

Date: DD MMM 2013

Master Supply Agreement

for ITS 2573

A panel arrangement for the supply of various telecommunications equipment, infrastructure and services.

NSW Government Department of Finance and Services
(Purchasing Authority)

[] **(Supplier)**

Master Supply Agreement

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draft

Details

Date

Parties

Name	NSW Government Department of Finance and Services
ABN	N/A
Short form name	Purchasing Authority
Notice details	Attention: [Insert]
	Address: [Insert]
	Facsimile: [Insert]
	Email: [Insert]

Name	
ABN	
Short form name	Supplier
Notice details	Attention: [Insert]
	Address: [Insert]
	Facsimile: [Insert]
	Email: [Insert]

Background

- A The NSW Government, represented by the Purchasing Authority, has authorised this Agreement to be used by Eligible Customers for the acquisition of telecommunications related equipment, infrastructure and services.
- B The Purchasing Authority wishes to enable Eligible Customers to procure various items of equipment, infrastructure and services from the Supplier from time to time for use in, or in connection with, the business, operations and services of the relevant agency or NSW Government entity or body.
- C The Purchasing Authority and the Supplier agree that from time to time, Eligible Customers may purchase equipment, infrastructure and services from the Supplier, and the Supplier will supply

that equipment, infrastructure and services on the terms of Purchase Orders entered into under this Agreement.

- D The Purchasing Authority is responsible for the administration of this Agreement on behalf of Eligible Customers and has authority to act on behalf of these entities in this respect.

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Agreed terms

1. General

PROCURING EQUIPMENT, INFRASTRUCTURE AND SERVICES

- 1.1 This Agreement requires that all Eligible Customers who acquire Equipment, Infrastructure and/or Services (as applicable) (**Contracted Items**) from the Supplier do so using the General Order Form (or as otherwise permitted under this Agreement).
- 1.2 This Agreement describes the relationship between the Purchasing Authority and the Supplier for the administration of the arrangement, including the means by which Contracted Items can be acquired under this Agreement, how those items can be updated during the Term, the pricing for the Contracted Items, which entities are entitled to acquire Contracted Items under this Agreement, which Approved Agents can be used by the Supplier to supply the Contracted Items, the Term of this arrangement, the minimum insurance requirements and any Performance Guarantee requirements, as well as the general terms and conditions applicable to the relationship.
- 1.3 The Parties agree to perform their obligations in accordance with the terms and conditions of this Agreement.
- 1.4 The Supplier must comply with the Panel Rules at all times during the Term of this Agreement.

DICTIONARY

- 1.5 Key terms and concepts used in this Agreement are defined in Schedule 1 (Dictionary).

2. Scope of Contract

PRICING FOR CONTRACTED ITEMS

- 2.1 Where an Eligible Customer executes a Purchase Order in accordance with this Agreement, the Eligible Customer must acquire the Contracted Items at the Prices which, for those Contracted Items prices for which are set out in Schedule 7 (Prices), must not exceed the amounts set out in Schedule 7 (Prices).
- 2.2 The amounts set out in Schedule 7 (Prices) are the maximum amounts payable by an Eligible Customer for the Contracted Items prices for which are set out in Schedule 7 (Prices) acquired during the Term, subject to any increase made in accordance with this Agreement. Nothing in this clause 2.2 prevents:
 - (a) the Supplier from charging a Customer for any item, service, expense or other thing which is permitted to be charged for under a Supply Contract; or

- (b) the Supplier and the Customer agreeing Prices which will apply to a Supply Contract which are lower than the amounts stated in Schedule 7 (Prices).

2.3 On the first, and each subsequent, anniversary of the Effective Date of this Agreement (**Adjustment Date**), the Supplier may make a CPI adjustment to increase the amounts stated in Schedule 7 (Prices) relating to the Services by the CPI Rate. For the avoidance of doubt, the Supplier is not permitted to increase the amounts stated in Schedule 7 (Prices) relating to Equipment or Infrastructure. If the Supplier chooses to make a CPI adjustment in accordance with this clause 2.3, an updated version of Schedule 7 (Prices) will be prepared by the Supplier to reflect the new amounts relating to the Services within 14 days of the Adjustment Date.

The CPI adjustment will be the CPI Rate, which will be calculated using the following formula:

$$\text{CPI Rate} = (A - B) / B$$

where:

A is the Australian Bureau of Statistics Consumer Price Index (All Capitals / All Groups) relevant to the 12 month period just completed (as at the Adjustment Date); and

B is the Australian Bureau of Statistics Consumer Price Index (All Capitals / All Groups) as at the end of the previous 12 month period.

- 2.4 In relation to all Supply Contracts entered into under this Agreement, the volume rebates, applicable thresholds and reimbursement or adjustment processes set out in Schedule 7 (Prices) (if any) will apply.
- 2.5 The Purchasing Authority may, itself, or by using a third party benchmarker, initiate a benchmark of all or any part of the Services the Supplier offers to provide under this Agreement at any time by giving Notice in Writing to the Supplier specifying the Services to be benchmarked (**Benchmarked Items**). Upon giving such Notice in Writing, the Purchasing Authority will consult with the Supplier, but for the avoidance of doubt will not be obliged to agree with the Supplier, in relation to the proposed Benchmarked Items. The right to initiate a benchmark under this clause 2.5 may not be exercised by the Purchasing Authority more frequently than once in every 12 month period during the Term of this Agreement.
- 2.6 A benchmark will compare the amounts set out in Schedule 7 (Prices) for the Benchmarked Items against prices (as applicable) for services the same as, or substitutable for, the Benchmarked Items (**Comparable Items**) based on data or information:
 - (a) from other suppliers of services that are similar to the Benchmarked Items;
 - (b) available from testing the market; or
 - (c) any combination of the sources in clauses 2.6(a) or 2.6(b),

taking into account factors such as the nature and size of the Supplier, the relevant geographies, any applicable Service Level Agreement, the relevant volumes, any particular or unique circumstances in which the Benchmarked Items are received or supplied, and such other issues and factors as the Purchasing Authority considers relevant, acting reasonably, and so determine a market benchmark (**Market Benchmark**). The Purchasing Authority must procure that the third party benchmarker undertakes to comply with the reasonable confidentiality requirements of both Parties.

2.7 The Supplier must:

- (a) give the Purchasing Authority and any of its Personnel (including any benchmarker appointed by Purchasing Authority):
 - (i) access to any sites, facilities, Deliverables, Personnel, information, documents and Materials; and
 - (ii) any assistance,
required by Purchasing Authority for, and relevant to the conduct of, the benchmark, excluding information relating to the Supplier's costs and margins; and
- (b) give the Purchasing Authority a copy of all reports from benchmarking carried out by (or at the request of) the Supplier and relating to the Benchmarked Items (which may be modified so that they do not identify the Supplier's customers or its internal costs and margins) promptly after a request by Purchasing Authority.

2.8 The third party benchmarker will be required to present its findings in a benchmarking report, including a description of the factors which were taken into account, a draft of which will be provided to the Purchasing Authority and the Supplier before it is in final form (**Draft Benchmarking Report**). The Supplier may, acting reasonably, submit comments or objections to the Purchasing Authority in respect of the Draft Benchmarking Report, including full supporting information and justification for such comments or objections. If the Purchasing Authority, acting reasonably, agrees with such comments or objections, it must communicate them to the third party benchmarker, and ask the third party benchmarker to reconsider its findings and issue a written response or an updated report.

2.9 If the Supplier does not comment on the Draft Benchmarking Report under clause 2.8 or the Purchasing Authority communicates Supplier comments under clause 2.8 but the third party benchmarker elects not to update the Draft Benchmarking Report (and provides reasons for not updating the Draft Benchmarking Report), the Purchasing Authority will provide such reasons to the Supplier and the Draft Benchmarking Report will be the Benchmark Report for the purposes of the remainder of this clause 2.

2.10 If the Purchasing Authority communicates Supplier comments under clause 2.8 and the third party benchmarker updates the Draft Benchmarking Report, the Purchasing Authority will

give the Supplier a copy of the updated Draft Benchmarking Report, which will be the Benchmark Report for the purposes of the remainder of this clause 2.

- 2.11 The Purchasing Authority will procure that the Benchmark Report will be modified so that it does not identify specifically the entity used for comparative purposes, such entity's customers or its internal costs and margins.
- 2.12 If a benchmark shows that the amounts set out in Schedule 7 (Prices) for the Benchmarked Items are higher than the Market Benchmark level established by the Benchmark Report, then:
- (a) the Purchasing Authority may by notice to the Supplier, require the Supplier to adjust the amounts set out in Schedule 7 (Prices) for those Benchmarked Items, in accordance with the Benchmark Report, with effect from the date that the benchmarking commenced; and
 - (b) the Supplier must do all things necessary, including executing all documents necessary, to implement the price adjustment referred to in clause 2.12(a).
- 2.13 The Supplier and Purchasing Authority agree to bear their own respective costs under clauses 2.5 to 2.12. The Purchasing Authority agrees to bear the costs of the third party benchmarker.

TERM OF AGREEMENT AND SUPPLY CONTRACT

- 2.14 This Agreement commences on the Effective Date of this Agreement and, unless it is validly terminated earlier in accordance with the terms of this Agreement or pursuant to a common law right, and subject to clause 2.15, continues until the End Date.
- 2.15 The Purchasing Authority may extend the term of this Agreement beyond the:
- (a) End Date for a further period of one year (**First Renewal Term**); and
 - (b) First Renewal Term for a further period of one year,
- on the same terms and conditions by giving the Supplier Notice in Writing at least 30 days prior to End Date, and/or the end of the First Renewal Term (as applicable).
- 2.16 Each Supply Contract commences on the Effective Date for that Supply Contract and continues for the Term of that Supply Contract unless earlier terminated in accordance with its terms.

3. Ordering and Supply Contracts

PURCHASE ORDERS

- 3.1 Any Eligible Customer may order Contracted Items by issuing a Purchase Order to the Supplier during the Term of this Agreement.

- 3.2 No equipment, deliverables, services or combination of deliverables and services are to be supplied under this Agreement, only under Supply Contracts formed in accordance with this clause 3.

PURCHASE ORDER REQUIREMENTS

- 3.3 Each Purchase Order must:
- (a) be signed by the Eligible Customer;
 - (b) specify the Contracted Items to be supplied and set out or attach the applicable Contract Specific Requirements;
 - (c) specify the Price of the Contracted Items ordered, which must not be greater than, or calculated using prices or rates greater than, the amounts stated in Schedule 7 (Prices); and
 - (d) specify the Site(s) or locations to which, and at which, the Contracted Items must be supplied.

FORMATION OF SUPPLY CONTRACTS

- 3.4 A binding Supply Contract between the Supplier and an Eligible Customer is created upon the Supplier and an Eligible Customer signing the Purchase Order.
- 3.5 Each Supply Contract incorporates:
- (a) clauses 1 to 27 of this Agreement other than those provisions which relate solely to the relationship between the Supplier and the Purchasing Authority and the means and processes by which Eligible Customers may enter into Supply Contracts under this Agreement;
 - (b) any Additional Terms that are stated as forming part of the Supply Contract in Item 6 of the General Order Form, together with any Schedules or Annexures to such Additional Terms;
 - (c) the Schedules to this Agreement other than those containing Additional Terms and their Schedules and Annexures referred to in clause 3.5(c);
 - (d) the applicable Contract Specific Requirements;
 - (e) the Purchase Order; and
 - (f) all other Order Documents.
- 3.6 To the extent that there is any conflict between any of the documents that comprise the Supply Contract, the conflict shall be resolved by giving priority to the documents in the order in which they appear in clause 3.5 (with an item higher in the list having priority over a lower item).

- 3.7 No confirmation, shipment or delivery docket, invoice or other document issued by or on behalf of the Supplier or the Customer (including the terms on any pre-printed purchase order form, any warranty or maintenance terms or licence terms) in relation to Contracted Items will vary or form part of the Supply Contract.

SEPARATE SUPPLY CONTRACT

- 3.8 Each Supply Contract is an independent Supply Contract that will continue in accordance with its terms until that Supply Contract has been terminated or fully discharged.
- 3.9 Supply Contracts and this Agreement may run concurrently, and Supply Contracts may continue after termination or expiration of this Agreement.

NO COMMITMENT

- 3.10 Neither the Purchasing Authority nor any Eligible Customer is obliged:
- (a) to issue any Purchase Orders to the Supplier; or
 - (b) to issue Purchase Orders for any minimum quantity of Contracted Items.

NO EXCLUSIVITY

- 3.11 The Supplier acknowledges that neither this Agreement nor any Supply Contract creates an exclusive supply arrangement between the Supplier and the Purchasing Authority or any Eligible Customer.
- 3.12 The Purchasing Authority and each Eligible Customer may, at any time, select another supplier to supply items that are the same as, or substantially similar to, any or all Contracted Items.

ENFORCEMENT

- 3.13 The Supplier acknowledges and agrees that the Purchasing Authority may enforce a Supply Contract as agent for an Eligible Customer, even though the Purchasing Authority is not a party to the Supply Contract in its own right.

SHORTENED GENERAL ORDER FORM

- 3.14 The Supplier and an Eligible Customer may use a shortened version of the General Order Form (including such shortened version as may be agreed by the Parties and used through any electronic buying platform operated by the relevant Eligible Customer) (**Short Form Order**) which omits items that the Parties agree are not required for the relevant Supply Contract, provided that:
- (a) the Purchase Order requirements stated in clause 3.4 are met and included in that form, as well as any other Order Details that the Parties may agree to include;
 - (b) the structure and form of the Short Form Order is consistent with the General Order Form (even if some items are omitted. Where items are omitted, subsequent items that are

included must retain their current item number or heading so that the references in this Agreement remain accurate);

(c) the Short Form Order is readily identifiable as an order under this Agreement and:

(i) uses the heading:

"General Order Form. Master Supply Agreement, ITS 2573";

(ii) includes the phrase;

"This General Order Form is issued pursuant to the Master Supply Agreement between the Purchasing Authority and the Supplier, and incorporates all the terms and conditions and other documents listed in clause 3.5 of the Master Supply Agreement as if repeated in full in this General Order Form."; and

(d) the Short Form Order is signed by both Parties.

3.15 The Parties may use an electronic form of any Order Document, provided that an electronic form of the relevant Order Document is lawful.

COMPLIANCE WITH CONSUMER LAWS

3.16 To the extent that the provisions of the CCA apply to goods or services supplied under a Supply Contract, then the provisions of the Supply Contract are subject to the provisions of the CCA.

3.17 To the extent that there is a failure to comply with a guarantee under sections 54 to 59 in schedule 2 of the CCA in respect of goods which are not goods of a kind that are ordinarily acquired for personal, domestic or household use or consumption, then to the extent permitted by law, the Supplier's liability is limited to one or more of the following, at the election of the Supplier:

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

3.18 To the extent that there is a failure to comply with a guarantee in respect of the supply of services under sections 60 to 62 in schedule 2 of the CCA, then to the extent permitted by law, the Supplier's liability is limited to one or more of the following, at the election of the Supplier:

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

NORMAL USE

3.19 For the purposes of the CCA, the Deliverables provided under a Supply Contract are ordinarily supplied for the use in connection with the provision of voice and data services which:

- (a) are not used for a Prescribed Use; and
- (b) are not for resale.

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

3.20 The Customer agrees that:

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

4. Deliverable Specific Issues

DELIVERY

- 4.1 The Supplier must deliver any Deliverables to the Site between the hours specified in the Order Documents, or as otherwise agreed in writing.
- 4.2 The Contract Price is inclusive of any additional or separate delivery costs, unless otherwise stated in the Order Documents.

TITLE AND RISK

- 4.3 Title to, and risk in, Deliverables supplied to the Customer (except to the extent that the Intellectual Property Rights in those Deliverables are assigned or licensed under clause 14.3, 14.4 or 14.6 or clause 5 of the Equipment Terms) passes to the Customer when the Supplier delivers those Deliverables to the Customer. If the Customer rejects a Deliverable in accordance with clause 6, 7, or 8, title in that Deliverable reverts to the Supplier when that Deliverable is delivered to a carrier for return to, or otherwise returned to, the Supplier.
- 4.4 Risk in a Deliverable that is collected by the Supplier from Customer for repair or replacement, or returned to the Supplier for repair or replacement, passes to the Supplier on collection of, or receipt of, that Deliverable (as applicable).

SERVICE LEVELS

- 4.5 The Supplier must perform its obligations in accordance with the Service Level Agreement (if any). The Supplier will not be liable for any failure to perform its obligations in accordance with the Service Level Agreement (if any) to the extent that such failure is caused by an Event (subject to the Supplier complying with clauses 27.10 and 27.11) or is attributable to the Customer's failure to perform its obligations in accordance with the Supply Contract or other breach of the Supply Contract by the Customer.
- 4.6 Either the Customer or the Supplier may periodically review the Service Level Agreement and may recommend or request a change to a Service Level Agreement. Any change to a Service Level Agreement must be implemented as a Change Request in accordance with the procedures stated in Schedule 8 (Supply Contract Variation Procedures).

SUPPORT SERVICES AND RESELLER PROVISION OF SUPPORT SERVICES

- 4.7 Subject to clause 4.9, the Supplier must supply Support Services for each Supported Deliverable during the Support Period.
- 4.8 For each Deliverable supplied by the Supplier under a Supply Contract, the Supplier must maintain the capability to provide the Support Services, including maintaining all resources and Personnel necessary to enable it to provide Support Services as required under the Supply Contract.
- 4.9 If it is specified in the Purchase Order that the Support Services are to be supplied via a Supplier that is a Reseller, the provisions of this clause 4.9 apply, and the Customer and the Supplier must agree in the Purchase Order which of the following business models, Reseller as Facilitator or Reseller with Pass Through Warranties, applies to the supply of the Support Services:
 - (a) **Reseller as Facilitator.** In this business model the Supplier provides reseller services which facilitate the supply of the Support Services by the original equipment provider or its authorised distributor to the Customer, in which case:
 - (i) the Supplier will procure that the original equipment provider or its authorised distributor enters into a contract directly with the Customer for the supply of the Support Services for the Warranty Period, or such other period as agreed between the Customer and the original equipment provider or its authorised distributor, and the provisions of the Supply Contract that relate to the supply of the Support Services, including provisions in the Supply Contract relating to Intellectual Property Rights and the features, capabilities, performance or other characteristics of the Support Services do not apply. The terms of the contract between the original equipment provider or its authorised distributor and the Customer for the supply of the Support Services will be attached to the Supply Contract and will be deemed accepted by the Customer when the Customer enters into the Supply Contract;

- (ii) the Supplier will co-ordinate and manage the provision of any:
 - (A) manufacturer's support and maintenance services that are to be provided in respect of any Defect or alleged Defect that is reported by the Customer to the Supplier;
 - (B) services that are to be provided in respect of any movement, addition, change or substitution of the Supported Deliverable; and
- (iii) the Customer will pay the proportion of the Contract Price attributable to the Support Services to the Supplier, and the Supplier shall pay the amount agreed between the Supplier and the original equipment provider or its authorised distributor for the Support Services; or
- (b) **Reseller with Pass Through Warranties.** In this business model, the Supplier will supply the Support Services to the Customer on the terms and conditions of the Supply Contract, except that:
 - (i) clause 20.10 does not apply;
 - (ii) the warranties or guarantees that are provided under the Supply Contract in respect of the Support Services are limited to any warranties and guarantees that cannot be excluded by law and any warranties that the original equipment provider or its authorised distributor permits the Supplier to assign to the Supplier's customers; and
 - (iii) the Supplier must use best efforts to ensure that:
 - (A) all benefits of the warranty to the Customer for the Supported Deliverables are utilised to the benefit of the Customer; and
 - (B) all benefits of any original equipment provider or its authorised distributor warranty services for the Supported Deliverables are utilised to the benefit of the Customer, and this may include returning faulty equipment to the original equipment manufacturer or authorised distributor for repair under warranty rather than repairing the Supported Deliverables.

4.10 The Supplier must provide any value added services that are set out in the Order Documents.

DOCUMENTATION

- 4.11 The Supplier must provide the User Documentation and any Bespoke User Documentation to the Customer in either hard copy or electronic format. If the User Documentation is provided in hard copy format:
- (a) the Supplier must make available, at no additional cost to the Customer, at least one copy of the User Documentation and such related material as the Supplier usually makes

available free to its other customers, upon supply of the relevant Contracted Item to the Customer, or at the time(s) stated in the Order Documents; and

- (b) additional copies of the User Documentation must, if requested by the Customer, be provided by the Supplier at the Supplier's then current commercial price.

4.12 The Supplier must ensure that any User Documentation and Bespoke User Documentation:

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

4.13 Where the Customer identifies any defect in the User Documentation or Bespoke User Documentation within 30 days of the date of supply of the User Documentation or Bespoke User Documentation to the Customer, the Supplier must amend the defective User Documentation or Bespoke User Documentation and must promptly supply to the Customer the amended User Documentation or Bespoke User Documentation (or the relevant part) at no additional cost to the Customer.

4.14 The Supplier grants the Customer a right to use the User Documentation or Bespoke User Documentation in connection with the authorised use of the Equipment, Infrastructure or other Deliverable, including for training purposes (**Authorised Use**). Where the User Documentation is only provided in an electronic format, the Customer may print copies of the User Documentation as reasonably necessary for the Authorised Use. The Supplier agrees that the Customer may copy or adapt (including incorporating parts of the User Documentation into other Documents) as reasonably necessary for the Authorised Use.

PRODUCT SAFETY

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

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

5. Delivery Management

PROJECT MANAGEMENT

- 5.1 The Customer shall have the right to appoint a representative of the Purchasing Authority to act as the Customer's agent for the purpose of exercising any of the Customer's rights arising out of, or in connection with, the Supply Contract.

CHANGE CONTROL

- 5.2 Either the Purchasing Authority or the Supplier may recommend or request a change to any part of this Agreement. Any change to any part of this Agreement must be implemented as a Contract Variation, subject to clause 27.2. The Party proposing the Contract Variation must provide details of the requested change and the reasons why it believes such change is necessary or desirable.
- 5.3 The Party receiving the draft Contract Variation must, within 5 Business Days of receipt (or such longer period set out in the Contract Variation):
- (a) request further information; or
 - (b) provide written notification to the other Party of its approval or rejection of the Contract Variation.
- 5.4 Either the Customer or the Supplier may recommend or request a change to any part of a Supply Contract. Any change to any part of a Supply Contract must be implemented as a Change Request in accordance with the variation procedures stated in Schedule 8 (Supply Contract Variation Procedures), subject to clause 27.2.

EXTENSION OF TIME

- 5.5 Each Party must do all it reasonably can to promptly inform the other of anything that it becomes aware of which is likely to affect the cost, quality or timing of delivery of the Contracted Items or outputs from them, and the Parties must then investigate how to avoid or minimise any adverse effect on the relevant Supply Contract.
- 5.6 The Customer may consent to a request for extension of time provided that the Supplier provides the Customer with a plan indicating in detail the steps the Supplier proposes to take to minimise the impact of any delay.
- 5.7 Subject to clause 5.9, the Customer must grant to the Supplier reasonable extension of time to perform its obligations under a Supply Contract, including any LD Obligations, upon, and must bear the Supplier's costs (calculated using the rates set out in the Supply Contract, or if none, calculated using the Supplier's then current commercial rates) incurred as a result of, a delay which has occurred because of:
- (a) the Customer's failure to perform its obligations in accordance with the Supply Contract (including a failure to provide the CSI to the Supplier);

- (b) a suspension of or change to access to the Site under clause 9.3, except where such suspension of or change access has been made as a result of an adverse finding arising out of an investigation into the conduct of the Supplier or its Personnel, the Supplier's failure to comply with clause 9.2 or 9.4, or any other negligence by the Supplier or its Personnel or breach of the Supply Contract by the Supplier;
- (c) the act or omission of the Customer, its Personnel or any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer; or
- (d) an Event (subject to the Supplier complying with clauses 27.10 and 27.11).

5.8 Subject to clause 5.9, the Customer may grant to the Supplier a reasonable extension of time upon, and bear the Supplier's costs (calculated using the rates set out in the Supply Contract, or if none, calculated using the Supplier's then current commercial rates) incurred as a result of, a delay which has occurred because of any change to any of the Customer's secrecy or security requirements provided that the Supplier will mitigate any expenses incurred or delay caused as a result of complying with such changed requirements.

5.9 The Supplier must submit a Change Request to the Customer in respect of the relevant extension of time or change to any amount payable by the Customer in accordance with Schedule 8 (Supply Contract Variation Procedures) within 10 Business Days of becoming aware of the relevant delay under clause 5.7 or 5.8.

LIQUIDATED DAMAGES

5.10 Where the Parties have agreed in Item 18 of the Purchase Order that liquidated damages will be payable for the late completion of an LD Obligation, clauses 5.11 to 5.17 apply.

5.11 Unless clause 5.7 applies in respect of a delay, where the Supplier has not completed an LD Obligation by the Due Date, the Supplier must pay liquidated damages stated in Item 18 of the Purchase Order or other part of the Order Details to the Customer.

5.12 The Customer must promptly give the Supplier Notice in Writing setting out the grounds on which the Customer claims that liquidated damages are payable.

5.13 Each Party acknowledges that the liquidated damages stated in Item 18 of the Purchase Order or other part of the Order Details are a genuine pre-estimate of the loss, damage or expense that the Customer will suffer during the period in which liquidated damages are payable under clause 5.11 as a result of the Supplier not completing the LD Obligation by the Due Date.

5.14 The Supplier must pay any liquidated damages that are due from the Due Date until the earlier of:

- (a) the date that the Supplier successfully completes the LD Obligation in relation to which the liquidated damages have been applied; or

- (b) the date on which the maximum number of days for which liquidated damages are payable as stated in Item 18 of the Purchase Order or other part of the Order Details have elapsed (the **Longstop Date**).

5.15 Liquidated damages paid under clause 5.11:

- (a) are the Customer's sole and exclusive financial remedy for the Customer's loss, damage and expense that the Customer suffers during the period in which liquidated damages are payable under clause 5.11 out of or in connection with the Supplier not completing the LD Obligation by the Due Date, subject only to the Customer's rights under clause 5.16; but
- (b) do not relieve the Supplier from any other liability or from meeting any other obligation under the Supply Contract.

5.16 The Customer may, at any time during the period in which liquidated damages are payable under clause 5.11, issue a Notice in Writing of a Substantial Breach in respect of the Supplier not completing the LD Obligation by the Due Date specifying a period during which the Supplier is required to remedy that Substantial Breach, such period to be the greater of:

- (a) 10 Business Days;
- (b) the period during which liquidated damages are payable for that Substantial Breach; or
- (c) such longer period stated in the Notice in Writing,

and if the Supplier has not remedied that Substantial Breach (by completing the LD Obligation) by the end of such period, the Customer may terminate the Supply Contract immediately by Notice in Writing to the Supplier.

5.17 The Parties agree that where the Supplier has not successfully completed the LD Obligation in relation to which the liquidated damages have been applied by the Longstop Date, the payment of liquidated damages by the Supplier under clause 5.11 is without prejudice to the Customer's right to claim damages at large in respect of loss, damage and expense that arises after the Longstop Date out of or in connection with the Supplier not completing the LD Obligation by the Longstop Date.

CUSTOMER SUPPLIED ITEMS

5.18 The Customer must provide and maintain the CSI at the times and in accordance with the requirements stated in the Contract Specific Requirements.

5.19 The Supplier must:

- (a) not use any CSI other than for the purposes of the Supply Contract without the prior written consent of the Customer;
- (b) not part with possession of any CSI unless the Customer has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any CSI;

- (c) take all reasonable care of all CSI including accounting for, preserving, installing or handling the CSI in accordance with the Order Documents;
 - (d) not modify any CSI without the prior written consent of the Customer;
 - (e) promptly inform the Customer of any loss, destruction or damage to any CSI;
 - (f) comply with any instruction of the Customer for preserving, forwarding or disposal of any damaged CSI; and
 - (g) pay the costs, if any, stated in the Contract Specific Requirements, for CSI.
- 5.20 If the CSI is no longer required for the purposes of a Supply Contract, it must be returned to the Customer or destroyed at the Customer's request as soon as practicable, unless other arrangements are agreed.

CUSTOMER ASSISTANCE

- 5.21 During the Term of the Supply Contract, the Customer must:
- (a) make available to the Supplier all relevant instructions, information, data, documents, specifications, plans, drawings and other materials as specified in Contract Specific Requirements or as otherwise agreed in writing with the Supplier; and
 - (b) answer reasonable queries made by the Supplier relating to the Customer's requirements in connection with the Supply Contract.

6. Physical Acceptance

- 6.1 This clause 6 applies to Contracted Items which are Equipment and Infrastructure, except where the Purchase Order provides that such Equipment and Infrastructure are Test Items, in which case they are subject to testing in accordance with clause 7.
- 6.2 Within 10 Business Days after receiving a delivery of Equipment or Infrastructure, the Customer must inspect that delivery and notify the Supplier if any of the Equipment or Infrastructure in the delivery is damaged or physically Defective, or if the delivery does not correspond in any respect to the Equipment or Infrastructure ordered by the Customer under the Supply Contract (**Incorrect Delivery**).
- 6.3 If the Customer does not notify the Supplier that any of the Equipment or Infrastructure in the delivery is damaged or physically Defective or that there is an Incorrect Delivery by the date which is 10 Business Days after the date on which the Customer received the delivery of Equipment or Infrastructure, the Customer will be deemed to have accepted that the Equipment or Infrastructure is free from damage or physical Defects and is not an Incorrect Delivery (**Physical Acceptance**).
- 6.4 If the Customer notifies the Supplier under clause 6.2, the Supplier must, at no cost to the Customer:

- (a) in the case of an Incorrect Delivery, take all steps required to ensure that the correct Contracted Items are delivered to the Customer as soon as possible, which may include removing the delivered items and re-delivering the Contracted Items which accurately correspond to the items ordered under the Supply Contract;
 - (b) in all other cases, if the amount of damaged or physically Defective Equipment is less than or equal to 5% of the number of items of Equipment or Infrastructure in that delivery:
 - (i) collect the Equipment or Infrastructure which has been rejected at a time and date agreed by the Parties; and
 - (ii) promptly, and in any event within five Business Days, or such longer period as the Customer, acting reasonably and taking into account the nature of the relevant Contracted Items and their origin, may notify the Supplier, either (at the Customer's option):
 - (A) provide the Customer with new Equipment or Infrastructure of the same type as the Defective Equipment or Infrastructure; or
 - (B) give the Customer a refund of the Price for the Defective Equipment or Infrastructure; or
 - (c) if the amount of damaged or physically Defective Equipment or Infrastructure is greater than 5% of the number of items of Equipment or Infrastructure in that delivery:
 - (i) collect the entire delivery of Equipment or Infrastructure; and
 - (ii) supply replacement Equipment or Infrastructure of the same type and in the same quantities as the delivery which has been rejected no later than 10 Business Days after the date on which the Supplier receives the Customer's notice under clause 6.2, or such longer period as the Customer, acting reasonably and taking into account the nature of the relevant Contracted Items and their origin, may notify the Supplier.
- 6.5 If clause 6.4(c) applies and the Supplier does not comply with its obligations under that clause, the Customer may issue a Notice in Writing to the Supplier terminating the Supply Contract, in whole or in part with immediate effect.

7. Testing

- 7.1 This clause 7 will apply to Test Items.
- 7.2 If the Order Documents do not set out an Acceptance Test Plan, the Supplier must, on or before the date which is 10 Business Days after the Effective Date of the Supply Contract (or any other date agreed between the parties in writing), submit to the Customer a draft Acceptance Test Plan for the Test Items identified in that Supply Contract.

- 7.3 The process set out in clause 8 will apply for Acceptance of that Acceptance Test Plan.
- 7.4 The party specified in the applicable Acceptance Test Plan (or if no party is specified, the Supplier) must perform the Acceptance Tests at the times specified in that Acceptance Test Plan.
- 7.5 If the Supplier is the party conducting the Acceptance Tests, it must give the Customer at least 5 Business Days prior notice of those Acceptance Tests and allow one or more members of the Customer's Personnel to attend and witness the conduct of those Acceptance Tests, provided that the Customer agrees to comply with the Supplier's reasonable security and work, health and safety requirements while attending a Supplier facility or premises, and must always be accompanied by a representative of the Supplier during such attendance.
- 7.6 Each Party must provide all assistance reasonably requested by the other in connection with the Acceptance Tests.
- 7.7 If the Supplier undertakes Acceptance Tests, it must promptly, after completing those Acceptance Tests (and in any event within 5 Business Days), provide the results of those Acceptance Tests to the Customer.
- 7.8 The Customer must, no later than 5 Business Days after:
- (a) receiving the results of any Acceptance Tests in accordance with clause 7.7; or
 - (b) if the Customer conducts the Acceptance Tests in accordance with clause 7.4, the date on which it conducts those Acceptance Tests,
- (the **Acceptance Test Notification Period**) give the Supplier Notice in Writing that it either:
- (c) Accepts the Test Item, if the Test Item meets the Acceptance Criteria; or
 - (d) rejects the Test Item, if the Test Item does not meet the Acceptance Criteria.
- 7.9 The Test Items are deemed accepted if:
- (a) the Customer does not notify the Supplier within the Acceptance Test Notification Period that the Test Item is Accepted or rejected;
 - (b) where the Customer is to perform the Acceptance Tests, the Customer fails to perform the Acceptance Tests by the end of the period specified in the Acceptance Test Plan for the performance of the Acceptance Tests, except for any delay resulting from any action of the Supplier, unless otherwise agreed;
 - (c) the Customer gives written notice that it waives the requirement for the Test Item to pass Acceptance Tests;
 - (d) the Parties agree that the Test Item is accepted based on an agreement to a reduction in the Contract Price; or
 - (e) the Customer uses the Test Item for its business purposes and/or in a production environment without the consent of the Supplier.

- 7.10 If the Customer rejects one or more Test Items (**Rejected Item**) in accordance with clause 7.8(d), the Supplier must within the time specified in the notice of rejection (which must be not less than 5 Business Days) (at no cost to the Customer):
- (a) replace, repair or modify that Rejected Item so that it complies with the Acceptance Criteria; and
 - (b) repeat the Acceptance Tests for the Rejected Item and, to the extent necessary, for the Dependent Items of the Rejected Item, in accordance with the procedure specified in clauses 7.5 to 7.8, unless the Customer issues a termination notice in accordance with clause 26.1(b).

8. Documentary Deliverables

- 8.1 The Supplier must submit each documentary Deliverable (including written information, documentation, reports and any other written material) to the Customer for approval on or before the applicable delivery date for such documentary Deliverable specified in the Order Documents.
- 8.2 The Supplier must ensure that each documentary Deliverable:
- (a) is reasonably acceptable to the Customer in terms of its presentation, accuracy and scope;
 - (b) is the most current and up-to-date version available;
 - (c) includes adequate definitions of all key terms, words and symbols; and
 - (d) is in English and is clearly expressed.
- 8.3 Before submitting any documentary Deliverable, the Supplier must ensure that the documentary Deliverable meets, in addition to the requirements of clause 8.3, all applicable Acceptance Criteria.
- 8.4 The Customer must, within 10 Business Days (or any other timeframe agreed between the parties in writing) of receiving a documentary Deliverable (**Review Period**), review that Deliverable and give the Supplier Notice in Writing that either it:
- (a) Accepts the documentary Deliverable, if the documentary Deliverable meets the Acceptance Criteria; or
 - (b) rejects the documentary Deliverable, if the documentary Deliverable does not meet the Acceptance Criteria, and requires amendments to the documentary Deliverable.
- 8.5 The documentary Deliverable is deemed accepted if:
- (a) the Customer does not notify the Supplier within the Review Period that the Test Item is Accepted or rejected;

- (b) the Customer gives written notice that it waives the requirement for the documentary Deliverable to meet the Acceptance Criteria; or
 - (c) the Parties agree that the documentary Deliverable is accepted based on an agreement to a reduction in the Contract Price.
- 8.6 If the Customer notifies the Supplier that the documentary Deliverable does not meet the Acceptance Criteria and it requires amendments to a documentary Deliverable under clause 8.4(b), the Supplier must, within five Business Days (or any alternative timeframe agreed between the parties in writing), prepare a revised documentary Deliverable which addresses all of the amendments required by the Customer.
- 8.7 The parties must repeat the process in this clause 8 until the documentary Deliverable meets all applicable requirements specified in the Agreement, including the Acceptance Criteria, unless the Customer issues a termination notice in accordance with clause 26.1(b).

9. Access

ACCESS TO SITE

- 9.1 Without prejudice to the Supplier's obligations under the Services Terms (if applicable), the Customer must prepare and maintain the Site:
- (a) to enable the supply of the Deliverables; and
 - (b) in accordance with a Site Specification that is approved in accordance with the Services Terms (if applicable).
- 9.2 Where the Customer provides the Supplier with access to the Site, the Supplier:
- (a) must ensure that its Personnel comply with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security; and
 - (b) is liable, subject to clause 19, for any damage to the extent that such damage is caused by any negligent act or omission of its Personnel on the Site.
- 9.3 Subject to clause 5.7, the Customer may temporarily deny or suspend access to the Site in its discretion.
- 9.4 The Supplier must comply, and must ensure that its Personnel comply, with the reasonable secrecy and security requirements of the Customer of which the Customer provides the Supplier by Notice in Writing before any access to the Site is granted to the Customer, as amended or updated from time to time.

10. Personnel

GENERAL

- 10.1 Neither Party may, without the prior written consent of the other Party, engage, employ or induce or cause a third party to induce the other Party's Personnel engaged in the performance of a Supply Contract to enter into a contract for service or a contract of employment with it.
- 10.2 The restriction in clause 10.1 shall apply during the Term of the Supply Contract and for a period of six months after the end of the Term of the Supply Contract.
- 10.3 A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of clause 10.1.
- 10.4 The Parties agree that the restrictions in clauses 10.1 to 10.3 are necessary to protect the legitimate interests of each Party.
- 10.5 The Customer must make available its Personnel to work with the Supplier as stated in the Order Documents. The Parties will identify such Personnel and their roles in the Order Documents.
- 10.6 The Customer must use reasonable efforts to ensure that its Personnel who are made available to work with the Supplier have the requisite authority, qualifications, competencies, skills and experience to perform their tasks.
- 10.7 The Supplier must ensure a safe system of work, that is the same as, or equivalent to, the system of work the Supplier maintains in place for its own Personnel, for any of the Customer's Personnel who the Customer makes available to perform work under the control and direction of the Supplier at the Supplier's premises.

APPROVED AGENTS

- 10.8 If so stated in Item 21 of the Purchase Order, the Supplier may supply Equipment or Infrastructure to the Customer through an Approved Agent.
- 10.9 If a Supply Contract is entered into between the Customer and an Approved Agent, the Approved Agent will sign the General Order Form, as agent for the Supplier, and the Supplier is deemed to have entered into a Supply Contract with the Customer.
- 10.10 The Supplier must ensure that its Approved Agents supply the Deliverables only in accordance with the terms of the Supply Contract under which the Approved Agent is to supply the Deliverables.
- 10.11 Where an Approved Agent signs a General Order Form under clause 10.9, the Approved Agent warrants, in its own capacity, that it is the lawful agent of the Supplier to provide the Contracted Items under the Supply Contract.

SUBCONTRACTORS

10.12 The Supplier must not subcontract the performance or supply of any of its obligations under a Supply Contract which relate to a material component of the Contracted Items which interface directly with the Customer without obtaining the prior written consent of the Customer, which may be given or withheld at the Customer's discretion, or given subject to such conditions as the Customer thinks fit. For any other obligations under a Supply Contract, where the Supplier proposes to sub-contract their performance or supply, it must give the Customer Notice in Writing of the proposed sub-contracting, and details of the proposed sub-contractor, and the Customer may object to the proposed sub-contracting where it has a valid reason for so doing (details of which must be given to the Supplier). Upon receiving such objection, the Supplier must not proceed with the proposed sub-contracting. The Customer agrees that the requirements in this clause 10.12 do not apply to services which are sub-contracted by the Supplier as part of its normal, day-to-day operations, and which do not have a substantive bearing on the Supplier's obligations under the Supply Contract, for example, printing, courier or other administrative services or functions.

10.13 Where the Customer believes that any Subcontractor is in material breach of its obligations to the Supplier, or its performance of obligations or services is unsatisfactory, so that the Supplier is likely to be in material breach of the Supply Contract as a result, the Customer must:

- (a) provide Notice in Writing to the Supplier setting out the details of its concerns; and
- (b) meet with the Supplier within 3 Business Days of the Supplier's receipt of the Notice in Writing to discuss the concerns,

and if, following the discussions with the Supplier, the Customer is satisfied, acting reasonably, that the Supplier will be in material breach of the Supply Contract as a result of the performance of the Subcontractor, the Customer may give Notice in Writing that it is withdrawing its consent to allow the Subcontractor to continue to work in connection with the Supply Contract and require the Supplier to procure that the Subcontractor promptly ceases performing any work in connection with the Supply Contract, subject to any contrary requirements of the Customer in respect of effecting an orderly transition notified to the Supplier, and in such circumstances, the Supplier agrees that the Customer will have no liability whatsoever to the Supplier for any loss suffered by the Supplier arising out of any termination of, or the continuation of, the relevant subcontract.

10.14 The Supplier:

- (a) must ensure that each Subcontractor is aware of all the terms and conditions of the Supply Contract that are relevant to the Subcontractor's performance of its work;
- (b) is not relieved of its liabilities and obligations arising out of, or in connection with, the Supply Contract by subcontracting any work, and remains liable to the Customer for the

acts, defaults and neglect of any Subcontractors as fully as if they were the Supplier's acts, defaults or neglects; and

- (c) must ensure that the Subcontractor ceases work upon receipt of a Notice in Writing from the Customer of withdrawal of the consent given under clause 10.13.

10.15 For the avoidance of doubt, where the Supplier is acting as a Reseller under the Supply Contract, the original equipment manufacturer or its authorised distributor is not a Subcontractor for the purposes of the Supply Contract.

11. Warranties

SUPPLIER WARRANTIES

11.1 The Supplier warrants to the Purchasing Authority that:

- (a) as at the Effective Date of this Agreement, the Supplier is properly constituted and has the right and authority to enter into this Agreement;
- (b) it will comply with the Panel Rules at all times during the Term of this Agreement;
- (c) to the best of its knowledge and belief there is no Conflict of Interest of the Supplier or its Personnel as at the Effective Date of this Agreement, and during the Term of this Agreement, the Supplier will use its reasonable efforts not to permit a Conflict of Interest of the Supplier or its Personnel to arise in the performance of its obligations;
- (d) the information provided to the Customer in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Supplier and its Personnel prior to entering into this Agreement, was to the best of the Supplier's knowledge and belief correct when it was provided to the Purchasing Authority; and
- (e) as at the Effective Date of this Agreement, to the best of its knowledge and belief the Supplier has all the necessary licences, approvals and consents necessary to perform its obligations under this Agreement and any Supply Contract to be entered into under it.

11.2 The Supplier warrants to the Customer that:

- (a) as at the Effective Date of the relevant Supply Contract, the Supplier is properly constituted and has the right and authority to enter into the Supply Contract;
- (b) to the best of its knowledge and belief there is no Conflict of Interest of the Supplier or its Personnel as at the Effective Date of the relevant Supply, and during the Term of the Supply Contract the Supplier will use its reasonable efforts not to permit a Conflict of Interest of the Supplier or its Personnel to arise in the performance of its obligations;
- (c) the information provided to the Customer in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Supplier and its Personnel prior

to entering into the relevant Supply Contract, was to the best of the Supplier's knowledge and belief correct when it was provided to the Customer;

- (d) as at the Effective Date of the relevant Supply Contract, to the best of its knowledge and belief the Supplier has all the necessary licences, approvals and consents necessary to perform its obligations under the Supply Contract;
- (e) that to the best of its knowledge and belief, the Supplier has the necessary Intellectual Property Rights and has procured the necessary consents in relation to Moral Rights, to grant the Customer the rights to use and/or own (if applicable) the Deliverables in accordance with the Supply Contract;
- (f) it has the right to transfer title to the Deliverables to the Customer in accordance with clause 4.3;
- (g) it has, and will at all times have, use and apply the skills, qualifications, expertise, capacity, resources and experience necessary to carry out its obligations under the Supply Contract;
- (h) it will perform all of its obligations under the Supply Contract in accordance with:
 - (i) the Statutory Requirements,
 - (ii) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Deliverables have not been produced using "worst forms of child labour" as defined; and
 - (iii) the codes, policies, guidelines and standards referenced on www.telco.nsw.gov.au;
- (i) all of its obligations under the Supply Contract will be carried out:
 - (i) by suitably competent and trained Personnel;
 - (ii) in an efficient, timely, professional, sound and commercially reasonable manner;
 - (iii) with the standard of diligence and care normally employed by duly qualified persons performing obligations similar to the Supplier's obligations under the Supply Contract;
 - (iv) in accordance with the agreed methodologies and all generally accepted practices appropriate to the activities undertaken; and
 - (v) in accordance with any other reasonable written direction that the Customer issues to the Supplier that does not conflict with the terms of this Agreement or the Supply Contract;
- (j) in respect of Deliverables, the Deliverables will:

- (i) meet the functional and performance criteria set out in, and otherwise conform with, the Order Documents and the other requirements of the Supply Contract;
 - (ii) be new and not used by any other person unless agreed in writing by the Customer;
 - (iii) be free from any security interest or encumbrance;
 - (iv) be fit for the purposes set out in the Order Documents other than the Contract Specific Requirements; and
 - (v) comply with all applicable laws, including all packaging and labelling requirements required for Deliverables of that type;
- (k) it will maintain any quality standard accreditation stated in the Contract Specific Requirements; and
- (l) it is responsible for the acts and omission of its Personnel as if they were its own acts and omissions.
- 11.3 All licences, approvals and consents obtained by the Supplier in relation to the Supply Contract must be obtained at the Supplier's cost.
- 11.4 Without limiting any of the Supplier's obligations under the Supply Contract, where the Supplier is not the manufacturer of a Deliverable, the Supplier must use its reasonable endeavours to pass on to the Customer the benefit of any warranties relating to the Deliverable provided by the manufacturer of the Deliverable or any other third party.

CUSTOMER WARRANTIES

- 11.5 The Customer warrants to the Supplier that:
- (a) it will provide the Supplier and its Personnel with a safe place to work;
 - (b) it will supply the CSI (if any) in accordance with the requirements stated in the Order Documents;
 - (c) it is responsible for the acts and omission of its Personnel as if they were its own acts and omissions;
 - (d) it has the right and authority to enter into the Supply Contract; and
 - (e) it will perform its obligations under the Supply Contract in accordance with:
 - (i) the Statutory Requirements,
 - (ii) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Deliverables have not been produced using "worst forms of child labour" as defined; and
 - (iii) the codes, policies, guidelines and standards referenced on www.telco.nsw.gov.au.

MUTUAL WARRANTIES

- 11.6 The Customer warrants to the Supplier, and the Supplier warrants to the Customer and the Purchasing Authority, that during the Term of the Supply Contract it will:
- (a) co-operate with each other Party and its Personnel to ensure timely progress and fulfilment of the Supply Contract, provided that nothing in this clause 11.6(a) requires the disclosure of a Party's Confidential Information or granting of any Intellectual Property Rights;
 - (b) act reasonably and in good faith with respect to matters that arise out of, or in connection with, the Supply Contract;
 - (c) work together with each other Party in a collaborative manner;
 - (d) to the extent that it is reasonably possible, perform its obligations so as to avoid hindering the performance of each other Party; and
 - (e) hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to each other Party on a regular basis to ensure each other Party is fully informed of the progress of work required under the Supply Contract.

12. Payment and Invoicing

PAYMENT

- 12.1 In consideration for the Supplier providing the Contracted Items in accordance with the Supply Contract, the Customer must pay the Supplier the Contract Price in the amounts and at the times stated in the Order Documents and/or Item 11 of the Purchase Order.
- 12.2 The Prices are fixed for the Term of the Supply Contract, unless otherwise stated in the Order Documents including Item 11 of the Purchase Order.
- 12.3 If the Supplier refuses, neglects or fails to perform an obligation to provide a Contracted Item in accordance with the Supply Contract, the Customer may withhold the payment associated with that failure until the Supplier performs the relevant obligation in accordance with the Supply Contract, unless the Supply Contract entitles the Customer to some alternative specific financial remedy for such refusal, neglect or failure, for example liquidated damages or services credits, but not a general right to damages.

INVOICING

- 12.4 The Parties agree that, subject to clauses 12.5 to 12.8, the Customer must pay the Supplier for the Contracted Items within 30 days (or such other period agreed in the Order Documents including the Purchase Order) of receipt of a Correctly Rendered Invoice. For the avoidance of doubt, no amount is payable by the Customer under a Supply Contract until a Correctly Rendered Invoice is received.

- 12.5 The Supplier must provide any further details in regard to an invoice that are reasonably requested by the Customer.
- 12.6 The Supplier must send any invoices for any amount due to the Customer's Authorised Representative at the address stated in Item 4 of the Purchase Order.
- 12.7 The making of a payment is not an acknowledgment that the Contracted Items have been supplied or accepted in accordance with the Supply Contract.
- 12.8 If the Customer disputes an invoiced amount the Customer must:
 - (a) provide the Supplier with written notice stating the amount it believes is due for payment and setting out the reasons for not paying the balance, such written notice to be given within 10 Business Days from the date of receipt of the invoice; and
 - (b) pay the amount it believes is due for payment by the date that payment must be made under the Supply Contract.

13. Taxes

- 13.1 Subject to clauses 13.2 and 13.3, the Supplier is liable for all Taxes imposed or levied in connection with the Supplier's performance of its obligations under the Supply Contract.
- 13.2 The Customer must pay any GST that is payable in respect of any Taxable Supply made under the Supply Contract in addition to the amount payable (exclusive of GST) for the Taxable Supply. GST is payable at the same time as the amount payable for the Taxable Supply to which it relates.
- 13.3 If there is any abolition or reduction, increase or introduction of any Tax, the Price that is payable for the Contracted Items, or any other cost or expense that is payable under the Supply Contract must be varied so that the Supplier's net dollar margin for the Contracted Items, cost or expense remains the same.
- 13.4 Any reference in the Supply Contract to a cost or expense to be reimbursed by one Party to another Party includes any GST payable in connection with a Taxable Supply to which that cost or expense relates, less the amount of any input tax credit that the Party requiring the reimbursement is entitled to claim.

14. Intellectual Property Rights

OWNERSHIP

- 14.1 All Intellectual Property Rights in:
 - (a) any Existing Material remain vested in the person that owns the Intellectual Property Rights at the Effective Date of a Supply Contract (**Owner**);

- (b) any adaptation, translation or derivative of that Existing Material, vests in, or, is hereby transferred or assigned to the Owner, immediately upon creation; and
- (c) Licensed Software and Machine Code remain vested in the Supplier, subject to the licences of Licensed Software and Machine Code granted under the Supply Contract.

SUPPLIER-OWNED NEW MATERIAL

- 14.2 The provisions of clauses 14.3 to 14.5 apply to New Material, unless clause 14.10 applies.
- 14.3 All Intellectual Property Rights in any New Material vest in, or, are hereby transferred or assigned to, the Supplier, immediately upon creation.
- 14.4 On the AAD of a Deliverable that incorporates the relevant New Material, the Supplier grants the Customer a non-exclusive, perpetual, irrevocable, royalty free, transferable licence to use, copy, translate and reproduce that New Material in connection with, or for the operation, modification, support and/or use of, the Deliverable in which it is incorporated, provided that such licence is subject always to the restrictions set out in clause 14.5.
- 14.5 The licence to New Material granted under clause 14.4:
 - (a) does not permit the Customer to disclose, sub-license or transfer the New Material to any other person, except as stated in clauses 14.5(c) to 14.5(e);
 - (b) does not permit the Customer to manufacture, sell, license, transfer or commercialise any of the New Material, or to reverse engineer, decompile, or disassemble any Licensed Software (except as specifically permitted by law), except as stated in clauses 14.5(c) to 14.5(e);
 - (c) permits the Customer to sublicense or transfer any of the rights granted under clause 14.4 without additional charge to any Division of the Government Service (as defined under the *Public Sector Employment and Management Act 2002* (NSW)), a NSW Public Sector Service (as defined under the *Public Sector Employment and Management Act 2002* (NSW)), a NSW Government Agency (as defined in the *Interpretation Act 1987* (NSW)), and any Public Health Organisation (as defined under the *Health Services Act 1997* (NSW)), where the Customer is a Division of the Government Service (as defined under the *Public Sector Employment and Management Act 2002* (NSW)), a NSW Public Sector Service (as defined under the *Public Sector Employment and Management Act 2002* (NSW)), a NSW Government Agency (as defined in the *Interpretation Act 1987* (NSW)), or a Public Health Organisation (as defined under the *Health Services Act 1997* (NSW)), provided that, for the avoidance of doubt, the sublicense cannot be broader than the licence granted to the Customer in clause 14.4, and no further sub-licensing is permitted by the sub-licensee;
 - (d) permits the Customer's subcontractors to access and use the New Material, without additional charge, in connection with the operation, modification, support and/or use of, the Deliverable in which it is incorporated by or on behalf of the Customer; and

- (e) permits the Customer to sublicense any of the rights in clause 14.4 without additional charge, (on one or more occasions) on a limited time basis to a contractor that is providing outsourced services to the Customer that includes the operation of the New Material, provided that the New Material is used solely for the internal business purposes of the Customer for the period of the outsource arrangement and the sublicense automatically terminates at the end of the period of the outsource arrangement.

EXISTING MATERIAL

- 14.6 On the AAD of a Deliverable that incorporates the Supplier's Existing Material, the Supplier grants the Customer a non-exclusive licence:
 - (a) if that Existing Material is Licensed Software; to that Existing Material on the terms and conditions of clause 5 of the Equipment Terms;
 - (b) if that Existing Material is an adaptation, translation or derivative of Licensed Software; to that Existing Material on the same terms and conditions as the licence for the Licensed Software stated to in clause 14.6(a);
 - (c) if that Existing Material is a tool, object library or similar routine that is not included in the Existing Material referred to in clause 14.6(a) or 14.6(b); to use, reproduce and adapt that Existing Material for the Customer's own internal use solely in connection with, or for the operation, modification, support and/or use of, that Deliverable; and
 - (d) if that Existing Material is a documentary Deliverable or any adaptation, translation or derivative of that Existing Material; to use that Existing Material for the Customer's internal use.
- 14.7 On the AAD of a Deliverable that incorporates Existing Material that is owned by a third party, including third party software, the Customer is granted a non-exclusive license to that third party Existing Material to use, reproduce and adapt that third party Existing Material for the Customer's own internal use solely in connection with, or for the operation, modification, support and/or use of, that Deliverable.
- 14.8 Where the Supplier uses a methodology in providing any Deliverable, the Supplier grants the Customer a non-exclusive licence to use that methodology during the Term of the Supply Contract solely for the purposes of receiving the benefit of the Deliverable under the Supply Contract or assisting the Supplier perform its obligations under the Supply Contract.
- 14.9 The Supplier may charge for any license to use any of its Existing Material, such fees to be stated in the Order Documents.

CUSTOMER-OWNED NEW MATERIAL

- 14.10 If it is stated in Item 17 of the Purchase Order or otherwise in the Order Documents that this clause applies to some or all of the New Materials, then subject to clause 14.12, upon the AAD of the relevant Deliverable that incorporates the New Material:

- (a) any Intellectual Property Rights in the New Material vest in, or are hereby transferred or assigned by the Supplier to, the Customer; and
- (b) the Customer grants the Supplier a non-exclusive, perpetual, irrevocable, royalty free, transferrable licence to the New Material to use, copy, adapt, translate, manufacture and in any other way exploit the Intellectual Property Rights in that New Material.

CUSTOMER MATERIAL

- 14.11 The Customer grants the Supplier a non-exclusive, non-transferable licence for the Term of the Supply Contract for the Supplier and its Personnel to use the Customer's Materials to the extent necessary for the Supplier to perform its obligations under the Supply Contract.

KNOW HOW ETC.

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

15. Confidentiality

- 15.1 Except to the extent necessary to comply with any Statutory Requirement or government policy relating to the public disclosure of Confidential Information, no Party will make public, disclose or use any Confidential Information of any other Party except in accordance with this Agreement or the Supply Contract, unless the other Party gives its prior written consent.
- 15.2 Each Party may disclose the Confidential Information of any other Party:
- (a) to its Personnel where the disclosure is essential to enable them to carry out their duties in connection with this Agreement or the Supply Contract; or
 - (b) to its Personnel, Related Companies and their directors, officers, employees, agents, contractors, lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the Party's performance under, this Agreement or a Supply Contract; or
 - (c) if the receiving Party is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.

- 15.3 Each Party must ensure that any Confidential Information of the other Party is used solely for the purposes permitted under clause 15.2.
- 15.4 The Customer may at any time require the Supplier to arrange for its Subcontractors to execute without delay a Deed of Confidentiality between the Customer and the Subcontractor substantially in the form of Schedule 12 (Deed of Confidentiality).

16. Privacy

16.1 The Supplier must:

- (a) use, access, retain or disclose Personal Information obtained in connection with this Agreement or a Supply Contract only for the purpose for which the Personal Information was acquired;
- (b) not do any act or engage in any practice that would breach an IPP, or which if done or engaged in by the Customer, would be a breach of that IPP;
- (c) comply with, carry out and discharge the obligations contained in the IPPs as if it were the Customer carrying out and discharging those obligations;
- (d) notify the Customer immediately upon becoming aware of a breach or possible breach of any of the obligations in this clause 16.1, whether by the Supplier, its Approved Agents or their Personnel;
- (e) notify any individual that makes a complaint to the Supplier regarding the Supplier's acts or practices in relation to such individual's Personal Information, that the complaint may be investigated by the Privacy Commissioner;
- (f) comply with all reasonable directions of the Customer in relation to the care and protection of Personal Information held in connection with the Supply Contract and take all reasonable measures to ensure that such information is protected against loss, unauthorised access or use, modification or disclosure and other misuse;
- (g) ensure that any of the Supplier's Personnel who are required to deal with the Personal Information for the purposes of the Supply Contract are made aware of the obligations of the Supplier under this clause 16.1; and
- (h) ensure that any agreement with any Approved Agent or Subcontractor who may be fulfilling a requirement in relation to the Supply Contract which includes the handling of Personal Information, contains the same or equivalent obligations to this clause 16.1 which are enforceable by the Supplier against the Approved Agent or the Subcontractor, as applicable.

17. Insurance

- 17.1 Subject to clause 17.7, the Supplier must hold and maintain, or be an insured under, one or more insurance policies, that provide the following cover:
- (a) public liability insurance with an indemnity of at least \$10,000,000 in respect of each claim for the period of cover (or such higher amount as may be specified in the Order Documents);
 - (b) product liability insurance with an indemnity of at least \$10,000,000 for the total aggregate liability for all claims for the period of cover (or such higher amount as may be specified in the Order Documents);
 - (c) workers' compensation insurance in accordance with applicable legislation; and
 - (d) other policy of insurance required to be held under any Additional Terms forming part of the Supply Contract.

The Supplier must maintain the coverage required under this clause 17.1 during the Term of this Agreement and the Term of the final Supply Contract entered into pursuant to this Agreement.

- 17.2 All policies of insurance required to be held by the Supplier under a Supply Contract must include cover for the Supplier's liability for the acts and omissions of the Supplier's subcontractors to the same extent as if they were the acts and omissions of the Supplier, or where the Supplier is unable or unwilling to obtain insurance with such cover, the Supplier must procure that its subcontractors obtain insurance policies which are consistent with the requirements of this clause 17. In such circumstances, the Supplier must provide evidence to the Customer that the relevant insurance has been obtained by its subcontractors before the Customer will grant approval of the relevant subcontractor under clause 10.12.
- 17.3 All policies of insurance must be entered into with an insurer which has a rating of A- or better by AM Best or an equivalent rating organisation at the date when cover is commenced, or for workers' compensation insurance the insurer (including any self-insurance) must be authorised by law.
- 17.4 The Supplier must within 30 days of the start of the Term of a Supply Contract, or of a request in writing from the Purchasing Authority or the Customer, provide the Customer and the Purchasing Authority with a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Customer and the Purchasing Authority) confirming that all the insurance policies required by the Supply Contract are current and that the insurance has the required limits of cover. Where the Supplier is insured under a Related Company's insurance policy, the certificate of currency must also show that the insurance policy includes the Supplier as an insured.

- 17.5 The Supplier agrees to hold, maintain or be an insured under, any additional insurance agreed in the Order Documents.
- 17.6 The effecting of insurance does not limit or expand the liabilities or obligations of the Supplier under the other provisions of the Supply Contract.
- 17.7 Where the Supplier does not wish to hold and maintain, or be an insured under, insurance required under clauses 17.1 to 17.5, or does not wish to enter into one or more of those insurance policies with an insurer of the type required by clause 17.3, the Supplier may make application to the Purchasing Authority to be exempted from the provisions of clauses 17.1 to 17.5. Such application must be supported by such documentation as may be required by the Purchasing Authority, including the Supplier's financial records (limited to publicly available financial records where the Supplier or any of its Related Companies is publicly traded). The Purchasing Authority may accept, conditionally accept or reject the Supplier's application. The Purchasing Authority must provide the Supplier with written notice within 30 days or receipt of the Supplier's application of the Purchasing Authority's determination under this clause 17.7, and in the absence of receipt of such written notice, the Supplier's application is deemed accepted by the Purchasing Authority.

18. Guarantees

PERFORMANCE GUARANTEES

- 18.1 If reasonably required by the Customer and agreed in Item 19 of the Purchase Order, the Supplier must arrange for a guarantor approved in writing by the Customer to enter into an agreement with the Customer substantially in the form of the agreement stated in Schedule 9 (Performance Guarantee), or such other document reasonably acceptable to the Customer. The Customer agrees that it will not make such request where the Supplier is itself the ultimate parent company or holding company of the Supplier Group, and is not controlled by any other Related Company (with the term "controlled" having the meaning set out in the definition of "Related Company" in Schedule 1 (Dictionary)). Where the guarantor is not domiciled in Australia the Customer may not refuse to accept an alternative form of guarantee solely on the basis that the jurisdiction and law of the guarantee is the jurisdiction and law of the country of the guarantor. This Performance Guarantee must be provided to the Customer within 30 days of the Effective Date of the Supply Contract, or such other period stated in the Order Documents.

FINANCIAL SECURITY

- 18.2 If reasonably required by the Customer and agreed in Item 20 of the Purchase Order, the Supplier must provide a Financial Security in the amount stated in Item 20 of the Purchase Order substantially in the form of the agreement stated in Schedule 10 (Financial Security), or in the standard form that is usually provided by the issuing entity. The Supplier must, following such a request, ensure that the Financial Security is provided within 14 days of the

Effective Date of the Supply Contract, or such other period as agreed in Item 20 of the Purchase Order.

- 18.3 The Financial Security will be held as security for the due and proper performance and completion of all the obligations of the Supplier under the Supply Contract.
- 18.4 The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution (**Issuer**) acceptable to the Customer.
- 18.5 If the Supplier fails to properly perform and complete its obligations under the Supply Contract, and the Customer suffers loss or damage arising from, or in connection with, such failure by the Supplier, the Customer may deduct its loss or damage (in so far as those losses and damages may be payable by the Supplier taking into account the terms and conditions of the Supply Contract, including the provisions of clause 19) from the Financial Security.
- 18.6 The Supplier agrees that the Customer will have no liability for any loss or damage suffered or incurred by the Supplier where the Customer exercises its rights in accordance with clause 18.5 in good faith.
- 18.7 Upon performance of part of the Supply Contract in accordance with its terms, the Supplier may request the Customer to consent to the discharge of the Financial Security provided under the Supply Contract and the substitution of another Financial Security in substantially the same form but for a lesser maximum aggregate sum. The Customer must not unreasonably withhold its consent to the substitution where the part performance of the Supply Contract has proportionately reduced the risk for which the Financial Security was originally provided.
- 18.8 The Financial Security will end on the sooner of:
 - (a) the date when payment is made by the Issuer up to the maximum amount required under the Financial Security;
 - (b) one year from the date that the last Deliverable under the Supply Contract is scheduled to pass its Acceptance Tests, or if no Acceptance Tests were required, the date that is scheduled to be 180 days from the date of delivery of the last Deliverable or performance of the last Service under the Supply Contract;
 - (c) the date the Customer and Supplier agree in writing to release the Issuer;
 - (d) the date the Customer notifies the Issuer that the Financial Security is no longer required.

19. Liability

- 19.1 To the extent permitted by law, and subject to clauses 19.2 to 19.7, the Supplier's liability in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out, of or in connection with,

the Supply Contract shall not exceed in aggregate for all claims that arise out, of or in connection with, the Supply Contract, the greater of:

- (a) \$150,000; or
 - (b) two times the Contract Price, or, in the case of Supply Contracts under which Managed Services (as defined in the Services Terms) are provided and there is a variable pricing component such that the Contract Price cannot be ascertained, two times the total of all Prices payable by the Customer to the Supplier for the Contracted Items in the 12-month period immediately preceding the date on which the relevant cause of action arose or, if the claim arose prior to the Supplier providing 12 months of Managed Services, the amount that is 12 times the average monthly amount that was paid for the Managed Services prior to the date on which the relevant cause of action arose.
- 19.2 In all cases, any refund of monies, payment of liquidated damages, or payment of any fees, rebates, credits, damages, losses, expenses, (including third party costs incurred and paid by the Supplier if a third party is engaged by the Customer to remedy a breach by the Supplier in accordance with the Supply Contract), liabilities or any other amounts that are stated as being payable by the Supplier in respect of any breach of the Supply Contract or under an indemnity, are included in determining whether the limitation of liability has been reached.
- 19.3 If, in respect of a Supply Contract:
- (a) the Contract Price under the Supply Contract is greater than \$20,000,000; or
 - (b) the Supply Contract is for Deliverables that are to be used for a Prescribed Use,
- the Parties must discuss and agree an alternative cap of liability and specify such alternative cap in the Order Documents prior to the execution of the relevant Purchase Order.
- 19.4 Notwithstanding any other clause in the Supply Contract, neither Party is liable in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise to the other Party for any Consequential Loss.
- 19.5 Notwithstanding any other clause in the Supply Contract, the Supplier has no financial cap on its legal liability where that liability arises from:
- (a) bodily injury (including sickness and death), including to the extent that the legal liability is covered by the indemnity in clause 20.1(b);
 - (b) loss of, or damage to, tangible property, including to the extent that the legal liability is covered by the indemnity in clause 20.1(b);
 - (c) breach of the Supplier's obligation of confidence under or pursuant to clause 15;
 - (d) the Supplier's indemnity in respect of breach of privacy obligations as stated in clause 20.1(a); or
 - (e) the Supplier's indemnity for IP Claims as stated in clause 20.10.

- 19.6 The liability of a Party (**Party A**) (including under an indemnity in this Agreement) for any damage incurred by another Party (**Party B**) will be reduced proportionately to the extent that any:
- (a) negligent or malicious act or omission of Party B or its Personnel; or
 - (b) failure by Party B or its Personnel to comply with its obligations and responsibilities under the Supply Contract,
- contributed to the damage, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract.
- 19.7 The Parties must use their reasonable efforts to mitigate any loss arising out of or in connection with the Supply Contract.

20. Indemnities

SUPPLIER INDEMNITIES

- 20.1 The Supplier must indemnify and hold harmless the Purchasing Authority, the Customer, and their officers and employees (the **Indemnified Party**) against any loss or expense which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) to the extent it:
- (a) arises out of or in connection with the Supplier's breach of any privacy obligations under or pursuant to clause 16.1; or
 - (b) is the result of a claim against an Indemnified Party made by a third party arising out of or in connection with a malicious or negligent act or omission of the Supplier, its directors, officers, employees, agents and subcontractors in the performance of the Supplier's obligations under the Supply Contract.
- 20.2 The Indemnified Party must promptly, and in any event within 5 Business Days of being notified of a claim for which it is seeking an indemnity under clause 20.1(b), provide the Supplier with Notice in Writing of the details of the claim. The Indemnified Party must (unless there is any government policy that prohibits the Supplier from handling the process for the settlement of the claim) permit the Supplier, at the Supplier's expense, to handle the process for the settlement of such claim and, as permitted by law, to control and direct any litigation that may follow a claim under clause 20.1(b) (including selecting solicitors and counsel), subject to the Supplier agreeing to comply at all times with the government policy relevant to the conduct of the litigation.
- 20.3 If Indemnified Party does not permit the Supplier to handle the process for the settlement of such claim under clause 20.2 and, as permitted by law, to control and direct any litigation that may follow a claim under clause 20.1(b), then the Indemnified Party must promptly and fully defend the claim (whilst complying with government policy), and not settle the claim

without the Supplier's prior written consent, such consent not to be unreasonably withheld. The Indemnified Party must keep the Supplier fully informed throughout the period of the claim, including providing copies of all relevant documents.

- 20.4 The Indemnified Party must, upon the Supplier confirming its obligations under the indemnity in clause 20.1, provide the Supplier with reasonable assistance in defending, settling or otherwise conducting the negotiations or litigation, at the Supplier's expense, including providing all relevant information and documents, permitting its Personnel to testify for the Supplier if requested by the Supplier and using any defence that might be available to the Indemnified Party.
- 20.5** If any IP Claim is brought against the Purchasing Authority or the Customer:
- (a) the Purchasing Authority or the Customer must promptly notify the Purchasing Authority or the Customer in writing of that IP Claim; and
 - (b) subject to clause 20.8, the Supplier must defend or settle that IP Claim at its expense.
- 20.6** The Purchasing Authority or the Customer (as applicable) must give the Supplier sole authority and control of the defence (including settlement) of the IP Claim.
- 20.7 The Supplier must comply with the 'Model Litigant Policy' or other litigation guidelines published by any NSW Government Body from time to time when dealing with an IP Claim.
- 20.8 The Purchasing Authority or the Customer (as applicable) must provide the Supplier with all information and assistance reasonably requested by the Supplier for resolving or defending the IP Claim. The Supplier must pay the Purchasing Authority's or the Customer's reasonable costs of performing its obligation under this clause 20.8.
- 20.9 The Supplier shall not be responsible for any compromise or settlement made by the Purchasing Authority or the Customer with respect to the IP Claim unless the Supplier has negotiated, or otherwise consented to, that settlement. The Supplier must not unreasonably withhold or delay its consent under this clause 20.9.
- 20.10 The Supplier shall at all times indemnify, and hold the Purchasing Authority or the Customer harmless from and against any loss (including reasonably legal costs and expenses), liability, damages, costs or expenses suffered or incurred by the Purchasing Authority or the Customer which arise as a result of, or in connection with, an IP Claim brought against the Purchasing Authority or the Customer, including any such loss, liability, damages, costs or expenses in respect of the Customer's inability to continue use the Deliverable which is the subject of the IP Claim in the circumstances referred to in clause 20.12(c).
- 20.11 To the extent that the IP Claim relates to or arises from:
- (a) any modification of the Deliverable by anyone other than the Supplier or its Personnel;
 - (b) use of the Deliverables in a manner for which they were not designed; or

- (c) the Supplier's compliance with the Purchasing Authority's or the Customer's designs, specifications or instructions unless at the relevant time there was a way in which the Supplier could have done so in a non-infringing way,

the Supplier will not:

- (d) be required to defend or settle that IP Claim in accordance with this clause 20; or
- (e) be liable to indemnify the Purchasing Authority or the Customer under clause 20.10.

20.12 Without prejudice to the Customer's rights under clause 20.10, if an IP Claim occurs or, if in the Supplier's judgment, is likely to occur, the Supplier, in its sole and absolute discretion, may:

- (a) obtain a licence for the Purchasing Authority or the Customer to continue to use or sell the affected Deliverable in accordance with the Supply Contract;
- (b) replace or modify the affected Deliverable so as to be substantially functionally equivalent but non-infringing; or
- (c) if the Supplier cannot achieve the outcomes in either of clauses 20.12(a) or 20.12(b), the Supplier must credit the fees paid to the Supplier by the Purchasing Authority or the Customer for the Deliverable the subject of the IP Claim.

20.13 The Supplier's liability in respect of the:

- (a) indemnities provided under clause 20.1(a) and clause 20.10 is subject to clauses 19.4, 19.6 and 19.7; and
- (b) indemnity provided under clause 20.1(b) is subject to clauses 19.1 to 19.7.

20.14 The Customer must give the Supplier 10 Business Days' Notice in Writing of an intention to claim a liability, loss or expense in accordance with clause 20.1(a) including in that notice an explanation of how that liability or expense was assessed and the Supplier's proposed share of that liability.

20.15 For the purposes of clause 20.10, an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of the *Patents Act 1990* (Cth) s.163, the *Designs Act 2003* (Cth) ss 96, 100, the *Copyright Act 1968* (Cth) s.183 and the *Circuits Layout Act 1989* (Cth) s.25, constitute an infringement.

20.16 Clauses 20.5 to 20.15 provide the Purchasing Authority's or the Customer's sole and exclusive remedies and the Supplier's entire liability in the event of an IP Claim. The Purchasing Authority or the Customer has no right to recover and the Supplier has no obligation to provide any other or further remedies.

21. Conflict of Interest

21.1 The Supplier must:

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

22. Performance Management

REPORTING

22.1 The Supplier must provide to the Customer the reports stated in the Order Documents in the time frame and format agreed in the Order Documents or as reasonably required by the Customer.

MANAGEMENT COMMITTEE

22.2 The following clauses 22.3 to 22.9 apply if, and to the extent, stated in the Order Documents.

22.3 If it is stated at Item 23 of the Purchase Order that a management committee is to be established, the Parties must agree and establish a management committee and a process for the conduct of the management committee's business by the date stated in the Order Documents.

22.4 The management committee must consist of the Party's project managers or officers, or such other persons as stated in the Order Documents including Item 23 of the Purchase Order.

22.5 All members of the management committee must be authorised and properly qualified, informed and instructed to enable the management committee to properly assess progress under the Supply Contract.

22.6 The management committee must:

- (a) review and monitor progress under the Supply Contract; and
- (b) carry out any other functions stated in Item 23 of the Purchase Order.

22.7 Unless agreed otherwise, the members of the management committee or their authorised delegates must meet at the Customer's offices at an agreed time at such frequency as is stated in Item 23 of the Purchase Order.

- 22.8 At least 1 Business Day prior to a management committee meeting, the Supplier's project manager must submit to the Customer's project manager a report of progress under the Supply Contract including:
- (a) details (including dates) of Deliverables commenced, completed or Accepted;
 - (b) details of any delays or issues arising from the project, including any known reasons for the delay or issue arising, and plans for the management of such delays and issues;
 - (c) a review of any:
 - (i) minutes and actions from the last meeting;
 - (ii) issues log;
 - (iii) risk management plan, which must be prepared and maintained in accordance with AS/NZS ISO 31000 Risk Management Standard or equivalent, unless agreed otherwise in writing;
 - (iv) details of any outstanding invoices and any payments that are about to become due;
 - (d) draft updates of relevant parts of the Contract Specific Requirements (if applicable);
 - (e) any new Change Requests (if applicable); and
 - (f) details of the progress of any draft Change Requests (if applicable).
- 22.9 If the Customer disagrees with the details recorded in the report, then the Customer must, within 2 Business Days of receipt of the report, make a written endorsement on the report recording its version of the details. The amended report must be provided to the Supplier within 1 Business Day of the Customer updating the report.

RESOLUTION MANAGER

- 22.10 Without limiting any other remedies that the Customer may have, if a Significant Failure occurs the Customer may appoint a resolution manager (**Resolution Manager**).
- 22.11 The Resolution Manager will oversee, and may issue reasonable directions that are not inconsistent with this Agreement and Supply Contract (**Directions**) for the resolution of a Failure, which may include a requirement that the Supplier makes available and provides access to leading subject matter experts (as nominated by the Supplier) within its organisation. Each Direction must specify a reasonable timeframe for compliance with the Direction.
- 22.12 The Supplier must comply with all Directions.

23. Government Policy

SMEPP

- 23.1 The Supplier acknowledges that it is aware that reliance was placed by the Purchasing Authority on the SMEPP in the evaluation of the tender submitted by the Supplier and in the Purchasing Authority entering into this Agreement with the Supplier.
- 23.2 The Supplier agrees to comply with the requirements and commitments provided for in the SMEPP tendered by the Supplier (a copy of which is attached in Part B of Schedule 2 (List of Equipment, Infrastructure and Services covered by this Agreement and SMEPP)) and to take all steps reasonably required to enable the Purchasing Authority to monitor compliance by the Supplier with the SMEPP.
- 23.3 The Supplier and the Purchasing Authority agree that the Purchasing Authority may establish mechanisms to monitor compliance by the Supplier with the requirements and its commitments under the SMEPP. The Supplier and the Purchasing Authority agree that non-compliance by the Supplier of its SMEPP commitments will constitute a breach of contract and entitle the Authority to terminate this Agreement for cause.
- 23.4 The Supplier agrees that the Purchasing Authority may take into consideration non-compliance by the Supplier with the tendered SMEPP when evaluating tenders submitted by the Supplier in the future for other agreements and consents to the Purchasing Authority using information about its non-compliance with the tendered SMEPP in connection with other tenders and agreements

24. Contract Administration

REPRESENTATIVES

- 24.1 Each Party may nominate an employee who is its Authorised Representative in Item 4 of the Purchase Order.
- 24.2 Each Party warrants to the other Party that its Authorised Representative has the authority to provide such consents and approvals as are required for the purposes of a Supply Contract and to issue instructions and directions as necessary for the purposes of a Supply Contract, on behalf of that Party.

NOTICE OF CHANGE OF CONTROL

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

RECORD KEEPING

- 24.4 The Supplier must keep financial records and other information relevant to the performance of the Supply Contract including as are required to comply with any applicable Statutory Requirement. The Supplier must give the Customer access to and copies of such records and information (excluding information relating to profit margins or other commercially sensitive information) within a reasonable time of a written request from the Customer. To the extent that any information disclosed under this clause is the Supplier's Confidential Information, the provisions of clause 15 will apply.

NOTICES

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

25. Dispute Resolution

- 25.1 The Parties agree to resolve any conflicts or issues between them that arise during the Contract Period out of, or in connection with, the Supply Contract in accordance with this clause 25.
- 25.2 If a dispute arises out of, or in connection with the Supply Contract during the Term of the Supply Contract, then, subject to clause 25.11, the aggrieved Party must submit a Notice in Writing to the other Party of the issue, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of the agreement which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Issue Notice**). The Issue Notice must be submitted within a reasonable time of the Party becoming aware of the issue. If the Party submitting the Issue Notice is the Supplier, the Supplier must send a copy of the Issue Notice to the Purchasing Authority.
- 25.3 If a Party submits an Issue Notice under clause 25.2, each Party must nominate in writing, within 7 days, a senior executive who will attempt to resolve the dispute. The nominated senior executives will promptly meet at a time and place that is mutually convenient with the objective of resolving the issue. The nominated senior executives may invite other personnel to attend the mutually convenient conference subject to a list of additional invited personnel being provided to the other nominated senior executive at least 24 hours prior to the conference.

- 25.4 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.
- 25.5 Each Party will bear its own costs under clauses 25.2 to 25.4.
- 25.6 If the dispute is not resolved within 21 days of the date that the Issue Notice was received by the other Party, then the Customer may, having regard to the nature of the Supply Contract and the issue(s) in dispute under it, the Customer's reasonable opinion as to the likelihood of resolving the dispute, and the most efficient and cost effective means of so doing, require the Supplier to participate in an alternative means of dispute resolution selected by the Customer. The Supplier agrees to participate in such selected means of dispute resolution in good faith.
- 25.7 If the dispute is not resolved at the conclusion of any alternative dispute resolution under clause 25.6, or if the Customer does not select any such alternative dispute resolution within 20 Business Days of becoming entitled to do so under clause 25.6, either Party may commence any other action or proceedings, including court proceedings.
- 25.8 If the Customer refers a dispute to expert determination under clause 25.6, it must submit a Notice in Writing to the Supplier specifying the issue to be decided by expert determination, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of the Supply Contract which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Referral Notice**).
- 25.9 If the dispute is to be resolved by expert determination the Parties will be bound by the provisions and procedures contained in Schedule 11 (Expert Determination Dispute Resolution Procedures), unless agreed otherwise in writing.
- 25.10 Notwithstanding the existence of a dispute each Party must continue to perform its obligations under the Supply Contract during the period of the attempt to resolve this issue under clauses 25.2 to 25.9.
- 25.11 The provisions of clauses 25.2 to 25.10 do not apply where a party seeks urgent interlocutory relief or where a Party has terminated the Supply Contract for a Substantial Breach or Fundamental Breach of the Supply Contract.

26. Termination

TERMINATION FOR CAUSE BY THE CUSTOMER

- 26.1 In addition to any other termination rights specifically set out in this Agreement, the Customer may terminate the Supply Contract immediately by providing the Supplier with Notice in Writing if:
- (a) the Supplier suffers an Insolvency Event;

- (b) the Customer rejects a Test Item or a documentary Deliverable three or more times; or
- (c) the Supplier has committed a Substantial Breach and the Supplier has not either:
 - (i) rectified that Substantial Breach within 14 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing specifying the details of the breach; or
 - (ii) proposed steps that are reasonably acceptable to the Customer that it will take to remedy the Substantial Breach and a timeframe within which the Supplier will take them which are reasonably acceptable to the Customer.

TERMINATION FOR CAUSE BY THE PURCHASING AUTHORITY

26.2 The Purchasing Authority may terminate this Agreement immediately by providing the Supplier with Notice in Writing if:

- (a) the Supplier suffers an Insolvency Event; or
- (b) the Supplier has materially failed to comply with the Panel Rules and the Supplier has not rectified that failure to comply (if capable of rectification) within 14 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing specifying the details of the material failure to comply; or
- (c) the Supplier otherwise ceases to be a supplier admitted to the ITS 2573 Panel.

In addition, the Supplier acknowledges the Purchasing Authority's right to terminate this Agreement for cause under clause 23.3.

TERMINATION FOR CONVENIENCE BY THE CUSTOMER

26.3 The Customer may by Notice in Writing at any time terminate the Supply Contract for convenience, such termination to be effective immediately unless stated otherwise on the Notice In Writing. The Supplier must immediately comply with any directions given in the Notice in Writing and must do everything that is reasonably practical to mitigate its losses arising in consequence of termination of the Supply Contract under this clause 26.3.

26.4 If the Customer exercises its right under clause 26.3, the Customer must:

- (a) indemnify the Supplier against any liabilities or expenses, which are reasonably and properly incurred by the Supplier to the extent that those liabilities or expenses were incurred as a result of termination of the Supply Contract in accordance with clause 26.3; and
- (b) pay any amount that is stated in the Item 12 of the Purchase Order as being payable by the Customer upon the exercise of its right to terminate the Supply Contract for convenience.

- 26.5 Once the Customer has paid the amounts in clause 26.4 in relation to a Supply Contract no further compensation is payable for any termination of the Supply Contract under clause 26.3.

TERMINATION FOR CAUSE BY THE SUPPLIER

- 26.6 The Supplier may terminate the Supply Contract immediately by providing the Customer with Notice in Writing if the Customer has:
- (a) not paid any amount that has not been disputed by the Customer in accordance with clause 12.8 by the date that payment was due to be made; and
 - (i) the Supplier has provide written notice of this failure; and
 - (ii) the Customer has failed to pay that undisputed amount within 28 days of receipt of the written notice of failure;
 - (b) committed a Fundamental Breach of the Supply Contract and the Customer has not rectified that Fundamental Breach within 28 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing from the Supplier specifying the details of the breach;
 - (c) committed a material breach of clause 7 of the Equipment Terms (if applicable) or clause 8 of the Infrastructure Terms (if applicable) and has not rectified that breach within 28 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing from the Supplier specifying the details of the breach; or
 - (d) suffered an Insolvency Event.

CONSEQUENCES OF TERMINATION

- 26.7 In the event of termination under clause 26.1, the Customer may obtain from any other source a reasonably similar alternative to the Contracted Items in which case the Supplier shall, subject to clause 19, be liable to the Customer for any reasonable expenses incurred and any losses sustained (including any price difference between the Contracted Items and the similar alternative) by the Customer.
- 26.8 If the Supply Contract:
- (a) is terminated by the Customer for cause, then the Customer may (but is not obliged to) provide the Supplier with written notice requiring the Supplier at its expense to remove Deliverables or to dismantle or remove work from the Customer's premises by a date stated in that notice;
 - (b) is terminated by the Supplier for cause, then the Supplier may provide the Customer with written notice requiring the Customer to return any Deliverables that have not been paid for in full, and the Customer must return those Deliverables at its expense by the date stated in that notice,

and in either case such termination is without prejudice to any right of action or remedy that has accrued or may accrue to either Party.

27. General

RELATIONSHIP

- 27.1 The Supplier agrees that it will not be taken to be and must not represent that it is the employee, partner, officer and/or agent of the Purchasing Authority or the Customer.

VARIATION

- 27.2 Subject to any other rights given under this Agreement or a Supply Contract to vary its terms, neither a Contract Variation nor a Change Request shall be valid unless agreed in writing and signed by both the Purchasing Authority and the Supplier (in the case of a Contract Variation) or the Customer and the Supplier (in the case of a Change Request).

ASSIGNMENT AND NOVATION

- 27.3 The Purchasing Authority may assign or novate this Agreement to any other NSW Government entity or department which takes over the functions of the Purchasing Authority in relation to the administration of this Agreement or the 2020 ICT Services Scheme administered by NSW Procurement (a business unit of the Purchasing Authority), provided that Notice in Writing of such assignment or novation is given to the Supplier.
- 27.4 The Supplier must not assign in whole or in part or novate a Supply Contract without obtaining the prior written consent of the Customer, which consent may be withheld in its discretion.
- 27.5 The Supplier acknowledges that the Customer may conduct financial and other inquiries or checks on the entity proposing to take over the Supply Contract before determining whether or not to give consent to the assignment or novation.
- 27.6 The Customer at its own cost, may assign or novate, the Supply Contract, where by operation of statute the Customer is reconstituted into a new legal entity, to that new legal entity, provided that Notice in Writing of such assignment or novation is given to the Supplier. If the assignment or novation changes the scope of the obligations or Deliverables to be provided by a Supplier under a Supply Contract, a Change Request must be effected, which will include a variation to the Price to reflect any increased costs that are incurred by the Supplier, or increased benefits that are gained by the Customer (as newly defined), as a result.
- 27.7 The Customer may, at its own cost, assign or novate the Supply Contract to any other Eligible Customer with the prior written consent of the Supplier, such consent not to be unreasonably delayed or withheld.

WAIVER

- 27.8 A waiver in respect of a breach of a provision of this Agreement or a Supply Contract (as applicable) by a Party shall not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce any provision of this Agreement or the Supply Contract will not be interpreted as a waiver of that provision.

MATERIAL ADVERSE EVENTS

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

UNFORESEEN EVENTS

- 27.10 A Party (**Affected Party**) is excused from performing its obligations under a Supply Contract to the extent it is prevented by an Event, except an Event that is the subject of a Business Contingency Plan. The Affected Party must immediately notify the other Party of the occurrence of the Event when the Affected Party becomes aware of it or when the Affected Party ought reasonably to be aware of it.
- 27.11 Each Party must make all reasonable efforts to minimise the effects of the Event. If the affected Party is prevented from performing its obligations under the Supply Contract by the Event for 60 days or such other period agreed in writing, then the other Party may in its discretion immediately terminate the Supply Contract by giving Notice in Writing of termination to the other Party.
- 27.12 Where the Supply Contract is terminated by the Customer in accordance with clause 27.11:
- (a) the Supplier is entitled to payment for work performed in accordance with the Supply 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 Supply Contract.

SEVERABILITY

- 27.13 If any part of this Agreement or a Supply Contract is void or voidable, then that part is severed from this Agreement or the Supply Contract (as applicable) without affecting the continued operation of the remainder of this Agreement or the Supply Contract (as applicable).

ENTIRE AGREEMENT

- 27.14 To the extent permitted by law:
- (a) this Agreement constitutes the entire understanding and agreement between the Supplier and the Purchasing Authority in relation to its subject matter. Any prior representation, arrangement, agreement or undertaking given or received by either Party is superseded and shall have no effect;

- (b) the warranties given by the Purchasing Authority and the Supplier in this Agreement are the sole warranties provided by the Parties in respect of this Agreement; and
- (c) neither Party makes any other warranty, including any implied warranties of merchantability and of fitness for a particular purpose.

27.15 To the extent permitted by law:

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

RIGHTS ARE CUMULATIVE

- 27.16 Subject to clause 5.15, the rights and remedies provided under this Agreement and the Supply Contract are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

SURVIVAL

- 27.17 In addition to any provision of the Equipment Terms, Infrastructure Terms or Services Terms (if applicable) which is stated to survive termination or expiry of the Supply Contract, the provisions of clauses 3.16 to 3.18, 10.1 to 10.4, 14.4 to 14.8, 14.12, 15.1 to 15.3, 16, 19, 20, 26.7, 26.8, 27.18 and 27.19, and any other clause which naturally should survive termination or expiry of the Supply Contract, shall survive termination or expiry of the Supply Contract.

COUNTERPARTS

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

APPLICABLE LAW

- 27.19 The laws of the New South Wales govern this Agreement and each Supply Contract and the Parties submit to the exclusive jurisdiction of the courts of New South Wales and to courts that have jurisdiction to hear appeals from those courts.

Schedule 1 - Dictionary

1. Agreed Terms

In this Agreement, unless the context requires otherwise:

1.1 **Acceptance Criteria** means:

- (a) for a Test Item, the requirements specified in the applicable Acceptance Test Plan which the Test Item must meet; and
- (b) for a documentary Deliverable, the requirements specified in the Supply Contract which that documentary Deliverable must meet,

in order to be Accepted by the Customer.

1.2 **Acceptance Test Plan** means the plan specifying:

- (a) the Test Items;
- (b) the Acceptance Criteria;
- (c) the Acceptance Tests;
- (d) the timeframes for conducting those Acceptance Tests; and
- (e) the party responsible for conducting each of the Acceptance Tests,

set out in the applicable Order Documents, or prepared in accordance with the process specified in clause 7.2 and Accepted by the Customer in accordance with clause 8.

1.3 **Acceptance Tests** means a test carried out in accordance with the relevant Acceptance Test Plan to determine whether a Test Item meets the Acceptance Criteria.

1.4 **Accepted** means:

- (a) for a Test Item, that Test Item has been accepted by the Customer in accordance with clause 7 and with the procedures set out in the applicable Acceptance Test Plan;
- (b) for documentary Deliverables, that those documentary Deliverables have been accepted by the Customer in accordance with the procedures set out in clause 8; and
- (c) for all other Contracted Items other than Construction Services (which must achieve Practical Completion in accordance with the provisions of clause 15.5 of the Services Terms), that those Contracted Items have been:
 - (i) Physically Accepted, in the case of Equipment or Infrastructure; and

- (ii) delivered in accordance with the Agreement, in the case of Contracted Items other than Equipment or Infrastructure,

and **Accept** and **Acceptance** have corresponding meanings.

- 1.5 **Actual Acceptance Date** or **AAD** means the date the Deliverable is Accepted or is deemed Accepted by the Customer in accordance with the Supply Contract.
- 1.6 **Additional Terms** means the Equipment Terms, Infrastructure Terms or Services Terms (as applicable).
- 1.7 **Agency** means:
 - (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth, State or Territory legislation, or an instrument made under that legislation (including a local authority);
 - (b) a body established by the Governor-General, a State Governor, or by a Minister of state of the Commonwealth, a state or a Territory; or
 - (c) an incorporated company over which the Commonwealth, a State or a Territory exercises control.
- 1.8 **Agreement** means this Master Supply Agreement and all Schedules and Annexures to it.
- 1.9 **Approved Agent** means any entity that is authorised in writing by the Supplier to act as the Supplier's legal agent for the purpose of supplying Contracted Items to the Customer under a Supply Contract, (including a Reseller, as defined in the Equipment Terms) and whose identity is approved by the Customer, but excludes the directors, officers or employees of the Approved Agent.
- 1.10 **Authorised Representative** means a person who has authority to act on behalf of a Party in accordance with this Agreement or a Supply Contract (as applicable).
- 1.11 **Bespoke User Documentation** means documents created for the Customer as a Deliverable under a Supply Contract that describe the features and functions of Equipment, Infrastructure or another Deliverable that has been created, modified or adapted for the Customer under a Supply Contract, in a hard copy, electronic or online format as stated in the Purchase Order or Contract Specific Requirements.
- 1.12 **Business Day** means any day that is not Saturday, Sunday or a public holiday in New South Wales and in clauses 15.11 and 15.12 of the Services Terms does not include 27, 28, 29, 30 or 31 December.
- 1.13 **CCA** means the *Competition and Consumer Act 2010* (Cth).
- 1.14 **Change in Control** means a circumstance in which control is or may be exercised over the Supplier:

- (a) by virtue of the change of a direct holding of at least fifteen percent of the voting shares in the Supplier or a holding company of the Supplier; or
 - (b) by any other means whatsoever.
- 1.15 **Change Request** means a change requested by either the Supplier or the Customer which, if signed by the Parties will result in a variation to any part of a Supply Contract.
- 1.16 **Confidential Information** means information that:
- (a) is by its nature confidential; or
 - (b) is communicated by the disclosing party to the confidant as confidential; or
 - (c) the confidant knows or ought to know is confidential; or
 - (d) relates to:
 - (i) the Contracted Items;
 - (ii) the financial, the corporate and the commercial information of any Party;
 - (iii) the affairs of a third party (provided the information is non-public); and
 - (iv) the strategies, practices and procedures of the State and any information in the Supplier's possession relating to the State public service,but excludes any information which the confidant can establish was:
 - (v) in the public domain, unless it came into the public domain due to a breach of confidentiality by the confidant or another person;
 - (vi) independently developed by the confidant; or
 - (vii) in the possession of the confidant without breach of confidentiality by the confidant or other person.
- 1.17 **Conflict of Interest** means the Supplier engaging in any activity, or obtaining any interest, whether pecuniary or non-pecuniary, which is likely to, has the potential to, or could be perceived to, restrict the Supplier from performing its obligations under this Agreement or a Supply Contract in an objective manner.
- 1.18 **Consequential Loss** means any loss, damage or expense recoverable at law:
- (a) other than a loss, damage or expense that would be suffered or incurred by any person in a similar situation to the person suffering or incurring the loss, damage or expense; or
 - (b) which is a loss of:
 - (i) opportunity or goodwill;
 - (ii) profits, anticipated savings or business;

- (iii) data; or
- (iv) value of any equipment,

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

- 1.19 **Construction Services** has the meaning given in clause 2 of the Services Terms.
- 1.20 **Contracted Items** has the meaning given in clause 1.1.
- 1.21 **Contract Price** means the total of all Prices payable by the Customer to the Supplier for the Contracted Items supplied under a Supply Contract, as stated in Item 7 of the Purchase Order or the other Order Documents for that Supply Contract (as applicable).
- 1.22 **Contract Specific Requirements** means all written material, documents and requirements which are specific to a particular Purchase Order, and may include a Statement of Work, Contract Specifications, Customer Requirements, description of Acceptance Tests, Drawings, Project Plan or milestones, as agreed by the Parties prior to execution of the Supply Contract.
- 1.23 **Contract Specifications** means the totality of any technical or descriptive specifications of functional, operational, performance or other characteristics required of a Deliverable provided by the Supplier under a Supply Contract being only:
- (a) any agreed specifications forming part of the Contract Specific Requirements; or
 - (b) if no specifications form part of the Contract Specific Requirements, the User Documentation.
- 1.24 **Contract Variation** means a change requested by either the Supplier or the Purchasing Authority which, if signed by the Parties, will result in a variation to any part of this Agreement.
- 1.25 **Correctly Rendered Invoice** means an invoice that is rendered in the form of a Tax Invoice where:
- (a) the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars;
 - (b) the invoice is set out as an itemised account, which identifies the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the amount payable; and
 - (c) the invoice is addressed to the Customer's Authorised Representative stated in Item 4 of the Purchase Order.
- 1.26 **Customer** means the person or body corporate named in Item 3 of the Purchase Order that enters into a Supply Contract with the Supplier. Customer does not include any of the Customer's Personnel.

- 1.27 **Customer Supplied Item** or **CSI** means the items set out in the Contract Specific Requirements (if any) to be supplied by the Customer under a Supply Contract.
- 1.28 **Cyberterrorism** means an assault on any electronic communications network.
- 1.29 **Defect** means a fault, error, failure, degradation, deficiency or malfunction that causes the relevant Deliverable not to meet the Contract Specific Requirements and other requirements under the Supply Contract and **Defective** has a corresponding meaning.
- 1.30 **Deliverable** means any Equipment, Infrastructure or output from any Service that is required to be provided to the Customer under a Supply Contract.
- 1.31 **Due Date** means the date by which an LD Obligation must be met, as stated in Item 18 of the Purchase Order or elsewhere in the Order Details or (if applicable) as varied by a Change Request or otherwise in accordance with the Supply Contract.
- 1.32 **Effective Date** means:
- (a) for this Agreement, the date on which both parties execute this Agreement; and
 - (b) for each Supply Contract, the date on which that Supply Contract is formed in accordance with clause 3.4.
- 1.33 **Eligible Customer** means any NSW Government Body or Eligible non-Government Body.
- 1.34 **Eligible non-Government Body** means a public body which is registered with NSW Procurement and is listed on NSW State's publicly available website at <http://nswbuy.com.au/PDF/nswbuy-customer-listing.aspx> as being eligible to buy under this Agreement, including the following bodies (as identified under the *Public Sector Employment and Management (Goods and Services) Regulation 9(5)*):
- (a) a private hospital;
 - (b) a charity or other community non-profit organisation;
 - (c) a private school or a college or university;
 - (d) a public authority of this State, other than a NSW Government Body;
 - (e) a public authority or government trading enterprise of the Commonwealth or any other State or Territory;
 - (f) a public authority or government trading enterprise of any other jurisdiction (but only if it carries on activities in this State);
 - (g) any contractor to a public authority (but only in respect of things done as such a contractor);
 - (h) such other public bodies under that Regulation, for which the Purchasing Authority is entitled to act from time to time in its discretion.

- 1.35 **End Date** means the date which is 3 years from the Effective Date of this Agreement.
- 1.36 **Equipment** means radio communications and link equipment used for the provision of voice and data services to be supplied by the Supplier under a Supply Contract including the relevant Licensed Software and Machine Code (if any). The types of such equipment which are within the scope of this Agreement are described in Part A of Schedule 2 (List of Equipment, Infrastructure and Services covered by this Agreement and SMEPP).
- 1.37 **Equipment Terms** means the document that describes the additional terms and conditions that are specific to the supply and purchase of Equipment under a Supply Contract, set out at Schedule 3 (Equipment Terms).
- 1.38 **Event** means a circumstance beyond the reasonable control of a Party that results in that Party being unable to perform an obligation on time and includes:
- (a) natural events like fire, flood, or earthquake;
 - (b) national emergency;
 - (c) terrorist acts (including Cyberterrorism) and acts of vandalism; or
 - (d) war.
- 1.39 **Existing Material** means any Material that is developed:
- (a) prior to the Effective Date of a Supply Contract; or
 - (b) independently of the Supply Contract,
- and that is incorporated into a Deliverable or Contracted Item under the Supply Contract.
- 1.40 **Financial Security** means the financial security referred to in clause 18.2.
- 1.41 **Fundamental Breach** means a breach of the Supply Contract by the Customer which prevents the Supplier from carrying out its obligations under the Supply Contract.
- 1.42 **General Order Form** means the form of purchase order set out at Schedule 6 (General Order Form).
- 1.43 **GST** has the same meaning as in the GST Law.
- 1.44 **GST Law** means any law imposing or relating to a GST and includes *A New Tax System (Goods & Service Tax) Act (Cth)*, *A New Tax System (Pay As You Go) Act 1999* and any regulation based on those Acts.
- 1.45 **Infrastructure** means infrastructure and equipment required to support radio communications and linking equipment used in the provision of voice and data services to be supplied by the Supplier under a Supply Contract. The types of such infrastructure and equipment which are within the scope of this Agreement are described in Part A of Schedule 2 (List of Equipment, Infrastructure and Services covered by this Agreement and SMEPP).

- 1.46 **Infrastructure Terms** means the document that describes the additional terms and conditions that are specific to the supply and purchase of Infrastructure under a Supply Contract, set out at Schedule 4 (Infrastructure Terms).
- 1.47 **Insolvency Event** means where a Party:
- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
 - (b) is insolvent with the meaning of Section 95A of the *Corporations Act 2001* (Cth);
 - (c) must be presumed by a court to be insolvent by reason of an event set out in Section 459C(2) of the *Corporations Act 2001* (Cth);
 - (d) fails to comply with a statutory demand within the meaning of Section 459F(1) of the *Corporations Act 2001* (Cth);
 - (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
 - (f) has a mortgagee enter into possession of any property of that Party;
 - (g) has a controller within the meaning of the Section 9 of the *Corporations Act 2001* (Cth) or similar officer appointed to all or any of its property; or
 - (h) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.
- 1.48 **Intellectual Property Rights** means all intellectual property rights including:
- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade name and other protected rights, or related rights, existing worldwide; and
 - (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a), but does not include the right to keep confidential information confidential, Moral Rights, business names, company names or domain names.
- 1.49 **Information Privacy Principle** or **IPP** means the Information Protection Principles contained in sections 8 to 19 of the *Privacy and Personal Information Act 1998* (NSW).
- 1.50 **ITS 2573 Panel** means the panel arrangement for the supply of two-way radio telecommunications equipment, infrastructure and services established by the Purchasing Authority to which the Supplier has been granted admission as a Pre-qualified Supplier (as defined in the Panel Rules).

- 1.51 **IP Claim** means a claim against the Purchasing Authority or a Customer made by a third party that the use of a Deliverable in accordance with the relevant Supply Contract infringes any Intellectual Property Rights, including the Moral Rights, of the third party claimant, that are enforceable in Australia.
- 1.52 **LD Obligation** means an obligation that is stated in Item 18 of the Purchase Order, or elsewhere in the Order Details, as being an obligation for which the late completion by the Supplier may require the payment of liquidated damages in accordance with clauses 5.10 to 5.17 of the Supply Contract.
- 1.53 **Licensed Software** means any standard, off-the-shelf software required for the operation of Equipment or for the purpose of enabling the Equipment to function as specified in the applicable Contract Specifications and provided by the Supplier to the Customer under the Supply Contract, and any updates or new releases of such software.
- 1.54 **Machine Code** includes any microcode, basic input/output system code (called BIOS), utility programs, device drivers, diagnostics, Firmware and any other code embedded in or delivered with the Equipment for the purpose of enabling the Equipment to function as specified in the applicable Contract Specifications. The term Machine Code excludes source code and the operating system and any software applications.
- 1.55 **Material** means any document or other thing in which Intellectual Property Rights subsist.
- 1.56 **Material Adverse Event** means any matter that:
- (a) substantially and adversely affects the Supplier's ability to perform any of its material obligations under this Agreement or a Supply Contract, which may result from:
 - (i) any material litigation or proceeding against the Supplier;
 - (ii) the existence of any material breach or default of any agreement, or of any order or award that is binding on the Supplier;
 - (iii) matters relating to the commercial, technical or financial capacity of the Supplier or in the knowledge of the Supplier, any Approved Agent or subcontractor proposed to be engaged in respect of this Agreement or a Supply Contract; or
 - (iv) any obligation under another contract the compliance with which may place the Supplier in material breach of this Agreement or a Supply Contract; or
 - (b) the Supplier knows, or should reasonably know, will, or has the potential to, cause material reputational damage to the Purchasing Authority or the Customer as a result of the Purchasing Authority and/or the Customer's association with the Supplier.
- 1.57 **Moral Rights** means a person's moral rights as defined in the *Copyright Act 1968* (Cth).
- 1.58 **New Material** means any Material that is:

- (a) newly created by or on behalf of the Supplier during the performance of its obligations under the Supply Contract;
 - (b) incorporated into a Deliverable; and
 - (c) delivered to the Customer in accordance with the requirements of the Supply Contract, except for any Material that is Existing Material or any adaptation, translation or derivative of that Existing Material.
- 1.59 **Notice in Writing** means a notice signed by a Party's authorised representative or his/her delegate or agent which must not be an email, or a document scanned and sent by email.
- 1.60 **NSW Government Body** means:
- (a) any Division of the Government Service as defined under the *Public Sector Employment and Management Act 2002* (NSW);
 - (b) a NSW Public Sector Service, whether in whole or in part (as defined under the *Public Sector Employment and Management Act 2002* (NSW)), being:
 - (i) the Teaching Service (including any public school or TAFE in NSW);
 - (ii) the NSW Police Force;
 - (iii) the NSW Health Service;
 - (iv) the service of either House of Parliament, or the President or Speaker, or the President and the Speaker jointly;
 - (v) any other service of the Crown;
 - (vi) the service of any other person or body constituted by or under an Act or exercising public functions, being a person or body that is prescribed, or that is of a class prescribed, for the purposes of the definition of Public Sector Service for the purposes of the *Public Sector Employment and Management Act 2002*;
 - (c) a NSW Government Agency (as defined in the *Interpretation Act 1987* (NSW));
 - (d) a government trading enterprise of this State (including a State Owned Corporation); and
 - (e) any Public Health Organisation as defined under the *Health Services Act 1997* (NSW), including any public hospital in NSW.
- 1.61 **Order Details** means the details of the Supply Contract specific to the transaction contemplated by the Supply Contract which are included in the Order Documents and agreed by the Customer and the Supplier, including the Contract Specific Requirements.
- 1.62 **Order Documents** means:
- (a) the Purchase Order;

- (b) the documents that are stated in the Purchase Order as being incorporated into the Supply Contract, including the Contract Specific Requirements; and
 - (c) any other document required to be prepared by the Supplier under the Supply Contract (for example, relating to the implementation of a project and associated payment arrangements), which must meet the requirements of, and be Accepted in accordance with, clause 8.
- 1.63 **Panel Rules** means the Purchasing Authority document "ITS 2573 Operational Telecommunications Equipment, Infrastructure and Services Panel Part B – Supplier Panel Rules and Conditions December 2012" which governs the operation of, and the Supplier's admission to, the ITS 2573 Panel, available on www.telco.nsw.gov.au and as may be updated or amended from time to time.
- 1.64 **Parties** means:
- (a) in relation to this Agreement, the Purchasing Authority and the Supplier; and
 - (b) in relation to a Supply Contract, the relevant Eligible Customer and the Supplier.
- 1.65 **Performance Guarantee** means the performance guarantee referred to in clause 18.1 substantially in the form of Schedule 9 (Performance Guarantee).
- 1.66 **Personal Information** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- 1.67 **Personnel** means an entity's directors, officers, employees, agents and subcontractors, and
- (a) for the Supplier; includes its Approved Agents and their Personnel; and
 - (b) for each of the Purchasing Authority and the Customer; includes their Personnel, but excludes the Supplier and its Personnel.
- 1.68 **Physically Accepted** has the meaning given in clause 6.3.
- 1.69 **Practical Completion** has the meaning given in clause 2 of the Services Terms.
- 1.70 **Prescribed Use** is limited to the use of a Contracted Item in a business environment where the direct result of a failure of the Contracted Item being supplied results in a serious risk of significant loss of life or personal injury or substantial damage to buildings or other tangible property in the following business environment:
- (a) planning, construction, maintenance or operation of an air traffic control system;
 - (b) planning, construction, maintenance or operation of a mass transit system (e.g. aircraft/trains/ferries/roads);
 - (c) planning, construction, maintenance or operation of a nuclear facility; or

- (d) planning, construction, maintenance or operation of facilities or programs in respect of biological or chemical environments, including quarantine.
- 1.71 **Price** means an itemised price (including a rate for a unit), payable in Australian dollars by a Customer for a Contracted Item under the Supply Contract, stated in Item 7 of the Purchase Order or the other Order Documents for that Supply Contract (as applicable). Price includes GST and any other Tax.
- 1.72 **Purchase Order** means a completed and executed General Order Form that includes the Order Details that are relevant to that Supply Contract.
- 1.73 **Referral Notice** has the meaning given in clause 25.8.
- 1.74 **Related Company** means an entity owned by, controlling, controlled by, or under common control with, directly or indirectly, a Party. For this purpose, one entity "controls" another entity if it has the power to direct the management and policies of the other entity (for example, through the ownership of voting securities or other equity interest, representation on its board of directors or other governing body, or by contract). A Related Company includes a "related body corporate" as that expression is defined in the *Corporations Act 2001* (Cth).
- 1.75 **Service Address** means:
- (a) in the case of the Supplier:
 - (i) the address set out in this Agreement or such other address of which the Supplier gives Notice in Writing to the Purchasing Authority; or
 - (ii) in relation to a Supply Contract at its address set out in Item 5 of the General Order Form or such other address of which the Supplier gives Notice in Writing to the Customer; or
 - (b) in the case of the Customer, the address set out in Item 5 of the General Order Form or the address of which the Customer gives Notice in Writing.
- 1.76 **Service Level Agreement** or **SLA** means the document or clauses that set out the performance expectations of the Parties in relation to, and defines the benchmarks for measuring the performance of, the Services, as set out in the relevant Contract Specific Requirements for a Supply Contract.
- 1.77 **Service Levels** means the minimum performance levels to be achieved by the Supplier in relation to the Services, as specified in a Service Level Agreement.
- 1.78 **Services** means services required to develop, plan, design, install, manage and maintain (as applicable) equipment and infrastructure used for the provision of voice and data services to be supplied by the Supplier under a Supply Contract, including the Support Services. The types of such services which are within the scope of this Agreement are described in Part A

of Schedule 2 (List of Equipment, Infrastructure and Services covered by this Agreement and SMEPP).

- 1.79 **Services Terms** means the document that describes the additional terms and conditions that are specific to the supply and purchase of Services under a Supply Contract, set out at Schedule 5 (Services Terms).
- 1.80 **Significant Failure** means any one or more of the following:
- (a) a breach of the security requirements of the Supply Contract which resulted in a person being in a position to commit an act which has the potential to have a significant adverse impact on the business, operations or reputation of the Customer;
 - (b) any other breach of the Supply Contract by the Supplier which has a significant adverse impact on a critical part of the business or operations of the Customer; and
 - (c) any failures specified as a 'significant failure' in the Contract Specific Requirements.
- 1.81 **Site** means the Customer's offices or other Customer-controlled locations stated in the Order Documents to which a Deliverable is to be delivered and/or at which a Deliverable is to be installed.
- 1.82 **SMEPP** means the Small and Medium Enterprise Participation Plan referred to in clause 23.2.
- 1.83 **State** means the State of New South Wales.
- 1.84 **Statutory Requirements** means the Australian laws, regulation or by-laws relating to the performance of the Party's obligations under this Agreement or the Supply Contract, including the WHS Legislation.
- 1.85 **Subcontractor** means a third party to which the Supplier has subcontracted the performance or supply of any Services.
- 1.86 **Substantial Breach** means:
- (a) a breach of the Supply Contract by the Supplier which deprives the Customer of all or substantially all of the benefit of the Supply Contract; or
 - (b) the following breaches by the Supplier of this Agreement or the Supply Contract:
 - (i) where an extension of time for the Supplier to perform an obligation has been granted under clauses 5.7 or 5.8, a delay by the Supplier in performing the relevant obligations under the Supply Contract which continues beyond such extension of time;
 - (ii) failing to provide suitable replacement personnel as required under clause 5 of the Services Terms, if applicable, where such failure prevents the Supplier from performing fundamental obligations under the Supply Contract;

- (iii) breaching any warranty under clause 11.1 or 11.2;
- (iv) failure to comply with a notice issued by Purchasing Authority under, or any of the Supplier's obligations under, clause 2.12;
- (v) where Acceptance Tests are to take place under the Supply Contract, and the Deliverable must be Accepted by a certain date specified in the Order Documents, except where such requirement is an LD Obligation, failing to pass Acceptance Tests in respect of that Deliverable by such date;
- (vi) failing to deliver a Deliverable or Contracted Item in respect of which Acceptance Tests will not apply under the Supply Contract by the date required in the Supply Contract except where such requirement is an LD Obligation;
- (vii) failing to effect and maintain insurance policies as required under clause 17.1 or under clause 15.2(f) or 16.4 of the Services Terms (if applicable);
- (viii) failing to provide a Performance Guarantee if required under clause 18.1;
- (ix) failing to provide a Financial Security if required under clause 18.2; or
- (x) 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 Supplier and the Supplier has not complied with clause 21.1(b) within a reasonable period.

1.87 **Supplier Group Company** means the Supplier and each of its Related Companies.

1.88 **Supply Contract** means a contract formed in accordance with clause 3.4.

1.89 **Supported Deliverable** means the Deliverables for which the Supplier must supply the Support Services, including as specified in an Order Documents.

1.90 **Support Period** for a Deliverable means the period during which the Support Services will be provided for that Deliverable, as specified in the Order Documents.

1.91 **Support Services** for a Deliverable means the services described in the Order Documents for the relevant Supply Contract as 'support services' for that Deliverable.

1.92 **Tax** means any sales tax, value added tax, duty, withholding tax, levy, impost or other charge or duty levied by any government in Australia or elsewhere, which arises out of or in connection with the Supplier's performance of its obligations under the relevant Part, but excludes GST and any Tax based on the net income of the Supplier.

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

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

1.95 **Term** means:

- (a) for this Agreement, the term of this Agreement as determined in accordance with clause 2.14 and 2.15; and

- (b) for a Supply Contract, the period commencing on the Effective Date for that Supply Contract and ending on:
 - (i) if the Supply Contract relates to Services, the date on which the Services Term (as set out in Item 9 of the Purchase Order) ends, or if no Services Term is set out in Item 9 of the Purchase Order, the date on which all of the obligations under that Supply Contract are discharged; or
 - (ii) in any other case, the date on which all of the obligations under that Supply Contract are discharged.
- 1.96 **Test Items** means Contracted Items (other than documentary Deliverables) for which Acceptance Tests will be conducted as specified in Item 24 of the Purchase Order.
- 1.97 **User Documentation** means the Supplier's or, where the Supplier is a Reseller, the original equipment manufacturer's, standard off the shelf documents that describe the features and functions of Equipment, Infrastructure or any other Deliverable, in a hard copy, electronic or online format that are provided by the Supplier to the Customer. User Documentation excludes any Document that is designed by the Supplier to be training materials.
- 1.98 **Warranty Period** for:
- (a) a Deliverable other than as described in (b) below, means the period commencing on delivery of that Deliverable and ending on:
 - (i) if the Deliverable is a Test Item, the date which is 12 calendar months after the date on which the Customer Accepts that Deliverable (or that Deliverable is deemed Accepted by the Customer in accordance with the Supply Contract), or such other date as may be described in Item 22 of the Purchase Order; or
 - (ii) if the Deliverable is not a Test Item, the date which is 12 calendar months after delivery of that Deliverable, or such other date as may be described in Item 22 of the Purchase Order; and
 - (b) a Deliverable that is repaired during the then current warranty period, means the period commencing on the date of delivery of the repaired Deliverable and ending on the later of:
 - (i) 12 calendar months after the date on which the Customer Accepts that repaired Deliverable; and
 - (ii) the end of the then current warranty period for that Deliverable (determined by reference to paragraph (a) above).
- 1.99 **WHS Legislation** means:
- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW);

- (b) the *Work Health and Safety Act 2011* (Cth) and the *Work Health and Safety Regulation 2011* (Cth); and
- (c) any equivalent or substantially similar legislation dealing with work or occupational health and safety in any other State or Territory in which the Supplier operates or performs any act or function in relation to, or for the purposes of, this Agreement or a Supply Function.

as amended, replaced or updated from time to time.

2. Interpretation

2.1 The following rules also apply in interpreting this Agreement and a Supply Contract, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) monetary references are references to Australian currency;
 - (iii) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as varied, assigned or novated;
 - (iv) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) If an agreement expressly or impliedly binds more than one person then it must bind each such person separately and all such persons jointly.
- (c) A singular word includes the plural, and vice versa.
- (d) The words "include(s)" and "including" are not words of limitation.
- (e) When a Party exercises its "discretion", the party may exercise its discretion in any way it chooses, provided only that it acts in good faith. There is no obligation to act reasonably where the word "discretion" is used.
- (f) The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement and the Supply Contract will be interpreted to give effect to undertaking business in this manner. To the extent permitted by law, any Order Document may be in electronic format.

- 2.2 Headings are for the purpose of convenient reference only, and do not affect interpretation of the document in which they appear.

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Schedule 2 – List of Equipment, Infrastructure and Services covered by this Agreement and SMEPP

PART A

Item Ref	Category	Sub-Category	Description
A	Equipment	Overall	Radio communications and link equipment used for the provision of voice and data services.
1		Network Equipment	Radio and data base stations, including; multicoupling and combiners, related IP equipment and controlling equipment.
2		Link Equipment	Backhaul link equipment, including: Antennas, feeders, protection (e.g. vermin proofing, earthing), cable management (but not cable trays) equipment. NTU & network multiplexing, routers, switching and IT Infrastructure equipment.
3		Power Equipment	Batteries, rectifiers, inverters, power management systems which support Category A & B equipment.
4		Terminal Equipment	Handheld, vehicle mounted and desk mounted radios, pagers, data devices, modems, data collection equipment, smartphones, and dispatch equipment. Equipment used to support terminal equipment such as in-car mounts, handheld microphones, device coding keys, power connection cables, device battery charging units and spare batteries.
B	Infrastructure	Overall	Infrastructure & equipment required to support radio communications and linking network equipment for Category A.
5		Poles/Towers	Radio antenna supporting structures, including; Towers, guyed masts, poles, roof top structures (e.g. Jumbo Rails)
6		Ancillary Tower infrastructure	Mounting hardware (face mount, offset, antenna support), cable trays, straps, antenna head frames, tower lighting and lightening protection and tower footings
7		Security/Safety Systems and devices	Alarm systems, security coded and keyed entry systems, DC ventilation systems, fire protection system and extinguishers, first aid kits and fire blankets.
8		Fibre Infrastructure	All fibre components up to the site termination point, including; Fibre cabling, WDM equipment, splicing, termination and interconnection equipment, fibre testing and monitoring equipment. Specialised fibre network multiplexing, routers

			and switching equipment not included in Category A. 9
9		Communications Buildings	On and off site constructed cabins, huts, shelters and outdoor cabinets. Portable and temporary structures including trailers, specialised vehicles and drop down and pick up cabins. Please note that in supplying this infrastructure respondents should be capable of providing ancillary equipment such as Alarm monitoring & management, miscellaneous cabling, air conditioning, ventilation, miscellaneous electrical, fire extinguishers, WHS/OHS, portable generators
C	Services	Overall	All services required to develop, plan, design and install, manage and maintain network Equipment (A) and Infrastructure (B).
10		Construction Services	Equipment (A) and Infrastructure (B) construction services, including; Rigging, installation, welding, cranes, concreting, fibre ploughing, transportation, deconstruction and disposal services
11		Design Services (Including IT architecture)	Permits, DAs, Environmental Impact Assessment, documentation, site surveys, structural and geotech assessments, surveyor, spectrum design, radio coverage plot/verification and prediction services.
12		Project Management Services	Project management, capacity management, asset management and capitalisation, site acceptance and network deployment.
13		Maintenance Services	Equipment and Infrastructure maintenance (regular and emergency/restoration), deployment of temporary sites; including RF and structural rectification works.
14		Strategic Telco Services	Strategic, technical, commercial planning and advice services which will also include all of the Equipment (A), Infrastructure (B) and Services (C) categories; Provision of connectivity services (eg fibre, microwave).

PART B

SME PARTICIPATION PLAN

Tenderer name:

Managed Services –

Request for Proposal

Dollar value of ANZ-SME content

Investment in plant and equipment

Employment created and retained in ANZ-SME firms

Note the number of retained roles does not include the periodic use of the 100 FIMs subcontracted by Broadcast Australia throughout NSW.

Skills, training and technology transfer

Detail the planned training and skills development of employees in ANZ-SMEs and the potential to undertake innovation, research and development of technology. This could include:

- **List training programs;**
- **Achievement awards;**
- **Indicate opportunities for the engagement and training of apprentices;**
- **Identify and describe opportunities for increasing skills of the employees;**
- **Identify the potential to undertake further innovation and / or research and development of contract related technology; and**
- **Any technology transfer that occurs as a result of imported technology.**

Identification of SME products and capabilities that contribute to the delivery of the contract

This could include:

- **A proposal for consulting with the ICN, Government organisations, local industry and other groups to identify the availability of goods and services from SMEs to meet the requirements of the contract;**
- **Detailing the means by which ANZ-SMEs in the supply chain are alerted to upcoming tenders and contract requirements;**
- **Methods for promoting the concept of ANZ-SME participation with consultants, subcontractors and others involved with the contract;**
- **A commitment to liaising with international suppliers to increase opportunities for ANZ-SMEs including manufacturing under overseas licensing arrangements and technology transfer; and**
- **Establishing procedures and policies that encourage ANZ-SME participation.**

Assessment and comparison of SME products and capabilities with overseas equivalent

This could include:

- **Procedures to be based on "whole of life" cost parameters and appropriate quality and performance indicators;**
- **Benchmarks for the evaluation of proposals and alternatives;**

- **Procedures for assessing the ANZ-SME content in a product or service;**
- **Procedures for ensuring that ANZ-SME products and services are evaluated against imported goods and services.**

Monitoring and reporting on outcomes for ANZ SME involvement

This could include:

- **SMEPP commitments secured against contract levels;**
- **Frequency of monitoring and reporting and associated mechanisms;**
- **Procedures for corrective action should inappropriate or ineffective action be determined;**
- **Frequency and level of internal assessment of the effectiveness of the implementation of the Plan;**
- **Frequency of external assessment of subcontractor and supplier commitment to local industry participation;**
- **Level of use of ICN and other organisations to assist in the identification of competitive local sources of supply; and**
- **The ICN can assist in the monitoring of compliance with SMEPP commitments as part of overall performance management.**

Statement of Compliance

Tenderers must state that in submitting a tender and a SMEPP they agree to take all reasonable steps to comply with SMEPP principles.

Should [insert full name of tenderer] be the successful tenderer for this project, we shall:

- **Take all reasonable steps to comply with SMEPP principles;**
- **Agree to be monitored by the Department or Agency for compliance with SMEPP commitments as part of overall performance management; and**
- **Acknowledge that the SMEPP Plan may be centrally recorded by the NSW Government.**

Signed on behalf of [insert full name of tenderer]:

Signature:

[Insert Director's signature]

Name:

[Insert Director's name]

Title:

[Insert Director's title]

Date:

[Insert date]

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Schedule 3 - Equipment Terms

1. Applicability

The terms and conditions set out in these Equipment Terms will apply to the Supply Contract if specified to do so in the Purchase Order.

2. Definitions

2.1 Specific Definitions

In these Equipment Terms, unless the contrary intention appears:

- (a) **Delivery Date** means the date specified in the Order Documents for the delivery of the Equipment.
- (b) **Equipment or Documentation Defect** means, as applicable:
 - (i) a fault, error, failure, degradation, deficiency or malfunction that causes the relevant item of Equipment to not meet the Contract Specific Requirements and other requirements under the Supply Contract; or
 - (ii) a failure of the User Documentation to meet the Contract Specific Requirements and other requirements under the Supply Contract.
- (c) **Firmware** means fixed software code and/or data structures that internally control elements or provides functionality within the Equipment.
- (d) **Install** means to set up the Equipment so that the manufacturer's installations tests can be completed successfully.
- (e) **Integration** or **Integrate** in respect of the Equipment means the implementation and setting to work of the Equipment with or within the Customer's existing environment so that it is ready for use by the Customer and complies with the Contract Specific Requirements and other requirements under the Supply Contract.
- (f) **Load and Performance Requirements** means, where applicable, that part of the Contract Specific Requirements detailing the performance levels required and the anticipated capacity requirements of the Equipment.
- (g) **Reseller** means any entity who provides Equipment but:
 - (i) is not the original equipment manufacturer or owner of the Intellectual Property Rights in the Equipment; or

- (ii) is not a Related Company of the original equipment manufacturer or owner of the Intellectual Property Rights in the Equipment.
- (h) **Reseller as Facilitator** means a Reseller who uses the business model describe in clause 8.2 of these Equipment Terms to facilitate the supply of the Equipment to the Customer.
- (i) **Reseller with Pass Through Warranties** means a Reseller who uses the business model describe in clause 8.3 of these Equipment Terms to supply Equipment to the Customer.
- (j) **Spares Availability Period** means a period of three years from the AAD of the relevant Equipment, or such other period agreed by the Parties and stated in the Purchase Order.

2.2 General Definitions

Any other capitalised words and expressions used in these Equipment Terms are defined in Schedule 1 (Dictionary).

3. Supply of Equipment

3.1 Delivery

The Supplier must:

- (a) subject to clauses 5.7 and 5.8 of this Agreement, supply the Equipment in accordance with the Contract Specific Requirements to the Site by the applicable Delivery Date; and
- (b) where specified in the Purchase Order:
 - (i) Install the Equipment in accordance with the Contract Specific Requirements by the applicable Due Date; and
 - (ii) demonstrate the use of the Equipment.

3.2 Disposal of Material

Unless otherwise specified in the Purchase Order, if the Supplier has Installed the Equipment the Supplier must by the AAD for the Equipment, remove or otherwise dispose of, at its own expense, all packing materials used for the delivery of the Equipment to the Site.

4. Retention

- (a) The Customer may retain a proportion of the payment for any milestones in the supply of any Equipment under a Supply Contract in the amount and for the period stated in the Purchase Order (or a Pricing and Payment Plan attached to the Purchase Order) for the due and proper performance and completion of the Supplier's delivery obligations under the Supply Contract.

- (b) The Customer must upon the completion of the Supplier's delivery obligations in accordance with the Supply Contract pay to the Supplier any amount retained under clause 4(a) of these Equipment Terms.

5. Right to Use Machine Code and Licensed Software

5.1 Machine Code

The Supplier grants to the Customer, for the period that the Customer has the lawful use of the Equipment, a non-exclusive, royalty-free licence to use the Machine Code on the Equipment in connection with, or for the operation, modification, support and/or use of, the relevant Equipment, subject to any limits on the capacity and capability for which the Customer has acquired the Supplier's written authorisation. The Customer must use Machine Code only as specified in this Supply Contract. The Customer must not:

- (a) otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) Machine Code, except as the Supplier may authorise in the User Documentation or in writing to the Customer;
- (b) reverse assemble, reverse compile, otherwise translate, or reverse engineer Machine Code except as specifically permitted by law;
- (c) sublicense or assign the licence for Machine Code except to the extent that if the Customer sells the Equipment to a third party, the licence to the Machine Code may be assigned to that third party purchaser as part of the sale of the Equipment, but not separately; or
- (d) lease Machine Code or any copy of it.

5.2 Licensed Software

The Supplier grants to the Customer, for the period that the Customer has the lawful use of the Equipment, a non-exclusive, royalty-free licence to use the Licensed Software in connection with, or for the operation, modification, support and/or use of, the relevant Equipment. The Customer agrees that such licence may be subject to any restrictions contained in the Supplier's standard software licence terms applicable to the Licensed Software, provided that such restrictions do not hinder or prevent use by the Customer of the Equipment in accordance with the Supply Contract. The Customer must not:

- (a) otherwise copy, display, transfer, adapt, modify, or distribute (electronically or otherwise) Licensed Software, except as the Supplier may authorise in the User Documentation or in writing to the Customer;
- (b) reverse assemble, reverse compile, otherwise translate, or reverse engineer Licensed Software except as specifically permitted by law;

- (c) sublicense or assign the licence for Licensed Software except to the extent that if the Customer sells the Equipment to a third party, the licence to the Licensed Software may be assigned to that third party purchaser as part of the sale of the Equipment, but not separately; or
- (d) lease Licensed Software or any copy of it.

6. Additional Capacity or Features

6.1 Obligation to Pay

If any item of Equipment is supplied to the Customer with additional capacity or features that can be activated by the Customer on a temporary or permanent basis and such additional capacity or features are specified in the Contract Specific Requirements but have not been paid for within the original Contract Price, the following terms apply where the Customer activates that additional capacity or features:

- (a) if the Customer first activates any of the additional capacity or features the Customer will be deemed to have permanently activated that additional capacity or feature and may use that additional capacity or feature from that date; and
- (b) the Customer must pay to the Supplier (subject to receiving a Correctly Rendered Invoice from the Supplier) an addition to the proportion of the Contract Price attributable to the Equipment, plus any additional amounts in respect of Services (such as support or maintenance) relating to the additional capacity or feature activated. These additions to the proportion of the Contract Price attributable to the Equipment must be specified in the Purchase Order. If no such addition is specified, the Customer will not be liable for any additional amount or charge.

6.2 Restricted Use

The Parties may agree that an item of Equipment is to be used for a restricted purpose (e.g. as a test machine only) in which case the Parties will agree the scope of the restricted use and the Price for the Equipment that can be used for that restricted purpose, and such details must be set out on the Purchase Order.

7. Export

Export laws and regulations of Australia and the United States may apply to the supply of Equipment under the Supply Contract. The Customer agrees:

- (a) that such export laws may govern the use of the Equipment (including technical data related to it) and any other Deliverables provided under the Supply Contract;

- (b) to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations) as they apply to the Customer; and
- (c) that no data, information, Deliverable and/or materials resulting from the Supply Contract (or any direct product of any of them) will be:
 - (i) exported, directly or indirectly, in breach of these export laws; or
 - (ii) used for any purpose prohibited by these export laws, including nuclear, chemical, or biological weapons proliferation, or development of missile technology.

8. Acquisition through a Reseller

8.1 Applicable Model

If it is specified in the Purchase Order that the Equipment is to be supplied via a Supplier that is a Reseller, the Customer and the Supplier must agree in the Purchase Order on which of the following business models govern the supply of the Equipment:

- (a) Reseller as Facilitator; or
- (b) Reseller with Pass Through Warranties,

in which case either clause 8.2 or 8.3 of these Equipment Terms will apply (as the case may be).

8.2 Reseller as Facilitator

In this business model, the Supplier provides reseller services which facilitate the supply of the Equipment from the original equipment provider or its authorised distributor to the Customer, in which case:

- (a) the Supplier will procure that the original equipment provider or its authorised distributor enters into a contract directly with the Customer for the supply of the Equipment, and the provisions of the Supply Contract that relate to the supply of the Equipment, including those relating to passing of title, Equipment warranties, Acceptance Tests, Intellectual Property Rights (including licences granted) and the features, capabilities, performance or other characteristics of the Equipment, and the other provisions of these Equipment Terms (other than this clause 8.2), do not apply. The terms of the contract between the original equipment provider or its authorised distributor and the Customer for the supply of the Equipment will be attached to the Purchase Order and will be deemed accepted by the Customer when the Customer enters into the Supply Contract;
- (b) the Customer will pay the Price for the Equipment to the Supplier, and the Supplier shall pay the amount agreed between the Supplier and the original equipment provider or its authorised distributor for the Equipment; and
- (c) the Supplier will co-ordinate any warranty claim that is reported by the Customer to the Supplier and must use best efforts to ensure that all benefits of the warranty to the

Customer are utilised to the benefit of the Customer, and this may include returning faulty equipment to the third party for repair under warranty rather than repairing the maintained Equipment.

8.3 Reseller with Pass Through Warranties

In this business model, the Supplier will supply the Equipment to the Customer on the terms and conditions of the Supply Contract, except that:

- (a) clause 20.10 of this Agreement does not apply;
- (b) the warranties or guarantees that are provided under these Equipment Terms are limited to any warranties or guarantees that cannot be excluded by law and any warranties that the original equipment provider or its authorised distributor permits the Supplier to assign to the Supplier's customers;
- (c) clause 4.3 of this Agreement does not apply and the Supplier warrants that title in the Equipment passes to the Customer on the date that the Reseller obtains title to the Equipment from its supplier, provided that such date is no later than 60 days after AAD of that Equipment (subject to the Supplier receiving payment from the Customer prior to 45 days after the AAD of the Equipment); and
- (d) the Supplier must use best efforts to ensure that all benefits of the warranty to the Customer for that Equipment are utilised to the benefit of the Customer, and this may include returning faulty equipment to the original equipment manufacturer or authorised distributor for repair under warranty rather than repairing the maintained Equipment.

9. Availability of Equipment and Spares

9.1 Spares Availability Period

The Supplier warrants that, for the Spares Availability Period it will, or it will procure that its supplier or the manufacturer will, offer to:

- (a) continue to supply the Equipment (including replacements, upgrades or attachments provided by the Supplier); or
- (b) supply appropriate substitutes for the Equipment if for any reason it is no longer available.

9.2 Warranty

The Supplier warrants that, for the Spares Availability Period, it will, or it will procure that its supplier or the manufacturer will, offer to:

- (a) continue to provide support and spare parts for the Equipment, or any replacement, upgrade or substitute for the Equipment;

- (b) if specified in the Purchase Order, provide training and such other assistance reasonably required by the Customer to enable the Customer to continue to use and maintain the Equipment; and
- (c) maintain or ensure that there is sufficient stock of Equipment parts to enable any replacement, upgrade or substitute to be promptly made available to the Customer.

9.3 Notice

If the Supplier intends to cease supplying spare parts for the Equipment it must give the Customer at least 6 month's notice prior to the end of the Spares Availability Period of its intention.

10. Specific Warranties

10.1 Scope

The Supplier warrants that the Equipment, during the relevant Warranty Period, subject to any exception in clause 11 of these Equipment Terms, will, in all material respects:

- (a) meet the Contract Specific Requirements (including the Contract Specifications) and any other requirements under the Supply Contract, including any Load and Performance Requirements;
- (b) be free from defects or omissions in materials, workmanship, design and performance;
- (c) be compatible and interoperable with Customer's hardware and software environment as set out in the Order Documents; and
- (d) be scalable to the extent set out in the Order Documents.

10.2 User Documentation

The Supplier warrants that the User Documentation that is to be provided by the Supplier at the time of delivery of the Equipment, will, subject to the exceptions in clause 11 of these Equipment Terms:

- (a) include material the Supplier usually makes available free to its other customers; and
- (b) provide adequate instructions on how to enable an appropriately skilled person to operate and use the Equipment without reference to the Supplier.

10.3 Defects

If the Customer provides the Supplier with Notice in Writing of any Equipment or Documentation Defect or suspected Equipment or Documentation Defect in the Equipment or User Documentation within the Warranty Period, then the Supplier shall:

- (a) inspect the Equipment and, as determined by the Supplier, replace or repair the Equipment or its components after receiving the Notice in Writing from the Customer. This must be

completed within any period agreed in the Service Level Agreement, or if there is no Service Level Agreement, it must be done in a reasonable time, taking in account the impact on the Customer's operations; or

- (b) promptly rectify any User Documentation.

10.4 Replacement Equipment and Parts

- (a) Where the Supplier replaces the Equipment or parts of the Equipment, the Supplier warrants that:
 - (i) the replacement hardware or parts become the property of the Customer on installation;
 - (ii) the parts will be newly manufactured (or, if they are not newly manufactured, will be warranted as if they are new); and
 - (iii) the replacement Equipment or parts are provided with same warranties that apply to the Equipment for the remainder of the Warranty Period of the Equipment.
- (b) If the Customer requires the Supplier to deal with any replaced parts in any particular way, e.g. remove Confidential Information from the replaced part and/or dispose of the replaced part, the Parties may agree the scope and Price for such services, and such services must be documented using a Change Request.

10.5 Customer Assistance

- (a) The Customer must provide reasonable assistance in remedying any Equipment or Documentation Defect, including installing any 'user installable parts' (as defined by the Supplier) supplied by the Supplier and running any diagnostic tests or software. Where the Supplier requires remote access to the Equipment to provide warranty services the Customer must provide that access, subject to the Supplier complying with the Customer security and privacy policies set out in the Purchase Order.
- (b) If the Customer does not permit such access then Customer must pay any additional costs incurred by the Supplier in attending the Customer's Site to provide the warranty services, such costs to be calculated using the rates set out in the Supply Contract, or if none are stated, using the Supplier's then current commercial rates.

10.6 Failure to Rectify

- (a) If the Supplier is unable or unwilling to rectify an Equipment or Documentation Defect in accordance with the timeframes in clause 10.3 of these Equipment Terms, and has been given the opportunity to do so, the Customer may give the Supplier Notice in Writing of its intention to use a third party who has been authorised by the Supplier or manufacturer to be an authorised repairer of the Equipment to correct the Equipment or Documentation Defect. In this case:

- (i) the Supplier must provide the authorised third party whatever assistance that may reasonably require to rectify the Equipment or Documentation Defect; and
 - (ii) the Supplier is liable to pay all costs reasonably incurred by the Customer under this sub-clause, subject to the limitations on liability applicable to the Supply Contract.
- (b) If the Supplier is unable or unwilling to rectify an Equipment or Documentation Defect in accordance with the timeframes in clause 10.3 of these Equipment Terms, and has been given the opportunity to do so, and there are no authorised third party repairers, then the Customer may, by Notice in Writing to the Supplier, arrange for another third party to correct the Equipment or Documentation Defect. In this case:
 - (i) the Customer must ensure that the third party complies with the manufacturer's instructions and any User Documentation in making any repair;
 - (ii) the Supplier's obligations under clause 10.3 of these Equipment Terms are not affected by the use of the third party, but the Supplier is not liable for any loss, damage or expense incurred or suffered by the Customer that is caused by the third party, including damage to the Equipment or any act or omission that causes the need for subsequent repair;
 - (iii) the Supplier must provide the third party whatever assistance that may reasonably require to rectify the Equipment or Documentation Defect; and
 - (iv) the Supplier is liable to pay all costs reasonably incurred by the Customer under this sub-clause, subject to the limitations on liability applicable to the Supply Contract.

10.7 Costs

- (a) The Supplier must pay for all costs incidental to the discharge of its warranty obligations including the provision of packing, freighting, disassembly, reassembly costs and Installation costs (other than any Installation costs for 'user installable parts' (as determined by the Supplier)).
- (b) The Supplier warrants that components and materials shall not in normal operating conditions emit fumes, liquids, electromagnetic radiation or noise which could be detrimental to Personnel, the environment or the operation of other equipment.
- (c) If the Customer rejects the Equipment under clauses 6 or 7 of this Agreement (as applicable) or the Supplier requires the Equipment to be returned to the Supplier in order to remedy an Equipment or Documentation Defect, the Supplier may determine the method of return and the carrier, and in any event is liable to pay the expenses for the return and shipment of repaired or any replacement Equipment.

11. Exceptions

- (a) The Supplier is not liable for any breach of the provisions in these Equipment Terms, or breach of any of the warranties in clause 11.2(j) to the extent to which they relate to the Equipment, which arises as the result of:
 - (i) fair wear and tear;
 - (ii) damage arises from the re-installation, moving, relocation or decommissioning or recommissioning of the Equipment by a person other than the Supplier or its authorised representative;
 - (iii) damage arising from changes, alterations, additions or modifications effected or attempted by a person other than the Supplier or an authorised third party repairer appointed under clause 10.6 of these Equipment Terms. To the extent that the Supplier permits a repair to be conducted by the Customer or any part is a 'user installable part' (as defined by the Supplier), then where that repair is conducted (or part is installed) in accordance with the Supplier's instructions this shall not affect any warranty;
 - (iv) damage arising from the act, error, fault, neglect, misuse or omission of the Customer;
 - (v) damage caused by the failure of electrical power (other than power from the internal battery of the Equipment), air conditioning, humidity control or any environmental factor;
 - (vi) damage caused by the operation of the Equipment other than in accordance with recommended operating procedures, User Documentation or otherwise than in accordance with the directions or recommendations of the manufacturer or the Supplier;
 - (vii) any Virus, denial of service attack or other malicious act that adversely affects the Equipment or any software installed on it or connected to it, except to the extent that:
 - (A) the attack or malicious act is an attack or malicious act of the Supplier; or
 - (B) the Contract Specific Requirements include a requirement to protect against viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specific Requirements;
 - (viii) use of consumables or parts that are of a type that, or which are provided by any person who, is not approved by the Supplier;
 - (ix) improper use or mismanagement by the Customer; or

- (x) an Event.
- (b) If the Supplier has been requested to provide any warranty services and the item that was requested to be remedied is determined not to be an Equipment or Documentation Defect then the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Supply Contract, or if none are stated, at the Supplier's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.
- (c) The Supplier expressly excludes any warranty that the Equipment will operate with any consumables or parts that are of a type that, or which are provided by any person who, is not approved by the Supplier.

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Schedule 4 - Infrastructure Terms

1. Applicability

The terms and conditions set out in these Infrastructure Terms will apply to the Supply Contract if specified to do so in the Purchase Order.

2. Definitions

2.1 Specific Definitions

In these Infrastructure Terms, unless the contrary intention appears:

- (a) **Delivery Date** means the date specified in the Order Documents for the delivery of the Infrastructure.
- (b) **Infrastructure Defect** means a fault, error, failure, degradation, deficiency or malfunction that causes the relevant Infrastructure to not meet the Contract Specifications and other requirements under the Supply Contract.
- (c) **Install** means to set up the Infrastructure so that the manufacturer's installations tests can be completed successfully.
- (d) **Load and Performance Requirements** means, where applicable, that part of the Contract Specific Requirements detailing the performance levels required and the anticipated capacity requirements of the Infrastructure.
- (e) **Spares Availability Period** means a period of three years from the AAD of the relevant Infrastructure, or such other period agreed by the Parties and stated in the Purchase Order.

2.2 General Definitions

Any other capitalised words and expressions used in these Infrastructure Terms are defined in Schedule 1 (Dictionary).

3. Supply of Infrastructure

3.1 Delivery

The Supplier must:

- (a) subject to clauses 5.7 and 5.8 of this Agreement, supply the Infrastructure in accordance with the Contract Specific Requirements to the Site by the applicable Due Date; and
- (b) where specified in the Purchase Order:

- (i) Install the Infrastructure in accordance with the Contract Specific Requirements by the applicable Due Date; and
- (ii) demonstrate the use of the Infrastructure.

3.2 Disposal of Material

Unless otherwise specified in the Purchase Order, if the Supplier has Installed the Infrastructure the Supplier must by the AAD for the Infrastructure, remove or otherwise dispose of, at its own expense, all packing materials used for the delivery of the Infrastructure to the Site.

4. Retention

- (a) The Customer may retain a proportion of the payment for any milestones in the supply of any Infrastructure under a Supply Contract in the amount and for the period stated in the Purchase Order (or a Pricing and Payment Plan attached to the Purchase Order) for the due and proper performance and completion of the Supplier's delivery obligations under the Supply Contract.
- (b) The Customer must upon the completion of the Supplier's delivery obligations in accordance with the Supply Contract pay to the Supplier any amount retained under clause 4(a) of these Infrastructure Terms.

5. Availability of Infrastructure and Spares

5.1 Spares Availability Period

The Supplier warrants that, for the Spares Availability Period it will, or it will procure that its supplier or the manufacturer will, offer to:

- (a) continue to supply the Infrastructure (including replacements, upgrades or attachments provided by the Supplier); or
- (b) supply appropriate substitutes for the Infrastructure if for any reason it is no longer available.

5.2 Warranty

The Supplier warrants that, for the Spares Availability Period, it will, or it will procure that its supplier or the manufacturer will, offer to:

- (a) continue to provide support and spare parts for the Infrastructure, or any replacement, upgrade or substitute for the Infrastructure;
- (b) if specified in the Purchase Order, provide training and such other assistance reasonably required by the Customer to enable the Customer to continue to use and maintain the Infrastructure; and

- (c) maintain or ensure that there is sufficient stock of Infrastructure parts to enable any replacement, upgrade or substitute to be promptly made available to the Customer.

5.3 Notice

If the Supplier intends to cease supplying spare parts for the Infrastructure it must give the Customer at least 6 month's notice prior to the end of the Spares Availability Period of its intention.

6. Infrastructure Warranties

6.1 Scope

The Supplier warrants that the Infrastructure, during the relevant Warranty Period, subject to any exception in clause 7 of these Infrastructure Terms, will, in all material respects:

- (a) meet the Contract Specific Requirements (including the Contract Specifications) and any other requirements under the Supply Contract, including any Load and Performance Requirements;
- (b) be free from defects or omissions in materials, workmanship, design and performance; and
- (c) be scalable to the extent set out on the Purchase Order.

6.2 User Documentation

The Supplier warrants that the User Documentation that is to be provided by the Supplier at the time of delivery of the Infrastructure, will, subject to the exceptions in clause 7 of these Infrastructure Terms:

- (a) include material the Supplier usually makes available free to its other customers; and
- (b) provide adequate instructions on how to enable an appropriately skilled person to operate and use the Infrastructure without reference to the Supplier.

6.3 Defects

If the Customer provides the Supplier with Notice in Writing of any Infrastructure Defect or suspected Infrastructure Defect in the Infrastructure or User Documentation within the relevant Warranty Period, then the Supplier shall:

- (a) inspect the Infrastructure and, as determined by the Supplier, replace or repair the Infrastructure or its components after receiving the Notice in Writing from the Customer. This must be completed within any period agreed in the Service Level Agreement, or if there is no Service Level Agreement, it must be done in a reasonable time, taking in account the impact on the Customer's operations; or
- (b) promptly rectify any User Documentation.

6.4 Replacement Infrastructure and Parts

- (a) Where the Supplier replaces the Infrastructure or parts of the Infrastructure, the Supplier warrants that:
 - (i) the replacement hardware or parts become the property of the Customer on installation;
 - (ii) the parts will be newly manufactured (or, if they are not newly manufactured, will be warranted as if they are new); and
 - (iii) the replacement Infrastructure or parts are provided with same warranties that apply to the Infrastructure for the remainder of the Warranty Period of the Infrastructure.
- (b) If the Customer requires the Supplier to deal with any replaced parts in any particular way, e.g. remove Confidential Information from the replaced part and/or dispose of the replaced part, the Parties may agree the scope and Price for such services, and such services must be documented using a Change Request.

6.5 Customer Assistance

- (a) The Customer must provide reasonable assistance in remedying any Defect, including installing any 'user installable parts' (as defined by the Supplier) supplied by the Supplier and running any diagnostic tests or software. Where the Supplier requires remote access to the Deliverable to provide warranty services the Customer must provide that access, subject to the Supplier complying with the Customer security and privacy policies set out in the Purchase Order.
- (b) If the Customer does not permit such access then Customer must pay any additional costs incurred by the Supplier in attending the Customer's Site to provide the warranty services, such costs to be calculated using the rates set out in the Supply Contract, or if none are stated, using the Supplier's then current commercial rates.

6.6 Failure to Rectify

- (a) If the Supplier is unable or unwilling to rectify an Infrastructure Defect in accordance with the timeframes in clause 6.3 of these Infrastructure Terms, and has been given the opportunity to do so, the Customer may give the Supplier Notice in Writing of its intention to use a third party who has been authorised by the supplier or manufacturer to be an authorised repairer of the Infrastructure to correct the Infrastructure Defect. In this case:
 - (i) the Supplier must provide the authorised third party whatever assistance that may reasonably require to rectify the Infrastructure Defect; and
 - (ii) the Supplier is liable to pay all costs reasonably incurred by the Customer under this sub-clause, subject to the limitations on liability in the Supply Contract.

- (b) If the Supplier is unable or unwilling to rectify an Infrastructure Defect in accordance with the timeframes in clause 6.3, and has been given the opportunity to do so, and there are no authorised third party repairers, then the Customer may give the Supplier Notice in Writing of its intention to arrange for another third party to correct the Infrastructure Defect. In this case:
 - (i) the Customer must ensure that the third party complies with the manufacturer's instructions and any User Documentation in making any repair;
 - (ii) the Supplier's obligations under clause 6.3 are not affected by the use of the third party, but the Supplier is not liable for any loss, damage or expense incurred or suffered by the Customer that is caused by the third party, including damage to the Infrastructure or any act or omission that causes the need for subsequent repair;
 - (iii) the Supplier must provide the third party whatever assistance that may reasonably require to rectify the Infrastructure Defect; and
 - (iv) the Supplier is liable to pay all costs reasonably incurred by the Customer under this sub-clause, subject to the limitations on liability in the Supply Contract.

6.7 Costs

- (a) The Supplier must pay for all costs incidental to the discharge of its warranty obligations including the provision of packing, freighting, disassembly, reassembly costs and Installation costs (other than any Installation costs for 'user installable parts' (as determined by the Supplier)).
- (b) The Supplier warrants that components and materials shall not in normal operating conditions emit fumes, liquids, electromagnetic radiation or noise which could be detrimental to Personnel, the environment or the operation of other equipment.
- (c) If the Customer rejects the Infrastructure under clauses 6 or 7 of this Agreement (as applicable) or the Supplier requires the Infrastructure to be returned to the Supplier in order to remedy an Infrastructure Defect, the Supplier may determine the method of return and the carrier, and in any event is liable to pay the expenses for the return and shipment of repaired or any replacement Infrastructure.

7. Exceptions

- (a) The Supplier is not liable for any breach of the provisions in these Infrastructure Terms, or breach of any of the warranties in clause 11.2(j) to the extent to which they relate to the Infrastructure, which arises as the result of:
 - (i) fair wear and tear;

- (ii) damage arises from the re-installation, moving, relocation or decommissioning or recommissioning of the Infrastructure by a person other than the Supplier or its authorised representative;
 - (iii) damage arising from changes, alterations, additions or modifications effected or attempted by a person other than the Supplier or an authorised third party repairer appointed under clause 6.6 of these Infrastructure Terms. To the extent that the Supplier permits a repair to be conducted by the Customer or any part is a 'user installable part' (as defined by the Supplier), then where that repair is conducted (or part is installed) in accordance with the Supplier's instructions this shall not affect any warranty;
 - (iv) damage arising from the act, error, fault, neglect, misuse or omission of the Customer;
 - (v) damage caused by the failure of electrical power (other than power from the internal battery of the Infrastructure), air conditioning, humidity control or any environmental factor;
 - (vi) damage caused by the operation of the Infrastructure other than in accordance with recommended operating procedures, User Documentation or otherwise than in accordance with the directions or recommendations of the manufacturer or the Supplier;
 - (vii) use of consumables or parts that are of a type that, or which are provided by any person who, is not approved by the Supplier;
 - (viii) improper use or mismanagement by the Customer; or
 - (ix) an Event.
- (b) If the Supplier has been requested to provide any warranty services and the item that was requested to be remedied is determined not to be an Infrastructure Defect then the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Supply Contract, or if none are stated, at the Supplier's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.
- (c) The Supplier expressly excludes any warranty that the Infrastructure will operate with any consumables or parts that are of a type that, or which are provided by any person who, is not approved by the Supplier.

8. Export

Export laws and regulations of Australia and the United States may apply to the supply of Infrastructure under the Supply Contract. The Customer agrees:

- (a) that such export laws may govern the use of the Infrastructure (including technical data related to it) and any other Deliverables provided under the Supply Contract;
- (b) to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations) as they apply to the Customer; and
- (c) that no data, information, Deliverable and/or materials resulting from the Supply Contract (or any direct product of any of them) will be:
 - (i) exported, directly or indirectly, in breach of these export laws; or
 - (ii) used for any purpose prohibited by these export laws, including nuclear, chemical, or biological weapons proliferation, or development of missile technology.

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Schedule 5 – Services Terms

1. Applicability

The terms and conditions set out in these Services Terms will apply to the Supply Contract if specified to do so in the Purchase Order.

2. Definitions

2.1 Specific Definitions

In these Services Terms, unless the contrary intention appears:

- (a) **Additional Items** means the additional items stated in the Purchase Order which are to be acquired by the Supplier under the Supply Contract.
- (b) **Additional Services** means any Services not within the scope of the Supply Contract as at the Effective Date of the Supply Contract.
- (c) **Assets** means the assets stated in the Purchase Order which are to be acquired by the Supplier under the Supply Contract.
- (d) **Assumptions** means the assumptions on which the Parties agree the Supplier has based the performance of the Managed Services and the Price, as set out in the Purchase Order.
- (e) **Authority** means any government or governmental, semi-government, local government, statutory, public, ministerial, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
- (f) **Business Contingency Plan** means a plan detailing the nature and scope of the business contingency services to be provided by the Supplier to overcome interruptions to the Customer's business, including as applicable, information about time-frames, scheduling, service levels, methodologies, systems, processes or programs for the implementation of such services and any other requirement, as stated in the Purchase Order.
- (g) **Client Contracts** means contracts between the Customer and purchasers of the Customer's products and services which are listed in the Purchase Order.
- (h) **Consolidation Period** means the first month of the Managed Services (commencing on the Services Commencement Date of the relevant Managed Service), or such other period stated on the Purchase Order.
- (i) **Construction Defect** means:

- (i) defects, shrinkage, faults or omissions in the Works, including any aspect of the Works which is not in accordance with the Supply Contract and any lack of functionality or capability; and
 - (ii) if the Works include the Design Obligations, Design Works that are not fit for its stated purpose.
- (j) **Construction Services** means to design, build, construct, modify, repair and/or remove any physical structure or amenity and includes:
 - (i) all work defined as 'construction work'; and
 - (ii) the supply of any goods or services defined as 'related goods and services', in the Security of Payment Act.
- (k) **Construction Site** means the land and other places identified in the Site Plan.
- (l) **Contract Period** means the term of the Supply Contract determined in accordance with clause 3 of these Services Terms.
- (m) **Customer Managed Services Data** means data supplied by the Customer to the Supplier to be processed using the Managed Services.
- (n) **Date for Practical Completion** means the date so described in the Order Details.
- (o) **Defects Liability Period** means the period for rectification of Construction Defects set out in the Order Details.
- (p) **Design Documents** means the drawings, specifications and other information, samples, models, patterns and the like required by the Supply Contract and created (and including, where the context so requires, those to be created by the Supplier) for the construction of the Works (which may include a preliminary design in relation to the Works).
- (q) **Design Obligations** means all tasks necessary to design and specify the Design Works, including preparation of the Design Documents.
- (r) **Design Works** means the Design Documents and any other outputs or Deliverables from the performance of the Design Obligations.
- (s) **Environment** means the technology environment that is in-scope for the provision of the Managed Services in the state it exists on the Services Commencement Date, and as may be amended by the addition or subtraction of items as varied from time to time in accordance with the Supply Contract.
- (t) **Managed Services** means Services in the nature of the Supplier managing Equipment and/or Infrastructure for the Customer (including managing the external delivery of services by a third party to the Customer in relation to Equipment and/or Infrastructure),

as more particularly described in the Purchase Order and as varied from time to time in accordance with the Supply Contract.

- (u) **Payment Claim** means a claim for payment under clause 15.11(a) of these Service Terms.
- (v) **PPS Law** means:
 - (i) the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations (each as amended from time to time); and
 - (ii) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (i).
- (w) **PPS Regulations** means the *Personal Property Securities Regulations 2010* (Cth).
- (x) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- (y) **Practical Completion** means that:
 - (i) the Works are complete, ready for immediate handover for use and occupation by the Customer and free of Construction Defects;
 - (ii) the Supplier has obtained and given the Customer all certificates, consents, warranties and approvals required by the Supply Contract;
 - (iii) the Supplier has completed the Works to the satisfaction of the Customer; and
 - (iv) the Supplier has removed all constructional plant from the Site and the Site is clean and tidy.
- (z) **Procedures Manual** means the Supplier's manual that sets out the processes and procedures for performing the Managed Services and working with the Customer and its Personnel.
- (aa) **Professional Services** means Services that including the following, as more particularly described in the Purchase Order and as varied from time to time in accordance with the Supply Contract:
 - (i) strategy advice;
 - (ii) planning activities and design services;
 - (iii) writing reports;
 - (iv) reviews or quality assurance activities;
 - (v) project management services; and
 - (vi) other information, communications or technology related services agreed by the Parties which are provided under the direction and control of the Customer,

but not including:

- (vii) installation, support or maintenance of Equipment or Infrastructure; or
- (viii) training or ancillary services in relation to the supply and installation of the Equipment or Infrastructure.
- (bb) **Proposed Variation** has the meaning set out in clause 17.3(c) of these Services Terms.
- (cc) **Security Interest** means any 'security interest' as defined in the PPS Law.
- (dd) **Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (ee) **Services Commencement Date** means:
 - (i) for all Services other than connectivity services (eg. fibre, microwave), the date that the Supplier is to commence providing the Services as specified in the Purchase Order; and
 - (ii) for connectivity services (eg. fibre, microwave), the date on which the Supplier notifies the Customer that the relevant service is ready for use.
- (ff) **Services Deliverable** has the meaning set out in clause 13.1 of these Services Terms.
- (gg) **Site Plan** means the plan referred to in Item 25 of the Order Form and annexed to the Order Documents.
- (hh) **Site Specification** means the document which details the environmental, operational, safety and management requirements in relation to the Site that are necessary for the provision of the Deliverable(s).
- (ii) **Specified Personnel** means the key personnel of the Supplier who are required to undertake the provision of the Deliverables or part of the work constituting the Deliverables, as stated the Purchase Order.
- (jj) **Stage** means one or more milestones that are identified as a stage in the Contract Specific Requirements.
- (kk) **Supplier Managed Services Data** means any data relating to the Environment (including statistical data, configuration information, technical architecture, process or procedures data, and any other such data necessary for administrative, corporate governance, operations, facilities management and related purposes) relating to the Supplier's provision of the Managed Services in accordance with the Supply Contract, which is generated by the Supplier, or its software, systems or equipment, and any reproduction, adaptation, translation or derivative of any of them.
- (ll) **Third Party Contract** means a contract between the Customer and a third party provider of products or services which is identified in the Purchase Order.

- (mm) **Transition In Period** means the period from the Effective Date of the Supply Contract until the Services Commencement Date.
- (nn) **Transition In Plan** means the Transition In plan that is attached to the Purchase Order.
- (oo) **Transition In Services** means the Services provided by the Supplier to the Customer during the Transition In Period, and includes the obligations described in the Purchase Order.
- (pp) **Transition Out Period** means the 3 month period (or such other period stated in the Purchase Order or the Transition Out plan) prior to the effective date of termination or expiry of the Supply Contract.
- (qq) **Transition Out Services** means the Services to be provided by the Supplier to the Customer during the Transition Out Period in anticipation of the termination or expiry of the Supply Contract.
- (rr) **Variation** has the meaning set out in clause 15.3 of these Services Terms.
- (ss) **Works** means the works to be designed, constructed, modified, repaired, removed and/or handed over to the Customer on Practical Completion by the Supplier.

2.2 General Definitions

Any other capitalised words and expressions used in these Services Terms are defined in Schedule 1 (Dictionary).

3. Contract Period

3.1 Contract Period

The Contract Period:

- (a) begins on the Services Commencement Date (and if none is specified, on the Effective Date of the Supply Contract); and
- (b) continues for the period specified in the Purchase Order (and if none is specified, until the completion of the last Deliverable),

unless it is terminated earlier in accordance with the Supply Contract or extended in accordance with clause 3.2.

3.2 Extension of the Contract Period

The Contract Period may be extended by agreement between the Parties using the procedure stated in Schedule 4 (Variation Procedures).

4. Staged Implementation

- (a) If the Purchase Order specifies that the Supply Contract is to be performed in Stages, the Parties agree to perform the Supply Contract in accordance with the Stages stated in the Contract Specific Requirements, subject to this provisions of this clause 4.
- (b) The Customer must give written notice to the Supplier within 10 Business Days (or such longer period stated in the Purchase Order) of the end of each Stage as to whether it wishes the Supplier to commence the following Stage. For the avoidance of doubt, the decision as to whether the Customer wishes the Supplier to perform subsequent Stages may be made in the Customer's sole discretion, and any decision that a subsequent Stage will not be performed does not constitute a termination for convenience of the Supply Contract.
- (c) The Supplier must not commence any work on Stage two or any subsequent Stage until it receives written notice from the Customer to proceed with the work in that Stage. The execution of the Supply Contract is deemed to be sufficient notification to proceed with work in Stage one.
- (d) Nothing in the Supply Contract shall be construed as obliging the Customer to give the written notice referred to in clause 4(b) of these Services Terms in respect of Stage two or any other subsequent Stage.
- (e) The Customer's liability to the Supplier for not proceeding to a subsequent Stage shall be limited to those costs (if any) that have been stated in the Purchase Order as being payable upon the Customer deciding that the Supplier should not perform a subsequent Stage.

5. Specified Personnel

- (a) The identity and roles of any Specified Personnel (if any) will be set out in the Purchase Order.
- (b) The Supplier must ensure that the Specified Personnel are actively performing the applicable role set out in the Purchase Order.
- (c) If Specified Personnel are unable or not suitable (in the reasonable opinion of the Customer) to undertake the work assigned to them, the Supplier must provide replacement personnel acceptable (on reasonable grounds) to the Customer at no additional charge as soon as is practicable.

6. Reporting

Unless otherwise specified in the Purchase Order, the Supplier must monitor the progress of the Services and provide the Customer with status reports at monthly intervals, or such other intervals as is agreed by the Parties which, at a minimum, include the following issues:

- (a) the issues and risks that the Supplier recommends be pro-actively addressed to avoid delays;
- (b) any actions that the Parties need to take, or decisions that need to be made, to ensure the provision of the Services in accordance with the requirements of the Supply Contract;
- (c) the progress of the work against any project plan;
- (d) to the extent applicable:
 - (i) the amounts charged, and amount of work in progress against the budget; and
 - (ii) whether it is anticipated that the budget is likely to be exceeded, and if so the reasons; and
- (e) any other issues that the Parties agree should be included in the reports.

This clause 6 does not apply to Managed Services.

7. Performance Reviews

- (a) If it is stated in the Purchase Order that the Parties must conduct a service and performance review of the Supplier's performance of the Supply Contract, then the Parties must conduct such reviews at the intervals and in accordance with the other requirements, including any obligations under any Service Level Agreement, stated in the Purchase Order.
- (b) 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 Purchasing Authority in any review.

8. Customer Directions

8.1 Supplier to Comply

The Supplier must comply with all reasonable directions of the Customer as may be given to the Supplier from time to time in respect of the delivery of the Services, provided that such directions are consistent with the requirements of the Supply Contract. If such direction:

- (a) causes the Supplier's costs to increase, the Customer must pay for any increase in the Supplier's costs at the Supplier's time and materials rates (calculated using the rates set out in the Supply Contract, or if none are stated, at the Supplier's then current commercial rates) plus any expenses; and

- (b) causes the Supplier not to be able to meet any timetable for delivery, then the timetable must be extended to the extent that it is reasonable given the nature of the direction and the impact on the Services,

and in each such case the revised Contract Price or timetable for delivery will be set out in an agreed Change Request.

8.2 Supplier to exercise own judgement

Nothing in clause 8.1 of these Services Terms affects the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the Customer's reasonable directions or otherwise to comply with the Supplier's obligations under the Supply Contract.

8.3 Supplier to exercise own judgement

Subject to otherwise complying with its obligations under the Supply Contract, the Supplier must exercise its independent discretion as to the most appropriate and efficient manner of providing the Services and satisfying the Supplier's obligations under the Supply Contract.

9. Site Specifications

- (a) If the Purchase Order specifies that a Site Specification is required, the Supplier must inspect the Site and provide the Customer with a Site Specification for the Customer's approval.
- (b) The Supplier must make any amendment to the Site Specification that is reasonably required by the Customer, providing such amendments are requested prior to the delivery of the Deliverables. If the Supplier reasonably believes that the required amendment will materially affect the Supplier's ability to perform its obligations under the Supply Contract, it will notify the Customer and the Parties will discuss in good faith whether any Change Request is required to deal with such required amendment.

10. Implementation Planning Study

- (a) If it is stated in the Purchase Order that the Supplier must provide an implementation planning study, the Supplier must complete the implementation planning study in accordance with the requirements in the Purchase Order.
- (b) Any implementation planning study must meet the objectives stated in the Purchase Order which may include:
 - (i) the Supplier's assessment of the scope and complexity of the project;
 - (ii) the required Deliverables;

- (iii) the resources required (including any resources to be made available by the Customer); and
 - (iv) the development of a project plan or a Service Level Agreement.
- (c) The Supplier must deliver the implementation planning study to the Customer by the date stated in the Purchase Order.
- (d) The implementation planning study is a documentary Deliverable and must comply with, and is to be tested in accordance with the provisions of, clause 8 of this Agreement.

11. Acceptance Testing

- (a) If it is specified in the Purchase Order that any Deliverable that is a product of the Services is required to undergo Acceptance Tests, the parties will submit the Deliverable to Acceptance Testing in accordance with clause 7 of this Agreement and the Contract Specific Requirements.
- (b) To the extent that the Services involve Construction Services, the specific terms related to Practical Completion and Construction Defects set out in clause 15 of these Services Terms will apply and not the Acceptance Testing provisions in clause 7 of this Agreement.

12. Employee Relationship

- (a) The Supplier undertakes to comply with all Statutory Requirements in relation to itself and any of its employees or contractors, including in relation to workers compensation, payroll tax, income tax, fringe benefits tax, PAYG tax, group tax, superannuation contributions, annual leave, long service leave and personal leave awards, industrial instruments and any other employment entitlement.
- (b) The Supplier acknowledges and agrees that:
 - (i) it is solely responsible for the obligations in clause 12(a) of these Services Terms; and
 - (ii) neither it, nor its Personnel have, pursuant to the Supply Contract, any entitlement from the Customer in relation to any form of employment or related benefit.

13. Services Terms Warranties

13.1 Scope

The Supplier warrants that Deliverables that are a product of the Services (**Services Deliverables**), during any applicable Warranty Period, subject to any exception in clause 14 of these Services Terms, will, in all material respects:

- (a) meet the Contract Specific Requirements (including the Contract Specifications) and any other requirements under the Supply Contract;
- (b) be free from defects or omissions in materials, workmanship, design and performance; and
- (c) be performed with due care and skill to a standard normally employed by duly qualified persons in performing services similar to the Services.

13.2 Defects

If the Customer provides the Supplier with Notice in Writing of any Defect in a Services Deliverable or suspected Defect in a Services Deliverable within the relevant Warranty Period, then the Supplier shall inspect or review the Deliverable and, as determined by the Supplier, repair or replace the Deliverable or re-perform the Services after receiving the Notice in Writing from the Customer. This must be completed within any period agreed in the Service Level Agreement, or if there is no Service Level Agreement, it must be done in a reasonable time, taking in account the impact on the Customer's operations.

13.3 Failure to Rectify

If the Supplier is unable or unwilling to rectify a Defect in a Services Deliverable in accordance with the timeframes in clause 13.2 of these Services Terms, and has been given the opportunity to do so, the Customer may by Notice in Writing inform the Supplier of its intention to use a third party correct the Defect in the Services Deliverable. In which case:

- (a) the Supplier's obligations under clause 13.2 of these Services Terms are not affected by the use of the third party, but the Supplier is not liable for any loss, damage or expense incurred or suffered by the Customer that is caused by the third party, including damage or any act or omission that causes the need for subsequent repair;
- (b) the Supplier must provide the third party whatever assistance that may reasonably require to rectify the Defect; and
- (c) the Supplier is liable to pay all costs reasonably incurred by the Customer under this sub-clause, subject to the limitations on liability in this Supply Contract.

13.4 Costs

- (a) The Supplier must pay for all costs incidental to the discharge of its warranty obligations including the provision of packing, freight, disassembly, reassembly costs and Installation costs (other than any Installation costs for 'user installable parts' (as determined by the Supplier)).
- (b) The Supplier warrants that components and materials shall not in normal operating conditions emit fumes, liquids, electromagnetic radiation or noise which could be detrimental to Personnel, the environment or the operation of other equipment.

- (c) If the Customer rejects the Deliverable or the Supplier requires the Deliverable to be returned to the Supplier in order to remedy a Defect, the Supplier may determine the method of return and the carrier, and in any event is liable to pay the expenses for the return and shipment of repaired or any replacement Infrastructure.

14. Exceptions

- (a) The Supplier is not liable for any breach of the provisions of these Services Terms, or breach of any of the warranties in clause 11.2(j) to the extent to which they relate to the Services Deliverables, which arises as the result of:
 - (i) any Customer Supplied Item not operating in accordance with its documentation or the requirements in the Supply Contract;
 - (ii) modifications to any Deliverables that were effected or attempted by a person other than the Supplier or its authorised representative;
 - (iii) damage arises from the re-installation, moving, relocation or decommissioning or recommissioning of the Deliverable by a person other than the Supplier or its authorised representative;
 - (iv) any act, error, fault, neglect, misuse or omission of the Customer;
 - (v) damage caused by the operation of the Deliverable other than in accordance with recommended operating procedures, Procedures Manual or otherwise than in accordance with the directions or recommendations of the manufacturer or the Supplier;
 - (vi) improper use or mismanagement by the Customer; or
 - (vii) an Event.
- (b) Where the Supplier has been requested to provide any warranty services and the item that was requested to be remedied is determined not to be a Defect in a Deliverable then the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Supply Contract, or if none are stated, at the Supplier's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.

15. Special Terms for Construction Services

15.1 Application and Order of Precedence

- (a) This clause 15 shall only apply when the Supplier is performing Construction Services under the Supply Contract.

- (b) Notwithstanding clause 3.5, to the extent that there is any conflict between this clause 15 and any other any of terms and conditions in the documents which comprise the Supply Contract (including any other clause of these Services Terms), the terms of this clause 15 shall prevail in respect of the Construction Services provided by the Supplier.

15.2 Design Obligations

- (a) This clause 15.2 only applies if the Works include the Design Obligations.
- (b) The Supplier warrants to the Customer that:
 - (i) any consultants engaged and retained by the Supplier must be suitably qualified, experienced and competent and must be approved by the Customer (acting reasonably) in writing;
 - (ii) prior to commencing any Works under the Supply Contract, the Supplier has examined and carefully checked any preliminary design in relation to the Works and that such preliminary design is suitable, appropriate and adequate for the Customer's purpose in relation to the Works as set out in the Contract Specific Requirements;
 - (iii) the Supplier shall execute and complete the Design Obligations and produce the Design Documents to accord with the Contract Specific Requirements;
 - (iv) the Supplier shall execute and complete the Works in accordance with the Design Documents so that the Design Works, when completed, must:
 - (A) be fit for their stated purpose; and
 - (B) comply with all the requirements of the Supply Contract and all Statutory Requirements;
 - (v) the Supplier has complied and will comply with its obligations as designer under the WHS Legislation;
 - (vi) construction in accordance with the Design Works will satisfy the requirements of the Supply Contract; and
 - (vii) the Design Works will include adequate and sufficient information so as to allow the Works to be performed safely and without risks to health.
- (c) The Supplier acknowledges that the warranties in clause 15.2(b) and the Design Obligations shall remain unaffected notwithstanding:
 - (i) that design work (including the any preliminary design in relation to the Works) has been carried out by or on behalf of the Customer and included in the Contract Specific Requirements;
 - (ii) any receipt or review of, or comment or direction on, the Design Documents by the Customer; and
 - (iii) any Variation under clause 15.3.
- (d) The Supplier:

- (i) must deliver the Design Documents to the Customer for review and approval well before commencing any work in respect of the design the subject of the Design Documents;
 - (ii) must not commence any work in respect of the design the subject of the Design Documents for at least 10 Business Days after giving the Design Documents to the Customer; and
 - (iii) will not be relieved of any obligations under this Contract by any review, comment or response by the Customer the Customer's failure to respond.
- (e) The Supplier:
 - (i) warrants that it has not relied and will not rely upon any review, failure to review, advice or comment by the Customer or the employees, agents or consultants of the Customer in relation to the design, the Design Documents or any other document provided by the Supplier; and
 - (ii) acknowledges that any review, failure to review, rejection, advice or comment by the Customer or the employees, agents or consultants of the Customer in relation to:
 - (A) the design, Design Documents or any other document provided by the Supplier; or
 - (B) any other matter,
 shall not in any way affect or reduce the obligations of the Supplier under the Supply Contract and the WHS Legislation.
- (f) Before commencing any of the Works, the Supplier must effect a professional indemnity policy with:
 - (i) insurers which must be rated A or higher by Standard & Poor; and
 - (ii) a total aggregate cover and cover for each individual claim of not less than \$10 million.
- (g) The Supplier must maintain professional indemnity insurance with a total aggregate cover and cover for each individual claim of not less than \$5 million for the period from the commencement of the provision of the Works until the Supplier has completed the Works and thereafter for a period of 7 years.

15.3 Variations

- (a) The Customer is entitled to direct the Supplier to increase, decrease or change the Works, the sequence in which the Works are performed or the materials or classes of work specified (**Variation**) and the Supplier must comply with any such direction after receipt of written approval from the Customer to proceed.
- (b) Any Variation must be valued by reference to any applicable schedule of prices or rates.
- (c) Where the Customer determines that there is no applicable schedule of prices or rates, the parties must use their best endeavours to agree in writing on a reasonable value of a Variation, failing which it will be determined by the Customer.

- (d) If the Customer or the Customer's Representative directs a Variation which involves the deletion or omission of any part of the Works, the Customer may itself, or have another person, carry out that work and the Supplier shall have no claim, and releases and waives any entitlement it may have to a claim arising out of the Customer or another person carrying out that work.

15.4 Liquidated Damages

- (a) The Supplier must achieve Practical Completion by the Date for Practical Completion.
- (b) The Supplier and the Customer agree that for the purposes of the Supply Contract, the achievement of Practical Completion by the Date for Practical Completion is an LD Obligation, and the provisions of clauses 5.11 to 5.17 apply, but references to Due Date will be read as references to the Date for Practical Completion.

15.5 Practical Completion

- (a) When the Supplier considers that Practical Completion has been achieved, it shall notify the Customer and the parties shall jointly inspect the Works within 5 Business days of such notice.
- (b) If Practical Completion has been achieved the Customer will notify the Supplier within 5 Business Days of the inspection nominating the date on which Practical Completion was achieved.
- (c) If Practical Completion has not been achieved the Customer will notify the Supplier within 5 Business Days of the inspection of the matters that need to be completed before Practical Completion will be achieved. When the Supplier has completed those items this clause 15.5 shall re-apply.
- (d) Notwithstanding that the Supplier has not given notice under clause 15.5(a), the Customer can issue a notice nominating that date on which Practical Completion has been achieved.

15.6 Delays

- (a) The Customer shall extend the Date for Practical Completion of the Works where:
 - (i) in its reasonable opinion, the Works have been delayed as a result of a breach of the Supply Contract by the Customer or wilful acts or omissions of the Customer, its Personnel or agents or as a result of an Event;
 - (ii) the Supplier has provided the Customer with written notice of the delay within 5 Business Days of becoming aware of the cause of the delay arising; and
 - (iii) the Supplier has taken all reasonable steps to avoid the delay and to minimise its effects.
- (b) The Supplier will only be entitled to an extension of time if it has complied with clause 15.6(a).
- (c) Notwithstanding that the Supplier has not asked for an extension of time or complied with clause 15.6(a), the Customer may, in its sole discretion, at any time and from time to time and for any reason, extend the Date for Practical Completion.
- (d) In exercising the discretion in clause 15.6(c), the Customer is not required to exercise its discretion for the benefit of the Supplier.

- (e) The rights of the Supplier to an extension of time under this clause 15.6 is the only entitlement of the Supplier arising out of or in connection with delay to the Works.

15.7 Construction Defects

- (a) The Supplier must promptly rectify any Construction Defects notified to the Supplier during the performance of the Works, at Practical Completion and during the Defects Liability Period.
- (b) If the Supplier fails to do so, the Customer may have the Construction Defects rectified and any costs incurred will be a debt due and payable by the Supplier to the Customer.

15.8 Work Health and Safety

The Supplier must (and ensure that its Personnel also):

- (a) ensure that the Works are carried out in a safe manner and in strict compliance with all applicable Statutory Requirements relating to workplace health and safety;
- (b) to the extent relevant to the Works being provided:
 - (i) do all things reasonably necessary to assist the Customer; and
 - (ii) refrain from doing (and ensure any Personnel refrain from doing) anything that may impede the Customer from discharging its obligations under the Supply Contract or the applicable Statutory Requirements in relation to the workplace health and safety;
- (c) immediately comply with any directions on safety issued by any relevant Authority or the Customer arising out of or in connection with the performance of the Works;
- (d) provide to the Customer all notices and correspondence concerning work, health and safety in connection with the Works within 5 Business Days after the dispatch and/or receipt of any such notice or correspondence; and
- (e) comply with the Supplier's and the Customer's policies and procedures with regards to workplace health and safety, in so far as such policies and procedures are not inconsistent with the relevant WHS Legislation, and where there is an inconsistency between the policies and procedures either:
 - (i) comply with whichever contains the higher standard; or
 - (ii) if clause 15.8(e)(i) above does not apply, any inconsistency or discrepancy between the policies and procedures must be notified by the Supplier to the Customer, and the Parties will act in good faith to agree which standard should apply.

For the purpose of this clause 15.8 and clause 15.9, "Statutory Requirements", in addition to the definition in Schedule 1 (Dictionary), also includes industry codes of practice (including building codes), safety standards and guidance materials.

15.9 Work Health and Safety Indemnity

The Supplier indemnifies the Customer against all claims, expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against the Customer) that the Customer may sustain or incur as a result, whether directly or indirectly, of any breach by the Supplier or any of its Personnel of its (or their) obligations under clause 15.8, or arising out of or in connection with a breach of a Statutory Requirement by the Contractor or any of its Personnel in performing the Works.

15.10 Site Warranty

The Supplier warrants that before executing the Supply Contract it has:

- (a) examined and carefully checked all information relevant to the risks, contingencies and other circumstances which could effect the Works and which the Supplier could have obtained by making enquiries on its own;
- (b) visited and inspected the Site and its surroundings and done everything reasonably possible to inform itself as to the Site and Site conditions at, near or relevant to the Site and obtained the necessary information as to risks, contingencies and other circumstances which might affect the execution of the Works or the cost of executing the Works; and
- (c) accepts all risks in connection with the Site and Site conditions.

15.11 Payment process

- (a) The Supplier may submit a claim for payment to the Customer's Authorised Representative on the dates set out in Item 11 of the Purchase Order (or any documents referred to in that Item) (**Reference Date**).
- (b) Where the Purchase Order nominates that there is a single payment to be made for the Construction Services, the Payment Claim shall be for the Contract Price (or, where other Contracted Items are provided under the Supply Contract, for the proportion of the Contract Price attributable to the Construction Services). Where the Purchase Order nominates that multiple progress payments are to be made for the Construction Services, the Payment Claim shall be for the value of the Construction Services work carried out under the Supply Contract since the last Payment Claim.
- (c) Notwithstanding clause 12.8 of this Agreement, within 10 Business Days of receipt of a Payment Claim that was provided on or after its Reference Date, the Customer's Authorised Representative must assess the Payment Claim and issue a payment schedule to the Supplier identifying the Payment Claim to which it relates and stating the amount (if any) which is to be paid by the Customer to the Supplier or by the Supplier to the Customer (**Payment Schedule**).
- (d) If the amount in the Payment Schedule is different from the amount claimed by the Supplier, the Customer's Authorised Representative shall set out the reasons for the difference including any reasons for withholding payment.
- (e) On the Due Date For Payment (as defined in clause 15.11(f) and 15.11(g) of these Services Terms), the Customer must pay to the Supplier or the Supplier must pay to the Customer (as the case may be) the amount set out in the Payment Schedule.

- (f) Notwithstanding clause 12.4 of this Agreement, the Due Date For Payment is, if the Customer is to pay, the date on which the last of the following occurs:
 - (i) the later of the expiry of the period of 20 Business Days after receipt by the Customer's Authorised Representative of a Payment Claim or the expiry of the period of 10 Business Days after the issue by the Customer's Authorised Representative of the Payment Schedule; and
 - (ii) the Supplier has:
 - (A) submitted a declaration (together with any other evidence or certification) that all employees' wages, allowances and statutory levies in respect of the Services have been paid. The declaration must be in the form of Schedule 13;
 - (B) submitted a Correctly Rendered Invoice in the amount identified in the Payment Schedule; and
 - (C) complied with clauses 17 and 18 of this Agreement and clause 15.2(f) of these Services Terms.
- (g) Notwithstanding clause 12.4 of this Agreement, the Due Date For Payment is, if the Supplier is to pay, the date on which the last of the following occurs:
 - (i) the Customer has submitted a tax invoice for the supply to which the Payment Claim relates; and
 - (ii) the expiry of the period of 20 Business Days after receipt by the Customer's Authorised Representative of a Payment Claim or the expiry of the period of 10 Business Days after the issue by the Customer's Authorised Representative of the Payment Schedule.

15.12 Security of Payment

- (a) The Supplier agrees that:
 - (i) payment of moneys for which the Customer has become liable to pay to the Supplier by reason of the Security of Payment Act (including amounts which have been determined by an adjudicator or which are the subject of an adjudication under the Security of Payment Act) shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily, but shall be a payment on account only;
 - (ii) in determining the value of the work carried out by the Supplier in the performance of the Agreement pursuant to clause 15.11 of these Services Terms, the Customer's Authorised Representative may determine a value which is less than the amount previously paid or payable to the Supplier;
 - (iii) notwithstanding the mechanism set out in clause 15.11 of these Services Terms:

- (A) in issuing any documents under the Security of Payment Act (including Payment Schedules), the Customer's Authorised Representative acts as the Customer's agent;
 - (B) the Customer's Authorised Representative is not the Customer's agent and is not authorised to receive any documents under the Security of Payment Act on the Customer's behalf (including Payment Claims); and
 - (C) if the Supplier makes a claim under the Security of Payment Act it must serve all relevant documents on the Customer and the Customer's Authorised Representative at the same time;
- (iv) for the purpose of section 17(3)(b) of the Security of Payment Act, the Supplier chooses the Institute of Arbitrators and Mediators Australia as the authorised nominating authority for receiving adjudication applications;
- (v) the Supplier must, promptly and without delay, give the Customer's Authorised Representative a copy of any written communication of whatever nature that the Supplier:
 - (A) receives from a Subcontractor under the Security of Payment Act or any other similar legislation in operation in Australia which relates to the Services (other than payment claims);
 - (B) gives under the Security of Payment Act or any other similar legislation in operation in Australia which relates to the Services (other than payment schedules);
 - (C) has been required to supply to a Subcontractor under the *Contractors Debts Act 1997* (NSW) setting out the Customer's name;
 - (D) gives or receives that shows an intention to suspend any Services or Subcontractor Work;
- (vi) the Supplier must ensure that each Subcontractor promptly gives the Customer and the Customer's Authorised Representative a copy of any notice that the Subcontractor receives from another person under the Security of Payment Act which relates to the Construction Services (other than payment claims);
- (vii) the Supplier must promptly notify the Customer and the Customer's Authorised Representative if it becomes aware that a Subcontractor intends to exercise a statutory lien, under section 11(3) of the Security of Payment Act, over unfixed plant and materials supplied by the Subcontractor for use in carrying out Subcontractor Work;
- (viii) if the Customer becomes aware that a Subcontractor is entitled to suspend Subcontractor Work pursuant to the Security of Payment Act or any other similar

legislation in operation in Australia, the Customer may (in its absolute discretion) pay the Subcontractor such money that is or may be owing to the Subcontractor in respect of that work, and any amount paid by the Customer is a debt due from the Supplier to the Customer;

- (ix) if the Customer receives a payment withholding request from a Subcontractor under section 26A of the Security of Payment Act, the Customer will be entitled to withhold the amount in the request from any payment due to the Supplier without any obligation on the Customer to consider whether the notice is valid and whether section 26B(2) of the Security of Payment Act applies;
- (x) the Supplier must indemnify the Customer against all damage, loss or liability suffered or incurred by the Customer (including legal costs incurred by the Customer on an indemnity basis) arising out of or in connection with:
 - (A) a suspension pursuant to the Security of Payment Act by a Subcontractor of Subcontractor Work;
 - (B) a failure by the Supplier to comply with this clause 15.12;
 - (C) any lien or charge claimed over unfixed plant or equipment forming part of the Construction Services under section 11(3) of the Security of Payment Act by a Subcontractor;
 - (D) any claim made by a Subcontractor under the *Contractors Debts Act 1997* (NSW); and
 - (E) a payment withholding request being served on the Customer under section 26A of the Security of Payment Act in respect of money that is or may become payable by the Customer to the Supplier for the Construction Services;
- (xi) personal delivery as referred to in section 31(1)(a) of the Security of Payment Act can only be effected by delivery to the Customer;
- (xii) the Customer's ordinary place of business as referred to in section 31(1)(b) and 31(1)(c) of the Security of Payment Act is as set out in the Parties section of this Agreement or Item 2 of the Purchase Order;
- (xiii) the facsimile number of Customer's ordinary place of business as referred to in section 31(1)(c) of the Security of Payment Act is as set out in Item 5 of the Purchase Order;
- (xiv) it is not possible for a payment claim as defined in the Security of Payment Act to be served by email;

- (b) For the purpose of this clause 15.12, **Subcontractor Work** means any work performed, or to be performed, by a Subcontractor which forms part of the Construction Services.

15.13 Proportionate liability

- (a) The Parties agree that Part 4 of the *Civil Liability Act 2002* (NSW) does not apply.
- (b) The Parties agree that their rights, obligations and liabilities will be those which would exist if Part 4 of the *Civil Liability Act 2002* (NSW) did not apply.

15.14 PPSA

The Supplier agrees that the terms of the Supply Contract may constitute one or more Security Interests for the purpose of the PPSA and that:

- (a) to perfect any such Security Interest the Customer may register a financing statement(s) on the Personal Property Securities Register;
- (b) the Supplier shall have no rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPSA;
- (c) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA;
- (d) the Supplier waives its right to receive notice of a verification statement under section 157 of the PPSA; and
- (e) the Supplier must, promptly on request by the Customer, provide any such information and execute and deliver any such documents as the Customer may reasonably require to protect the Security Interests granted to the Customer by the Supplier under or in relation to the Supply Contract.

15.15 WHS Principal Contractor

- (a) This clause 15.15 only applies if Item 25 of the Purchase Order indicates that the Supplier is to be appointed 'principal contractor' for work health and safety purposes.
- (b) For the purposes of this clause, '**WHS Principal Contractor**' means the person engaged as principal contractor in accordance with the applicable WHS Legislation.
- (c) Without limiting or in any way affecting the Supplier's obligations under the Supply Contract, the Customer engages the Supplier as the WHS Principal Contractor for the Construction Services and authorises the Supplier to have management and control of the Construction Site and to discharge the duties of a WHS Principal Contractor.
- (d) The Supplier accepts its engagement as WHS Principal Contractor and:
 - (i) must strictly comply with the WHS Legislation as applicable;

- (ii) must ensure that in carrying out the Construction Services, or causing the Construction Services to be carried out, it complies with all its obligations under the WHS Legislation, as applicable, including as WHS Principal Contractor;
 - (iii) acknowledges that it has control and management of the Construction Site;
 - (iv) is responsible for all costs associated with performing the role of WHS Principal Contractor; and
 - (v) must ensure that signs, that are clearly visible from outside the Construction Site and on which the name and contact telephone numbers (including an after hours emergency telephone number) of the Supplier are stated, are placed at each boundary of the Construction Site.
- (e) The Customer and the Supplier agree that the Supplier has sufficient authority to comply with its obligations as the WHS Principal Contractor under the WHS Legislation. If the Supplier becomes aware that the authority is not sufficient for this purpose, the Supplier must immediately provide detailed written notice to the Customer's Authorised Representative, copied to the Customer.
- (f) All subcontracts must include, and approval for the Supplier to subcontract any part of the Construction Services will be conditional upon the subcontract including:
- (i) a provision that the Subcontractor acknowledges the appointment of the Supplier as the WHS Principal Contractor for the purposes of the WHS Legislation;
 - (ii) a provision that the Subcontractor will not interfere with, disturb, impede or obstruct the carrying out by the WHS Principal Contractor of the WHS Principal Contractor's obligations, and will cooperate and comply with any direction of the WHS Principal Contractor; and
 - (iii) a provision that the Subcontractor will not be entitled to make any claim against the Supplier arising out of or in any way in connection with this clause or any direction of the WHS Principal Contractor or otherwise with any requirement of the WHS Principal Contractor.

15.16 Appointment of Principal Contractor

- (a) The Customer may, at its sole discretion, notify the Supplier that its appointment or engagement as WHS Principal Contractor under clause 15.15 of these Services Terms is terminated and advise the Supplier of the identity of the new principal contractor for the Construction Services.
- (b) If the Supplier's appointment or engagement as WHS Principal Contractor under clause 15.15 of these Services Terms is terminated, then the Supplier must (and ensure that the Personnel also):
 - (i) do all things necessary to assist the new WHS Principal Contractor for the Construction Services; and

- (ii) refrain from doing anything that may impede the new WHS Principal Contractor for the Construction Services,

in discharging its obligations under the WHS Legislation in connection with the Construction Services generally (including, without limitation, in respect of its appointment or engagement as the new WHS Principal Contractor for the Construction Services).

16. Special Terms for Professional Services

16.1 Application

This clause 16 shall only apply when the Supplier is performing Professional Services under the Supply Contract.

16.2 Notice Period

If no Contract Period is specified in the Purchase Order and the Professional Services are provided on a time and materials basis, then the Professional Services will be provided from the Services Commencement Date until either Party cancels the Professional Services by providing 30 days prior Notice in Writing to the other.

16.3 Design

If a Purchase Order requires the Supplier to supply Professional Services that involves the provision of a plan or design, the Supplier must:

- (a) prepare a draft of the plan or design in accordance with, and to meet, any requirements specified in the Supply Contract under which the Professional Services are, or will be, supplied;
- (b) submit the draft plan or design to the Customer for Acceptance by the applicable Due Date; and
- (c) perform all Services specified in the Supply Contract under which those Professional Services are, or will be, supplied.

16.4 PI Insurance

Except where the Supplier self-insures in relation to professional indemnity or errors and omissions, in which case the provisions of clause 17.7 are deemed to apply (*mutatis mutandis*) to the requirement under this clause 16.4, the Supplier must hold and maintain, or be an insured under, one or more insurance policies that include professional indemnity or errors and omissions insurance that provide indemnity cover of at least the amount of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover. The Supplier must maintain the coverage required under this clause 16.4 of these Services Terms during the Contract Period and until the date that is 7 years from the last day of the Contract Period.

17. Special Terms for Managed Services

17.1 Application

This clause 17 shall only apply when the Supplier is performing Managed Services under the Supply Contract.

17.2 Transition In

- (a) The Parties must perform their obligations in relation to Transition In Services in accordance with the Transition In Plan.
- (b) As part of the Transition In Services, the Supplier must provide a detailed project plan by the date specified in the Transition In Plan that includes the strategy for the delivery of the Managed Services that is appropriate for the Customer's needs and its user population, which will include (to the extent relevant to the particular Managed Services):
 - (i) identification and procurement of necessary Assets and Additional Items;
 - (ii) identification of Client Contracts and Third Party Contracts and how they are to be managed;
 - (iii) mechanism to determine when Transition In Services are complete and the Managed Services can commence;
 - (iv) allocation of responsibilities within each Party's organisation;
 - (v) the payment schedule;
 - (vi) implementation of the Managed Services; and
 - (vii) how any Project Services will be identified and provided.
- (c) Subject to clauses 5.7 and 5.8 of this Agreement, the Supplier must ensure that it has completed the Transition In Services for the relevant Managed Services by the date(s) stated in the Purchase Order.
- (d) Once the Supplier has completed the relevant Transition In Services it must give written notice to the Customer stating that:
 - (i) if the Parties have agreed criteria for determining that Transition In Services have been successful, that those criteria have been met; and/or
 - (ii) if the Parties have not agreed criteria for determining that Transition In Services have been successful, the date that the Supplier is ready to commence providing the relevant Managed Services.
- (e) The Supplier must commence providing the relevant Managed Services by the date stated in the written notice provided under clause 17.2(d) of these Services Terms, unless the

Customer provides written notice within 5 days of the date of receipt of the Supplier's notice under clause 17.2(d) of these Services Terms, stating that:

- (i) if the Parties have agreed criteria for determining that Transition In Services have been successful, those criteria have not been met and the details of how they have not been met; or
 - (ii) if the Parties have not agreed criteria for determining that Transition In Services have been successful, the details of the Customer's reasonable grounds for believing that the Supplier is not ready to provide the relevant Managed Services.
- (f) If the Supplier receives written notice under clause 17.2(e) of these Services Terms, then the Supplier must promptly remedy the defects and give the written notice to the Customer stating the date that the Supplier is ready to commence providing the relevant Managed Services. The Supplier must commence the Managed Services by the date in that notice.
- (g) Where the Managed Services are to be handed over in phases, clauses 17.2(d) to 17.2(e) of these Services Terms will apply to the relevant Managed Services that are in each of the phases that are to be handed over.

17.3 Due Diligence

- (a) Unless stated otherwise on the Purchase Order, the Transition In Services will include the Supplier performing due diligence, which may include assessment and definition of the:
- (i) Customer's goals, requirements and expectations in respect of the Managed Services;
 - (ii) Supplier's understanding of the Customer's and/or user's experience and requirements in relation to the Managed Services;
 - (iii) objectives to be met by the Supplier;
 - (iv) nature and scope of the Managed Services, including the Environment, the Assets,
 - (v) Client Contracts and Third Party Contracts (and any requirement to novate or assign any of them);
 - (vi) end users who will be supported by the Managed Services;
 - (vii) necessary Assets and Additional Items and how they may need to be procured;
 - (viii) migration of Customer Managed Services Data;
 - (ix) Transition In plan;
 - (x) required Deliverables;
 - (xi) resources required (including any Customer Supplied Items or Customer assistance);

- (xii) complexity of the project; and
 - (xiii) any Transition Out plan.
- (b) The due diligence must be completed within 30 days of the Effective Date of the Supply Contract (or such other period agreed in the Purchase Order). The Customer must provide such assistance, information and access to its Personnel as may be reasonably required by the Supplier to assist the Supplier to perform the due diligence.
- (c) If the Supplier's due diligence determines that:
 - (i) any aspect of the Services (including any of the items in clause 17.3(a) of these Services Terms) is different to that represented to the Supplier by the Customer and/or there are items that were not known to the Supplier that will adversely affect the Supplier's ability to meet the Service Levels or other obligations under the Supply Contract; or
 - (ii) any Assumption is not true,then the Supplier will provide the Customer with a formal proposal to vary the Supply Contract (**Proposed Variation**) and the Parties will negotiate in good faith to vary the Price, and/or adjust the relevant Service Level or other obligation that is affected. If the Parties agree a variation to the Supply Contract this will be documented by a Change Request and the procedures stated in Schedule 8 (Supply Contract Variation Procedures) will apply subject to clauses 17.2(d) to 17.3(g) of these Services Terms.
- (d) Any Proposed Variation:
 - (i) of the Price will, as far as possible, be calculated using the Supplier's time and materials rates (calculated using the rates set out in the Supply Contract, or if none are stated, at the Supplier's rates for government), or the rates for providing Additional Services; and
 - (ii) of the Service Levels or other obligations must be done so as to provide the Customer with a level of service as close to the Service Level or obligation as set out in this Supply Contract as is practical taking into account the reason for the variation.
- (e) If the Proposed Variation provides substantially similar Service Levels and other obligations as those set out in the Supply Contract, and the varied Price is not more than 5% higher than the Price set out in the Supply Contract as at the Effective Date of the Supply Contract, then the Supply Contract will be amended to reflect this Proposed Variation.
- (f) If the Proposed Variation:

- (i) does not provide substantially similar Service Levels and other obligations as those that were set out in the Supply Contract as at the Effective Date of the Supply Contract; or
- (ii) proposes to increase the Price by more than 5% as set out in the Supply Contract at the Effective Date of the Supply Contract

then the Customer may terminate the Supply Contract by giving the Supplier Notice In Writing to terminate the Supply Contract within 21 days of receipt of the Supplier's Proposed Variation. If no such notice is received then the Supply Contract will be amended to reflect the Proposed Variation.

- (g) If the Customer does terminate the Supply Contract under clause 17.2(f) of these Services Terms, then the Customer must:
 - (i) pay the Supplier any amount of the Price for the Transition In Services which have been completed that has not been paid;
 - (ii) indemnify the Supplier against any liabilities or expenses, which are reasonably and properly incurred by the Supplier to the extent that those liabilities or expenses were incurred as a result of preparing to perform the Managed Services; and
 - (iii) pay any amount that is stated in the Purchase Order as being payable if the Supply Contract is terminated under clause 17.3(f) of these Services Terms.
- (h) If there is no requirement for a Proposed Variation or the Parties agree to a variation, then the Supplier must then complete the Transition In Services.

17.4 Procedures Manual

- (a) The Supplier must prepare a draft Procedures Manual for the approval of the Customer as part of the Transition In Services. The Procedures Manual will describe the key attributes of the Managed Services, including:
 - (i) the governance arrangements between the Customer and the Supplier;
 - (ii) the governance arrangements dealing with the Supplier and any third parties;
 - (iii) the protocols for managing security issues between the Parties;
 - (iv) the protocols for identifying and managing risks;
 - (v) how the key aspects of the Managed Services will be provided to the Customer;
 - (vi) the procedures for providing Additional Services; and
 - (vii) how user complaints and disputes will be managed.

The Procedures Manual is not required to document the details of how every aspect of the Managed Services is to be provided; rather, it is required to describe the key attributes of the Managed Services delivery.

- (b) Within 14 days of receipt of the draft Procedures Manual the Customer must:
 - (i) approve the Procedures Manual; or
 - (ii) provide written notice of any changes to the draft Procedures Manual that it requires, and provided those changes are reasonable, the Supplier must update the Procedures Manual and re-submit it for approval by the Customer.
- (c) Once the Procedures Manual has been approved by the Customer it forms part of the Supply Contract and the Parties must perform their obligations in accordance with it. The Supplier must, at no additional cost to the Customer, update the Procedures Manual if there is a variation to the Supply Contract that impacts on any of the contents of the Procedures Manual. As the Supplier makes each update the updated version of the Procedures Manual must be approved by the Customer using the procedure in clauses 17.4(a) and 17.4(b). Once each updated Procedures Manual has been approved by the Customer, it forms part of the Supply Contract and the Parties must perform their obligations in accordance with it.

17.5 Business Contingency

- (a) If stated in the Purchase Order that a Business Contingency Plan is required, the Supplier must, within the time stated in the Purchase Order or as otherwise agreed in writing, prepare a Business Contingency Plan for the approval of the Customer.
- (b) The Business Contingency Plan must include the details stated in the Purchase Order or as otherwise agreed in writing. The Supplier must provide the Customer with a copy of the approved Business Contingency Plan.
- (c) The Business Contingency Plan must be reviewed, updated and tested by the Supplier at the intervals stated in the Purchase Order.
- (d) If there is an interruption to the Customer's business that is contemplated by the Business Contingency Plan the Supplier must perform the obligations in the Business Contingency Plan. The Customer must provide the Supplier with any assistance reasonably required by the Supplier to create and perform the Business Contingency Plan.

17.6 Customer Managed Services Data

- (a) The Supplier must not place any lien, charge or other encumbrance over the Customer Managed Services Data.
- (b) The Supplier will, to the extent specified in the Purchase Order:
 - (i) make backup copies of the Customer Managed Services Data; and

- (ii) store and retain backup copies.
- (c) The Supplier will provide such security measures in accordance with best practice industry standards in relation to the Customer Managed Services Data as specified in the Purchase Order.
- (d) The Supplier will ensure the Customer has access to the Customer Managed Services Data at all reasonable times, in any reasonable manner and at no additional charge, whilst the Customer Managed Services Data is in the possession or under the control of the Supplier.
- (e) The Supplier will use commercially available products to protect the Customer Managed Services Data from unauthorised access by third parties. The Supplier may permit access to the Customer Managed Services Data by the Supplier's Personnel who require access to perform the Managed Services, or any third parties connected with any Third Party Contract or Client Contract that permits such access. Any such access must be subject to any of the Customer's security requirements stated in the Purchase Order.
- (f) The Supplier may store, hold, process or otherwise deal with any Customer Managed Services Data and/or any Personal Information in any country in the world, provided that the Supplier provides the Customer with prior written notice of the countries in which such activities may occur and the Customer agrees to the nominated countries (such agreement not to be unreasonably withheld) and provided that the Supplier complies at all times with the provisions of clause 16 of this Agreement.
- (g) In respect of Customer Personal Information, the Supplier agrees that it shall:
 - (i) comply with all applicable privacy laws as may be enforced from time to time which regulate the collection, storage, use or disclosure of or access to that information;
 - (ii) comply with any Customer directions that are consistent with such laws; and
 - (iii) ensure that before permitting any Customer Personal Information to be collected or stored by, or disclosed to, any person outside Australia, the Supplier will inform the Customer and provide such assurances the Customer reasonably requires, including as to the Supplier's security system and that the data protection interests of relevant individuals will not be materially different than would have been the case had the Customer Personal Information remained solely in Australia. Where the applicable privacy laws contain requirements applying to Customer Personal Information collected or stored by, or disclosed to, any person outside Australia, then this sub-clause 17.6(g)(iii) shall not apply.

17.7 Third Party Service Providers

- (a) If the Customer retains a third party to perform services that interact with any of the Managed Services or otherwise connect with the Environment, the Supplier will co-

operate with the third party to assist the Customer to manage its third parties' responsibilities and so that they are carried out in a coordinated, effective and timely manner by:

- (i) providing access to the Supplier's facilities and resources as reasonably required by the third party provided that the third party agrees to comply with the Supplier's reasonable confidentiality and security requirements communicated to it;
- (ii) providing any information regarding the operating environment, protocols, interfaces, architecture and other operating parameters reasonably required by the third party;
- (iii) providing any assistance reasonably required by the third party in relation to the connection or interfacing of any equipment; and
- (iv) following reasonable directions by the Customer as to the division of responsibilities in relation to the discharge by the Supplier and a third party of their respective obligations,

and provided always that the Supplier is under no obligation to disclose any of its Confidential Information or Intellectual Property Rights to the third party.

- (b) The Customer must, at its own cost, promptly and fully enforce any contract with a third party whose products or services interact with any of the Managed Services or otherwise connect with the Environment.

17.8 Virus Protection

The Supplier must not maliciously or negligently introduce any Virus into the Customer's systems.

17.9 Supplementary Processes

The Purchase Order or the Procedures Manual may specify supplementary processes and terms that apply to the provision of the Managed Services. If so, the Parties will comply with any such supplementary processes and terms, provided that the terms in these Services Terms and the Supply Contract prevail over any such supplementary processes and terms if there is an inconsistency.

17.10 Service Levels

- (a) During the Consolidation Period, the Supplier will use its best efforts (but will not be liable for any failure) to meet or exceed the Service Levels.
- (b) At the end of the Consolidation Period, the Supplier will provide the Customer with a report setting out how the Managed Services are operating under the provisions of the Supply Contract. Within 14 days of the end of the Consolidation Period, the Parties must meet and formally review the Managed Services and consider any changes that may be

needed to meet the Customers' ongoing requirements. Any changes will be implemented via a Change Request and the procedures in Schedule 8 (Supply Contract Variation Procedures) will apply.

- (c) From the day after the Consolidation Period, the Supplier must meet or exceed the Service Levels, subject to any:
 - (i) Event;
 - (ii) act or omission of the Customer or its Personnel;
 - (iii) act or omission of any person who is identified in the Purchase Order as being organised by, or under the direction of, the Customer; or
 - (iv) exception set out in clause 14 of these Services Terms,provided that in the case of clause 17.10(c)(ii) or (iii), the Supplier will not be relieved of a failure to meet the relevant Service Level unless, having become aware that such events will cause a failure to meet the applicable Service Level, or where it ought reasonably have become so aware, it has first given the Customer notice of the relevant act or omission and given the Customer the opportunity to rectify the relevant issue within 2 Business Days of notification, and the Customer has failed to do so within such period.
- (d) Without limiting its obligations under the Service Level Agreement, the Supplier will, to the extent required by the Supply Contract:
 - (i) consult as necessary with the Customer in order to provide the Customer with such information relevant to the Managed Services as the Customer reasonably requires concerning the current and anticipated future performance of the Managed Services;
 - (ii) cooperate with all procedures reasonably implemented by the Customer in relation to the Managed Services; and
 - (iii) implement such recommendations as may be reasonably made by the Customer in order to ensure the Managed Services continue to comply with the requirements of the Supply Contract.
- (e) If, at any time between the end of the Consolidation Period and the beginning of any Transition Out Services, the Supplier fails to meet a Service Level in a material way, it will promptly:
 - (i) investigate the underlying cause of the failure;
 - (ii) prepare and supply to the Customer a report on the failure;
 - (iii) take whatever action is reasonably necessary to minimise the impact of the failure;
 - (iv) correct the failure as soon as practicable; and

- (v) keep the Customer advised as to the progress being made in rectifying any circumstances which caused the failure.
- (f) Where a Service Level is not met by reason of the Supplier's failure to meet its obligations under the Supply Contract, the reports and work provided under clause 17.10(e) of these Services Terms will be completed at no cost to the Customer. In all other cases the Customer must pay the Supplier's reasonable costs at its time and materials rates (calculated using the rates set out in the Supply Contract, or if none are stated, at the Supplier's then current rates for government), for such reports and work.

17.11 Change Control

- (a) The Parties agree that where:
 - (i) the Customer wishes to make a change to the Environment;
 - (ii) the Supplier recommends to the Customer that changes should be made to the Environment; or
 - (iii) the volume of any Service increases beyond the volumes set out in the Purchase Order or Additional Services are required,then the Parties shall comply with the process in this clause 17.11.
- (b) Where the requested change is for an Additional Service then the Customer must request Additional Services by providing the Supplier with a Change Request. Unless agreed otherwise in writing, any Additional Services shall be charged at the rates set out in the Purchase Order, or if no rates are set out in the Purchase Order, the Additional Services shall be charged at the Supplier's then current rates for government. The Supplier is not required to provide any Additional Services until a Change Request has been signed by the Parties.
- (c) If the Customer requires a Professional Service related to the performance of the Managed Services but which forms a discrete arrangement, the Customer must request that Professional Service by providing the Supplier with a Change Request and the procedures in Schedule 8 (Supply Contract Variation Procedures) will apply. The Change Request must include the details required in the Purchase Order for Professional Services and the provisions of clause 16 of these Services Terms will also apply.
- (d) The details of any new, changed or Additional Services, including the scope of the Services and the Prices that are payable for them, must be set out in a Change Request and the procedures in Schedule 8 (Supply Contract Variation Procedures) will apply.
- (e) For clarity, if there is any dispute arising out of or in connection with this Supply Contract, including as to whether a service or item is within the scope of the Managed Services or whether a service is an Additional Service or a Professional Service, or there is any other issue relating to the nature, scope or Price of any service or item or the scope of

a Party's responsibilities, that dispute will be dealt with in accordance with clause 25 of this Agreement.

17.12 Transition Out

- (a) If stated in the Purchase Order, the Supplier must, within 6 months, or such other date agreed by the parties, after the Services Commencement Date, develop a comprehensive Transition Out plan. The Transition Out plan must include:
 - (i) the Price that is payable to the Supplier for performing the Transition Out Services;
 - (ii) any costs associated with selling, transferring, assigning or relocating assets that are exclusively used in the provision of the Managed Services;
 - (iii) any costs associated with winding down or stranded assets; and
 - (iv) how and when that Price and any other sums are due and payable.
- (b) The Transition Out Services may include:
 - (i) selling, transferring, assigning or relocating assets that are exclusively used in the provision of the Managed Services and the amount payable to the Supplier for such items;
 - (ii) providing reasonable assistance in procuring novations or assignments of the Client Contracts and Third Party Contracts to a new services provider or to the Customer;
 - (iii) returning or, if requested by the Customer, destroying documents or materials containing the Customer's Confidential Information together with any reproduction of those documents or materials;
 - (iv) transitioning the Managed Services to a new service provider or to the Customer; and
 - (v) if requested by the Customer, granting or assisting the Customer (or new service provider) to procure a licence to continue using any generally commercially available software in the Australian market which is the same as that being used in the System, and any software owned by the Supplier which is integral to the ongoing provision of the Managed Services, subject to payment of licence fees by the Customer (or new service provider).
- (c) The Parties will review the Transition Out plan annually or at such other period agreed by the Parties in the Transition Out plan, and the Supplier must implement any agreed changes.

- (d) The Customer must pay the Supplier for the work necessary to provide the Transition Out plan, and any work necessary to change or review the Transition Out plan on a time and materials basis (calculated using the rates set out in the Supply Contract, or if none are stated, at the Supplier's then current commercial rates).
- (e) Subject to clause 17.12(g) of these Services Terms, if the Customer requires the Supplier to perform the Transition Out Services, it must provide the Supplier with Notice In Writing of its requirement at least 30 days prior to the date that would allow the Transition Out Services to be performed in full prior to the last day of the Contract Period (i.e. if the Transition Out Services are to last 90 days then the Customer must provide the Supplier Notice in Writing that it requires the Supplier to perform the Transition Out Services at least 120 days prior to the last day of the Contract Period).
- (f) If the Supplier receives Notice in Writing under clause 17.12(e) of these Services Terms, the Supplier must provide the Transition Out Services to the Customer during the Transition Out Period, and the Customer must pay the Supplier:
 - (i) the Price for the Transition Out Services;
 - (ii) any costs associated with winding down or stranded assets; and
 - (iii) any costs associated with selling, transferring, assigning or relocating assets that are exclusively used in the provision of the Managed Services.
- (g) Notwithstanding clauses 17.12(e) and 17.12(f) of these Services Terms, the Supplier has no obligation to provide Transition Out Services where the Supplier has terminated the Supply Contract under clause 26.6.
- (h) In the course of providing any Transition Out Services, the Supplier must, in consultation with the Customer and as stated in the Transition Out plan, (as may be applicable to the relevant type of Managed Service):
 - (i) return any Customer Supplied Item;
 - (ii) freeze non-critical software changes in any of the Customer's software that is being supported as part of the Managed Services;
 - (iii) provide all reasonable transition assistance for the delivery of Customer Managed Services Data to the new service provider or to the Customer and the reloading of the production databases;
 - (iv) provide a list of outstanding service desk issues (provided as a csv file or as otherwise agreed by the Parties);
 - (v) provide a list of the outstanding issues that are detailed on any issues register;

- (vi) answer questions and provide such other information as may be reasonably sought by the new service provider or by the Customer to assist it in the transition process; and
- (vii) surrender any remaining Customer owned reports and documents still in the Supplier's possession.
- (i) During the Transition Out Period:
 - (i) the Supplier ceases to become liable to perform any part of the Managed Services as it is transitioned to a new service provider or to the Customer;
 - (ii) the Supplier's obligations to meet the Service Levels is reduced to a 'best efforts' obligation only and the Supplier is not liable for failing to meet the Service Levels; and
 - (iii) the Customer must continue to pay in full the proportion of the Contract Price attributable to the Managed Services until the last day of the Contract Period, notwithstanding that some or all of the Managed Services may have been transitioned to a new service provider or to the Customer.

17.13 Intellectual Property and Ownership of Data

- (a) For the purposes of these Services Terms, it is agreed by the Parties that clause 14 is subject to this clause 17.13.
- (b) For the purposes of this clause 17.13, the definitions of Customer Managed Services Data and Supplier Managed Services Data are not included within the definitions of Existing Material and New Material stated in Schedule 1 (Dictionary).
- (c) All Intellectual Property Rights in any:
 - (i) Customer Managed Services Data remain vested in the Customer; and
 - (ii) Supplier Managed Services Data remain vested in, or are hereby transferred or assigned upon creation to, the Supplier.
- (d) The Customer grants the Supplier a non-exclusive, non-transferable licence for the Contract Period for the Supplier and its Personnel to use the Customer Managed Services Data to the extent necessary for the Supplier to perform its obligations under the Supply Contract.
- (e) If the Supplier provides any Supplier Managed Services Data to the Customer, the Supplier grants the Customer a non-exclusive licence to use within Australia that Supplier Managed Services Data during the Contract Period solely for the purposes of receiving the benefit of the Managed Services under the Supply Contract or assisting the Supplier to perform its obligations under the Supply Contract.

- (f) If the Supplier provides the Procedures Manual to the Customer, the Supplier grants the Customer a non-exclusive licence to use within Australia any Supplier-owned Intellectual Property Rights in that Procedures Manual during the Contract Period and the Transition Out Period solely for the purposes of receiving the benefit of the Managed Services under the Supply Contract or assisting the Supplier to perform its obligations under the Supply Contract.
- (g) The Supplier may charge for any licence to use any Supplier Managed Services Data provided that such charges are stated or referred to in the Purchase Order.
- (h) Nothing in this Supply Contract grants the Customer any right to any Intellectual Property Rights in any physical infrastructure (including any telecommunications equipment, hardware, software or network) that is used to provide the Managed Services.
- (i) Nothing in clauses 17.6(g) or 17.12(b) requires the Supplier to disclose to the Customer or any other person any of the Supplier's Confidential Information or any of its proprietary information, methodologies, software tools or other items.

17.14 Customer Responsibilities for Use

- (a) The Customer must not, and must ensure that its users do not:
 - (i) process, or require the Supplier to process, any Customer Managed Services Data for any illegal, unlawful or fraudulent purposes; or
 - (ii) use the Managed 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 or network;
 - (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 or breach of any Intellectual Property Right, privacy right or right of confidentiality of any person.

Schedule 6 - General Order Form

Item	General Details			
1	Master Supply Agreement	MSA Number:		
		Date Created:		
		This is a Purchase Order made under the Master Supply Agreement with the Supplier and the NSW Government Department of Finance and Services (MSA). Once signed by both parties, this Purchase Order forms a 'Supply Contract' for the purposes of the MSA.		
2	Supplier	Name:		
		ACN:		
		Address:		
		(if different from MSA)		
3	Customer	Name:		
		Address:		
4	Authorised Representatives	Supplier:	Name	
			Position	
			Address	
			Phone	
			Fax	
			email	
		Customer:	Name	
			Position	
			Address	
			Phone	
			Fax	

Item	General Details					
			email			
5	Address for Legal Notices	Supplier:	Notices should be sent: As per the details in the MSA <input type="checkbox"/> or as per the details below <input type="checkbox"/>			
			Name			
			Position			
			Address			
			Fax			
		Customer:	Notices should be sent: To the Customer's Authorised Representative above <input type="checkbox"/> or as per the details below <input type="checkbox"/>			
		<i>Note: If the Customer's Authorised Representative will receive notices, they must not be given by email.</i>				
			Name			
			Position			
			Address			
	Fax					
6	Additional Terms	Tick one or more as applicable: <input type="checkbox"/> Equipment Terms <input type="checkbox"/> Infrastructure Terms <input type="checkbox"/> Services Terms				
Details of Equipment, Infrastructure and/or Services to be Provided						
7	Standard Order	<input type="checkbox"/> Purchase Order is for Equipment, Infrastructure or Services where the descriptions, specifications and pricing are contained in the MSA:				
		Item	Item Reference No (if applicable)	Quantity Ordered	Unit Price (ex GST)	Total Price for Item (ex GST)

Item	General Details	
		<div>Delivery Address</div> <div>Delivery Date</div> <div>Set out any special instructions such as delivery details:</div>
8	Contract Specific Requirements	<input type="checkbox"/> Purchase Order is for Equipment, Infrastructure and/or Services set out in the following Supply Contract documentation: <i>Attach as appropriate:</i> <ul style="list-style-type: none"> <input type="checkbox"/> Specifications <input type="checkbox"/> Statement of Work <input type="checkbox"/> Service Level Agreement <input type="checkbox"/> Support Services agreement/description (If so, state when Support Services will commence, on Acceptance, or not until expiry of Warranty Period.) <input type="checkbox"/> Customer Requirements <input type="checkbox"/> Drawings <input type="checkbox"/> Project Plan or milestones with milestone dates including any retentions <input type="checkbox"/> Customer Supplied Items <input type="checkbox"/> Other specify:
9	Services Term	If the Supplier is to perform services for a period (such as managed services) set out the term.
Details of Pricing and Payment		
10	Pricing	<input type="checkbox"/> As per Item 7 of this Purchase Order <input type="checkbox"/> As per attached Pricing and Payment Plan
11	Payment	<input type="checkbox"/> On Acceptance <input type="checkbox"/> On Delivery <input type="checkbox"/> As per the attached Pricing and Payment Plan
12	Termination for Convenience Payments	<input type="checkbox"/> Applies as follows: <i>[Identify any applicable categories where Customer may be obliged to pay amounts if Customer exercises its right to terminate for convenience.]</i>

Item	General Details	
Performance Details		
13	Specified Personnel	<input type="checkbox"/> None <input type="checkbox"/> Yes, as follows: <i>[List Supplier specified personnel and roles.]</i>
14	Approved Subcontractors as at date of Purchase Order	
15	Contract Management and Reviews	
16	Reporting	<i>[List reports Supplier is required to provide, content and timing.]</i>
17	IPR	Customer Owned New Materials
18	Liquidated Damages	
19	Performance Guarantee	<input type="checkbox"/> Yes <input type="checkbox"/> No
20	Financial Security	<input type="checkbox"/> Yes <input type="checkbox"/> No
21	Approved Agents	
22	Warranty Period	<i>State if a warranty period other than as specified in clause 1.98 of Schedule 1 applies</i>
23	Management Committee	<i>State if Management Committee is to be established</i> <i>If so, set out its members, frequency of meetings, details of any additional functions etc</i>
24	Test Items	<i>Are Contracted Items Test Items?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No
25	WHS Principal Contractor	<i>Note: only applicable if a) the Services Terms are applicable (see Item 6 above) and b) the Supplier is providing Construction Services</i>

Item	General Details
	<p>Is the Supplier to be engaged as the 'principal contractor' for work health and safety purposes?</p> <p><input type="checkbox"/> Yes – then clauses 15.15 and 15.16 of the Services Terms apply and the site plan detailing the Construction Site is as attached to, and forming part of, the Order Documents.</p> <p>Note: attach site plan detailing the Construction Site in respect of which the Supplier is the WHS Principal Contractor.</p> <p><input type="checkbox"/> No – then clauses 15.15 and 15.16 of the Services Terms do not apply.</p>

EXECUTED as an agreement.

Signed for and on behalf of [insert name of Customer] by **[insert name of Customer's Authorised Representative]** but not so as to incur personal liability

Print Name

Signature of Customer Representative

Date

Signed for and on behalf of [insert Supplier's name and ACN/ABN] by **[insert name of Supplier's Authorised Representative]** but not so as to incur personal liability

Print Name

Signature of Authorised Signatory

Date

Schedule 7 – Prices

1. Discounts and Rate Card

1.1 Project Duration and Team Discounts (Services Only)

- (a) The discounts based on the duration of an engagement or project under a Supply Contract, and the number of Supplier FTEs involved in it (**Project Duration and Team Discounts**) will apply for the Term of this Agreement and (if later) the Term of each Supply Contract entered into under this Agreement.
- (b) Project Duration and Team Discounts apply for all Customers acquiring Contracted Items under a Supply Contract entered into under this Agreement.
- (c) Project Duration and Team Discounts will be applied to, and discounted, from the final invoice for Services in respect of the relevant project or engagement, and will be calculated, based on the project or engagement duration and team size, in accordance with the following table:

1.1 Project/Assignment Duration	1.2 Resources (FTEs)			
	1.3 < 4	1.4 4 - 7	1.5 7 – 10	1.6 > 10
1.7 < 4 weeks	[insert]%	[insert]%	[insert]%	[insert]%
1.8 4 – 8 weeks	[insert]%	[insert]%	[insert]%	[insert]%
1.9 8 – 16 weeks	[insert]%	[insert]%	[insert]%	[insert]%
1.10 16 – 32 weeks	[insert]%	[insert]%	[insert]%	[insert]%
1.11 > 32 weeks	[insert]%	[insert]%	[insert]%	[insert]%

1.2 Services Rate Card

- (a) The Supplier's rate card for various roles and personnel involved in the provision of Services under a Supply Contract (**Services Rate Card**) will apply for the Term of this

Agreement and (if later) the Term of each Supply Contract entered into under this Agreement.

- (b) In relation to any Supply Contract, subject to any other discount or rebate set out in this Schedule or otherwise agreed between the Supplier and the Purchasing Authority or the Customer, the Supplier agrees to provide Services at the daily ceiling rates. The daily ceiling rates are based on a day of 8 hours.
- (c) The Purchasing Authority and the Supplier have agreed the following Services Rate Card:

draft

Schedule 8 – Supply Contract Variation Procedures

1. Procedures

- 1.1 Each request or recommendation for a change to the Supply Contract or any of the Order Documents must be submitted in a form substantially similar to the Change Request form attached to this Schedule 8.
- 1.2 For each draft Change Request submitted:
 - (a) the Customer must allocate it with a sequential number;
 - (b) the draft Change Request must be logged and its progress documented by recording its status from time to time by the Supplier as follows:
 - (i) requested;
 - (ii) under evaluation;
 - (iii) awaiting authorisation;
 - (iv) cancelled;
 - (v) pending
 - (vi) approved/authorised;
 - (vii) expired;
 - (viii) in progress;
 - (ix) applied;
 - (x) delivered;
 - (xi) accepted.
- 1.3 The Party receiving the draft Change Request must within 5 Business Days of receipt (or such longer period set out in the Change Request):
 - (a) request further information;
 - (b) provide written notification to the other Party of its approval or rejection of the Change Request.
- 1.4 If the Customer submits a draft Change Request to the Supplier, and the Supplier believes that there is more than 1 Business Day's work involved in the evaluation of the Change Request, then prior to commencing work on evaluating the draft Change Request, the Supplier may request that

the Customer pays for the work involved to evaluate the draft Change Request. The Customer may then either revise the draft Change Request to require less than 1 Business Day's work to evaluate it, or agree to pay for the Supplier's work to evaluate the Change Request in an amount agreed by the Parties, or in absence of agreement, at the Supplier's then current commercial rates.

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

draft

Change Request Form

CHANGE REQUEST BRIEF DETAILS

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

CHANGE REQUEST HISTORY LOG

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

DETAILS OF CHANGE REQUEST

Summary

[Insert a summary of the changes, if required]

SCOPE

[Insert changes to the scope of Contracted Items.]

EFFECT OF CHANGE ON CONTRACT SPECIFICATIONS

[Insert any changes to the Contract Specification]

EFFECT OF CHANGE ON PROJECT TIMETABLE

[Insert any changes to the delivery dates or Due Dates or other key dates under Supply Contract]

EFFECT OF CHANGE ON CHARGES AND TIMING OF PAYMENT

[Insert any changes to the charges and the timing of payment]

CHANGES TO CSI

[Insert any changes to the CSI]

CHANGES TO CUSTOMER ASSISTANCE

[Insert any changes to the Customer's Assistance]

PLAN FOR IMPLEMENTING THE CHANGE

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

THE RESPONSIBILITIES OF THE PARTIES FOR IMPLEMENTING THE CHANGE

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

RESPONSIBILITIES OF THE SUPPLIER

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

RESPONSIBILITIES OF THE CUSTOMER

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

EFFECT ON ACCEPTANCE TESTING OF ANY TEST ITEM

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

EFFECT OF CHANGE ON PERFORMANCE OF ANY DELIVERABLE

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

EFFECT OF CHANGE ON DOCUMENTARY DELIVERABLES

Changes will be required to the following documents:

[Add any other documents which may be affected.]

ANY OTHER MATTERS WHICH THE PARTIES CONSIDER IMPORTANT

[insert if there are any other matters.]

LIST OF DOCUMENTS THAT FORM PART OF THIS CHANGE REQUEST

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

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

[Insert any amendments to clauses in the Supply Contract or relevant Schedules or Order Documents]

AUTHORISATION

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

Schedule 9 - Performance Guarantee

Deed dated the

day of

20

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

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

Purpose *[insert full legal name and ACN/ABN of the Supplier]* (**Supplier**) has agreed to offer to supply goods and/or services to the Customer under a contract dated *[insert date of Supply Contract]* entered into pursuant to the Master Supply Agreement (**Supply Contract**).

DEFINITIONS

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

Deed means this Deed of Guarantee.

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

Master Supply Agreement means the Master Supply Agreement between the Purchasing Authority and the Supplier dated *[insert date of MSA]*.

Insolvency Event means where the Supplier:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent with the meaning of Section 95A of the *Corporations Act 2001* (Cth);
- (c) must be presumed by a court to be insolvent by reason of an event set out in Section 459C(2) of the *Corporations Act 2001* (Cth);
- (d) fails to comply with a statutory demand within the meaning of Section 459F(1) of the *Corporations Act 2001* (Cth);
- (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (f) has a mortgagee enter into possession of any property of that Party;
- (g) has a controller within the meaning of the Section 9 of the *Corporations Act 2001* (Cth) or similar officer appointed to all or any of its property; or

- (h) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

Notice in Writing means a notice signed by a party's authorised representative or his/her delegate or agent which must not be an email or a document scanned and sent by email.

BY THIS DEED

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

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

9. The address for services of Notices in Writing under this Deed for a party is, in the case of the:

Guarantor

Physical address:

Postal address:

Fax number:

Supplier

Physical address:

Postal address:

Fax number:

Customer

Physical address:

Postal address:

Fax number:

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

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

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

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

[Redacted signature line]

By *[insert name of Customer representative]*

[Redacted signature line]

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

[Redacted signature line]

[Redacted signature line]

Signature of Customer representative

[Redacted signature line]

Print Name

[Redacted signature line]

Date

[Redacted signature line]

Signature of Customer's Witness

[Redacted signature line]

Print Name

[Redacted signature line]

Date

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

[Redacted signature line]

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

[Redacted signature line]

Signature Director

[Redacted signature line]

Print name

[Redacted signature line]

Signature of Director/Secretary

[Redacted signature line]

Print name

Date

Date

draft

Schedule 10 - Financial Security

Deed dated the

day of

20

Between [insert name of the Customer] (Customer)

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

DEFINITIONS

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

BY THIS DEED:

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

6. A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy by facsimile to the address last advised by one of them to the other. Where the notice is given or served by facsimile, the sending party must confirm receipt by any other means.

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

Guarantor

Physical address

Postal address

Phone number

Fax number

Supplier

Postal address

Phone number

Fax number

Customer

Postal address

Phone number

Fax number

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

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

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

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

By *[insert name of Customer representative]*

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

Signature of Customer representative

Print name

Date

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

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

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

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

Signature of Director/Secretary

Print name

Signature of Witness

Print name

Date

Signature of Director/Secretary

Print name

Date

Date

Schedule 11– Expert Determination Dispute Resolution Procedures

1. **Expert Determination: general**

- 1.1 If a Referral Notice is submitted under clause 25.9 of the Supply Contract, the expert is to be agreed between the Parties. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated on the application of either Party by the Chief Executive Officer, Australian Commercial Disputes Centre of NSW.
- 1.2 The expert nominated must be a person who is an experienced Australian legal practitioner or a person with practical experience in the technology that is the subject matter of the dispute, unless otherwise agreed. The expert must not be:
 - (a) an employee of the Parties;
 - (b) a person who has been connected with the relevant Supply Contract or has a conflict of interest, as the case maybe; or
 - (c) a person who the Parties have not been able to agree on.
- 1.3 The expert may appoint any person that the expert believes will be able to provide the specialists skills that are necessary to make a determination, including an Australian legal practitioner. The expert must consult with both Parties prior to appointing such person.
- 1.4 When the person to be the expert has been agreed or nominated, the Customer, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Supplier) 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 11; and
 - (d) any other matter which is relevant to the engagement.

2. **Submissions**

- 2.1 The procedure for submissions to the expert is as follows:

- (a) The Party that has referred the issue to expert determination must make a submission in respect of the issue, within 30 Business Days after the date of the letter of engagement referred to in clause 1.4 of this Schedule 11.
- (b) The other Party must respond within 30 Business Days after receiving a copy of that submission. That response may include cross-claims.
- (c) The Party referred to in clause 2.1(a) of this Schedule 11 may reply to the response, but must do so within 20 Business Days after receiving the response, and must not raise new matters.
- (d) The other Party may comment on the reply, but must do so within 20 Business Days after receiving the reply, and must not raise new matters.
- (e) The expert must ignore any submission, response, reply, or comment not made within the time given in this clause 2.1 of this Schedule 11, unless the Customer and the Supplier agree otherwise.
- (f) The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the request and response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- (g) All submissions, responses, replies, requests and comments must be in writing. If a Party gives information to the expert, it must at the same time give a copy to the other Party.

3. Conference

- 3.1 The expert must arrange at least one conference with both Parties. The request must be in writing, setting out the matters to be discussed.
- 3.2 Each Party is entitled to be represented at any preliminary conference before the expert by its legal representatives and other authorised representatives, with information and knowledge of the issues.
- 3.3 The expert is not bound by the rules of evidence and may receive information in any manner the expert sees fit, but must observe the requirements of procedural fairness. Consultation between the expert and a Party must only take place in the presence of the other Party, unless a Party fails to attend a conference or meeting which has been convened by the expert and of which prior notice has been given. Any Party providing information to the expert must provide that information to the other Party.
- 3.4 The Parties agree that such a conference is considered not to be a hearing that would give anything under this Schedule 11 the character of arbitration.
- 3.5 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off or counter-claim.

4. Questions to be determined by the Expert

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

- (a) is there an event, act or omission that gives the claimant a right to compensation under the Supply Contract:
 - (i) for damages for breach of the Supply 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 Supply Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
- (c) in the light of the answers to clause 4.1(b) of this Schedule 11:
 - (i) What compensation, if any, is due from one Party to the other and when did it fall due?
 - (ii) What interest, if any, is due when the expert determines that compensation?

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

4.3 The Parties must share equally the fees of the expert, any other costs associated with the process, including room hire expenses, transcript expenses and the like and the fees of any person appointed by the expert under clause 1.3 of this Schedule 11 for the determination, and bear their own expenses.

4.4 Unless a Party has a right to commence litigation or otherwise resolve the dispute under the Supply Contract:

- (a) in the absence of a manifest error the Parties must treat each determination of the expert as final and binding and give effect to it; and
- (b) if the expert determines that one Party owes the other money, that Party must pay the money within 20 Business Days.

5. Role of Expert

5.1 The expert must:

- (a) act as an expert and not as an arbitrator, adjudicator or as expert witness;
- (b) make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise;
- (c) act impartially, free of bias and with no vested interest in the outcome of the dispute;
- (d) adopt procedures for the Expert Determination suitable to the circumstances of the dispute so as to provide for an expeditious cost effective and fair means for the determination of the dispute; and
- (e) issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 45 Business Days after the receipt of the information in clause 2.1(d) of this Schedule 11.

5.2 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate and give notice to the Parties of such correction.

6. **Confidentiality**

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

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

Schedule 12 – Deed of Confidentiality

Deed of Agreement dated the

day of

20

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

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

RECITALS

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

WHAT IS AGREED

1. Recitals

The parties to this Deed acknowledge the truth and accuracy of the Recitals.

2. Interpretation

DEFINITIONS

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

Agreement means the Supply Contract entered into under the Master Supply Agreement between the Supplier and the NSW Government Department of Finance and Services under which the Supplier will supply Deliverables to the Customer dated [insert date].

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

2.2 Confidential Information means information that:

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

but excludes any information which the Subcontractor can establish was:

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

Supplier means [insert name of Supplier].

Deliverables means any equipment, infrastructure or services and any associated material offered for supply or provided by the Supplier in accordance with the Agreement.

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

Intellectual Property Rights means all intellectual property rights including:

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

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

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

State means the State of New South Wales.

GENERAL

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

2.4 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.

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

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

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

2.8 The words "include(s)" and "including" are not words of limitation.

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

3. Non disclosure

3.1 The Subcontractor must not disclose the Confidential Information to any person without the prior written consent of the Customer.

- 3.2** The Customer may grant or withhold its consent in its discretion.
- 3.3** If the Customer grants its consent, it may impose conditions on that consent, including a condition that the Subcontractor procures the execution of a Deed in these terms by the person to whom the Subcontractor proposes to disclose the Confidential Information.
- 3.4** If the Customer grants consent subject to conditions, the Subcontractor must comply with those conditions.
- 3.5** Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- (a) to its directors, officers, employees and contractors;
 - (b) to the Supplier and its directors, officers, employees and the Supplier's other contractors who are engaged in the supply of the Deliverables and their directors, officers, employees,
- each referred to a **permitted recipients**, where such disclosure is essential to carrying out their duties in respect of the Express Purpose.
- 3.6** Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- (a) to its lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the performance under this Deed; or
 - (b) if the Subcontractor is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.
- 3.7** Before disclosing the Confidential Information to a permitted recipient, the Subcontractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.8** The Confidential Information must not be copied or reproduced by the Subcontractor or the permitted recipients without the expressed prior written permission of the Customer, except as for such copies as may be reasonably required for the Express Purpose.
- 3.9** If any person, being any director, officer, contractor or employee of the Subcontractor, who has had access to the Confidential Information in accordance with this clause 3 leaves the service or employ of the Subcontractor then the Subcontractor will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Subcontractor, would be a breach of the obligations of the Subcontractor under this Deed.

4. Restriction on use

- 4.1** The Subcontractor must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Customer use the Confidential Information for any purpose other than the Express Purpose.

4.2 The Subcontractor must, unless otherwise authorised by the prior written consent of the Customer:

- (a) treat as confidential and secret all of the Confidential Information which the Subcontractor has already acquired or will acquire from the Customer;
- (b) take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and take all necessary action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;
- (c) not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;
- (d) not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and
- (e) ensure that the permitted recipients comply with the terms of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

5. Survival

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

6. Rights of the Customer

PRODUCTION OF DOCUMENTS

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

LEGAL PROCEEDINGS

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

7. Indemnity and release

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

8. No exclusion of law or equity

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

9. Waiver

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

10. Remedies cumulative

CUMULATIVE

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

OTHER INSTRUMENTS

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

11. Variations and amendments

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

12. Applicable law

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

13. Notices

13.1 Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Subcontractor, at the Subcontractor's registered office.

13.2 All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or facsimile transmission.

13.3 If delivery or receipt of a notice is not made on a Business Day, then it will be taken to be made on the next Business Day.

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EXECUTED AS A DEED

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

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

In the presence of: [insert name of witness]

Signature of Customer

Print name

Date

Signature of Witness

Print name

Date

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

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

Signature Director

Print name

Date

Signature of Director/Secretary

Print name

Date

Schedule 13 – Statutory declaration and Subcontractor statement

STATUTORY DECLARATION

Statutory declaration in the matter of Supply Contract dated [insert] (**Agreement**)

between

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

and

[name of Supplier] (ABN [insert]) (**Supplier**)

I, [full name] of [address], in the State of [name of state], [occupation] do solemnly and sincerely declare that:

1. I have knowledge of the relevant facts and am authorised by the Supplier to make this statutory declaration on its behalf.
2. This statutory declaration is made pursuant to clause [15.11 of the Services Terms of the Supply Contract in relation to payment claim number [insert] submitted by the Supplier on [insert date] under and in accordance with the Agreement.
3. The Supplier declares that the Supplier, its Subcontractors and suppliers:
 - ☐ are **not** subject to the provisions of section 175B of the *Workers Compensation Act 1987* (NSW) (**WC Act**), Schedule 2, Part 5 of the *Pay-roll Tax Act 2007* (NSW) (**NSW PT Act**) and section 127 of the *Industrial Relations Act 1996* (NSW) (**IR Act**);
 - ☐ are subject to the provisions of the WC Act, NSW PT Act or the IR Act. Accordingly, the Supplier declares to the matters set out in paragraphs 4 to 6 below.
4. Attached to and forming part of this declaration is a Subcontractor's Statement given by the Supplier in its capacity as 'Subcontractor' (as that term is defined in the WC Act, NSW PT Act and IR Act) which is a written statement:
 - (a) under the WC Act, section 175B, in the form and providing the detail required by that legislation;
 - (b) under the NSW PT Act, Schedule 2, Part 5, in the form and providing the detail required by that legislation; and
 - (c) under the IR Act, section 127, in the form and providing the detail required by that legislation.

5. The Supplier has received, in its capacity as a 'principal contractor' (as that term is defined in section 175B of the WC Act) in connection with the Services under the Supply Contract, a written statement from each of its Subcontractors for the purposes of section 175B of the WC Act.
6. The Supplier has received, in its capacity as a 'principal contractor' in connection with the Services under the Supply Contract, a written statement from each of its Subcontractors for the purposes of Schedule 2, Part 5 of the PT Act.
7. All remuneration payable by the Supplier to employees of the Supplier for Services under the Supply Contract during the period from the date of commencement of any Services under the Supply Contract to the date of this statutory declaration has been paid.
8. The Supplier has paid all amounts owing to its employees in accordance with any relevant state or federal industrial agreement, state or federal industrial award and/or contract of employment.
9. The Supplier has paid all amounts due and payable to its sub-suppliers and Subcontractors up to the date of the payment claim in respect of their part of the Services under the Supply Contract.
10. The following sub-suppliers and Subcontractors have invoked the dispute resolution procedure under their subcontract or services agreement:

[*insert list of sub-suppliers and subcontractors that have invoked the dispute resolution procedure under their subcontract or services agreement]/*none]
11. The period of the Supply Contract covered by this declaration is from ***[insert]*** to ***[insert]***
12. I am not aware of anything which would contradict the statements made in the statutory declarations and written statements provided to the Supplier by its Subcontractors, as referred to in this declaration.
13. 'Services' has the same meaning as in the Supply Contract.
14. The Supplier has completed all obligations in accordance with the Supply Contract.
15. I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Declared at *[insert]* on *[insert]* before me

Justice of the peace/notary public/legal
practitioner

←

Signature of declarant

Full name of witness (print)

Full name of declarant (print)

Address of witness

Certificate under section 34 (1)(c) of *Oaths Act 1900*

**Please cross out any text that does not apply*

I _____, a _____,
insert name of authorised witness *insert qualification to be authorised witness*

certify the following matters concerning the making of this statutory declaration by the person who made it:

1. *I saw the face of the person *or* *I did not see the face of the person because the person's face was covered, but I am satisfied that the person had a special justification for not removing the covering.
2. *I have known the person for at least 12 months *or* *I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was

describe identification document relied on

Signature of authorised witness (print)

Date



SUBCONTRACTOR'S STATEMENT

REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:
(Business name)

of
(Address of subcontractor)

has entered into a contract with ABN:
(Business name of principal contractor) (Note 2)

Contract number/identifier
(Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. (Note 6)

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... (Note 7)

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature Full name

(g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

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Signing page

EXECUTED as an agreement.

**Signed for and on behalf of NSW
Department of Finance and Services** by
[insert name of DFS Representative] but not
so as to incur personal liability

Print Name

Signature of Customer Representative

Date

**Signed for and on behalf of [insert
Supplier's name and ACN/ABN]** by [insert
name of Customer's Representative] but not
so as to incur personal liability

Print Name

Signature of Authorised Signatory

Date