

Attachment 1 - Amended form of Agreement

**STUDENT ADMINISTRATION AND LEARNING
MANAGEMENT SYSTEM AGREEMENT**

EXECUTION OF AGREEMENT [PART ONE]

STANDARD TERMS AND CONDITIONS [PART TWO]

DICTIONARY [PART THREE]

SCHEDULES [PART FOUR]

MODULES [PART FIVE]

SERVICE LEVEL AGREEMENT [PART SIX]

ATTACHMENTS [PART SEVEN]

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PART 1 - EXECUTION OF AGREEMENT

Deed of Agreement dated day of 2012
the

Between the Technical and Further Education Commission of

[insert address]
[redacted]

in the State of New South Wales, 2007 ('the Customer')

and [insert name and ACN / ABN of Contractor]

Tribal Group Pty Limited ACN 135 097 942

of [insert business address]
[redacted]

in the State of New South Wales, 2000 ('the Contractor')

Recitals:

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

The Parties Agree:

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

- (a) the Agreement Details and the 'Post CV 28 Documents' from the Agreement Documents;
- (b) the Standard Terms and Conditions;
- (c) the Dictionary;
- (d) the Modules to this Agreement referenced in Item 5 of the Agreement Details,
- (e) the Schedules referenced in Item 6 of the Agreement Details excluding the 'Post CV 28 Documents' from the Agreement Documents;
- (f) the Service Level Agreement; and
- (g) the Attachments,

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

EXECUTED AS AN AGREEMENT

Signed for and on behalf of the Technical and Further Education Commission

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

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

Signature of the Customer's Representative

Signature of Witness

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

Tribal Group Pty Limited ACN 135 097 942

in accordance with s127 of the Corporations Act 2001 by:

Signature Director Signature of Director/Secretary

Print name

Print name

END OF PART ONE



PART 2 - STANDARD TERMS AND CONDITIONS

STANDARD TERMS AND CONDITIONS

1. Agreement Administration

1.1 AUTHORISED REPRESENTATIVES

- 1.1.1 Each Party must nominate in items 2 and 3 of the Agreement Details, their duly authorised representatives.
- 1.1.2 Each Party warrants that their respective nominated representatives have the power and authority to provide such consents as are required and to issue instructions for the fulfilment of the terms of this Agreement.
- 1.1.3 Where the Customer is required to give consent under the terms of this Agreement, it may do so upon such reasonable conditions as it sees fit to impose.
- 1.1.4 A party may change its nominated representative by notice to the other party.

1.2 NOTICES

Form

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

Service method

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

Receipt

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

2. Agreement Operation

2.1 TERM

This Agreement commences on the date specified in item 7(i) of the Agreement Details and will continue for the period specified in item 7(ii) of the Agreement Details. The Contractor agrees that the Customer may by Notice in Writing extend this Agreement on the same terms for the period specified in item 7(iii) of the Agreement Details.

2.2 CONDITION SUBSEQUENT

Not used.

2.3 ENTIRE AGREEMENT

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

2.4 NON-EXCLUSIVE AGREEMENT

This Agreement is a non-exclusive agreement and the Customer reserves the right to buy Deliverables from a third party at any time.

2.5 BENEFIT

- (a) The Contractor will perform this Agreement for the benefit of the NSW Government Bodies, and NSW Government Bodies are entitled to rights and privileges under this Agreement as if references to the Customer include the NSW Government Bodies.
- (b) The Customer holds the benefit of the Agreement on its own behalf and on trust for NSW Government Bodies.
- (c) The Customer may enforce and recover under the Agreement for and on behalf of each NSW Government Body, and (where in relation to an indemnity) demand as a debt due and payable under this Agreement, any amount which the Contractor would be liable to pay the NSW Government Body had the NSW Government Body been a party to this Agreement under or in respect of any failure by the Contractor to comply with the Agreement (except to the extent that such amount is recovered directly by the NSW Government Body from the Contractor).
- (d) Payment by the Contractor to the Customer of an amount owed to a NSW Government Body pursuant to this clause will, to that extent, satisfy and discharge the Contractor's obligation to pay the amount to that NSW Government Body.
- (e) The Customer is free to make any amendments to or waive rights under this Agreement without reference to other NSW Government Bodies and to accept monies and settle disputes without reference to other NSW Government Bodies.
- (f) The Contractor covenants with the Customer that the Contractor will, when requested by the Customer, enter into an agreement with one or more NSW Government Bodies, as requested, for the purposes of enforcing the Agreement. In addition, with the consent of the Customer, any of the NSW Government Bodies may at any time make themselves a party to the Agreement by executing a copy of the Agreement and delivering it to the Customer and the Contractor.
- (g) If clause 2.5(f) is invoked by any of the NSW Government Bodies, this Agreement shall be taken to have effect in relation to that NSW Government Bodies on and from the Commencement Date.
- (h) The parties acknowledge and agree that it is intended that the limitation on liability set out in clause 4.6 is not to be avoided by making any NSW Government Bodies beneficiaries of any obligations under this Agreement, and that (except for liability of a type which is not limited by this Agreement) liability under or in connection with this Agreement in favour of the NSW Government Bodies will be aggregated with any liability the Contractor may have to the Customer under this Agreement for the purposes of assessing whether the liability cap in clause 4.6 has been reached or exceeded.
- (i) This clause 2.5 does not have the effect of assigning Intellectual Property rights to NSW Government Bodies.

3. Management of Agreement

3.1 CO-OPERATION

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

3.2 DUTY NOT TO HINDER PERFORMANCE

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

3.3 CONTRACTOR'S WARRANTIES

The Contractor warrants that:

- (a) it has the right and authority to enter into this Agreement;
- (b) to the best of its knowledge, no Conflict of Interest of the Contractor or its Personnel exists or is likely to arise in the performance of their obligations under this Agreement;
- (c) the information provided by the Contractor as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its Personnel is correct and complete;
- (d) it has obtained all licenses, approvals and consents necessary to grant any rights or perform any obligations under this Agreement;
- (e) the Deliverables do not infringe the Intellectual Property or Moral Rights of a third party;
- (f) if any information referred to in this clause ceases to remain correct or accurate, it will immediately notify the Customer;
- (g) the Deliverables conform to the Contract Specifications;
- (h) if a Virus is introduced into the Customer's Systems or Customer Environment as a result of the supply by the Contractor or its Personnel of a Deliverable which has not been scanned with up to date anti-virus software, or any wrongful act (including negligent) or omission by the Contractor or its Personnel, then the Contractor, must at its own cost and expense (at the election of the Customer), immediately remove or allow the Customer to remove the Virus and reinstate the affected Deliverable; and
- (i) if a Virus is introduced into the Customer's Systems or Customer Environment as a result of the supply by the Contractor or its Personnel of a Deliverable which has been scanned with up to date anti-virus software and for which the Contractor has used reasonable security measures, then the Contractor, must at its own cost and expense (at the election of the Customer), remove or allow the Customer to remove the Virus and reinstate the affected Deliverable in accordance with the Service Level Agreement. For clarity, the Contractor is not responsible under this paragraph where the Virus is a new virus that is not detected by the anti-virus software.

3.4 AGREEMENT DETAILS

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

3.5 ISSUE RESOLUTION

- 3.5.1 The Parties agree to resolve any conflicts or issues between them in relation to this Agreement in accordance with the provisions of clauses 3.5 to 3.7 inclusive and Schedule 5.
- 3.5.2 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below must be followed in this priority until the issue is resolved:
 - (a) Amicable resolution (clause 3.6);
 - (b) Expert determination (clause 3.7 and Schedule 5).

3.6 AMICABLE RESOLUTION

- 3.6.1 A Party may submit Notice in Writing to the other Party of an issue, including a dispute or difference ("the Issue Notice"), about the meaning or effect of the Agreement or any matter arising under or out of this Agreement.
- 3.6.2 The Issue Notice must be submitted within a reasonable time of the Party becoming aware of the issue to the other Party's authorised representative.
- 3.6.3 The Parties must follow the issue resolution process in this clause 3.6 and Schedule 5, before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 3.6.4 If a Party submits an Issue Notice under this clause, each Party will nominate in writing a senior executive within 7 days. The nominated senior executives must promptly confer at a time and place that is mutually convenient to resolve the issue.
- 3.6.5 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.
- 3.6.6 Each Party will bear its own costs under this clause 3.6.

3.7 REFERRAL TO EXPERT DETERMINATION

- 3.7.1 A Party is not entitled to refer an issue for expert determination in accordance with Schedule 5, until 21 days after the submitting of the Issue Notice and the issue resolution process in clause 3.6 has failed to resolve the dispute within that 21 day period.
- 3.7.2 A Party may only refer an issue to expert determination by submitting Notice in Writing to the other Party's authorised representative specifying the issue to be decided ("the Referral Notice").
- 3.7.3 Upon referring an issue to expert determination, the Parties will be bound by the provisions and procedures contained in Schedule 5.
- 3.7.4 If a Referral Notice has not been submitted within 28 days of becoming entitled under clause 3.7.1 then the issue is barred from expert determination or any other action or proceedings (including court proceedings).
- 3.7.5 Notwithstanding the existence of a dispute each Party shall continue to perform its obligations under the Agreement.
- 3.7.6 Unless the Parties otherwise agree in writing, clauses 3.5 to 3.7 do not apply to disputes the subject matter of which exceeds the amount nominated in Item 8 of Schedule 1. In the event that the Parties are unable to agree on the amount of the subject matter, then either Party may submit an Issue Notice to the other Party and the provisions of clauses 3.5 to 3.7 shall be followed for the sole purpose of determining the amount in dispute.

3.8 NOTIFICATION OF CHANGE IN CONTROL OR TRANSFER OF OWNERSHIP

During the Term, the Contractor must immediately notify the Customer in writing of any proposed or other change in Control or any proposed or other action to reconstruct or amalgamate itself. The Customer will not unreasonably refuse to provide its consent to the change in Control. For clarity, the Customer is deemed to be acting reasonably in withholding its consent where the Customer:

- (a) has concerns about the financial capacity of the Contractor as a result of the change in Control (including where in the Customer's view the Contractor does not own or control total consolidated assets of a reasonable value having regard to the value of this agreement and the risk profile);

- (b) has concerns that the change in Control will result in the Contractor or its Controlling entity not being publicly traded entities and as a result there could be non-public changes to product development or technical architecture (in the absence of a commitment that all plans and strategies associated with the Licensed Software at the Customer will be agreed with the Customer prior to implementation);
- (c) has concerns about the likelihood of continued development and support of the Licensed Software as a result of the change in Control;
- (d) has concerns that the change in Control will result in Control by a customer that is likely to require rearchitecture of the Licensed Software;
- (e) has concerns that the change in Control has the potential to have a significant negative impact on the Customer's implementation of the Licensed Software or the operations, reputation or financial position of the Customer.

If the Customer does not consent to the change in Control it will be deemed to be a Substantial Breach of the Agreement.

3.9 NOTIFICATION OF CONTRACTOR'S INSOLVENCY

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

3.10 TAXES, DUTIES AND GOVERNMENT CHARGES

- 3.10.1 The Contractor is liable for all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement, except taxes to which clauses 3.10.2 to 3.10.5 inclusive, apply.
- 3.10.2 No amount is payable under this Agreement until a Correctly Rendered Invoice is received.
- 3.10.3 If there is any abolition or reduction of any tax, duty, excise the Consideration payable for the Supply must be varied so that the Contractor's net dollar margin for the Supply remains the same.
- 3.10.4 Any contract entered into by a Party to this Agreement or a contract with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to this clause 3.10.
- 3.10.5 Except as otherwise specified, the Parties agree that all amounts payable or Consideration given by a Party to the other under this Agreement are exclusive of GST.
- 3.10.6 Where an amount payable by a Party is exclusive of GST, the Party must pay any GST that is payable in respect of any Taxable Supply made under this Agreement in addition to the Consideration (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.
- 3.10.7 Any reference in this Agreement 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.

4. Risk Management

4.1 MINIMUM INSURANCE REQUIREMENTS

- 4.1.1 The Contractor must hold and maintain, and must ensure that its subcontractors are beneficiaries under or otherwise hold and maintain, the following insurances for the Term:

- (a) public liability insurance of the value of at least the amount specified in item 9(a) of the Agreement Details in respect of each claim;
 - (b) products liability insurance of the value of at least the amount specified in item 9(b) of the Agreement Details for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover;
 - (c) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees;
 - (d) professional indemnity insurance to the value of at least the amount specified in item 9(c) of the Agreement Details. The professional indemnity insurance must:
 - (i) cover the Contractor's liability to the Customer in respect of the Services and any Products supplied pursuant to or ancillary to the Services;
 - (ii) be maintained by the Contractor for the period specified in item 9(c) of the Agreement Details;
 - (iii) include a description of the risk covered by the policy; and
 such other insurances as are specified in item 9(d) of the Agreement Details.
- 4.1.2 All policies of insurance must be effected with an insurer approved by the Customer (which approval will not be unreasonably withheld where the insurer is rated A- or better by AM Best or an equivalent rating organization).
- 4.1.3 The Contractor must notify the Customer of any material variation or cancellation of any policy of insurance required to be held and maintained pursuant to clause 4.1.1.
- 4.1.4 The Contractor must, and must ensure that subcontractors, as soon as practicable, inform the Customer in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and must ensure that the Customer is kept fully informed of subsequent action and developments concerning the claim.
- 4.1.5 During the Term, the Contractor must when requested in writing by the Customer:
- (a) supply proof that all insurance policies required by this Agreement are current; and
 - (b) if required by the Customer, arrange for its insurer to complete and sign a "Confirmation of Insurances Obtained Form" substantially in the form of Schedule 6, and provide this to the Customer within 30 days of the request. Equivalent evidence as to the currency of insurance policies required by this Agreement will be acceptable to the Customer.
- 4.1.6 If the Contractor fails to comply with clauses 4.1.1, 4.1.2 or 4.1.3, the Customer may:
- (a) effect and maintain the insurances required under clause 4.1.1 and pay the necessary premiums; and
 - (b) recover from the Contractor or set off in accordance with clause 12.4 against other money due by the Customer to the Contractor the cost of the premiums and the Customer's reasonable costs of effecting and maintaining the insurance; or
 - (c) treat the failure as a Substantial Breach.
- 4.1.7 Where the Contractor is insured under a parent company's or holding company's insurance policy, that insurance policy must clearly indicate that it applies to and extends coverage to the Contractor in accordance with clause 4.1.1.
- 4.1.8 The Contractor's compliance with this clause 4.1 does not limit the liabilities or obligations of the Contractor under the other provisions of this Agreement.

4.2 FINANCIAL SECURITY

- 4.2.1 If required in the Agreement Details, or requested by the Customer in writing from time to time on reasonable grounds, the Contractor must provide a Financial Security substantially in the form of the agreement set out in Schedule 7.
- 4.2.2 The Financial Security will be held as security for the due and proper performance and completion of all the obligations of the Contractor under this Agreement.
- 4.2.3 The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution ("Issuer") acceptable to the Customer.
- 4.2.4 If the Contractor fails to properly perform and complete its obligations under this Agreement and the Customer suffers loss or damage arising from, or in connection with, such failure by the Contractor, the Customer may deduct any or all such loss or damage (as ascertained and certified by the Customer) from the Financial Security.
- 4.2.5 If the Financial Security is not sufficient to meet payment of all the loss or damage suffered by the Customer, the balance remaining will be a debt due and owing from the Contractor to the Customer and may be recovered by the Customer in accordance with clause 12.4.
- 4.2.6 The Contractor agrees that the Customer will have no liability of any nature (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Contractor where the Customer exercises its rights under this clause in good faith.
- 4.2.7 The Contractor waives any rights it may have to obtain an injunction or otherwise prevent the Customer from making a claim or receiving a payment under the Financial Security. This clause 4.2.7 does not prevent the Contractor from taking action to recover from the Customer any amount invalidly received by the Customer under any such Financial Security.
- 4.2.8 The Financial Security must be released to the Contractor (or to whom the Contractor directs) as specified in the PIPP, or otherwise if:
- (a) the Contractor has fully performed and discharged all of its obligations under this Agreement; and
 - (b) in the reasonable opinion of the Customer as applicable, there is no prospect that money or damages will become owing (whether actually or contingently) by the Contractor to the Customer.
- 4.2.9 The Customer shall not be obliged to make any further payments under the Agreement, whether or not such payments are due, until any Financial Security required under this clause has been provided.

4.3 PERFORMANCE GUARANTEE

- 4.3.1 If required in the Agreement Details, or requested by the Customer on reasonable grounds, the Contractor must arrange for a guarantor approved in writing by the Customer to enter into an agreement with the Customer substantially in the form of the agreement set out in Schedule 8.
- 4.3.2 On request by the Customer, the Contractor will procure that the guarantor enter into a deed of variation on terms reasonably acceptable to the Customer which amends the performance guarantee so that it also applies to secure the Contractor's performance of agreements which are novated from this Agreement.
- 4.3.3 The Customer shall not be obliged to make any further payments under the Agreement, whether or not such payments are due, until any performance guarantee or deed of variation to the performance guarantee required under this clause has been provided.

4.4 THIRD PARTY INDEMNITY

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

4.5 LIABILITY UNDER THE AGREEMENT

- 4.5.1 The liability of a Party to the other Party for breach of this Agreement, or in tort, or for any other common law or statutory cause of action arising out of the operation of this Agreement, shall be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.
- 4.5.2 The liability of a Party for loss or damage sustained by the other Party will be reduced proportionately but only to the extent that any wrongful (including negligent) act or omission of the other Party or its Personnel caused or contributed to the loss.
- 4.5.3 To the extent permitted by law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this Agreement whether these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

4.6 LIMITATION OF LIABILITY

- 4.6.1 The liability of a Party under this Agreement, in respect of each occurrence giving rise to an action described in clause 4.5 shall, except in relation to liability for:
- (a) personal injury (including sickness and death);
 - (b) loss of, or damage to, tangible property;
 - (c) which an indemnity is provided for under this Agreement;
 - (d) breach of a Law; or
 - (e) infringement of a third party's intellectual property rights,
- be limited to an amount specified in the Agreement Details.
- 4.6.2 In clause 4.6.1 "occurrence" means either a single occurrence, or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.
- 4.6.3 The Parties' liability, despite any other clause of this Agreement, does not include Consequential Loss.

4.7 RISK MANAGEMENT

- 4.7.1 The Contractor must implement a comprehensive risk management program for the Deliverables, including without limitation:
- (a) assessing issues and risks that may affect the Deliverables, and an analysis of their likelihood and impact;
 - (b) developing and implementing mitigation and control strategies to minimise the likelihood or impact of those issues or risks occurring;
 - (c) continuously monitoring and reviewing those issues and risks to ensure that those mitigation and control strategies remain effective; and
 - (d) maintaining an issues and risks register setting out the information referred to in paragraphs 4.7.1(a)-4.7.1(b).
- 4.7.2 For clarity, the Contractor may comply with clause 4.7.1 in relation to risks which apply to its organisation generally (including the Contractor Group) in an organisation wide risk management program rather than a separate risk management program which is specific to the Customer.

4.8 MATERIAL ADVERSE EFFECTS

- 4.8.1 The Contractor warrants that it has disclosed in writing to the Customer prior to the date of this Agreement and will continue to disclose events actual or threatened which would have a material adverse effect on the Contractor's ability to perform its obligations under this Agreement, including:
- (a) litigation or proceedings (actual or threatened) against the Contractor;
 - (b) the existence of a breach or default or alleged breach or default of an agreement, order or award binding upon the Contractor; and
 - (c) matters relating to the commercial, technical or financial capacity of the Contractor or its Personnel.

5. Information Management

5.1 CONFIDENTIALITY

- 5.1.1 Except to the extent necessary to comply with any Law or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with this Agreement, unless the other Party gives its prior written consent.
- 5.1.2 Each Party may disclose the Confidential Information of the other Party to its Personnel where the disclosure is essential to carrying out their duties for the purposes of this Agreement.
- 5.1.3 The Customer may disclose the Confidential Information of the Contractor to a person for NSW Government Purposes, provided that the Contractor's tools and methodologies may only be disclosed by obtaining the Contractor's prior consent, such consent not to be unreasonably withheld.
- 5.1.4 Each Party must ensure that any Confidential Information of the other Party is used solely in connection with, or for the purposes of fulfilling its obligations under this Agreement, or in the case of the Customer for NSW Government Purposes. Each Party must take reasonable steps to protect the Confidential Information of the other Party.
- 5.1.5 The Customer may at any time require the Contractor to arrange for its Personnel engaged in the performance of this Agreement to execute without delay a Deed of Confidentiality substantially in the form of Schedule 9.
- 5.1.6 The Customer's Property is the Confidential Information of the Customer and not of the Contractor. This does not affect rights and obligations of confidentiality in Materials referred to in clause 5.3.3 except to the extent incorporated into Material that is created, collected, recorded, written, developed or otherwise brought into existence by or on behalf of the Contractor in the performance of this Agreement (other than the Licensed Software or developments to the Contractor's tools and methodologies).
- 5.1.7 This clause 5.1 shall survive the termination or expiry of this Agreement.

5.2 PUBLIC ANNOUNCEMENTS

- 5.2.1 The Contractor will not issue or make statements or comments to the public, the media or other persons or authorise a person to do those things, regarding the Agreement or matters arising in relation to it (including referring to the Customer as a reference site for the Contractor) without the Customer's consent.
- 5.2.2 Clause 5.2.1 does not prevent the Contractor from disclosing information in relation to the Agreement to its professional advisers or to comply with an applicable law or the requirements of a regulatory body including a relevant stock exchange.

5.3 INTELLECTUAL PROPERTY

The Customer's Intellectual Property

- 5.3.1 Subject to clause 5.3.3 and clause 12 of Module 4, all Intellectual Property in the Deliverables shall immediately vest upon their creation in the Customer without further need for assurance.
- 5.3.2 To the extent that the Contractor needs to access or use the Customer's Materials for the provision of the Deliverables, the Customer grants the Contractor a non-exclusive, non-transferable licence for the Term to use such materials.

Pre-existing Intellectual Property Rights

- 5.3.3 Nothing in this clause 5.3 will affect the ownership of any pre-existing Intellectual Property rights in any tools, object libraries, methodologies and materials ("Materials") used to

produce or that are incorporated with the Deliverables. Where the Intellectual Property in such Materials are owned by the Contractor or a third party, the Contractor grants and will ensure that relevant third parties grant to the Customer, at no additional cost a perpetual, non-exclusive, non-transferable licence:

- (a) to exercise Intellectual Property rights (and to sublicense those rights) in such Materials for NSW Government Purposes or to the extent necessary to exercise the Customer's rights in relation to the Deliverable; or
- (b) where and only to the extent specified in the Agreement Details, to perform or sublicense any other act.

Moral Rights

- 5.3.4 To the extent that a person has Moral Rights in the Deliverables, the Contractor will obtain a Moral Rights Consent from that person, and provide it on request by, and in a form acceptable to, the Customer.
- 5.3.5 A '**Moral Rights Consent**' means a waiver of Moral Rights to the extent permitted by law and an unconditional consent to any act or omission in relation to the Deliverable by or on behalf of the Customer, its Personnel or any licensee or subsequent owner of copyright in the Deliverable.

IP rights

- 5.3.6 The Customer received from DoE all required Intellectual Property rights under Administrative Arrangements Orders.
- 5.3.7 The Customer may novate Intellectual Property rights to DoE.

Survival of clause 5.3

- 5.3.8 This clause 5.3 will survive the termination or expiry of this Agreement.

6. Security and Access

6.1 ACCESS TO THE CUSTOMER'S SITE OR CUSTOMER ENVIRONMENT

- 6.1.1 Where the Customer provides the Contractor with access to the Customer's Site or Customer Environment, the Contractor shall:
 - (a) ensure that all Personnel comply with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security; and
 - (b) be liable for any damage caused by the Contractor or its Personnel on the Customer's Site or Customer Environment.
- 6.1.2 The Contractor will limit its use of the Customer's Site and Customer Environment to no more than as is reasonably necessary to comply with its obligations to provide the Deliverables.
- 6.1.3 Prior to granting a person remote access to the Customer Environment, the Customer may require that person to execute an access agreement in a form reasonably specified by the Customer.
- 6.1.4 Access to the Customer's Site or Customer Environment may be temporarily denied or suspended by the Customer, at its sole discretion.
- 6.1.5 Except where denial of access is due to an investigation into the conduct or due to the wrongful conduct, of the Contractor or its Personnel, the Customer must give a reasonable extension of time to complete any obligations affected by the denial of access.

6.2 PRIVACY

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

6.3 SECRECY AND SECURITY

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

6.4 CHILD PROTECTION

- 6.4.1 The Contractor acknowledges that it is aware of the requirements of the *Commission for Children and Young People Act 1998* and all related legislation ("Child Protection Legislation").
- 6.4.2 The Contractor will ensure that all its Personnel involved in providing the Customer with Deliverables and who have direct unsupervised contact with children and young people comply with the requirements of the Child Protection Legislation. For any of these Personnel, the Contractor must conduct, and ensure that its subcontractors conduct, a working with children check.
- 6.4.3 The Contractor must also develop ID cards at its own cost and provide a sample for review by the Customer.
- 6.4.4 Without limiting the generality of clause 6.4.2, the Contractor's Personnel working in direct unsupervised contact with children must disclose whether or not they are a *prohibited person* under any Child Protection Legislation including the completion of a prohibited employment declaration form as required by their employer and, if a *prohibited person*, must not commence, undertake or remain in *child-related employment* (with the expressions in *italics* being defined in the Child Protection Legislation).
- 6.4.5 At each performance review meeting with the Customer, the Contractor must provide an updated listing of all of its Personnel engaged in child-related employment under the Agreement and include information on the status of their working with children check.

7. Contractor's Obligations under this Agreement

7.1 PRODUCT AND SERVICE WARRANTIES

Product warranty

- 7.1.1 In relation to a Deliverable that comprises Products, the Contractor warrants that each Product:
 - (a) will be supplied in accordance with the requirements of this Agreement;

- (b) will be free from any charge or liability;
- (c) shall be new, unless otherwise specified in the Agreement Details, and shall conform to the Contract Specifications;
- (d) will be fit for the purpose;
- (e) shall conform to the description and model number provided by the Contractor; and
- (f) shall be free from material defects in workmanship.

Service warranty

7.1.2 In relation to a Deliverable that comprises Services, the Contractor warrants that:

- (a) the Contractor will provide the Services in accordance with the requirements of this Agreement and with due care and skill;
- (b) the Services will conform to the Contract Specifications;
- (c) the Services will be fit for purpose;
- (d) if specified in the Agreement Details that they are required, the Contractor has established quality assurance arrangements for the provision of the Services and will comply with and maintain those quality assurance arrangements during the Term; and
- (e) the Contractor will not enter into any arrangement that impedes or is likely to hinder its provision of the Services in a manner, and to a standard, that is not satisfactory to the Customer without obtaining the Customer's prior written consent.

7.2 RECTIFICATION OF DEFECTS

- 7.2.1 If a Defect occurs during the Warranty Period, the Contractor will promptly undertake any remedial work or supply a replacement in respect of the affected Deliverable at no additional charge including, where applicable, supplying an Update or New Release, in accordance with the Service Level Agreement.
- 7.2.2 The Contractor warrants to the same extent as the Deliverable, any remedial work or Deliverable replacement provided in accordance with clause 7.2.1 from completion of that rectification work or the replacement.
- 7.2.3 Where the Contractor does not comply with clause 7.2.1 within a reasonable time of becoming aware of a Defect, the Customer may perform or have performed the necessary rectification work and the costs incurred shall be a debt due by the Contractor to the Customer and recoverable in accordance with clause 12.4.
- 7.2.4 Subject to clause 7.2.5, any work performed by or on behalf of the Customer pursuant to clause 7.2.3 shall not have the effect of invalidating any warranty provided by the Contractor under this Agreement.
- 7.2.5 The Contractor shall not be liable at any time under this clause 7.2 for any Defect in any Deliverable resulting from any failure of the Customer to use the Deliverable in compliance with any Documentation supplied to the Customer.

7.3 THIRD PARTY WARRANTY

- 7.3.1 Where the Contractor supplies Deliverables that have been procured from third parties, the Contractor shall as soon as reasonably practical provide to the Customer written notification of any details of any warranties given by the third parties.
- 7.3.2 The Contractor must if requested by the Customer, procure the assignment of those third party warranties to the Customer within a reasonable period of the request. Any third party

warranties so assigned do not relieve the Contractor from its obligation to comply with the Contractor's warranties under this Agreement.

7.4 COMPLIANCE WITH LAWS AND STANDARDS

- 7.4.1 The Parties must, in performing their obligations under this Agreement, comply with all Laws and Standards.
- 7.4.2 The Contractor will ensure that the Deliverables at the time they are delivered (and at the time they are due for Acceptance) comply with, and provide functionality for the Customer to achieve compliance with, the Laws and Standards, without additional processing or conversion not performed by the Deliverables (eg extracting data to another application to produce a report).
- 7.4.3 The Contractor will ensure that the modules comprising the Licensed Software continue to comply with clause 7.4.2 on each Update or New Release during the Term including in respect of a new or changed Law or Standard (**Compliance Change**). Where the Contractor has at least 9 months' notice of a Compliance Change prior to the scheduled release date for an applicable New Release, it will ensure that modifications are made to the Licensed Software in order for the New Release to achieve compliance with such new or changed Law or Standard before the Law or Standard comes into effect or is subject to the relevant change. Without limiting the Contractor's obligations under this clause to make itself aware of Laws and Standards and keep up to date with changes to them, the Customer will use reasonable efforts to notify the Contractor when it becomes aware of changes in relevant Laws and Standards which are applicable under this clause. For clarity, this clause 7.4.3 applies to functionality or processes within a module of Licensed Software that are needed to comply with the Compliance Change; it will not require the Contractor to create entirely new functionality or processes outside the general scope of the module. This clause 7.4.3 does not apply to Developed Software other than as agreed in a Variation.
- 7.4.4 Without limiting clause 13, the Contractor will provide evidence of its compliance with this clause 7 upon request by the Customer, including completing any investigation, review or questionnaire and providing any declaration, attestation or certificate of compliance requested by the Customer.
- 7.4.5 If the Customer, acting reasonably, considers that any personnel of the Contractor are not complying with Laws and Standards as required under this Agreement, the Customer may immediately, and without notice to the Contractor, remove such personnel from its premises or facilities, and any such action by the Customer will not excuse the Contractor from or extend the time for performance under this Agreement.
- 7.4.6 Where a new Law or Standard is made by a NSW Government Body, or there is a change to a Law or Standard made by a NSW Government Body (which does not apply concurrently with an equivalent applicable Law or Standard not made by a NSW Government Body), compliance under clauses 7.4.2 and 7.4.3 with the new Law or Standard or change is subject to a Variation. Compliance under clauses 7.4.2 and 7.4.3 with other changes to Laws or Standards do not require a Variation.

Performance Monitoring of Local Jobs First requirements

- 7.4.7 The Contractor acknowledges that it is aware that reliance was placed by the Customer on the SMEPP in the evaluation of the tender submitted by the Contractor and in the Customer entering into this Agreement with the Contractor. The Contractor agrees to comply with the requirements and commitments provided for in the SMEPP tendered by the Contractor and to take all steps reasonably required to enable the Customer to monitor compliance by the Contractor with the SMEPP.
- 7.4.8 The Contractor and the Customer agree that the Customer may establish mechanisms to monitor compliance by the Contractor with the requirements and its commitments under the SMEPP. The Contractor and the Customer agree that non-compliance by the Contractor of its SMEPP commitments will constitute a Substantial Breach. Further, the Contractor agrees that the Customer may take into consideration non-compliance by the

Contractor with the tendered SMEPP when evaluating tenders submitted by the Contractor in the future for other agreements and consents to the Customer using information about its non-compliance with the tendered SMEPP in connection with other tenders and agreements.

7.5 INDUSTRIAL RELATIONS ISSUES

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

7.6 LICENCES AND APPROVALS

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

7.7 KEEPING OF RECORDS AND ACCESS TO RECORDS

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

7.8 CREDIT/DEBIT CARD OR ELECTRONIC FACILITY

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

7.9 CONTRACTOR'S OBLIGATIONS IN RELATION TO THE CUSTOMER'S PROPERTY

7.9.1 The Contractor must:

- (a) not use any of the Customer's Property other than for the purposes of this Agreement without the prior written consent of the Customer;
- (b) not part with possession of any of the Customer's Property unless the Customer has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any of the Customer's Property;
- (c) take all reasonable care of all of the Customer's Property including accounting for, preserving, installing or handling of the Customer's Property;
- (d) pay the costs, if any, set out in the Agreement Details, for the Customer's Property;
- (e) not modify any of the Customer's Property without the prior written consent of the Customer;
- (f) promptly inform the Customer of any loss, destruction or damage to any of the Customer's Property;
- (g) ensure that no unauthorised party is allowed physical or electronic access to the Customer's Property; and
- (h) comply with any instruction of the Customer for preserving, forwarding or disposal of any damaged the Customer's Property.

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

7.9.3 Upon request by the Customer from time to time, or when no longer required for the purposes of this Agreement, the Customer's Property must be returned to the Customer as soon as practicable unless other arrangements are agreed by the Parties.

- 7.9.4 The Contractor will limit its use of the Customer Environment and Customer's Property to no more than as is reasonably necessary to comply with its obligations to provide the Deliverables.
- 7.9.5 Where the Contractor has access to the Customer's premises or the Customer Environment, the Contractor will comply with the Customer's policies (as if references to Customer Personnel include a reference to the Contractor and its Personnel) and reasonable directions and act in a responsible and businesslike manner on and around those premises and in the use of the Customer Environment.
- 7.9.6 Without prejudice to clause 7.9.1(g), in relation to Customer Data the Contractor will establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards against the destruction, loss, unauthorised access or alteration of Customer Data in the possession of Contractor which are:
- (a) no less rigorous than those maintained by the Contractor for its own information of a similar nature;
 - (b) no less rigorous than accepted security standards in the industry; and
 - (c) adequate to meet the requirements of Customer's policies and applicable Laws and Standards.
- 7.9.7 The Contractor must not disclose any Customer Data to any person without the Customer's prior written consent, except to the extent that:
- (a) the disclosure is required by Law;
 - (b) the Contractor has given prior notice to the Customer of the requirement for disclosure (except where prior notice is prohibited by the applicable Law, in which case the Contractor must give notice to the Customer as soon as the Law permits); and
 - (c) the Contractor has provided all reasonable assistance to the Customer (at the Customer's cost) to take lawful steps to restrict or prevent such disclosure;
- 7.9.8 The Contractor will remove all Customer Data from any media taken out of service or when no longer required for the purposes of this Agreement, and subject to obtaining the Customer's consent, will destroy or securely erase such Customer Data in accordance with the Customer's policy and procedures manual.
- 7.9.9 In the event the Contractor discovers or is notified of a breach or potential breach of security relating to Customer Data within the Contractor's possession or control, the Contractor will immediately:
- (a) notify the Customer of such breach or potential breach;
 - (b) investigate (with the Customer's participation if so desired by the Customer, subject to the Contractor's security and confidentiality guidelines and procedures) such breach or potential breach and perform a risk assessment, root cause analysis and develop a corrective action plan;
 - (c) provide a written report to the Customer of such risk assessment, root cause analysis and corrective action plan;
 - (d) remediate the effects of such breach or potential breach of security, and
 - (e) provide the Customer with such assurances as the Customer reasonably requests that such breach or potential breach will not recur.

7.10 OPEN SOURCE SOFTWARE

- 7.10.1 The Contractor must ensure that:

- (a) none of the Deliverables (excluding Services) comprise Open Source Software; and
 - (b) it does not insert any Open Source Software into the Customer Environment,
- except to the extent otherwise approved by the Customer in writing.

7.10.2 Where the Customer gives its approval in relation to use of any Open Source Software under clause 7.10.1:

- (a) the Contractor must ensure that the use of that Open Source Software will not result in an obligation to disclose, license or otherwise make available any part of the Customer Environment or any of the Customer's Confidential Information to any third party; and
- (b) the use of that Open Source Software will not in any way diminish the Contractor's obligations under the Agreement, including without limitation in relation to any warranties, indemnities or any provisions dealing with the licensing or assignment of Intellectual Property.

7.11 REPORTS

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

8. The Customer's Obligations

8.1 THE CUSTOMER TO PROVIDE INFORMATION

- 8.1.1 During the Term the Customer must as soon as practicable when required under this Agreement:
- (a) make available to the Contractor all relevant instructions, information, data, documents, specifications, plans, drawings and other materials; and
 - (b) answer queries made by the Contractor relating to the Customer's requirements in connection with this Agreement.

8.2 THE CUSTOMER'S MATERIALS

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

8.3 THE CUSTOMER'S PERSONNEL

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

8.4 SITE PREPARATION

Subject to clause 11.6, the Customer is responsible for Site preparation and maintenance of Site conditions to enable the supply of a Deliverable, unless otherwise specified in the Agreement Details.

9. Personnel

9.1 RESTRICTION ON ENGAGING PERSONNEL OF OTHER PARTY

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

9.2 CONTRACTOR'S PERSONNEL

- 9.2.1 The Contractor must ensure that its personnel, including any Specified Personnel, supply the Deliverables in accordance with this Agreement.
- 9.2.2 The Contractor must employ only such persons in respect of this Agreement who:
 - (a) are skilled and experienced in the provision of the Services or similar Services;
 - (b) hold all necessary licenses, permits and authorities (where applicable); and
 - (c) hold any current certifications as required by the Contract Specifications.
- 9.2.3 To enable the Customer to determine the Contractor's compliance with clause 9.2.2, the Contractor will, upon reasonable request by the Customer:
 - (a) provide information about the Personnel requested by the Customer, including qualifications and work history; and
 - (b) make the Personnel available for an interview with Customer Personnel.

9.3 REMOVAL OF PERSONNEL

- 9.3.1 The Customer may by written notice request the reassignment or replacement of any Personnel used by the Contractor to provide the Services if:
 - (a) the Customer reasonably believes that such Personnel do not have suitable skills or experience to provide the Services; or
 - (b) the Customer otherwise has reasonable grounds for requesting the reassignment or replacement of such Personnel.
- 9.3.2 Upon receipt of any such notice, the Parties must promptly consult with each other about the Customer's request. If, following such consultation, the Customer does not withdraw its request, the Contractor must reassign or replace those Personnel as the case may be.

9.4 ABSENCES

- 9.4.1 The Contractor will properly manage the allocation of holidays or any other absences of Contractor Personnel who are Specified Personnel, are performing Services under a SOW or have designated roles in the Governance framework set out in Attachment 5 - Governance to ensure that at all times it has sufficient resources to perform its obligations

and provide continuity and availability in dealings with the Customer (including planning Contractor Personnel's holidays to minimise the impact on the Services).

- 9.4.2 The Contractor will, as soon as reasonably possible, notify the Customer of any planned or requested Contractor Personnel leave (including Specified Personnel leave) which must be logged into the Customer's leave register. The parties will then work together to agree such leave. To the extent the parties are unable to agree, either party may seek to initiate dispute resolution.

9.5 SPECIFIED PERSONNEL

- 9.5.1 The Contractor acknowledges that the Specified Personnel have a critical role in the provision of the Deliverables and will directly affect the quality of the Deliverables.

- 9.5.2 The Contractor must:

- (a) utilise the Specified Personnel to provide the Deliverables as and when required in accordance with the Project Implementation and Payment Plan and the Contract (although the Contractor may also use other Contractor Personnel in addition to those Specified Personnel to provide the Deliverables);
- (b) properly manage the allocation of holidays or any other absences of Specified Personnel to ensure that at all times it has sufficient resources to provide the Deliverables;
- (c) ensure that Specified Personnel are not absent during the final month of an SOW without the prior written approval of the Customer (not to be unreasonably withheld or delayed);
- (d) if required by the Customer, promptly provide temporary substitute personnel approved by the Customer to replace any absent Specified Personnel;
- (e) ensure that involvement by Specified Personnel in:
 - (i) the Contractor's servicing of any other client; or
 - (ii) the Contractor's internal requirements,
 does not interfere with the provision of the Deliverables under the Contract;
- (f) use its best endeavours to minimise the turnover rate of Specified Personnel to a reasonable level; and
- (g) not remove or replace the Specified Personnel (or any replacements) without the Customer's prior written consent, except that the Contractor may replace Specified Personnel where they are no longer available due to personal hardship, serious illness, death or resignation or parental leave of more than 30 days in accordance with the Contractor's parental leave policy; and
- (h) where Specified Personnel are not the Contractor's employees, provide evidence to the Customer on request that the Specified Personnel is engaged for a sufficient term to meet the requirements of the Agreement.

- 9.5.3 Any appointment or replacement of Specified Personnel must be approved by the Customer acting reasonably. The Contractor must provide the Customer with such information as the Customer reasonably requires concerning any proposed appointment or replacement of any Specified Personnel (including a resume), and an opportunity to interview them.

- 9.5.4 Unless otherwise agreed, where any Specified Personnel are replaced during this Agreement, the Contractor agrees that where fees relating to the Specified Personnel are being charged at Daily Rates the Contractor will not be entitled to recover from the Customer any costs or fees applicable to the replacement Specified Personnel for the first

month of their engagement, unless the Contractor is able to demonstrate to the reasonable satisfaction of the Customer that such replacement Specified Personnel is able to commence delivery of the Services for which they will be responsible to the standard required by this Agreement from the commencement of their engagement.

9.6 PERSONNEL VISAS, BACKGROUND REQUIREMENT AND CHECKS

9.6.1 The Contractor is responsible for handling and processing all immigration and employment-related issues and requirements (including processing visas, work permits and ensuring compliance with all applicable country laws) arising in connection with Contractor Personnel. The Customer will not be required to participate in any immigration or visa activities. The Contractor will, at the Customer's request, verify in writing (and provide reasonable supporting documentation) that all Contractor Personnel have valid work authorisations and visas that permit them to perform the Services in the manner and location set forth in this Agreement.

9.6.2 All Contractor Personnel must:

- (a) be authorised to work in each country in which they perform or are assigned to perform work under this Agreement;
- (b) not have a criminal conviction involving a dishonest act (but the Contractor is not responsible if it conducted a criminal check in the 2 years prior to the conviction);
- (c) not otherwise be disqualified from performing the assigned work under applicable Laws; and
- (d) the Contractor will not assign any individual or allow an individual to continue performing the work under this Agreement who does not meet and continue to meet each of the foregoing requirements.

9.7 RESTRICTION ON MARKETING ACTIVITY

Except for marketing or sales representatives designated in writing by the Contractor and agreed to in advance by the Customer, none of the Contractor Personnel will conduct any marketing or sales activities to the Customer or the Customer employees at the Customer's facilities or sites, other than reporting potential marketing opportunities to the Contractor's designated marketing representatives or where there is a legitimate need for such activities to be undertaken, including in relation to a publicly available business opportunity of which the Contractor is made aware.

9.8 KNOWLEDGE EXPERTS

9.8.1 Subject to obtaining approval under clause 9.10, the Contractor will:

- (a) ensure that the best knowledge experts from the Contractor Group globally are appropriately engaged in the Contractor's performance of this Agreement;
- (b) ensure the Global Product Director of the Contractor Group is assigned to oversee the performance of the Contractor and assure the quality of the Deliverables; and
- (c) provide the Customer with an escalation path, reasonably acceptable to the Customer, to access senior personnel in the Contractor Group for the Customer to raise concerns and resolve issues.

If the Customer notifies the Contractor of a material technical issue in the Deliverables which the Customer reasonably believes will not be resolved by the Contractor's Australian-based personnel within the time required by this Agreement, the Contractor will arrange for experienced knowledge experts from the Contractor Group's global resources within 5 Business Days to be available as reasonably required by the Customer to avoid or remedy (as applicable) the relevant issue. The Contractor will also arrange for those experts to attend Customer premises as reasonably required the Customer.

9.9 SKILLS TRANSFER

- 9.9.1 The Customer wishes to develop a sound understanding of the Deliverables amongst its Personnel, and in doing so, expects to gain a skill set which minimises the cost and effort in the ongoing administration and configuration of the Deliverables.
- 9.9.2 The Contractor will ensure knowledge acquisition and skills transfer are achieved through active involvement of Customer Personnel within the Contractor's project team. A proportion of this skills transfer will be achieved via direct training as required by the Contract Specifications.
- 9.9.3 The Contractor will:
- (a) identify the types of knowledge and skills which are appropriate to be transferred to Customer Personnel (and will be responsible for skills transfer of knowledge regarding the System); and
 - (b) plan how to transfer such knowledge and develop expertise amongst selected Customer Personnel, recognising the different needs of Customer Personnel groups.
- 9.9.4 The skills transfer approach and activities will include the following:
- (a) Knowledge acquisition and skills transfer to the Customer is achieved through the active involvement of Customer Personnel working alongside the Contractor's project team.
 - (b) Profiling of the types of knowledge and skills which are appropriate to transfer to Customer Personnel, and planning for the transfer of such knowledge and skills to develop expertise amongst Customer Personnel (recognising the different needs of Customer Personnel groups).
 - (c) Doing all things necessary to provide Customer Personnel with the requisite skills and knowledge to productively participate in the delivery of the Deliverables, and to be able to develop, enhance, maintain and support the Deliverables without the Contractor's assistance. The skills to be transferred or training to be undertaken in respect of the Deliverables may, as relevant and as specified in the Contract Specifications include:
 - (i) architecture and design;
 - (ii) technical configuration and deployment;
 - (iii) technical operation, management and support;
 - (iv) system administration; and
 - (v) sufficient technical input to the Customer's technical writers to enable them to develop the operational manuals and training materials.
- 9.9.5 The Contractor acknowledges that its obligations under this clause 9.9 are continuing. The Customer must act reasonably and in good faith when continuing to exercise its rights under this clause.

9.10 SUB-CONTRACTING

- 9.10.1 The Contractor must not subcontract any work under this Agreement to a person outside of the Contractor Group without obtaining the prior written consent of the Customer, which consent may be given on such conditions as the Customer thinks fit.

9.10.2 The Contractor:

- (a) must ensure that the subcontractor is aware of all the terms and conditions of this Agreement that are relevant to the subcontractor's performance of any work;
- (b) will, if required by the Customer, provide the subcontract to the Customer (and make any changes to the subcontract reasonably requested by the Customer), and promptly provide the Customer with any amendments to the subcontract;
- (c) will, if required by the Customer, arrange for the subcontractor to enter a direct agreement with the Customer on terms acceptable to the Customer;
- (d) shall not be relieved of its liabilities and obligations arising out of this Agreement by subcontracting any work and shall be responsible for all the subcontractors' acts or omissions;
- (e) must ensure that it has the right to terminate any subcontract in accordance with the provisions of clause 15.1;
- (f) must ensure the subcontract contains provisions providing that the Contractor may assign or novate the subcontract to the Customer without any consent from the subcontractor and requiring the subcontractor to do all things necessary to effect such assignment or novation or, where the Contractor is not a party to a subcontract, provisions requiring the relevant subcontractor to, at the Customer's direction, assign or novate the subcontract to the Customer without any consent and requiring all relevant subcontractors to do all things necessary to effect such assignment or novation; and
- (g) must ensure that the subcontractor immediately ceases work upon receipt of a Notice in Writing from the Customer of withdrawal of the consent given under clause 9.10.1.

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

9.10.4 Where the Contractor commits a Substantial Breach due to the fault of a subcontractor, the Contractor will, if requested by the Customer, replace that subcontractor with another subcontractor acceptable to the Customer.

10. Performance of this Contract

10.1 DELIVERY NOTIFICATION

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

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

10.2 DELIVERY

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

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

10.2.3 The Contractor must, to the extent reasonably practicable, deliver the Deliverables with as minimal interruption to the normal business activities of the Customer as possible.

10.3 REJECTION AND ACTUAL ACCEPTANCE DATE

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

- (a) are defective or are not in good order and condition; or
- (b) do not comply with or perform in accordance with the Contract Specifications,

but in the case of Deliverables provided after Final Acceptance has occurred, subject to the Customer having provided the Contractor with at least one opportunity to remedy the breach for a period of 7 days.

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

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

10.3.3 The AAD for a Deliverable will occur, in all cases other than those specified in clause 10.3.2, on the date Acceptance is deemed to have occurred in clause 10.5.8.

10.4 REJECTION NOTIFICATION

10.4.1 The Customer may issue a rejection notice at any time prior to Acceptance in accordance with clause 10.3. The rejection notice shall provide instructions to the Contractor relating to the removal, replacement, modification, rectification and/or redelivery of any rejected Deliverables. The Contractor must, at the Contractor's expense, comply with the rejection notice in a reasonable time.

10.4.2 No Price is payable for the Deliverable, or any part of it if the Deliverable is rejected by the Customer and any Price paid under this Agreement for the Deliverable will be refunded within 14 days of the rejection. Exercise of rights pursuant to this clause 10.4.2 is without prejudice to any other right of action or remedy which has accrued or may have accrued due to failure of the Deliverable to meet the Acceptance Criteria or other requirements of this Agreement.

10.5 ACCEPTANCE TESTING

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

Acceptance Testing

10.5.2 The Parties will conduct Acceptance Testing as set out in Attachment 3.

Supplementary Tests

10.5.3 The Customer may at any time during the Acceptance Period carry out or require the Contractor to carry out Supplementary Tests.

10.5.4 Subject to clause 10.5.5 the costs of any Supplementary Tests shall be paid by the Customer.

10.5.5 Where the Supplementary Tests establish that the Deliverables do not comply with the Contract Specifications, the costs of such of those Supplementary Tests as were reasonably required to establish non-compliance shall be borne by the Contractor.

Failure

- 10.5.6 If a Deliverable is not provided by the time required by the Agreement to commence Acceptance Testing, then the Deliverable is deemed to fail Acceptance Testing.
- 10.5.7 Where a Deliverable fails an Acceptance Test or part thereof, the Customer may, in whole or in part:
- (a) waive the requirement for the Acceptance Test to be satisfactorily completed;
 - (b) require that further reasonable Acceptance Tests be conducted at the Contractor's expense, such tests to be satisfactorily completed in accordance with this clause 10.5 within the period agreed by the Parties;
 - (c) conditionally accept the Deliverable, subject to the Contractor agreeing at its own cost to deliver a work-around or to otherwise rectify any outstanding deficiency, acceptable to the Customer;
 - (d) accept the Deliverable subject to an agreed reduction in the Contract Price; or
 - (e) without limiting any other remedy, reject and require the removal of the Deliverable or any materials associated with the rejected Deliverable and the restoration of anything affected by the Deliverable to its pre Agreement state (but in the case of a Deliverable provided after Final Acceptance has occurred, subject to the Customer having provided the Contractor with at least one opportunity to resubmit the Deliverable for further Acceptance Tests which are at least 7 days after the failed Acceptance Test).

Deemed Acceptance

- 10.5.8 The Customer shall be treated as having accepted any Deliverables in the event that the Customer fails to notify to the Contractor of the rejection of the Deliverables within the Acceptance Notification Period unless otherwise agreed.

Effect of Acceptance

- 10.5.9 The parties acknowledge that:
- (a) acceptance tests are not capable of testing for every possible Defect or other requirement of the Acceptance Criteria; and
 - (b) Acceptance of a Deliverable does not affect the Contractor's obligation under this Agreement to correct Defects.

10.6 DOCUMENTATION

- 10.6.1 At all times the Contractor will ensure that the Customer is supplied with Documentation that fully describes in a manner in which the Customer's Personnel (who are suitably qualified in the case of technical documentation which is not designed for end users) can readily understand and apply, processes and procedures relevant to the Deliverables (including Documentation specifically required by the Contract Specifications).
- 10.6.2 The Contractor must provide, at no additional cost to the Customer, at least one copy of the Documentation and such Documentation as the Contractor usually makes available free to its other customers, upon supply of the Deliverable to the Customer.
- 10.6.3 Additional copies of the Documentation must, if requested by the Customer, be provided by the Contractor at the Price specified in the PIPP or if the Price is not specified, free of charge.
- 10.6.4 The Documentation will be:
- (a) in English;

- (b) in an electronic format reasonably required by the Customer;
- (c) of a reasonable standard in terms of its presentation, accuracy and scope;
- (d) the most current up to date version available; and

and all key terms, words and symbols must be adequately defined.

- 10.6.5 The Contractor must amend inaccurate or out of date Documentation, and must promptly supply to the Customer a duly amended version of the Documentation at no additional cost to the Customer.
- 10.6.6 The Customer may use the Documentation for any training purposes associated with the Deliverables.
- 10.6.7 From time to time, the Customer may request Interface Specifications for the Deliverables, and the Contractor will provide the Interface Specifications within a reasonable time.

10.7 EXTENSION OF TIME

- 10.7.1 If the Contractor becomes aware of any matter which will, or is likely to, give rise to a delay in a Milestone, the Contractor will within 5 Business Days of becoming aware give the Customer:
- (a) a notice setting out detailed particulars of the delay; and
 - (b) a detailed corrective action plan.
- 10.7.2 If the Customer reasonably believes that the Contractor will not achieve a Milestone by the due date for that Milestone in the PIPP ("Milestone Due Date"), the Customer may give notice to that effect to the Contractor and the Contractor will then within 5 Business Days give the Customer a detailed corrective action plan. The provision of such a plan, and any approval or consent given by the Customer in relation to that plan, will not relieve the Contractor of any liability or responsibility under this agreement for any delay.
- 10.7.3 The Contractor will take all reasonable steps to preclude the cause of any delay to a Milestone, and to mitigate or minimise the consequences of any delay.
- 10.7.4 The Contractor will be entitled to an extension of time to a Milestone Due Date if:
- (a) the Contractor is or will be delayed in achieving the Milestone by a Qualifying Cause of Delay; and
 - (b) the Contractor gives the Customer written notice of the fact or likelihood of delay within the earlier of:
 - (i) 5 Business Days of when the Contractor first became aware of the delay; or
 - (ii) 20 Business Days of the first occurrence of the delay (provided that if the Contractor reasonably demonstrates that the delay is not something of which it ought reasonably to have been aware within that 20 Business Days period, the period for submission of the notice will be reduced to 5 Business Days after the Contractor first became aware of, or ought reasonably to have become aware of, that delay),
- which notice must include written details of:
- (iii) the date on which the cause of the delay first arose;
 - (iv) the cause of the delay; and
 - (v) how the Milestone Due Date is likely to be delayed, both in progress of one or more activities and as a whole (to the extent reasonably practicable to do so); and

- (c) the Contractor gives the Customer within the later of the period set out in clause 10.7.4(b) or 5 Business Days of the cessation of the delay:
 - (i) a written claim for extension of time specifying the number of days claimed, the date on which the cause of the delay first arose and the date of the cessation of the delay; and
 - (ii) a statement of the facts on which the claim is based.
- 10.7.5 The Customer will, within 10 Business Days of receipt of the later of:
 - (a) a written claim given by the Contractor under clause 10.7.4(c); or
 - (b) the information referred to in clause 10.7.6,
 give the Contractor:
 - (c) written notice:
 - (i) of the Contractor's entitlement to any extension of time;
 - (ii) granting that extension of time; and
 - (iii) of the new Milestone Due Date and any related changes of dates in this Agreement affected by the delayed Milestone; or
 - (d) if no extension is given, written notice of that decision.
- 10.7.6 If the Customer gives a written direction to the Contractor to provide the Customer with further information in support of the Contractor's extension of time claim submitted under clause 10.7.4(c) that it reasonably requires, the Contractor must give that supporting information within 5 Business Days of that written direction.
- 10.7.7 Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time under this clause 10.7, the Customer may, in its absolute discretion at any time before or after a Milestone Due Date and from time to time, extend the Milestone Due Date. The Customer is not required to exercise its discretion under this clause 10.7.7 for the benefit of the Contractor. The Customer's discretion to direct the grant of an extension of time under this sub-clause does not represent a waiver or relaxation of any conditions precedent to the granting of an extension of time.
- 10.7.8 If there is a delay to a Milestone for which the Contractor is not entitled to an extension of time, the Contractor:
 - (a) remains obliged to achieve the Milestone by the Milestone Due Date;
 - (b) does not have any remedy against the Customer for the delay, including any entitlement to damages for breach of this Agreement; and
 - (c) is not relieved of any liability to the Customer for any failure to achieve the Milestone by the Milestone Due Date by reason of the delay.
- 10.7.9 The Contractor's entitlement to an extension of time will be reduced to the extent that it has not taken all reasonable steps to minimise the delay. Where more than one event causes concurrent delays to a Milestone and at least one of those events is not a Qualifying Cause of Delay, then to the extent that the delays are concurrent, the Contractor will not be entitled to an extension of the Milestone Due Date.
- 10.7.10 The failure of the Customer to grant any extension of time, or to grant an extension of time within the time prescribed by this clause 10.7, will not cause a Milestone to be set at large or prevent the Customer from subsequently exercising its discretion under clause 10.7.7.

10.8 ESCROW OF SOURCE CODE

- 10.8.1 If specified in the Agreement Details or otherwise requested in writing by the Customer, the Contractor must arrange:
- (a) for the Contractor, the Customer and an escrow agent approved by the Customer to enter into an Escrow Agreement in relation to the Escrow Materials; or
 - (b) for the Customer to become a party to an escrow arrangement which already covers the Escrow Materials which the Customer regards as a satisfactory arrangement.
- 10.8.2 Any escrow arrangements to which the Customer becomes a Party under this clause 10.8 must endure for at least the period specified in the Agreement Details unless otherwise agreed. The Parties will bear the costs connected with such escrow arrangements in the proportions agreed by them in writing.
- 10.8.3 The Contractor must consult with and comply with the reasonable directions of the Customer in any negotiations with the escrow agent arising under this clause 10.8.

10.9 ADDITIONAL SERVICES

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

10.10 TITLE

Title in Deliverables passes to the Customer on delivery (if not earlier under this Agreement), save as otherwise agreed.

11. Project Management**11.1 APPLICATION OF PROJECT MANAGEMENT CLAUSES**

The following clauses 11.1 to 11.13 inclusive apply only if and to the extent specified in the Agreement Details.

11.2 GOVERNANCE

The Parties will comply with the governance requirements in Attachment 5.

11.3 MANAGEMENT COMMITTEE

- 11.3.1 By the date specified in the Agreement Details, the Parties must mutually agree and establish a management committee and a process for the conduct of the committee's business.
- 11.3.2 The management committee must, unless the Parties agree otherwise in writing, consist of the persons specified in the Agreement Details.
- 11.3.3 The management committee must:
- (a) review and monitor progress under this Agreement and report to the Customer's authorised representative or other person nominated by the Customer from time to time; and
 - (b) carry out such other functions as set out in the Agreement Details.
- 11.3.4 The members of the management committee or their authorised representatives must meet weekly at the Customer's offices (unless the Parties agree otherwise) at a time agreed between the Parties.

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

11.4 PROGRESS REPORTING

- 11.4.1 The Parties must each nominate their respective project managers or officers in the Agreement Details or the PIPP.
- 11.4.2 At least 24 hours prior to a management committee meeting, the Contractor's project manager must submit to the Customer's project officer a report of progress under this Agreement, including:
- (a) progress against the PIPP Annexure A (or milestones in a SOW), and a summary of any issues that may impact on the meeting of that PIPP and the Contractor's recommendations to resolve such issues;
 - (b) a narrative report outlining the progress made since the last report was provided, including compliance with the PIPP Annexure A (or milestones in a SOW) and progress in relation to the Deliverables and Milestones with the dates where each Deliverable and/or Milestone was commenced, completed or accepted;
 - (c) a Gantt chart with status updated by assessment of actual achievements and projections of future progress;
 - (d) any delays or defaults, including reasons and plans for the management of such delays and defaults in respect of the supply of the Deliverables;
 - (e) draft updates of relevant parts of the Contract Specifications;
 - (f) any proposed variations in accordance with clause 14 to the terms of this Agreement; and
 - (g) any other information as the Customer reasonably requests be included within those reports that is relevant to the Agreement.
- 11.4.3 If the Customer disagrees with the facts recorded in the report, then the Customer must place on the record its version of the facts.

11.5 CONTRACT REVIEW PROCEDURES

- 11.5.1 The Parties must at regular intervals, unless otherwise specified in the Agreement Details, conduct a service and performance review of the Contractor's performance of this Agreement including its obligations under any Service Level Agreement.
- 11.5.2 All reviews must be undertaken by representatives of both Parties who have the authority, responsibility and relevant expertise in financial and operational matters appropriate to the nature of the review.

11.6 SITE SPECIFICATION

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

11.7 IMPLEMENTATION PLANNING STUDY (IPS)

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

- 11.7.2 The implementation planning study must meet the objectives specified in the Agreement Details, which may include:
- (a) the Contractor's assessment of the scope and complexity of the project;
 - (b) required Deliverables;
 - (c) resources required (including any resources to be made available by the Customer);
 - (d) development of a PIPP and/or a Service Level Agreement as relevant; or
 - (e) any other requirements specified in the Agreement Details.
- 11.8 PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)**
- 11.8.1 The Parties must perform their respective obligations under this Agreement at the times and in the manner set out in the PIPP.
- 11.8.2 Subject to clause 14, either Party may periodically review the PIPP and may recommend or request a change to the PIPP. Any change to the PIPP may be implemented as a Variation.
- 11.8.3 The Contractor will ensure that any project plans developed in relation to this Agreement are consistent with the PIPP, and will update them to remain consistent with the PIPP. To the extent of any inconsistency between the PIPP and other project plans, the PIPP prevails.
- 11.9 GO LIVE DECISION**
- 11.9.1 The Customer will determine, in its absolute discretion, when any Deliverable is moved into a Live Production Environment.
- 11.10 SERVICE LEVEL AGREEMENT**
- 11.10.1 The Parties must perform their obligations in accordance with any Service Level Agreement.
- 11.10.2 Subject to clause 14, either Party may periodically review the Service Level Agreement and may recommend or request a change to a Service Level Agreement. Any change to the Service Level Agreement may be implemented as a Variation.
- 11.11 TIME OF THE ESSENCE**
- The Contractor acknowledges that time is of the essence in completing any obligations under this Agreement where the due date for their performance has been specified in the Agreement Details or the PIPP as being an obligation subject to this clause 11.11 ("Due Date").
- 11.12 RETENTION OF MONEYS**
- 11.12.1 The Customer may withhold a proportion of the payment for any Milestones in the amount and for the period identified in a PIPP for the due and proper performance and completion of the Contractor's entire obligations under this Agreement.
- 11.12.2 The Customer must upon the completion of the Contractor's entire obligations in accordance with this Agreement pay to the Contractor any amount withheld under clause 11.12.1.
- 11.13 BUSINESS CONTINGENCY ARRANGEMENTS**
- 11.13.1 The Contractor must within the time specified in the Agreement Details or as otherwise agreed in writing between the Parties, prepare a Business Contingency Plan for the approval of the Customer.

- 11.13.2 The Business Contingency Plan must be documented in a form acceptable to the Customer and must be available at all reasonable times for review by the Customer.
- 11.13.3 The Business Contingency Plan must be reviewed, updated and tested by the Contractor at the intervals specified in the Agreement Details to ensure its relevance and effectiveness.
- 11.13.4 All affected Deliverables must be reinstated by the Contractor in accordance with the Business Contingency Plan in the event of an interruption to the Customer's business that is contemplated by the plan. The Customer must provide the Contractor with any assistance reasonably required by the Contractor to implement the Business Contingency Plan.

12. Payment

12.1 PAYMENT OF CONTRACT PRICE

- 12.1.1 In consideration for the Contractor providing a Deliverable in accordance with this Agreement, the Customer must pay the Contractor the Contract Price in the amounts and at the times specified in Attachment 2.
- 12.1.2 The Contract Price shall be fixed for the Term, unless otherwise specified in the Agreement Details.

12.2

12.2.1

12.2.2

[REDACTED]

12.2.3

[REDACTED]

12.2.4

12.2.5

[REDACTED]

[REDACTED]



(b)

(c)

(d)

(e)



12.3 INVOICES AND TIME FOR PAYMENT

- 12.3.1 The Parties agree subject to the further provisions of this clause 12.3 that payment for the Deliverables must be made within 30 days after receipt of a Correctly Rendered Invoice.
- 12.3.2 The Contractor must provide any further details in regard to an invoice that are reasonably requested by the Customer from the Contractor.
- 12.3.3 The making of a payment is not an acknowledgment that the Deliverables have been supplied or accepted in accordance with this Agreement.
- 12.3.4 If the Customer disputes the invoiced amount the Customer must:
- (a) certify the amount it believes is due for payment;
 - (b) pay that amount; and
 - (c) the liability for any outstanding claims must be determined in accordance with clauses 3.5 to 3.7 inclusive.

12.4 SET-OFF/MONEY RECOVERABLE BY THE CUSTOMER

- 12.4.1 Any damages, rebates, losses, fees or other expenses ("Loss") recoverable by the Customer from the Contractor may be deducted from any money then due to the

Contractor under this Agreement or Financial Security. If the money due to the Contractor is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Customer and may be recovered from the Contractor by the Customer in any court of competent jurisdiction.

12.5 SUSPENSION OF PAYMENTS

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

13. Audit

13.1 AUDIT

- 13.1.1 Subject to clause 13.2, the Contractor will, upon 5 Business Days' notice during the hours between 8.30 am and 5.30 pm on a Business Day or as otherwise agreed, permit and provide persons (**Auditors**) other than a Competitor nominated by the Customer supervised access to the Contractor's and its Personnel's premises, books, records, documents, computer systems, equipment and other property relevant to the performance of this agreement to verify compliance by the Contractor with its obligations under this agreement and its likely capacity to continue to comply with its obligations in the future (**Audit**), including:

- (a) verifying the correctness and accuracy of fees payable (including pass-through costs and out-of-pocket expenses) to the Contractor;
- (b) reviewing the Contractor's subcontractor performance of obligations under this Agreement;
- (c) carrying out technology infrastructure and application systems disaster recovery and business continuity planning reviews of the Contractor's or its subcontractors' procedures, controls, facilities and assets relating to the Contractor's obligations under this Agreement;
- (d) establishing that the Contractor has certifications required by the Contract Specifications;
- (e) carrying out all legal and regulatory reviews and audits required of the Customer;
- (f) carrying out risk reviews of the Customer (or any other person entitled to receive the Services) for internal risk and insurance assessment purposes;
- (g) carrying out fraud risk reviews;
- (h) carrying out reviews of the Contractor's use of the information technology networks and application systems used in connection with the provision of the Deliverables;
- (i) verifying the confidentiality and security of data;
- (j) ascertaining the adequacy of the Contractor or its subcontractors controls and management of risks associated with the infrastructure or other information technology and processes used in providing the Deliverables;
- (k) ascertaining the Contractor's compliance with its obligations in relation to subcontracting;
- (l) verifying the accuracy of data as processed by the Contractor and any process that impacts upon its integrity;
- (m) auditing the Contractor's technology or process change and release management processes;

- (n) auditing the Contractor and its subcontractors compliance with governmental bodies, standards organisations or regulatory authorities having jurisdiction over the Contractor or subcontractor in relation to the Deliverables, and
- (o) any other reasonable business purpose subject to the agreement of the Contractor, such consent not to be unreasonably withheld or delayed.

13.2 NOTICE

13.2.1 As part of the notice of the Audit under clause 13.1.1, the Customer must state the intended scope of the Audit.

13.2.2 Prior notice of access for the purposes of an Audit is not required where:

- (a) the Customer has reasonable grounds for suspecting fraud or systematic overcharging; or
- (b) entry is required by virtue of any applicable Laws or other regulatory requirements, provided that the Customer has given notice to the Contractor as soon as reasonably practicable after receiving notice of the requirement to conduct an Audit by the relevant regulatory authority.

13.3 FINANCIALS

The Customer will not require its Auditors to have access to financial records of the Contractor, to the extent the required financial records are available to the Customer from a reputable external auditor, in audited form or otherwise.

13.4 SECURITY

In undertaking the Audit, the Customer will ensure that the Auditors comply with reasonable security requirements of the Contractor made known to the Customer.

13.5 CO-OPERATION

13.5.1 The Contractor will do things reasonably necessary to facilitate a prompt and efficient Audit.

13.5.2 The Auditors will ensure that there is no undue interference with the Contractor's business in the conduct of the Audit.

13.6 COPIES OF MATERIALS

The Auditors may make copies of books, records, documents and other Materials they have access to as part of an Audit, and the Contractor will provide the Auditors with the necessary facilities to enable them to do so.

13.7 COSTS OF THE AUDIT

The Customer is responsible for costs incurred by it in relation to an Audit unless the Audit reveals material non-compliance by the Contractor with the Contractor's obligations under this agreement in which case the Contractor is liable to the Customer for the costs incurred by the Customer in relation to the Audit.

13.8 AUDIT RECOMMENDATIONS

13.8.1 Subject to clause 13.8.2, the Contractor will implement Audit recommendations and comply with Audit findings to the extent necessary to ensure that the Services continue to be delivered in accordance with this agreement.

13.8.2 Where the Contractor, acting reasonably, does not agree with the Audit recommendations, the Contractor must within 10 Business Days of receiving the Audit recommendations, provide a written explanation to the Customer detailing the reasons for its disagreement,

along with an alternative proposal to address the issues found during the Audit (**Alternative Proposal**). The Contractor must then implement and comply with the Alternative Proposal.

13.9 EXTERNAL AUDITS

The Contractor will ensure that the Customer is provided with copies of external auditors' reviews of the Services or this agreement.

13.10 CONFIDENTIALITY

For clarity, where the Contractor discloses its Confidential Information to an Auditor in the course of an Audit, clause 5.1 applies to that Confidential Information.

14. Variations

14.1.1 Subject to any other rights given under this Agreement to vary its terms and the following provisions of this clause 14, a variation to the terms and conditions of this Agreement shall not be valid unless agreed in writing and signed by both the Customer and the Contractor.

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

15. Termination

15.1 TERMINATION OR SUSPENSION FOR CONVENIENCE

15.1.1 The Customer may by Notice in Writing at any time terminate or suspend this Agreement in whole or in part. The Contractor must immediately comply with any directions given in the notice and must do everything possible to mitigate its losses arising in consequence of termination or suspension of this Agreement under this clause 15.1.

15.1.2 The Customer shall pay the Contractor, in addition to any amounts paid or payable by the Customer for completed Milestones in the PIPP, a reasonable fee for work performed by the Contractor towards any partially completed Milestones in the PIPP and reasonable demobilisation costs (up to a maximum of 30 days) in relation to the Contractor's Personnel. Unless otherwise specified in the Agreement Details, no further compensation will be payable to the Contractor in respect of a termination or suspension under this clause 15.1.

15.1.3 Within 7 days after a request by the Customer, the Contractor will notify the Customer what the amount under clause 15.1.2 would be at the expiry of the 7 day period, provided that the amount notified in respect of a partially completed Milestone must not be more than the amount that the Customer would have had to pay under this Agreement had the Milestone been completed. On request, the Customer will include with the notice evidence justifying the calculation of this amount. If the Contractor fails to provide the information to the Customer, the Contractor is deemed to notify an amount of \$0 at the end of the 7 day period.

15.1.4 If the Customer terminates or suspends this Agreement under clause 15.1.1 within 7 days after the Contractor notifies an amount clause 15.1.3, the Customer's liability under clause 15.1.2 is limited to a maximum of that amount.

15.1.5 This clause 15.1 does not apply to termination or suspension in accordance with clause 17.2 or termination occurring because of a default by the Contractor as specified in clause 15.2, unless the Customer in its absolute discretion elects to apply this clause 15.1.

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

15.2 TERMINATION OF THIS AGREEMENT FOR BREACH BY CONTRACTOR

15.2.1 The Customer may terminate this Agreement in whole or in part for Substantial Breach or the Contractor's Insolvency by Notice in Writing without prejudice to any other right of action or remedy that has accrued or may accrue to either Party.

15.2.2 In the case of Substantial Breach the Customer must first by Notice in Writing give the Contractor notice that it has 7 days to remedy the Substantial Breach or such other longer period specified in the notice.

15.2.3 If the Contractor:

- (a) fails to give the Customer a notice containing clear evidence that it has remedied a Substantial Breach; or
- (b) fails to pass Acceptance Tests which results in rejection of the Deliverable by the Customer under clause 10.5.7(e),

the Customer may terminate this Agreement in whole or in part by Notice in Writing to the Contractor.

15.3 EFFECT OF TERMINATION OF AGREEMENT

In the event of termination under clause 15.2, the Customer may:

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

15.4 TERMINATION FOR BREACH BY THE CUSTOMER

15.4.1 If the Customer fails to pay the Contractor any amount in accordance with this Agreement, which is not in dispute, or commits any fundamental breach of this Agreement, then the Contractor may by Notice in Writing require the Customer to remedy the default within 28 days after receiving the notice.

15.4.2 If the Customer fails to remedy the breach, or fails to propose steps reasonably acceptable to the Contractor to do so, the Contractor may by Notice in Writing terminate this Agreement without prejudice to any other right of action or remedy which has accrued or might accrue to either Party.

16. Transition Out Services**16.1 SERVICES PROVIDED BY THE CONTRACTOR**

On request by the Customer, the Contractor will:

- (a) provide the Customer or its nominee with cooperation, assistance, advice, explanations and information reasonably requested by the Customer;
- (b) do acts and things and execute deeds, documents and instruments as are necessary or desirable; and
- (c) comply with the Customer's reasonable directions,

to ensure the completion and continuity of the functions and performance of the Deliverables required to be provided under this agreement or to assist in the replacement of the Deliverables or some components of the Deliverables by the Customer or its

nominee including the orderly supply, installation, configuration, migration and transition to a new system or components (**Transition Out Services**).

16.2 EXAMPLES OF TRANSITION OUT SERVICES

Transition Out Services that the Customer may request under clause 16.1 include:

- 16.2.1 developing or modifying, together with the Customer, a plan for the continuity and orderly transition of responsibility for the Deliverables to the Customer or another person or the replacement of the Deliverables or some components of the Deliverables by the Customer or another person;
- 16.2.2 providing technical information about the Deliverables, such as data formats and fields (including database schema), interface specifications and business rules;
- 16.2.3 providing data conversion assistance, including the extraction, transformation and the loading of the data;
- 16.2.4 providing access to equipment, systems and documentation;
- 16.2.5 delivering data, documentation, records or the Customer's Property in the Contractor's possession or control to the Customer or its nominee;
- 16.2.6 providing reasonable training in relation to the Deliverables to the Customer or its nominee;
- 16.2.7 arranging or procuring the secondment from time to time of suitably qualified personnel as are reasonably required by the Customer in connection with the transition process;
- 16.2.8 using its best endeavours to cause any subcontractor of the Contractor or other third parties which are utilised by the Contractor in the provision of the Deliverables, to enter into agreements with the Customer or its nominee on terms and conditions no less favourable than those offered to the Contractor; and
- 16.2.9 novating or assigning or securing the novation or assignment of any contracts with the subcontractors of the Contractor or other third parties which are utilised by the Contractor in the provision of the Services or System.

16.3 TIME

Unless otherwise agreed between the parties, the time required to carry out the Transition Out Services will be a reasonable time having regard to the amount of work required by the Contractor.

16.4 CONTINUITY OF SERVICES

The Contractor will continue to perform, for a reasonable period (as determined by the Customer) of up to 24 months following the expiration or termination of this Agreement, any or all of the Services and charge the Price set out in section 25 of the PIPP. The Customer will keep the Contractor informed of the Customer's need for the Contractor to continue performing Services under this clause, and use reasonable endeavours to notify the Contractor at least 30 days before such Services are to end.

17. General

17.1 DISCLOSURE OF CONFLICTS OF INTEREST

The Contractor must:

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

17.2 EVENTS

- 17.2.1 A Party is excused from performing its obligations to the extent it is prevented by an Event, except an Event that can be dealt with by an extension of time under clause 10.7 or that is the subject of a Business Contingency Plan. The Contractor must immediately notify the Customer of the occurrence of the Event when the Contractor becomes aware of it or when the Contractor ought reasonably to be aware of it.
- 17.2.2 Each Party must make all reasonable efforts to minimise the effects of the Event. If the affected Party is prevented by the Event from performing its obligations under this Agreement for 30 days or such other period as the Parties agree in writing, then the other Party may in its sole discretion immediately terminate this Agreement by giving Notice in Writing of termination to the other Party.
- 17.2.3 Where this Agreement is terminated by the Customer in accordance with clause 17.2.2:
- (a) the Contractor shall be entitled to payment for work completed in accordance with this Agreement up to the date of termination; and
 - (b) the Parties must otherwise bear their own costs and will be under no further liability to perform this Agreement.

17.3 ASSIGNMENT OR NOVATION

- 17.3.1 The Contractor must not, or attempt to, assign in whole or in part or novate this Agreement without obtaining the prior written consent of the Customer, which consent may be withheld at its absolute discretion.
- 17.3.2 The Contractor acknowledges that the Customer may conduct financial and other inquiries or checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.
- 17.3.3 The Customer at its own cost, may assign or novate this Agreement (in whole or in part) to a NSW Government Body without the prior written consent of the Contractor, and in that event the Customer will give the Contractor 30 days' notice of such assignment or novation. A NSW Government Body can then assign or novate the Agreement to another NSW Government Body if required.
- 17.3.4 If, after the assignment or novation, the Customer wishes to change the scope of the obligations or Deliverables to be provided by the Contractor under this Agreement, a variation in accordance with clause 14 must be effected.
- 17.3.5 Where there are more than 7 agreements between NSW Government Bodies and the Contractor which have been created by partly novating this Agreement (or agreements from which this Agreement has been novated), the Contractor and the Customer will negotiate in good faith to agree on the payment of additional fees to the Contractor to compensate the Contractor for the increased overhead in managing that larger number of agreements.
- 17.3.6 A reference to the Customer's right to assign or novate the Agreement includes the right for the Customer to create a separate agreement between the Contractor and the Customer for part of the Agreement. For example, the Customer may decide to have 2 parts of the Agreement managed separately by 2 different departments and therefore may create 2 separate agreements for those parts to give effect to that.

17.4 WAIVER

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

17.5 SEVERABILITY

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

17.6 COUNTERPARTS

17.6.1 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. If there are a number of counterparts of this Agreement, the counterparts taken together constitute one and the same instrument.

17.6.2 Without limiting clause 17.6.1, this Agreement may be entered into by an exchange of emails of the executed Agreement or counterparts of this Agreement.

17.7 APPLICABLE LAW

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

17.8 RIGHTS CUMULATIVE

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

17.9 NO AGENCY, EMPLOYEE OR PARTNERSHIP RELATIONSHIP

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

END OF PART TWO

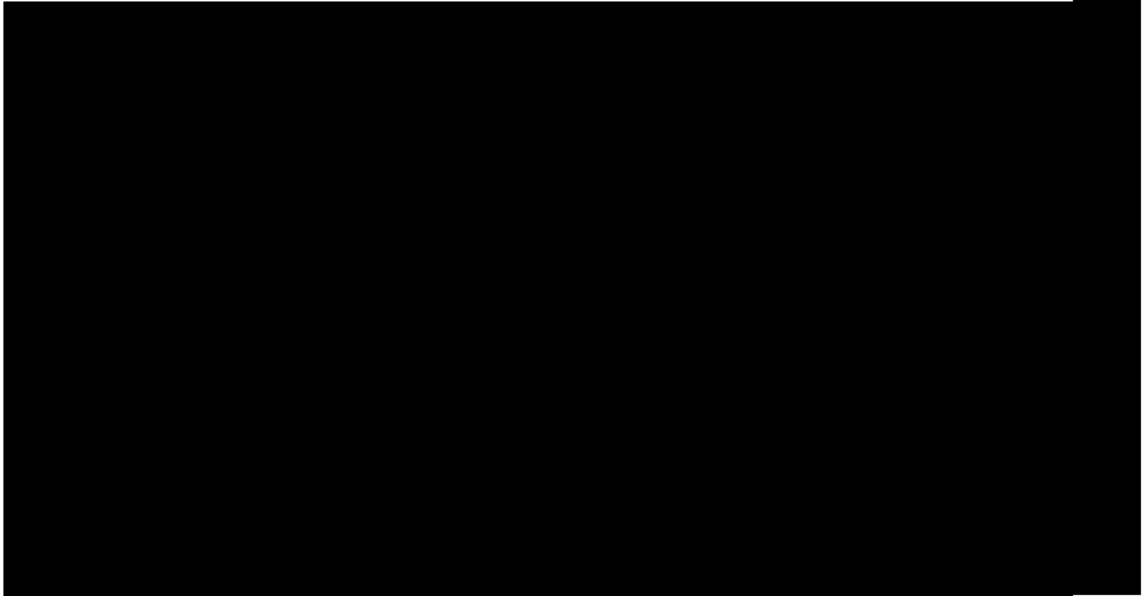
PART 3 - DICTIONARY

DICTIONARY

1. Interpretation

1.1 DEFINITIONS

In this Agreement, unless the contrary intention appears:



“Agreement” means all the parts of this Agreement between the Customer and the Contractor, which includes the Standard Terms and Conditions, the Dictionary, the Schedules and the Modules, and any attachments, referenced in or annexed to the Agreement Details.

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

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

“Business Day” means a day, not being a Saturday, Sunday or public holiday, on which banks are generally open for business in Sydney, Australia.

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

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

“Competitor” means, unless the parties agree otherwise (acting reasonably):

- (a) Accenture (except to the extent that there is a reasonable internal separation arrangement in place designed to protect disclosure of the Contractor’s Confidential Information to Accenture’s resources responsible for developing licensed software products which are substitutable for the Licensed Software);

- (b) Synergetic, Civica, Sentral Education, Edval Timetables, Celcat, Timetabler, Technology One, Compass Education, Cases, Pam, Power School, Seqta, Simon, Xuno, Ellucian, Avaxa, Wise.NET, CCS, CSG, Dialogue Consulting, Fujitsu Services, EXC (EduPoint) and Job Ready; and
- (c) an entity, which is agreed between the parties as part of an annual review, to be a competitor.

“Complete Implementation” means the full implementation of the System including Licensed Software, Developed Software and the establishment of Software Support Services, delivered by the Contractor and comprised of an implementation for all TAFEs and corporate offices.

“Compliance Change” has the meaning given to it in clause 7.4.3.

“Confidential Information” means information that:

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

includes but is in no way limited to:

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

but does not include anything which the Contractor establishes:

- (i) was in the public domain at the time it was received by the Contractor; or
- (j) entered the public domain after being received by the Contractor without a breach of confidentiality.

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

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

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

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

and any costs or expenses incurred in connection with the foregoing, but excludes any Direct Loss.

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

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

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

- (a) specifications set out in Schedule 2;
- (b) any specifications agreed to and brought into existence by the Customer and the Contractor in the performance of their obligations under and in accordance with the terms of this Agreement; and
- (c) those specifications generally published or made publicly available by the Contractor.

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

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

“Contractor Group” means

- (a) the Contractor; and
- (b) any present or future corporation or other business entity Controlled by, Controlling or under common Control with the Contractor.

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

- (a) the Contractor becoming unable to pay its debts as and when they fall due;
- (b) the Contractor no longer has the resources to perform this Agreement;
- (c) an application for winding up is made regarding the Contractor and not stayed within 14 days;
- (d) a winding up order is made against the Contractor;
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed to the Contractor;
- (f) a mortgagee enters into the possession of any property of the Contractor;

- (g) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (h) any actions of a similar effect are taken.

“Control” means:

- (a) the right to control the composition of the Board of Directors, including through the removal or appointment of directors of the Contractor;
- (b) the right to cast or control the casting of more than 50% of the maximum number of votes of a general meeting or the right to at least 50% of the dividends or income of the Contractor; or
- (c) control by any other means whatsoever.

“Correctly Rendered Invoice” means an invoice that is rendered in the form of a Tax Invoice where:

- (a) the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars;
- (b) the invoice is set out as an itemised account, which identifies the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the Contract Price payable;
- (c) the invoice is accompanied by documentary evidence that signifies that Acceptance (where applicable) has occurred in accordance with this Agreement; and
- (d) the invoice is addressed to the officer specified in the Agreement Details to receive invoices.

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

“Customer Data” means all Data (excluding Licensed Software) provided by the Customer or created or obtained by the Contractor in the course of this Agreement.

“Customer Environment” means the hardware, software, networks and other computer or data communications equipment used by the Customer.

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

“Customer’s Property” means any property or information of the Customer (including Customer Data and Customer Materials) in the custody or control of the Contractor or its Personnel.

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

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

“Department” means the Customer.

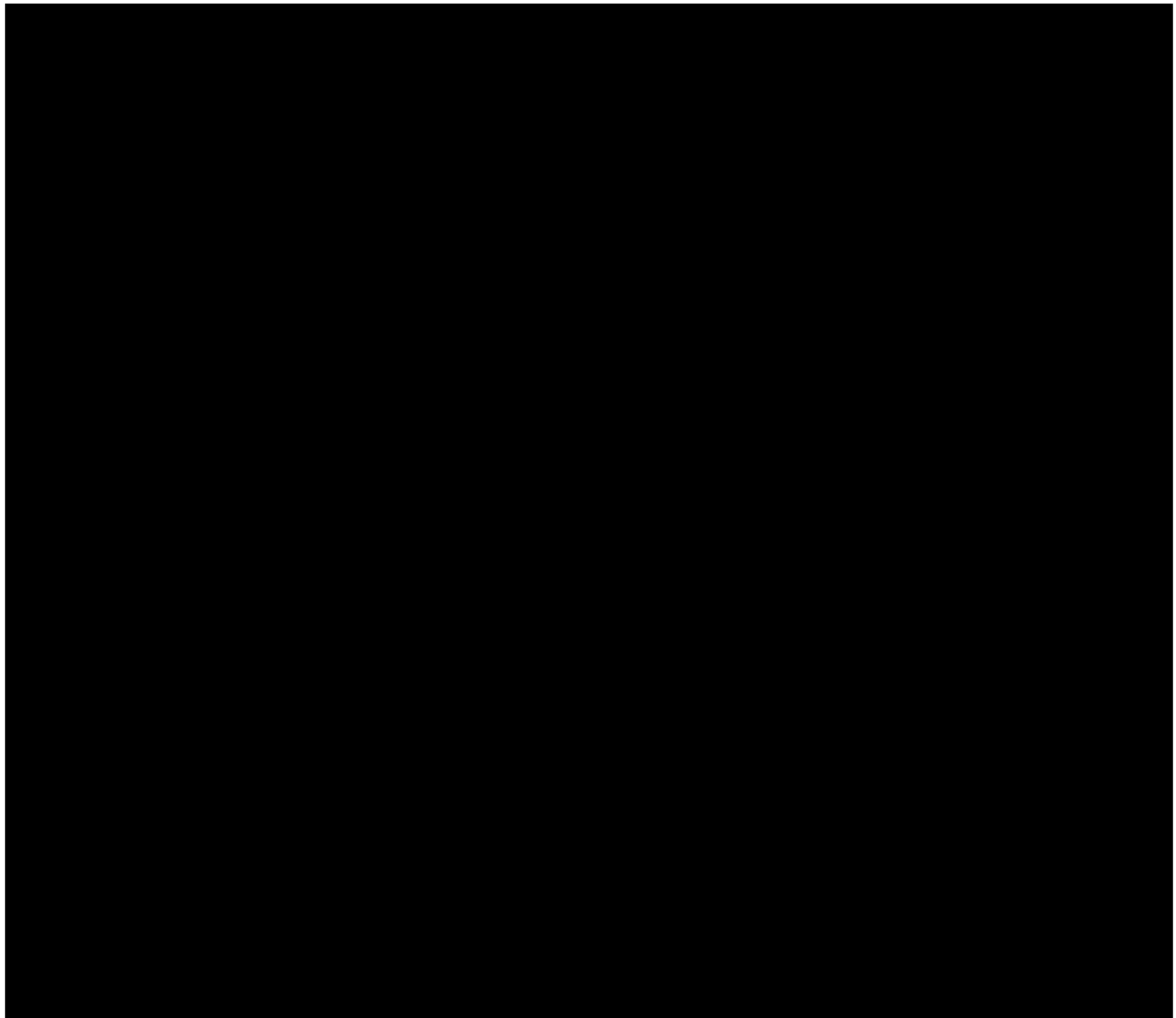
“Dictionary” means the glossary of definitions of words and expressions used in this Agreement contained in this Part 3 of the Agreement.

“Document” includes:

- (a) any paper or other material on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and/or
- (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device.

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

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



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

"Escrow Materials" has the meaning given to it in the Escrow Agreement.

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

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

"Final Acceptance" means the date that the Customer issues a certificate of Acceptance for the System following the Complete Implementation.

"Final Acceptance Date" means the date that Final Acceptance occurs.

"Go Live" means a Deliverable is moved into a Live Production Environment.

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

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

"Information Privacy Principles or IPP" means the principles contained in the Information Protection Principles contained in sections 8 to 19 of the *Privacy and Personal Information Protection Act 1998*.

"Institution" means a TAFE institute.

"Intellectual Property" means all intellectual property rights including:

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

"Laws" include:

- (a) laws, ordinances, regulations, by laws and lawful requirements or directions made under or arising from or through the foregoing (eg the requirements of a mandatory code arising under a statute); and
- (b) the conditions of a licence, permit or the like issued under a statute or other law.

“Licensed Software” means the software set out in section 6 of the PIPP.

“Live Production Environment” means the environment in which the Customer productively conducts actual transactions in day-to-day business operations using the System.

“Milestones” means the milestones as set out in the PIPP.

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

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

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

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

“NSW Government Body” means any or all (or any part of) the following entities:

- (a) the State of New South Wales, including its departments, agencies, institutes, schools, offices, bureaus, business units, groups, divisions, and any other New South Wales government entities;
- (b) the Customer;
- (c) a Government Sector, whether in whole or in part (as defined under the Government Sector Employment Act 2013 (NSW)), being:
 - (i) the Public Service;
 - (ii) the Teaching Service;
 - (iii) the NSW Police Force;
 - (iv) the NSW Health Service;
 - (v) the Transport Service of New South Wales;
 - (vi) any other service of the Crown (including the service of any NSW government agency);
 - (vii) the service of any other person or body constituted by or under an Act or exercising public functions (such as a State owned corporation), being a person or body that is prescribed by the regulations for the purposes of the definition of Government Service in the Government Sector Employment Act 2013 (NSW);
- (d) a NSW Government Agency (as defined in the Interpretation Act 1987 (NSW));
- (e) a government trading enterprise of this State (including a State Owned Corporation); and
- (f) any Public Health Organisation as defined under the Health Services Act 1997 (NSW), including any public hospital in NSW.

“NSW Government Purposes” means any purpose of a NSW Government Body including:

- (a) the business, operations or activities of a NSW Government Body;

- (b) an activity of another person for purposes relating to a NSW Government Body, including:
 - (i) a co-provider arrangement where another registered training organisation conducts a course for the Customer (or vice-versa);
 - (ii) an alliance or joint venture arrangement which includes a NSW Government Body; and
- (c) the provision of services by a NSW Government Body to any person or the provision of goods or services by any person to a NSW Government Body (including a procurement process for those goods or services);

but does not include installation of the Licensed Software by a person (other than a NSW Government Body) for its own use except as an incidental part of receiving services from, or supplying services to, a NSW Government Body.

“Open Source Software” means any software which, as a condition of its use, modification or distribution, requires that such software, any modification to that software or any other software with which such software is combined or distributed be:

- (a) disclosed or distributed in source code or object code form;
- (b) licensed for the purposes of making modifications; or
- (c) redistributable,

to any third parties.

“Parties” means the Customer and the Contractor.

“PCI DSS” means the Payment Card Industry Data Security Standard Version 3.0, any related security standards administered by the Payment Card Industry Security Standards Council together with any requirements of the Customer’s acquirer organisation or a payment card brand and any payment card specific requirements relating to the Customer’s business, as such requirements are amended from time to time.

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

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

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

“Product” means an item set out in the Agreement that the Contractor must provide to the Customer, including the Licensed Software, Developed Software, System, Documentation and the deliverables specified in the Contract Specifications (including as set out in the PIPP).

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

“Schedules” means Schedule 1 to Schedule 14 of the Agreement.

“Schools” means pre-school/kindergarten, primary and secondary schools.

“Service” means the services required to be delivered in the Agreement Details (or elsewhere in this Agreement) and including any associated materials that the Contractor must provide to the Customer in accordance with this Agreement.

“Service Address” means:

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

“Service Provider” means any person or persons providing services (including bureau or outsourced business process, information technology or telecommunications services) to the Customer from time to time, other than the Contractor (in the course of performing the Agreement).

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

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

“SME” means small and medium enterprises from NSW, other States and Territories of Australia or New Zealand, with up to 500 full time equivalent employees. For this definition of SME, grouping provisions apply. If the SME is controlled by another legal entity (e.g. a Parent Company), the 500 employee figure is aggregated across both entities. i.e.,

subsidiaries of larger companies are classified according to their parent company employee levels.

“SMEPP” means a SME participation plan submitted by tenderers in response to a tender. A SMEPP describes the nature of, or proposed nature of, tenderer’s engagement with ANZ-SMEs. An important aspect of SMEPPs is SME capability development.

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

“SOW” means a Statement of Work entered in accordance with section 14 of the PIPP.

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

“Standards” means:

- (a) applicable industry codes or standards (including ISO 27001, ISO 27017, ISO 27018, PCI DSS, Web Content Accessibility Guidelines 2.0 Level AA), and ASAE3402);
- (b) standards issued by the International Organization for Standardization; and
- (c) policies, codes, standards, guidelines, procedures or recommendations relating to the Deliverables:
 - (i) referenced in the Agreement Details or the Contract Specifications; or
 - (ii) as the Customer may from time to time notify to the Contractor provided that in such case the applicable policies, codes, standards, guidelines, procedures or recommendations must be widely accepted within Australian governments for use in relation to public Schools or VET.

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

- (a) breaching any warranty under clauses 3.3, 7.1.1 or 7.1.2;
- (b) failing to effect and maintain insurance policies as required under clause 4.1;
- (c) failing to provide a Financial Security as required under clause 4.2;
- (d) failing to provide a Performance Guarantee or amendment to it as required under clause 4.3;
- (e) failing to provide suitable replacement personnel as required under clause 9.3 which prevents the Contractor from performing fundamental obligations under this Agreement;
- (f) where a delay continues beyond the extension of time granted under clause 10.7;
- (g) failing to pass Acceptance Tests which results in rejection of the Deliverable by the Customer under clause 10.5.7(e);
- (h) the existence of a Conflict of Interest which in the Customer’s reasonable opinion prevents the full and proper performance of this Agreement by the Contractor;
- (i) where the Contractor is subject to a Change in Control without the Customer’s consent;

- (j) where the Contractor breaches a time of the essence obligation imposed on the Contractor in accordance with clause 11.11 in relation to the performance of this Agreement;
- (k) failing to meet a Milestone in Annexure A of the PIPP; and
- (l) a non-substantial breach of the Agreement that has not been remedied within 90 days after notice by the Customer or 5 non-substantial breaches of the Agreement within a 6 month period.

“Supplementary Tests” means the further Acceptance Tests that are required by the Customer to demonstrate that a Deliverable complies with the Contract Specifications.

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

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

“System” means the fully integrated system comprising the Licensed Software and Developed Software as implemented in the Customer Environment, including the associated configuration, reports and interfaces, all as required to meet the Contract Specifications.

“TAFE Exit Date” means the date that the Contractor ceases to provide services to the Customer.

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

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

“Term” means the term of this Agreement, set out in item 7 of the Agreement Details and any extension of the term in accordance with clause 2.1.

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

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

“Virus” means a computer program, code, device, product or component that is designed to or may in the ordinary course of its operation, prevent, inhibit or impair the performance of a Deliverable in accordance with its Contract Specifications.

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

1.2 RULES FOR INTERPRETING THIS AGREEMENT

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

1.2.2 The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply:

(a) A reference to:

- (i) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (ii) monetary references are references to Australian currency;
- (iii) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as varied, assigned or novated;
- (iv) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
- (v) anything (including a right, obligation or concept) includes each part of it;
- (vi) a business day means any day other than Saturday, Sunday or a day that is a public holiday for the Customer; and
- (vii) a Deliverable or any part of it:
 - A. being fit for purpose or for its intended purpose; or
 - B. as having an intended use,

(or any similar reference) will be read as referring to the purpose, intended purpose or intended use stated in or reasonably ascertainable from:

 - C. the Contract Specifications; or
 - D. a variation; or
 - E. a SOW.

(b) If this Agreement expressly or impliedly binds more than one person then it must bind each such person separately and all such persons jointly.

(c) A singular word includes the plural, and vice versa.

(d) The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.

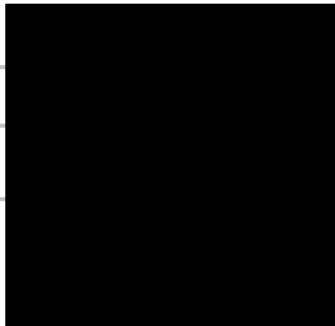


END OF PART 3

PART 4 - SCHEDULES

Schedule 1 – Agreement Details

Item 1	Agreement Number	DETPD1016	
Item 2	Name	Technical and Further Education Commission	
	The Customer's Authorised Representative		
Item 3	Contractor's Name/Address and ABN/ACN		
	Authorised Representative		
Item 4	State and Applicable Law (clause 17.7)	New South Wales.	
Item 5	Modules agreed between the Parties <i>[Indicate by marking with an X, the Modules that apply]</i>		
	Module 1 – Hardware Acquisition and Installation	<input type="checkbox"/>	
	Module 2 – Hardware Maintenance Services	<input type="checkbox"/>	
	Module 3 – Licensed Software	<input checked="" type="checkbox"/>	
	Module 4 – Development Services	<input checked="" type="checkbox"/>	
	Module 5 – Software Support Services	<input checked="" type="checkbox"/>	
	Module 6 – IT Personnel	<input type="checkbox"/>	
	Module 7 – Professional Services	<input type="checkbox"/>	
	Module 8 – Data Management	<input type="checkbox"/>	
	Module 9 – Telecommunications Services	<input type="checkbox"/>	
	Module 9A – Telecommunications Services – Special Terms for GTA Category 1B Services (Broadband Local Access)	<input type="checkbox"/>	
	Module 9B – Telecommunications Services – Special Terms for GTA Category 2 Services (Broadband Internet Access)	<input type="checkbox"/>	
	Module 10 – Web Services	<input type="checkbox"/>	
	Module 11 – Managed Services	<input type="checkbox"/>	

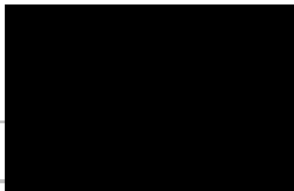
Item 6	Module 11A – Special Terms Relating to Management of GTA Category 1B Services and Core Network Services	<input type="checkbox"/>
	Module 12 – Systems Integration Services	<input type="checkbox"/>
	Schedules to apply <i>[Indicate by marking with an X, the Schedules that apply]</i>	
	Schedule 1 – Agreement Details	X
	Schedule 2 – Agreement Documents	X
	Schedule 3 – Product and Service List	X
	Schedule 4 – Statutory Declaration by Subcontractor	X
	Schedule 5 – Expert Determination Procedure	X
	Schedule 6 – Confirmation of Insurances	X
	Schedule 7 – Financial Security	X
	Schedule 8 – Performance Guarantee	X
	Schedule 9 – Deed of Confidentiality	X
	Schedule 10 – Privacy	X
	Schedule 11 – Escrow Agreement	X
	Schedule 12 – Variation Procedures	X
Schedule 13 – Risk Management	<input type="checkbox"/>	
Schedule 14 – eProcurement Requirements	<input type="checkbox"/>	
Item 7	Term (clause 2)	
	(i) Commencement Date of this Agreement:	The date of execution of this Agreement.
	(ii) Duration of this Agreement: (Where appropriate, specify that the period for service, e.g. hardware/software support & maintenance, will commence from expiry of relevant warranty period)	Until completion of the Services, unless terminated earlier.
	(iii) Period of extended term (if any): (clause 2.1)	See Module 5.
Item 8	Issue Resolution (clause 3.5 and Schedule 5)	
	Specify the expert determination amount:	\$1M per claim, except that there is no limit applying to a dispute relating to Schedule 12, section 24 of the PIPP or Annexure B of the PIPP.

Item 9	Insurance Policy Amount (clause 4.1.1)	
	(a) Public Liability Insurance Limit of Indemnity: \$AUS M:	
	(b) Product Liability Insurance Limit of Indemnity: \$AUS M:	
	(c) (if requested in 4.1.1) Professional Indemnity Insurance Limit of Indemnity: \$AUS M:	
	The Customer is to state the period that the Contractor must maintain its Professional Indemnity Insurance. If the Contractor is a member of occupational association with an approved scheme under <i>The Professional Standards Act 1994</i> or similar State or Territory legislation, then the insurance amount may be limited by the Customer, accordingly.	
	(d) Insert other insurances required (if requested in 4.1.1)	Not applicable.
Item 10	Financial Security (clause 4.2 and Schedule 7)	
	(i) Specify here if Financial Security is required: (Yes / No)	Yes.
	(ii) Amount:	
Item 11	Performance Guarantee (clause 4.3 and Schedule 8)	
	(i) Specify here if Performance Guarantee is required: (Yes / No)	Yes.
	(ii) Guarantor (clause 4.3):	Tribal Group Plc
Item 12	Liability (clauses 4.5 and 4.6)	
		
Item 13	Information Management (clause 5.1)	
	(i) The Customer to specify and/or annex any information that the Contractor must treat as Confidential Information:	As per the definition of Confidential Information.
	(ii) Contractor to specify any information that the Customer must treat as Confidential Information:	As per the definition of Confidential Information.
	(iii) Specify if limited disclosure of Confidential Information is permitted by a Party and set out the conditions of disclosure:	The Customer may disclose Confidential Information: (a) to the Customer's solicitors, auditors, insurers or accountants for the purpose of advising or reporting on matters arising from this Agreement; (b) for NSW Government Purposes; and (c) to government departments, agencies and entities, and persons who receive information under established government policies, procedures or protocols or for public accountability purposes.
Item 14	Intellectual Property (clause 5.3)	
	(i) Specify the Customer's rights to use the Contractor's pre-existing IP (clause 5.3.3):	No additional rights specified.

Item 15	Secrecy and Security (clause 6.3)	
	Specify any secrecy or security requirements with which the Contractor is to comply during the Term:	Not applicable.
Item 16	Product and Service Warranties (clause 7.1)	
	(i) Specify whether Deliverables are new or otherwise (clause 7.1.1(c)):	Deliverables are to be new.
	(ii) Specify any quality assurance and compliance arrangements required (clause 7.1.2(b)):	As set out in the Contract Specifications.
Item 17	Compliance with Laws and Standards (clause 7.4)	
	(i) Specify any codes, policies, standards or guidelines with which the Contractor is to comply:	
Item 18	Credit/Debit Card (clause 7.8)	
	Specify any credit/debit card or electronic facility that the Customer may use to pay the Contractor:	Not applicable.
Item 19	The Customer's Materials (clause 7.9)	
	(i) Specify the Customer's Materials:	See Attachment 1. No costs are applicable.
	(ii) Specify costs for the Customer's Materials:	Not applicable.
Item 20	Reports (clause 7.10)	
	Specify reports required (if any), time for provision and format:	As required by the Contract Specifications, including in particular Section E7 of the RFP.
Item 21	Site Preparation and Maintenance (clause 8.4)	
	Specify the Party responsible:	The Customer.
Item 22	Specified Personnel (clause 9.2)	
	Nominate the key personnel (if any) who are to be dedicated to provide the Deliverables:	See the PIPP.
Item 23	Subcontractors (clause 9.5.4)	
	(i) The Customer is to specify if statutory declaration from subcontractors, substantially in the form of Schedule 4, is required:	A statutory declaration is required.
	(ii) List of Subcontractors:	See the PIPP.
Item 24	Delivery (clauses 10.1 and 10.2)	

	Specify for each Module the:	
	(i) Nature of the Deliverable:	<ul style="list-style-type: none"> • Licensed Software; • Software Support Services; • Development Services; and • other Deliverables, which this Agreement requires the Contractor to supply, including the Deliverables set out in the PIPP.
	(ii) Volume of the Deliverable:	As required by the Contract Specifications.
	(iii) Date of delivery:	See the PIPP.
	(iv) Site to be delivered to:	As advised by the Customer.
	(v) Hours of delivery:	Business Hours
	(vi) Delivery costs to be applied:	Not applicable.
Item 25	AAD (clause 10.3)	
	If Acceptance Tests are not required, specify if the Actual Acceptance Date (AAD) will occur in five business days or another number of days following the delivery of a Deliverable (clause 10.3.2):	Acceptance Tests are required - see Attachment 3.
Item 26	Acceptance Testing (clause 10.5)	
	Specify for each Module:	
	(i) If Acceptance Testing is required:	Acceptance Tests are required for all Deliverables, including the Licensed Software, as set out in Attachment 3.
	(ii) The Party to conduct Acceptance Tests:	See Attachment 3.
	(iii) Detail to be included in Acceptance Test plan:	See Attachment 3.
	(iv) The Acceptance Period:	See Attachment 3.
	(v) Acceptance Notification Period:	See Attachment 3.
	(vi) The Acceptance Criteria:	See Attachment 3.
	(vii) The number of hours on each normal working day for the running of the Acceptance Tests:	See Attachment 3.
	(viii) The commencement date for Acceptance Tests:	See Attachment 3.
Item 27	Documentation (clause 10.6)	
	(i) Specify any additional publications or aids to be made available by the Contractor and the charge (if any):	Not applicable.
	(ii) Specify the number of additional copies of the Documentation being purchased by the Customer and the charge:	The Contractor will make additional copies available at no cost, and the Customer may make copies of the Documentation at no cost.

Item 28	(iii) Specify dates for delivery of Documentation:	Documentation for the Licensed Software must accompany delivery of the Licensed Software.
	Escrow (clause 10.8)	
	(i) Specify if an Escrow arrangement is required:	Yes.
	(ii) Specify time for Escrow arrangement to endure:	Until the Escrow Materials are released in accordance with the escrow arrangement or the escrow arrangement is otherwise terminated
Item 29	(iii) List Escrow Materials:	See the Escrow Agreement.
	Management Committee (clause 11.3)	
	(i) Specify if clause 11.3 applies:	No. The processes set out in Section E6 of the RFP apply instead of clause 11.2.
	(ii) Specify by when management committee and its processes to be established:	Not applicable.
Item 30	(iii) Specify the persons on the management committee and any additional functions they are to carry out:	Not applicable.
	Progress Reporting (clause 11.4)	
	(i) Specify if clause 11.4 applies:	No. The reporting requirements set out in Section E7 of the RFP apply instead of clause 11.3
	(ii) Nominate Project Manager/Officer for each Party:	Not applicable.
Item 31	Contract Review Procedures (clause 11.5)	
	(i) Specify if clause 11.5 applies:	No.
	(ii) Specify any specific time intervals for service and performance reviews:	Not applicable.
	(iii) Specify any other matters to be reviewed:	No additional matters.
Item 32	Site Specification (clause 11.6)	
	(i) Specify if clause 11.6 applies:	No.
	(ii) Specify if the Contractor is to provide a Site Specification:	No.
Item 33	Implementation Planning Study (clause 11.7)	
	(i) Specify if clause 11.7 applies:	No.
	(ii) Insert IPS objectives and time for provision of study:	Not applicable.
Item 34	Project Implementation and Payment Plan (clause 11.8)	
	Specify if clause 11.8 applies:	A PIPP is required, and is set out in the PIPP.
Item 35	Service Level Agreement (clause 11.10)	
	Specify if clause 11.10 applies:	Yes.

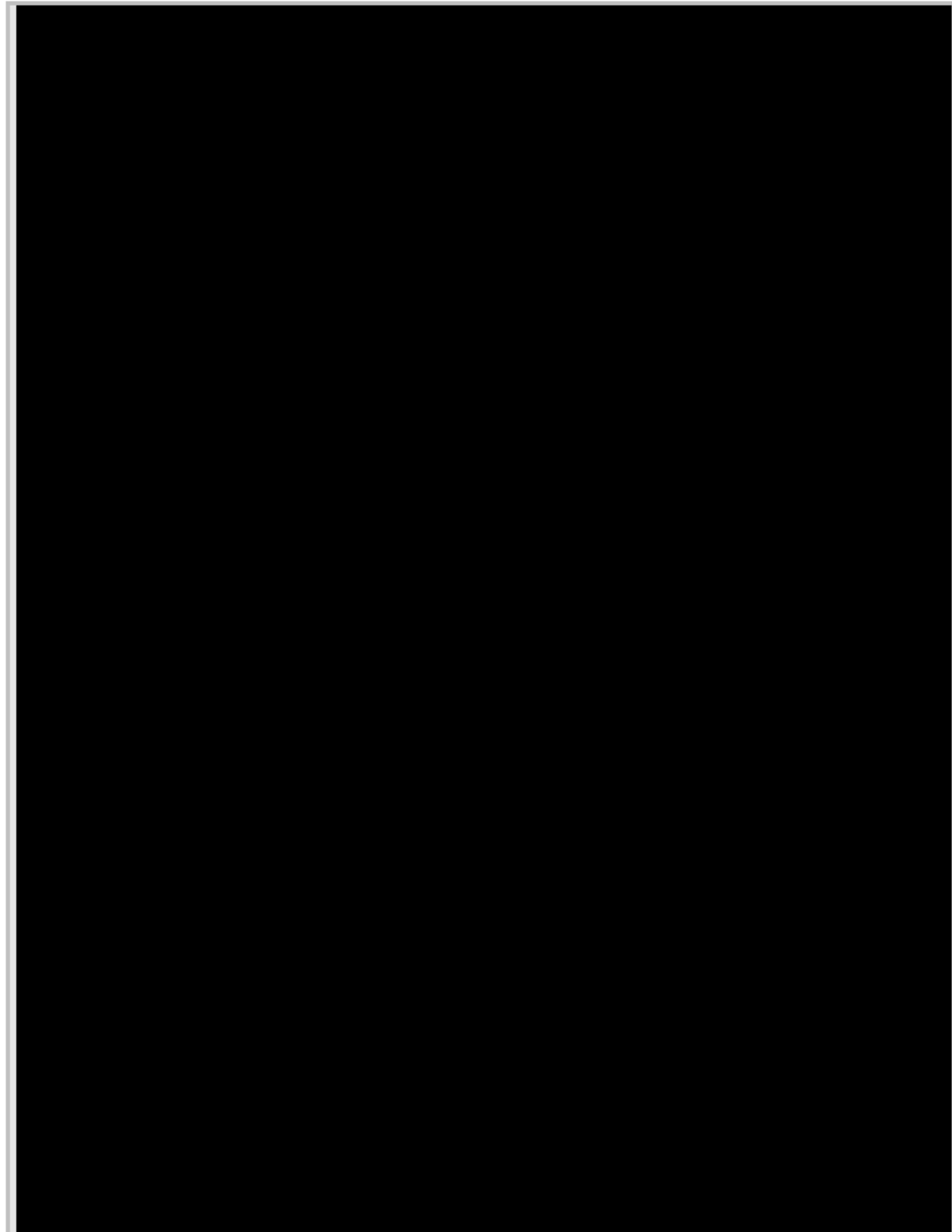
Item 36	Time of the Essence (clause 11.11)	
	(i) Specify if clause 11.11 applies:	No.
	(ii) Due Date for performance and Milestones:	Not applicable.
	(iii) Amount of Liquidated Damages (LD's):	Not applicable.
	(iv) Number of days LD's are to be applied:	Not applicable.
Item 37	Retention of Moneys (clause 11.12)	
	(i) Specify if clause 11.12 applies:	No.
	(ii) Specify percentage of Contract Price is to be retained by the Customer until AAD of a Deliverable:	Not applicable.
Item 38	Business Contingency Plan (clause 11.13)	
	(i) Specify if clause 11.13 applies:	Yes.
	(ii) Specify by when BCP to be provided:	5 Business Days after the date of this Agreement. The Contractor will also provide a copy of this plan to the Customer for review upon request by the Customer, and make changes to the plan as are reasonably requested by the Customer.
	(iii) Specify the BCP Services it requires and the period of the services:	The Contractor is required to have a business contingency plan in place in order to minimize any interruption in the provision of the Products and Services to the Customer.
	(iv) State the periods that the BCP must be updated by the Contractor:	The Contractor's business contingency plan must be updated regularly and when requested by the Customer.
	(v) Specify the time periods that the Contractor is to test the operability of the BCP:	The Contractor's business contingency plan must be tested regularly and when requested by the Customer.
	(vi) Specify any information to be included in the BCP:	The business contingency plan will include procedures to predict, avoid, remedy and mitigate internal or external problems that may have a material adverse affect on the Contractor from providing the Products and Services.
Item 39	Payment (clause 12)	
	(i) Specify whether the Contract Price is fixed:	
	(ii) Specify price variation mechanism:	
Item 40	Variations (clause 14)	
	Specify whether Schedule 12 to apply:	Yes.
Item 41	Termination for Convenience (clause 15.1.2)	
	Specify whether further compensation is payable and amount:	No.

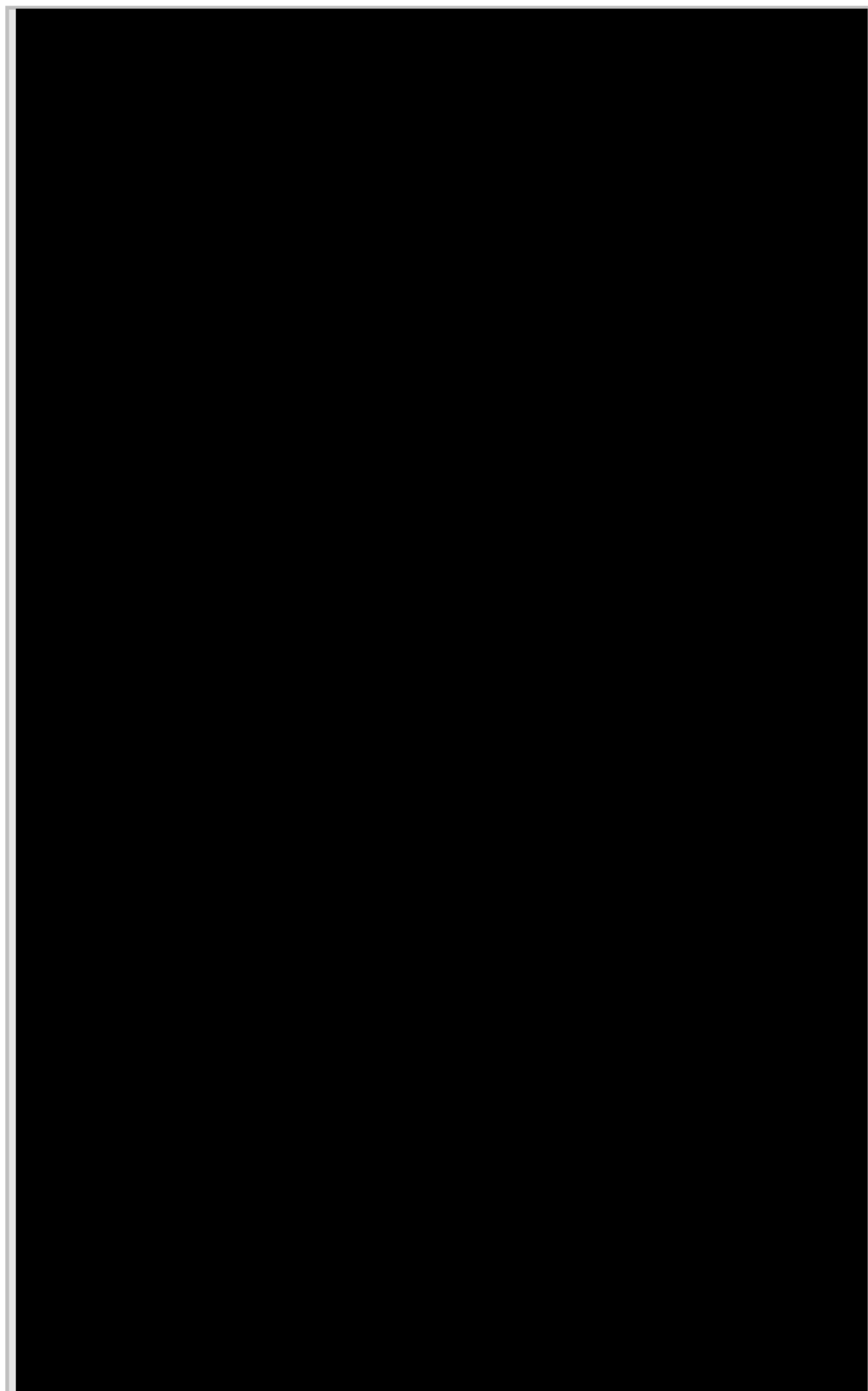
Item 42	Warranty Period for Deliverables:	
	Module 1 - Hardware Acquisition and Installation:	
	Specify Warranty Period, if other than 365 days:	Not applicable.
	Module 3 - Licensed Software:	
	Specify Warranty Period, if other than 365 days:	60 days.
	Module 4 - Development Services:	
	Specify Warranty Period, if other than 365 days:	60 days.
Module 12 - Systems Integration Services:		
	Specify Warranty Period, if other than 365 days:	Not applicable.
Item 43	The Customer's eProcurement Requirements	
	Specify whether Schedule 14 is to apply and specify supplier type (Standard, Solutions Supplier or Managed Vendor):	Not applicable.
Item 44	Notices (clause 1.2)	
	The Customer's contact details and Service Address:	
	(Insert details of the Customer's Representative)	
	Name:	
	Address:	
	Position:	
	Fax:	N/A
	Email:	
	The Contractor's contact details and Service Address:	
	Name:	
	Address:	Level 7, 50 Pitt Street, Sydney, NSW, 2000
	Position:	
	Fax:	N/A
	Email:	

Schedule 2 – Agreement Documents

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

All such documentation must be itemised in this Schedule 2 and listed below.







Schedule 3 – Product and Service List

Module 3 - Licensed Software

No.	Details to be included from Module 3 – Licensed Software	Agreement Details agreed by the Contractor and the Customer
C3.1	Licensed Software (clause 1.2 of Module 3)	
	Specify the Licensed Software to be provided:	As set out in the PIPP. The Licensed Software is comprised of the Units set out in the PIPP.
C3.2	Licence Period ((clause 1.2) of Module 3)	
	Specify if the Licence is not to be a perpetual licence and specify the term of the Licence:	Perpetual.
C3.3	Class of Licence (clause 2.1 of Module 3)	
	Specify the Class of Licence:	
	Specify the number of copies of the licensed software to be provided to the Customer:	The Contractor will supply 1 copy of the Licensed Software to the Customer.
C3.4	Licence Rights (clause 4.1 of Module 3)	
	Specify any additional licence rights that the Contractor must provide to the Customer:	Not applicable.
C3.5	Protection and Security of the Licensed Software (clause 7 of Module 3)	
	Specify if the Customer must maintain records of the location of all copies to the Licensed Software:	No.
C3.6	Designated Equipment and Location (clause 1 of Module 3)	
	Specify if the use of the Licensed Software is restricted to any Designated Equipment:	No. The Customer agrees that if it replaces the Designated Equipment, any replacement will have the equivalent minimum specification to the extent it is set out in the Contract Specifications.
	Specify if the Licensed Software may only be operated at specific locations:	No.
C3.7	Consequences of termination (clause 9 of Module 3)	
	Specify if the Customer is to destroy or return to the Contractor all copies of the Licensed Software and all related Documentation after the termination of the Licence:	Yes, subject to clause 9 of Module 3.
	Specify if the use of Licensed Software for archival purposes will be subject to any restrictions:	No.
C3.8	Reverse Engineering (clause 10 of Module 3)	
	Specify any specific rights the Customer has to reverse assemble or reverse compile the Licensed Software in addition to any rights the Customer may have under the Copyright Act (1968 (Cth):	No additional specific rights.

Module 4 - Development Services

No.	Details to be included from Module 4 – Development Services	Agreement Details agreed by the Contractor and the Customer
C4.1	Development Services (clause 1.2 of Module 4):	
	Specify the Services the Contractor is to perform to develop the Developed Software	As set out in the Contract Specifications (including an SOW for Development Services).
	Annex the implementation planning study (clause 4 of Module 4)	Not applicable.
	Annex the Project Implementation and Payment Plan (PIPP) (clause 6 of Module 4) specifying the Development Services the Contractor is to perform	
	Specify any additional Development Services the Contractor is to perform other than those detailed in the PIPP	As set out in the Contract Specifications (including an SOW for Development Services).
C4.2	Developed Software (clause 1.2 of Module 4):	
	Specify the Developed Software or Product to be created by the Contractor for the Customer	All Developed Software set out in the Contract Specifications (including an SOW for Development Services).
	Specify if the Customer is to own the Developed Software or Product	No.
C4.3	Designated Operating Environment (clause 1.2 of Module 4):	
	Specify the Designated Operating Environment in which the Developed Software is designed to be used	The Designated Equipment.
C4.4	Methodology for Software Development Procedure (clause 8 of Module 4):	
	Specify any additional methodologies, or any other requirements to those specified in clause 8, to be adhered to by the Contractor	As set out in the Contract Specifications.
C4.5	Source Code (clause 9 of Module 4):	
	Specify if the source code of Developed Software is not to be placed in escrow	Source Code is to be: (a) provided to the Customer (other than Developed Software which the Customer has agreed will become Licensed Software); and (b) placed into escrow.
	Specify if the Contractor must deliver to the Customer all the source code for software tools used in the development of the Developed Software required by the Customer to operate and support the Developed Software	Source code for the software tools is to be provided to the Customer and placed into escrow.
	Specify if the Contractor grants a licence to the Customer to use software tools, object libraries or other devices or methodologies for the purpose of maintaining and enhancing the Developed Software	Yes.

Module 5 – Software Support Services

No.	Details to be included from Module 5 – Software Support Services	Agreement Details agreed by the Contractor and the Customer
C5.1	Software Support Services (clause 1.2 of Module 5):	
	Specify the Software Support Services to be provided including, but not limited to, telephone support, e-mail and fax support, web-based support and on-site support	
	Specify the support period	From the Commencement Date until the next 30 June, and then for further periods of 1 year commencing on 1 July unless the Customer notifies the Contractor it does not require the Software Support Services at least 30 days prior to the end of the then current period.
	Specify the Support Service Fees	
	Specify Time and Materials rates for additional services	Not applicable.
	Specify the Support Software to be supported	The Licensed Software and the Developed Software.
	Annex the SLA (if any) that the Parties have agreed to in relation to the Software Support Services	See Part 6.
C5.2	Designated Equipment (clause 1.2 of Module 5):	
	Specify the Designated Equipment on which the Supported Software is to be installed and/or used	The Designated Equipment.
C5.3	Contract Period (clause 2 of Module 5):	
	Specify the period of the Software Support Services	See the definition of the support period in item C5.1 above.
C5.4	Commencement Date (clause 2 of Module 5):	
	Specify the Commencement Date of the Software Support Services	The Commencement Date.
C5.5	Additional Services (clause 3.4 of Module 5):	
	Specify any additional services to be provided that are	Not applicable.

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No.	Details to be included from Module 5 – Software Support Services	Agreement Details agreed by the Contractor and the Customer
	not included in Software Support Services	
	Specify Time and Materials rates	Not applicable.
C5.6	Service Levels (clause 7 of Module 5):	
	Specify any performance rebates for not meeting Service Levels, or reference any relevant Service Level Agreement provision	See Part 6.
C5.7	Updates and New Release (clause 8 of Module 5):	
	Specify any costs for New Releases:	Not applicable.
	Specify if the Contractor is to supply Updates and New Release during any Software Support Services and the costs (if any):	Yes, while the Software Support Services are provided. [REDACTED]
	Training - Specify any training the Contractor is to provide and the costs (if any) to enable the Customer and its Personnel to operate and Update or New Release:	As required by the Contract Specifications.
	Specify any installation costs - time and materials rates to be listed:	Not applicable.
	Specify any additional software that is not an Update or New Release and its cost:	Not applicable.

Schedule 4 – Statutory Declaration by Subcontractor

Oaths Act (NSW), 1900 Ninth Schedule

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

1. *[insert full subcontractor company name and its ACN/ABN]* ("the Declarant") has been selected as a subcontractor to, Tribal Group Pty Limited ACN 135 097 942 ("the Contractor") under an agreement between the Customer for and on behalf of the Crown in right of the State and the Contractor for the supply of the Deliverables to the Customer ("the Agreement").
2. The Declarant is aware of the terms and conditions as set out in the Agreement.
3. The Declarant offers to sub-contract on terms that will:
 - (e) be consistent with the standard terms and conditions of the Agreement; and
 - (f) enable compliance by the Contractor with clause 9.4 of the Agreement.
4. There are no reasons of which I am aware that would prevent a subcontract from being signed and performed in a manner that would allow the satisfactory and timely performance of any relevant Contractor responsibilities under the Agreement.

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

Declared at

the day of 20

Before me,

Schedule 5 – Expert Determination Procedure

EXPERT DETERMINATION

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

- (g) All submissions, responses, replies, requests and comments must be in writing. If a Party to the Agreement gives information to the expert, it must at the same time give a copy to the other Party.

5. Conference

- 5.1 The expert may request a conference with both Parties to the Agreement. The request must be in writing, setting out the matters to be discussed.
- 5.2 The Parties agree that such a conference is considered not to be a hearing that would give anything under this Expert Determination Procedure the character of arbitration.
- 6. In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.

7. Questions to be determined by the Expert

- 7.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
 - (a) Is there an event, act or omission that gives the claimant a right to compensation under the Agreement:
 - (i) for damages for breach of the Agreement, or
 - (ii) otherwise in law?
 - (b) If so:
 - (iii) what is the event, act or omission?
 - (iv) on what date did the event, act or omission occur?
 - (v) what is the legal right which gives rise to the liability to compensation?
 - (vi) is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
 - (c) In the light of the answers to clause 7.1(a) and (b) of this Expert Determination procedure:
 - (vii) What compensation, if any, is due from one party to the other and when did it fall due?
 - (viii) What interest, if any, is due when the expert determines that compensation?
- 7.2 The expert must determine for each issue any other questions required by the Parties, having regard to the nature of the issue.
- 8. The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 9. If the expert determines that one Party must pay the other an amount exceeding the amount specified in Agreement Details (calculating the amount without including interest on it and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 10. Unless a Party has a right to commence litigation under clause 9 of this Expert Determination Procedure:
 - (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 28 days.

11. Role of Expert

11.1 The expert:

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

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

Schedule 6 – Confirmation of Insurances

Insurer:

Contractor:

Tribal Group Pty Limited ACN 135 097 942 (The Insured)

Re: Agreement for the provision of Student Admin and Learning Management System

between the Insured and

Technical and Further Education Commission

It is confirmed that:

1. The Insured has obtained the following policies (the Insurance Policies)

(a) A public liability policy to the value of \$AUD

(the Limit of Indemnity) in respect of each claim;

(b) A products liability policy to the value of \$AUD

for the total aggregate liability for all claims arising out of the Insured's products for the period of cover.

(c) Professional Indemnity Insurance to the value of \$AUD

Expiry

/ 20

(d) Workers Compensation Insurance

2. The insurance policies conform with the requirements of clause 4.1 of Part 2 between the Customer and the Insured.

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

Specify below any exclusions for the Insurance Policies.

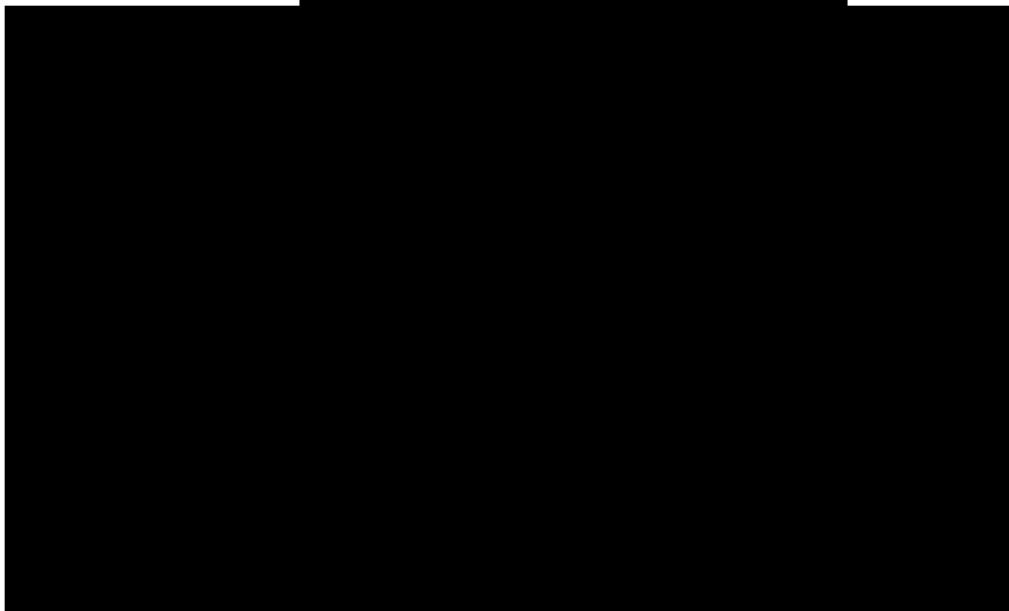
Signature of authorised representative of Insurer/Broker

Print name

Position

Date

Schedule 7 –



Schedule 8

[REDACTED]

Schedule 9 – Deed of Confidentiality

Deed of Agreement dated the day of 20

Between ('the Disclosing Party')

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

RECITALS:

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

What is agreed:

1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals.

2. Interpretation

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

"Agreement" means the agreement between the Customer and the Contractor for the supply of the Deliverables dated [insert date].

"Confidential Information" means information that

- (a) is by its nature confidential; or
- (b) is communicated by the Disclosing Party to the Confidant as confidential; or
- (c) the Confidant knows or ought to know is confidential; and
- (d) includes but is in no way limited to:
 - (i) the Deliverable;
 - (ii) materials including the financial, the corporate and the commercial information of the Disclosing Party;
 - (iii) any material which relates to the affairs of a third party;

- (iv) information relating to the strategies, practices and procedures of the State and any information in the Contractor's possession relating to the State public service,

but does not include anything which the Confidant establishes:

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

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

"Contractor" means Tribal Group Pty Limited ACN 135 097 942.

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

"Customer" has the same meaning as in the Agreement.

"Customer's Materials" means any documentation, information or material supplied by or on behalf of the Customer to the Confidant.

"Express Purpose" means the Confidant performing the obligations under the Agreement.

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

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

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

"State" means the State of New South Wales.

3. General

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

3.1.2 A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, reenacted 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.

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

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

- 3.1.5 A word which suggests one gender includes the other gender.
- 3.1.6 If a word is defined, another part of speech of that word has a corresponding meaning.

4. Non disclosure

- 4.1.1 The Confidant must not disclose the Confidential Information to any person without the prior written consent of the Disclosing Party.
- 4.1.2 The Disclosing Party may grant or withhold its consent in its discretion.
- 4.1.3 If the Disclosing Party grants its consent, it may impose conditions on that consent, including a condition that the Confidant procures the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the Confidential Information.
- 4.1.4 If the Disclosing Party grants consent subject to conditions, the Confidant must comply with those conditions.
- 4.1.5 Despite clause 4.1.1 of this Deed, the Confidant may disclose the Confidential Information to its directors, officers, employees, and contractors ("permitted recipients") where such disclosure is essential to carrying out their duties owed to the Disclosing Party or in accordance with this Deed.
- 4.1.6 Before disclosing the Confidential Information to a permitted recipient, the Confidant will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 4.1.7 The Confidential Information must not be copied or reproduced by the Confidant or the permitted recipients without the expressed prior written permission of the Disclosing Party, except as for such copies as may be reasonably required for the purposes of this Deed.
- 4.1.8 The Disclosing Party may at any time require the Confidant to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.
- 4.1.9 If any person being any director, officer, contractor or employee of the Confidant, who has had access to the Confidential Information in accordance with this clause leaves the service or employ of the Confidant then the Confidant will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Confidant, would be a breach of the obligations of the Confidant under this Deed.
- 4.1.10 The requirements of this Deed do not affect the obligation of the Confidant to disclose any Confidential Information where it is required to be disclosed at law.

5. Restriction on use

- 5.1.1 The Confidant must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Disclosing Party use the Confidential Information for any purpose other than the Express Purpose.
- 5.1.2 The Confidant must, unless otherwise authorised by the prior written consent of the Disclosing Party:
 - (a) treat as confidential and secret all of the Confidential Information which the Confidant has already acquired or will acquire from the Disclosing Party;

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

6. Survival

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

7. Rights of the Disclosing Party

7.1 Production of Documents

7.1.1 The Disclosing Party may demand the delivery up to the Disclosing Party of all documents in the possession or control of the Confidant containing the Confidential Information.

7.1.2 The Confidant must immediately comply with a demand under this clause 6.

If the Disclosing Party makes a demand under clause 7 of this Deed, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose the Disclosing Party or control they lie.

7.1.4 In clause 7 of this Deed, "documents" includes any form of storage of information, whether visible to the eye or not.

7.1.5 Legal Proceedings. The Disclosing Party may take legal proceeding against the Confidant or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

8. Indemnity and release

8.1.1 The Confidant is liable for and agrees to indemnify and keep indemnified the Disclosing Party in respect of any claim, damage, loss, liability, cost, expense, or payment which the Customer suffers or incurs as a result of:

- (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 Confidant or the permitted recipients other than in accordance with this Deed.

9. 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.

10. Waiver

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

11. Remedies cumulative

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

12. 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.

13. Applicable law

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

14. Notices

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

EXECUTED AS A DEED

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

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

for and on behalf of the Technical and Further Education Commission

but not so as to incur any personal liability.

Signature of Disclosing Party

Signature of Witness

Print name

Print name

Signed, sealed and delivered by

In the presence of

Signature of Confidant

Signature of Witness

Print name

Print name

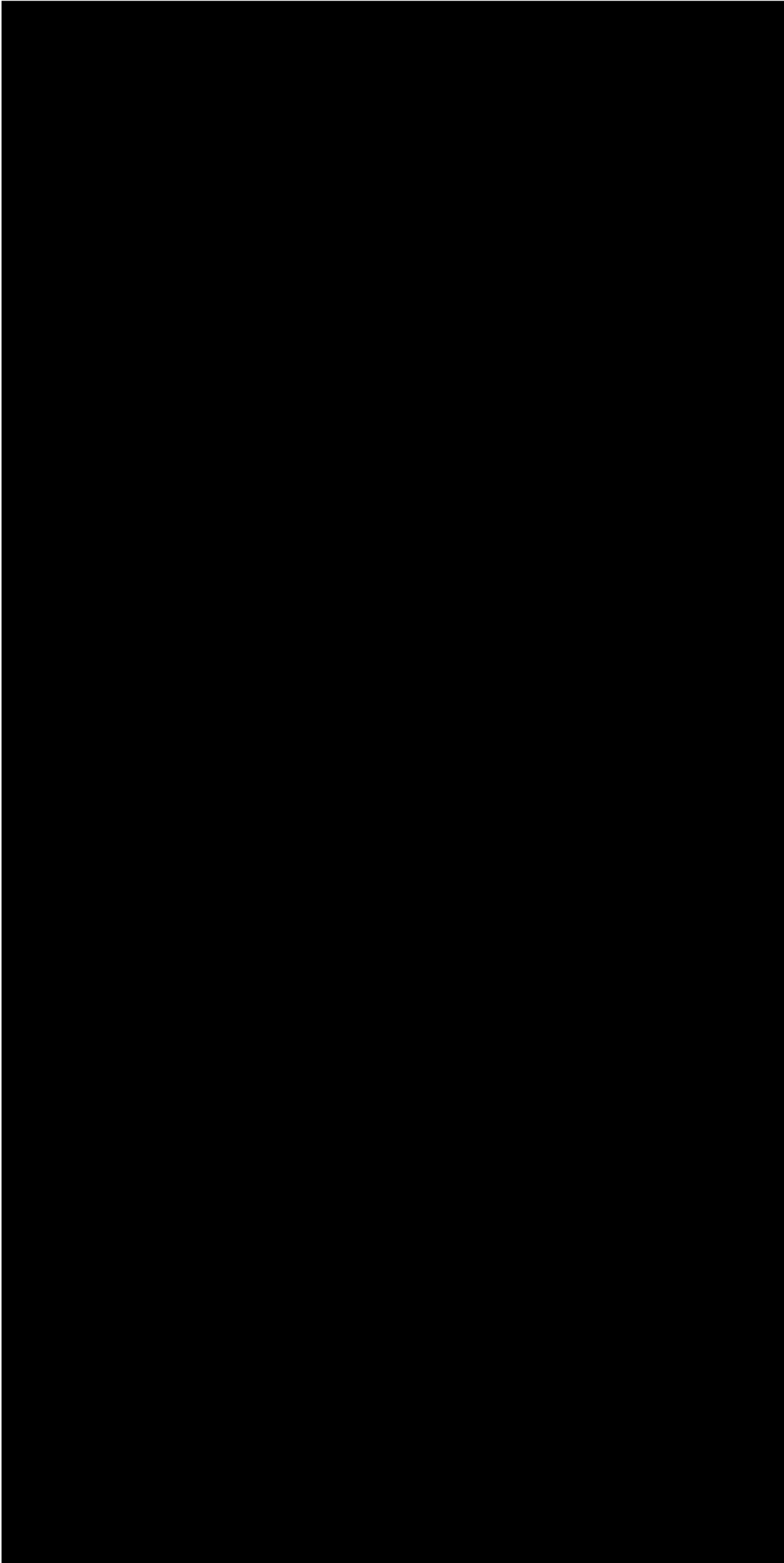
Schedule 10 – Privacy

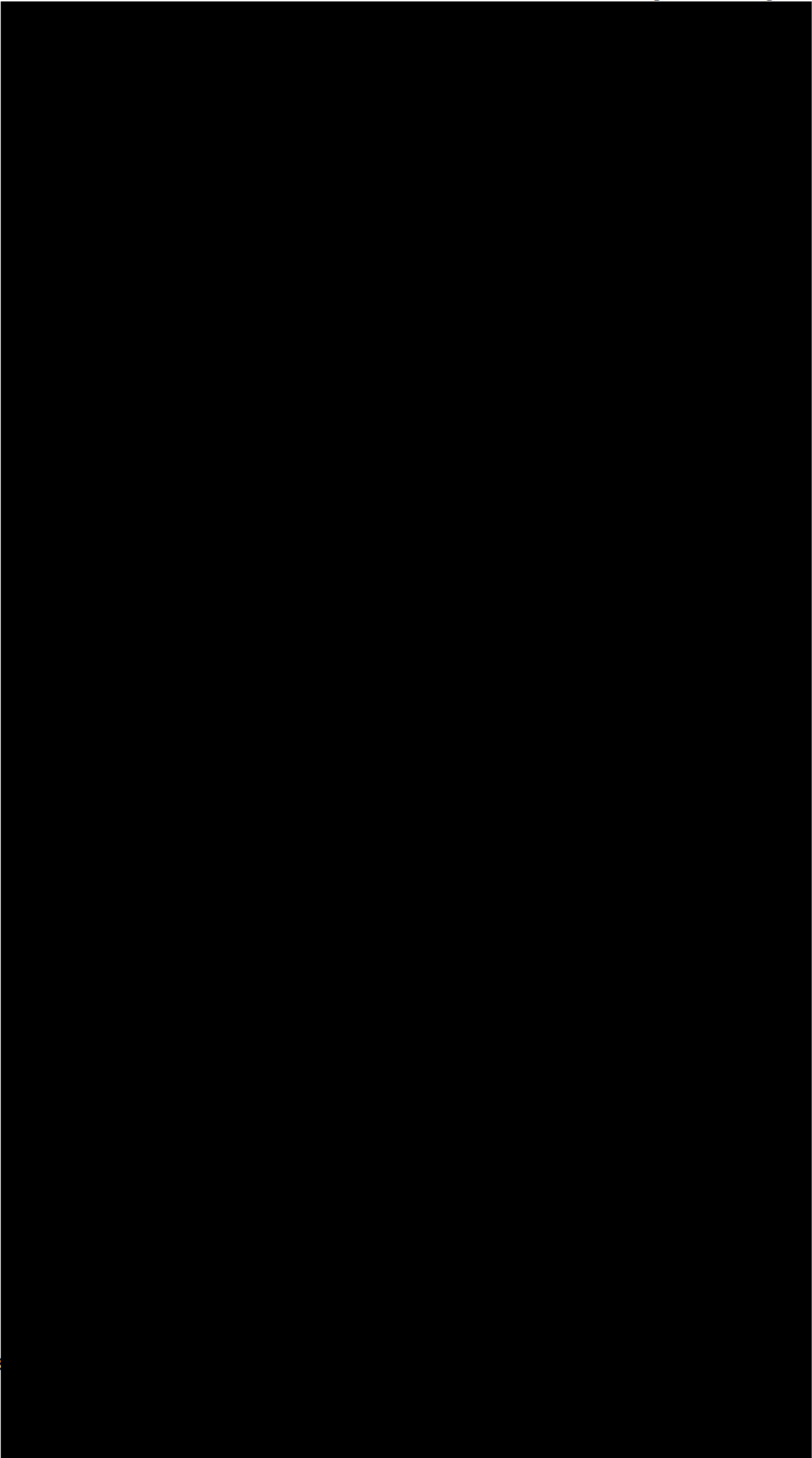
CONTRACTOR'S PRIVACY OBLIGATIONS

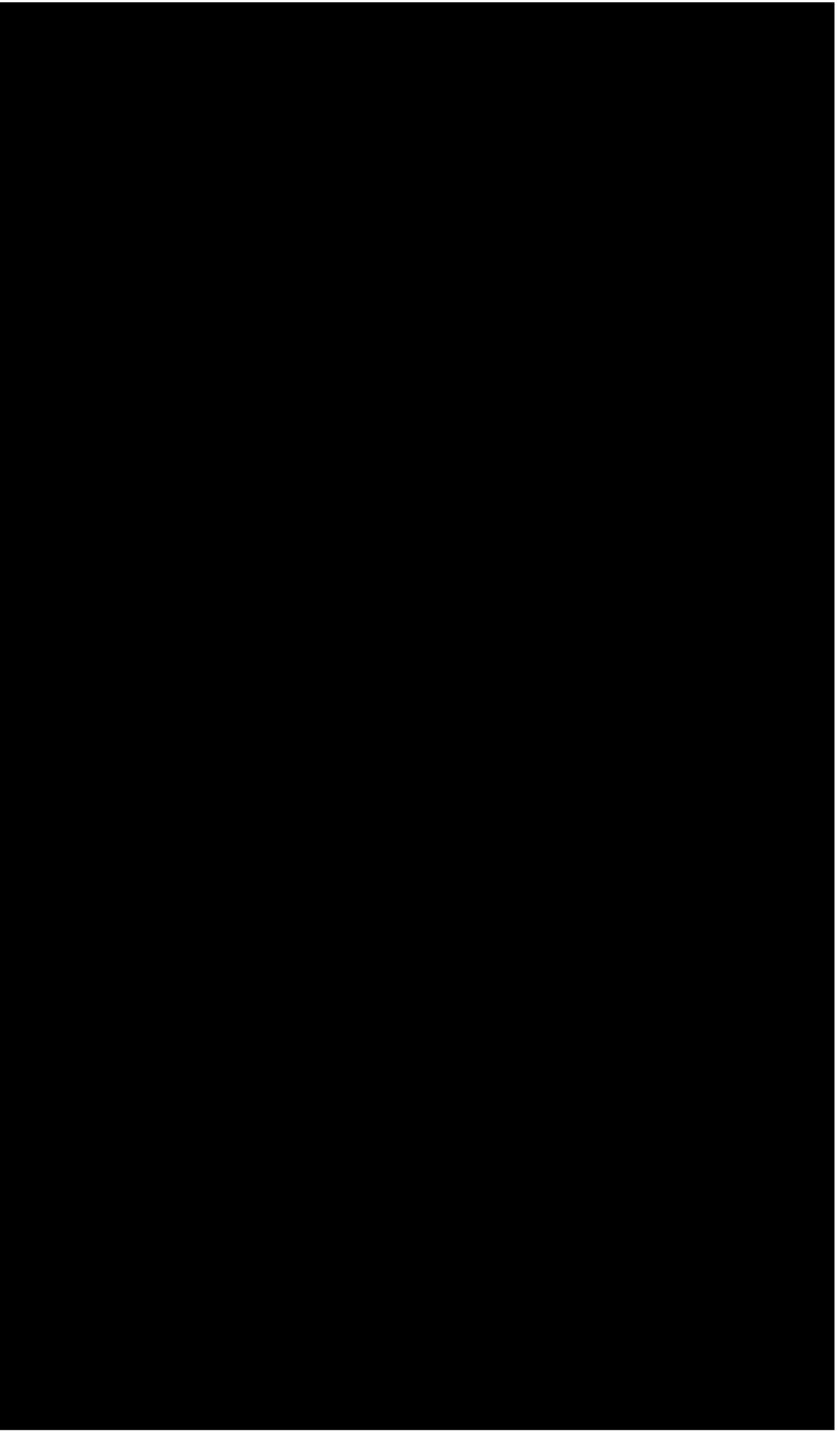
Pursuant to clause 6.2 of Part 2, the Contractor agrees:

1. to use, access or retain Personal Information obtained during the course of providing the Deliverables under the Agreement only for the purpose of the Agreement, unless required by law;
2. to ensure the Personal Information is protected against loss and against unauthorised access, use, modification or disclosure and against other misuse;
3. not to disclose Personal Information without the written agreement of the Customer, unless required by law;
4. not to transfer Personal Information outside Australia without the prior written agreement of the Customer;
5. to destroy or permanently de-identify Personal Information as soon as it is no longer required for the purposes of the Agreement;
6. in relation to Personal Information obtained during the course of providing Deliverables under the Agreement, not to do any act or engage in any practice that would breach an Information Privacy Principle, or which if done or engaged in by the Customer, would be a breach of that IPP;
7. in relation to Personal Information obtained during the course of providing the Deliverables under the Agreement, to comply with, carry out and discharge to the maximum extent possible, the obligations contained in the IPP's as if it were the Customer carrying out and discharging those obligations;
8. to immediately notify the Customer if it becomes aware that a disclosure of Personal Information is, or may be required, by law;
9. to notify the Customer immediately upon becoming aware of a breach or possible breach of any of the obligations contained in or referred to in this Schedule, whether by the Contractor or its Personnel;
10. with the prior written consent of the Customer, to notify the individuals affected, that complaints about acts or practices in relation to such individuals' Personal Information may be investigated by the Privacy Commissioner;
11. to comply with all reasonable written directions of the Customer in relation to the care and protection of Personal Information held in connection with the Agreement and in addition thereto, take all reasonable measures to ensure that such information is protected against loss, unauthorised access or use, modification or disclosure and against other misuse;
12. to ensure that only the Contractor's Personnel have access to Personal Information;
13. to ensure that any Personnel of the Contractor who is required to deal with the Personal Information for the purposes of the Agreement is made aware of the obligations of the Contractor under this Schedule; and
14. to ensure that any other agreement with any subcontractor who may be fulfilling a requirement in relation to the Agreement which includes the handling of Personal Information, contains the same or equivalent obligations to this Schedule which are enforceable by the Contractor against the Approved Party or the subcontractor, as applicable.

Schedule 11 –



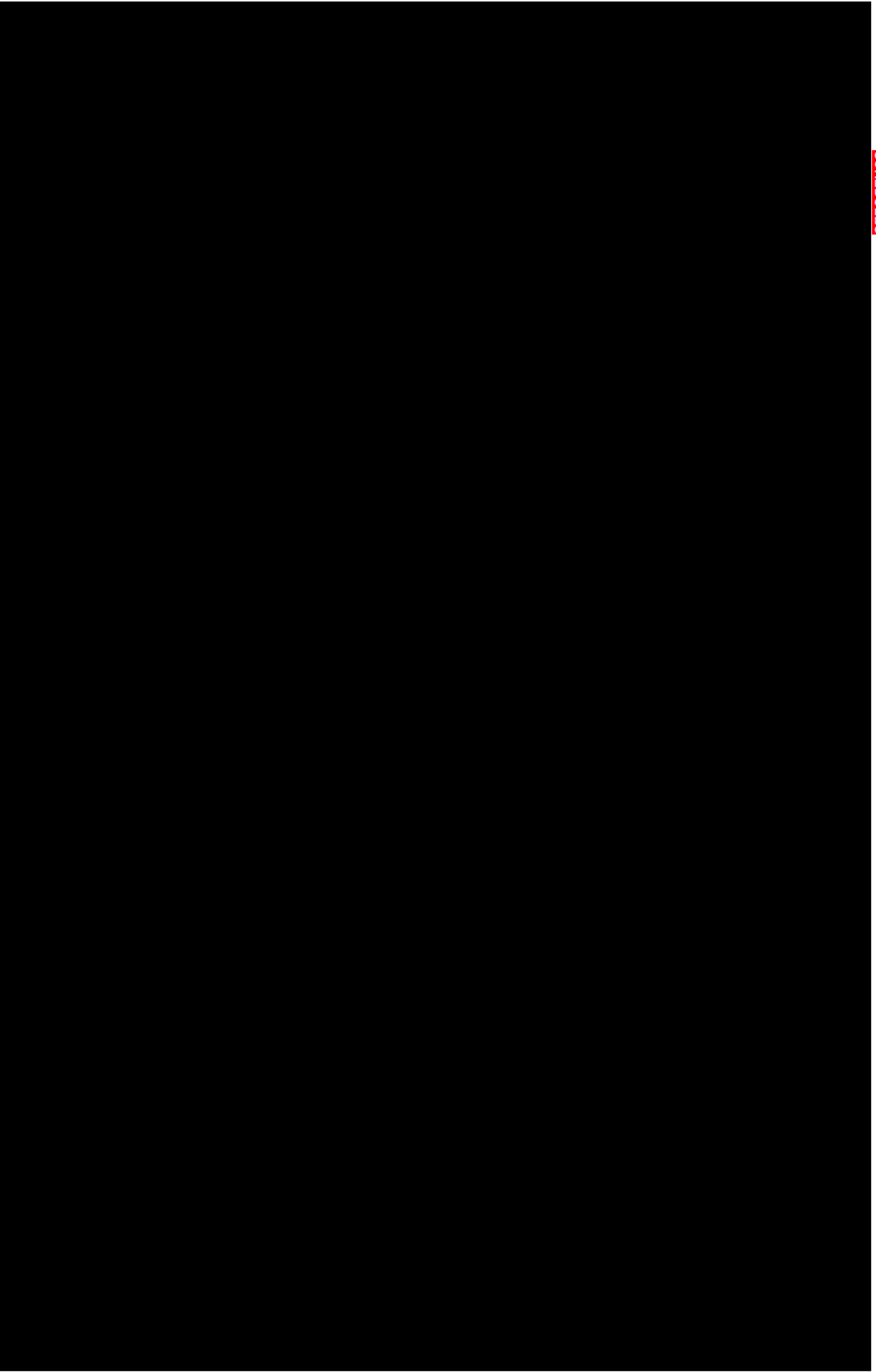




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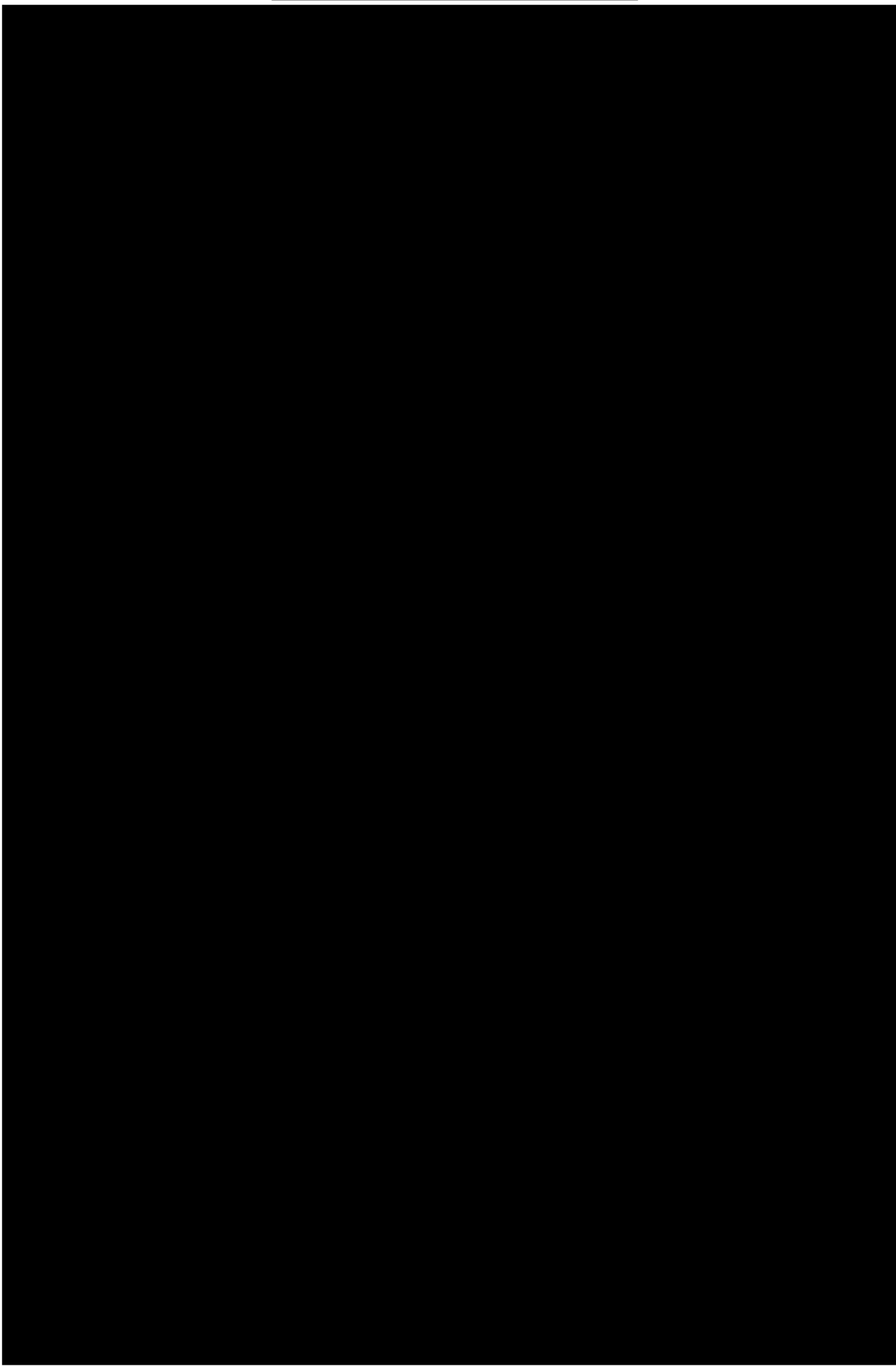
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Schedule 12 –



Schedule 13 – Risk Management

Not applicable.

Schedule 14 – eProcurement Requirements

Not applicable.

PART 5 - MODULES

Module 03 Licensed Software

1. INTERPRETATION

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

1.2 In this Module 3, unless the contrary intention appears:

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

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

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

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

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

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

“**Warranty Period**” means for Licensed Software, 60 days after the AAD.

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

2. SCOPE OF LICENCE

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

2.2 Subject to clause 4.1(f) of this Module 3 the Licence granted to the Customer is non transferable.

3. CONTRACTOR'S RIGHTS IN THE LICENSED SOFTWARE

- 3.1 The Customer acknowledges that ownership in the Licensed Software does not pass to the Customer and the Customer may use the Licensed Software only in accordance with the Agreement.
- 3.2 The Customer agrees that it will not:
- (a) use the Licensed Software contrary to the provisions of clauses 4, 6 or 12 of this Module 3; or
 - (b) do anything that would prejudice the Contractor's right, title or interest in the Licensed Software except in accordance with its rights under the Agreement.

4. LICENCE RIGHTS

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

5. WARRANTY

- 5.1 The Contractor warrants that at all times during the Warranty Period each item of Licensed Software supplied under the Agreement is interoperable with, compatible with and functions with each other item of Licensed Software supplied under the Agreement.

6. WARRANTY PERIOD

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

7. PROTECTION AND SECURITY OF THE LICENSED SOFTWARE

- 7.1 The Customer will:

- (a) if and to the extent required by the Agreement, maintain records of the location of all copies of the Licensed Software;
 - (b) refrain from altering or removing a copyright statement or other notice of ownership of Intellectual Property rights which accompanies the Licensed Software; and
 - (c) ensure that, prior to the disposal of any media, any Licensed Software contained on it has been erased or destroyed.
- 7.2 The Customer will upon reasonable written notice from the Contractor allow the Contractor to make investigations in any reasonable manner to verify the Customer's compliance with the Licence.
- 8. **TERMINATION**
- 8.1 The Customer may terminate the Licence for convenience by providing the Contractor with 30 days prior Notice in Writing of its intention to terminate the Licence, in which case no refund will be available.
- 8.2 Unless earlier terminated in accordance with the Agreement or otherwise surrendered by the Customer, the Licence remains in force for the duration of the Licence Period.
- 9. **CONSEQUENCES OF TERMINATION OF LICENCE**
- 9.1 If specified in the Agreement, the Customer will after termination of the Licence destroy or return to the Contractor all copies of the Licensed Software and all related Documentation, save that the Customer may retain a copy of the Licensed Software and its related Documentation as may be reasonably required by the Customer to comply with any relevant Laws or for the purposes of any dispute.
- 9.2 The Customer's obligation to make any payments under the Agreement for use of the Licensed Software shall cease after the date of termination or revocation of the Licence.
- 10. **REVERSE ENGINEERING**
- 10.1 Subject to the Agreement, the Customer shall not, in contravention of the Copyright Act 1968 (Cth), reverse assemble or reverse compile the Licensed Software in whole or in part.
- 11. **SURVIVAL OF LICENCES**
- 11.1 Unless the Agreement is terminated by the Contractor for breach of the licence conditions by the Customer, the licences granted by the Contractor under the Agreement survive termination or expiration of the Agreement.
- 12. **SOFTWARE INTERFACES**
- 12.1 From time to time, the Customer may request Interface Specifications for the Licensed Software and the Contractor will provide the Interface Specifications for that Licensed Software within a reasonable time.
- 12.2 The Contractor must keep the Interface Specifications up to date at all times to reflect the version of the Licensed Software supplied to the Customer.
- 12.3 In this clause, "**Interface Specifications**" in relation to Licensed Software means sufficient information about that Licensed Software for the Customer or another person engaged by the Customer to develop software which interfaces with that Licensed Software and includes a database schema and applications program interfaces.
- 13. **DIVESTMENT**

- 13.1 Where a NSW Government Body (or part of that NSW Government Body) (**Divested Entity**) ceases to meet the definition of NSW Government Body, the Customer may, in its absolute discretion:
- (a) permit the Divested Entity to continue to use the Licensed Software for a period of 24 months with no additional payment to the Contractor (and during this period the Divested Entity will be treated as if it were still a NSW Government Body);
 - (b) transfer licences to the Divested Entity;
 - (c) permit continued use under paragraph (a), and then transfer licences under paragraph (b); or
 - (d) take none of the above actions (and all licence rights will remain with the Customer).

14. **AVAILABILITY TO OTHER PARTIES**

- 14.1 The Contractor will, if and to the extent directed by the Customer from time to time, make the licensing arrangements (including pricing) under this Agreement available to New South Wales headquartered private schools, registered training organisations and universities, on the same terms as this Agreement. For clarity, any arrangements entered under clause 14 of this Module 3 will be separate contracts and the Customer has no liability for those contracts.

15. **TRANSFER OF LICENCE RIGHTS**

- 15.1 Where the Customer novates this Agreement in part to another NSW Government Body in accordance with clause 17.3 of Part 2, the Customer may determine in its absolute discretion how to allocate licence rights to the Licensed Software to the relevant NSW Government Body, including the allocation of Purchased EFTSUs. The Customer may then from time to time further reallocate licence rights between this Agreement and another Agreement between the Contractor and a NSW Government Body.
- 15.2 At any time, the Customer may novate to DoE COTS Applicable licence rights to the Licensed Software. This may include the novation of Purchased EFTSUs and associated Support Services Fees that have been paid in advance. The Contractor will consent to this novation.

16. **SOFTWARE LOCKS**

- 16.1 The Contractor warrants that the Licensed Software does not contain Software Locks except solely as necessary to restrict execution of functionality for which the Customer is not licensed. For example, the Contractor warrants that there are no Software Locks in the Licensed Software which apply after a particular time, or limit the number of users or EFTSUs or apply to particular hardware or platform software. The Contractor will immediately provide to the Customer all information necessary to de-activate a Software Lock which does not comply with this clause (in relation to any period required by the Customer).
- 16.2 In this clause, a “**Software Lock**” means a mechanism (including a software lock or software key), the purpose of which is to disable or reduce the functionality or performance of all or any part of the Licensed Software, but does not include a security mechanism over which the Customer has unconditional control.

Module 04 Development Services

1. INTERPRETATION

1.1 The terms and conditions included in this Module 4 form part of the Agreement and apply for the provision of Development Services.

1.2 In this Module 4, unless the contrary intention appears:

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

“**Design Specification**” means the specification to be provided in accordance with clause 7 of this Module 4.

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

“**Developed Software**” means the software solution or Product specified in the Contract Specifications to be created by the Contractor for the Customer.

“**Development Services**” means the Services specified in the Contract Specifications and provided by the Contractor to develop the Developed Software.

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

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

“**Warranty Period**” means for the Developed Software, the first 60 days after the AAD.

1.3 Other capitalised words and expressions used in this Module 4 are contained in Part 3 of the Agreement.

2. PERIOD OF SERVICES

The Customer may, from time to time, during the Term order Development Services from the Contractor in accordance with the Contract Specifications.

3. DEVELOPMENT SERVICES

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

4. IMPLEMENTATION PLANNING STUDY

- 4.1 The Contractor shall prepare an implementation planning study in accordance with clause 11.7 of Part 2.

5. TIME

- 5.1 The Contractor must perform the Development Services at the times and in the manner set out in the Contract Specifications.

6. SCOPE AND INCLUSIONS

- 6.1 The Contractor must in accordance with the Contract Specifications implement all activities set out in the Contract Specifications for the performance of the Development Services and perform any other Services specified in the Agreement.

- 6.2 The Contract Specifications for the Development Services may include but is not limited to the following Stages:

- (a) assessment and definition of the:
 - (i) the Customer's existing system or the Designated Operating Environment, if necessary;
 - (ii) the Customer's goals, requirements and expectations in respect of the Developed Software which shall include a statement of:
 - (A) the Contractor's understanding of the Customer's and/or user's experience and requirements in relation to the Developed Software;
 - (B) the objectives to be met by the Contractor; and
 - (C) the scope of the Developed Software;
 - (iii) required Deliverables;
 - (iv) resources required (including any resources to be made available by the Customer); and
 - (v) complexity of the project;
- (b) a feasibility study in which the Contractor makes the determination (and includes any appropriate recommendations) as to whether the Contractor's Development Services proposals are capable of meeting the Customer and/or User's needs and expectations taking into account budgetary, operational, technical and time considerations;
- (c) development of a strategy for the creation of the Developed Software that is appropriate for the Customer's needs and its user population covering all appropriate planning and timetabling issues associated with the Development Services including:
 - (i) identification of the Services to be performed, including any applicable Software Support Services;
 - (ii) identification and procurement of necessary Products, including any additional software to be licensed;
 - (iii) allocation of responsibilities within each Party's organisation;
 - (iv) staging of the project;
 - (v) development of a Milestones and payment schedule; and
 - (vi) implementation of the Services;
- (d) Development of a Design Specification for the Developed Software which shall be completed and approved in accordance with clause 7 of this Module 4;
- (e) Development of the Developed Software (including prototyping if applicable) in accordance with the methodology in clause 8 of this Module 4;

- (f) Testing and acceptance of the Developed Software in accordance with clause 10.5 of Part 2.

7. DESIGN SPECIFICATION

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

8. METHODOLOGY

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

- (iv) review of corrective measures, to determine their effectiveness; and
- (v) provision for ensuring that timely corrective action is taken by reviewing deficiencies and tracking their clearance;
- (g) include a Quality Assurance and reporting program that is carried out through each stage of the design and development of the Developed Software and involves continually monitoring and assessing the quality of the Developed Software against criteria set out in the Contract Specifications, as well as requirements traceability back to the Customer's requirements; and
- (h) adhere to any other requirements specified in the Agreement including the software development process specification in the Contract Specifications.

9. SOURCE CODE

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

10. WARRANTY PERIOD FOR THE DEVELOPED SOFTWARE

- 10.1 The Contractor will promptly rectify any Defect in the Developed Software that occurs during the Warranty Period in accordance with the Service Level Agreement.

11. CONTRACTOR'S WARRANTIES

- 11.1 The Contractor warrants that it will comply with all licensing terms and conditions regulating the use of any software or development tools in providing the Development Services.
- 11.2 Where the ownership of the Developed Software passes to the Customer, the Contractor warrants that it will:
- (a) neither permit or tolerate the making of any copies of the Developed Software without first obtaining the Customer's consent;

- (b) institute measures within the Contractor's organisation to prevent the making or use of unauthorised copies of the Developed Software which must include detection measures to verify compliance and appropriate disciplinary action against the Contractors' Personnel for the contravention of these measures; and
- (c) inform its Personnel of their legal responsibilities in relation to the protection and use of the Developed Software.

12. INTELLECTUAL PROPERTY RIGHTS IN DEVELOPED SOFTWARE

- 12.1 As between the Customer and the Contractor, Intellectual Property rights in Developed Software belong to the Contractor as soon as they come into existence.
- 12.2 The Customer makes no representation about Intellectual Property Rights in the Developed Software (including whether the Contractor would require any licences from other parties to exercise Intellectual Property Rights in the Developed Software).
- 12.3 The Contractor grants, and will ensure relevant third parties grant, to the Customer a non-exclusive and perpetual licence (including the right to sub-licence) without additional cost to the Customer, to exercise Intellectual Property rights in the Developed Software.
- 12.4 The Contractor must not (itself and ensure that the Contractor Group does not) commercialise (whether by assignment, licensing or provision of a service) any Developed Software without the consent of the Customer which it may grant or withhold in its absolute discretion.

13. INCORPORATION OF DEVELOPED SOFTWARE INTO LICENSED SOFTWARE

- 13.1 The Contractor may, with the consent of the Customer, incorporate the Developed Software (or part of the Developed Software) into the Licensed Software. In that event, the Contractor must maintain and support it as part of the Licensed Software. The Developed Software then becomes Licensed Software for the purposes of this Agreement except that the Contractor will not charge the Customer or any other NSW Government Body a licence fee in respect of that Licensed Software.
- 13.2 Where the Contractor fails to maintain and support the Developed Software as part of the Licensed Software, the Intellectual Property in the Developed Software (or the relevant part of the Developed Software) is assigned to the Customer.

Module 05 Software Support Services

1. INTERPRETATION

1.1 The terms and conditions included in this Module 5 form part of the Agreement and apply for the provision of Software Support Services.

1.2 In this Module 5, unless the contrary intention appears:

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

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

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

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

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

“Supported Software” means the Licensed Software and the Developed Software, including any Updates, New Releases, modifications, enhancements and any material relating to the Supported Software such as, but not limited to, Documentation, flow charts, logic diagrams and listings.

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

1.3 Other capitalised words and expressions used in this Module 5 are defined in Part 3 of the Agreement.

2. PERIOD OF SERVICES

2.1 The Software Support Services must be provided for the period specified in the Agreement unless earlier terminated in accordance with the provisions thereof. The Software Support Services shall commence at the expiry of the relevant Warranty Period for the Supported Software unless otherwise stipulated to the contrary in the Agreement. Defect correction and the implementation of Updates and New Releases will be provided for no additional charge during the Warranty Period unless otherwise specified in the Agreement.

3. SOFTWARE SUPPORT SERVICES

- 3.1 The Contractor must provide the Software Support Services in accordance with the Agreement. The Software Support Services must be provided by personnel located in Australia, New Zealand, Philippines, and England with Software Support Services to be provided by personnel located in Australia between 8am and 6pm on Business Days.
- 3.2 The Contractor agrees that the Software Support Services must as a minimum ensure that the:
- (a) Supported Software conforms to and performs in accordance with the Contract Specifications;
 - (b) Supported Software complies with clause 7.4 of Part 2 at all times;
 - (c) Supported Software performs in accordance with the Service Levels; and
 - (d) Documentation is provided in accordance with the Agreement.
- 3.3 Software Support Services do not include correction of:
- (a) Defects or errors caused by the operation of the Supported Software or the Designated Equipment in a manner contrary to the Contract Specifications;
 - (b) Defects or errors caused by modifications or alterations of the Supported Software not authorised by the Contractor;
 - (c) Defects or errors caused by equipment maintenance not provided by the Contractor;
 - (d) Defects or errors caused by computer programs other than the Supported Software; and
 - (e) Data Correction.
- 3.4 Any additional services provided that are not included in Software Support Services supplied by the Contractor may be supplied on a Time and Materials basis.
- 3.5 The Contractor will comply with Annexure A (- Maintenance Model).

4. THE CUSTOMER'S OBLIGATIONS

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

5. DEFECTS

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

6. DEFECT LOGGING

- 6.1 On receipt of notice of a Defect by the Customer under clause 5.1 of this Module 5, the Contractor must assign an identification number to the Defect, which will be used by the Parties to identify the Defect.
- 6.2 The Contractor must maintain an accurate Problem Log for the period of the Software Support Services of all reported Defects and provide the Customer with a call tracking number for problem identification and follow-up.

7. SERVICE LEVELS

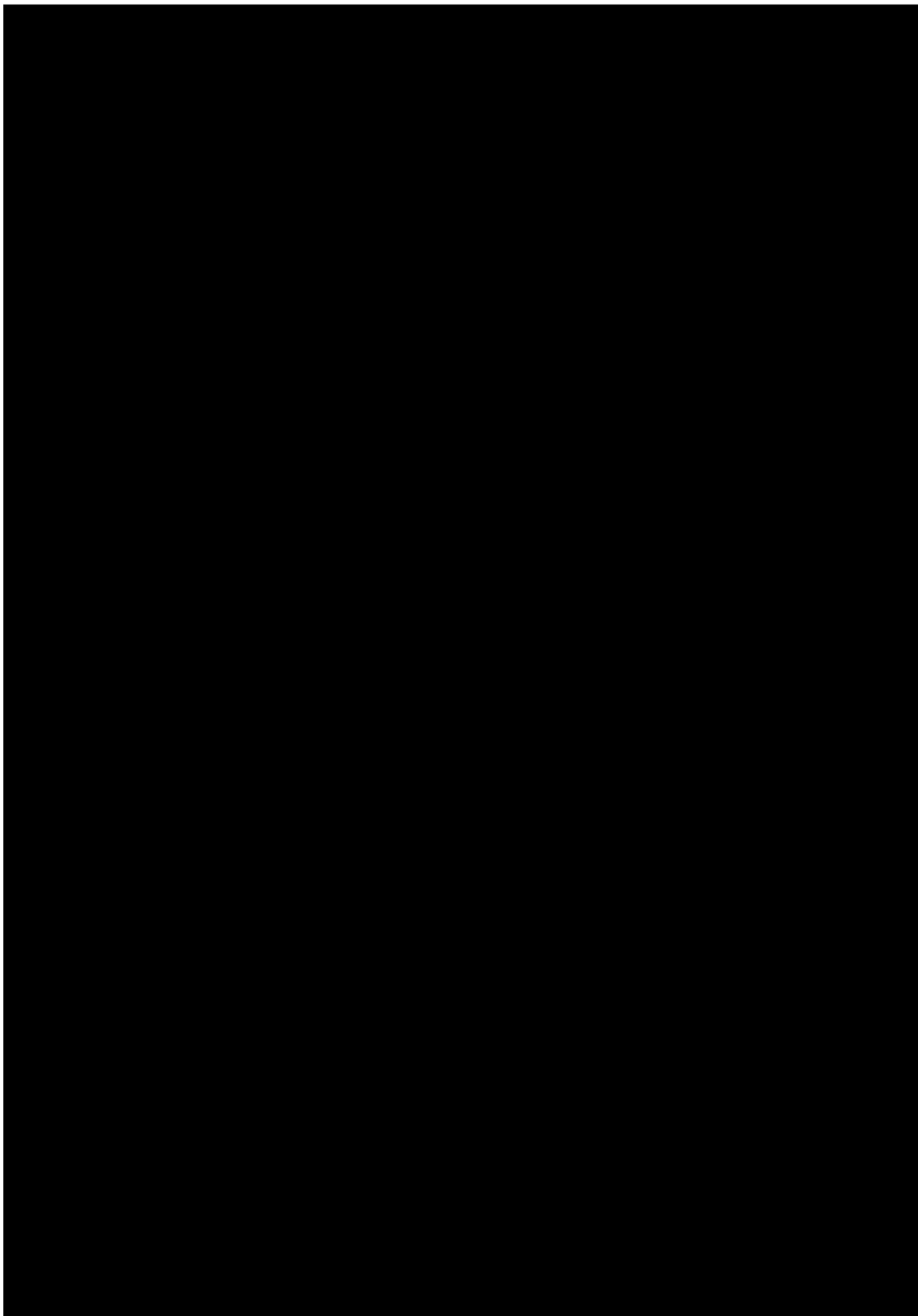
- 7.1 If the Contractor does not achieve the required minimum Service Levels, then the Customer shall be entitled to any performance rebates specified in the Service Level Agreement or the Agreement.
- 7.2 The Customer may conduct a review of the Service Levels targets on an annual basis or as otherwise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

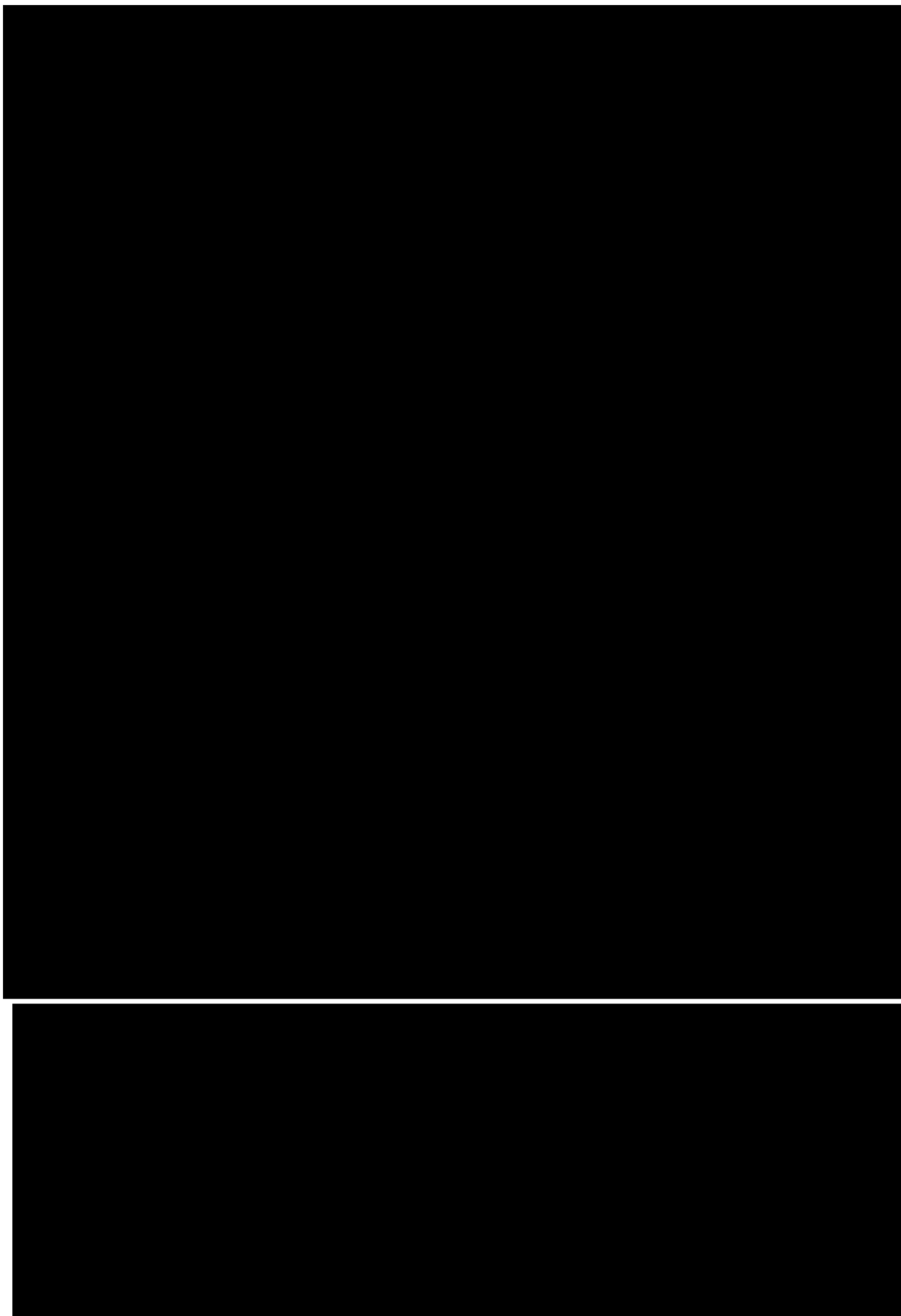
8. UPDATES AND NEW RELEASES

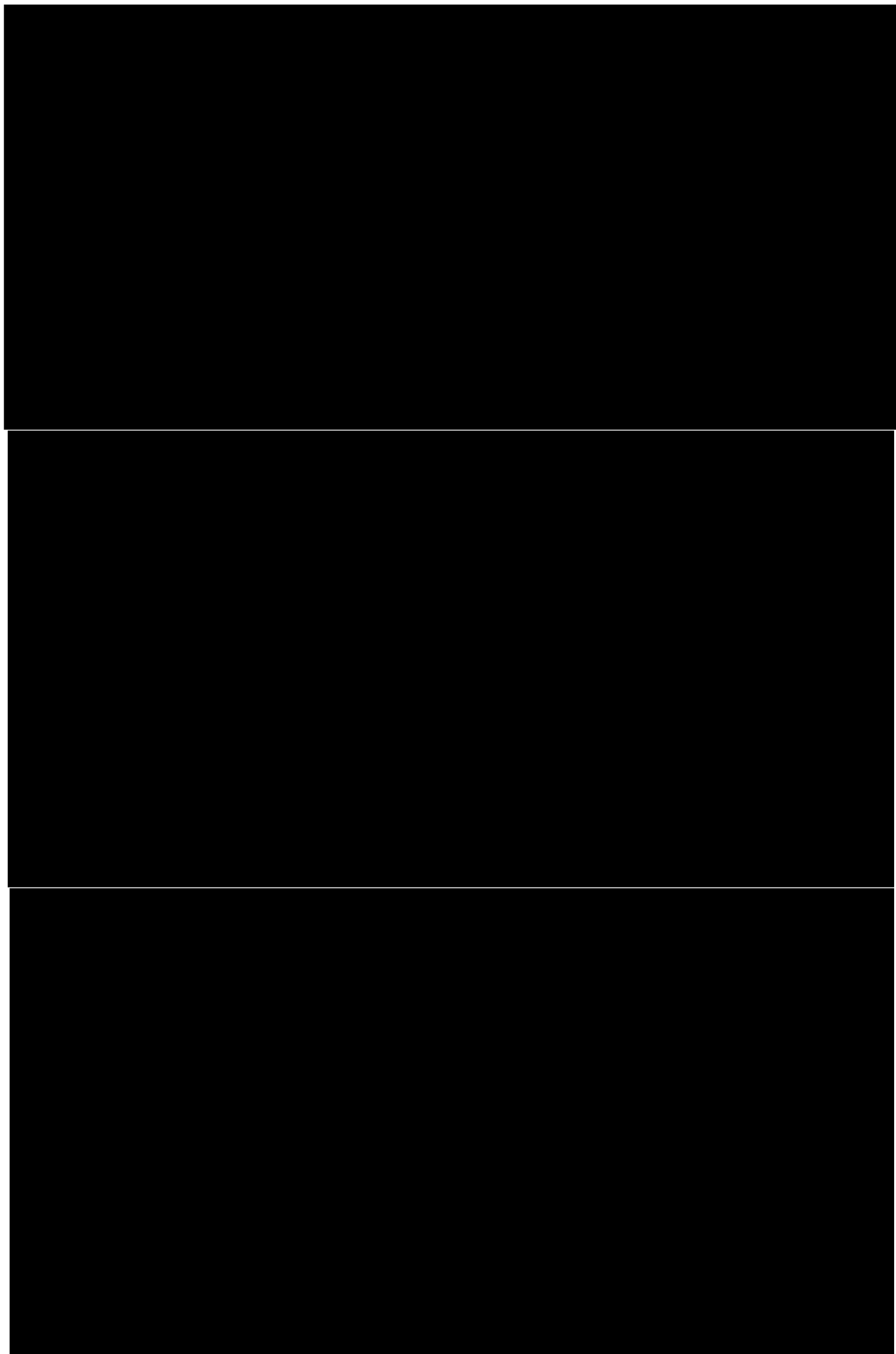
- 8.1 The Contractor will release New Releases for the Supported Software on a periodic and managed basis rather than an ad-hoc basis. The Contractor will publish an indicative timetable for these New Releases 12 months in advance and the Contractor must issue at least 1 New Release every 18 months.
- 8.2 The Contractor will release Updates for the Supported Software as necessary, including to remedy Defects and to ensure ongoing compliance with clause 7.4 of Part 2.
- 8.3 The Contractor must offer the Customer all Updates to and New Releases of the Supported Software during the Term. The Contractor warrants that the Update or New Release:
- (a) will provide the functionality and performance specified in the Contract Specifications (unless otherwise agreed);
 - (b) will operate on and be compatible with the Designated Equipment; and
 - (c) will not prevent the Licensed Software from continuing to operate together in accordance with the Contract Specifications.
- 8.4 The Contractor must provide training at the costs set out in the Agreement to enable the Customer including its Personnel, to operate the Update or New Release on the Designated Equipment.
- 8.5 The Customer may conduct reasonable tests of an Update or New Release (and the Contractor will provide a copy of the Update or New Release for this purpose and provide reasonable assistance to the Customer).
- 8.6 The Customer is to notify the Contractor within 30 days from completing its testing if it rejects the offer by the Contractor, of an Update or New Release. The Contractor must continue to maintain the version of the Supported Software which the Customer is using provided that the Customer continues to possess a valid licence for that version of the Supported Software.
- 8.7 If the Customer accepts the Update or New Release:
- (a) the Contractor will provide all necessary assistance required by the Customer for a smooth implementation and transition to the Update or New Release including installation, configuration and integration of the Update or New Release and migration of data to the Update or New Release; and

- (b) without limiting paragraph (a), the Contractor will:
 - (i) reapply any customisations that had been applied to the Customer's current version of the Licensed Software; and
 - (ii) modify the Developed Software as necessary to ensure the Licensed Software and the Developed Software continue to operate together in accordance with the Contract Specifications.
 - (c) the Contract Specifications of the Supported Software will be deemed to be amended to the extent that the specifications for the Update or New Release supersede the existing Contract Specifications.
- 8.8 The Contractor must specify in the Agreement any additional software that it considers does not fall within an Update or New Release and which it intends to charge the Customer for during the period of the Agreement.
- 8.9 The Contractor will use an open architecture in developing Updates, New Releases and other new software products.

Annexure A - Maintenance Model





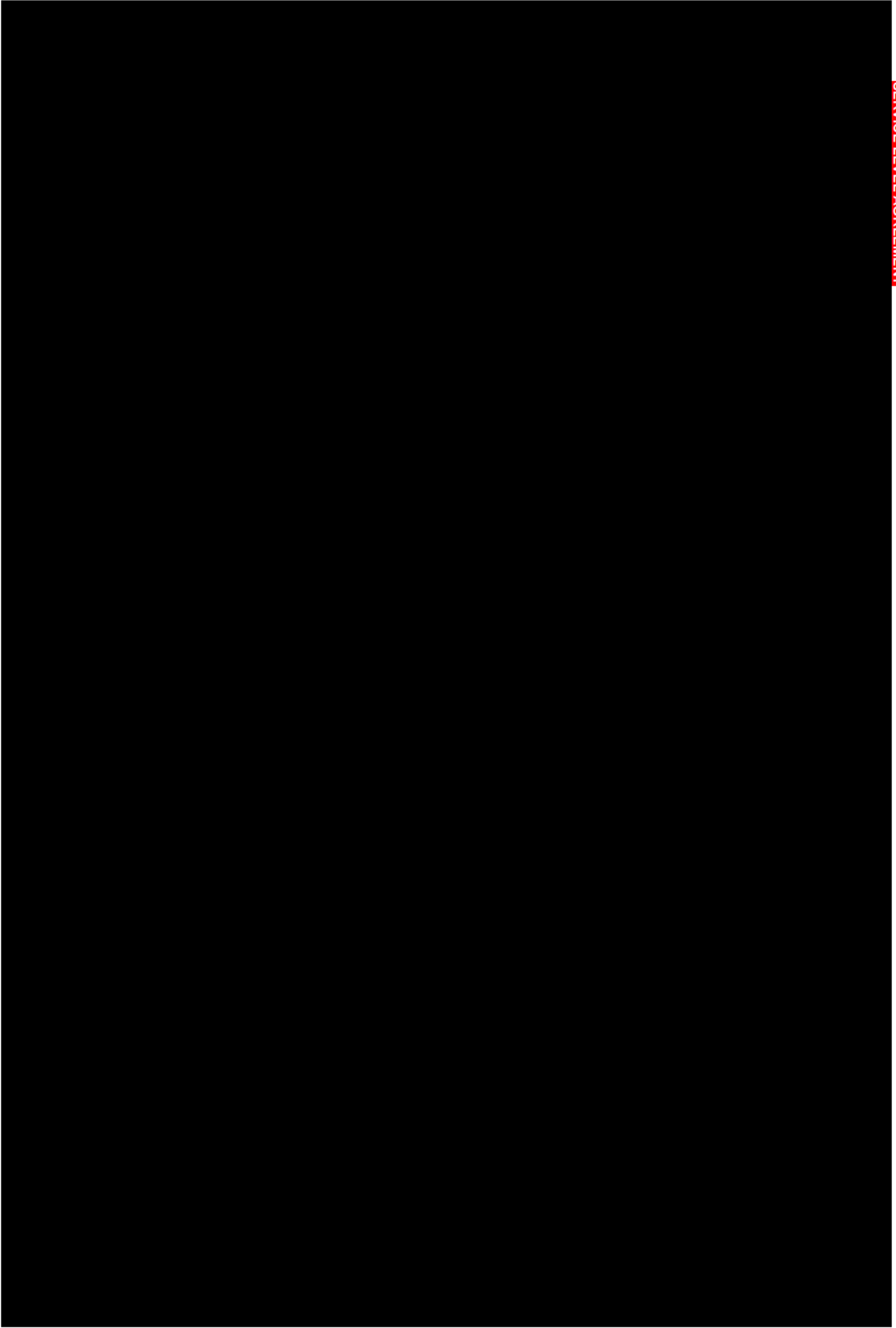


[REDACTED]

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PART 6 -



PART 7 - ATTACHMENTS

Attachment 1 - The Customer's Materials

Not applicable.



Annexure E - *Intentionally left blank*

Attachment 4 - [REDACTED]

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AGREEMENT
ATTACHMENTS

1.

1.

2.

3.

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Attachment 5 - Governance

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AGREEMENT

