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20 May 2021

By hand and via email

[REDACTED]  
**Building Assurance Solution Customer Contract**

Congratulations on the award of the Building Assurance Solution Customer Contract.

Attached is a copy of the countersigned Customer Contract between the Crown in Right of the State of NSW as represented by the Department of Customer Service (the **Customer** or **DCS**) and KPMG (the **Contractor**) dated 19 May 2021 (**Customer Contract**).

The Contract Period will end on the delivery of the Building Assurance Solution v2.0. But will be assessed at the end of each milestone as set out below:

- a) Building Assurance Solution – Minimum Viable Product (MVP) due to be delivered 6 months from the contract execution date.
- b) Building Assurance Solution v1.0 (estimated May 2022)
- c) Building Assurance Solution v2.0 (estimated February 2023)

We look forward to working together on this exciting project.

[REDACTED]

**PROCURE IT FRAMEWORK**

**VERSION 3.2**

**PART 2: CUSTOMER CONTRACT**

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## 1. Recitals

### PROCURE IT FRAMEWORK

- 1.1 The New South Wales Department of Customer Service administers the *Procure IT Framework*.
- 1.2 The Procure IT Framework sets out the standard terms used by NSW Government buyers for the acquisition of information and communications technology related products and services. Such standard terms are set out in:
- (a) in respect of Panel Arrangements, the relevant Part 1 - Head Agreement;
  - (b) Part 2 - the Customer Contract, including its Schedules;
  - (c) Part 3 - the Dictionary;
  - (d) Part 4 - the Modules; and
  - (e) Part 5 - the Module Order Forms.
- 1.3 The NSW Procurement Board ('the Board') is established under section 164 of the *Public Works and Procurement Act 1912 (NSW)* ('PWP Act'). The Board may pursuant to section 174(1) of the PWP Act, establish a scheme under which a Government Agency accredited by the Board may procure goods and services for that Government Agency or for other Government Agencies, subject to any terms and conditions of its accreditation.
- 1.4 The Board may issue directions and policies in relation to the NSW Government's procurement system under section 175 of the PWP Act. When engaging contractors under the Procure IT Framework, Government Agencies must comply with all such directions and policies of the Board that are applicable from time to time.
- 1.5 The Contract Authority is the head of a Government Agency, which may procure goods and services for that Government Agency or for other Government Agencies consistent with any applicable policies and directions of the Board, the terms of its accreditation (if any) by the Board, and the principles of probity and fairness.
- 1.6 The relevant Contract Authority is responsible for the administration of the Head Agreement on behalf of Eligible Customers and has authority to act on behalf of these entities in this respect.
- 1.7 The *Procure IT Framework* is designed so that Products and Services can be acquired:
- (a) as a result of a panel arrangement where an entity acts as the Contract Authority and establishes a master purchasing arrangement where one or more Contractors agree to offer certain Products and/or Services to Eligible Customers at pre-agreed Prices and on pre agreed core terms and conditions, for a defined Term (**Panel Arrangement**); or
  - (b) using an alternate procurement process that does not involve a Panel Arrangement (**Non-Panel Arrangement**).

### PANEL ARRANGEMENT

- 1.8 Where the *Procure IT Framework* is used for a Panel Arrangement, the Contract Authority will undertake a procurement process and the successful Contractors will sign the Head Agreement and go onto the panel. The Head Agreement requires that all Eligible Customers

who acquire Products and Services under the Panel Arrangement acquire the Products and Services using the form of Customer Contract that is set out in the *Procure IT Framework*.

- 1.9** The Head Agreement describes the relationship between the Contract Authority and the Contractor for the administration of the Panel Arrangement, including the Products and Services that can be acquired under the Panel Arrangement, how those Products and Services can be updated during the Term, the Pricing for the Products and Services, which entities are entitled to acquire Products and Services under the Panel Arrangement, which Approved Agents can be used by the Contractor to supply the Products and Services, the Term of the Panel Arrangement, the minimum insurance requirements and any Performance Guarantee that might apply to Customer Contracts entered into under the Head Agreement, as well as the general terms and conditions applicable to the relationship.

#### NON-PANEL ARRANGEMENT

- 1.10** Where there is no Panel Arrangement, a Customer may acquire Products or Services from the Contractor under a Customer Contract, and the terms and conditions of the Head Agreement are not to be used.

#### CUSTOMER CONTRACT

- 1.11** The Customer Contract describes the relationship between the Customer and the Contractor for the supply of the Products and Services that are described in the Customer Contract. Where the Customer Contract is made under a Head Agreement:
- (a) the Products and Services that can be acquired, the Prices at which they can be sold, and the degree to which the terms and conditions can be varied are limited by the terms of the Head Agreement; and
  - (b) the Customer is entitled to the benefits of any arrangements that have been made by the Contract Authority under the Head Agreement in respect to insurance and any Performance Guarantee.

- 1.12** The Parties agree to perform their obligations in accordance with the terms and conditions of this Customer Contract.

#### DICTIONARY

- 1.13** The *Procure IT Framework* includes the Dictionary, which defines key terms and concepts.

## **2. Scope of Contract**

#### PRODUCTS AND SERVICES

- 2.1** Where the Customer Contract is made under a Head Agreement, the Contractor must supply Products and/or Services stated in the Order Documents in accordance with the Head Agreement and Customer Contract, at the Prices, which must not exceed the amounts set out in Annexure 3 to the Head Agreement.
- 2.2** Where the Customer Contract is not made under a Head Agreement, the Contractor must supply the Products and/or Services stated in the Order Documents in accordance with the Customer Contract.

#### PRICING

- 2.3** The Price payable by the Customer for the Products or Services is set out in Item 11 of the General Order Form. In relation to Panel Arrangements, the amounts set out in Annexure 3 to

the relevant Head Agreement are the maximum amounts payable by a Customer for the Products or Services acquired during the Term of such Head Agreement, subject to any increase made in accordance with any price variation mechanism stated in Annexure 3 to the Head Agreement. Nothing in this clause 2.3 prevents:

- (a) the Contractor from charging a Customer for any item, service, expense or other thing which is permitted to be charged for under a Customer Contract; or
- (b) the Contractor and the Customer agreeing Prices which will apply to a Customer Contract which are lower than the amounts stated in Annexure 3 to the Head Agreement.

#### CONTRACT PERIOD

- 2.4** The Customer Contract commences on the Commencement Date and will expire at the end of the Contract Period stated in Item 10 of the General Order Form. The Customer may extend the Contract Period on the same terms and conditions for the period stated in Item 10 in the General Order Form, by giving the Contractor written notice at least 30 days prior to the end of the Contract Period.

#### NOMINEE PURCHASER

- 2.5** If an Eligible Customer requires a Nominee Purchaser to enter into a Customer Contract on its behalf, the Contractor may not refuse to enter into that Customer Contract solely on the basis that the Customer Contract will be signed by the Nominee Purchaser as agent for the Eligible Customer and will not be signed by the Eligible Customer itself, provided that the Nominee Purchaser:
- (a) provides its current registration number as given by the Contract Authority or Eligible Customer;
  - (b) provides its nominating Eligible Customer's Australian Business Number; and
  - (c) provides the Contractor with the written authorisation from the Contract Authority or Eligible Customer that confirms the Nominee Purchaser's rights to purchase Products and/or Services as agent for the Eligible Customer.

### **3. Formation of Customer Contract**

#### FORMATION

- 3.1** A Customer Contract is entered into under a Head Agreement only where the Head Agreement is cross referenced in Item 7 of the General Order Form.
- 3.2** Where the Customer Contract is entered into (and there is either a Head Agreement or the Customer is not the Contract Authority), the Contractor and the Customer:
- (a) agree that the Contract Authority may enforce the Customer Contract as agent for the Customer, even though the Contract Authority is not a party to the Customer Contract in its own right and in such circumstances, the applicable limitations and exclusions of liability in respect of the relevant claim will be those set out in clause 18 below, rather than those set out in clause 12 of the Head Agreement; and
  - (b) may seek to include any Additional Conditions that vary any of the terms and conditions of the Customer Contract including the Protected Clauses, provided that the Customer first obtains the written approval of the Secretary, New South Wales Department of Customer Service in accordance with the directions and policies of the Board that are applicable from time to time.



- 3.3** A Customer Contract between the Contractor and Customer is created upon
- (a) the Parties: completing and agreeing the Order Details and any Additional Conditions; and
  - (b) signing the General Order Form.
- 3.4** The Parties must, at a minimum, include in the Order Documents details of the Parties (stated in Item 1 and Item 4 of the General Order Form), Item 7 (if the Customer Contract is placed under a Head Agreement), the relevant Modules that are to be included in Item 8, the Contract Period in Item 10, the Products and Services (stated in Item 11 of the General Order Form or in the relevant Module Order Form), the Price (or such details as are required to calculate the Price including those stated in Item 11 of the General Order Form or in the relevant Module Order Form), delivery details (including those stated in Item 12 of the General Order Form), the Contract Specifications (as stated in Item 13 of the General Order Form) and any details from the Module Order Forms that are required to describe the Products or Services.
- 3.5** The Parties may use a shortened version of the General Order Form (in hard or electronic format) which omits Items that the Parties agree are not required for the Customer Contract, provided that:
- (a) the minimum Order Details stated in clause 3.4 are included in that form, as well as any other Order Details that the Parties may agree to include;
  - (b) the structure and form of the General Order Form is consistent with Schedule 1 (even if some Items are omitted. Where Items are omitted subsequent Items that are included must retain their current Item number or heading so that the references in the Procure IT Framework remain accurate);
  - (c) the document is readily identifiable as a General Order Form that comprises part of this Customer Contract and:
    - (i) uses the heading:

"General Order Form. Schedule 1 to the Customer Contract (which is Part 2 of the *Procure IT Framework*)"
    - (ii) and includes the phrase;

"This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of Part 2 as if repeated in full in this General Order Form."
  - and
  - (d) the shortened document is signed by both Parties.
- 3.6** The Parties may use an electronic form of any Order Document, provided that an electronic form of the relevant Order Document is lawful and is executed by the parties by means of electronic communication in accordance with relevant Statutory Requirements.
- 3.7** To the extent that an Item in the Order Documents has not been completed or is omitted, that Item will be deemed not applicable.
- 3.8** The Customer Contract comprises:
- (a) any Modules that are stated as forming part of the Customer Contract in Item 8 of the General Order Form and the corresponding Module Order Forms;

- (b) any Schedules that are stated as forming part of the Customer Contract in Item 9 of the General Order Form other than Schedule 1 (General Order Form), Schedule 2 (Agreement Documents), Schedule 3 (Service Level Agreement) or Schedule 12 (PIPP);
- (c) any Additional Conditions in Schedule 1 (if applicable);
- (d) the other provisions of Schedule 1;
- (e) these clauses 1 to 26;
- (f) Part 3, the Dictionary;
- (g) any PIPP agreed by the Parties based on Schedule 12 (PIPP);
- (h) any Service Level Agreement agreed by the Parties based on Schedule 3 (Service Level Agreement);
- (i) all other Order Documents;
- (j) Annexure 3 to the Head Agreement (if applicable); and
- (k) the Agreement Documents (if any).

**3.9** To the extent that there is any conflict between any of the documents that comprise the Customer Contract, the conflict shall be resolved by giving priority to the documents in the order in which they appear in clause 3.8 (with an item higher in the list having priority over a lower item).

**3.10** For clarity:

- (a) the terms and conditions of use of NSWBuy or any other electronic purchasing system used by the Customer are not part of the Customer Contract; and
- (b) if the Customer uses any document that has any terms and conditions on it as the basis of a General Order Form (including a purchase order) then any terms and conditions that are on that document (whether pre-printed, automatically generated or otherwise) but are not in the form and structure of the General Order Form, are expressly excluded from the Customer Contract. Any Additional Conditions must be inserted as Item 43 (Additional Conditions) of a General Order Form.

#### COMPLIANCE WITH CONSUMER LAWS

**3.11** To the extent that the provisions of the *Competition and Consumer Act 2010 (Cth) (CCA)* apply to Deliverables supplied under this Customer Contract, then the provisions of this Customer Contract are subject to the provisions of the CCA.

**3.12** To the extent that there is a failure to comply with a statutory guarantee under sections 54 to 59 in Schedule 2 of the CCA in respect of Deliverables comprising of goods, then subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:

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

**3.13** To the extent that there is a failure to comply with a statutory guarantee in respect of the supply of Deliverables comprising of services under sections 60 to 62 in Schedule 2 of the CCA, then subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, the Contractor's liability is limited to one or more of the following, at the election of the Contractor:

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

## **4. Relationship**

**4.1** The Contractor agrees that it will not be taken to be and must not represent that it is the employee, partner, officer and/or agent of, the Customer.

## **5. Deliverable Specific Issues**

### DELIVERY

**5.1** The Contractor must deliver any Deliverables to the Site between the hours stated in Item 12 of the General Order Form or as otherwise agreed in writing.

**5.2** The Contract Price is inclusive of any additional or separate delivery costs, unless otherwise stated in the Order Documents including Item 11 of the General Order Form.

**5.3** The Parties must perform their obligations in accordance with any Service Level Agreement. Either Party may periodically review the Service Level Agreement and may recommend or request a change to a Service Level Agreement. Any change to a Service Level Agreement must be implemented as a Change Request in accordance with the procedures stated in Schedule 4 – Variation Procedures.

### DOCUMENTATION

**5.4** The Contractor must provide the User Documentation and any Bespoke User Documentation to the Customer in either hard copy or electronic format. If the User Documentation is provided in hard copy format:

- (a) the Contractor must make available, at no additional cost to the Customer, at least one copy of the User Documentation and such related material as the Contractor usually makes available free to its other customers, upon supply of the Product or Service to the Customer, or at the time(s) stated in the PIPP; and
- (b) additional copies of the User Documentation must, if requested by the Customer, be provided by the Contractor at the Price stated in Item 15 of the General Order Form, or if the Price is not stated in the Order Documents, at the Contractor's then current commercial price.

**5.5** The Contractor must ensure that any User Documentation and Bespoke User Documentation:

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

(d) is in the English language.

- 5.6** Where the Customer identifies any Defect in the User Documentation or Bespoke User Documentation within 30 days of the date of supply of the User Documentation or Bespoke User Documentation to the Customer, the Contractor must amend the defective User Documentation or Bespoke User Documentation and must promptly supply to the Customer the amended User Documentation or Bespoke User Documentation (or the relevant part) at no additional cost to the Customer.
- 5.7** The Contractor grants the Customer a right to use the User Documentation in connection with the authorised use of the Product or Service including for training purposes. Where the User Documentation is only provided in an electronic format the Customer may print ad hoc pages of the User Documentation. The Customer must not otherwise copy or adapt (including incorporating parts of the User Documentation into other Documents) without the Contractor's prior written consent (not to be unreasonably withheld).

#### NORMAL USE

- 5.8** Except where expressly specified in the Order Documents or any Additional Conditions, for the purposes of the CCA, the Deliverables provided under this Customer Contract are ordinarily supplied for the use in connection with processing internal data for business applications which:
- (a) do not require very high levels of availability or completely error free use;
  - (b) are not used for a Prescribed Use;
  - (c) are not for resale.

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

#### PRODUCT SAFETY

- 5.9** If the Contractor determines that a Deliverable requires an engineering change that is classified by the supplier or manufacturer as being mandatory in order to ensure product safety then:
- (a) the Contractor will, at its own cost, provide a 'user installable part' which the Customer must promptly install; or
  - (b) the Customer will allow the Contractor to Install the engineering change, at the Contractor's own cost.
- 5.10** The Customer agrees that:
- (a) the Contractor may maintain such information (including Personal Information) as may be required to assist the Contractor in complying with its obligations under the CCA or other law in respect of product safety, including product recall; and
  - (b) it will promptly give the Contractor Notice in Writing of any information that the Contractor may need in order for the Contractor to provide any notice relating to product safety that it may be required to provide under the CCA or other law.

#### SYSTEM

- 5.11** If it is stated on the General Order Form that the Products and Services procured by the Customer pursuant to this Customer Contract comprise a System:

- (a) the Contractor must in an efficient and well-coordinated manner, and in accordance with the PIPP:
  - (i) develop suitable technical and functional specification documents for the proposed System;
  - (ii) design, develop and build the System; and
  - (iii) assist the Customer with Acceptance Testing the System,in accordance with this Customer Contract and the relevant Modules; and
- (b) final acceptance of the System under this Customer Contract will not occur until such time as the System as a whole, including all components, passes all Acceptance Tests, including such Acceptance Tests as are designed to ensure that the System is in accordance with the Contract Specifications.

## 6. Delivery Management

### PROJECT MANAGEMENT

- 6.1 Where the Customer Contract is made under a Head Agreement, the Customer shall have the right to appoint a representative of the Contract Authority to act as the Customer's agent for the purpose of exercising any of the Customer's rights arising out of, or in connection with, the Customer Contract.
- 6.2 The following clauses 6.3 to 6.9 apply if and to the extent stated in the Order Documents.

### MANAGEMENT COMMITTEE

- 6.3 If it is stated on the General Order Form that a management committee is to be established, the Parties must agree and establish a management committee and a process for the conduct of the management committee's business by the date stated in the Order Documents.
- 6.4 The management committee must consist of the Party's project managers or officers, or such other persons as stated in the Order Documents including Item 16 of the General Order Form.
- 6.5 All members of the management committee must be authorised and properly qualified, informed and instructed to enable the management committee to properly assess progress under the Customer Contract.
- 6.6 The management committee must:
  - (a) review and monitor progress under the Customer Contract; and
  - (b) carry out any other functions stated in Item 16 of the General Order Form.
- 6.7 Unless agreed otherwise, the members of the management committee or their authorised delegates must meet weekly at the Customer's offices at an agreed time.
- 6.8 At least 1 Business Day prior to a management committee meeting, the Contractor's project manager must submit to the Customer's project manager a report of progress under the Customer Contract including:
  - (a) details (including dates) of Deliverables and Milestones commenced, completed or accepted;

- (b) details of any delays or issues arising from the project, including any known reasons for the delay or issue arising, and plans for the management of such delays and issues;
- (c) a review of any:
  - (i) minutes and actions from the last meeting;
  - (ii) issues log;
  - (iii) risk management plan, which must be prepared and maintained in accordance with AS/NZS ISO 31000 Risk Management Standard or equivalent, unless agreed otherwise in writing;
  - (iv) details of any outstanding invoices and any payments that are about to become due;
- (d) draft updates of relevant parts of the Contract Specifications;
- (e) any new Change Requests or Contract Variations (if applicable); and
- (f) details of the progress of any draft Change Requests or Contract Variations (if applicable).

**6.9** If the Customer disagrees with the details recorded in the report, then the Customer must, within 2 Business Days of receipt of the report, make a written endorsement on the report recording its version of the details. The amended report must be provided to the Contractor within 1 Business Day of the Customer updating the report.

#### PERFORMANCE REVIEWS

- 6.10** If it is stated in Item 17 of the General Order Form that the Parties must conduct a service and performance review of the Contractor's performance of the Customer Contract, then the Parties must conduct such reviews at the intervals and in accordance with the other requirements, including any obligations under any Service Level Agreement, stated in the Order Documents.
- 6.11** 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. Where the Customer Contract is made under a Head Agreement, either Party may request the involvement of the Contract Authority in any review.

#### SITE SPECIFICATIONS

- 6.12** Where it is stated in Item 18 of the General Order Form that a Site Specification is required, the Contractor must inspect the Site and provide the Customer with a Site Specification for the Customer's approval.
- 6.13** The Contractor must make any amendment to the Site Specification that is reasonably required by the Customer, providing such amendments are requested prior to the delivery of the Deliverables. Where the Contractor reasonably believes that the required amendment will materially affect the Contractor's ability to perform its obligations under the Customer Contract, it will notify the Customer and the Parties will discuss in good faith whether any Change Request is required to deal with such required amendment.

#### IMPLEMENTATION PLANNING STUDY

- 6.14** Where it is stated in Item 19 of the General Order Form that the Contractor must provide an implementation planning study, the Contractor must complete the implementation planning study in accordance with the requirements in Item 19 of the General Order Form.
- 6.15** Any implementation planning study must meet the objectives stated in Item 19 of the General Order Form which may include:
- (a) the Contractor's assessment of the scope and complexity of the project;
  - (b) the required Deliverables;
  - (c) the resources required (including any resources to be made available by the Customer); and
  - (d) the development of a PIPP or a Service Level Agreement.
- 6.16** The Contractor must deliver the implementation planning study to the Customer by the date stated in Item 19 of the General Order Form, and unless it is stated in the Order Documents that it is to undergo Acceptance Tests in accordance with clause 10.1(b), the AAD for the implementation planning study is determined in accordance with clause 10.1(a).

#### PROJECT SCHEDULE

- 6.17** The Parties must perform their obligations at the times and in the manner stated in the PIPP and Item 20 of the General Order Form.

#### CHANGE CONTROL

- 6.18** Either Party may recommend or request a change to the PIPP or any other part of the Customer Contract. Any change to the PIPP or any other part of the Customer Contract must be implemented as a Change Request in accordance with the variation procedures stated in Schedule 4 - Variation Procedures, subject to clauses 26.1 to 26.2.

#### STAGED IMPLEMENTATION

- 6.19** The Parties agree to perform the Customer Contract in accordance with the Stages stated in the PIPP (if any).
- 6.20** The Customer must give written notice to the Contractor within 10 Business Days (or such longer period stated in Item 20 of the General Order Form) of the end of each Stage as to whether it wishes the Contractor to commence the following Stage.
- 6.21** The Contractor must not commence any work on a subsequent Stage until it receives written notice from the Customer to proceed with the work in that Stage. The signing of the Customer Contract is deemed to be sufficient notification to proceed with work in Stage one.
- 6.22** Nothing in the Customer Contract shall be construed as obliging the Customer to give the written notice referred to in clause 6.21 in respect of any Stage.
- 6.23** The Customer's liability to the Contractor for not proceeding to a subsequent Stage shall be limited to those costs that have been stated in the Order Documents (if any).

## EXTENSION OF TIME

- 6.24** Each Party must do all it reasonably can to promptly inform the other of anything that it becomes aware of which is likely to affect the cost, quality or timing of delivery of the Deliverables, and the Parties must then investigate how to avoid or minimise any adverse effect on the Customer Contract.
- 6.25** The Customer may consent to a request for extension of time provided that the Contractor provides the Customer with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of any delay.
- 6.26** The Contractor may be entitled to a reasonable extension in time and to claim any loss, damage or expense (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) suffered by the Contractor that arise out, or in connection with a delay which has occurred because of:
- (a) the Customer's failure to perform its obligations in accordance with the Customer Contract;
  - (b) the act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer;
  - (c) any change to access to the Customer's Site (including denial or suspension of access under clause 7.3 unless the change to access is due to an adverse finding arising out of an investigation into the conduct of the Contractor or its Personnel or a breach of clause 7.2; or
  - (d) any change to any of the Customer's secrecy or security requirements provided that the Contractor will mitigate any expenses incurred or delay caused as a result of complying with such changed requirements.
- 6.27** The Contractor must submit a Change Request to the Customer in respect of the relevant extension of time or change to any amount payable by the Customer in accordance with Schedule 4— Variation Procedures within 5 Business Days of the Contractor becoming aware of the relevant delay under clause 6.26.

## LIQUIDATED DAMAGES

- 6.28** Where the Parties have agreed in Item 21 of the General Order Form that liquidated damages will be payable for the late completion of an LD Obligation, clauses 6.29 to 6.34 apply.
- 6.29** Where the Contractor has not completed an LD Obligation by the Due Date, or if the Due Date has been varied by a Change Request or otherwise in accordance with the Customer Contract, such varied Due Date, the Contractor must pay liquidated damages stated in Item 21 of the General Order Form to the Customer unless the late completion of the LD Obligation is:
- (a) caused by a Force Majeure Event;
  - (b) caused by the Customer or its Personnel;
  - (c) caused by the act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer; or
  - (d) permitted because an extension of time for completion of the LD Obligation has been granted by the Customer in accordance with the Customer Contract.
- 6.30** The Customer must promptly give the Contractor Notice in Writing setting out the grounds on which the Customer claims that liquidated damages are payable.



- 6.31** Each Party acknowledges that the liquidated damages stated in Item 21 of the General Order Form are a genuine pre-estimate of the loss, damage or expense that the Customer will suffer during the period in which liquidated damages are payable under clause 6.32 as a result of the Contractor not completing the LD Obligation by the Due Date.
- 6.32** The Contractor must pay any liquidated damages that are due from the Due Date until the earlier of:
- (a) the date that the Contractor successfully completes the LD Obligation in relation to which the liquidated damages have been applied; or
  - (b) the date on which the maximum number of days for which liquidated damages are payable as stated in Item 21 of the General Order Form have elapsed (the **Longstop Date**).
- 6.33** Liquidated damages paid under clause 6.32:
- (a) are the Customer's sole and exclusive financial remedy for the loss, damage and expense that the Customer suffers during the period in which liquidated damages are payable under clause 6.32 out of or in connection with the Contractor not completing the LD Obligation by the Due Date, subject only to the Customer's rights under clause 6.34; but
  - (b) do not relieve the Contractor from any other liability or from meeting any other obligation under the Customer Contract.
- 6.34** The Customer may, at any time during the period in which liquidated damages are payable under clause 6.32, issue a Notice in Writing of a Substantial Breach in respect of the Contractor not completing the LD Obligation by the Due Date specifying a period during which the Contractor is required to remedy that Substantial Breach, such period to be the greater of:
- (a) 10 Business Days;
  - (b) the period during which liquidated damages are payable for that Substantial Breach; or
  - (c) such longer period stated in the Notice in Writing,
  - (d) and if the Contractor has not remedied that failure to complete the LD Obligation (by completing the LD Obligation) by the end of such period, the Customer may terminate the Customer Contract immediately by Notice in Writing to the Contractor.
- 6.35** The Parties agree that where the Contractor has not successfully completed the LD Obligation in relation to which the liquidated damages have been applied by the Longstop Date, the payment of liquidated damages by the Contractor under clause 6.32 is without prejudice to the Customer's right to claim damages at large in respect of loss, damage or expense that arise after the Longstop Date out of or in connection with the Contractor not completing the LD Obligation by the Longstop Date.

#### CUSTOMER SUPPLIED ITEMS (CSI)

- 6.36** The Customer must provide and maintain the CSI at the times and in accordance with the requirements stated in the Order Documents including Item 22 of the General Order Form.
- 6.37** The Customer must enforce any agreement with a third party under which products or services of that third party are being provided to the Contractor as CSI (**Third Party CSI**), including support and maintenance contracts, to the extent that the relevant third party's failure to provide or resolve any issues with the Third Party CSI materially impacts the Contractor's ability to perform its obligations under the relevant Customer Contract.

- 6.38** The Contractor must:
- (a) not use any CSI other than for the purposes of the Customer Contract without the prior written consent of the Customer;
  - (b) not part with possession of any CSI unless the Customer has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any CSI;
  - (c) take all reasonable care of all CSI including accounting for, preserving, installing or handling the CSI in accordance with the Order Documents;
  - (d) not modify any CSI without the prior written consent of the Customer;
  - (e) promptly inform the Customer of any loss, destruction or damage to any CSI;
  - (f) comply with any reasonable instruction of the Customer for preserving, forwarding or disposal of any damaged CSI; and
  - (g) pay the costs, if any, stated in Item 22 of the General Order Form, for CSI.
- 6.39** If the CSI is no longer required for the purposes of the Customer Contract, it must be returned to the Customer or destroyed at the Customer's request as soon as practicable, unless other arrangements are agreed.
- 6.40** Provided the Contractor complies with its obligations under clauses 6.38(c) to 6.38(f), the Customer must repair or replace CSI within a reasonable time of becoming aware that the CSI does not comply with the requirements stated in the Order Documents.

#### CUSTOMER ASSISTANCE

- 6.41** During the Contract Period, the Customer must:
- (a) make available to the Contractor all relevant instructions, information, data, documents, specifications, plans, drawings and other materials as specified in Item 22 of the General Order Form or as otherwise agreed in writing with the Contractor; and
  - (b) answer reasonable queries made by the Contractor relating to the Customer's requirements in connection with the Customer Contract.

#### ESCROW

- 6.42** If stated in Item 23 of the General Order Form, the Contractor must arrange:
- (a) for itself, the Customer and an escrow agent approved by the Customer to enter into an Escrow Agreement (or such other document reasonably acceptable to the Customer) 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.
- 6.43** Any escrow arrangements to which the Customer becomes a Party under clause 6.42 must endure for at least the period stated in Item 23 of the General Order Form unless otherwise agreed. The Parties will bear the costs connected with such escrow arrangements in the proportions agreed by them in the Escrow Agreement.
- 6.44** The Contractor must consult with and comply with the reasonable directions of the Customer in any negotiations with the escrow agent arising under clauses 6.42.

## BUSINESS CONTINGENCY

- 6.45** If stated in Item 24 of the General Order Form that a Business Contingency Plan is required, the Contractor must, within the time stated in Item 24 of the General Order Form or as otherwise agreed in writing, prepare a Business Contingency Plan for the approval of the Customer.
- 6.46** The Business Contingency Plan must include the details stated in Item 24 of the General Order Form or as otherwise agreed in writing. The Contractor must provide the Customer with a copy of the approved Business Contingency Plan within 30 days of the Commencement Date or such other period agreed by the Parties in writing.
- 6.47** The Business Contingency Plan must be reviewed, updated and tested by the Contractor at the intervals stated in Item 24 of the General Order Form.
- 6.48** If there is an interruption to the Customer's business that is contemplated by the Business Contingency Plan the Contractor must perform the obligations in the Business Contingency Plan. The Customer must provide the Contractor with any assistance reasonably required by the Contractor to create and perform the Business Contingency Plan.

## 7. Access

### ACCESS TO CUSTOMER'S SITE

- 7.1** Without prejudice to the Contractor's obligations under clauses 6.12 and 6.13, the Customer must prepare and maintain the Site:
- (a) to enable the supply of the Deliverables; and
  - (b) in accordance with the Site Specification that is approved under clauses 6.12 to 6.13, or as otherwise stated in Item 18 of the General Order Form.
- 7.2** Where the Customer provides the Contractor with access to the Customer's Site, the Contractor:
- (a) must ensure that its Personnel comply with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security; and
  - (b) is liable for any damage to the extent that such damage is caused by the negligent act or omission of its Personnel on the Customer's Site.
- 7.3** The Customer may temporarily deny or suspend access to the Customer's Site in its discretion.

### CUSTOMER DATA

- 7.4** The Contractor does not own or have any interest in or rights to the Customer Data wherever it may be located other than as set out in the Customer Contract and the relevant Modules.
- 7.5** The Contractor must not transfer, take or send Customer Data which is a State Record outside the jurisdiction of New South Wales, Australia, or transfer the possession of the Customer Data, without the Customer's prior written consent or as specified in Item 25A of the General Order Form.

- 7.6 If the Customer provides the Contractor with consent under clause 7.5, the Contractor must comply with any conditions imposed by the Customer in relation to the Customer Data the subject of the consent.
- 7.7 The Contractor must retain only the Customer Data that the Customer has agreed the Contractor may retain and must only retain that Customer Data for the period of time and in the volumes notified by the Customer from time to time, after which date the Contractor must destroy the Customer Data or return it to the Customer, at the Customer's election.
- 7.8 Where the Customer has agreed in writing that Customer Data may be used for testing purposes, the Contractor must not use any Customer Data for testing purposes unless that Customer Data has first been masked or de-identified in a manner approved by the Customer.
- 7.9 If stated in a Module Order Form, the Contractor must take and maintain back ups of Customer Data that is loaded into a Deliverable so that there is no loss of Customer Data in the event that any failure of any Deliverable causes damage to, or loss of, any Customer Data.

## SECURITY

- 7.10 The Contractor must:
- (a) establish, maintain, enforce and continuously improve safety and security procedures and safeguards against the unauthorised access, use, destruction, loss or alteration of Customer Data and the Customer's other Confidential Information; and
  - (b) notify and keep the Customer notified at all times of the Contractor's current safety and security procedures and safeguards in respect of Customer Data and keep the Customer notified of any amendments to such procedures and safeguards that are made from time to time.
- 7.11 Without prejudice to clause 7.10, the Contractor must comply, and must ensure that its Personnel comply, with the secrecy and security requirements of the Customer as stated in Item 25 of the General Order Form, or of which the Customer subsequently provides the Contractor by written notice.
- 7.12 Unless approved by the Customer's Chief Information Officer and expressly agreed in the General Order Form, if the Contractor becomes aware of an actual, alleged or suspected breach of the secrecy and security requirements referred to in clause 7.10 or 7.11 (**Security Issue**), it must:
- (a) immediately notify the Customer of the Security Issue;
  - (b) within 48 hours from the notification in clause 7.12(a) conduct an investigation into the Security Issue and notify the Customer of the Contractor's findings in respect of whether a secrecy or security breach has occurred, the nature of the breach, its consequences and plan to remedy; and
  - (c) if a secrecy or security breach has occurred, within 24 hours from the conclusion of the investigation in clause 7.12(b) remedy the security breach and notify the Customer of the remedy.

## 8. Personnel

### PERSONNEL - GENERAL

- 8.1 Neither Party may, without the prior written consent of the other Party, engage, employ or induce or cause a third party to induce the other Party's Personnel engaged in the

performance of the Customer Contract to enter into a contract for service or a contract of employment with it.

- 8.2** The restriction in clause 8.1 shall apply during the Contract Period and for a period of six months after the end of the Contract Period.
- 8.3** A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of clause 8.1.
- 8.4** The Parties agree that the restrictions in clauses 8.1 to 8.3 are necessary to protect the legitimate interests of each Party.
- 8.5** The Customer must make available its Personnel to work with the Contractor as stated in the Order Documents including Item 26 of the General Order Form. The Parties will identify such Personnel and their roles in the Order Documents.
- 8.6** The Customer must use reasonable efforts to ensure that its Personnel who are made available to work with the Contractor have the requisite authority, qualifications, competencies, skills and experience to perform their tasks.
- 8.7** The Contractor must ensure a safe system of work for any of the Customer's Personnel who the Customer makes available to perform work under the control and direction of the Contractor at the Contractor's premises.

#### SPECIFIED PERSONNEL

- 8.8** The identity and roles of any Specified Personnel must be stated in Item 27 of the General Order Form.
- 8.9** If Specified Personnel are unable or not suitable in the reasonable opinion of the Customer to undertake the work assigned to them the Contractor must provide replacement Personnel acceptable (on reasonable grounds) to the Customer at no additional charge as soon as is practicable.

#### APPROVED AGENTS AND SUBCONTRACTORS

- 8.10** The Contractor may supply Deliverables to the Customer through Approved Agents.
- 8.11** If a Customer Contract is entered into between the Customer and an Approved Agent, the Contractor is deemed to have entered into a Customer Contract with the Customer.
- 8.12** The Contractor must ensure that its Approved Agents supply the Deliverables only in accordance with the terms of the Customer Contract under which the Approved Agent is to supply the Deliverables.
- 8.13** If requested in writing by the Customer, the Contractor must arrange for its Approved Agents to execute a Deed Poll substantially in the form of Schedule 6 – Deed Poll.
- 8.14** The Contractor must not subcontract the performance or supply of any Services under the Customer Contract without obtaining the prior written consent of the Customer which will not be unreasonably withheld or delayed and which may be given on such conditions as the Customer thinks fit.
- 8.15** Where the Customer believes that any Subcontractor is in breach of its obligations to the Contractor, or its performance of obligations or services is unsatisfactory, so that the Contractor is likely to be in breach of the Customer Contract as a result, the Customer may:

- (a) provide Notice in Writing to the Contractor setting out the details of its concerns;
- (b) require the Contractor to meet with the Customer within 3 Business Days of the Contractor's receipt of the Notice in Writing to discuss the concerns; and
- (c) if, following the discussions with the Contractor, the Customer is satisfied that the Contractor will be in breach of the Customer Contract as a result of the performance of the Subcontractor, the Customer may give Notice in Writing that it is withdrawing its consent to allow the Subcontractor to continue to work in connection with the Customer Contract and require the Contractor to procure that the Subcontractor promptly ceases performing any work in connection with the Customer Contract subject to any contrary requirements of the Customer in respect of effecting an orderly transition notified to the Contractor, and in such circumstances, the Contractor agrees that the Customer will have no liability whatsoever to the Contractor for any loss, damage or expense suffered by the Contractor arising out of any termination of, or the continuation of, the relevant subcontract.

**8.16** The Contractor:

- (a) must ensure that each Subcontractor is aware of all the terms and conditions of the Customer Contract that are relevant to the Subcontractor's performance of its work;
- (b) is not relieved of its liabilities and obligations arising out of, or in connection with, a Customer Contract by subcontracting any work; and
- (c) must ensure that the Subcontractor ceases work upon receipt of a Notice in Writing from the Customer of withdrawal of the consent given under clause 8.15(c).

**8.17** If stated in Item 28 of the General Order Form, the Contractor must obtain from the Subcontractor a signed statutory declaration substantially in the form of Schedule 7 – Statutory Declaration – Subcontractor.

## **9. General Warranties**

### CONTRACTOR WARRANTIES

**9.1** The Contractor warrants to the Customer that:

- (a) as at the Commencement Date, the Contractor is properly constituted and has the right and authority to enter into the Customer Contract;
- (b) to the best of its knowledge and belief there is no Conflict of Interest of the Contractor or its Personnel as at the Commencement Date, and during the Contract Period the Contractor will use its reasonable efforts not to permit a Conflict of Interest of the Contractor or its Personnel to arise in the performance of its obligations;
- (c) the information provided to the Customer in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its Personnel, was to the best of the Contractor's knowledge and belief correct when it was provided to the Customer;
- (d) as at the Commencement Date, to the best of its knowledge and belief the Contractor has all the necessary licences, approvals and consents necessary to perform its obligations under the Customer Contract;
- (e) it will not maliciously or negligently introduce any Virus into the Customer's systems during the Contract Period;

- (f) that to the best of its knowledge and belief, the Contractor has the necessary Intellectual Property Rights and has procured the necessary consents in relation to Moral Rights, to grant the Customer the rights to use and/or own (if applicable) the Deliverables in accordance with the Customer Contract;
- (g) it will perform its obligations in accordance with:
  - (i) the Statutory Requirements,
  - (ii) any other laws that are stated in Item 30 of the General Order Form;
  - (iii) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Deliverables have not been produced using "worst forms of child labour" as defined; and
  - (iv) the codes, policies, guidelines and standards listed in Item 8 of the Head Agreement Details and Item 30 of the General Order Form;
- (h) it will maintain the quality standard accreditation stated in Item 29 of the General Order Form during the Contract Period; and
- (i) it is responsible for the acts and omissions of its Personnel as if they were its own acts and omissions.

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

**9.3** If stated in the General Order Form that the Products and Services procured by the Customer pursuant to this Customer Contract comprise a System:

- (a) subject to clauses 3.11 to 3.13 (inclusive), any qualifications to the warranties provided by the Contractor under the Modules in respect of the Products and Services comprising the System are excluded; and
- (b) the Contractor warrants to the Customer that to the best of its knowledge and belief:
  - (i) the System will comply with the Contract Specifications and the Customer Contract;
  - (ii) the System will be properly installed in a professional and competent manner;
  - (iii) each Deliverable comprising the System will be compatible, interoperable and integrate properly with each other Deliverable comprising the System; and
  - (iv) the System will be compatible, interoperable and integrate properly with the Designated Environment.

#### CUSTOMER WARRANTIES

**9.4** The Customer warrants to the Contractor that:

- (a) it has complied with all laws and policies, including procurement policies in awarding the Customer Contract to the Contractor;
- (b) it will provide the Contractor and its Personnel with a safe place to work;
- (c) it will supply any CSI in accordance with the requirements stated in the Order Documents;

- (d) it is responsible for the acts and omission of its Personnel as if they were its own acts and omissions;
- (e) it will not maliciously or negligently introduce any Virus into the Contractor's systems during the Contract Period;
- (f) that to the best of its knowledge and belief, the Customer has the necessary Intellectual Property Rights and has procured the necessary consents in relation to Moral Rights, to grant the Contractor and its Personnel the rights to use any CSI for the purpose of performing its obligations under the Customer Contract;
- (g) where there is more than one Eligible Customer being represented by the Customer, the Customer acts with full authority and as the sole representative of all the Eligible Customers; and
- (h) it will perform its obligations in accordance with:
  - (i) the Statutory Requirements,
  - (ii) any other laws that are stated in the Order Documents including Item 31 of the General Order Form;
  - (iii) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Deliverables have not been produced using "worst forms of child labour" as defined; and
  - (iv) the codes, policies, guidelines and standards listed in the Order Documents including Item 31 of the General Order Form.

#### MUTUAL WARRANTIES

**9.5** Each Party warrants to the other Party that during the Contract Period it will:

- (a) co-operate with the other Party and its respective Personnel to ensure timely progress and fulfilment of the Customer Contract, provided that nothing in this clause 9.5 requires the disclosure of a Party's Confidential Information or granting of any Intellectual Property Rights;
- (b) act reasonably and in good faith with respect to matters that arise out of, or in connection with, the Customer Contract;
- (c) work together in a collaborative manner;
- (d) to the extent that is reasonably possible, perform its obligations so as to avoid hindering the performance of the other Party;
- (e) hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other Party on a regular basis to ensure the other Party is fully informed of the progress of work required under the Customer Contract; and
- (f) perform its obligations and responsibilities by the dates stated in the Customer Contract.

## 10. Acceptance

#### ACCEPTANCE

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



- (a) unless it is stated in Item 32 of the General Order Form that the Deliverable is required to undergo Acceptance Testing, 2 Business Days or such other period that is stated in Item 32 of the General Order Form following the delivery of the Deliverable as required in the Order Documents; or
- (b) where it is stated in Item 32 of the General Order Form that the Deliverable is required to undergo Acceptance Tests, on the sooner of:
  - (i) the date the Customer issues a certificate of acceptance; or
  - (ii) on the date the Customer issues a notice that it conditionally accepts the Deliverable in accordance with clauses 10.10(b) or 10.12(c); or
  - (iii) on the last day of the Acceptance Test Notification Period where acceptance is deemed to have occurred in accordance with clause 10.13.

#### ACCEPTANCE TESTING

- 10.2** Where it is stated in Item 32 of the General Order Form that the Deliverable is required to undergo Acceptance Tests, Acceptance Tests must be conducted in relation to the Deliverable and the following provisions in clauses 10.3 to 10.16 will apply.

#### CONDUCTING ACCEPTANCE TESTS

- 10.3** Acceptance Testing must be completed in accordance with the requirements of the Order Documents including Item 32 of the General Order Form, or if the details of the Acceptance Tests are not stated in the Order Documents, then at least 20 Business Days before the relevant Deliverable is due to be delivered (or such other period as the Parties may agree) the Parties must agree:
- (a) the identification of the Deliverables or part of the Deliverable to be tested;
  - (b) the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests;
  - (c) which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use;
  - (d) the methodology and process for conducting the Acceptance Tests;
  - (e) the scheduling of Acceptance Tests, including the Acceptance Test Period and the Acceptance Test Notification Period;
  - (f) the Acceptance Criteria. The Acceptance Criteria should only test whether the Deliverable meets the Contract Specifications and other requirements of the Customer Contract and should not include any other criteria unless the Parties otherwise agree in writing; and
  - (g) the Acceptance Test Data. The Customer is responsible for ensuring that the Acceptance Test Data is representative of the data that will be used by the Deliverable in the Customer's business or production environment.
  - (h) Where the details of the Acceptance Tests are not stated in the Order Documents, the Contractor shall, not less than 60 Business Days before the relevant Deliverable is due to be delivered (or such other period as the Parties may agree), notify the Customer that details of the Acceptance Tests (including those in (a) to (g) above have not yet been agreed and must be agreed at least 20 Business Days before the relevant Deliverable is

due to be delivered (or such other period as the Parties may agree). Any failure of the Parties to agree any matter relating to the Acceptance Tests will be dealt with in accordance with clause 24 below, and the 20 Business Days requirement referred to above will not apply.

**10.4** To the extent that:

- (a) Acceptance Test Data is required for the Contractor to complete the Acceptance Tests; and
- (b) the provision of that Acceptance Test Data is specified as the Customer's responsibility in the Order Documents or the documents setting out the Acceptance Tests,

the Customer must provide that Acceptance Test Data to the Contractor:

- (c) at the times specified in the Order Documents or the documents that set out the Acceptance Tests; or
- (d) if no times are specified in those documents, at least 14 Business Days prior to the date on which the Acceptance Test Period for the applicable Acceptance Tests commences.

**10.5** Where the Contractor is conducting the Acceptance Tests, the Customer's representative must be available during Business Hours on each day during the Acceptance Test Period to give any assistance and/or information reasonably requested by the Contractor.

**10.6** Each Party must provide all reasonable cooperation and assistance to enable the performance of any Acceptance Tests.

**10.7** The Parties are entitled to observe and, to the extent reasonable, participate in the performance of any Acceptance Tests.

**10.8** The Party conducting the Acceptance Tests must provide the other Party within the Acceptance Test Notification Period a written test notification specifying:

- (a) a written summary of the Acceptance Tests;
- (b) the results achieved from those Acceptance Tests; and
- (c) a Defects List (if there are any Defects).

#### ACCEPTANCE TEST OUTCOMES

**10.9** Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable meets the Contract Specifications and other requirements under the Customer Contract, the Customer must issue a certificate of acceptance to the Contractor within the Acceptance Test Notification Period.

**10.10** Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable does not meet the Contract Specifications and other requirements under the Customer Contract then, if the Defects are only Minor the Customer must give the Contractor written notice within the Acceptance Test Notification Period that the Customer either:

- (a) waives the requirement for the Acceptance Test to be satisfactorily completed;
- (b) conditionally accepts the Deliverable, subject to the Contractor agreeing, at its own expense, to deliver a Workaround or to otherwise rectify any item on the Defects List within the Warranty Period in a manner that is acceptable to the Customer; or

(c) accepts the Deliverable subject to an agreed reduction in the Contract Price.

**10.11** Where the Customer conditionally accepts the Deliverable in accordance with clause 10.10(b) then:

- (a) the AAD occurs on the date that the Customer gives written notice that it conditionally accepts the Deliverable; and
- (b) the Customer may use the Deliverable in a business or production environment from the AAD.

**10.12** Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable fails to meet the Contract Specifications and other requirements under the Customer Contract because the Defects are more than Minor Defects, then the Customer must give the Contractor written notice within the Acceptance Test Notification Period that the Customer either:

- (a) waives the requirement for the Acceptance Test to be satisfactorily completed;
- (b) requires that the Contractor remedy the Defects on the Defects List, in which case the Contractor must remedy the Defects on the Defects List at its own expense within a reasonable period of time, and re-submit the Deliverable to further Acceptance Testing using the process in clauses 10.2 to 10.16 (except that the Acceptance Testing is restricted to testing the items that were on the Defects List and any necessary regression testing), at the Contractor's expense;
- (c) conditionally accepts the Deliverable, subject to the Contractor agreeing, at its own expense, to deliver a Workaround or to otherwise rectify any item on the Defects List within the Warranty Period in a manner that is acceptable to the Customer;
- (d) accepts the Deliverable subject to an agreed reduction in the Contract Price; or
- (e) subject to the Customer having provided the Contractor with one opportunity to re-submit the Deliverable for further Acceptance Testing, the Customer may, without limiting any other remedy, reject the Deliverable and require the removal of the Deliverable and any materials associated with the rejected Deliverable and require the restoration of anything affected by the Deliverable to its pre Customer Contract state, at the Contractor's expense.

**10.13** The Deliverables are deemed accepted if:

- (a) the Customer does not notify the Contractor within the Acceptance Test Notification Period that the Deliverable is rejected or conditionally accepted;
- (b) where the Customer is to perform the Acceptance Tests, the Customer fails to perform any Acceptance Test within the Acceptance Test Period for any reason, except for any delay resulting from any action of the Contractor unless otherwise agreed;
- (c) the Customer gives written notice that it waives the requirement for the Deliverable to pass the Acceptance Tests;
- (d) the Parties agree that the Deliverable is accepted based on an agreement to a reduction in the Contract Price; or
- (e) the Customer uses the Deliverable for its business purposes and/or in a production environment without the prior written consent of the Contractor.

- 10.14** Where the Acceptance Test relates to a Deliverable that is a Document, it is not a failure to provide the Document in accordance with the Contract Specifications and the other requirements of the Customer Contract where the Customer requests a change to:
- (a) any opinion expressed in the Document, provided that the opinion expressed in the Document is the professional opinion held by the Contractor;
  - (b) the style, formatting or layout of the Document, unless the style, formatting or layout is part of the Contract Specifications; or
  - (c) semantics.
- 10.15** The Warranty Period (if any) of a Deliverable commences on the AAD of that Deliverable.
- 10.16** In the event of power failure, air-conditioning failure or other cause outside the control of the Contractor:
- (a) the Customer must approve an extension of the Acceptance Test Period to accommodate any delays caused directly as a result of those circumstances; and
  - (b) the Contractor must ensure that the Deliverable is ready to resume or recommence Acceptance Tests when conditions are again satisfactory and stable.

## **11. Payment and Invoicing**

### **PAYMENT**

- 11.1** In consideration for the Contractor providing a Deliverable in accordance with the Customer Contract, the Customer must pay the Contractor the Contract Price in the amounts and at the times stated in the Order Documents (including the PIPP) and/or Item 14 of the General Order Form. If the time for payment is not stated in the Order Documents and/or Item 14 of the General Order Form, then the Contract Price is due:
- (a) on AAD for Products;
  - (b) monthly in arrears for Recurring Services, other than Services provided under Modules 2 and 5;
  - (c) annually in advance for Services provided under Modules 2 and/or 5.
- 11.2** The Prices are fixed for the Contract Period, unless otherwise stated in the Order Documents including Item 14 of the General Order Form.
- 11.3** A Customer may pay any amount due under the Customer Contract by credit/debit card or electronic facility stated in Item 33 of the General Order Form. The Contractor may only charge a fee for payment by credit/debit card where the fee is stated in Item 33 of the General Order Form.
- 11.4** Without prejudice to the Customer's other rights and remedies, if the Contractor refuses, neglects or fails to perform an obligation to provide a Deliverable in accordance with the Customer Contract, the Customer may withhold the payment associated with that failure until the Contractor performs the relevant obligation in accordance with the Customer Contract.
- 11.5** The Customer may retain a proportion of the payment for any Milestones in the amount and for the period stated in the PIPP for the due and proper performance and completion of the Contractor's delivery obligations under the Customer Contract incurred prior to the end of the Warranty Period or a period otherwise stated in the PIPP.

- 11.6** The Customer must upon the completion of the Contractor's delivery obligations in accordance with the Customer Contract (incurred prior to the end of the Warranty Period or a period otherwise nominated in the PIPP) pay to the Contractor any amount retained under clause 11.5.

#### INVOICING

- 11.7** The Parties agree that, subject to clauses 11.8 to 11.11, the Customer must pay the Contractor for the Deliverables within 30 days (or such other period agreed in the Order Documents including Item 14 and Item 20 of the General Order Form) of receipt of a Correctly Rendered Invoice. For the avoidance of doubt, no amount is payable by the Customer under a Customer Contract until a Correctly Rendered Invoice is received.
- 11.8** The Contractor must provide any further details in regard to an invoice that may be reasonably requested by the Customer.
- 11.9** The Contractor must send any invoices for any amount due to the person at the address stated in Item 14 of the General Order Form.
- 11.10** The making of a payment is not an acknowledgment that the Deliverables have been supplied or accepted in accordance with the Customer Contract.
- 11.11** If the Customer disputes an invoiced amount the Customer must:
- (a) provide the Contractor with written notice of the dispute, such written notice to be given within 10 Business Days from the date of receipt of the invoice; and
  - (b) pay the undisputed portion of the invoice by the date that payment must be made under the Customer Contract.

## 12. Taxes

- 12.1** Subject to clauses 12.2 and 12.3, the Contractor is liable for all Taxes imposed or levied in connection with the Contractor's performance of its obligations under the Customer Contract.
- 12.2** The Customer must pay any GST that is payable in respect of any Taxable Supply made under the Customer Contract in addition to the amount payable (exclusive of GST) for the Taxable Supply. GST is payable at the same time as the amount payable for the Taxable Supply to which it relates.
- 12.3** If there is any abolition or reduction, increase or introduction of any Tax, the Price that is payable for the Deliverable, or any other cost or expense that is payable under the Customer Contract must be varied so that the Contractor's net dollar margin for the Deliverable, cost or expense remains the same.
- 12.4** Any reference in the Customer Contract to a cost or expense to be reimbursed by one Party to another Party includes any GST payable in connection with a Taxable Supply to which that cost or expense relates, less the amount of any input tax credit that the Party requiring the reimbursement is entitled to claim.

## 13. Intellectual Property Rights

#### OWNERSHIP

- 13.1** All Intellectual Property Rights in:

- (a) any Existing Material remain vested in the person that owns the Intellectual Property Rights at the Commencement Date (**Owner**); and
- (b) any adaptation, translation or derivative of that Existing Material, vests in, or, is hereby transferred or assigned to the Owner, immediately upon creation.

#### CONTRACTOR OWNED NEW MATERIAL

**13.2** The provisions of clauses 13.3 to 13.5 apply to New Material, unless clause 13.11 applies.

**13.3** All Intellectual Property Rights in any New Material vest in, or, are hereby transferred or assigned to, the Contractor, immediately upon creation.

**13.4** On the AAD of a Deliverable that incorporates the relevant New Material, the Contractor grants the Customer a non-exclusive, perpetual, irrevocable, royalty free, transferable licence to use, copy, adapt, translate, reproduce and in any way exploit that New Material in connection with, or for the operation, modification, support and/or use of, the Deliverable in which it is incorporated, subject to the restrictions set out in clause 13.5.

**13.5** The licence to New Material in clause 13.4:

- (a) does not permit the Customer to disclose the New Material to any other person, except as stated in clauses 13.5(c) to (e);
- (b) does not permit the Customer to manufacture, sell, license, transfer, commercialise or otherwise exploit any of the New Material or any Existing Material except as stated in clauses 13.5(c) to (e);
- (c) permits the Customer to sublicense any of the rights in clause 13.4 without additional charge to any "Public Service agency" or other "government sector agency" (as defined in the *Government Sector Employment Act 2013* (NSW)), any NSW Government agency or statutory body representing the Crown (as referenced in section 13A of the *Interpretation Act 1987* (NSW)), any other public authority that is constituted by or under an Act of the State of New South Wales or that exercises public functions, and any "public health organisation" (as defined in the *Health Services Act 1997* (NSW));
- (d) permits the Customer's subcontractors to access the New Material, without additional charge, for the internal purposes of the Customer provided that, unless otherwise required by the Contractor, the Customer's subcontractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract; and
- (e) permits the Customer to sublicense any of the rights in clause 13.4, without additional charge, to a contractor that is providing outsource services to the Customer that include the operation of the New Material, provided that:
  - (i) the New Material is used solely for the internal business purposes of the Customer for the period of the outsource arrangement and the sublicense automatically terminates at the end of the period of the outsource arrangement; and
  - (ii) unless otherwise required by the Contractor, the contractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract.

#### EXISTING MATERIAL

- 13.6** On the AAD of a Deliverable that incorporates the Contractor's Existing Material, the Contractor grants the Customer a non-exclusive licence:
- (a) if that Existing Material is Licensed Software; to that Existing Material on the terms and conditions of the licence of that Licensed Software under the relevant Module;
  - (b) if that Existing Material is an adaptation, translation or derivative of Licensed Software; to that Existing Material on the same terms and conditions as the licence for the Licensed Software stated in clause 13.7(a);
  - (c) if that Existing Material is a tool, object library or similar routine that is not included in the Existing Materials stated in clauses 13.7(a) or 13.7(b); to use, reproduce and adapt that Existing Material for the Customer's own internal use in connection with, or for the operation, modification, support and/or use of, that Deliverable;
  - (d) if that Existing Material is a Document Deliverable and any adaptation, translation or derivative of that Existing Material; to use that Existing Material for the Customer's internal use; and
  - (e) if that Existing Material is an Online Service, the right to use and access that Existing Material on the terms and conditions under the relevant Module.
- 13.7** On the AAD of a Deliverable that incorporates Existing Material that is owned by a third party, including third party software, the Customer is granted a non-exclusive licence to that third party Existing Material to:
- (a) use, reproduce and adapt that third party Existing Material on the terms and conditions, and for the fees, stated in Item 34 of the General Order Form; or
  - (b) if no terms and conditions or fees are stated in Item 34 of the General Order Form; to use, reproduce and adapt that third party Existing Material for the Customer's own internal use in connection with, or for the operation, modification, support and/or use of, that Deliverable.
- 13.8** Where the Contractor uses a methodology in providing any Deliverable, the Contractor grants the Customer a non-exclusive licence to use that methodology during the Contract Period solely for the purposes of receiving the benefit of the Services under the Customer Contract or assisting the Contractor to perform its obligations under the Customer Contract.
- 13.9** Unless expressly agreed otherwise in the General Order Form, the licenses granted under clauses 13.6(c), 13.6(d), 13.7 and 13.8 are perpetual and irrevocable to the extent required for the Customer to receive the benefit of the Products and the Services in accordance with the terms and conditions of the Customer Contract.
- 13.10** The Contractor may charge for any licence to use any of its Existing Material, such fees to be stated in Item 34 of the General Order Form.

#### CUSTOMER OWNED NEW MATERIAL

- 13.11** If it is stated on the General Order Form that this clause applies to some or all of the New Materials and subject to clauses 13.13 to 13.15, upon the AAD of the relevant Deliverable that incorporates the New Material:
- (a) any Intellectual Property Rights in the New Material vest in, or are hereby transferred or assigned by the Contractor to, the Customer; and

- (b) the Customer may, in its sole discretion and only if stated in the General Order Form, grant the Contractor a :
  - (i) non-exclusive, perpetual irrevocable, royalty free, transferable licence in respect of the Intellectual Property Rights in the New Material to use, copy, adapt, translate, manufacture and in any other way exploit the Intellectual Property Rights in the New Material; or
  - (ii) licence in respect of the Intellectual Property Rights in the New Material on such terms as are specified in the General Order Form.

#### CUSTOMER MATERIAL

**13.12** The Customer grants the Contractor a non-exclusive, non-transferable licence for the Contract Period for the Contractor and its Personnel to use the Customer's Materials to the extent necessary for the Contractor to perform its obligations under the Customer Contract.

#### KNOW HOW ETC

**13.13** Subject to the restrictions on the disclosure of Confidential Information:

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

#### OPEN SOURCE LICENCE

**13.14** The Contractor must not, without the prior written consent of the Customer:

- (a) develop or enhance any Deliverable using Open Source Software; or
- (b) insert any Open Source Software into any Deliverable.

**13.15** Where the Customer provides its consent in relation to the use of any Open Source Software under clause 13.14(a) the Contractor will ensure that the use of that Open Source Software will not:

- (a) result in an obligation to disclose, license or otherwise make available any part of the Customer's environment, data or Confidential Information to any third party; or
- (b) diminish the Contractor's obligations under this Customer Contract.

## 14. Confidentiality

**14.1** Except to the extent necessary to comply with any Statutory Requirement 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 the Customer Contract, unless the other Party gives its prior written consent.

**14.2** Each Party may disclose the Confidential Information of the other Party:



- (a) to the Contract Authority;
- (b) Secretary, New South Wales Department of Customer Service and to that Department's Personnel;
- (c) to its Personnel where the disclosure is essential to enable them to carry out their duties in connection with the Customer Contract or any Head Agreement;
- (d) to its Personnel, Related Companies and their directors, officers, employees, agents, contractors, lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the Party's performance under, the Customer Contract or any Head Agreement in circumstances where such persons have a need to know (and only to the extent that each has a need to know and has been directed and agrees to keep confidential the Confidential Information on terms not inconsistent with this Customer Contract); or
- (e) if the receiving Party is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.

**14.3** Each Party must ensure that any Confidential Information of the other Party is used solely for the purposes permitted under clause 14.2.

**14.4** The Customer may at any time require the Contractor to arrange for its Subcontractors to execute without delay a Deed of Confidentiality between the Customer and the Subcontractor substantially in the form of Schedule 8 – Deed of Confidentiality.

## **15. Privacy**

**15.1** The Contractor must when it collects, uses, discloses or holds Personal Information in the course of performing its obligations under this Customer Contract:

- (a) collect, use, access, disclose or hold such Personal Information obtained in connection with the Customer Contract only for the purposes of performing its obligations under this Customer Contract;
- (b) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws;
- (c) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by the Customer, would be a breach of any Privacy Laws;
- (d) not disclose Personal Information to any other person without the prior written consent of the Customer or as expressly required by Statutory Requirements;
- (e) notify the Customer immediately upon becoming aware of a breach or possible breach of any of the obligations in this clause 15.1, whether by the Contractor, its Approved Agents or their Personnel, and comply with any reasonable direction from the Customer with respect to remedying that breach;
- (f) notify any individual that makes a complaint to the Contractor regarding the Contractor's acts or practices in relation to such individual's Personal Information, that the complaint may be investigated by the Privacy Commissioner;
- (g) comply with all reasonable directions of the Customer in relation to the care and protection of Personal Information held in connection with the Customer Contract or the rights of individuals to access and correct such Personal Information, and take all technical, organisational and other security measures reasonably within the Contractor's

power to protect the Personal Information from misuse, interference and loss and from unauthorised access or use, modification or disclosure;

- (h) not allow, or permit access to, or transfer any Personal Information that belongs to the Customer, has been provided by the Customer or has been collected, accessed or used by the Contractor with the consent of the Customer, outside of Australia, unless it has first obtained the Customer's approval in writing or as specified in Item 25B of the General Order Form;
- (i) ensure that any of the Contractor's Personnel who are required to deal with the Personal Information for the purposes of the Customer Contract are made aware of the obligations of the Contractor under this clause 15.1; and
- (j) ensure that any agreement with any Approved Agent or Subcontractor who may be fulfilling a requirement in relation to the Customer Contract which includes the handling of Personal Information contains substantially the same or equivalent obligations to this clause 15.1 which are enforceable by the Contractor against the Approved Agent or the Subcontractor, as applicable.

## **16. Insurance**

**16.1** The Contractor must hold and maintain, or be an insured under, one or more insurance policies, that provide the following cover:

- (a) public liability insurance with an indemnity of at least \$10,000,000 in respect of each claim for the period of cover;
- (b) product liability insurance with an indemnity of at least \$10,000,000 for the total aggregate liability for all claims for the period of cover; and
- (c) workers' compensation insurance in accordance with applicable legislation.

The Contractor must maintain the coverage required under this clause 16.1 during the Contract Period.

**16.2** Where the Customer Contract is entered into under a Head Agreement, the Contractor must also hold and maintain, or be an insured under, one or more insurance policies that have been agreed by the Contractor and the Contract Authority under the Head Agreement. Details of these insurances are stated in Item 7 of the General Order Form.

**16.3** If the Customer Contract is for the provision of Services, the Contractor must hold and maintain, or be an insured under, one or more insurance policies that include professional indemnity or errors and omissions insurance that provide indemnity cover of at least the amount of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover. The Contractor must maintain the coverage required under this clause 16.3 during the Contract Period and until the date that is 4 years from the last day of the Contract Period.

**16.4** The insurance policies in clauses 16.1(a), 16.1(b) and 16.3 must include cover for the Contractor's liability for the acts and omissions of the Contractor's subcontractors to the same extent as if they were the acts and omissions of the Contractor.

**16.5** All policies of insurance must be entered into with an insurer which has a rating of A- or better by AM Best or an equivalent rating organisation at the date when cover is commenced, or for workers' compensation insurance the insurer (including any self-insurance) must be authorised by law.

- 16.6** The Contractor must within 30 days of the start of the Contract Period or of a request in writing from the Customer provide the Customer with a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Customer) confirming that all the insurance policies required by the Customer Contract are current and that the insurance has the required limits of cover. Where the Contractor is insured under a Related Company's insurance policy, the certificate of currency must also show that the insurance policy includes the Contractor as an insured.
- 16.7** The Contractor agrees to hold, maintain or be an insured under, any additional insurance stated in Item 36 of the General Order Form.
- 16.8** Where the Contractor does not wish to hold and maintain, or be an insured under, insurance required by clauses 16.1 to 16.5, or does not wish to enter into one or more of those insurance policies with an insurer of the type required by clause 16.5, the Contractor may make application to the Customer to be exempted from the provisions of clauses 16.1 to 16.6. Such application must be supported by such documentation as may be required by the Customer, (including the Contractor's financial records (limited to publicly available financial records where a Contractor or any of its Related Companies is publicly traded)). The Customer may accept, conditionally accept or reject the Contractor's application. The Customer must provide the Contractor with written notice within 30 days of receipt of the Contractor's application of the Customer determination under this clause 16.8, and in absence of receipt of such written notice, the Contractor's application is deemed accepted by the Customer.
- 16.9** Where the Customer Contract is entered into under a Head Agreement:
- (a) the Customer cannot grant the Contractor consent to be exempt from any insurance requirements required under the Head Agreement;
  - (b) if the Contractor has obtained the consent of the Contract Authority and the Secretary, New South Wales Department of Customer Service to be exempt from any insurance requirements under any Head Agreement, then the Customer must accept the Contractor's application for an application for any similar exemption under the Customer Contract.
- 16.10** The effecting of insurance does not limit or expand the liabilities or obligations of the Contractor under the other provisions of the Customer Contract.

## **17. Guarantees**

### PERFORMANCE GUARANTEES

- 17.1** Where the Customer Contract is entered into under a Head Agreement and the Contractor has provided a Performance Guarantee under that Head Agreement:
- (a) the Contractor agrees that the Customer has the benefit of that Performance Guarantee provided that the Customer is a Government Agency;
  - (b) where the Customer is an Eligible non-Government Body, the Eligible non-Government Body cannot take the benefit of the Performance Guarantee provided to the Contract Authority under that Head Agreement, but the Eligible non-Government Body may separately agree with the Contractor that the Contractor is to provide a Performance Guarantee for the benefit of the Eligible non-Government Body under the Customer Contract in accordance with clause 17.2.
- 17.2** Where:
- (a) the Customer Contract is not entered into under a Head Agreement; or

- (b) the Customer Contract is entered into under a Head Agreement but the Contractor has not provided a Performance Guarantee under that Head Agreement,

and it is agreed in Item 37 of the General Order Form (provided that in the case of (b) above, the Contractor will notify the Contract Authority that the relevant Customer has requested a Performance Guarantee and the Contract Authority has given its written approval that a Performance Guarantee be provided for that Customer), 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 stated in Schedule 9 – Performance Guarantee, or such other document reasonably acceptable to the Customer. Where the guarantor is not domiciled in Australia the Customer may not refuse to accept an alternative form of guarantee solely on the basis that the jurisdiction and law of the guarantee is the jurisdiction and law of the country of the guarantor. This Performance Guarantee must be provided to the Customer within 30 days of the Commencement Date, or such other period stated in Item 37 of the General Order Form.

- 17.3** Any Performance Guarantee that is issued in favour of a Customer that is a Government Agency and clause 17.2(b) applies, can only be enforced by the Contract Authority acting on behalf of the Customer.

#### FINANCIAL SECURITY

- 17.4** Where it is agreed in Item 38 of the General Order Form, the Contractor must provide a Financial Security in the amount stated in Item 38 of the General Order Form substantially in the form of the agreement stated in Schedule 10 – Financial Security, or in the standard form that is usually provided by the issuing entity. The Contractor must, following such a request, ensure that the Financial Security is provided within 14 days of the Commencement Date, or such other period as agreed in Item 38 of the General Order Form.
- 17.5** The Financial Security will be held as security for the due and proper performance and completion of all the obligations of the Contractor under the Customer Contract.
- 17.6** The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution (**Issuer**) acceptable to the Customer.
- 17.7** If the Contractor fails to properly perform and complete its obligations under the Customer Contract, and the Customer suffers loss, damage or expense arising from, or in connection with, such failure by the Contractor, the Customer may deduct its loss, damage or expense (in so far as those losses, damages and expenses may be payable by the Contractor taking into account the terms and conditions of the Customer Contract, including the provisions of clause 18) from the Financial Security.
- 17.8** The Contractor agrees that the Customer will have no liability for any loss, damage or expense suffered or incurred by the Contractor where the Customer exercises its rights in accordance with clause 17.7 in good faith.
- 17.9** Upon performance of part of the Customer Contract in accordance with its terms, the Contractor may request the Customer to consent to the discharge of the Financial Security provided under the Customer Contract and the substitution of another Financial Security in substantially the same form but for a lesser maximum aggregate sum. The Customer must not unreasonably withhold its consent to the substitution where the part performance of the Customer Contract has proportionately reduced the risk for which the Financial Security was originally provided.
- 17.10** The Financial Security will end on the sooner of:
- (a) the date when payment is made by the Issuer up to the maximum amount required under the Financial Security;

- (b) one year from the date that the last Deliverable under the Customer Contract is scheduled to pass its Acceptance Tests, or if no Acceptance Tests were required, the date that is scheduled to be 180 days from the date of delivery of the last Deliverable or performance of the last Service under the Customer Contract;
- (c) the date the Customer and Contractor agree in writing to release the Issuer; or
- (d) the date the Customer notifies the Issuer that the Financial Security is no longer required.

**17.11** The Customer must reimburse the Contractor for any reasonable costs it incurs, including the fees payable to the Issuer, in connection with providing the Financial Security. These costs and fees must be reimbursed to the Contractor within 30 days of the Contractor providing a Correctly Rendered Invoice for the costs and fees.

## **18. Liability**

**18.1** To the extent permitted by law, and subject to clauses 3.12, 3.13, and 18.2 to 18.7, the Contractor's liability in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out of, or in connection with, the Customer Contract shall not exceed in aggregate for all claims that arise out of, or in connection with, the Customer Contract, the greater of:

- (a) \$100,000; or
- (b) in respect of claims that arise from:
  - (i) a Non-Recurring Service or Product; two times the Contract Value for the Non-Recurring Service or Product;
  - (ii) a Short Term Recurring Service; the Contract Value for the Short Term Recurring Service;
  - (iii) a Recurring Service other than a Short Term Recurring Service;
    - (A) if the claim arose after the Recurring Service had been provided for 12 months; the amount paid or unpaid but due and outstanding, for the Recurring Service for the 12 months prior to the date that the claim first arose; or
    - (B) if the claim arose prior to the Contractor providing 12 months of Recurring Services; the amount that is 12 times the average monthly amount that was paid or unpaid but due and outstanding for the Recurring Service prior to the date on which the claim first arose; or
  - (iv) a System, two times the Contract Value for the Non-Recurring Service or Product comprising the System.

**18.2** In all cases, any refund of monies, payment of liquidated damages, or payment of any fees, rebates, credits, damages, losses, expenses, (including third party costs incurred and paid by the Contractor if a third party is engaged by the Customer to remedy a breach by the Contractor in accordance with the Customer Contract), liabilities or any other amounts that are stated as being payable by the Contractor in respect of any breach of the Customer Contract or under an indemnity, are included in determining whether the limitation of liability has been reached.

**18.3** If the Customer Contract is for the supply of any Deliverables:

- (a) where the Contract Price under the Customer Contract is greater than \$20,000,000; or
  - (b) where the Customer Contract is for Deliverables that are to be used for a Prescribed Use,
- the Parties must discuss and agree an alternative cap of liability in Item 39 of the General Order Form.

**18.4** Notwithstanding any other clause in the Customer Contract, neither Party is liable to the other Party for any Consequential Loss (including under an indemnity).

**18.5** Notwithstanding any other clause in the Customer Contract, the Contractor has no financial cap on its legal liability where that liability arises from:

- (a) bodily injury (including sickness and death), including to the extent that the legal liability is covered by the indemnity in clause 19.1(b);
- (b) loss of, or damage to, tangible property, including to the extent that the legal liability is covered by the indemnity in clause 19.1(b);
- (c) breach of the Contractor's obligation of confidence under or pursuant to clause 14;
- (d) the Contractor's indemnity in respect of breach of privacy obligations as stated in clause 19.1(a); or
- (e) the Contractor's indemnity for IP Claims as stated in clause 19.1(c).

**18.6** The liability of a Party (**Party A**) for any loss, damage or expense incurred by another Party (**Party B**) will be reduced proportionately to the extent that:

- (a) any negligent or malicious act or omission of Party B or its Personnel; or
- (b) any failure by Party B or its Personnel to comply with its obligations and responsibilities under the Customer Contract,

contributed to the loss, damage or expense, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract.

**18.7** The Parties must use their reasonable efforts to mitigate any loss, damage or expense arising out of, or in connection with, the Customer Contract.

## **19. Indemnities**

### CONTRACTOR INDEMNITY

**19.1** The Contractor must indemnify and hold harmless the Customer, its officers and employees against any loss or expense which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) to the extent it:

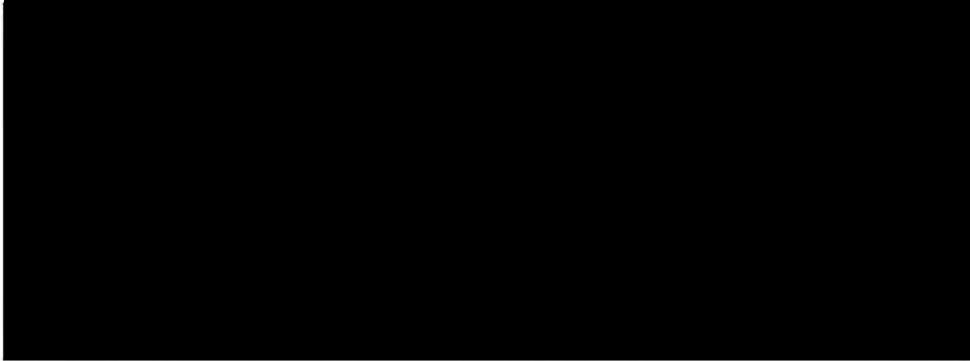
- (a) arises out of or in connection with the Contractor's breach of any privacy obligations under or pursuant to clause 15.1;
- (b) is the result of a claim against the Customer, its officers or employees made by a third party arising out of or in connection with a malicious or negligent act or omission of the Contractor, its directors, officers, employees, agents and subcontractors in the performance of the Contractor's obligations to the Customer under the Customer Contract; or

(c) is the result of a claim against the Customer, its officers or employees made by a third party that the use of the Deliverable in accordance with the Customer Contract infringes any Intellectual Property Rights, including the Moral Rights, of the third party claimant, that are enforceable in Australia (**IP Claim**).

- 19.2** The Customer must promptly, and in any event within 5 Business Days of being notified of a claim for which it is seeking an indemnity under clause 19.1(b) or 19.1(c), provide the Contractor with Notice in Writing of the details of the claim. The Customer must (unless there is any government policy that prohibits the Contractor from handling the process for the settlement of the claim) permit the Contractor, at the Contractor's expense, to handle the process for the settlement of such claim and, as permitted by law, to control and direct any litigation that may follow a claim under clause 19.1(b) or 19.1(c) (including selecting solicitors and counsel), subject to the Contractor agreeing to comply at all times with the government policy relevant to the conduct of the litigation.
- 19.3** If the Customer does not permit the Contractor to handle the process for the settlement of such claim under clause 19.2 and, as permitted by law, to control and direct any litigation that may follow a claim under clause 19.1(b) or 19.1(c), then the Customer must promptly and fully defend the claim (whilst complying with government policy), and not settle the claim without the Contractor's prior written consent, such consent not to be unreasonably withheld. The Customer must keep the Contractor fully informed throughout the period of the claim, including providing copies of all relevant documents.
- 19.4** The Customer must, upon the Contractor confirming its obligations under the indemnity in clause 19.1, provide the Contractor with reasonable assistance in defending, settling or otherwise conducting the negotiations or litigation, at the Contractor's expense, including providing all relevant documents, permitting its Personnel to testify for the Contractor if requested by the Contractor and using any defence that might be available to the person being indemnified.
- 19.5** Notwithstanding clause 19.1(c), the Contractor is not required to indemnify the Customer, its officers and employees to the extent that an IP Claim is caused by:
- (a) any open source software that forms part of the Deliverable;
  - (b) the combination, operation or use of a Deliverable with any other product, equipment business method, software or data (unless such combination, operation or use is approved by the Contractor or in accordance with the Contract Specifications);
  - (c) any modification of a Deliverable by any person other than the Contractor or its Personnel unless such modification is approved by the Contractor;
  - (d) the Contractor following the designs, specifications or instructions provided by the Customer or other person on the Customer's behalf; or
  - (e) the continued use of a Deliverable after the Contractor has provided the Customer a new software version, patch or correction, or a replacement part or other correction, that would have overcome the infringement.
- 19.6** Without prejudice to the Customer's rights under clause 19.1(c), if there is an IP Claim then the Contractor may, 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 in accordance with the Customer Contract;
  - (b) replace or modify the Deliverable so that the alleged infringement ceases and the replaced or modified Deliverable provides the Customer with substantially similar functionality and performance as required in the Contract Specifications; or

# SIGNED AS AN AGREEMENT

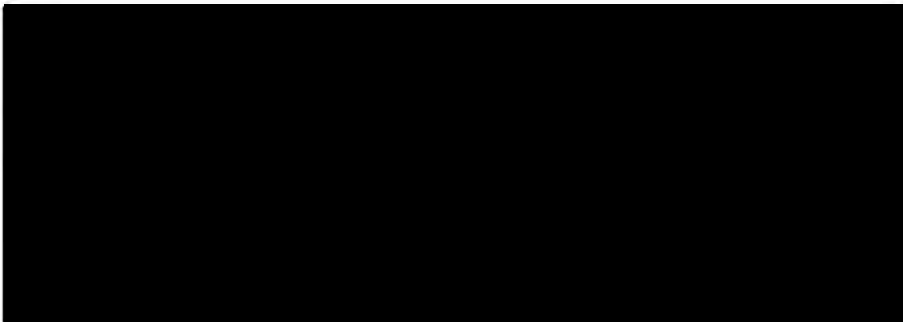
Signed for and on behalf of



our personal liability

Date 19<sup>th</sup> May 2021

In the presence of:



19.05.2021

Date



COUNTERPARTS

**26.21** If there are a number of counterparts of the Customer Contract, the counterparts taken together constitute one and the same instrument.

APPLICABLE LAW

**26.22** The laws of New South Wales govern the Customer Contract and the Parties submit to the exclusive jurisdiction of the courts of New South Wales.

**26.15** The Contractor will provide copies of any of the information in clause 26.13, as requested by the Customer, at the Contractor's own expense and in such medium as the Customer may reasonably require.

**26.16** Without limiting or otherwise restricting clauses 26.12 to 26.15, the Contractor:

- (a) authorises the Customer to make information concerning the Contractor available to other Government Agencies. Such information may include any information provided by the Contractor to the Customer and any information relating to the Contractor's performance under this Customer Contract;
- (b) acknowledges that information about the Contractor from any source, including substantiated reports of unsatisfactory performance, or any conduct including, any civil and/or criminal or alleged criminal conduct, by any Officers of the Contractor or a Related Company may be taken into account by Government Agencies considering whether to offer the Contractor future opportunities for working with Government Agencies;
- (c) agrees that the communication of such information to any Government Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
- (d) releases and indemnifies the Customer and the State of New South Wales from and against any claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

#### SEVERABILITY

**26.17** If any part of the Customer Contract is void or voidable, then that part is severed from the Customer Contract without affecting the continued operation of the remainder of the Customer Contract.

#### ENTIRE AGREEMENT

**26.18** To the extent permitted by law:

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

#### RIGHTS ARE CUMULATIVE

**26.19** Subject to clause 6.33, the rights and remedies provided under the Customer Contract are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

#### SURVIVAL

**26.20** The provisions of clauses 3.11 to 3.13, 6.42 to 6.44, 8.1 to 8.4, 13.4 to 13.8, 13.9, 13.11, 13.13, 13.15, 14.1 to 14.3, 15, 16.3, 18, 19, 25.7, 25.8, 26.20 and 26.22, and any other clause which naturally should survive termination or expiry of the Customer Contract, shall survive termination or expiry of the Customer Contract.

#### MATERIAL ADVERSE EVENTS

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

#### FORCE MAJEURE EVENTS

- 26.9** A Party is excused from performing its obligations to the extent it is prevented by a Force Majeure Event, except a Force Majeure Event which requires a Party to take steps pursuant to a Business Contingency Plan. The Contractor must immediately notify the Customer of the occurrence of the Force Majeure Event when the Contractor becomes aware of it or when the Contractor ought reasonably to be aware of it.
- 26.10** Each Party must make all reasonable efforts to minimise the effects of the Force Majeure Event. If the affected Party is prevented from performing its obligations under the Customer Contract by the Force Majeure Event for 60 days or such other period agreed in writing, then the other Party may in its discretion immediately terminate the Customer Contract by giving Notice in Writing of termination to the other Party.
- 26.11** Where the Customer Contract is terminated by the Customer in accordance with clause 26.10:
- (a) the Contractor is entitled to payment for work performed in accordance with the Customer Contract up to the date of termination; and
  - (b) the Parties must otherwise bear their own costs and will be under no further liability to perform the Customer Contract.

#### GOVERNMENT INFORMATION

- 26.12** The Contractor acknowledges that the Customer is subject to the GIPA Act and agrees that the Customer may disclose any part or all of this Customer Contract on its nominated website established for GIPA Act disclosures. The Contractor irrevocably consents to the Customer acting in accordance with this clause.
- 26.13** To the extent that section 121 of the GIPA Act applies, the Contractor must, upon receipt of a written request by the Customer, provide the Customer with immediate access to the following information contained in records held by the Contractor:
- (a) information that relates directly to the performance of Services by the Contractor;
  - (b) information collected by the Contractor from members of the public to whom it provides, or offers to supply, Services; and
  - (c) information received by the Contractor from the Customer to enable it to provide Services.
- 26.14** For the purposes of clause 26.13, information does not include:
- (a) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
  - (b) information that the Contractor is prohibited from disclosing to the Customer by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
  - (c) information that, if disclosed to the Customer, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Customer, whether at present or in the future.

advise the Customer by 30 days' notice in writing to both the Agency Head and Chief Information Officer of the Customer that such data will be available for download for a specified period (being no less than 60 days in duration) and on expiry of such period, such data will then be deleted;

- (c) the Contractor must delete Customer Data within the period specified in the Order Documents and, if requested by the Customer, provide certification that the Customer Data has been deleted;
- (d) the Contractor must cease providing the Products and Services; and
- (e) the Contractor must comply with any other reasonable direction issued by the Customer where permitted by the Customer Contract.

## **26. General**

### VARIATION

- 26.1** Subject to any other rights given under this Customer Contract to vary its terms and the following provisions of clause 26.2, neither a Change Request nor a Contract Variation shall be valid unless agreed in writing and signed by both the Customer and the Contractor.
- 26.2** Where required under directions and policies issued by the Board from time to time, the Customer must obtain the written approval of the Secretary, New South Wales Department of Customer Service prior to agreeing to a variation of any term or condition of the Procure IT Framework, including a variation to any of the Protected Clauses. In such circumstances, the Contractor must obtain a copy of such written approval from the Customer before entering into the relevant Change Request that varies such term or condition, including a Protected Clause.

### ASSIGNMENT AND NOVATION

- 26.3** The Contractor must not assign in whole or in part or novate the Customer Contract without obtaining the prior written consent of the Customer, which consent may be withheld in its discretion.
- 26.4** The Contractor acknowledges that the Customer may conduct financial and other inquiries or checks on the entity proposing to take over the Customer Contract before determining whether or not to give consent to an assignment or novation.
- 26.5** The Customer, at its own cost, may assign or novate, the Customer Contract, where by operation of statute the Customer is reconstituted into a new legal entity, to that new legal entity. If the assignment or novation changes the scope of the obligations or Deliverables to be provided by a Contractor under a Customer Contract, a Change Request (or Contract Variation, if applicable) must be effected, which will include a variation to the Price to reflect any increased costs that are incurred by the Contractor, or increased benefits that are gained by the Customer (as newly defined), as a result.
- 26.6** The Customer may, at its own cost, assign or novate the Customer Contract to any other Eligible Customer with the prior written consent of the Contractor, such consent not to be unreasonably delayed or withheld.

### WAIVER

- 26.7** A waiver in respect of a breach of a provision of the Customer Contract by a Party shall not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce any provision of the Customer Contract will not be interpreted as a waiver of that provision.

- (A) more than one Unremedied Breach; or
- (B) more than one breach which is incapable of remedy and, after the first such breach, the Customer has failed to take reasonable appropriate action to mitigate against the recurrence of such a breach; or
- (iii) obligations as to the Contractor's Intellectual Property Rights under the Customer Contract:
  - (A) more than one Unremedied Breach; or
  - (B) more than one breach which is incapable of remedy and, after the first such breach, the Customer has failed to take reasonable appropriate action to mitigate against the recurrence of such a breach;

where, for the purposes of this clause 25.6(c), "**Unremedied Breach**" means a breach which is capable of remedy and which has not been rectified within 28 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing from the Contractor specifying the details of the breach; or

- (d) suffered an Insolvency Event.

#### CONSEQUENCES OF TERMINATION

**25.7** In the event of termination under clause 25.2, the Customer may obtain from any other source a reasonably similar alternative to the Deliverables in which case the Contractor shall, subject to clause 18, be liable to the Customer for any reasonable losses, damages or expenses incurred (including any price difference between the Deliverable and the similar alternative) or suffered by the Customer.

**25.8** If the Customer Contract:

- (a) is terminated by the Customer for cause or it expires, then the Customer may provide the Contractor with written notice requiring the Contractor at its expense to remove Deliverables or to dismantle or remove work from the Customer's premises by a date stated in that notice;
- (b) is terminated by the Contractor for cause, then the Contractor may provide the Customer with written notice requiring the Customer to return any Deliverables that have not been paid for in full, and the Customer must return those Deliverables at its expense by the date stated in that notice; and
- (c) such termination or expiry is without prejudice to any right of action or remedy that has accrued or may accrue to either Party.

**25.9** On termination of this Customer Contract for any reason:

- (a) subject to any obligations arising out of any applicable State security classification or Statutory Requirements or specified in the Order Documents, a Party may retain for quality assurance and risk management purposes any notes and other records created or received in providing the Product or performing the Service provided that any retained notes or records are subject to the confidentiality obligations in accordance with clause 14;
- (b) at the Customer's request made within 60 days following termination, the Contractor must provide the Customer with a copy of all Customer Data in the format specified in the Order Documents or if no format is specified, in the standard format as usually provided by the Contractor. Where it is specifically agreed that the Contractor may satisfy this clause by providing access to a copy of the data, the Contractor must first

- (vi) assist DCS, the Contract Authority or the Customer to prevent unethical practices in the business relationship,

or engaging in any form of collusive or unethical practices, including offering staff of DCS, the Contract Authority or the Customer inducements or incentives designed to improperly influence the conduct of their duties.

#### TERMINATION FOR CONVENIENCE BY THE CUSTOMER

- 25.3** The Customer may by Notice in Writing at any time terminate the Customer Contract for convenience, such termination to be effective immediately unless stated otherwise on the Notice In Writing. The Contractor must immediately comply with any directions given in the Notice in Writing and must do everything that is reasonably practical to mitigate its losses arising in consequence of termination of the Customer Contract under this clause 25.3.
- 25.4** If the Customer exercises its right under clause 25.3, the Customer must:
- (a) if Item 42 of the General Order Form does not state an amount that is payable on termination, indemnify the Contractor against any losses, damages or expenses, which are reasonably and properly incurred by the Contractor to the extent that those losses, damages or expenses were incurred as a direct result of the termination of the Customer Contract in accordance with clause 25.3; or
  - (b) pay any amount that is stated in Item 42 of the General Order Form.
- 25.5** Once the Customer has paid the amounts in clause 25.4 no further compensation is payable for any termination under clause 25.3.

#### TERMINATION FOR CAUSE BY THE CONTRACTOR

- 25.6** The Contractor may terminate the Customer Contract immediately by providing the Customer Notice in Writing if the Customer has:
- (a) not paid any amount that has not been disputed by the Customer in accordance with clause 11.11 by the date that payment was due to be made; and
    - (i) the Contractor has provided written notice of this failure; and
    - (ii) the Customer has failed to pay that undisputed amount within 28 days of receipt of the written notice of failure;
  - (b) committed a Fundamental Breach of the Customer Contract and the Customer has not rectified that Fundamental Breach within 28 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing from the Contractor specifying the details of the breach;
  - (c) committed, in respect of its:
    - (i) privacy obligations under the Customer Contract:
      - (A) more than one Unremedied Breach; or
      - (B) more than one breach which is incapable of remedy and, after the first such breach, the Customer has failed to take reasonable appropriate action to mitigate against the recurrence of such a breach;
    - (ii) obligations of confidentiality under the Customer Contract:

- 24.12** The amount specified in Item 41 of the General Order Form shall include the total amount being claimed by both Parties including the amount of any cross claim but excludes any set offs, interest and legal costs. If the Parties are unable to agree on the total amount being claimed each Party shall submit a claim to the other Party detailing the nature of the claim, the relevant term of the Customer Contract which has been breached and how it calculated the amount of its claim. Where only one Party is submitting a claim the other Party shall be entitled to submit its estimate of the amount of the claim to the other Party. If the calculations of each Party differ from one another the amount in dispute for the purposes of Item 41 of the General Order Form shall be calculated by totalling the value of all the claims or estimated amount of the claims together and dividing that amount by the total number of claims and estimated claims.
- 24.13** The provisions of clauses 24.2 to 24.12 do not apply where a party seeks urgent interlocutory relief or where a Party has terminated the Customer Contract for a Substantial Breach or Fundamental Breach of the Agreement.

## **25. Termination**

- 25.1** If the Customer Contract is made under a Head Agreement then termination or expiry of the Head Agreement does not affect the Customer Contract, unless the context necessarily requires it.

### TERMINATION FOR CAUSE BY THE CUSTOMER

- 25.2** The Customer may terminate the Customer Contract immediately by providing the Contractor Notice in Writing if:
- (a) the Contractor suffers an Insolvency Event; or
  - (b) the Contractor has committed a Substantial Breach and the Contractor has not either:
    - (i) rectified that Substantial Breach within 14 days (or such longer period as stated in the Notice in Writing) of receipt of a Notice in Writing specifying the details of the breach; or
    - (ii) proposed steps that are reasonably acceptable to the Customer that it will take to remedy the Substantial Breach and a timeframe within which the Contractor will take them which are reasonably acceptable to the Customer.
  - (c) the Contractor fails to comply with the New South Wales Department of Customer Service (DCS) Statement of Business Ethics (<https://www.finance.nsw.gov.au/about-us/business-ethics>) including failure to:
    - (i) comply with applicable NSW Government Code of Practice and DCS's procurement policies and procedures,
    - (ii) provide accurate and reliable advice and information when required,
    - (iii) declare actual or perceived conflicts of interest as soon as the Contractor becomes aware of the conflict,
    - (iv) act ethically, fairly and honestly in all dealings with DCS, the Contract Authority or the Customer,
    - (v) take all reasonable measures to prevent the disclosure of Confidential Information of DCS, the Contract Authority and the Customer,

the Customer Contract which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Issue Notice**). The Issue Notice must be submitted within a reasonable time of the Party becoming aware of the issue. If the Party submitting the Issue Notice is the Contractor, then where the Customer Contract is made under a Head Agreement, the Contractor must send a copy of the Issue Notice to the Contract Authority.

- 24.3** If a Party submits an Issue Notice under clause 24.2, each Party must nominate in writing, within 7 days, a senior executive who will attempt to resolve the dispute. The nominated senior executives will promptly meet at a time and place that is mutually convenient with the objective of resolving the issue. The nominated senior executives may invite other Personnel to attend the mutually convenient conference subject to a list of additional invited Personnel being provided to the other nominated senior executive at least 24 hours prior to the conference.
- 24.4** If the Parties are able to agree upon a resolution to the dispute, the terms of the agreement are to be documented and signed by both nominated senior executives. Such an agreement will be binding on both Parties.
- 24.5** Each Party will bear its own costs under clauses 24.2 to 24.4.
- 24.6** If the dispute is not resolved within 21 days of the date that the Issue Notice was received by the other Party, either Party may then refer the dispute to expert determination in accordance with clauses 24.7 to 24.8.
- 24.7** The Party that requires that the dispute is resolved by expert determination must submit a Notice in Writing to the other Party specifying the issue to be decided by expert determination, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of the agreement which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Referral Notice**).
- 24.8** If the dispute is to be resolved by expert determination the Parties will be bound by the provisions and procedures contained in Schedule 11 – Dispute Resolution Procedures, unless agreed otherwise in writing.
- 24.9** If a Referral Notice has not been submitted within 20 Business Days of becoming entitled under clause 24.6 then the issue is barred from expert determination or any other action or proceedings, subject to clause 24.13. The Customer and the Contractor may, in writing, agree to extend this 20 Business Days period for the purposes of continuing to negotiate a resolution of a particular dispute for up to another 20 Business Days.
- 24.10** Notwithstanding the existence of a dispute, each Party must continue to perform its obligations under the Customer Contract during the period of the attempt to resolve the dispute .
- 24.11** Unless the Parties otherwise agree in writing, clauses 24.7 to 24.8 do not apply to any dispute:
- (a) for which either Party's claim exceeds \$250,000 or the amount stated in Item 41 of the General Order Form;(b) that involves a party claiming that a statutory guarantee under the CCA is involved in the dispute; or
  - (c) which relates to an issue of the type stated in Item 41 of the General Order Form.

In this case if the dispute is not resolved within 15 Business Days of the date that the Issue Notice was received by the other Party, either Party may commence any other form of resolution, including court proceedings.



(a) to data in the possession or control of the Contractor or any of its Subcontractors (other than any data or information containing the Contractor's or its Subcontractor's costs and margins or of a financially sensitive nature); and

(b) to the Contractor's Personnel,

for the purposes of obtaining information in connection with an audit under clauses 23.5 and 23.6.

- 23.7** For the purpose of complying with clause 23.6, the Contractor must promptly and efficiently give the Customer and their Personnel any assistance they reasonably require.
- 23.8** The Customer and its Personnel must comply with the Contractor's reasonable security requirements.
- 23.9** Without limiting the rights of the Customer, if an audit shows that the Contractor has breached or is in breach of this Customer Contract, the Contractor must promptly do all things necessary to remedy that breach and prevent it from recurring at no cost to the Customer.
- 23.10** If an audit shows that the Contractor has overcharged the Customer in any invoice, the Contractor must promptly refund any amounts that the Contractor has overcharged the Customer, and adjust all of the current invoices that have not been paid by the Customer to ensure that the Customer is only liable to pay the correct amount.
- 23.11** The Contractor and Customer may agree an alternative audit mechanism to that provided in clauses 23.5 to 23.8, such mechanism to be specified in Item 40A of the General Order Form or otherwise as agreed in writing. Any alternate audit mechanism agreed to under this clause 23.11 must address compliance with the Contractor's Customer Data, security and privacy obligations and such other of the Contractor's obligations required by the Customer and reasonably agreed by the Contractor.

#### NOTICES

- 23.12** Any Notice in Writing must be sent to the receiving Party's Service Address addressed to the Party's nominee for receipt of notices, or if no such position is nominated, it must be addressed to the Authorised Representative of such Party.
- 23.13** Any Notice in Writing is regarded as given and received:
- (a) if sent by mail; 3 Business Days after it is posted;
  - (b) if sent by fax; at 9.00 am on the Business Day following the day when the addressee actually receives it in full and in legible form; and
  - (c) if sent by email; when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).

## **24. Dispute Resolution**

- 24.1** The Parties agree to resolve any dispute between them that arises during the Contract Period out of, or in connection with, the Customer Contract in accordance with clause 24.
- 24.2** If a dispute arises out of, or in connection with, the Customer Contract during the Contract Period, then, subject to clause 24.13, the aggrieved Party must submit a Notice in Writing to the other Party of the issue, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of

## 22. Government Policy

- 22.1** If there is a Head Agreement and the Contractor was required to provide a competitive quote prior to entering into this Customer Contract, the Contractor must, during the Contract Period, comply with the NSW Government policy known as the "Small and Medium Enterprises ('SME') Policy Framework" in respect of such competitive quote. The Contractor acknowledges that it has read clause 16 of the Head Agreement which sets out the requirements of the Contractor imposed by the "Small and Medium Enterprises ('SME') Policy Framework " and agrees to comply with those requirements in respect of the competitive quote.
- 22.2** If there is no Head Agreement and the Customer Contract is a standalone Customer Contract then if the Contractor was required to provide a competitive quote prior to entering into this Customer Contract the Contractor must, during the Contract Period, comply with the NSW Government policy known as "Small and Medium Enterprises ('SME') Policy Framework " in respect of the competitive quote. The Contractor acknowledges that it has read the "Small and Medium Enterprises ('SME') Policy Framework at <http://www.procurepoint.nsw.gov.au/procurement-reform/about-nsw-procurement-reform/small-and-medium-enterprises-policy-framework> which sets out the requirements of the Contractor imposed by the Small and Medium Enterprises ('SME') Policy Framework.
- 22.3** The Contractor must comply with the New South Wales Department of Customer Service Statement of Business Ethics (<https://www.finance.nsw.gov.au/about-us/business-ethics>).

## 23. Contract Administration

### REPRESENTATIVES

- 23.1** Each Party may nominate an employee who is its Authorised Representative in Item 3 or Item 6 of the General Order Form.
- 23.2** Each Party warrants to the other Party that its Authorised Representative has the authority to provide such consents and approvals as are required for the purposes of this Customer Contract and to issue instructions and directions as necessary for the purposes of this Customer Contract, on behalf of that Party.

### NOTICE OF CHANGE IN CONTROL

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

### RECORD KEEPING AND AUDIT

- 23.4** The Contractor must keep financial records and other information relevant to the performance of the Customer Contract including as are required to allow the Customer to determine the Contractor's compliance with this Customer Contract and the accuracy of its invoices.
- 23.5** Subject to clause 23.11, no more than once in any calendar year, the Customer may conduct an audit to enable the Customer to confirm the Contractor's compliance with this Customer Contract by giving the Contractor at least 5 Business Days' prior written notice. Clauses 23.6 to 23.8 apply to an audit conducted by the Customer.
- 23.6** The Contractor must give the Customer and its Personnel (including internal and external auditors and advisers) full access at all reasonable times and on reasonable notice:

- (c) if, in the opinion of the Contractor, neither clause 19.6(a) nor 19.6(b) is reasonably commercially available and the Customer is not subject to the benefits of the legislation in clause 19.9, the Contractor may terminate the Customer Contract on 30 days' Notice in Writing and will be liable for all loss, damage or expense suffered by the Customer in connection with such termination.

**19.7** Notwithstanding clause 19.1, the Contractor is not required to indemnify the Customer under clause 19.1(b) or 19.1(c) (as applicable), its officers and employees:

- (a) if the third party making a claim under clause 19.1(b) or the IP Claim (as applicable) is the Contract Authority or any other Eligible Customer who is obtaining the benefit of, or being provided with, the Product, Service or Deliverable under the Customer Contract; or
- (b) where the third party claim under clause 19.1(b) or the IP Claim arises from, or in connection with, the supply of any Product, Service or Deliverable (or the supply of any item based on any Product, Service or Deliverable) to the third party, whether the supply was made by the Customer or any person who has, directly or indirectly, acquired the Product, Service or Deliverable or item based on the Product, Service or Deliverable from the Customer.

**19.8** The Contractor's liability in respect of the indemnity provided under:

- (a) clause 19.1(a), is subject to clauses 18.4, 18.6 and 18.7;
- (b) clause 19.1(b), is subject to clauses 18.1 to 18.7;
- (c) clause 19.1(c), is subject to clauses 18.4, 18.6 and 18.7.

**19.9** For the purposes of clause 19.1(c) an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth), sections 96 and 100 of the Designs Act 2003 (Cth), section 183 of the Copyright Act 1968 (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.

## **20. Conflict of Interest**

**20.1** The Contractor must:

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

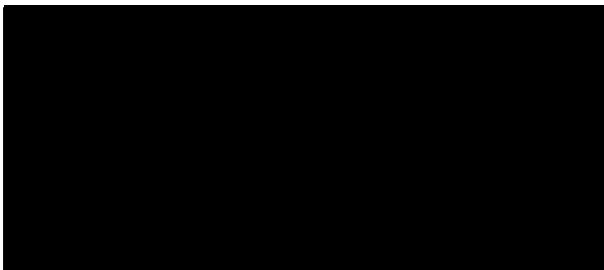
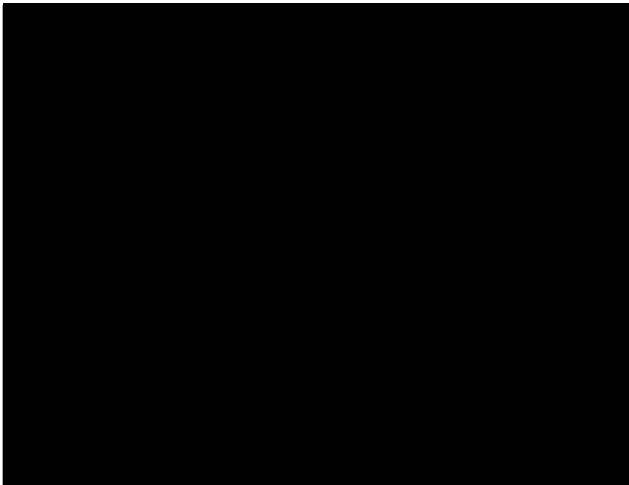
## **21. Performance Management**

### REPORTING

**21.1** The Contractor must provide to the Customer the reports stated in the Order Documents including Item 40 of the General Order Form in the time frame and format agreed in the Order Documents or as reasonably required by the Customer.

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Date

**Schedule 1: General Order Form**

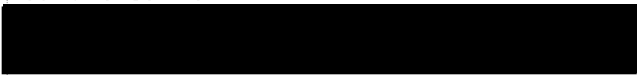
**PROCURE IT VERSION 3.2**

CUSTOMER


Item 1 Name of Customer

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
Specify the Customer's full legal name:	Department of Customer Service (ABN 81 913 830 179)

Item 2 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
Specify the Customer's service/delivery address:	Office of the Building Commissioner, Department of Customer Service  Haymarket NSW 2000, or such other person or contact details as notified by the Customer to the Contractor in writing.

Item 3 Customer's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Representatives (clause 23.1)</b>	
Specify an employee who is the Customer's Authorised Representative:	 Haymarket NSW 2000, or such other person or contact details as notified by the Customer to the Contractor in writing.

CONTRACTOR

Item 4 Name of Contractor

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
Specify the Contractor's full legal name:	KPMG (ABN 51 194 660 183)

Item 5 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify the Contractor's service/delivery address:	KPMG International Towers Sydney Tower 3, Level 38 300 Barangaroo Avenue Sydney NSW 2000

#### Item 6 Contractor's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Representatives (clause 23.1)</b>	
Specify an employee who is the Contractor's Authorised Representative:	<b>Name:</b> [REDACTED] [REDACTED] [REDACTED] [REDACTED]

#### 7 Head Agreement

This Item 7 must be completed when the Customer Contract is entered into under a Head Agreement.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.1)</b>	
Specify the Head Agreement number:	Not applicable.
Specify the Head Agreement title:	Not applicable.
Specify the Term of the Head Agreement: Start Date: End Date: If the Term of the Head Agreement has expired the Customer must obtain the Contract Authority's approval to enter into a further Customer Contract, and this approval should be attached to this General Order Form.	Not applicable.
<b>Insurance (clause 16.2)</b>	
Specify the insurances required under the Head Agreement:	Not applicable.
The default insurance requirement under the Head Agreement is public liability insurance with an indemnity of at least \$10,000,000 in respect of each claim for the period of cover. Specify any higher limit of cover that is required by the Head Agreement:	Not applicable.
The default insurance requirement under the Head Agreement is product liability insurance with an indemnity of at least \$10,000,000 for the total aggregate liability for all claims for the period of cover.	Not applicable.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify any higher limit that is required by the Head Agreement:	
Specify if professional indemnity/errors and omissions insurance was required under the Head Agreement. If so, the default insurance requirement is for a limit of cover of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover. Specify any higher limit that is required by the Head Agreement:	Not applicable.
Workers' compensation insurance in accordance with applicable legislation:	Not applicable.
Specify any other type of insurance required under the Head Agreement and the specified amount:	Not applicable.
<b>Performance Guarantee (clause 17.1)</b>	
Specify if the Contractor was required to provide a Performance Guarantee under the Head Agreement:	Not applicable.

#### Item 8 Modules that form part of the Customer Contract

##### Formation (clause 3.8(a))

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

- |  |                                     |   |                          |
|--|-------------------------------------|---|--------------------------|
| Module 1 – Hardware Acquisition and Installation     | <input type="checkbox"/>            | Module 11 – Telecommunications as a Service             | <input type="checkbox"/> |
| Module 2 – Hardware Maintenance and Support Services | <input type="checkbox"/>            | Module 12 – Managed Services                            | <input type="checkbox"/> |
| Module 3 – Licensed Software                         | <input type="checkbox"/>            | Module 13 – Systems Integration                         | <input type="checkbox"/> |
| Module 4 – Development Services                      | <input type="checkbox"/>            | Module 13A – Major Project Systems Integration Services | <input type="checkbox"/> |
| Module 5 – Software Support Services                 | <input type="checkbox"/>            |   |                          |
| Module 6 – Contractor Services                       | <input type="checkbox"/>            |   |                          |
| Module 7 – Professional Services                     | <input type="checkbox"/>            |   |                          |
| Module 8 – Training Services                         | <input type="checkbox"/>            |   |                          |
| Module 9 – Data Migration                            | <input type="checkbox"/>            |   |                          |
| Module 10 – As a Service                             | <input checked="" type="checkbox"/> |   |                          |

#### Item 9 Schedules that form part of the Customer Contract in addition to the General Order Form

##### Formation (clause 3.8(b))

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

- |                                  |                          |  |                          |
|----------------------------------|--------------------------|--|--------------------------|
| Schedule 1 – General Order Form  | Applies                  | Schedule 7 – Statutory Declaration - Subcontractor | <input type="checkbox"/> |
| Schedule 2 – Agreement Documents | <input type="checkbox"/> | Schedule 8 – Deed of Confidentiality               | <input type="checkbox"/> |



Schedule 3 – Service Level Agreement	<input type="checkbox"/>	Schedule 9 – Performance Guarantee	<input type="checkbox"/>
Schedule 4 – Variation Procedures	<input checked="" type="checkbox"/>	Schedule 10 – Financial Security	<input type="checkbox"/>
Schedule 5 – Escrow Deed	<input type="checkbox"/>	Schedule 11 – Dispute Resolution Procedures	<input type="checkbox"/>
Schedule 6 – Deed Poll – Approved Agents	<input type="checkbox"/>	Schedule 12 – Project Implementation and Payment Plan	<input checked="" type="checkbox"/>

#### Item 10 Contract Period

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Contract Period (Clause 2.4)</b>	
Specify the Commencement Date if it is not the date when the Customer and the Contractor sign the Customer Contract:	The date that the Customer Contract is executed by the Parties or, if executed on different dates, on the date of last execution.
Specify the end of the Contract Period:	On the completion of all of the Milestones specified in the PIPP in accordance with the Customer Contract. The Customer will issue the Contractor's Authorised Representative with a written notice upon the completion of the final Milestone and the date of this notice will signal the end of the Contract Period.
Specify any period of extension of the Contract Period in days/weeks/years:	Not applicable.

#### Item 11 Common Details

<b>Formation (clause 3.4)</b>	
The Contract Price and pricing details are specified in the PIPP.	

#### Item 12 Delivery Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Delivery (clause 5.1)</b>	
Specify the address of the Site where delivery is to be made:	Not applicable - There will be no physical delivery to the Site.
Specify any delivery instructions:	Not applicable.
Specify the hours during which delivery may be made to the Site:	Not applicable.

#### Item 13 Contract Specifications

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Formation (clause 3.4)</b>	
If the Contract Specifications are the User Documentation leave this Item blank. If the Contract Specifications comprise other documents, list those documents in order of priority:	The Contract Specifications will be agreed by the Parties in writing within the first six weeks of the Contract Period (or such other period as agreed by the Parties in writing). Once agreed, those Contract Specifications will be deemed to form part of the Customer Contract.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>System (clauses 5.11 and 9.3)</b>	
Specify whether the Products and Services comprise a System.	Not applicable.

#### Item 14 Payment

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Payment (clauses 11.1 and 11.2)</b>	
<b>Invoicing (clauses 11.7 and 11.9)</b>	
Specify the Customer's officer to receive invoices:	
Specify address to which invoices should be sent:	Invoices should be sent to the below addresses or such other addresses as notified by the Customer to the Contractor in writing:
Specify the number of days from receipt of a Correctly Rendered Invoice that the Customer must make payment. If this Item is not completed, the Customer must pay the Contractor within 30 days from receipt of a Correctly Rendered Invoice.	30 days from receipt of a Correctly Rendered Invoice.
Specify when the Contract Price must be paid: E.g. if the earlier Price is to be paid on delivery, insert "The Contract Price is due on delivery". If payment is to be made on more than one occasion then consider using a PIPP under Item 20.	Refer to the PIPP.
Specify whether the Contract Price is fixed: E.g. does the unit Price per item vary for inflation or other factors? If so, specify the calculation for Price variations:	The Contract Price is fixed provided that all assumptions specified in the PIPP remain accurate in all material respects.

#### Item 15 User Documentation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>User Documentation (clause 5.4(b))</b>	
Specify the Price of any additional copies of the User Documentation:	The Contractor will provide the Customer with digital copies of any User Documentation at no charge.

### Item 16 Management Committee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Management Committee (clause 6.4)</b>	
List the name/s of the Contractor's project manager, officers or other relevant persons who will sit on the management committee:	Refer to the PIPP.
<b>Management Committee (clause 6.6)</b>	
Specify the function to be performed by the management committee:	Refer to the PIPP.
List the name/s of the Customer's project manager, officers or other relevant persons who will sit on the management committee:	Refer to the PIPP.
<b>Management Committee (clause 6.8)</b>	
Specify the details, including the contents of the progress report to be submitted to the Customer's project manager:	Refer to the PIPP.
Specify any other details:	Refer to the PIPP.

### Item 17 Performance Review Procedures

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Performance Reviews (clause 6.10)</b>	
Specify if a service and performance review/s of the Contractor's performance of the Customer Contract is to apply:	Yes. The Contractor must cooperate with the Customer and its Personnel in respect of all performance review meetings, including making available to the Customer such information and reports as may be reasonably required by the Customer to assess the Contractor's service and performance under the Customer Contract.
Specify any specific time intervals for service and performance reviews:	The Parties agree that the Contractor's performance may be reviewed by the Customer at the completion of each Milestone or at such other times as reasonably required by the Customer.

### Item 18 Site Preparation and Maintenance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Site Specifications (clause 6.12)</b>	
Specify: <ul style="list-style-type: none"> <li>• Site location; and</li> <li>• whether a Site Specification is required.</li> </ul>	Not applicable.
<b>Access to Customer's Site (clause 7.1(b))</b>	
Specify any other requirements in relation to the Site access:	Not applicable.
Specify any requirements for the preparation and maintenance of the Site:	Not applicable.

### Item 19 Implementation Planning Study

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Implementation Planning Study (clauses 6.14 to 6.16)</b>	
Specify if the Contractor must provide an implementation planning study:	An implementation planning study is not required.
Specify the implementation planning study objectives and time for provision of study:	Not applicable.
Date for delivery of the implementation planning study to the Customer:	Not applicable.
Specify if the implementation planning study need to undergo Acceptance Tests in accordance with clause 10.1(b):	Not applicable.

### Item 20 Project Implementation and Payment Plan (PIPP) and Staged Implementation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Project Schedule (clause 6.17)</b>	
<b>Invoicing (clause 11.7)</b>	
Specify if a PIPP has been created. If so, identify the document in this Item and attach as an Annex to this General Order Form: E.g. the PIPP is in a document "PIPP v1_1 27/10/11" and Annexure 1 to the Customer Contract.	A PIPP has been created and is included at Schedule 12.
<b>Staged Implementation (clause 6.20)</b>	
Specify if there is to be Staged Implementation: If so, details of the Deliverables that comprise each Stage must be stated in the PIPP together with the period during which the Customer must give written notice to move to the next Stage (if greater than 10 Business Days):	Yes, there will be Staged Implementation in accordance with the PIPP.

### Item 21 Liquidated Damages

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Liquidated Damages (clauses 6.28 to 6.34)</b>	
Specify if Liquidated Damages (LDs) will apply:	Liquidated Damages will not apply.
Specify the Milestones which are LD Obligations:	Not applicable.
Specify the Due Date for completion of each LD Obligation:	Not applicable.

<b>Details to be included from the Customer Contract</b>	<b>Order Details agreed by the Contractor and the Customer</b>
Specify the calculation and amount of LDs for each LD obligation:	Not applicable.
Specify the maximum number of days LDs are to be paid for each LD obligation:	Not applicable.

## Item 22 Customer Supplied Items (CSI) and Customer Assistance

<b>Details to be included from the Customer Contract</b>	<b>Order Details agreed by the Contractor and the Customer</b>
<b>Customer Supplied Items (CSI) (clause 6.36)</b>	
Specify each CSI to be provided by the Customer: CSI may be: <ul style="list-style-type: none"> <li>office access, desks etc (specify location, standards, times of access);</li> <li>Hardware or software (specify equipment, capacity, versions of software and dates of availability);</li> <li>VPN access or other remote access (specify capacity and hours available).</li> </ul> [Note: details of any Customer Personnel should be specified in Item 26].	The CSI that will be provided by the Customer is set out in the PIPP.
Specify if any CSI must be covered by support and maintenance contracts including the period of cover, the Contractors rights of access to any third party support help desk, the hours and service levels to which support and maintenance must be available to the Contractor:	Not applicable.
Specify the times when each CSI is to be provided:	If not specified in the PIPP, as reasonably determined by the Customer and notified to the Contractor.
Specify any requirements to attach to any CSI: E.g. any standards that the CSI must meet.	The Customer must provide reasonable quality CSI that supports the Contractor to provide the Services and Deliverables in accordance with the Customer Contract.
Specify if the Contractor must conduct any verification checks of CSI's to ensure they are satisfactory:	None.
If so, specify the verification check process for each CSI: Include: <ul style="list-style-type: none"> <li>a process to manage satisfactory and unsatisfactory verification checks;</li> <li>a process to manage 'reissued' CSI's;</li> <li>a process to manage repeat CSI verification checks;</li> <li>a process to manage 'draft' or 'incomplete' and 'updated' CSI's;</li> </ul>	Not applicable.

<b>Details to be included from the Customer Contract</b>	<b>Order Details agreed by the Contractor and the Customer</b>
<ul style="list-style-type: none"> <li>a process to manage rejected CSI's:</li> <li>a process to manage previously satisfactory CSI which becomes defective:</li> <li>a list of required verification check forms and/or registers and a corresponding data entry process:</li> <li>a list of Customer and Contractor nominee/s for responsibility to undertake verification checks:</li> </ul>	
Specify any amount payable by the Contractor to the Customer for any item of CSI:	No amount is payable.
<b>Customer Assistance (clause 6.41)</b>	
Specify the instructions, information, data, documents, specifications, plans, drawings and other materials that must be provided by the Customer to the Contractor:	As reasonably determined by the Customer and notified to the Contractor.

#### Item 23 Escrow

<b>Details to be included from the Customer Contract</b>	<b>Order Details agreed by the Contractor and the Customer</b>
<b>Escrow (clause 6.42)</b>	
Specify if an escrow arrangement is required:	An escrow arrangement is not required.
Specify the parties to the escrow arrangement:	Not applicable.
Specify the time for the escrow arrangement to endure:	Not applicable.

#### Item 24 Business Contingency Plan

<b>Details to be included from the Customer Contract</b>	<b>Order Details agreed by the Contractor and the Customer</b>
<b>Business Contingency (clauses 6.45 to 6.47)</b>	
Specify if a Business Contingency Plan is required:	For the Contract Period, the Contractor must comply with its internal business contingency plan and ensure that it has in place appropriate systems, measures and procedures to respond to and mitigate against events and circumstances (including Force Majeure Events) that may affect the continuity of the Services and Deliverables.
Specify when the Business Contingency Plan is required:	Not applicable.
Specify any information to be included in the Business Contingency Plan including the business contingency services required and the period of the services:	Not applicable.

<b>Details to be included from the Customer Contract</b>	<b>Order Details agreed by the Contractor and the Customer</b>
Specify the periods that the Business Contingency Plan must be reviewed, updated by the Contractor:	As reasonably determined by the Contractor to enable compliance with its obligations under the Customer Contract.
Specify the time periods that the Contractor is to test the operability of the Business Contingency Plan:	As reasonably determined by the Contractor to enable compliance with its obligations under the Customer Contract.

#### Item 25A Transfer of Records outside NSW - Customer Data

<b>Details to be included from the Customer Contract</b>	<b>Order Details agreed by the Contractor and the Customer</b>
<b>Customer Data (clause 7.5)</b>	
<p>Specify whether any State Records will be transferred to the Contractor's possession under the Customer Contract.</p> <p>If yes, Customer to state whether consent is provided to transfer State Records outside the jurisdiction of New South Wales.</p> <p>If consent is granted, Customer to specify:</p> <ul style="list-style-type: none"> <li>• the jurisdiction(s) for which consent is granted</li> <li>• the conditions on which such consent is granted.</li> </ul> <p>[Note: Clause 7.5 of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]</p>	<p>State Records may be transferred to the Contractor or come into the Contractor's possession or control under the Customer Contract.</p> <p>If any State Records are transferred to the Contractor or come into its possession or control in the course of performing its obligations under the Customer Contract, the Contractor must ensure that the State Records are not transferred, sent, taken, accessed or disclosed outside of Australia and in all cases such transfer, access or disclosure must be:</p> <ol style="list-style-type: none"> <li>a) solely for the purpose of providing the Services and Deliverables under the Customer Contract;</li> <li>b) by authorised Contractor's Personnel whose roles require such access to provide the Services and Deliverables in accordance with the Customer Contract;</li> <li>c) in a secure manner that is consistent with the requirements under the Customer Contract; and</li> <li>d) in accordance with any security policies, standards and directions as reasonably notified by the Customer to the Contractor in writing.</li> </ol> <p>For clarity, nothing in this Item 25A limits the security and privacy obligations of the Contractor under the Customer Contract, including under clauses 7.4 to 7.9 (Customer Data), 7.10 to 7.12 (Security) and clause 15 (Privacy).</p>

#### Item 25B Transfer of Records outside NSW – Personal Information

<b>Details to be included from the Customer Contract</b>	<b>Order Details agreed by the Contractor and the Customer</b>
<b>Privacy (clause 15)</b>	
<p>Customer to specify whether consent is provided to transfer Personal Information outside the jurisdiction of New South Wales.</p> <p>If consent is granted, Customer to specify:</p> <ul style="list-style-type: none"> <li>• the jurisdiction(s) for which consent is granted</li> </ul>	<p>If any Personal Information is transferred to the Contractor or comes into its possession or control in the course of performing its obligations under the Customer Contract, the Contractor must ensure that the Personal Information is not transferred, sent, taken, accessed or disclosed outside of Australia and in all cases such transfer, access or disclosure must be:</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<ul style="list-style-type: none"> <li>the conditions on which such consent is granted.</li> </ul> <p>[Note: Clause 15.1(h) of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]</p>	<ul style="list-style-type: none"> <li>a) solely for the purpose of providing the Services and Deliverables under the Customer Contract;</li> <li>b) by authorised Contractor's Personnel whose roles require such access to provide the Services and Deliverables in accordance with the Customer Contract;</li> <li>c) in a secure manner that is consistent with the requirements under the Customer Contract; and</li> <li>d) in accordance with any security policies, standards and directions as reasonably notified by the Customer to the Contractor in writing.</li> </ul> <p>For clarity, nothing in this Item 25B limits the security and privacy obligations of the Contractor under the Customer Contract, including under clauses 7.4 to 7.9 (Customer Data), 7.10 to 7.12 (Security) and clause 15 (Privacy).</p>

**Item 25 Secrecy and Security**

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Access to Customer's Site (clause 7.11)</b></p> <p>Specify any secrecy or security requirements that the Contractor and its Personnel must comply with: E.g. insert a reference to any document that includes a security requirement.</p>	<p><b>Secrecy and security requirements</b></p> <ul style="list-style-type: none"> <li>(a) The Contractor and its Personnel (including subcontractors) must not share any access codes or passwords provided by, or generated on behalf of the Customer, for use in accessing the Customer's systems or Customer Data.</li> <li>(b) The Contractor must have and maintain for the Contract Period (or for so long as it holds Customer Data (including Personal Information) or the Customer's Confidential Information) physical and information controls and security measures in accordance with ISO 27001 - Information Security Management and the other security and privacy standards, requirements and controls set out under the Customer Contract.</li> </ul>



Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<p>(i) meet the Contractor's security and privacy obligations under the Customer Contract;</p> <p>(ii) audit, monitor, detect, identify, report and protect against privacy breaches, Viruses, fraud, corruption and other threats or hazards to the security or integrity of Customer Data, the Customer's operations or the Services and Deliverables; and</p> <p>(iii) manage any potential security risks in its supply chains.</p> <p>(e) The Contractor and its subcontractors must regularly review and, if necessary, update their security arrangements to ensure that they remain in compliance with the Customer Contract.</p> <p>(f) Nothing in this Item restricts the Contractor's obligations in relation to security, privacy or confidentiality under the Customer Contract. In the event that there is any conflict between any of the security, privacy or confidentiality standards or requirements that apply under the Customer Contract, the higher or more onerous standard applies to the extent of the relevant conflict.</p> <p><b>Revisions</b></p> <p>If there are any revisions to the secrecy or security requirements and policies specified in this Item and the Customer requires the Contractor to comply with those revised requirements and policies, the Customer will notify the Contractor. If changes to the secrecy or security requirements require the Contractor to materially change the way it provides the Services or Deliverables or the Contractor can demonstrate that it will incur material additional costs, then the Parties will enter into good faith negotiations as to an appropriate and reasonable adjustment to the Contract Price. Any adjustment will be based on the rates and charges specified in the PIPP.</p>
<p><b>Timeframes for response to a Security Issue</b></p>	
<p>Specify whether Customer agrees to any alternate timeframe for:</p> <ul style="list-style-type: none"> <li>• Notification of actual, alleged or suspected security breach (clause 7.12(a))</li> </ul> <p>[Note: default is immediate notification]</p> <ul style="list-style-type: none"> <li>• Investigation of Security Issue (clause 7.12(b))</li> </ul> <p>[Note: default is within 48 hours from notification]</p> <ul style="list-style-type: none"> <li>• Remedy the Security Breach (clause 7.12(c)).</li> </ul> <p>[Note: the default is within 24 hours from conclusion of investigation].</p> <p>Any alternate timeframes agreed to in this General Order Form must:</p>	<p>The default timeframes applies, except that security breaches will be remedied by the Contractor as soon as reasonably practicable having regard to the severity of the breach.</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<ul style="list-style-type: none"> <li>• be approved by the Customer's Chief Information Officer; and</li> <li>• comply with the NSW Cyber Security Policy, NSW Cyber Security Incident Emergency Sub Plan from</li> </ul> <div style="background-color: black; width: 100%; height: 50px; margin: 5px 0;"></div> <ul style="list-style-type: none"> <li>• comply with applicable security standards; and</li> <li>• comply with the Customer's Information Security Management System and other Customer security and policy requirements including incident notification requirements.</li> </ul>	

**Item 26 Customer's Personnel**

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Personnel General (clause 8.5)</b></p> <p>Specify the Customer's Personnel who will be available to work with the Contractor and their roles and responsibilities: Also specify the times and duration of their involvement as well as their authority levels:</p>	<p>As reasonably determined by the Customer and notified to the Contractor from time to time.</p> <p>Notwithstanding the above, the Parties agree that:</p> <ol style="list-style-type: none"> <li>a) relevant Customer Personnel should (to the extent reasonable practicable) be available as reasonably required by the Contractor for the entirety of the Contract Period;</li> <li>b) Customer Personnel should have the requisite authority to carry out their roles and responsibilities under the Customer Contract; and</li> <li>c) Customer Personnel should have the requisite experience and capability, and a sufficient understanding and knowledge of the Services and Deliverables to be provided under the Customer Contract (including the project background),</li> </ol> <p>to ensure continuity in the provision of the Services and Deliverables and where applicable, to provide directions and respond to any reasonable enquiries from the Contractor in relation to the Customer Contract.</p>

**Item 27 Specified Personnel**

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Specified Personnel (clause 8.8)</b></p> <p>Specify the identity and roles and responsibilities of any of the Contractor's Specified Personnel:</p>	<p>As set out in the PIPP.</p>

Item 28 Subcontractors

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Agents and Subcontractors (clause 8.17)</b>	
Specify which subcontractors are required to provide a Statutory Declaration - Subcontractor, substantially in the form of Schedule 7:	Schedule 7 is not required.

Item 29 Quality Standard Accreditation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Contractor Warranties (clause 9.1(h))</b>	
Specify any quality standard accreditation arrangements the Contractor must hold during the Contract Period:	Not applicable.

Item 30 Contractor's Compliance with Standards, Codes and Laws

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Contractor Warranties (clause 9.1(g))</b>	
Specify any laws (other than Statutory Requirements) the Contractor is to comply with:	<p>To the extent applicable, the Contractor and its Personnel must (in addition to the Statutory Requirements) comply with any Commonwealth law or New South Wales law in respect of Modern Slavery.</p> <p>In this Item:</p> <p><b>Modern Slavery</b> means conduct defined as "modern slavery" in the <i>Modern Slavery Act 2018</i> (Cth) or <i>Modern Slavery Act 2018</i> (NSW) (as applicable).</p>
Specify any codes, policies, guidelines or standards the Contractor is to comply with:	<p><b>Codes, Policies, Guidelines and Standards</b></p> <p>In addition to the security policies and standards referenced in Item 25, the Contractor must comply (to the extent applicable) with the:</p> <ul style="list-style-type: none"> <li>a) Department of Customer Service Statement of Business Ethics currently published at <a href="https://www.customerservice.nsw.gov.au/about-us/statement-of-business-ethics">https://www.customerservice.nsw.gov.au/about-us/statement-of-business-ethics</a>;</li> <li>b) the NSW Government Procurement Policy Framework currently published at <a href="https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework">https://buy.nsw.gov.au/policy-library/policies/procurement-policy-framework</a>;</li> <li>c) NSW Government Supplier Code of Conduct currently published at <a href="https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct">https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct</a>;</li> <li>d) NSW Government Small and Medium Enterprises and Regional Procurement Policy currently published at <a href="https://buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy">https://buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy</a>;</li> </ul>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<div style="background-color: black; width: 100%; height: 40px; margin-bottom: 10px;"></div> <ul style="list-style-type: none"> <li>f) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) (including to ensure that the Services and Deliverables have not been produced using the worst forms of child labour as defined in that Convention);</li> <li>g) the finalised and Customer approved version of the Global Governance Framework but only on and from the time it is made available to the Contractor; and</li> <li>h) any specific policies, codes, guidelines and standards as otherwise agreed between the Parties.</li> </ul> <p><b>ICT Accessibility</b></p> <p>The Contractor must strive to ensure that, to the extent reasonably practicable, the Building Assurance Solution:</p> <ul style="list-style-type: none"> <li>a) is accessible to users and does not infringe relevant anti-discrimination laws applicable in New South Wales; and</li> <li>b) meets Accessibility Standard AS EN 301 549, but there shall be no obligation for the Contractor to have the Building Assurance Solution independently verified by a third party in respect of such standard.</li> </ul> <p><b>Revisions</b></p> <p>If there are any revisions to the codes, policies, guidelines or standards specified in this Item and the Customer requires the Contractor to comply with those revised requirements, the Customer will notify the Contractor. If changes to the codes, policies, guidelines or standards require the Contractor to materially change the way it provides the Services or Deliverables, or the Contractor can demonstrate that it will incur material additional costs, then the Parties will enter into good faith negotiations as to an appropriate and reasonable adjustment to the Contract Price. Any adjustment will be based on the rates and charges specified in the PIPP.</p>

**Item 31 Customer's Compliance with Standards, Codes and Laws**

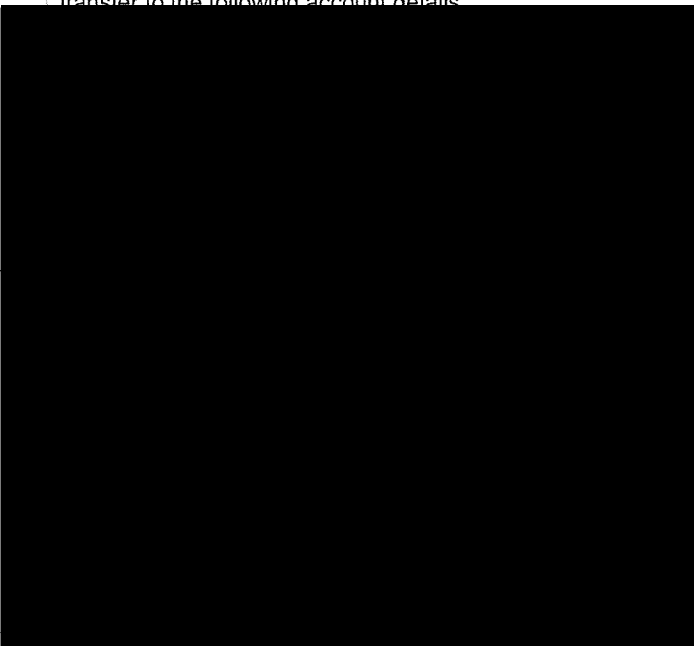
Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Customer Warranties (clause 9.4(h))</b>	
Specify any laws (other than Statutory Requirements) the Customer is to comply with:	Not applicable.
Specify any codes, policies, guidelines or standards the Customer is to comply with:	Not applicable.

## Item 32 Acceptance Testing

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Part 3 Dictionary (clauses 1.2 to 1.5)</b></p>	<p>The Parties agree that the Acceptance Testing regime under the Customer Contract does not apply. The Parties agree that the Acceptance Testing process and principles set out in the Additional Conditions and the PIPP applies instead.</p>
<p><b>Acceptance Test Notification Period</b> is the period from the end of the Acceptance Test Period, within which the Customer must provide to the Contractor written notice of the result of the Acceptance Test.</p> <p>Specify this period:</p> <p>If no period is specified, the period is 2 Business Days:</p>	<p>See note above.</p>
<p><b>Acceptance Test Data</b> is the data that is provided by the Customer, and agreed by the Contractor that reflects the data the Customer will use in the Deliverable, that is to be used for Acceptance Testing.</p> <p>Specify the Acceptance Test Data:</p>	<p>See note above.</p>
<p><b>Acceptance Test Period</b> is the period for the performance of any Acceptance Tests for any Deliverable.</p> <p>Specify this period:</p> <p>If no period is specified, the period is 10 Business Days from the date of delivery of the Deliverable to the Customer.</p>	<p>See note above.</p>
<p><b>Acceptance (clause 10.1)</b></p>	
<p>For each Deliverable, specify whether each Deliverable is to undergo Acceptance Testing:</p> <p>If not, the Deliverable will be Accepted under clause 10.1(a)</p>	<p>See note above.</p>
<p>If a Deliverable is not to undergo Acceptance Tests, specify the period required following delivery of the Deliverable as required by the Order Documents when the Actual Acceptance Date for a Deliverable occurs:</p> <p>If no period is specified, then the period is 2 Business Days.</p>	<p>See note above.</p>
<p><b>Conducting Acceptance Tests (clause 10.3)</b></p>	
<p>For each Deliverable that is to undergo Acceptance Tests, specify details of the Acceptance Testing requirements:</p>	<p>See note above.</p>
<p>Specify the identification of the Deliverables or part of the Deliverables to be tested:</p>	<p>See note above.</p>
<p>Specify the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests:</p>	<p>See note above.</p>
<p>Specify which Party is to provide the test environment, including hardware, software,</p>	<p>See note above.</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
power, consumables and other resources and when the environment and resources must be ready for use:	
Specify the methodology and process for conducting Acceptance Tests:	See note above.
Specify the scheduling of Acceptance Tests including the Acceptance Test Period and the Acceptance Test Notification Period:	See note above.
Specify the Acceptance Criteria used to test whether the Deliverable meets the Contract Specification and other requirements of the Customer Contract:	See note above.
Specify the Acceptance Test Data required:	See note above.
If an Acceptance Test document has been created that addresses the above points it can be attached to the General Order Form by identifying the document here:	Refer to the Additional Conditions and the PIPP.

**Item 33 Credit/Debit Card**

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<b>Payment (clause 11.3)</b>	
Specify any credit/ debit card or electronic facility that the Customer may use to pay the Contractor:	Unless otherwise agreed between the Parties in writing, the Customer must pay the Contractor by electronic funds transfer to the following account details:  
Specify any fee that is applicable for payment by credit/debit card	Not applicable.

Item 34 Intellectual Property

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Existing Material (clauses 13.7, 13.9 and 13.10)</b></p>	
<p>Specify any terms and conditions applicable for granting a licence for Existing Material owned by a third party:</p>	<p>a) Prior to using any Existing Material in the supply of the Services or the production of the Deliverables (including incorporating the Existing Material in a Deliverable) the Contractor must notify the Customer in writing as to whether it includes any Intellectual Property Rights owned by a third party.</p> <p>b) The Contractor must, in respect of any third party Intellectual Property Rights used in the supply of the Services or the production of Deliverables or included in any Deliverables:</p> <ol style="list-style-type: none"> <li>i. ensure that it procures, at its sole cost, licences to use such third party Existing Material on the same terms as the Contractor licences the Existing Material under this Customer Contract (as varied by the Additional Conditions);</li> <li>ii. ensure that the use of such third party Existing Materials does not constrain Project Remediate, the delivery of the pilot for the Building Assurance Solution or the Customer's use of the Services or any Deliverables; and</li> <li>iii. otherwise not use any third party Existing Materials in the provision of the Services or the production of any Deliverables without the consent of the Customer and on terms agreed with the Customer in writing.</li> </ol>
<p>If a perpetual and irrevocable licence to use certain Existing Material cannot be provided (for example because it is licensed under subscription for a defined period), specify:</p> <ul style="list-style-type: none"> <li>• the duration of the licence to use that Existing Material and/or</li> <li>• the terms on which the licence may be revoked.</li> </ul>	<p>As per the Additional Conditions.</p>
<p>Specify any fees to be charged for any licence to use any of Contractor's Existing Materials:</p>	<p>No additional fees are payable during the Contract Period. For clarity, the Contract Price incorporates licences for the Customer and other Permitted Users as defined in the Additional Conditions to use any Existing Material that forms part of the Building Assurance Solution for the Contract Period and on the licence terms specified in the Customer Contract (as varied by the Additional Conditions) and on the assumptions set out in the PIPP.</p>
<p><b>Customer Owned New Material (clause 13.11)</b></p>	
<p>Specify whether clause 13.11 applies ie. whether the Customer owns any New Material. If so, specify:</p> <ul style="list-style-type: none"> <li>• which items of New Material are Customer Owned New Material; and</li> <li>• whether the Contractor is granted any licence by the Customer to use</li> </ul>	<p>a) Except for the New Materials specified in paragraph (b) below, the Contractor owns all New Materials, including all New Materials in the Building Assurance Solution (including source code), and clause 13.11 does not apply to such New Materials.</p> <p>b) The Customer owns New Material in:</p> <ol style="list-style-type: none"> <li>i. the Global Governance Framework; and</li> <li>ii. in Materials used in the development of, or which are included within, the Global</li> </ol>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>the Customer Owned New Material, and if so, what licence terms apply to the Contractor's use of the Customer Owned New Material.</p> <p>If clause 13.11 does not apply, state "Not applicable".</p>	<p>Governance Framework (including protocols, taxonomies and guiding principles),</p> <p>except for any of the Contractor's Existing Materials and provided that those Existing Materials were not developed by, or on behalf of, the Contractor or any of its Personnel or other third party for the purposes of, or in anticipation of, performing the Contractor's obligations under the Customer Contract.</p> <p>For the Contract Period, the Customer grants the Contractor and its Personnel a non-exclusive, non-transferrable, royalty-free, revocable licence to use the Existing Material referred to in paragraph (b) to the sole extent necessary to enable the Contractor and its Personnel to provide the Services and Deliverables.</p>

**Item 35 Confidentiality**

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Confidentiality (clause 14.4)</b></p> <p>Specify if the Contractor must arrange for its Subcontractors to execute a Deed of Confidentiality substantially in the form of Schedule 8- Deed of Confidentiality:</p>	<p>Schedule 8 is not required. However, by the Commencement Date (or as soon as possible thereafter) the Contractor must arrange for Mirvac and its other Subcontractors to enter into a confidentiality agreement that contains confidentiality provisions that are substantially the same as those contained in the Customer Contract.</p>

**Item 36 Insurance Requirements**

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Insurance (clause 16.7)</b></p> <p>Level of indemnity of public liability insurance in respect of each claim for the period of cover.</p> <p>The default requirement in the Customer Contract is \$10,000,000</p> <p>[Only specify if a higher limit of cover that is required by the Customer Contract:]</p>	<p>Default applies.</p>
<p>Level of indemnity of product liability insurance for the total aggregate liability for all claims for the period of cover.</p> <p>The default requirement in the Customer Contract is \$10,000,000</p> <p>[Only specify if any higher limit of cover that is required by the Customer Contract:]</p>	<p>Default applies.</p>
<p>If Services are being provided under the Customer Contract the default level of indemnity of professional indemnity insurance for the total aggregate liability for all claims for the period of cover is \$1,000,000</p> <p>[Only specify is a higher limit that is required by the Customer Contract:]</p>	<p>Default applies.</p>



<b>Details to be included from the Customer Contract</b>	<b>Order Details agreed by the Contractor and the Customer</b>
Specify any additional insurance that the Contractor is to hold, including the type of insurance, the term of the insurance and the amount of the insurance:	Not applicable.

### Item 37 Performance Guarantee

<b>Details to be included from the Customer Contract</b>	<b>Order Details agreed by the Contractor and the Customer</b>
<b>Performance Guarantee (clause 17.2)</b>	
Specify if the Contractor must arrange for a guarantor to enter into a Performance Guarantee:	Not applicable.
Specify the date by which the Performance Guarantee must be provided to the Customer. If no date is specified, the Contractor must provide the Performance Guarantee to the Customer within 30 days of the Commencement Date.	Not applicable.

### Item 38 Financial Security

<b>Details to be included from the Customer Contract</b>	<b>Order Details agreed by the Contractor and the Customer</b>
<b>Financial Security (clause 17.4)</b>	
Specify if the Contractor must provide a Financial Security: If so, specify the amount of the Financial Security:	Not applicable.
Specify the date by which the Financial Security must be provided to the Customer: If no date is specified, the Contractor must provide the Financial Security within 14 days of the Commencement Date.	Not applicable.

### Item 39 Limitation of Liability

<b>Details to be included from the Customer Contract</b>	<b>Order Details agreed by the Contractor and the Customer</b>
<b>Limitation of Liability (clause 18)</b>	
If the Parties cannot agree the amount that is legally payable under the Customer Contract for the: <ul style="list-style-type: none"> <li>• Non-Recurring Service or Product; and/or</li> <li>• Short Term Recurring Service</li> </ul> (as applicable) insert the amount that the Parties agree is the best estimate of the Contract Value for the relevant item (the Estimated Contract Price).	As set out in the Additional Conditions.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Note: It may be necessary to separately identify the amounts payable under a single Customer Contract into separate amounts that are attributable to each of the different types of Product/ Service.</p> <p><b>(See the definition of Contract Value in Part 3)</b></p>	
<p>If Services are being provided under any of the following Modules:</p> <ul style="list-style-type: none"> <li>• Module 6 – Contractor Services;</li> <li>• Module 7 – Professional Services; or</li> <li>• Module 8 – Training Services,</li> </ul> <p>specify whether the Parties regard the relevant Services as being:</p> <ul style="list-style-type: none"> <li>• the supply of a service of the same type on a periodic basis, and so are to be classified as Recurring Services for the purpose of the limitation of liability; or</li> <li>• provided in respect of a specific project where the Contractor has been engaged by a Customer to produce, create or deliver a specified outcome or solution that may be subject to Acceptance Testing, in which case the Services are to be classified as Non-Recurring Services for the purpose of the limitation of liability.</li> </ul> <p><b>(See definition of Non-Recurring Services and Recurring Services in Part 3)</b></p>	Not applicable.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify the alternative cap of liability (clause 18.3):	Not applicable.

#### Item 40 Performance Management Reports

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Reporting (clause 21.1)</b></p> <p>Specify the reports required, (if any), the time for provision and the agreed format:</p>	<p>a) The Contractor must provide the Customer with the following reports:</p> <ul style="list-style-type: none"> <li>i. a monthly status report for eConstruction to feed into the Steering Committee;</li> <li>ii. regular sprint reports for both active and completed sprints;</li> <li>iii. the reports specified in the PIPP and other Order Documents; and</li> </ul>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	<ul style="list-style-type: none"> <li>iv. such other reports in relation to the Services and Deliverables as reasonably required by the Customer, provided that such other reports will be at the Customer's additional cost, which shall be reasonably agreed by the Parties in writing and calculated based on any applicable rates and charges specified in the PIPP.</li> <li>b) The reports must be provided to the Customer's Authorised Representative.</li> <li>c) All reports must be: <ul style="list-style-type: none"> <li>i. in writing and provided in the format required by the Contractor and agreed by the Customer acting reasonably (if any);</li> <li>ii. in English; and</li> <li>iii. accurate and up-to-date at the date provided to the Customer.</li> </ul> </li> </ul>

#### Item 40A Audit

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Alternative Audit Mechanism (clause 23.11)</b></p> <p>If the default audit provisions of clause 23.5-23.8 are to apply, state "Not Applicable".</p> <p>If an alternative audit mechanism is agreed by the Customer and Contractor, specify the terms of such alternate audit including the Contractor's obligations to be audited.</p> <p>Note: Any alternate audit mechanism must address compliance with the Contractor's Customer Data, security and privacy obligations and such other obligations required by the Customer and reasonably agreed by the Contractor.</p>	<p>The default audit provisions in clauses 23.5 to 23.8 apply, subject to the audit provisions within the Additional Conditions.</p>

#### Item 41 Dispute Resolution

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Dispute Resolution (clause 24)</b></p>	
<p>Specify the threshold amount in AU\$ for issues to be resolved by expert determination under clauses 24.7-24.8.</p>	<p>Not applicable. The Parties have agreed that the dispute resolution procedure set out in the Additional Conditions will apply to this matter.</p>
<p>Specify type of issue/s not to be determined by expert determination under clauses 24.7 to 24.8.</p>	<p>No issues will be determined by expert determination. Instead, the Parties agree to participate in mediation in accordance with the Additional Conditions.</p>

Item 42 Termination for Convenience

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p><b>Termination for Convenience by the Customer (clause 25.4)</b></p>	
<p>Specify whether an amount is payable under clause 25.4(b) if the Customer exercises its right of termination for convenience under clause 25.3, and if so, specify that amount:</p>	<p>The Parties agree that if the Customer exercises its right of termination for convenience under clause 25.3, the Customer:</p> <ul style="list-style-type: none"> <li>(a) must provide at least 30 days' notice (except in circumstances where the Customer elects not to proceed to the next Stage or Milestone, in which case termination may be immediate);</li> <li>(b) must pay to the Contractor all fees incurred for Services and Deliverables provided up to the effective date of termination; and</li> <li>(c) will not be entitled to a refund of any pre-paid fees due to the decision to terminate for convenience and regardless of whether the Services and Deliverables for those fees have been provided to the Customer.</li> </ul> <p>As the Contractor will benefit from the development of the Building Assurance Solution, notwithstanding anything to the contrary in the Customer Contract, no other termination for convenience fees or charges will be payable by the Customer except those listed above.</p>

Item 43 Additional Conditions

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Specify any Additional Conditions:</p> <p>Note: where the Customer Contract is made under a Head Agreement the Customer must obtain the consent of the Contract Authority and the Secretary of the New South Wales Department of Customer Service where an Additional Condition varies any term or condition of the Procure IT Framework including a Protected Clause.</p>	<p>Refer to Attachment A: Additional Conditions.</p>

**This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 as if repeated in full in this General Order Form.**

## **Attachment A: Additional Conditions**

The below Additional Conditions are entered into and form part of the Customer Contract.

### **PART A: DEFINITIONS AND CUSTOMER CONTRACT TERMS**

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#### **1. Definitions**

Terms used in these Additional Conditions have the meaning given under Part 3: Dictionary or as set out below:

- (a) **Building Assurance Solution** means the end-to-end building assurance As a Service solution to be designed, configured, delivered and operated by the Contractor which meets the Contract Specifications and all other requirements specified in the PIPP and other Order Documents.
- (b) **Customer Owned IP** has the meaning given in clause 5.1(a) of these Additional Conditions.
- (c) **Collaboration Deed** means the deed of that same title entered into between the Parties on or about the date of the Customer Contract in relation to the principles and arrangements as to how the Parties will collaborate in the development and marketing of the Building Assurance Solution.
- (d) **Global Governance Framework** has the meaning given in the Collaboration Deed.
- (e) **Marketing and Communication Plan** means the marketing and communication plan in relation to the Building Assurance Solution.
- (f) **Permitted Users** means the persons that are permitted to use the Building Assurance Solution during the Contract Period for Project Remediate and the pilot for the Building Assurance Solution and includes the Customer, Government Agencies, owners corporations, strata managers, and other participants approved and onboarded by the Contractor in the pilot for the Building Assurance Solution, and each of their employees, subcontractors and other personnel. For clarity, the aforementioned Permitted Users are the Permitted Users for the purposes of Module 10 of the Customer Contract.
- (g) **Project Remediate** means the NSW Government program to help remove combustible cladding from up to around 225 buildings in NSW.
- (h) **Wilful Misconduct** means a deliberate act or omission of the Contractor, which the Contractor knew or ought reasonably to have known, had it given due consideration to the consequences of such act or omission, would have a materially adverse effect on the Customer and the Contractor nevertheless deliberately performed that act or omitted to act.

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#### **2. Acknowledgements**

The Parties acknowledge and agree that:

- (a) the Parties' obligations and rights under these Additional Conditions are additional to those specified in the Collaboration Deed and the other terms of the Customer Contract;
- (b) except to the extent expressly specified below, nothing in these Additional Conditions is intended to limit or restrict the Customer's rights or remedies under the Collaboration Deed or the Customer Contract; and

- (c) notwithstanding clause 3.9 of the Customer Contract, these Additional Conditions prevail over the other terms of the Customer Contract to the extent of any conflict or inconsistency.

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### 3. Document Deliverables

- (a) Unless otherwise directed by the Customer in writing, the Contractor must submit all Document Deliverables to the Customer's Authorised Representative for approval in accordance with the timeframes and requirements set out in the Customer Contract.
- (b) The Document Deliverables must:
  - (i) be in English;
  - (ii) be fit for their stated purpose; and
  - (iii) comply with the PIPP and all other requirements under the Customer Contract.
- (c) The Customer will use its reasonable endeavours to review and confirm whether or not it approves a Document Deliverable within 10 Business Days of provision to the Customer in accordance with this Customer Contract or such longer period as the Customer may deem reasonably necessary having regard to the nature, length and complexity of the Document Deliverables.
- (d) The Customer must approve a Document Deliverable if it complies with paragraph (b).
- (e) If the Customer (acting reasonably) requests any amendments to a Document Deliverable to correct any non-compliance with the requirements of paragraph (b), the Contractor must amend the Document Deliverable and re-submit it to the Customer's Authorised Representative within five Business Days of the Customer's request or within such other timeframe as agreed by the Customer acting reasonably in writing.
- (f) The Parties must repeat the process in paragraph (e) until the Customer approves each Document Deliverable.
- (g) The Parties agree that a Document Deliverable does not fail to comply with the requirements of paragraph (b) exclusively because of:
  - (i) any opinion expressed in the Document Deliverable, provided that the opinion expressed in the Document Deliverable is the professional opinion held by the Contractor;
  - (ii) the style, formatting or layout of the Document Deliverable, unless the style, formatting or layout is part of the Customer Contract or affects the readability or useability of the Document Deliverable; or
  - (iii) semantics which do not impact the interpretation of the substantive matters conveyed in the Document Deliverable.
- (h) A Document Deliverable is not to be regarded as approved by the Customer until the Customer issues a notice in writing to the Contractor specifying that the Document Deliverable is approved by the Customer.
- (i) The Parties agree that notwithstanding clause 1.6 of Part 3: Dictionary and the acceptance testing provisions under the Customer Contract:
  - (i) the provisions in clause 3 of these Additional Conditions apply to the acceptance and approval of Document Deliverables; and

- (ii) the Actual Acceptance Date for a Document Deliverable will occur on the date on which that Document Deliverable is approved in accordance with the process set out above in these Additional Conditions.

### 3.2 No obligation

- (a) The Customer does not assume or owe any duty of care to the Contractor to review any Document Deliverables for errors, omissions or compliance with the Customer Contract.
- (b) No review, acceptance or approval of, comments upon, rejection of, or failure to review or comment upon or reject, any Document Deliverables provided by the Contractor to the Customer under the Customer Contract or any other direction by the Customer about the Document Deliverables will:
  - (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Customer Contract or otherwise at law; or
  - (ii) prejudice the Customer's rights against the Contractor whether under the Customer Contract or otherwise at law.

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## 4. Marketing and Communication Plan

- (a) The Contractor must prepare and submit to the Customer's Authorised Representative a written Marketing and Communication Plan that specifies the Contractor's proposed strategy to market the Building Assurance Solution and to communicate with key stakeholders about the Building Assurance Solution (including particulars of proposed promotional events and advertising campaigns).
- (b) Throughout the Contract Period, the Contractor must:
  - (i) review and update the Marketing and Communication Plan as reasonably required by the Customer. Any changes or updates to the Marketing and Communication Plan that are made during the Contract Period must be submitted to the Customer's Authorised Representative for approval; and
  - (ii) comply with the most up-to-date Marketing and Communication Plan approved by the Customer in accordance with this clause.
- (c) For clarity, the Marketing and Communication Plan is a Document Deliverable. Clause 3 of these Additional Conditions therefore applies to the Marketing and Communication Plan, including any updates to it.

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## 5. Intellectual Property

### 5.1 Definition of New Material

- (a) The Parties agree that notwithstanding anything to the contrary in the Customer Contract, including Part 3: Dictionary, the following Material constitutes "New Material" to be owned by the Customer (**Customer Owned IP**):
  - (i) the Global Governance Framework; and
  - (ii) Materials used in the development of, or which are included within, the Global Governance Framework (including protocols, taxonomies and guiding principles),

except for any of the Contractor's Existing Materials and provided that those Existing Materials were not developed by, or on behalf of, the Contractor or any of

its Personnel or other third party for the purposes of, or in anticipation of, performing the Contractor's obligations under the Customer Contract.

- (b) In the first sentence of clause 13.11 of the Customer Contract:
- (i) the reference to clause "13.13" is deleted and replaced with clause "13.14" so that the sentence reads "subject to clauses 13.14 to 13.15"; and
  - (ii) the words "upon the AAD" are deleted and replaced with the words "on the creation".

## 5.2 New Materials - Licence

Clause 13.4 of the Customer Contract is deleted and replaced with:

*"Except for Customer Owned IP and subject to clauses 5.4(b) and 5.6 of these Additional Conditions, on the creation of a Deliverable that incorporates New Material, the Contractor grants to the Customer (or must procure the granting to the Customer of) a non-exclusive, perpetual, irrevocable, royalty free, non-transferable and sub-licensable licence to use, copy, adapt, translate, reproduce and in any way exploit that New Material (provided that, to the extent such New Material is software which is incorporated into a Deliverable which is also software, such dealing with that New Material will be restricted to use, copying, adaptation, translation, reproduction or exploitation of that Deliverable as a whole) for any purpose in connection with:*

- (a) *the Customer performing its obligations and exercising its rights under the Customer Contract and the Collaboration Deed;*
- (b) *the full use and enjoyment of the Building Assurance Solution and Deliverables in which the New Material is incorporated, including operating, upgrading, supporting and maintaining them;*
- (c) *the performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the Building Assurance Solution and other Deliverables;*
- (d) *the development of the Global Governance Framework;*
- (e) *Project Remediate or, with the Contractors' prior written consent (not to be unreasonably withheld), for other similar Government programs in relation to building rectification; or*
- (f) *the carrying out, or exercise, of the functions or powers of the Customer in connection with the development of a viable commercial marketplace for the Building Assurance Solution."*

## 5.3 Contractor's Existing Material

Clause 13.6 of the Customer Contract is deleted and replaced with:

*"Subject to clauses 5.4(b) and 5.6 of these Additional Conditions, on the creation of a Deliverable that incorporates the Contractor's Existing Material, the Contractor grants to the Customer (or must procure the granting to the Customer of) a non-exclusive, perpetual, irrevocable, royalty free, non-transferable and sub-licensable licence to use, copy, adapt, translate, reproduce and in any way exploit the Contractor's Existing Material (provided that, to the extent such Contractor's Existing Material is software which is incorporated into a Deliverable which is also software, such dealing with that Contractor's Existing Material will be restricted to use, copying, adaptation, translation, reproduction or exploitation of that Deliverable as a whole) for any purpose in connection with:*



- (a) *the Customer performing its obligations and exercising its rights under the Customer Contract and the Collaboration Deed;*
- (b) *the full use and enjoyment of the Building Assurance Solution and other Deliverables in which the Contractor's Existing Material is incorporated, including operating, upgrading, supporting and maintaining them;*
- (c) *the performance of tests and other quality assurance processes, including Acceptance Tests, in relation to the Building Assurance Solution and other Deliverables;*
- (d) *the development of the Global Governance Framework;*
- (e) *Project Remediate, or with the Contractors' prior written consent (not to be unreasonably withheld) for other similar Government programs in relation to building rectification; or*
- (f) *the carrying out, or exercise, of the functions or powers of the Customer in connection with the development of a viable commercial marketplace for the Building Assurance Solution."*

#### **5.4 Sub-licence rights and rights of Permitted Users**

- (a) Clause 13.5 of the Customer Contract is deleted and replaced with "Not Used".
- (b) Notwithstanding clauses 5.2 and 5.3 of these Additional Conditions, the Building Assurance Solution is licensed to:
  - (i) the Customer and its Personnel on the terms applicable for a Software as a Service, as set out in Module 10 and this clause 5.4. The Building Assurance Solution may be used and accessed by the Customer at no additional charge during the Contract Period for Project Remediate and the pilot for the Building Assurance Solution (the **Approved Purpose** for the purposes of Module 10); and
  - (ii) other Permitted Users (that is, Permitted Users other than the Customer and its Personnel), who may access and use the Building Assurance Solution at no additional charge during the Contract Period for the Approved Purpose, provided that such Permitted Users accept the Contractor's end user licence agreement notified to them when accessing the Building Assurance Solution.
- (c) Subject to clauses 5.4(b) and 5.6 of these Additional Conditions, the Customer may only sublicense any of the Intellectual Property Rights licensed under these Additional Conditions without additional charge to any of its Personnel (including contractors that have a need to use the Intellectual Property Rights) and to any "public service agency" or other "government sector agency" (as defined in the *Government Sector Employment Act 2013* (NSW)), any NSW Government agency or statutory body representing the Crown (as referenced in section 13A of the *Interpretation Act 1987* (NSW)), any other public authority that is constituted by or under an Act of the State of New South Wales or that exercises public functions, and any "public health organisation" (as defined in the *Health Services Act 1997* (NSW)).

#### **5.5 Third party IP**

Clause 13.7 of the Customer Contract is deleted and replaced with:

*"On the creation of a Deliverable that incorporates Existing Materials that are owned by a third party, including third party software, the Contractor must procure licences for the Customer to use that third party Existing Material in accordance with the terms specified in Item 34 of the General Order Form".*

## 5.6 IP qualifications

- (a) Clauses 13.8 to 13.10 of the Customer Contract are deleted and replaced with "Not Used".
- (b) Notwithstanding anything to the contrary in these Additional Conditions, the Customer, its Permitted Users and its licensees will not be entitled to use any of the Contractor's Existing Material or New Materials to commercialise (including by sale to any third party) any of the Contractor's Existing Material or New Materials.
- (c) The Customer must use its reasonable endeavours to ensure that, where applicable, any sublicensee under clauses 13.4 to 13.6 of the Customer Contract complies with the licensing restrictions and terms under the Customer Contract.
- (d) If any Document Deliverables are branded with the Contractor's name, logo or trade marks, and those Document Deliverables are changed, translated, modified or adapted without the Contractor's authorisation (**Modified Materials**), the Contractor will not be liable or responsible for any loss the Customer may suffer in connection with the Customer's, or any Permitted User's, use of, or reliance on, such Modified Materials to the extent caused by the unauthorised change, translation, modification or adaptation.

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## 6. Loss of Customer Data

- (a) The Parties agree that the Contractor will be liable for loss of data, but only to the extent specified at clause 6(b). Accordingly, clause 1.24(b) of Part 3: Dictionary is amended as follows:
  - (i) insert the word "or" after paragraph (ii) and delete the entirety of paragraph (iii); and
  - (ii) renumber paragraph (iv) to (iii).
- (b) Without limiting the Contractor's liability for other direct losses caused by a breach of the Contractor's privacy, confidentiality or security obligations under the Customer Contract that may arise as a result of a loss of Customer Data, where the Contractor is required under the Customer Contract to retain backups of Customer Data, and that Customer Data is lost as a result of the Contractor's or its Personnel's breach of the Customer Contract, the Contractor's liability for any lost Customer Data will be limited to the cost of restoring that Customer Data from the last available backup, except where the breach arises due to the Wilful Misconduct of the Contractor or its Personnel.

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## 7. Acceptance Testing

### 7.1 General

- (a) The Parties agree that the Acceptance Testing provisions set out in clause 10 of the Customer Contract do not apply. Instead, the Parties agree that the Acceptance Testing process and principles set out in this clause and the PIPP applies.
- (b) It is the Contractor's responsibility to conduct all necessary tests (including penetration tests) of the Building Assurance Solution to ensure that it meets the relevant Acceptance Criteria and the other requirements of the Customer Contract.
- (c) Before delivery of the Building Assurance Solution and other Deliverables to the Customer, the Contractor must:
  - (i) test the Building Assurance Solution to ensure that it meets the relevant Acceptance Criteria and the other requirements of the Customer Contract; and

- (ii) remedy any non-compliances.
- (d) The Customer may carry out any tests in respect of the Building Assurance Solution and other Deliverables as agreed by the Contractor and the Contractor must provide reasonable assistance in connection with those tests.
- (e) If, after the conducting Acceptance Tests three or more times in respect of the Building Assurance Solution or the same Deliverable, the Contractor fails to demonstrate that the Building Assurance Solution or the relevant Deliverable complies with the Acceptance Criteria and the other requirements of the Customer Contract, the Parties will discuss in good faith any reasonable changes that may be required to achieve compliance.
- (f) The Parties agree that notwithstanding clause 1.6 of Part 3: Dictionary and the acceptance testing provisions under the Customer Contract, the Actual Acceptance Date for the Building Assurance Solution and all other Deliverables will occur on the date on which the Building Assurance Solution and other Deliverables are approved by the Customer in writing. The Customer must approve the Building Assurance Solution and other Deliverables if they are demonstrated to comply with the requirements of the Customer Contract (including any applicable Acceptance Criteria).

## **7.2 No obligation**

- (a) The Customer does not assume or owe any duty of care to the Contractor to review the Building Assurance Solution or other Deliverables for errors, omissions or compliance with the Customer Contract.
- (b) No acceptance certificate or review, acceptance or approval of, comments upon, rejection of, or failure to review or comment upon or reject, the Building Assurance Solution or any Deliverables provided by the Contractor to the Customer under the Customer Contract will:
  - (i) relieve the Contractor from, or alter or affect, the Contractor's liabilities or responsibilities whether under the Customer Contract or otherwise at law; or
  - (ii) prejudice the Customer's rights against the Contractor whether under the Customer Contract or otherwise at law.

---

## **8. Understanding how the Building Assurance Solution works**

- (a) In the spirit of the Collaboration Deed, the Contractor must provide all necessary assistance to the Customer to enable the Customer to understand how the Building Assurance Solution works and has been developed, provided that nothing under this clause requires the Contractor to provide to the Customer any commercially sensitive or third party confidential information (including any source code of the Building Assurance Solution).
- (b) To the extent the Customer requires assistance to understand the source code or any of the Materials not otherwise licensed or provided to the Customer under the Customer Contract, the Customer may request from the Contractor supervised access to such Materials (and the Contractor will not unreasonably withhold its approval of such a request).

---

## **9. Staged implementation and agile development**

- (a) The Customer agrees that the Contractor may develop the Building Assurance Solution in an agile manner. Any configuration changes or departures from the Contract Specifications requested by the Customer will be considered by the

Contractor and discussed by the Parties in good faith to determine if such changes are acceptable to the Contractor.

- (b) The Parties may agree in writing to utilise a system or tool to facilitate project management activities, including hosting the product backlogs (a **Management Tool**) to facilitate the agile delivery of the Services.
- (c) The Parties must ensure that all notifications, requests, approvals and categorisations in respect of the product backlog or any configuration changes or departures from the Contract Specifications are recorded in the Management Tool, except to the extent a formal Change Request is agreed. Notifications and approvals recorded in the Management Tool will satisfy the requirements for such notices and approvals to be issued to the other Party in writing.
- (d) Each Party agrees not to object to the use of records obtained from the Management Tool in a dispute or proceeding on the basis that such records are in an electronic or digital form.
- (e) The Contractor must not submit an invoice for payment until each Milestone or Stage has been met in accordance with the PIPP and the Customer Contract to the satisfaction of the Customer (acting reasonably). Notwithstanding anything to the contrary in the PIPP or other Order Documents, the Customer will not be entitled to pay for any subsequent Milestone or Stage until the preceding Milestone and Stage has been met in accordance the Customer Contract, including this clause.
- (f) If the Customer, in its sole discretion, elects not to proceed to a particular Milestone or Stage, the Customer will have no liability to the Contractor.
- (g) The Parties may, by written agreement and acting reasonably, elect to change the timeframes with respect to any Milestones and Stages, including bringing certain Milestones or Stages forward.

---

## 10. Invoicing

- (a) The definition of "Correctly Rendered Invoice" in clause 1.33 of Part 3: Dictionary is amended to:
  - (i) remove the word "and" at the end of paragraph (c);
  - (ii) replace the full-stop at the end of paragraph (d) and add a semicolon and the word "and"; and
  - (iii) add a new paragraph (e) as follows:

*"(e) the invoice correctly references the Customer's Purchase Order (PO) number issued by the Customer to the Contractor at the commencement of the relevant Milestone or Stage".*
- (b) The Contractor will need a PO to submit a Correctly Rendered Invoice. If the Contractor does not receive a PO from the Customer, it is the responsibility of the Contractor to follow this up with the Customer's Authorised Representative.

---

## 11. Dispute resolution

### 11.1 General

- (a) The Parties agree that notwithstanding clause 24 of the Customer Contract, the Parties agree to resolve any dispute between them that arises out of, or in connection with, the Customer Contract in accordance with this clause 11.

- (b) Either Party may give a Notice in Writing of a dispute to the other Party setting out the particulars of the dispute (**Dispute Notice**).
- (c) Nothing in this clause limits the ability of either Party to commence legal action against the other Party (including instituting court proceedings) for urgent injunctive, interlocutory or declaratory relief in respect of a dispute.

## 11.2 Escalation

- (a) Within 10 Business Days of a Party receiving a Dispute Notice, the Parties' nominated representatives must meet and try to resolve the dispute in good faith.
- (b) If the Parties have not:
  - (i) resolved the dispute; or
  - (ii) met,within the period specified in clause 11.2(a), a more senior executive of each Party must meet and try to resolve the dispute in good faith within 10 Business Days following the conclusion of the period specified in clause 11.2(a) or such other period as may be agreed by the Parties in writing.

## 11.3 Alternative dispute resolution

If the dispute remains unresolved after 25 Business Days of receipt of the Dispute Notice (or such longer period as may be agreed by the Parties in writing), then either Party must, before commencing litigation, issue a notice to the other Party requiring the dispute to be determined by mediation in accordance with, and subject to, the Resolution Institute Mediation Rules. If a dispute has not been resolved within 90 days from the conclusion of the mediation process, either Party may commence any other form of resolution, including court proceedings.

## 11.4 Costs

Each Party will bear its own costs in respect of complying with this clause 11.

## 11.5 Continue to perform

Notwithstanding the existence of a dispute, the Parties must continue to perform their obligations under the Customer Contract. However, if the performance of a particular component of the Services or Deliverables is the subject of a dispute and the dispute requires a resolution in order for the impacted Services or Deliverables to be performed, the Parties will discuss in good faith to determine whether that component of the Services or Deliverables needs to be suspended until a resolution has been made in accordance with this clause 11. The Parties agree that the affected component of the Services or Deliverables may:

- (a) only be suspended if there is no reasonable alternative or viable workaround without a resolution to the dispute; and
- (b) the Contractor must immediately resume the suspended component of the Services or Deliverables upon the resolution of the dispute.

---

## 12. Liability

- (a) Clause 18.1 of the Customer Contract is deleted and replaced with the following clause:

*"Subject to clause 18.2 and clauses 18.4 to 18.7 of the Customer Contract, to the maximum extent permitted by law, the Contractor's liability in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out of, or in connection*

*with, the Customer Contract or the Collaboration Deed shall not exceed in aggregate for all claims that arise out of, or in connection with, the Customer Contract or the Collaboration Deed, an amount equal to two times the Contract Price."*

- (b) Notwithstanding the foregoing, where the Contractor is a member of a relevant scheme approved under the Professional Standards Legislation and that scheme limits the liability of the Contractor in accordance with that scheme, then the Contractor's liability will only be limited to the extent specified under that scheme.
- (c) In this clause, "Professional Standards Legislation" means the *Professional Standards Act 1994 (NSW)* or other equivalent laws providing for the Contractor's statutory limitation of liability.
- (d) Clause 18.3 of the Customer Contract is deleted and marked as "Not used."

## **PART B: MODULE 10**

---

### **13. Customer Use and Access to the As a Service**

#### **13.1 Clause 4.3**

The last sentence of clause 4.3 is deleted and replaced with the following wording:

*"...provided that the functionality, performance and availability of the As a Service used by the Customer and Permitted Users shall not decrease during the Contract Period."*

#### **13.2 Clause 4.4**

The first sentence of clause 4.4 is deleted and replaced with the following wording:

*"To the extent reasonably practicable, the Contractor must:*

- (a) *provide the Customer with prior written notice of any changes to, or new versions of, the Service (if relevant); and*
- (b) *if requested to do so by the Customer, demonstrate the extent to which the change or new version is capable of providing the functionality, performance and availability specified in the Contract Specifications and Order Documents."*

---

### **14. Data control and audit**

#### **14.1 Clause 5.2**

Clauses 5.3(a) and (b) of Module 10 are deleted and replaced with "Not Used".

#### **14.2 Clause 5.4**

The Parties acknowledge and agree that:

- (a) clause 5.4 of Module 10 is not intended to remove or restrict the Customer's audit rights under the other provisions of the Customer Contract (including as set out in item 40A of the General Order Form and these Additional Conditions); and
- (b) due to the nature of the Contractor's business, the Customer's nominated auditor may be a competitor of the Contractor in relation to audit services but (unless otherwise agreed between the Parties in writing) the auditor will not be Deloitte, Ernst & Young or Pricewaterhouse Coopers. However, the Customer's auditor will not be a direct competitor with the Contractor in relation to the Building Assurance Solution or similar technological solutions.

---

**15. Service Levels**

- (a) Clause 6 of Module 10 is deleted in full and replaced with "Not Used".
- (b) However, for clarity, the Contractor must comply with any performance commitments or obligations set out in the PIPP or as otherwise agreed between the Parties in writing from the date specified in the PIPP or as otherwise agreed between the Parties in writing.

---

**16. Liability**

Clause 8 of Module 10 is deleted in full and replaced with "Not Used".

---

**17. Software as a Service**

Clause 17.5 of Module 10 is deleted in full and replaced with the following clause:

*"Subject to the rights expressly set out in Module 10 and in the other provisions of the Customer Contact (including the Additional Conditions), the Contractor reverses all rights, title and interest in and to the As a Service, including all related Intellectual Property Rights."*

# SIGNED AS AN AGREEMENT

Signed for and on behalf of the Department of Customer Service (ABN 81 913 830 179)



Date

19<sup>th</sup> May 2021

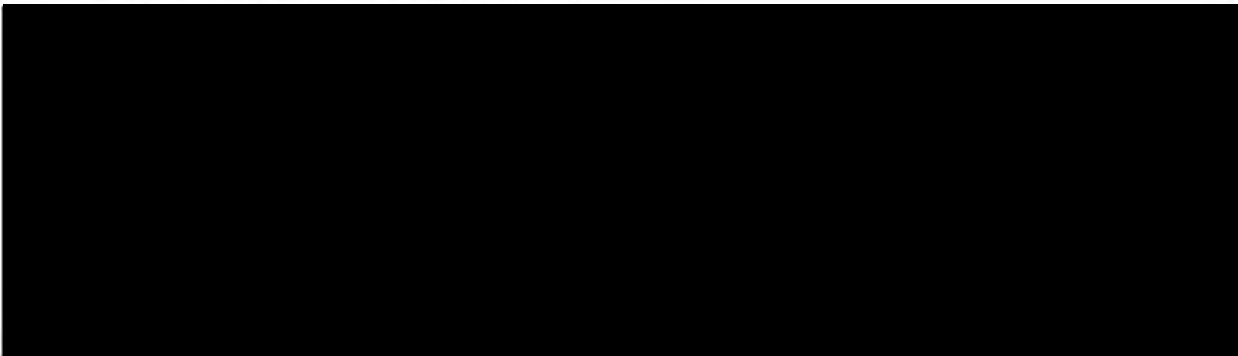
Date

19.05.2021

Signed for and on behalf of KPMG (ABN 51 194 660 183)

By....., a partner of that partnership under the authority of  
.....(name of authorising deed) who has no notice of revocation of that authority

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



15/04/2021

Date

15/04/2021

Date

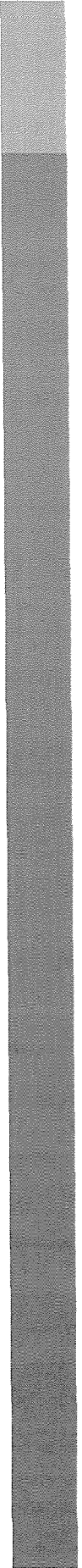




**Schedule 2 : Agreement Documents - Not used**



**Schedule 3: Service Level Agreement - Not used**



## Schedule 4: Variation Procedures

### Procedures

- 1.1** Each request or recommendation for a change to the PIPP or any part of the Customer Contract must be submitted in a form substantially similar to the Change Request form attached to this Schedule.
- 1.2** For each draft Change Request submitted:
- (a) the Customer must allocate it with a sequential number; and
  - (b) the draft Change Request must be logged and its progress documented by recording its status from time to time by the Contractor as follows:
    - (i) requested;
    - (ii) under evaluation;
    - (iii) awaiting authorisation;
    - (iv) cancelled;
    - (v) pending
    - (vi) approved/authorised;
    - (vii) expired;
    - (viii) in progress;
    - (ix) applied;
    - (x) delivered;
    - (xi) accepted.
- 1.3** The Party receiving the draft Change Request must within 5 Business Days of receipt (or such longer period set out in the Change Request):
- (a) request further information; or
  - (b) provide written notification to the other Party of its approval or rejection of the Change Request.
- 1.4** If the Customer submits a draft Change Request to the Contractor, and the Contractor believes that there is more than 1 Business Day's work involved in the evaluation of the Change Request, then prior to commencing work on evaluating the draft Change Request the Contractor may request that the Customer pays for the work involved to evaluate the draft Change Request. The Customer may then either revise the draft Change Request to require less than 1 Business Day's work to evaluate it, or agree to pay for the Contractor's work to evaluate the Change Request in an amount agreed by the Parties, or in absence of agreement, at the Contractor's then current commercial rates.
- 1.5** If the Customer Contract has been entered into under a Head Agreement, and the Change Request seeks to vary any terms or conditions of the Customer Contract, including a Protected Clause and the Customer approves of the Change Request, the Customer must

submit the Change Request to the Contract Authority and the Secretary of the New South Wales Department of Customer Service, for approval immediately after it has notified the Contractor that it approves the Change Request.

## 2. Status

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

## 3. Change Request Form

### CHANGE REQUEST BRIEF DETAILS

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

### CHANGE REQUEST HISTORY LOG

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

DETAILS OF CHANGE REQUEST

SUMMARY

- 3.1 [Insert a summary of the changes, if required]

SCOPE

- 3.2 [Insert changes to the scope of Products to be provided and/or any Services, including any extensions to the Contract Period.]

EFFECT OF CHANGE ON CONTRACT SPECIFICATION

- 3.3 [Insert any changes to the Contract Specification]

EFFECT OF CHANGE ON PROJECT TIMETABLE

- 3.4 [Insert changes to the project timetable]

NEW PIPP (ANNEXED)

- 3.5 [Annex new PIPP if required]

EFFECT OF CHANGE ON CHARGES AND TIMING OF PAYMENT

- 3.6 [Insert new charges and the timing of payment into the new PIPP]

CHANGES TO CSI

- 3.7 [Insert any changes to the CSI]

CHANGES TO CUSTOMER PERSONNEL

- 3.8 [Insert any changes to the Customer's Personnel]

CHANGES TO CUSTOMER ASSISTANCE

- 3.9 [Insert any changes to the Customer's Assistance]

PLAN FOR IMPLEMENTING THE CHANGE

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

THE RESPONSIBILITIES OF THE PARTIES FOR IMPLEMENTING THE CHANGE

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

RESPONSIBILITIES OF THE CONTRACTOR

- 3.12 [Insert the responsibilities of the Contractor for implementing the change – if any.]

RESPONSIBILITIES OF THE CUSTOMER

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

EFFECT ON ACCEPTANCE TESTING OF ANY DELIVERABLE

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

EFFECT OF CHANGE ON PERFORMANCE OF ANY DELIVERABLE

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

EFFECT ON USERS OF THE SYSTEM/SOLUTION

- 3.16 [Insert if there will be any effect on users of the system/solution – or alternatively insert None.]

EFFECT OF CHANGE ON DOCUMENTATION DELIVERABLES

- 3.17 Changes will be required to the following documents:

(a) [Add any other documents which may be affected.]

EFFECT ON TRAINING

- 3.18 [Insert if there will be an effect on training or alternatively insert None.]

ANY OTHER MATTERS WHICH THE PARTIES CONSIDER IMPORTANT

- 3.19 [insert if there are any other matters.]

ASSUMPTIONS

- 3.20 The plan for implementing the changes outlined in this Change Request is based on the assumptions listed below:

(a) [Insert any assumptions. If none then this section will be deleted].

- 3.21 If the assumptions are or become untrue, the Parties will address the effect of this through a subsequent Change Request.

LIST OF DOCUMENTS THAT FORM PART OF THIS CHANGE REQUEST

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

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

- 3.23 [Insert amendments to clauses in the Customer Contract, relevant Schedules including Service Level Agreement]

- 3.24 Note that variations to any of the terms and conditions of the Procure IT Framework including the Protected Clauses require the Customer to obtain the prior written approval of the Contract Authority and the Secretary, New South Wales Department of Customer Service approval in accordance with directions and policies issued by the Board from time to time. (clause 26.2))

AUTHORISATION

- 3.25 The Contractor must not commence work on the Change Request until is signed by both Parties. Once signed by both Parties, the Customer Contract is updated by this Change

Request and any provisions of the Customer Contract that conflict with this Change Request are superseded.

# SIGNED AS AN AGREEMENT

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

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

Signature of Customer Representative

Print name

Date

Signed for and on behalf of *[insert Contractor's name and ACN/ABN]*

Signature of Authorised Signatory

Print name

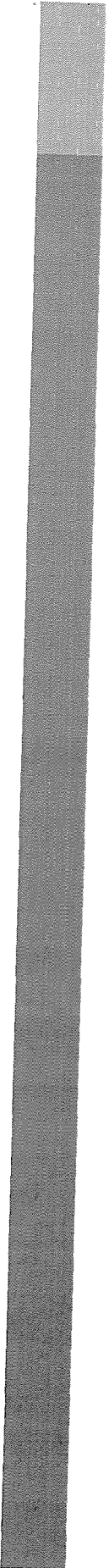
Date





**Schedule 5: Escrow Deed - Not used**

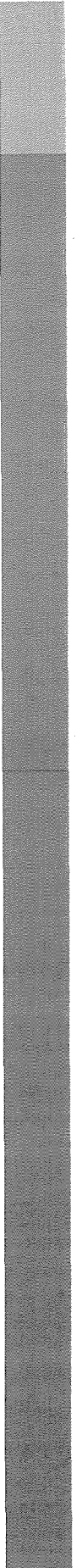
**Schedule 6: Deed Poll – Approved Agents - Not used**



**Schedule 7: Statutory Declaration - Not used**



**Schedule 8: Deed of Confidentiality - Not used**

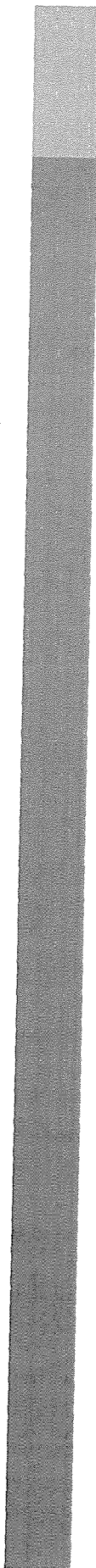


**Schedule 9: Performance Guarantee - Not used**

**Schedule 10: Financial Security - Not used**



**Schedule 11: Dispute Resolution Procedures - Not used**



**Schedule 12: Project Implementation and Payment Plan (PIPP)**

Refer to separate document titled Schedule 12: Project Implementation and Payment Plan.





## **Schedule 12:**

# **Project Implementation and Payment Plan (PIPP)**

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# 1. Introduction

## 1.1. Document Scope

This PIPP covers the Building Assurance Solution platform ('**BAS Platform**' or '**Platform**') project. The project is due to start in April 2021, with three phases of work, to build and run a BAS Platform. The Customer is a key stakeholder in this project and will act as a sponsor. This initiative will be delivered through the overarching DCS eConstruction Program, with a strong focus on:

1. Shifting the focus from looking at the performance of **individual players** to the quality of the entire **construction team**.
2. Transparent **responsibility** with the Developer as they are the principal, and they are selling to the **customer**.
3. All players on the team must be pointing towards the same goal: **trustworthy buildings**.
4. The regulator will be on the building sites (fields) of the riskiest teams offering the choice of **lifting performance or leaving the game**.
5. **Consumers, finance, insurance, contracts** will reinforce the value of trustworthy teams that produce trustworthy buildings.





## 2. Project Overview

The Contractor will deliver the BAS Platform in 3 phases, in which the final phase will be used to assist relevant stakeholders to calculate the trustworthy index of an asset (class 2 residential building) as an output of the BAS Platform.

### 2.1. Government participation

The project is being delivered for the NSW Department of Customer Service (**DCS, the Customer**).

The key success of this engagement will be measured by:

1. **Contractor** to deliver a minimum viable product (**MVP**) version of the platform that is ready for testing with industry participants.
2. **Contractor** to contribute with feedback to the Customer's Global Governance Framework (**GGF**) during the MVP testing phase and assess the impact of the GGF to the overall platform. Post the MVP testing period, the Contractor will advise the impact and remediation effort to align the BAS Platform with the GGF. For clarity, the GGF is a Customer Supplied Item.
3. The Platform MVP to be jointly reviewed and promoted by DCS, and then tested with industry participants and tested with real assets as agreed by the parties.
4. The resulting Building Trustworthy Index (**TWI**) will be reviewed by a DCS endorsed 3<sup>rd</sup> Party and then tested and validated by industry participants.
5. **Contractor** to deliver a Production grade (licensable on commercial terms) platform (BAS v1.0) that is ready to be scaled to the broader industry and to other jurisdictions. Note: cross-state and cross-jurisdiction tailoring and customisation is not part of this engagement.

### 2.2. Key assumptions or dependencies

Delivery and Solution Assumptions:

1. Customer will allocate a nominated project lead(s) to act on behalf, and with the authority, of the Customer during the project;
2. Customer will provide the Contractor with access to CSI and any additional data or information that the Customer considers the Contractor reasonably requires to carry out the Services and Deliverables;
3. Customer end-users will be available to participate in testing during the agreed UAT period for 'Regulator' functionality;
4. Customer will use its reasonable endeavours to ensure that relevant stakeholders are available to review and approve any outputs and deliverables. Time delays caused by lack of stakeholder availability may impact the Contractor's capacity to deliver the Services and Deliverables within the milestones and may necessitate a change request;
5. Subject to COVID-19 safe work conditions, delivery effort will be carried out on the Contractor's premises using Contractor equipment;

6. Organisational change management (that is, process/people related change management of the system itself) that may be needed to related systems inside the Customer or with 3rd parties is not included within the scope of the Services and Deliverables;
7. All integrations are assumed to be API based;
8. The Customer will use its reasonable endeavours to provide access to the test environments of relevant government systems (including ePlanning) for integration;
9. Integration data model requirements are clear and well documented during the Discovery (4-6 weeks) Phase of the project;
10. The Customer will use its reasonable endeavours to ensure that (to the extent reasonably practicable) there are sufficient Customer or other Government system integration SMEs available as reasonably required by the Contractor to enable the Contractor to carry out its obligations under the Customer Contract;
11. All integrations for external data query exclude API-based integration for material suppliers to provide traceability events data - an events API will be exposed with documentation provided for industry participants to submit supply chain data;
12. Digitisation of industry participants' custom systems would require separate effort and is not included within Contractor costs;
13. Managed Service Support and maintenance:
  - I. Service desk support is available 9am to 5pm AEST on Business Days for the Contract Period starting after completion of the MVP until end of Phase 3. The on-going commercial model that is part of Go-To-Market (GTM) deliverable will list the service levels, including service desk availability;
  - II. Support requests received out of office hours and during the weekends will be supported on a reasonable effort basis;
18. Supply chain events will be available in GS-1 compliant format and will be made available via documented, authenticated set of APIs;
19. Mobile application functionality is not in scope and will be considered at a later stage. External users will access the system via the Internet (via UI or API). UI Authentication will be done via Azure AD using email;
20. Data entry via UI can be completed using forms capability;
21. The complete set of quality data inputs ascertained from the National Construction Code, Australian Standards and better practice specifications will not be included for all building components within the MVP version available to the conclusion of the project;
22. The Trustworthy Index version available at the conclusion of the project will be restricted to the critical high-risk elements within a class 2 residential building. The critical building components will be determined by an initial risk assessment and take into consideration known types of defects that are consistently presenting problems. The identified building components will include those associated the five key building elements featured within the Design and Building Practitioners Act 2020; and

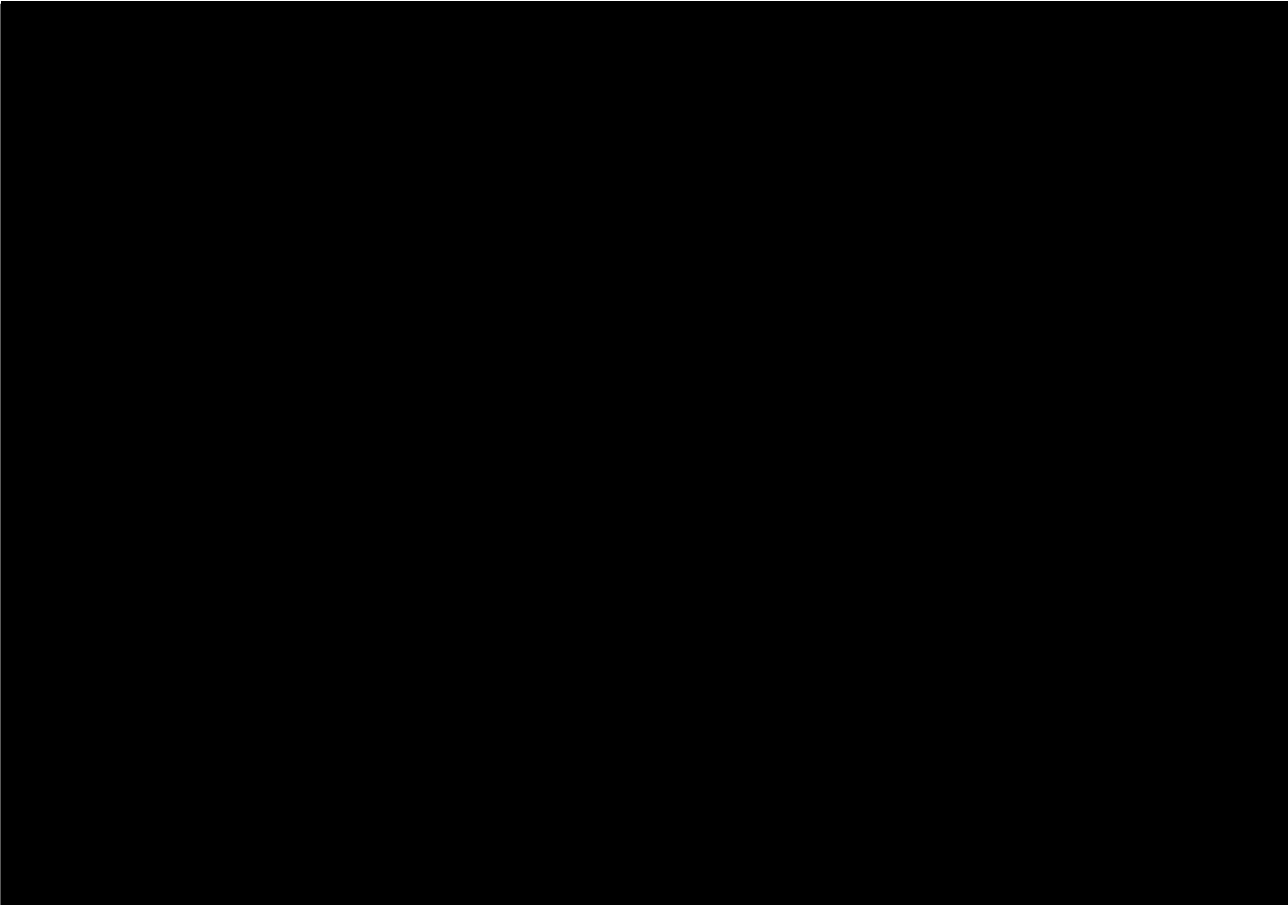
23. The weightings of the data inputs will be developed from a 5 x 5 model for each of the assurance categories – certificates, accredited parties and asset class criticality.

## 2.3. Commercial Assumptions

1. Project Implementation fees reflect current understanding of overall project services. The fees are provided based on available information and assume clear definition of requirements and stakeholder access. Customer will be responsible in assisting with stakeholder engagement and ensuring relevant individuals are available to facilitate delivery and project execution.
2. Any expenses incurred (as agreed by DCS in writing prior to incurring the expense) will be included in the monthly invoice, issued at the end of each month. Travel and other auxiliary expenses are excluded from the fees, should these be needed e.g. for regional travel/accommodation. Contractor will seek explicit approval from Customer prior to incurring them. At the time of contracting, Contractor does not anticipate any additional expenses.
3. During the Project Implementation, Contractor will work with the Customer to build a 'Post Launch Jan 2023 - Managed Service commercial model' to be subscribed by the NSW Government and the Industry participants. After the Implementation phase, Contractor assumes that the NSW Government will continue to subscribe to the full BAS product and ensure that the overall delivery of the BAS services remains commercially viable for the Contractor.
4. The Contractor's ICT Services Scheme (SCM0020) rates will apply for additional or incremental work related to the project.
5. To the extent that the scope changes beyond the control of the Contractor, or if the assumptions set out in this document prove to be inaccurate or incomplete in material respects (including proposed time commitments being less than necessary to achieve Customer's final list of requirements or if the Customer specifically requires additional resources), Contractor will work with the Customer to negotiate a revised fee that is fair, reasonable and agreed by all parties.
6. The solution assumes that integration with industry participants internal system (for data dissemination) fall outside the BAS 2.0 version. Contractor will provide a standardised API for data intake that industry participants can connect to (and provide their data).
7. The solution assumes that the data being ingested into the BAS is of enough quality to perform the trustworthy rating calculations and that there is no specific detailed data validation/ checking component currently included in the scope of the BAS development. The solution specifically allows for simple verification using simple predefined lists at the asset class / systems level. Excluded from the contract are future functionalities that for example include detailed pre-defined/ restricted data input interfaces, business logic data validation rules, validation rules across multiple (external) 3rd party data sources or optical character recognition (OCR) technologies. There is an opportunity to incorporate these solutions in the future if there is market appetite to uplift the digital data maturity of the industry as well as to increase overall trust into outputs from the BAS Scope of Work.

## 3. Products and Services

### 3.1. Products and Services to be provided



While commercial scale of BAS v2.0 is not part of this engagement, additional scope items such as cross-state readiness and other value propositions might be added at a later stage. The support and maintenance aspect of BAS2.0 delivered as part of this engagement is considered part of the scope of this engagement.

#### 3.1.1. BAS MVP

BAS MVP will be developed in consultation with the Customer and Industry stakeholders and will aim to enable the following outcomes:

- BAS ready to be tested and validated with industry participants
- BAS is integrated with prioritised government systems to capture required data points for Trustworthy Index Calculations within the time and budget confines
- BAS is able to facilitate additional data collection from Industry Participants to support the Trustworthy Index Calculations (via UI or API), including Participant Data, Certificates, Traceability Data and other relevant information
- BAS is able to calculate the Trustworthy Index
- BAS is able to provide access to the Trustworthy Index to Insurers/Financiers



### 3.1.2. BAS 1.0

Following the MVP testing, BAS 1.0 will incorporate the feedback from the industry and enable the following outcomes:

- BAS is able to support NSW Construction industry Class 2 Residential buildings scale to capture, calculate and share the Trustworthy Index
- BAS incorporates learnings from post-MVP testing with Industry Participants
- BAS incorporated additional prioritised scope items beyond MVP within the time and budget confines
- BAS is integrated with additional prioritised government systems to capture and enrich additional data points for the Trustworthy Index Calculation
- BAS is able to provide access to the Trustworthy Index to other types of participants
- BAS is able to support additional prioritised elements of insight, data collection and calculation

### 3.1.3. BAS 2.0

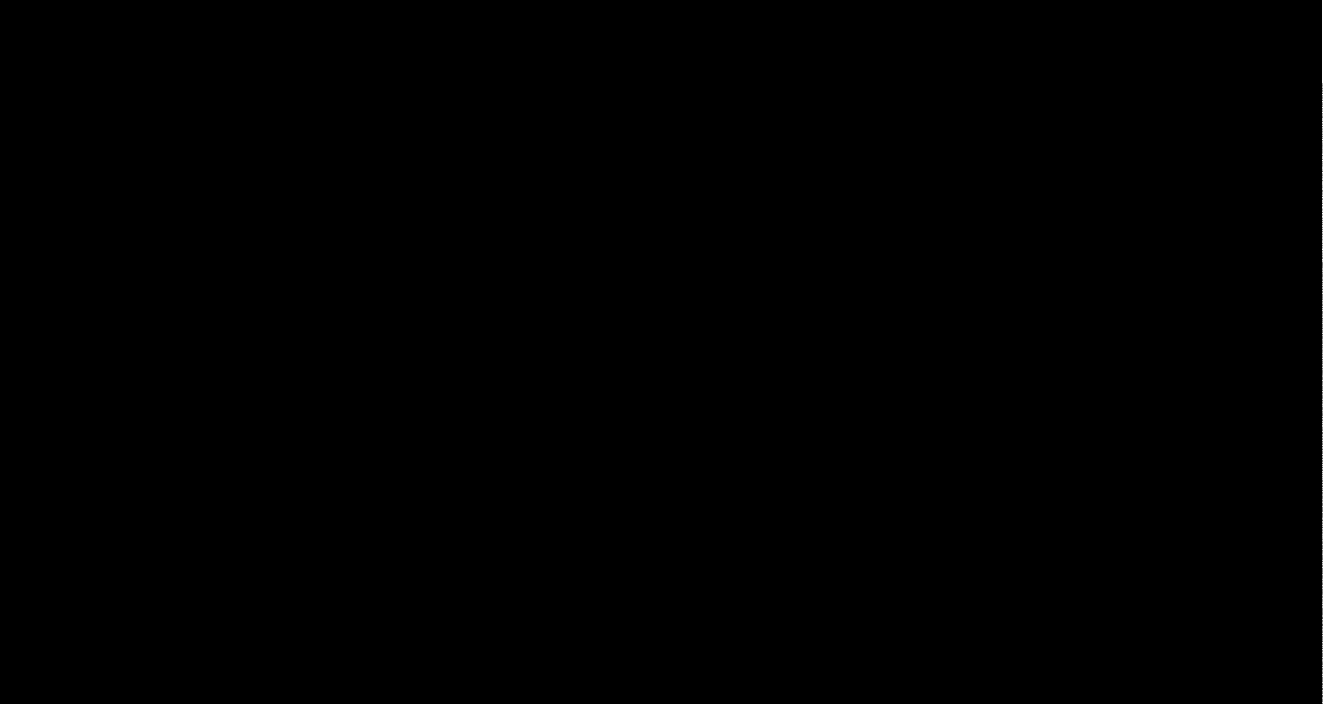
With BAS 1.0 delivering a commercial proposition and a live platform, BAS 2.0 will enable a number of outcomes to support scaling the proposition beyond NSW:

- BAS is able to support further expansion into other Australian jurisdictions and beyond
- BAS incorporated additional prioritised scope items beyond MVP and BAS 1.0 within the time and budget confines
- BAS is able to provide additional views to consume the Trustworthy Index
- BAS is able to support additional prioritised elements of insight, data collection and calculation

## 3.2. Provision of the Products and/or Services, including Subcontractors

To deliver the BAS Platform, the **Contractor** will be the primary delivery party and will draw on the expertise of several additional organisations in a subcontractor (Mirvac, ASX and Western Sydney University) capacity.

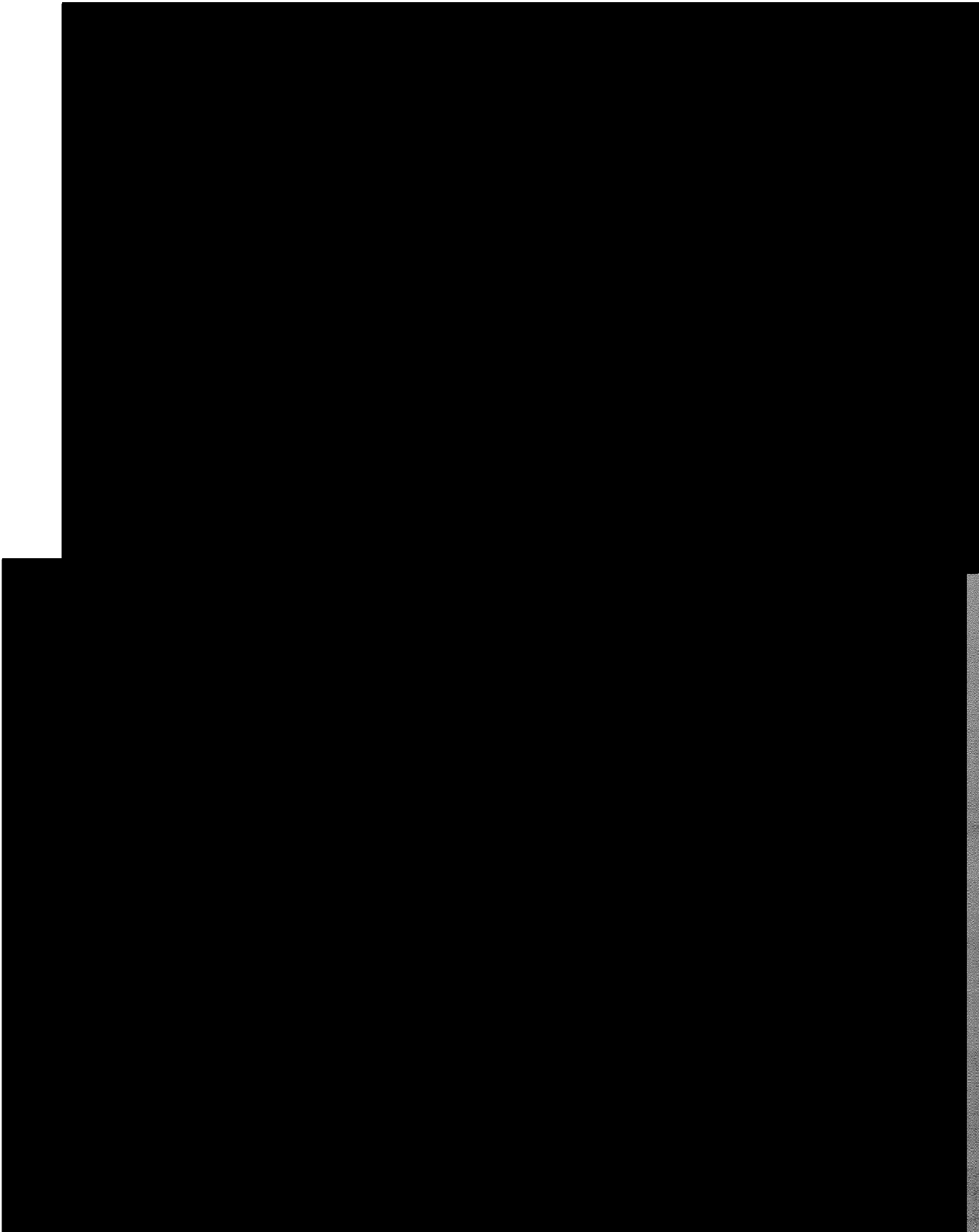
Led by Contractor, the **Consortia** is a combination of organisations brought together to deliver a diverse and complementary best market expertise.

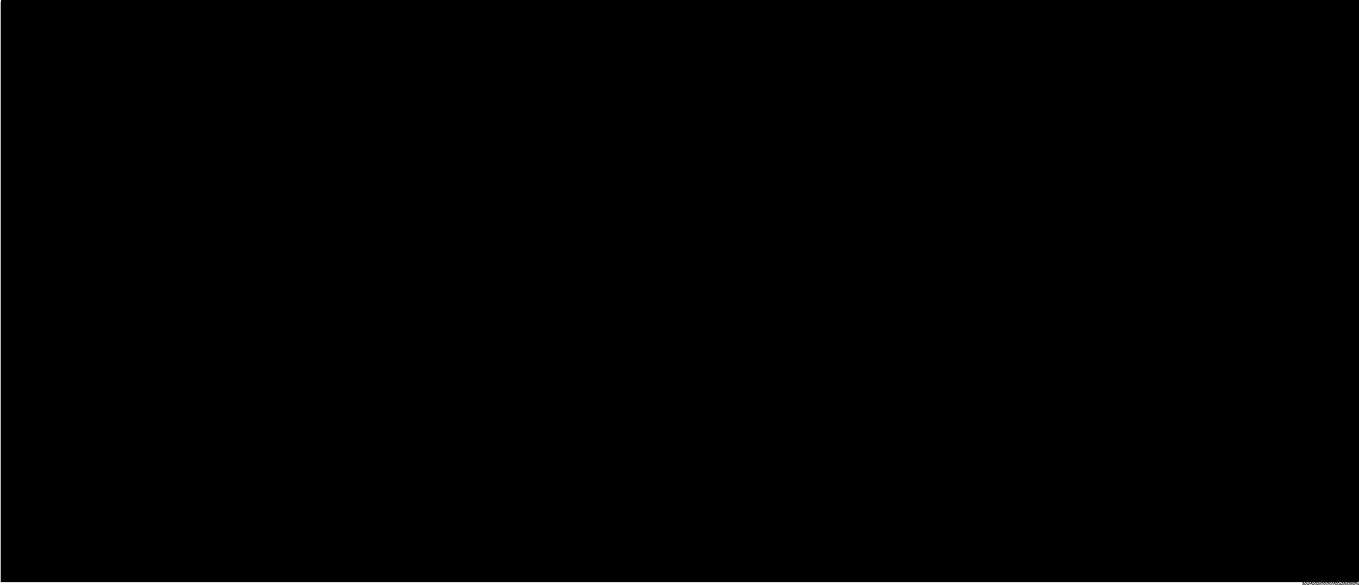


The **Contractor** will provide a fully managed platform to DCS using a SaaS (Software as a Service) model for any users or the BAS Platform. No backend access, individual hardware or software components will be provided in isolation or handed over to DCS.

## 4. Overview of Deliverables



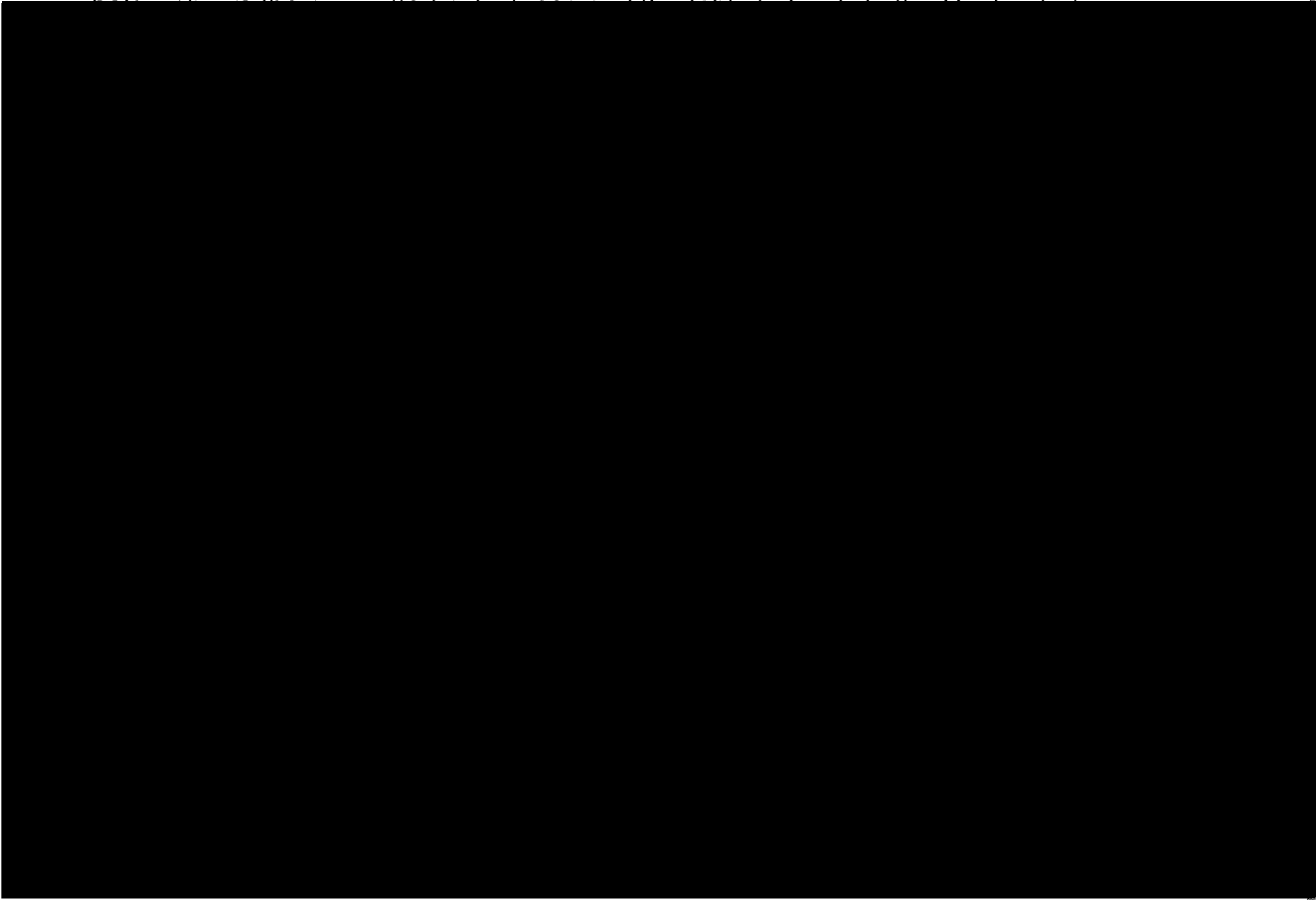




## 4.2. Other Services

### 4.2.1. Professional services on a time and materials basis

The BAS platform milestones would be delivered as a Professional Service. The illustration below shows the committed resources and the related costs for the Contract.



### **4.2.3. Platform Enhancements**

The BAS Platform enhancements will start once the solution has reached a mature state (e.g. BAS v1.0). All BAS Platform enhancements can be summarised in 2 distinct categories:

Category 1: Operations Enhancements

- Corrective enhancements (fixing Production issues)
- Performance enhancements (Production monitoring driven)
- Scheduled maintenance (Platform hygiene)

All Category 1 Enhancements are part of the Managed Service fees and delivered by the Service Management teams

#### Category 2: Product Enhancements


- The BAS Product Team maintains an on-going Product Feature Backlog (PFB) listing all new enhancements that have been captured from Customer or derived from other industry user feedback
- The PFB is constantly qualified and prioritised by feasibility, desirability and viability perspective. The Product owner is the ultimate decision maker on additional features to be added to the product enhancement queue
- If a new feature is requested, the requestor (e.g. Customer or other industry user) will provide the funding (based on the product owner estimate) to support the new enhancement to be added to the product
- The base product will receive recurring updates (new enhancements) as part of the scheduled release cycle (twice per year)

#### 4.2.4. Additional features and ideas

The BAS Platform "Additional features and ideas" will follow the above described "Enhancements" pathway. All new features and ideas will be considered as Product Enhancements (Category 2) and will be assessed on Viability, Feasibility and Desirability perspective. As with all new enhancements, new features and ideas will go through a prioritisation process with funding gates and product release cycles.

### 4.3. Contract Period

The Contract Period is specified in item 10 of the GOF.



#### 4.4. Contract specifications

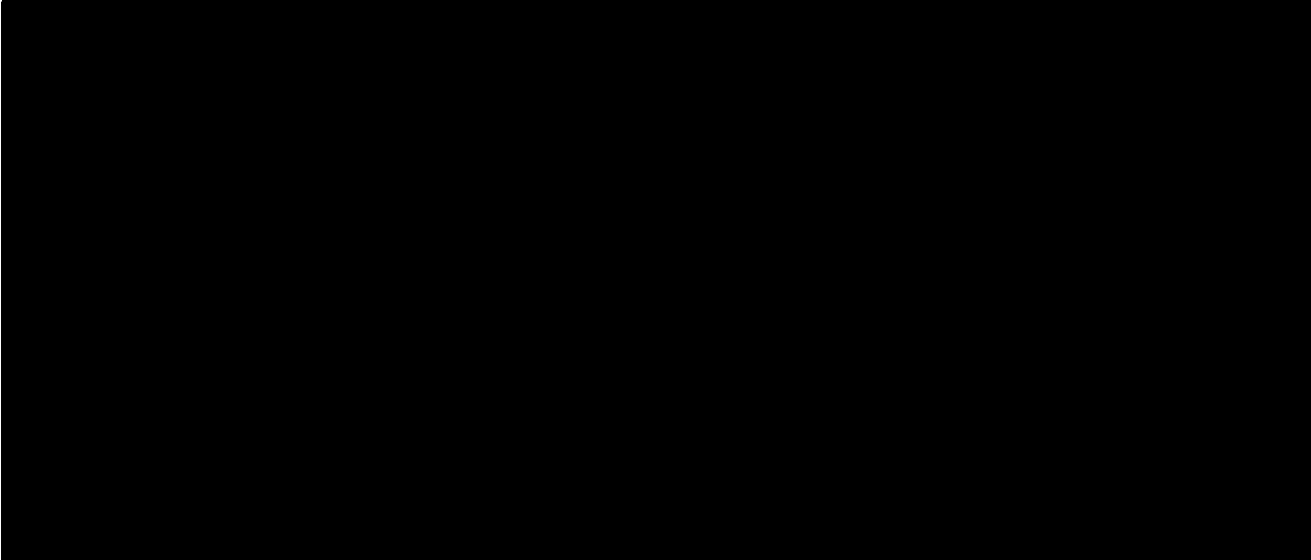
The Contractor will work closely with the Customer and Industry stakeholders during the period of Discovery (4-6 weeks from Commencement) to refine and review the proposed specifications and scope in respect of the MVP and key user journeys, and the Contractor must prepare a summary of such items as a Document Deliverable (**Contract Specifications**).

The Contract Specifications will inform the agile delivery process and ensure that key objectives for the Building Assurance Solution are addressed.

In terms of outcomes, please refer to Section 3.1 that the Project will aim to enable across MPV, BAS 1.0 and BAS 2.0

#### 4.5. Exclusions

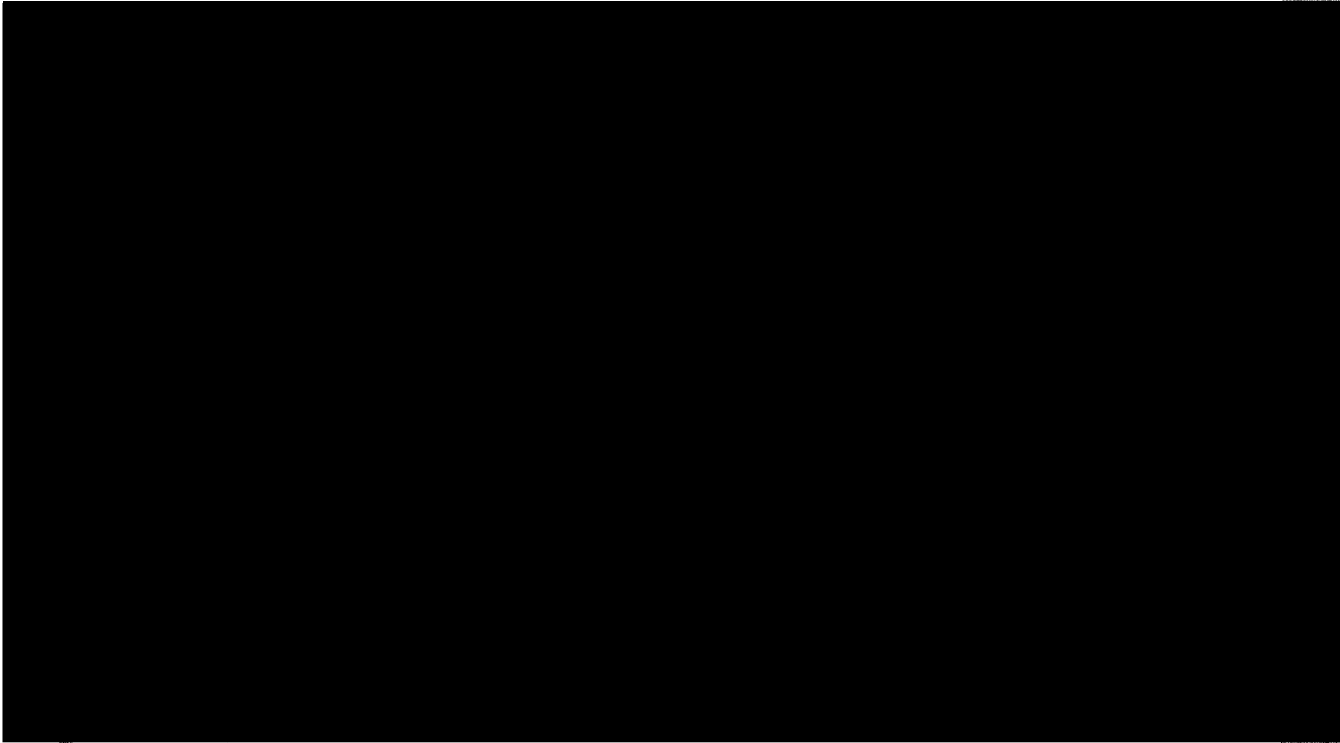
Below is a list of additional deliverables that are not part of this Customer Contract's scope of work or Contract Price but are considered value add activities for this engagement. If agreed by the Customer, these additional scope items will be delivered for an extra cost on a time and materials basis based on the Contractor's ICT Services Scheme (SCM0020) rates



## 5. Implementation

### 5.1. Methodology and approach

The Contractor is proposing a Hybrid Approach – which will draw upon a range of tools, accelerators, best practice guidelines and experiences. Hybrid means the rigour of waterfall combined with the Customer focus and speed of agile.



Contractor's delivery approach will include the following steps:

- Product delivery setup and resource mobilisation
- BAS Product scope definition with industry workshops, user stories with personas and complexity estimations
- Iterative development stage with agile cadence and recurring delivery pipeline management
- Recurring Solution demo with re-planning and prioritisation
- Product beta lunch with user testing
- Release and milestone celebrations

The diagram below provides a pictorial representation of the proposed delivery approach.



## 5.2. Roles and responsibilities

### 5.2.1. Key roles and responsibilities

Contractor's team consists of a range of skills and capabilities to reflect the nature of the Building Assurance Solution and its component parts. Going forward, this will be a mix of full time and part-time team members – with the aim to balance costs and value from the outset. The Parties envisage a joint team approach and the Contractor will work with the Customer to confirm key roles and responsibilities from day 1.

Contractor's proposed engagement leadership team will work with Customer to ensure overall quality of the program. Contractor will work closely with the proposed team to support them in the overall delivery, providing expert guidance and experience to mitigate risk.

<b>Roles</b>	<b>Description</b>	<b>RACI</b>
<b>BAS Platform Owner</b>	Laszlo Peter, highly experienced entrepreneur with product development and delivery expertise	Accountable for overall engagement delivery
Product Owner	Max Soyref, PhD, deep industry and product delivery expertise across multiple sectors	Responsible for overall engagement delivery
Customer Lead Partner	Phil Barfield, Co-lead partner with deep NSW Government delivery experience	Accountable for KPMG delivery and escalation point
QA Partner	Jacinta Hargan, Technology Partner for NSW Government – focusing risk / quality	Accountable for overall quality management
Industry SME	David McCarthy, In-depth Building construction expertise with extensive sector connections	Accountable for BAS Data model and industry standard adoption
Modelling SME	Bartosz Piwcewicz, actuarial SME with extensive modelling and mathematical expertise	Accountable for the Trustworthy Index development and delivery

Roles	Description	RACI
Delivery	Lucy Gardoll, experienced Project Manager with strong delivery focus	Responsible for the overall project management

In addition to the key roles listed above, Contractor will be leveraging:

- Wider industry experience – from Mirvac and Western Sydney University to ensure the Contractor stress tests the early thinking to ensure the solution works for end users
- Managed service – set-up and run expertise enabled by Partner Andrew Wiles
- Partner for Construction Risk and Industry SME - Mike McCloskey

### 5.3. Delivery location

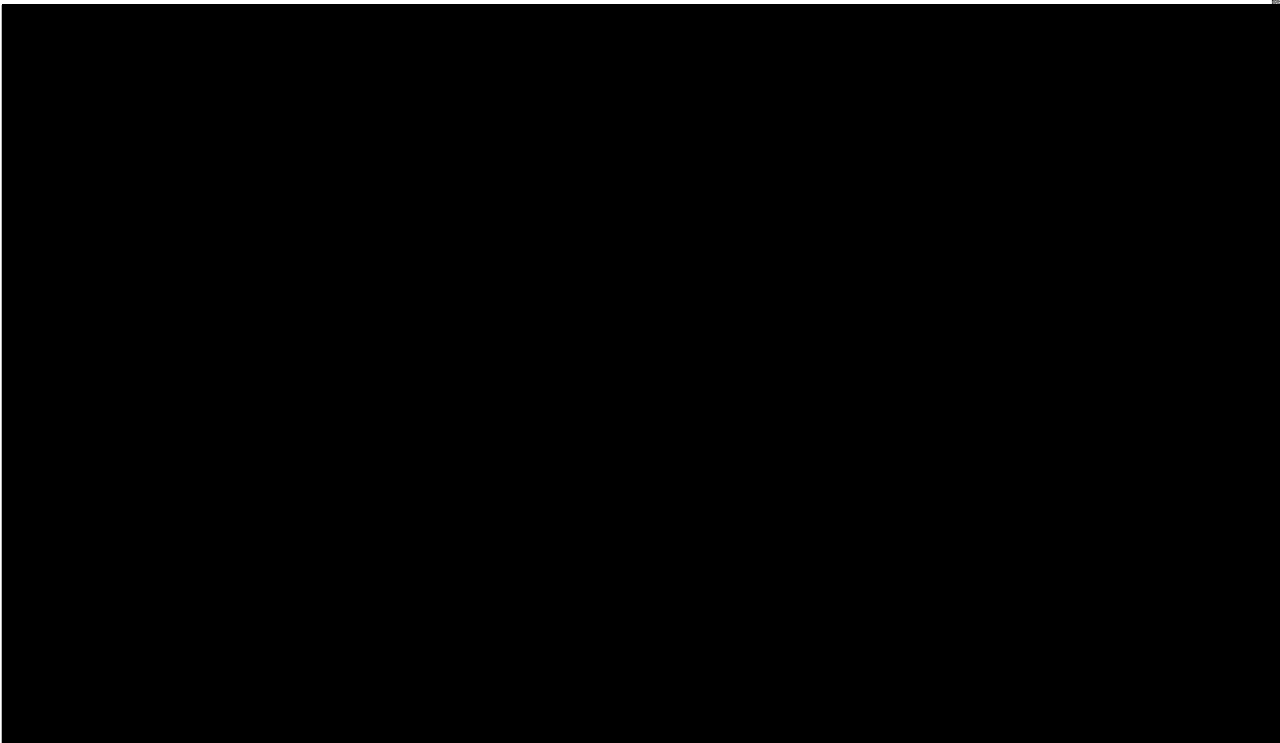
The Services will be delivered in standard office environment and at the locations agreed with the Customer.

The Services will be delivered in standard office environment using the Contractor's Sydney Hub(s). The Customer's McKell Building will be used for meetings and discussions as required between Contractor and Customer. Virtual and remote meeting technology will be used as required. Any other locations are to be agreed between the Parties.

## 6. Project Management

### 6.1. Issues Log

The Contractor will adopt testing good-practice to align to the Product Development Lifecycle. Functional testing will be performed every sprint, with regression and integration testing run prior to every release and major milestones.



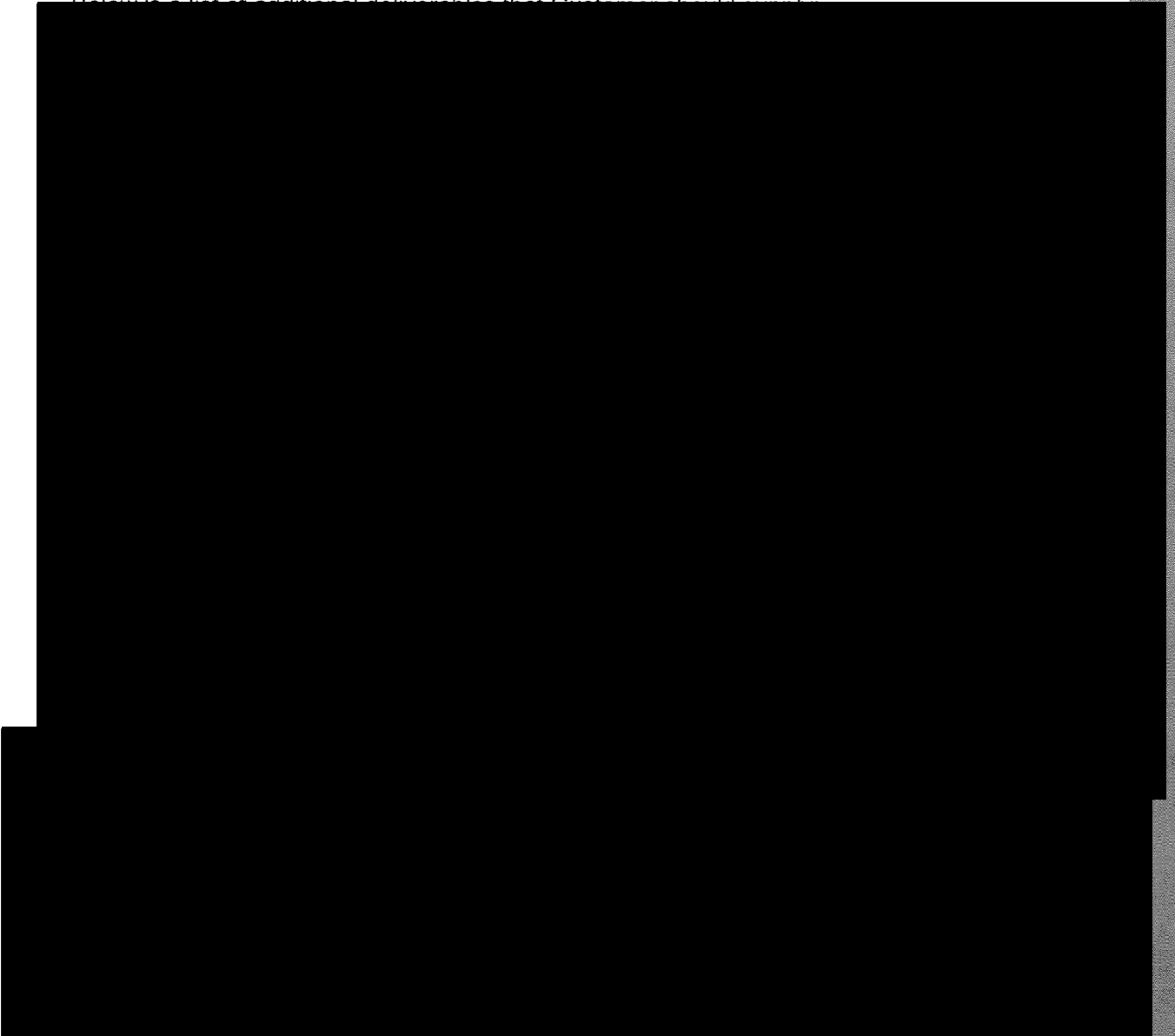
## 6.2. Risk management plan

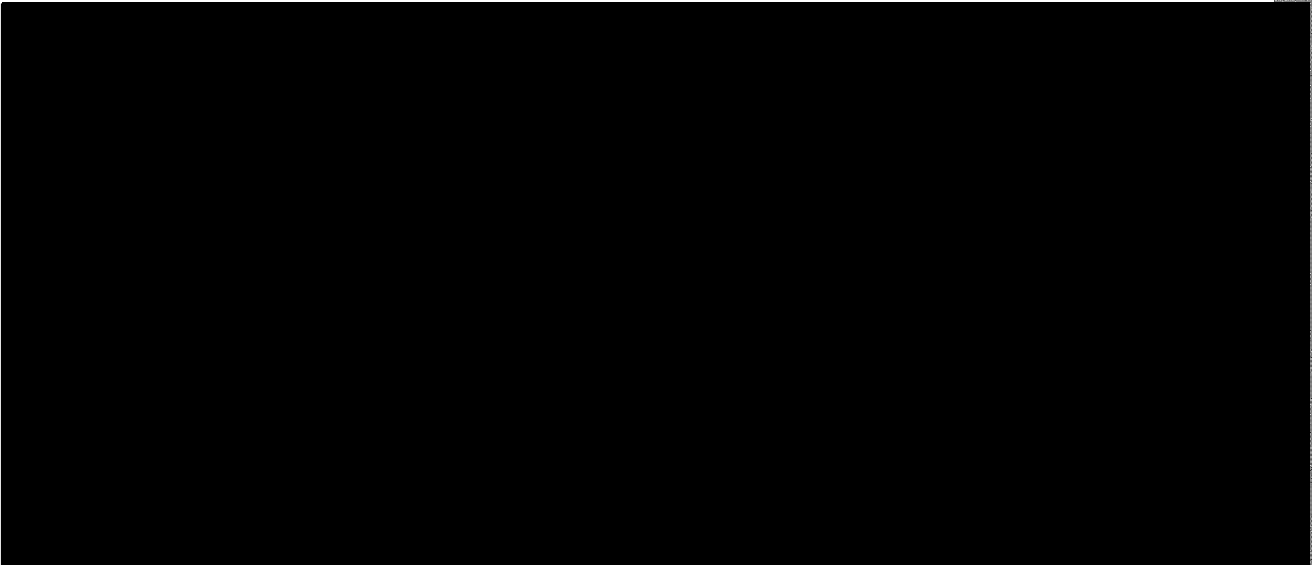
The Contractor will proactively manage and put in place a Risk Management Plan as part of BAS delivery. As part of the risk management process, the Contractor's and the Customer's team will work to identify and capture the risks as part of regular project delivery cadence. Once identified the risks will be assessed and mitigation defined and assigned. The team will review the risks and their status on a regular basis to ensure risks and issues are managed. Any major risks will be escalated to the appropriate governance body for the project.

## 7. Customer Supplied Items (CSI)

### 7.1. List of CSI

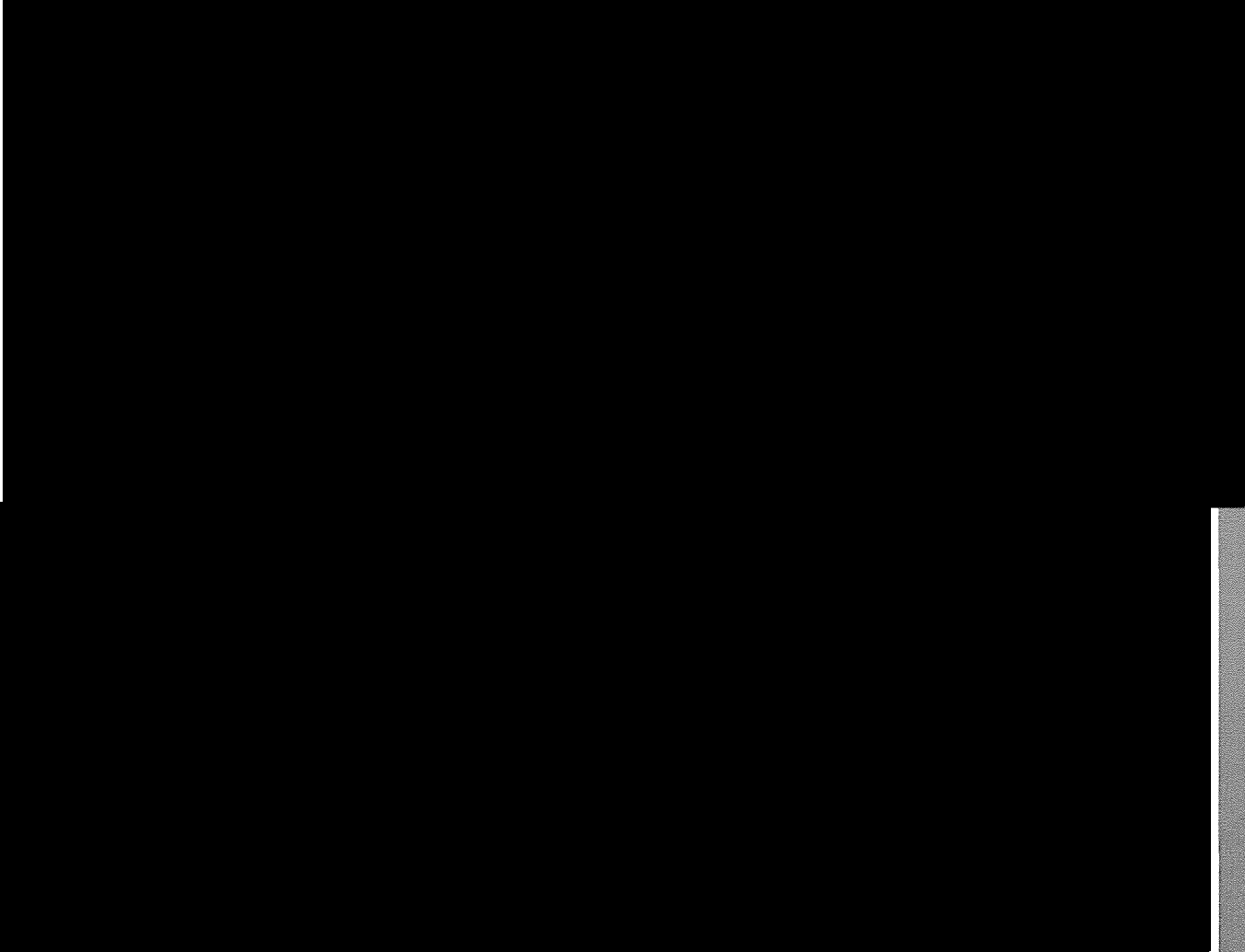
Below is a list of additional deliverables that Customer should provide:





## 10.2. Conducting Acceptance Tests

N/A (see above)

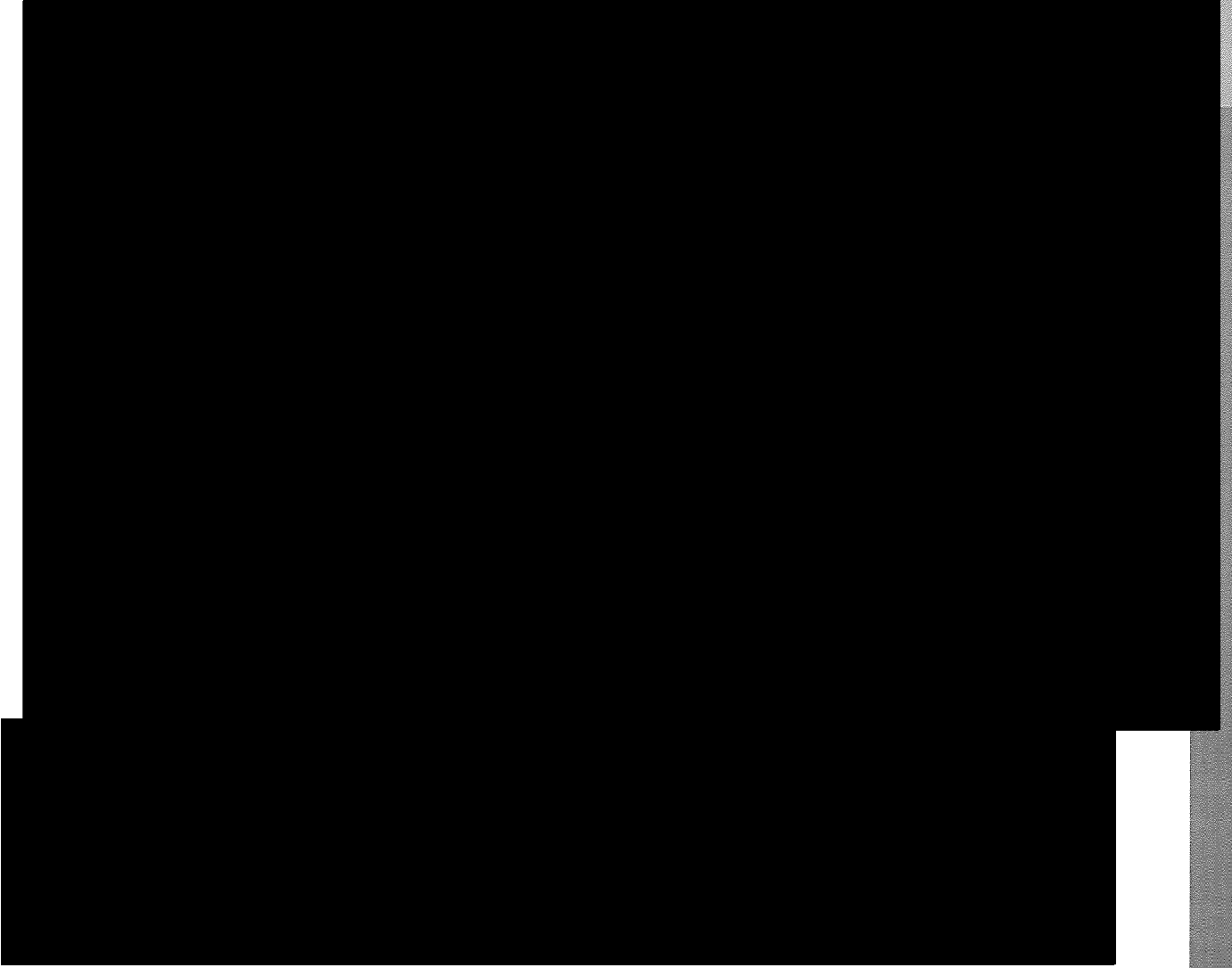


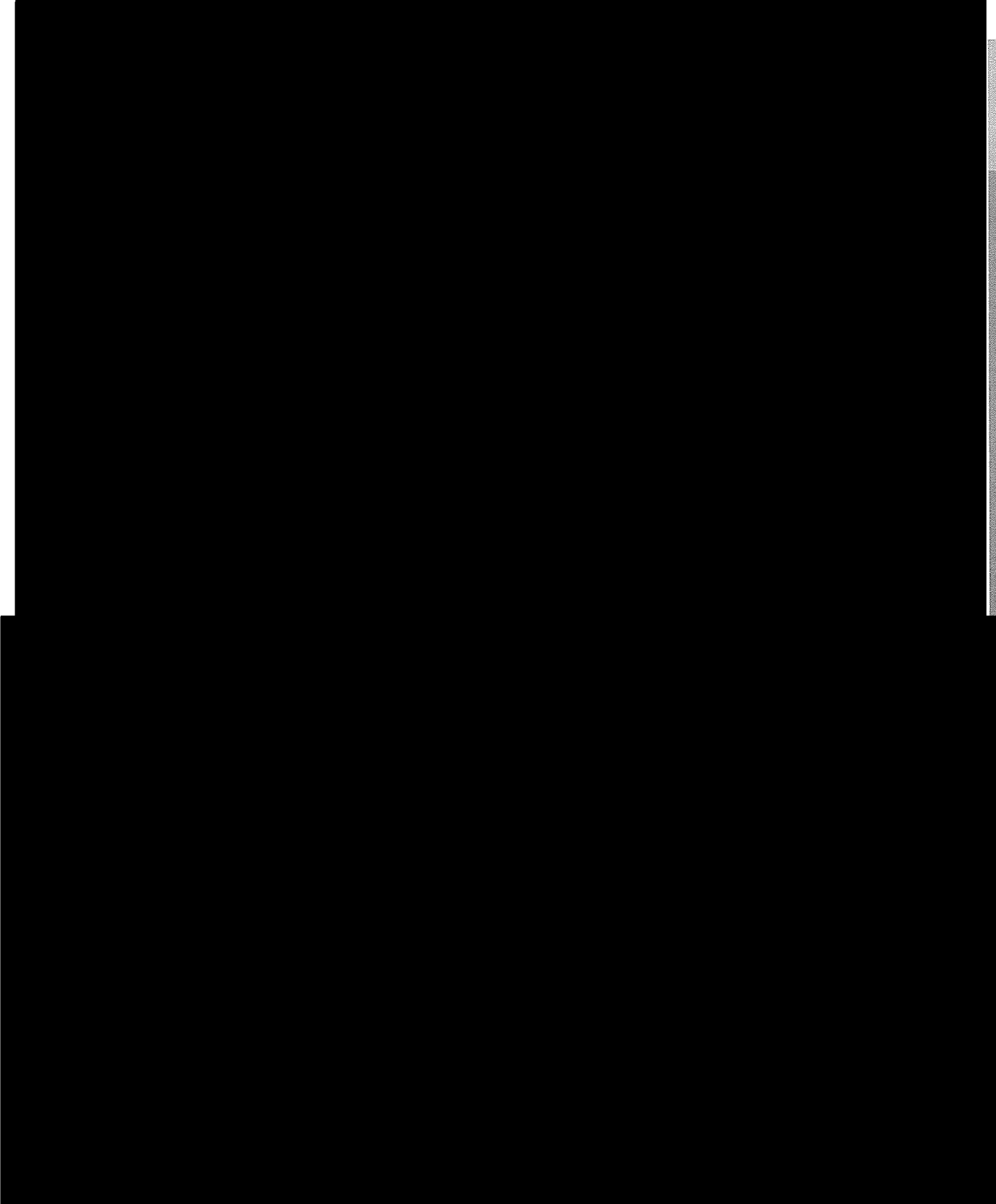
not require any additional contractual arrangement.

## 10. Acceptance Testing

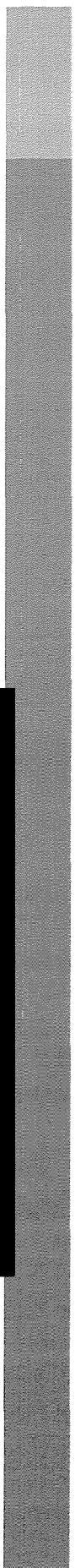
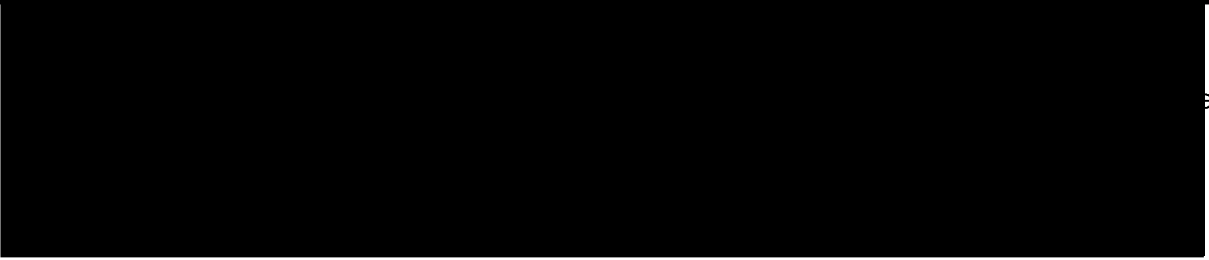
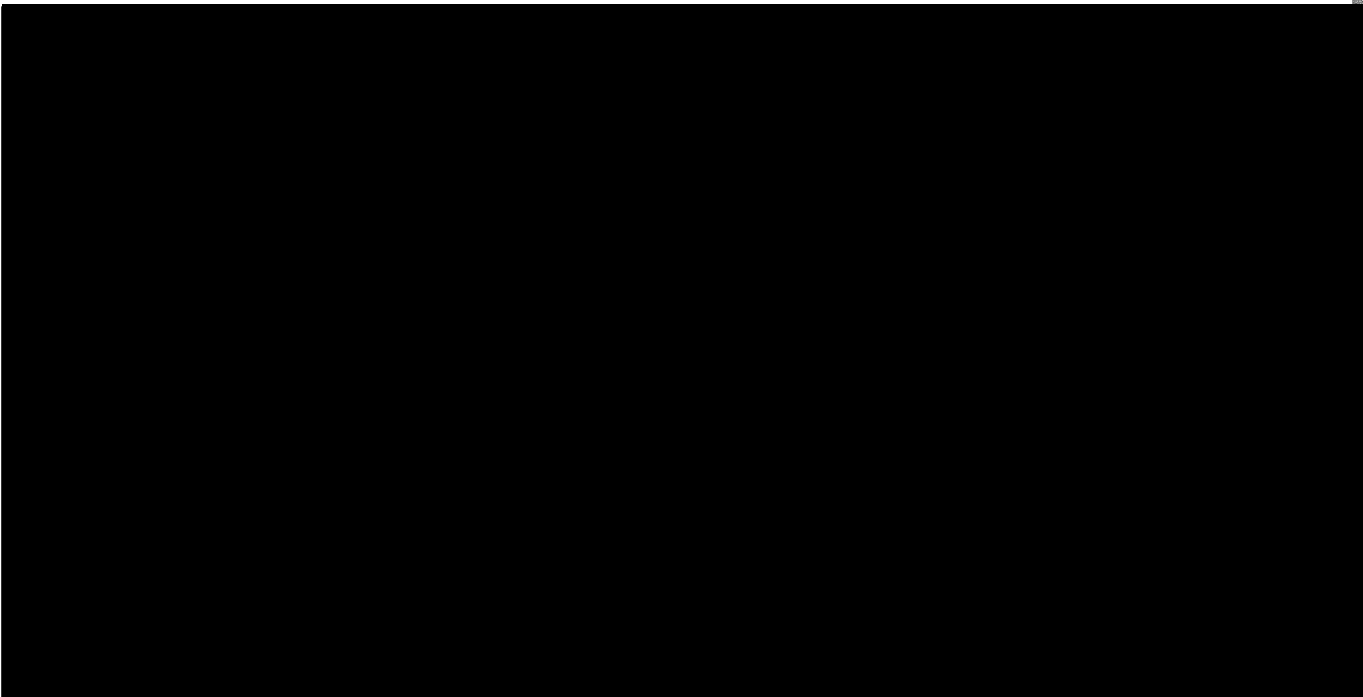
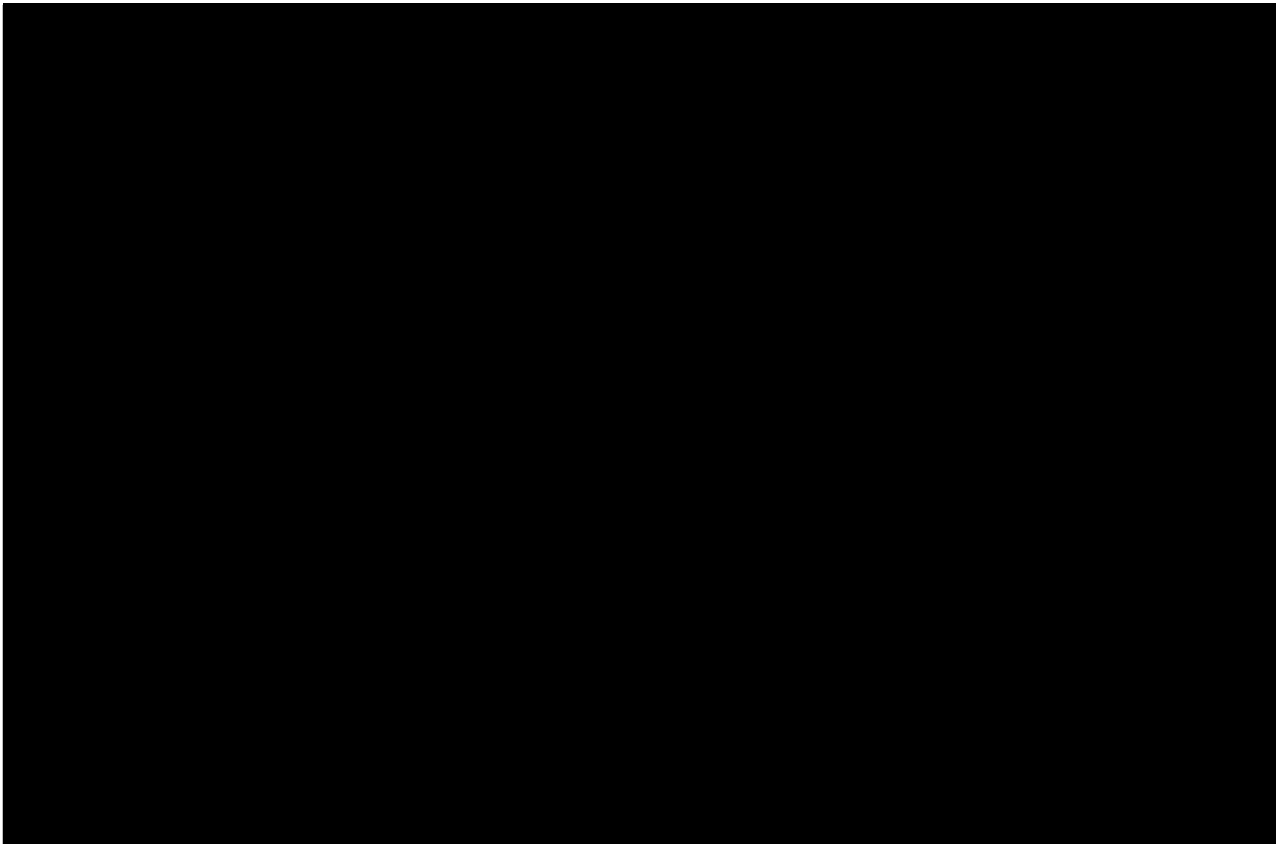
Since the Contractor will be delivering a Platform that is maintained and commercially licensed to the whole industry (not only to the Customer), the overall Platform Test Plan and documented test results will be presented to the Customer for Acceptance.

## 11. Project Plan





The table below lists all payments for each product delivery stage and the associated payment schedules with the GST component. The Payment ID# and Payment Due Dates are the estimated invoicing dates and invoicing amounts. For clarity, the "Payment Due Date" is







## 12.5.BAS v2.0 Managed Service

With the release of BAS v2.0 (estimated Jan 2023), the BAS Platform will transition into the BAS v2.0 Managed Service phase (starting in January 2023 and initial managed service period of 12 months till January 2024). The Contractor has listed the minimum commercial fees for which the platform would be operated (\$144,297 per month). While BAS v2.0 Managed Service (from January 2023 to January 2024) is not considered part of the Contract Period, Customer and all other BAS Platform participants would be charged a commercial license fee to access the BAS platform. The sum of these license fees would have to be at minimum \$144,297 per month in order to create a commercially viable BAS platform.

Contractor reserves the rights to seize to operate the BAS platform if the commercial viability objective indicated above is not met (in discussion with Customer).





**PROCURE IT FRAMEWORK**

**VERSION 3.2**

**PART 3: DICTIONARY**

# DICTIONARY

## 1. AGREED TERMS & INTERPRETATION

### AGREED TERMS

- 1.1 Acceptance Criteria** means the criteria to be applied in the performance of any Acceptance Test.
- 1.2 Acceptance Test Notification Period** means a period of 3 Business Days from the end of the Acceptance Test Period, or such other period stated in Item 32 of the General Order Form or agreed in writing, within which the Party conducting an Acceptance Test must provide the other Party with written notice of the results of the Acceptance Test.
- 1.3 Acceptance Test Data** means the data that is provided by the Customer, and agreed by the Contractor in Item 32 of the General Order Form, that reflects the data the Customer will use in the relevant Deliverable, that is to be used for Acceptance Testing.
- 1.4 Acceptance Test Period** means the period for the performance of any Acceptance Tests for any Deliverable which is a period of 10 Business Days from the delivery of the Deliverable to the Customer, or such other period stated in Item 32 of the General Order Form or agreed between the Parties in writing.
- 1.5 Acceptance Tests** means any acceptance tests stated in Item 32 of the General Order Form or agreed in writing.
- 1.6 Actual Acceptance Date** or **AAD** means the actual acceptance date for a Deliverable, being the date calculated in accordance with clause 10.1 of the Customer Contract.
- 1.7 Additional Conditions** means any terms or conditions which vary, or are additional to, the terms and conditions set out in the Customer Contract, which are stated in Item 43 of the General Order Form and which, subject to directions and policies issued by the Board from time to time, require the prior written approval of the Secretary, New South Wales Department of Customer Service as set out in clause 3.2(b) of the Customer Contract.
- 1.8 Agency** means:
- (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth, State or Territory legislation, or an instrument made under that legislation (including a local authority);
  - (b) a body established by the Governor-General, a State Governor, or by a Minister of state of the Commonwealth, a State or a Territory; or
  - (c) an incorporated company over which the Commonwealth, a State or a Territory exercises control.
- 1.9 Agreement Documents** means the documentation listed in Schedule 2 to the Customer Contract.
- 1.10 Annexure** means a document that is incorporated into, and forms part of, the Head Agreement.
- 1.11 Approved Agent** means any entity that is authorised in writing by the Contractor to act as the Contractor's legal agent for the purpose of supplying Products and/or Services to the Customer under a Customer Contract, and whose identity is:

- (a) stated in the Head Agreement Details or otherwise approved by the Contract Authority; or
- (b) where there is no Head Agreement, approved by the Customer,
- but excludes the directors, officers or employees of the Approved Agent.
- 1.12 Authorised Representative** means a person who has authority to act on behalf of a Party in accordance with the Head Agreement (Part 1) or the Customer Contract (as applicable).
- 1.13 Bespoke User Documentation** means documents created for the Customer as a Deliverable under a Customer Contract that describe the features and functions of a Product or Service that has been created, modified or adapted for the Customer under a Customer Contract, in a hard copy, electronic or online format as stated in the Contract Specifications.
- 1.14 Board** means the New South Wales Procurement Board established under section 164 of the PWP Act.
- 1.15 Business Contingency Plan** means a plan detailing the nature and scope of the business contingency services to be provided by the Contractor to overcome interruptions to the Customer's business, including as applicable, information about time-frames, scheduling, service levels, methodologies, systems, processes or programs for the implementation of such services and any other requirement, as stated in Item 24 of the General Order Form.
- 1.16 Business Day** means any day that is not Saturday, Sunday or a public holiday in New South Wales.
- 1.17 Business Hours** means 9.00am to 5.00pm on a Business Day.
- 1.18 CCA** means the Competition and Consumer Act 2010 (Cth).
- 1.19 Change in Control** means a circumstance in which control is or may be exercised over the Contractor:
- (a) by virtue of the change of a direct holding of at least fifteen percent of the voting shares in the Contractor or a holding company of the Contractor; or
- (b) by any other means whatsoever.
- 1.20 Change Request** means a change requested by either Party which, if signed by the Parties, will result in a variation to any part of the Customer Contract.
- 1.21 Commencement Date** means:
- (a) the Commencement Date stated in Item 10 of the General Order Form; or
- (b) if no Commencement Date is stated in the General Order Form, the date the Customer Contract is signed by the Customer and the Contractor.
- 1.22 Confidential Information** means information that:
- (a) is by its nature confidential;
- (b) is communicated by the disclosing party to the confidant as confidential;
- (c) the confidant knows or ought to know is confidential; or
- (d) relates to:

- (i) the Customer Data;
- (ii) the Products and Services;
- (iii) the financial, corporate and commercial information of any Party;
- (iv) the affairs of a third party (provided the information is non-public); or
- (v) the strategies, practices and procedures of the State and any information in the Contractor's possession relating to a Government Agency,

but excludes any information which the confidant can establish was:

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

**1.23 Conflict of Interest** means the Contractor engaging in any activity, or obtaining any interest, whether pecuniary or non-pecuniary, which is likely to, has the potential to, or could be perceived to, restrict the Contractor from performing its obligations under the relevant Part in an objective manner.

**1.24 Consequential Loss** means any loss, damage or expense recoverable at law:

- (a) other than a loss, damage or expense that would be suffered or incurred by any person in a similar situation to the person suffering or incurring the loss, damage or expense; or
- (b) which is a loss of:
  - (i) opportunity or goodwill;
  - (ii) profits, anticipated savings or business;
  - (iii) data; or
  - (iv) value of any equipment,

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

**1.25 Contract Authority** means the head of a Government Agency which may procure goods and services for that Government Agency or for other Government Agencies consistent with any applicable policies and directions of the Board and the terms of its accreditation (if any) by the Board, and described in Item 2 of the Head Agreement Details.

**1.26 Contract Period** means the period of the Customer Contract stated in Item 10 of the General Order Form, including any period or periods of extension of the Customer Contract made in accordance with clause 2.4 of the Customer Contract.

**1.27 Contract Price** means the total of all Prices payable by the Customer to the Contractor for the Deliverables supplied under the Customer Contract as stated in Item 11 of the General Order Form.

**1.28 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 the Customer Contract being only:

- (a) any specifications stated in the Customer Contract in Item 13 of the General Order Form; or
- (b) if no specifications are set out in the Customer Contract, the User Documentation.

**1.29 Contract Value** means:

- (a) the amount that is the maximum amount that the Customer is legally required to pay to the Contractor for the relevant:
  - (i) Non-Recurring Service and/or Product; or
  - (ii) Short Term Recurring Service,under the Customer Contract, calculated at the Commencement Date; or
- (b) if the Parties determine that the amount in paragraph (a) is not capable of calculation, and there is an Estimated Contract Price for the relevant Non-Recurring Service or Product or Short Term Recurring Service, the Contract Value is the greater of:
  - (i) the Estimated Contract Price for the relevant Non-Recurring Service or Product or Short Term Recurring Service; or
  - (ii) the amounts paid by the Customer, or unpaid but due and outstanding, for the relevant Non-Recurring Service or Product or Short Term Recurring Service as at the date on which the claim first arises; and
- (c) if the Parties determine that the amount in paragraph (a) is not capable of calculation, and there is no Estimated Contract Price for the relevant Non-Recurring Service or Product or Short Term Recurring Service, the Contract Value is the aggregate of:
  - (i) the amounts paid by the Customer, or unpaid but due and outstanding, for the relevant Non-Recurring Service or Product or Short Term Recurring Service as at the date on which the claim first arises; and
  - (ii) the average amount paid by the Customer in each month of the Contract Period for the relevant Non-Recurring Service or Product or Short Term Recurring Service prior to the date on which the claim first arises multiplied by the number of remaining months of the Contract Period during which the relevant Non-Recurring Service and/or Product or the Short Term Recurring Services were to be provided, as set out in the Order Documents.

**1.30 Contract Variation** means a variation to the terms and conditions of the Customer Contract that requires the consent of the Secretary, New South Wales Department of Customer Service in accordance with clause 26.2 of the Customer Contract.

**1.31 Contractor** means the person or body corporate named in Item 3 of the Head Agreement Details and/or Item 4 of the General Order Form that enters into the relevant Part. For the purpose of a Customer Contract, Contractor includes any Approved Agent who enters into the Customer Contract. Contractor does not include any of the Contractor's Personnel (other than an Approved Agent).

**1.32 Contractor Information** means information relating to:



- (a) the Head Agreement and any Customer Contract formed under the Head Agreement subject to the exclusions stated in Item 5 of the Head Agreement Details;
- (b) the Contractor's performance under the Head Agreement or a Customer Contract;
- (c) the financial position or reputation of the Contractor; and/or
- (d) the shareholdings in the Contractor, or the corporate structure, directorship or shareholdings of the Contractor,

but excluding any of the Contractor's Confidential Information or Intellectual Property Rights.

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

- (a) the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars;
- (b) the invoice is set out as an itemised account which identifies the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the amount payable;
- (c) the invoice is accompanied by documentary evidence that signifies that acceptance (where appropriate) has occurred in accordance with the Customer Contract; and
- (d) the invoice is addressed to the officer stated in Item 6 of the General Order Form to receive invoices.

**1.34 Customer** means the person or body corporate named in Item 1 of the General Order Form that enters into a Customer Contract with the Contractor. Customer does not include any of the Customer's Personnel.

**1.35 Customer Contract** means those Parts, terms and conditions and other documents listed in clause 3.8 of Part 2.

**1.36 Customer Data** means all data and information relating to the Customer or any other Government Agency and the operations, facilities, customers, clients, personnel, assets and programs of the Customer and any other Government Agency, including Personal Information, in whatever form that information may exist and whether entered into, stored in, generated by, retrieved, printed, processed or produced as part of any Services.

**1.37 Customer Supplied Item** or **CSI** means the items set out in Item 22 of the General Order Form to be supplied by the Customer under a Customer Contract.

**1.38 Cyberterrorism** means an assault on any electronic communications network.

**1.39 Defect** means a fault, error, failure, degradation, deficiency or malfunction that causes the relevant Deliverable not to meet the Contract Specifications and other requirements under the Customer Contract.

**1.40 Defects List** means a written notice stating details of the actual results of any Acceptance Test, and for any alleged Defect(s) a statement as to whether the alleged Defect is Minor. The Defects List is not required to include the cause of the Defect.

**1.41 Deliverable** means any Product, Service or output from any Service that is required to be provided to the Customer under the Customer Contract, and if applicable, includes the System.

- 1.42 Designated Environment** means the hardware platform / operating system combination of the Customer as described in the relevant Module Order Form.
- 1.43 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;
  - (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; and/or
  - (d) a piece of text or text and graphics stored electronically as a file for manipulation by document processing software.
- 1.44 Due Date** means the date by which an LD Obligation must be met, as stated in Item 21 of the General Order Form.
- 1.45 Eligible Customer** means any Government Agency or Eligible non-Government Body.
- 1.46 Eligible non-Government Body** means a public body being eligible to buy under a specific Head Agreement, including the following bodies (as identified under the Public Works and Procurement Regulation 2014 clause 6:
- (a) a private hospital;
  - (b) a local council or other local authority;
  - (c) a charity or other community non-profit organisation;
  - (d) a private school or a college;
  - (e) a university;
  - (f) a public authority of the Commonwealth, any other State or Territory;
  - (g) a public authority or of any other jurisdiction (but only if it carries on activities in this State); or
  - (h) any contractor to a public authority (but only in respect of things done as such a contractor).
- 1.47 Escrow Agreement** means an agreement under which an independent third party receives the source code or object code of certain software from the Contractor for delivery to the Customer or the Contractor upon the fulfilment of pre-specified conditions and is substantially in the form of Schedule 5 to the Customer Contract unless otherwise agreed by the Parties.
- 1.48 Escrow Materials** means:
- (a) the source code, object code of any software Deliverable and all other relevant software programs owned by the Contractor;
  - (b) documentation;
  - (c) drawings and plans; and
  - (d) a list of any relevant third party software programs,

sufficient to enable a competent programmer skilled in the use of the software included in the Deliverable (and any necessary development tools used to create the Deliverable) to keep the Deliverables in good order and repair, that are stated in Item 23 of the General Order Form.

- 1.49 Estimated Contract Price** means the Parties' estimate of the amount payable under the Customer Contract for the relevant:
- (a) Non-Recurring Service or Product; or
  - (b) Short Term Recurring Service,
- as stated in Item 39 of the General Order Form.
- 1.50 Existing Material** means any Licensed Software or any other Material that is developed:
- (a) prior to the Commencement Date; or
  - (b) independently of the Customer Contract,
- and that is incorporated into a Deliverable under the Customer Contract.
- 1.51 Financial Security** means the security in Item 38 of the General Order Form which is in substantially the form of Schedule 10 to the Customer Contract.
- 1.52 Force Majeure Event** means a circumstance beyond the reasonable control of a Party that results in that Party being unable to perform an obligation on time and includes:
- (a) natural events like fire, flood, or earthquake;
  - (b) national emergency;
  - (c) terrorist acts (including Cyberterrorism) and acts of vandalism; or
  - (d) war.
- 1.53 Fundamental Breach** means a breach of the Customer Contract by the Customer which prevents the Contractor from carrying out its obligations under the Customer Contract.
- 1.54 General Order Form** means Schedule 1 to the Customer Contract and includes the Order Details that are relevant to that Customer Contract.
- 1.55 GIPA Act** means the Government Information (Public Access) Act 2009 (NSW).
- 1.56 Government Agency** means any of the following:
- (a) a government sector agency (within the meaning of the *Government Sector Employment Act 2013 (NSW)*);
  - (b) a NSW Government agency;
  - (c) any other public authority that is constituted by or under an Act or that exercises public functions (other than a State owned corporation); or
  - (d) any State owned corporation prescribed by regulations under the PWP Act.
- 1.57 GST** has the same meaning as in the GST Law.

- 1.58 GST Law** means any law imposing or relating to a GST and includes the *A New Tax System (Goods & Service Tax) Act 1999* (Cth) and any regulation pursuant to such Act.
- 1.59 Hardware** means the physical components of a computer including the microprocessor, hard discs, RAM, motherboard and peripheral devices.
- 1.60 Head Agreement** means an agreement between the Contract Authority and the Contractor, comprising those Parts, terms and conditions and other documents listed in clause 4.2 of Part 1.
- 1.61 Head Agreement Details** means those details stated in Annexure 1 to Part 1.
- 1.62 Head Agreement Documents** means the documentation listed in Annexure 2 to Part 1.
- 1.63 Insolvency Event** means where a Party:
- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
  - (b) is insolvent with the meaning of section 95A of the *Corporations Act 2001* (Cth);
  - (c) must be presumed by a court to be insolvent by reason of an event set out in section 459C(2) of the *Corporations Act 2001* (Cth);
  - (d) fails to comply with a statutory demand within the meaning of section 459F(1) of the *Corporations Act 2001* (Cth);
  - (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
  - (f) has a mortgagee entitled to, or enter into, possession of any property of that Party;
  - (g) has a controller within the meaning of the section 9 of the *Corporations Act 2001* (Cth) or similar officer appointed to all or any of its property; or
  - (h) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.
- 1.64 Install** means to set up Hardware so that the manufacturer's installation tests can be completed successfully.
- 1.65 Intellectual Property Rights** means all intellectual property rights including:
- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade names and other protected rights, or related rights, existing worldwide; and
  - (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in paragraph (a),

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

- 1.66 LD Obligation** means an obligation that is stated in Item 21 of the General Order Form as being an obligation for which the late completion by the Contractor may require the payment of liquidated damages in accordance with clauses 6.28 to 6.35 of the Customer Contract.
- 1.67 Licensed Software** means standard off-the-shelf software provided by the Contractor to the Customer and includes any updates or new releases of that software that may be provided to the Customer from time to time in accordance with the Customer Contract.
- 1.68 Material** means any Document or other thing in which Intellectual Property Rights subsist.
- 1.69 Material Adverse Event** means any matter that:
- (a) substantially and adversely affects the Contractor's ability to perform any of its material obligations under the relevant Part, which may result from:
    - (i) any material litigation or proceeding against the Contractor;
    - (ii) the existence of any material breach or default of any agreement, or of any order or award that is binding on the Contractor;
    - (iii) matters relating to the commercial, technical or financial capacity of the Contractor or in the knowledge of the Contractor, any Approved Agent, Subcontractor or subcontractor proposed to be engaged in respect of this agreement; or
    - (iv) any obligation under another contract the compliance with which may place the Contractor in material breach of the relevant Part; or
  - (b) the Contractor knows, or should reasonably know, will, or has the potential to, cause material reputational damage to the Contract Authority or the Customer as a result of the Contract Authority and/or the Customer's association with the Contractor or Subcontractor.
- 1.70 Milestone** means the groups of tasks relating to and including the provision of Deliverables to be performed or provided by the Contractor under the Customer Contract.
- 1.71 Minor** means, unless otherwise agreed in the Order Documents:
- (a) in respect of a Deliverable that is not a Document, a Defect that would not prevent the Deliverable from being used in a production environment even though there may be some insubstantial inconvenience to users of the Deliverable, provided that the Defect does not compromise security; and
  - (b) in respect of a Deliverable that is a Document, errors that are limited to errors in formatting, style, spelling or grammar or minor errors of fact or interpretation that do not detract from the usefulness or intent of the document.
- 1.72 Module** means a document that describes the additional terms and conditions that are specific to a particular Product or Service or method of acquisition of a Product or Service. The Modules applicable to the Customer Contract are stated in item 8 of the General Order Form and contained in Part 4.
- 1.73 Module Order Form** means a document that includes the Order Details that are relevant to a particular Module. The Module Order Forms are contained in Part 5.
- 1.74 Moral Rights** means a person's moral rights as defined in the *Copyright Act 1968* (Cth).
- 1.75 New Material** means any Material that is:

- (a) newly created by or on behalf of the Contractor during the performance of its obligations under the Customer Contract;
- (b) incorporated into a Deliverable; and
- (c) delivered to the Customer in accordance with the requirements of the Customer Contract,

except for any Material that is Existing Material or any adaptation, translation or derivative of that Existing Material.

- 1.76 Nominee Purchaser** means a contractor to a Customer that is authorised to enter into the Customer Contract as the Customer's agent.
- 1.77 Non-Panel Arrangement** has the meaning given to such term in clause 1.7(b).
- 1.78 Non-Recurring Services** means Services which are provided by the Contractor under any of the following Modules:
- (a) Module 4 – Development Services; and
  - (b) Module 13 – Systems Integration Services; and
  - (c) Module 9 – Data Migration
- and, if agreed by the Parties in Item 39 of the General Order Form:
- (d) Module 6 – Contractor Services;
  - (e) Module 7 – Professional Services; and
  - (f) Module 8 - Training Services.
- 1.79 Notice in Writing** means a notice signed by a Party's authorised representative or his/her delegate or agent which must not be an email or a document scanned and sent by email.
- 1.80 Officer** has the same meaning as detailed in section 9 of the *Corporations Act 2001 (Cth)*.
- 1.81 Online Service** means cloud computing services and related Products and Services as described in the Module 10 (As a Service) Order Form and further defined in the Contract Specifications.
- 1.82 Open Source Software** means software available under a licence which meets the criteria of the Open Source Definition published by the Open Source Initiative at <http://www.opensource.org>, and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at <http://www.creativecommons.org>.
- 1.83 Order Details** means the details of the Customer Contract specific to the transaction contemplated by the Customer Contract which are included in the Order Documents and agreed by the Customer and the Contractor.
- 1.84 Order Documents** means the General Order Form and the documents that are stated on the General Order Form as being incorporated into the Customer Contract, which may include:
- (a) any Schedule to the Customer Contract;
  - (b) any document referred to in, or based on, any Schedule to the Customer Contract; and

- (c) one or more Modules and their relevant Module Order Forms.
- 1.85 Panel Arrangement** has the meaning given to such term in clause 1.7(a).
- 1.86 Part** means each pro forma document that is designated as a Part of the Procure IT Framework, being:
- (a) Part 1: the Head Agreement, including its Annexures;
  - (b) Part 2: the Customer Contract, including its Schedules;
  - (c) Part 3: the Dictionary;
  - (d) Part 4: the Modules; and
  - (e) Part 5: the Module Order Forms.
- 1.87 Parties** means:
- (a) in relation to the Head Agreement: the Contract Authority and the Contractor; and
  - (b) in relation to the Customer Contract: the Customer and the Contractor.
- 1.88 Performance Criteria** means the criteria applicable to the performance of the Contractor including the:
- (a) quality of Products or Services offered or delivered;
  - (b) competitiveness of the Products or Services and pricing;
  - (c) Contractor's sales and marketing performance;
  - (d) Contractor's financial stability;
  - (e) Contractor's management and suitability of its Personnel;
  - (f) Contractor's administration of the Head Agreement, any Customer Contracts and risk;
  - (g) Contractor's management of environmental issues;
  - (h) Contractor's Occupational, Health, Safety and Rehabilitation (OHS&R) Management;
  - (i) Contractor's industrial relations performance; and
  - (j) claims on insurance and other financial assurances made in respect of the Contractor's business or the Head Agreement and any Customer Contracts.
- 1.89 Performance Guarantee** means a document substantially in the form of Annexure 5 to the Head Agreement or Schedule 9 to the Customer Contract (as applicable).
- 1.90 Personal Information** means information or an opinion about an identified individual (ie. a natural person), or an individual who is reasonably identifiable:
- (a) whether the information or opinion is true or not; and
  - (b) whether the information or opinion is recorded in a material form or not.
- 1.91 Personnel** means an entity's directors, officers, employees, agents and subcontractors, and:

- (a) for the Contractor, includes its Approved Agents and their Personnel; and
- (b) for the Customer, includes any Nominee Purchaser and its Personnel, but excludes the Contractor and its Personnel.

**1.92 Prescribed Use** is limited to the use of a Product or Service in a business environment where the direct result of a failure of the Product or Service being supplied results in a serious risk of significant loss of life or personal injury or substantial damage to buildings or other tangible property in the following business environment:

- (a) planning, construction, maintenance or operation of an air traffic control system;
- (b) planning, construction, maintenance or operation of a mass transit system (e.g. aircraft/trains/ferries/roads);
- (c) planning, construction, maintenance or operation of a nuclear facility; or
- (d) planning, construction, maintenance or operation of facilities or programs in respect of biological or chemical environments, including quarantine.

**1.93 Price** means an itemised Price (including a rate for a unit), payable in Australian dollars by a Customer for a Product or Service under the Customer Contract in Item 11 of the General Order Form. Price includes GST and any other Tax.

**1.94 Privacy Laws** means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);
- (d) any legislation (to the extent that such legislation applies to the Customer or the Contractor or any other recipient of Personal Information) from time to time in force in:
  - (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
  - (ii) any other jurisdiction (to the extent that the Customer or any Personal Information or the Contractor is subject to the laws of that jurisdiction),affecting privacy or Personal Information, provided that the Contractor ensures that it complies at all times with the Privacy Laws applicable in New South Wales; and
- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

**1.95 Procure IT Framework** means the suite of pro forma documents issued by the New South Wales Department of Customer Service that provide the framework for the procurement of information and communications technology related goods and services by Government Agencies.

**1.96 Product** means Hardware and Licensed Software only.

**1.97 Project Implementation and Payment Plan** or **PIPP** means a document that includes Order Details relating to the implementation of a project and associated payment arrangements



which is included in a Customer Contract if stated in Item 20 of the General Order Form. An example template of a PIPP is set out in Schedule 12 to the Customer Contract.

**1.98 Protected Clauses** means the following clauses of the Customer Contract:

- (a) Additional Conditions (clause 3.2 (b));
- (b) Formation (part of clause) and Compliance with Consumer Laws (clauses 3.7 to 3.11);
- (c) Product Safety (clauses 5.9 to 5.10);
- (d) Intellectual Property Rights (clause 13);
- (e) Privacy (clause 15);
- (f) Insurance (clause 16)
- (g) Liability (clause 18);
- (h) Indemnities (clause 19);
- (i) Conflict of Interest (clause 20);
- (j) Notice of Change in Control (clause 23.3);
- (k) Dispute Resolution (clause 24 and Schedule 11 – Dispute Resolution Procedures);
- (l) Termination (clause 25);
- (m) Assignment and Novation (clauses 26.3 to 26.6); and
- (n) Applicable Law (clause 26.22).

**1.99 PWP Act** means the Public Works and Procurement Act 1912 (NSW).

**1.100 Recurring Services** means Services which are provided by the Contractor under any of the following Modules:

- (a) Module 2 – Hardware Maintenance and Support Services;
- (b) Module 5 – Software Support Services;
- (c) Module 11– Telecommunications as a Service;
- (d) Module 12– Managed Services; and
- (e) Module 10 - As a Service,

and, unless agreed otherwise by the Parties in Item 39 of the General Order Form:

- (f) Module 6 – Contractor Services;
- (g) Module 7 – Professional Services; and
- (h) Module 8 - Training Services.

**1.101 Related Company** means an entity owned by, controlling, controlled by, or under common control with, directly or indirectly, a Party. For this purpose, one entity "controls" another entity

if it has the power to direct the management and policies of the other entity (for example, through the ownership of voting securities or other equity interest, representation on its board of directors or other governing body, or by contract). A Related Company includes a "related body corporate" as that expression is defined in the *Corporations Act 2001* (Cth).

- 1.102 Reseller** means any entity which provides Products or Services but is not:
- (a) the original equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service; or
  - (b) a Related Company of the original equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service.
- 1.103 Schedule** means a schedule to the Customer Contract.
- 1.104 Service** means any item or thing to be provided under a Customer Contract that is not a Product.
- 1.105 Service Address** means:
- (a) in the case of the Contract Authority, the address set out in the Head Agreement;
  - (b) in the case of the Contractor:
    - (i) the address set out in the Head Agreement or such other address of which the Contractor gives Notice in Writing to the Contract Authority; or
    - (ii) in relation to a Customer Contract at its address set out in Item 5 of the General Order Form or such other address of which the Contractor gives Notice in Writing to the Customer; or
  - (c) in the case of the Customer: the address set out in Item 2 of the General Order Form or the address of which the Customer gives Notice in Writing to the Contractor.
- 1.106 Service Credit** means the service credits awarded against the Contractor for a failure to meet the Service Levels, as specified in a Service Level Agreement.
- 1.107 Service Level Agreement** or **SLA** means the document or clauses that set out the performance expectations of the Parties and defines the benchmarks for measuring the performance of the Services. An example template of an SLA is set out in Schedule 3 to the Customer Contract.
- 1.108 Service Levels** means the minimum performance levels to be achieved by the Deliverable, as specified in a Service Level Agreement.
- 1.109 Short Term Recurring Services** means Recurring Services that are stated to be provided for a period of 12 months or less in the Order Documents.
- 1.110 Site** means the Customer's offices or other Customer-controlled locations stated in Item 18 of the General Order Form to which a Deliverable is to be delivered and/or at which a Deliverable is to be installed.
- 1.111 Site Specification** means the document which details the environmental, operational, safety and management requirements in relation to the Site that are necessary for the provision of the Deliverable(s).

- 1.112 Specified Personnel** means the key personnel of the Contractor who are required to undertake the provision of the Deliverables or part of the work constituting the Deliverables, as stated in Item 27 of the General Order Form.
- 1.113 Stage** means one or more Milestones that are identified as a stage in the PIPP.
- 1.114 State** means the State of New South Wales.
- 1.115 State Record** has the meaning given in section 3 of the *State Records Act 1998* (NSW).
- 1.116 Statutory Requirements** means any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in any relevant jurisdiction relating to the performance of the Party's obligations under the relevant Part and includes industry codes of conduct, provided that the Contractor ensures that it complies at all times with the Privacy Laws applicable in New South Wales.
- 1.117 Subcontractor** means a third party to which the Contractor has subcontracted the performance or supply of any Services.
- 1.118 Substantial Breach** means:
- (a) a breach of the Customer Contract by the Contractor which deprives the Customer of substantially all of the benefit of the Customer Contract; or
  - (b) the following breaches by the Contractor of the Customer Contract:
    - (i) a delay by the Contractor in performing its obligations under the Customer Contract which continues beyond the extension of time granted under clauses 6.26 and 6.27;
    - (ii) failing to provide suitable replacement personnel as required under clause 8.9 where such failure prevents the Contractor from performing fundamental obligations under the Customer Contract;
    - (iii) breaching any warranty under clause 9.1;
    - (iv) where Acceptance Tests are required in order for the Deliverable to achieve AAD (and the obligation to ensure the Deliverable achieves AAD by a certain date is not an LD Obligation), failing to pass Acceptance Tests which results in rejection of the Deliverable by the Customer under clause 10.12(e);
    - (v) where Acceptance Tests are not required in order for a Deliverable to achieve AAD (and the obligation to ensure the Deliverable achieves AAD by a certain date is not an LD Obligation), failing to deliver the Deliverable by the date required in the Customer Contract;
    - (vi) failing to effect and maintain insurance policies as required under clauses 16.1, 16.2, 16.3 or 16.7 (other than to the extent that the Contractor received an exemption under clause 16.8);
    - (vii) failing to provide a Performance Guarantee as required under clause 17.2;
    - (viii) failing to provide a Financial Security as required under clause 17.4; or
    - (ix) the existence of a Conflict of Interest which in the Customer's reasonable opinion prevents the full and proper performance of the Contract by the

Contractor and the Contractor has not complied with clause 20.1(b) within a reasonable period.

- 1.119 System** means the system described in the Contract Specifications, comprising the Products and Services procured by the Customer pursuant to the Customer Contract.
- 1.120 Tax** means any sales tax, value added tax, duty, withholding tax, levy, impost or other charge or duty levied by any government in Australia or elsewhere, which arises out of or in connection with the Contractor's performance of its obligations under the relevant Part, but excludes GST and any tax based on the net income of the Contractor.
- 1.121 Tax Invoice** has the same meaning as provided for in the GST Law.
- 1.122 Taxable Supply** has the same meaning as provided for in the GST Law.
- 1.123 Term** means the term of the Head Agreement, set out in Item 6 of the Head Agreement Details and any extension of the Term in accordance with clause 2.1 of the Head Agreement.
- 1.124 User Documentation** means the Contractor's standard off the shelf documents that describe the features and functions of a Product or Service, in a hard copy, electronic or online format that are provided by the Contractor to the Customer. User Documentation excludes any Document that is designed by the Contractor to be training materials.
- 1.125 Virus** means a computer program, code, device, product or component that is designed to or may in the ordinary course of its operation, prevent, inhibit or impair the performance of a Deliverable in accordance with the relevant Contract Specifications, but does not include any code, mechanism or device that is included in software by the Contractor for the purpose of managing the licensed use of software.
- 1.126 Warranty Period** means:
- (a) in relation to Hardware, 365 days from AAD;
  - (b) in relation to Licensed Software, 90 days from AAD; and
  - (c) in relation to Services where there is an Acceptance Test process, 30 days from AAD.
- 1.127 Workaround** means a fix or alternative procedure to temporarily address a Defect.

#### INTERPRETATION

- 1.128** The following rules also apply in interpreting any Part, 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 reference to a "Part [number]" is a reference to that specific Part only; e.g. "Part 3" is a reference to Part 3 only. A reference to "Part" without a number is

a reference to the Part in which the reference to that Part appears e.g. if the phrase "clause 3 in this Part" appears in a clause in the Customer Contract , then this is a reference to clause 3 in the Customer Contract only;

- (v) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity; and
  - (vi) anything (including a right, obligation or concept) includes each part of it.
  - (b) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
  - (c) If an agreement expressly or impliedly binds more than one person then it must bind each such person separately and all such persons jointly.
  - (d) A singular word includes the plural, and vice versa.
  - (e) The words "include(s)" and "including" are not words of limitation.
  - (f) When a Party exercises its "discretion", the party may exercise its discretion in any way it chooses, provided only that it acts in good faith. There is no obligation to act reasonably where the word "discretion" is used.
  - (g) Where there is an obligation that requires the completion of a particular Order Document, including a PIPP or Service Level Agreement, but the particular Order Document is not incorporated into the Customer Contract because it is not stated in the General Order Form that the particular Order Document is included in the Customer Contract, then that obligation does not form part of the relevant Customer Contract.
  - (h) The Parties may undertake business by the electronic exchange of information and the provisions of each Part will be interpreted to give effect to undertaking business in this manner. To the extent permitted by law, any Part or any Order Document, including the General Order Form may be in electronic format.
  - (i) Where there is a shortened version of the General Order Form, Module Order Form or other Order Document, and the Order Details (details placed under an Item number) have been numbered differently in the shortened version of the Order Document to the Item numbering in the pro forma template of the relevant Order Document, then the references to the Item number in the relevant Part of the Procure IT Framework shall be interpreted as a reference to the relevant Item in the shortened version of the relevant Order Document notwithstanding the actual Item number used in the shortened version of relevant Order Document, e.g. if in a shortened General Order Form the Order Details relating to Credit/Debit Cards are included under Item number 16 in the shortened General Order Form, then the reference to "Item 33" in clause 11.3 of the Customer Contract shall be interpreted as a reference to Item number 16 in the shortened General Order Form.
- 1.129** Headings are for the purpose of convenient reference only, and do not affect interpretation of the document in which they appear.

## Module 10 – As a Service

Version 3.2

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## 1. AGREED TERMS AND INTERPRETATION

The terms and conditions included in this Module 10 form part of the Customer Contract and apply when the Parties state that the As a Service Module forms part of the Customer Contract.

In this Module, unless the contrary intention appears:

- 1.1 **Application** means any application software which may or may not be delivered as an Online Service, for use by Permitted Users.
- 1.2 **Approved Purpose** means the purpose agreed in the Order Documents for which the Customer and Permitted Users shall use the Service.
- 1.3 **As a Service** means Infrastructure as a Service, Platform as a Service and/or Software as a Service that is being supplied in accordance with the Order Documents, and each such As a Service is a Service for the purposes of the Customer Contract.
- 1.4 **Consolidation Period** means the first month of the provision of the As a Service (commencing on the Service Commencement Date of the relevant As a Service), or such other period, or no such period, stated in the Order Documents.
- 1.5 **Customer Access Facilities** means telecommunications, networks, systems and other facilities used, or required by, or on behalf of the Customer for accessing and making use of the Service.
- 1.6 **Customer Data** means data or information, including Personal Information, that is submitted by the Customer or Permitted Users into the As a Service to be stored or processed and made accessible from the As a Service in any form, regardless of the format, location or medium.
- 1.7 **Cutover Date** means the date when the Contractor advises the Customer that the Customer can commence loading Customer Data into the As a Service following the completion of the Transition In Services.
- 1.8 **Data Access** means the ability to retrieve, view, edit, transmit or otherwise make use of, Customer Data.
- 1.9 **Data Centre Region** means the physical location, by country or region, of the Contractor's computing Hardware and software, including any back-ups used to store, host and process Customer Data.
- 1.10 **Environment** means the entire set of technology components required for the provision of the As a Service.
- 1.11 **Infrastructure as a Service** means a computing data centre with the equipment used to support operations, including storage, hardware, servers and networking components, delivered as an Online Service.
- 1.12 **Online Service** means computing services and capabilities such as application software, software platforms, hardware platforms, infrastructure and similar capabilities, which are delivered by the Contractor to the Customer over an IP network (including the Internet), rather than provided locally or on-site. Typically, the software and hardware assets are owned by the Contractor and the Customer is billed for usage.
- 1.13 **Permitted User** means such persons that the Customer has permitted to use the As a Service for an Approved Purpose, in accordance with the Customer Contract, including individual end users.

- 1.14 **Platform as a Service** means a hosted Environment for configuring and running Applications that is delivered as an Online Service.
- 1.15 **Service Commencement Date** means the date that the Contractor states it is ready to commence the Services or such date that the Parties agree that the Contractor must commence the Services.
- 1.16 **Service Definition** means the Contractor's description of the As a Service as specified in the Order Documents and may include details of specific inclusions, exclusions, limitations and costs.
- 1.17 **Services** means the As a Service, any Support Services, Transition In Services, Transition Out Services, Training Services provided under clause 10.3 in this Module and any other Deliverables specified in the Order Documents.
- 1.18 **Software as a Service** means software or an Application that is delivered as an Online Service.
- 1.19 **Support Services** means any services specified in the Service Definition or Order Documents that are additional to the As a Service and may include, but are not limited to, implementation, user training and ongoing system administration, monitoring and performance management, backup and recovery services.
- 1.20 **Technical Specifications** means any defined characteristics of the Environment or Services in terms of functionality, performance, availability or dependencies.
- 1.21 **Third Party Application** means an Application supplied, licensed from or owned by a third party which is used by the Customer.
- 1.22 **Transition In Services** means any activities specified in the Order Documents or the Service Definition that are to be undertaken by the Contractor prior to the Cutover Date that may include, data migration, business continuity plans, testing of the As a Service, handover arrangements and planning to enable the Customer's operations and Customer Data to be moved to the Services and may also include development of a Transition Out Services plan.
- 1.23 **Transition Out Services** means any activities specified in the Order Documents or the Service Definition that are to be undertaken by the Contractor after the cessation of the As a Service to enable the Customer's operations and Customer Data to be removed from the As a Service and may include treatment of Customer's documents or materials, transitioning the As a Service to a new service provider or to the Customer, resolving issues relating to technological parity and current industry standards with other service providers and provision of technical documentation for the transfer of Customer Data, and procedures for the return/transfer or deletion of Customer Data.
- 1.24 **User Documentation** means the user manuals, installation instructions, reference material and other relevant publication and aids and any updates, replacements, revisions and additions (if any) provided or made available by the Contractor from time to time in a hard copy, electronic or online format. User Documentation excludes any document that is training material.

**INTERPRETATION**

- 1.25 Other capitalised words and expressions used in this Module are defined in the Dictionary of the Procure IT Framework.



## 2. TERM OF SERVICES

### 2.1 The Contract Period:

- (a) commences from the Services Commencement Date of the first of the Services to be provided under the Customer Contract; and
- (b) continues for the period of time stated in the Order Documents, including any period or periods of extension of the Customer Contract,

unless the Customer Contract is terminated sooner in accordance with the Customer Contract and this Module.

### 2.2 The Contract Period may be extended by agreement between the Parties using the procedure in Schedule 4 – Variation Procedures.

### 2.3 During the Contract Period, the Customer engages the Contractor to be the provider of the Services.

## 3. SCOPE

### 3.1 The Contractor shall provide all Services to the Customer for the Contract Period.

### 3.2 Should the Contractor employ an agent, subcontractor or third party to perform or carry out any part of the Services, the Contractor is not relieved of its liabilities and obligations arising out of, or in connection with, the Customer Contract by such employment.

## 4 CUSTOMER USE AND ACCESS TO THE AS A SERVICE

### 4.1 The Customer agrees that the access rights of any Permitted User (for example on a named or password enabled basis) cannot be shared or used by more than one individual, unless the right is reassigned in its entirety to another individual authorised user in which case the first user shall no longer have any right to access the As a Service.

### 4.2 The Customer acknowledges and agrees that it is the Customer's and/or Permitted Users' responsibility (unless otherwise stated in the Order documents) to acquire, maintain and properly use any device, communications link and software and to update any device, communications link or software if the Technical Specification or the Service Definition change during the Contract Period.

### 4.3 The Customer acknowledges and agrees that the As a Service may be provided on a shared service basis to the Customer and other clients of the Contractor from a common code base and/or common Environment and the Contractor may from time to time:

- (a) change add or delete the functions, features, performance, or other characteristics of the As a Service, and if such change, addition or deletion is made, the specifications of the As a Service shall be amended accordingly; and
- (b) correct errors or upgrade the As a Service,

provided that the functionality or availability of the As a Service used by the Customer shall not materially decrease during the Contract Period.

### 4.4 The Contractor will provide prior written notice via its website or email of major changes or new versions of the Service (if relevant). The Contractor does not guarantee any change, addition, deletion, error correction, patch or new version will be compatible with any application, other software or interface that connects to or interfaces with the As a Service that has been made by or on behalf of the Customer.

- 4.5 The Contractor will identify any additional guidelines and usage restrictions (if any) that may apply to the As a Service in each Customer Contract. The Customer must use the As a Service in accordance with any such guidelines and restrictions (as updated from time to time) provided that such guidelines and restrictions do not result in a material reduction in the level of performance or availability of the As a Service during the Contract Period.
- 4.6 If the Contractor's changes under clauses 4.3, 4.4, or 4.5 result in a material reduction in the level of performance or availability of the As a Service during the Contract Period the Customer may exercise its rights to terminate the Customer Contract.
- 4.7 The Customer is solely responsible for all Customer Data and it, and its Permitted Users, are solely responsible for entering Customer Data into the As a Service, maintaining Customer Data (including backing up and restoring Customer Data) and ensuring that it is accurate and not false, misleading or deceptive nor likely to mislead or deceive.
- 4.8 The Customer will comply with all applicable laws in connection with access to or use of the As a Service or the Customer Contract.

## 5 DATA CONTROL AND AUDIT

- 5.1 This clause 5 operates during the Contract Period and (where relevant) such period thereafter as the Contractor (including any person on the Contractor's behalf) has access to anything which embodies the Customer Data.
- 5.2 The Contractor agrees:
- (a) it shall ensure that the As a Service materially complies with the Service Definition;
  - (b) it will not vary the Data Centre Region(s) specified in the Order Documents without the prior written consent of the Customer, such consent not to be unreasonably withheld;
  - (c) to apply to the Customer Data the level of security and encryption that is specified in the Order Documents;
  - (d) it shall implement and comply with any business continuity plan that may be specified in the Order Documents;
  - (e) it shall implement and comply with the retention and disposal requirements specified in the Order Documents; and
  - (f) it shall ensure the accessibility, usability and preservation of Customer Data does not change detrimentally in any material respect as a result of any changes made by the Contractor to the As a Service and subject to any agreed downtime of the As a Service.
- 5.3 The Customer agrees that:
- (a) it shall use only the Customer Access Facilities to access the As a Service;
  - (b) it shall ensure that the Customer Access Facilities meet the security standards specified in the Order Documents; and
  - (c) it shall use its best endeavours to prevent viruses or other harmful or malicious code in the Customer Data and that the Customer Data does not infringe any third party's rights.
- 5.4 The parties agree that the Customer and/or its representative who may not be a competitor of the Contractor (including a supervisory authority of the Customer) may conduct an audit, at the Customer's cost and up to one time per year. This number of audits may be exceeded

where additional audits are required by any lawful authority. The audit shall solely involve access to Customer Data, access to all relevant documentation and access to evidence to verify the Contractor's processes and controls. Such documentation and evidence may include but is not limited to the Contractor's data and logs directly related to the Customer's use of the As a Service, the Contractor's architecture, systems and procedures, independent certifications or interviews.

- 5.5 If expressly agreed in the Order Documents, the Contractor shall facilitate an on-site visit to the facilities from where the Service is provided at the Customer's cost up to one time per year. The Customer shall give the Contractor reasonable advance written notice of not less than 14 days of any request for an on-site visit. During any on-site visit the Customer and its representatives shall observe the security procedures which the Contractor reasonably requires and ordinarily obtains from third parties. If the Customer conducts an on-site visit through a third party independently appointed representative, such representative shall be required to enter into a non-disclosure agreement containing confidentiality provisions substantially similar to those set forth in the Customer Contract to protect the Contractor's proprietary information. Any on-site visits described in this clause shall be conducted during reasonable times and shall be of reasonable duration and shall not unreasonably interfere with the Contractor's day-to-day operations.
- 5.6 The Contractor will provide production, test, and backup environments in the Data Centre Regions specified in the Order Documents. All activities or services which involve Data Access, storage, hosting or processing of Customer Data will be carried out in the Data Centre Region(s) specified in the Order Documents. The Contractor and its Related Companies may perform certain aspects of the Services from locations and/or through use of subcontractors worldwide, and those services may require access to the Customer's account details or the Contractor's logs and data relating to the Customer's use of the As a Service, but will exclude any use or retrieval of Customer Data.

## 6. SERVICE LEVELS

- 6.1 From the day after the Consolidation Period the Contractor must comply with the terms of the Service Level Agreement, subject to any:
- (a) Force Majeure Event;
  - (b) act or omission of the Customer or its Personnel; and
  - (c) act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer.

## 7. RESTRICTIONS

- 7.1 The Customer shall not:
- (a) remove, alter or obscure any disclaimer or notice, or any restricted right legend, trademark, copyright or other ownership right legend appearing in the As a Service on a screen or any print out from the As a Service;
  - (b) allow access to or use of the As a Service for any purpose other than the Approved Purpose;
  - (c) copy, adapt, translate, publish, communicate to the public, or create any adaptation, translation, or derivative of the As a Service or the User Documentation, unless expressly permitted by the Customer Contract or the law;
  - (d) reverse engineer, reverse compile, decompile or disassemble the object code of any part of the As a Service or otherwise attempt to derive the source code of the As a Service, except to the extent permitted by law; or

- (e) use or permit the use of the As a Service for any purpose that may cause damage or injury to any person or property or breach any law.

## 8. LIABILITY

8.1 The Contractor and the Customer agree that, for the purposes of the Services provided under this Module, clause 18.5 of the Customer Contract is replaced with the following:

The Contractor has:

- (a) subject to paragraph (b) below, no financial cap on its legal liability where that liability arises from:
  - (i) bodily injury (including sickness and death), including to the extent that the legal liability is covered by the indemnity in clause 19.1(b); or
  - (ii) loss of, or damage to, tangible property, including to the extent that the legal liability is covered by the indemnity in clause 19.1(b);
  - (iii) breach of the Contractor's obligation of confidence under or pursuant to clause 14; or
  - (iv) the Contractor's indemnity in respect of breach of privacy obligations as stated in clause 19.1(a); and
- (b) a financial cap on its legal liability for all claims in the aggregate arising from:
  - (i) the Contractor's indemnity for IP Claims under clause 19.1(c); or
  - (ii) liability arising from or in relation to Customer Data,

the greater of \$100,000 or three times the annual Contract Value of the affected Service provided under this Module unless a greater amount is specified in the Order Documents.

## 9. INFORMATION OWNERSHIP, INTEGRITY AND PRIVACY

- 9.1 The Contractor does not own or have any interest in or rights to the Customer Data wherever it may be located other than as set out in this Module or the Customer Contract.
- 9.2 The Customer grants to the Contractor or to any third party associated with the Contractor, a non-exclusive, non-transferable licence over the Customer Data for the sole purpose of the Contractor performing its obligations under the Customer Contract and enabling the Customer's use of the As a Service including handling Customer Data in accordance with the Customer's instructions.
- 9.3 The Contractor will ensure continuity of accessibility and usability (in each case, in material compliance with the Service Definition) of all Customer Data regardless of any migration of data to other formats during the Contract Period. The Contractor will notify the Customer of any proposed migration and will allow the Customer to verify data integrity.
- 9.4 The Contractor may delete, purge and/or disclose Customer Data where it is required to do so under any applicable law. Where the Contractor receives a request to delete, purge and/or disclose any part of the Customer Data, if legally permitted to do so, it shall promptly notify the Customer of the request to enable the Customer to respond.
- 9.5 Subject to clause 9.4, the Contractor and any third party associated with the Contractor will not access, disclose, delete, process or otherwise use Customer Data for any purpose other than in accordance with the Customer Contract or as expressly authorised by the Customer.
- 9.6 Without limiting this clause, the Contractor agrees that, in respect of Personal Information it shall comply with Privacy Laws applicable to its provision of the As a Service.

## 10. ADDITIONAL SERVICES

### Transition in services

- 10.1 Any Transition In Services shall be provided by the Contractor in accordance with the Order Documents.

### Transition out services

- 10.2 Any Transition Out Services shall be provided by the Contractor in accordance with the Order Documents.

### Training services

- 10.3 The Contractor will provide the Customer with requested training services at the time, and for the Price, set out in the Order Documents. The details of the courses, number of attendees, location for training, and which party is responsible for providing the equipment and the Price must be set out in the Order Documents.

### Documentation

- 10.4 The Contractor will provide or make available to the Customer, upon request and at no cost to the Customer:
- (a) all necessary User Documentation; and
  - (b) any other Contractor documents listed in the Order Documents to substantiate the Contractor's compliance with its privacy, security and business continuity commitments.

## 11. WARRANTIES

- 11.1 The Contractor warrants to the Customer that the Services will perform in accordance with the Service Definition and Technical Specifications in all material respects during the Contract Period. The Contractor does not guarantee that access to and use of the Service will be uninterrupted or error free.

## 12. PAYMENT AND INVOICING

- 12.1 The Customer must pay the Contractor for the Services in accordance with the Order Documents.
- 12.2 If any charge owing by the Customer is 30 days or more overdue, and is not in dispute the Contractor will issue a notice to the Customer's Authorised Representative named in Item 3 of the General Order Form requiring payment within a further 14 days of the date the notice before taking any further action including suspension of the As a Service.

## 13. TERMINATION

- 13.1 In addition to the Customer's right to terminate the Customer Contract in accordance with clause 25 of the Customer Contract and clause 4.6 of this Module, the Customer may immediately terminate the Customer Contract in respect of this Module for cause by providing the Contractor Notice in Writing, if the Contractor persistently breaches the warranties contained in this Module (irrespective of whether such breaches collectively constitute a Substantial Breach) in which event the Contractor will be liable for the Customer's reasonable direct costs and expenses associated with the breach including all reasonable direct costs associated with changing Contractors, subject to the applicable exclusions and limitations of liability set out in this Module and the Customer Contract.
- 13.2 On termination of this Customer Contract for any reason:

- (a) all licences granted in this Module shall immediately terminate;
- (b) other than in respect of Confidential Information which is Customer Data, each Party shall destroy or return and make no further use of any Confidential Information (and all copies of them) of the other Party;
- (c) the Contractor must delete Customer Data within the period specified in the Order Documents and, if requested by the Customer, provide certification that it has been deleted; and
- (d) at the Customer's request made within 60 days of termination, the Contractor must provide the Customer with access to a copy of all Customer Data in the format specified in the Order Documents or if no format is specified, in the standard format as usually provided by the Contractor.

#### 14. NO ASSIGNMENT OR NOVATION

- 14.1 The Contractor must not assign in whole or in part or novate the Customer Contract without obtaining the prior written consent of the Customer, and such consent may be withheld in the Customer's sole discretion except where the novation involves a Contractor Related Company.

#### 15. INFRASTRUCTURE AS A SERVICE

- 15.1 Additional terms and conditions may be set out in the Order Documents in relation to Infrastructure as a Service.
- 15.2 Unless otherwise specified in the Order Documents, the Customer is solely responsible for:
- (a) configuring, installing, maintaining and obtaining licences to any software, applications or other materials that may be installed, located, hosted or otherwise stored on the Infrastructure as a Service;
  - (b) ensuring that all content and data stored on or otherwise retained on the Infrastructure as a Service are backed-up and that copies of back-up media are stored securely;
  - (c) restoring data or content from back-up media;
  - (d) implementing and maintaining security measures to protect the data, software, applications or other materials that are installed, located, hosted or otherwise stored on the Infrastructure as Service;
  - (e) obtaining all third party consents that are necessary to enable the Customer to store the relevant data and content on the Infrastructure as a Service; and
  - (f) all use of the Infrastructure as a Service by any person.
- 15.3 The Customer must:
- (a) ensure that all licences obtained by it in relation to software, applications or other materials that are hosted on the Infrastructure as a Service extend to permit the Contractor (and its sub-contractors) to run, execute or otherwise use each such item for the purposes of providing the Infrastructure as a Service; and
  - (b) comply with the terms of all licences referred to in paragraph (a) above and clause 15.2(a).

- 15.4 The Contractor may change the underlying infrastructure used by it to provide the Infrastructure as a Service, provided that any such change does not materially and adversely impact the Customer.

## 16. PLATFORM AS A SERVICE

- 16.1 Additional terms and conditions may be set out in the Order Documents in relation to Platform as a Service.

## 17. SOFTWARE AS A SERVICE

- 17.1 Additional terms and conditions may be set out in the Order Documents in relation to Software as a Service.

- 17.2 The Contractor or third parties may from time to time make available to the Customer (e.g., through an online exchange) third-party products or services, including but not limited to Third Party Applications. Any acquisition by the Customer of such Third Party Applications, products or services, and any exchange of data between Customer and any Third Party Application provider, is solely between the Customer and the applicable Third Party Application provider. The Contractor is not liable for, and does not warrant or support, third party products or services, whether or not they are designated by Contractor as "certified" or otherwise, except as specified in an Order Documents.

- 17.3 Any Third Party Applications supplied under Order Documents between Customer and Contractor shall be supplied by the Contractor in accordance with such Order Documents.

- 17.4 **Third Party Applications and Customer Data.** If the Customer installs or enables Third Party Applications for use with Services, the Customer acknowledges that the Contractor may allow providers of those Third Party Applications to access Customer Data as required for the interoperation and support of such Third Party Applications with the As a Service. The Contractor shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third Party Application providers. The As a Service shall allow the Customer to restrict such access by restricting Permitted Users from installing or enabling such Third Party Applications for use with the As a Service.

- 17.5 **Reservation of Rights in Service.** Subject to the limited rights expressly granted hereunder, the Contractor reserves all rights, title and interest in and to the As a Service, including all related Intellectual Property Rights. No rights are granted to the Customer hereunder other than as expressly set out in this Module.

- 17.6 **Customer Applications and Code.** If a Customer, or a third party acting on Customer's behalf, or a Permitted User creates applications or program code using the As a Service, the Customer authorizes the Contractor to host, copy, transmit, display and adapt such applications and program code, solely to enable the Contractor to provide the Service in accordance with the Order Documents. The Contractor acquires no right, title or interest from the Customer or its licensors in or to such applications or program code, including any Intellectual Property Rights therein.

**PROCURE IT VERSION 3.2  
MODULE ORDER FORM  
MODULE 10 – AS A SERVICE**

**Box 1 Services**

<b>Details to be included from Module 10</b>	<b>Order Details agreed by the Contractor and the Customer</b>
<p><b>Contract Period (clause 2.1)</b></p> <p>Specify the Services Commencement Date, and, if applicable, the period of time for which the Services will be provided</p>	<p>The Services will commence in accordance with the PIPP and will continue until the expiry or termination of the Customer Contract.</p>
<p><b>Service definition (clause 2.3)</b></p> <p>Describe the Service to be provided, ie:</p> <ol style="list-style-type: none"> <li>a. Infrastructure as a Service;</li> <li>b. Platform as a Service;</li> <li>c. Software as a Service; and</li> <li>d. any Management Services (unless subject to a separate module), eg               <ul style="list-style-type: none"> <li>- implementation</li> <li>- user training</li> <li>- support services</li> <li>- ongoing system administration</li> <li>- monitoring and performance management</li> <li>- backup and recovery services.</li> </ul> </li> </ol>	<p>The Contractor must provide a Software as a Service solution (the Building Assurance Solution), as well as all other Services and Deliverables as set out in the PIPP.</p> <p>As part of the Services, the Contractor must design, build, configure, test, deploy and host the Building Assurance Solution.</p> <p>All Services and Deliverables must be provided in accordance with the Contract Specifications and the Customer Contract, including all requirements set out in the PIPP and other Order Documents.</p>
<p>The Service Definition should include the strategy for the delivery of the Services that is appropriate for the Customer's needs and its user population, such as:</p> <ol style="list-style-type: none"> <li>a. identification of the Services to be performed;</li> <li>b. identification of Client Contracts and Third Party Contracts and how they are to be managed;</li> <li>c. a mechanism to determine when Transition In Services are complete and the Services can commence; and</li> <li>d. implementation of the Services, and</li> </ol> <p>Note: Module 10 expects that the Parties will enter into a Service Level Agreement.</p>	
<p>Specify any <b>Support Services</b> that are additional to the As a Service and may include, but are not limited to, implementation, user training and ongoing system administration, monitoring and</p>	



**Details to be included from Module 10**

**Order Details agreed by the Contractor and the Customer**

performance management, backup and recovery services.

**Training Services (clause 10.3)**

Specify whether the Contractor will provide any training services associated with the Service.

If yes, specify the time when training services will be provided.

The Contractor must provide training to Building Assurance Solution users in accordance with the PIPP.

**Documentation (clause 10.4)**

Specify any Contractor documents, in addition to User Documentation, to substantiate the Contractor's compliance with its privacy, security and business continuity commitments.

Upon the Customer's reasonable request, the Contractor agrees to provide the Customer with access to additional documentation that the Contractor has in place or has developed in respect of any key steps and processes it has undertaken in respect of its privacy, security and business continuity obligations and commitments under this Customer Contract. However, the Contractor may redact from such documentation any third party confidential information or other commercially sensitive information.

**Pricing**

Specify whether the Service is for a fixed Price or on a subscription basis.

If for a fixed Price, set out the pricing for the Service.

If on a subscription basis, specify how payment is made (eg monthly, yearly, etc).

Specify the Price of any training services. (clause 10.3)

Fixed price provided that all the assumptions set out in the PIPP remain accurate in all material respects.

If the assumptions in the PIPP become inaccurate in material respects, the Parties will discuss in good faith a reasonable adjustment in price to reflect the changed assumption, which shall be documented as a Change Request.

**Approved Purpose (clauses 1.2 and 7.1(b))**

Specify the purpose for which the Customer and Permitted Users shall use the Service.

The Customer and Permitted Users may use the Building Assurance Solution for the Approved Purpose specified in the Additional Conditions.

**Box 2 Transition In**

**Details to be included from Module 10**

**Order Details agreed by the Contractor and the Customer**

**Specification of Transition In Services (clause 10.1)**

Specify any Transition In Services to be provided, such as:

- a. due diligence;

Not applicable.

- b. data migration;
- c. Business Contingency Plans;
- d. testing of Services; and
- e. handover arrangements

**Due diligence** may include assessment and definition of the:

- a. Customer's goals, requirements and expectations in respect of the Services
- b. Contractor's understanding of the Customer's and/or user's experience and requirements in relation to the Services
- c. objectives to be met by the Contractor
- d. nature and scope of the Service, including the Environment, the Assets, Client Contracts and Third Party Contracts (and any requirement to novate or assign any of them)
- e. end users who will be supported by the Service
- f. necessary Assets and Additional Items and how they may need to be procured
- g. migration of Customer Data
- h. data retention and disposal requirements
- i. required Deliverables
- j. resources required (including any Customer Supplied Items or Customer assistance)
- k. complexity of the project, and
- l. any Transition Out Services plan.

**Data migration** services should include the drafting of a Procedures Manual (if one does not exist as part of the Service Definition) for approval by the Customer (eg within 14 days). The Procedures Manual should describe the key attributes of the Services, including:

- a. the governance arrangements between the Customer and the Contractor;
- b. the governance arrangements dealing with the Contractor and any third parties;
- c. the protocols for managing security issues between the Parties;
- d. the protocols for identifying and managing risks;

**Details to be included from Module 10****Order Details agreed by the Contractor and the Customer**

- e. how the key aspects of the Services will be provided to the Customer;
- f. the procedures for varying Services and providing Additional Services;
- g. how user complaints and disputes will be managed;
- h. updating the Procedures Manual; and
- i. data backups, if required outside of disaster recovery processes.

Note: Once the Procedures Manual has been approved by the Customer it forms part of the Customer Contract and the Parties must perform their obligations in accordance with it.

**Business Contingency Plan**

The Parties may agree to include a Business Contingency Plan in accordance with clauses 6.45 to 6.48 of the Customer Contract.

**Box 3 Customer Use and Access to the As a Service****Details to be included from Module 10****Order Details agreed by the Contractor and the Customer****Terms under which the Service is available (clause 4.1)**

Consider issues including:

- a. authorisation to access the Service, eg individual and multi-user passwords;
- b. maximum Contractor Systems capacity;
- c. is the Customer responsible to acquire, maintain and properly use any device, communications link and software and to update any device, communications link or software if the Technical Specification of the Service Definition changes during the Contract Period;
- d. is the Service provided on a shared service basis to the Customer and other clients from a common code base and/or common environment;
- e. conditions under which the Contractor may change any characteristics of the Service, and if the specifications of the Service must be amended accordingly; and

Without limiting the terms set out in the PIPP and the Additional Conditions;

- only the Customer, its Personnel and other Permitted Users may access and use the Service and the Building Assurance Solution for the Approved Purpose;
- Permitted Users will be provided login credentials by the Contractor on an individual basis to enable access and use of the Service and the Building Assurance Solution; and
- the Customer is responsible for procuring an internet connection to enable it and its Personnel to access the Service and the Building Assurance Solution.

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p>f. conditions under which the Contractor may correct errors patch or install new versions of the Service.</p>	
<p><b>Data Centre Region (clause 5.2(b) and clause 5.6)</b></p> <p>Specify the physical location(s) by country or region of the Contractor's computing hardware and software used to store, host and process Customer Data, including production, test and backup environments.</p> <p>Note: the location(s) must not be changed without the prior written consent of the Customer (cl. 5.2(b)).</p>	<p>Data centres will be located in Australia. The Contractor currently utilises data centres in Sydney, Australia (Azure East).</p>

Box 4 Data Control and Access

Details to be included from Module 10	Order Details agreed by the Contractor and the Customer
<p><b>Security and Encryption (clause 5.2(c))</b></p> <p>Specify the level of security and encryption required for the Customer Data as defined by the Customer's Information Security Management System (ISMS).</p> <p>Note: All NSW Government Departments, Statutory Bodies and Shared Service Providers are required to have an ISMS.</p>	<p>The Contractor must comply with the level of security and encryption that is consistent with the Contractor's security obligations under this Customer Contract and reflects good industry practice for services and applications of the type provided under this Customer Contract, including having in place physical and information security measures in accordance with ISO 27001 - Information Security Management.</p> <p>Notwithstanding any other provision of the Customer Contract, in the event of any conflict between any of the security and encryption requirements under the Customer Contract the higher standard applies.</p>
<p><b>Business Continuity Plan (clause 5.2(d))</b></p> <p>Detail any Business Continuity Plan, including backup and disaster recovery procedure, in place for implementation by the Contractor, if required.</p>	<p>For the Contract Period, the Contractor must comply with its own internal business contingency plan and ensure that it has in place appropriate systems, measures and procedures to respond to and mitigate against events and circumstances (including Force Majeure Events) that may affect the continuity of the Services and Deliverables.</p>
<p><b>Data Retention and Disposal (clause 5.2(e))</b></p>	

Specify the retention period for the Customer Data and retention and disposal requirements the Contractor will implement and comply with in relation to Customer Data.

- a) Unless otherwise agreed by the Parties in writing, the Customer may access the As a Service (and the Customer Data in it) for up to 90 days following the termination or expiry of the Customer Contract or such other period agreed by the Parties in writing (**Retention Period**). Following the expiry of the Retention Period, the Contractor must securely destroy any remaining hosted Customer Data once it has notified the Customer's Authorised Representative in accordance with paragraph b).
- b) Within five Business Days prior to the expiry of the Retention Period, the Contractor must notify the Customer's Authorised Representative in writing that it intends to dispose of the Customer Data in accordance with the Customer Contract.
- c) For clarity, the aforementioned requirement only applies to Customer Data as defined under Part 3: Dictionary and includes the data or information, including Personal Information, that is submitted by the Customer or its Personnel into the As a Service. The Contractor must retain data belonging to other Permitted Users in accordance with the end user licence agreement applicable to those users.

**Security Standards for Customer Access Facilities (clause 5.3(b))**

Specify the security standards that the Customer Access Facilities will meet.

Not applicable.

**On-site visit (clause 5.5)**

Specify any requirements by the Contractor for on-site visits to the facilities where the Service is provided.

The Parties agree that clause 5.5 of Module 10 applies (subject to the Additional Conditions) and that, if requested by the Customer, the Contractor shall facilitate an on-site visit to the client-permitted areas of the facilities from where the Service is provided in accordance with the requirements specified in clause 5.5 of Module 10.

The Customer will comply with clause 5.5 in relation to any on-site visits.

Nothing above or in clause 5.5 of Module 10 limits the Customer's other audit rights under the Customer Contract, including under clauses 23.4 to 23.10 of Part 2: Customer Contract.

**Details to be included from Module 10****Order Details agreed by the Contractor and the Customer****Consolidation Period (clause 6.1)**

The Consolidation Period is defined as the first month of the provision of the As a Service (cl. 1.4).

Specify if another period is required. If yes, what is the period?

Not applicable. A Service Level Agreement does not apply.

However, for clarity, the Contractor must comply with any performance commitments or obligations set out in the PIPP or as otherwise agreed between the Parties in writing from the date specified in the PIPP or as otherwise agreed between the Parties in writing.

**Box 6 Payment and Invoicing****Details to be included from Module 10****Order Details agreed by the Contractor and the Customer****Payment for Services (clause 12.1)**

Terms of payment should include details of the Services provided. Note that no payment is due where termination of the contract is occasioned by the Contractor's breach of the contract. The Contractor must send the Customer a Correctly Rendered Invoice for each payment before the relevant amount is due. Payment terms must be consistent with NSW Government policy.

The terms of payment are as per the PIPP and item 14 of the General Order Form.

**Box 7 Transition Out****Details to be included from Module 10****Order Details agreed by the Contractor and the Customer****Transition Out Services (clause 10.2)**

If required, Transition Out Services may include:

- a. returning or destroying documents or materials, together with any reproduction of those documents or materials;
- b. transitioning the Service to a new service provider or to the Customer;
- c. granting or assisting the Customer (or new service provider) to procure a licence to continue using any generally commercially available software in the Australian market which is the same as that being used in the System, and any software owned by the Contractor which is integral to the ongoing provision of the Service, subject to payment of licence fees by the Customer (or new service provider);

Not applicable.

- d. ensuring technological parity with other service providers, and the provision of sufficient technical documentation, to enable successful and cost-effective transfer of the Customer Data; and
- e. procedures for the return/transfer or deletion of Customer Data upon termination of the Customer Contract; or in the event that the Contractor becomes subject to corporate takeover or insolvency.

Consider issues relating to:

- a. regular (eg annual) review of the Transition Out Services plan; and
- b. how and when the Transition Out Services are brought into effect.

Specific matters that may be covered in the Transition Out Services plan include that the Contractor, in consultation with the Customer and as stated in the Transition Out Services plan:

- a. return any Customer Supplied Item(s);
- b. freeze non-critical software changes in any of the Customer's software that is being supported as part of the Service;
- c. provide all reasonable transition assistance for the delivery of Customer Data to the new service provider or to the Customer and the reloading of the production databases;
- d. provide a list of outstanding service desk issues (provided as a csv file or as otherwise agreed by the Parties in the Transition Out Plan);
- e. provide a list of the outstanding issues detailed on any issues register;
- f. answer questions and provide such other information as may be reasonably sought by the new service provider and/or by the Customer to assist it in the transition process;
- g. surrender any remaining Customer owned reports and documents still in the Contractor's possession;
- h. the Contractor ceases to become liable to perform any part of the Service after it is transitioned to a new service provider or to the Customer;
- i. the Contractor's obligations to meet the Service Levels are not reduced and the

**Details to be included from Module 10****Order Details agreed by the Contractor and the Customer**

Contractor remains liable for failing to meet any Service Levels;

- j. the Customer must continue to pay the full Services Price until the last day of the Contract Period, notwithstanding that some or all of the Service may have been transitioned to a new service provider or to the Customer (unless otherwise agreed in the Order Documents);
- k. the Contractor must, subject to clause 13.2 of the Module, return to the Customer all Customer Data within 14 days of termination of the Customer Contract and back up and secure Customer data for a further 60 days after termination of the Customer Contract;
- l. grant or assist the Customer (or new service provider) to procure a licence to continue using any generally commercially available software in the Australian market which is integral to the ongoing provision of the Services, subject to payment of licence fees by the Customer (or new service provider); and
- m. not delete any Customer Data at the end of the Customer Contract without the express prior approval of the Customer.

**Box 8 Return of Customer Data on termination****Details to be included from Module 10****Order Details agreed by the Contractor and the Customer****Customer Data deletion and certification (clause 13.2(c))**

Specify the period within which the Contractor must delete the Customer Data and whether certification it has been deleted is required.

Refer to Box 4 in relation to the period within which the Contractor must delete the Customer Data.

If requested by the Customer, the Contractor must provide written confirmation to the Customer that it has securely deleted Customer Data in accordance with the Customer Contract.



**Customer Data format (clause 13.2(d))**

Specify the format that the Customer Data must be provided to the Customer.

Except to the extent otherwise specified in the Contract Specifications, Customer Data may either be exported by API from the Building Assurance Solution to the Customer, or otherwise provided by the Contractor to the Customer in CSV format.

If not specified in the Contract Specifications, the format for provision of the Customer Data to the Customer will be agreed by the Parties in writing prior to the expiry or termination of the Customer Contract.

**Box 9 Additional terms –Infrastructure as a Service**

**Details to be included from Module 10**

**Order Details agreed by the Contractor and the Customer**

**Additional terms and conditions (cl. 15.1)**

Specify any additional terms and conditions in relation to Infrastructure as a Service.

Not applicable.

**Box 10 Additional terms –Platform as a Service**

**Details to be included from Module 10**

**Order Details agreed by the Contractor and the Customer**

**Additional terms and conditions (cl. 16.1)**

Specify any additional terms and conditions in relation to Platform as a Service.

Not applicable.

**Box 11 Additional terms – Software as a Service**

**Details to be included from Module 10**

**Order Details agreed by the Contractor and the Customer**

**Additional terms and conditions (cl. 17.1)**

Specify any additional terms and conditions in relation to Software as a Service.

Specify whether the Contractor warrants or supports third party products or services. (cl. 17.2).

Specify any Third Party Applications supplied by the Contractor (cl. 17.3).

- a) The Customer acknowledges and agrees that the As a Service is not intended to be used for archival purposes. However, the Contractor must keep, maintain and backup data that is inputted into, stored in or generated by the Building Assurance Solution and protect and safeguard such data (and check the integrity of all backup data) to ensure that the Building Assurance Solution remains functional and achieves its Objectives and in a manner that is

consistent with the Contractor's obligations under the Customer Contract with respect to Customer Data.

- b) No back-end access to the As a Services is available to the Customer unless expressly agreed in writing.
- c) The Contractor may provide the Customer with credentials such as usernames and passwords (**Login Credentials**) for it and its Permitted Users to access and use the As a Service. The Customer must keep its, and must ensure its Personnel keep their, Login Credentials secure and confidential and take appropriate steps to prevent unauthorised access to the As a Service. The Customer is responsible for all activities that take place on the As a Service using its and its Personnel's Login Credentials.
- d) Without limiting clause 7 of Module 10 of the Customer Contract, the Customer and its Personnel must:
  - i. only access the As a Service via the interfaces provided by the Customer, and not create unauthorised links to, or frame or mirror, the As a Service;
  - ii. not compromise or attempt to compromise the As a Service or the infrastructure over which the As a Service is provided; and
  - iii. not take any action that has the purpose of adversely affecting the use or functionality of the As a Service.
- e) If, while using the Building Assurance Solution, the Customer becomes aware of any matter that the Customer determines may reasonably likely affect the security or integrity of the As a Service as it pertains to the Services or Deliverables being provided under the Customer Contract, the Customer must use its reasonable endeavours to notify the Contractor of the issue.
- f) The Customer acknowledges that the Contractor does not assume a management responsibility in relation to

the Customer's use of the As a Service. The Customer must make all management decisions with respect to Customer Data being shared through the As a Service. The Customer is responsible and accountable for managing its business and affairs and deciding what to do after receiving the As a Service, including whether to implement any outcomes, reports, advice or recommendations produced by the As a Service.

- g) The Customer accepts sole responsibility for, and the Contractor will not verify, the accuracy of all Customer Data processed using the As a Service and the results obtained from that processing in accordance with Global Governance Framework to the extent that these results depend upon the accuracy of the Customer Data and the Global Governance Framework.
- h) The As a Service is not intended to and must not be used to provide input to or form part of the Customer's financial or risk systems, processes, or controls, or any like service that may be subject to audit by the Contractor.
- i) The As a Service is not:
  - i. an internal control over financial reporting; or
  - ii. to be used to generate information that is an accounting record.



# Collaboration Deed - Building Assurance Solution

Department of Customer Service  
DCS

KPMG  
KPMG

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# Collaboration Deed - Building Assurance Solution

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**Parties**                    Department of Customer Service ABN 81 913 830 179 (DCS)  
   KPMG ABN 51 194 660 183 (KPMG)

## Recitals

- A.        DCS has recognised the need for the development of a market for a digital building assurance solution to accurately index the development of certificates relating to the design and construction of buildings.
- B.        Accordingly, in 2020, DCS conducted a procurement process and sought tenders for a provider to develop the Building Assurance Solution on the basis that DCS would provide support for that development.
- C.        As a result of the procurement process, DCS has selected KPMG to develop the Building Assurance Solution.
- D.        The Parties will enter into a contract in the form of Procure IT (version 3.2) for the development of the Building Assurance Solution on or about the date of this deed (**Development Contract**).
- E.        The Parties have agreed certain principles and arrangements as to how they will collaborate in the development and marketing of the Building Assurance Solution, and the manner in which the Global Governance Framework will apply to the development of the Building Assurance Solution, and have entered into this deed to document those principles.

## Operative provisions

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### 1.        Definitions

In this deed:

**Authorised Representative** means each Party's nominated representative as identified in Schedule 1 or as otherwise advised by a Party in writing to the other Party's Authorised Representative.

**BAS Communications** has the meaning given in clause 6.2(c).

**Building Assurance Solution** has the meaning given in the Development Contract.

**Building Industry** means the industry comprising all persons and entities involved with, or who carry out or support, building work, including product suppliers, manufacturers, insurers and financiers to that industry.

**Business Day** means a day other than a Saturday, Sunday or public holiday in NSW.

**Confidential Information** has the meaning given in the Development Contract.

**Customer Data** has the meaning given in the Development Contract.

**Development Contract** has the meaning given in the Recitals.

**Global Governance Framework** has the meaning given in clause 5.

**Government Agency** has the meaning given in Part 3: Dictionary of Procure IT (version 3.2), which forms part of the Development Contract.

**Learnings** has the meaning given in clause 9.1.

**Mirvac** means Mirvac Ventures Pty Ltd (ABN 21 626 584 745).

**Notice** has the meaning given in clause 12.

**Objectives** has the meaning given in clause 3(a).

**Other Government Entity** means any Federal, overseas or State or Territory governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality.

**Party** means a party to this deed.

**Project Remediate** means the NSW Government program to help remove combustible cladding from up to around 225 buildings in NSW.

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## 2. Interpretation

In this deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) an obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;

(c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to a clause or schedule is to a clause or schedule of this deed;

(i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(j) the words "includes", "including" and words of equivalent expression are not words of limitation;

(k) a reference to "\$" or "dollar" is to Australian currency; and

- (l) no term or provision of this deed will be construed against a Party on the basis that this deed or the term or provision was put forward or drafted by that Party.

---

### 3. Objectives and acknowledgements

- (a) The Parties acknowledge and agree that DCS' objectives in collaborating with KPMG are:
- (i) to have technical solutions (including the Building Assurance Solution) developed to establish and maintain an accurate depository for the certificates relating to the design and construction of buildings that will be available to future owners and maintainers;
  - (ii) for the Building Industry and others to use such technical solutions;
  - (iii) to share Learnings and data in connection with the Building Assurance Solution;
  - (iv) so that, in due course, the Building Assurance Solution developed by KPMG pursuant to the collaboration is not a monopoly solution but rather that, over time, other viable alternatives are developed and available to the Building Industry and which are all compliant with the Global Governance Framework; and
  - (v) for the Building Assurance Solution to:
    - A. be a product that can be used globally and not be developed specifically for use within NSW; and
    - B. comply with the Global Governance Framework as approved by DCS,

**(Objectives).**

- (b) To meet the Objectives, KPMG must work with DCS to:
- (i) establish a "one team" approach in relation to the development and delivery of the Building Assurance Solution;
  - (ii) carefully coordinate and interface its activities with any services and work being carried out by DCS, industry participants and other contractors in connection with the development of the Building Assurance Solution and the Global Governance Framework;
  - (iii) minimise the need for DCS to be involved in managing the tasks that KPMG performs under both this deed and the Development Contract;
  - (iv) cooperate with DCS and others in the development of the Global Governance Framework as required by DCS from time to time;
  - (v) provide support, where requested by DCS, to enable DCS to demonstrate the functionality and application of the Building Assurance Solution; and
  - (vi) establish working relationships with other industry participants or contractors involved in respect of the delivery of the Building Assurance Solution and the Global Governance Framework to minimise problems and issues and in order to ensure the seamless delivery of the Building Assurance Solution.



- (c) KPMG must not engage in any practice or do, or omit to do, anything that adversely affects, or has the potential to adversely affect, the reputation of DCS or the State of NSW.
- (d) DCS intends to:
  - (i) develop the Global Governance Framework;
  - (ii) provide assistance as reasonably agreed by the Parties for the successful delivery of the services in accordance with the Development Contract;
  - (iii) coordinate with the broader industry and its participants as reasonably determined by DCS;
  - (iv) facilitate broader communication options with additional stakeholders (including other state governments and other sector stakeholders) as reasonably determined by DCS; and
  - (v) co-operate with KPMG in relation to the achievement of the Objectives.

---

## 4. Relationship between Deed and Development Contract

### 4.1 General

- (a) This deed supplements KPMG's obligations under the Development Contract and is intended to set out the collaborative framework through which KPMG will provide the services and deliverables required to be provided under the Development Contract.
- (b) The Parties acknowledge and agree that nothing in this deed is intended to exclude or limit KPMG's obligations under the Development Contract.
- (c) In the event of any inconsistency or conflict between this deed and the Development Contract, this deed prevails to the extent of the inconsistency.

### 4.2 Liability

KPMG's liability under both this deed and the Development Contract will be limited in accordance with clause 12 of the Additional Conditions under the Development Contract.

---

## 5. Global Governance Framework

- (a) KPMG acknowledges that DCS will work with KPMG, the Building Industry and other government and non-government participants to develop, update and maintain a framework and set of protocols governing the development of the Building Assurance Solution (**Global Governance Framework**) to ensure its adaptability and longevity.
- (b) DCS or its personnel (including contractors) may:
  - (i) share any data or information obtained during the course of the development of the Building Assurance Solution or relating to the features of the Building Assurance Solution with other participants involved in the development of the Global Governance Framework; and
  - (ii) use such data or information to inform the development of the Global Governance Framework and incorporate such data or information

(including the features of the Building Assurance Solution) into the Global Governance Framework (in its absolute discretion).

---

## 6. Collaboration and marketing

### 6.1 Commercialisation of Building Assurance Solution

KPMG must develop the Building Assurance Solution:

- (a) in a manner that meets the Objectives; and
- (b) with the intention of encouraging the uptake and use of the Building Assurance Solution by the Building Industry and others.

### 6.2 Marketing and communications

- (a) KPMG will use all reasonable endeavours, at its cost, to market the Building Assurance Solution to support the Objectives and to encourage the uptake and use of the Building Assurance Solution.
- (b) KPMG acknowledges and agrees that DCS has not made any representation as to any assistance it may provide to KPMG in respect of the marketing of the Building Assurance Solution, except that DCS may, at its sole discretion, elect to assist KPMG with marketing and encouraging the uptake of the Building Assurance Solution to support the Objectives.
- (c) KPMG must not publish any marketing materials, public statements or issue any releases to the media (including any posts on social media) (**Public Statement**) in respect of the Building Assurance Solution, any Project Remediate data, the Development Contract or its relationship with DCS (**BAS Communications**) without obtaining DCS' prior written consent (which may be given or withheld in DCS' sole discretion) and consulting with DCS in respect of the BAS Communication unless the content of the relevant BAS Communication:
  - (i) has already been publicly communicated by DCS or its Minister through a Public Statement;
  - (ii) is purely high level or conceptual in nature and DCS or its Minister has already made a Public Statement about the Building Assurance Solution and the appointment of KPMG; or
  - (iii) is otherwise public knowledge other than through a breach of this deed or the Development Contract.
- (d) Notwithstanding clause 6.2(c), KPMG must not make any Public Statement that breaches clause 3(c) or its obligations of privacy or confidentiality under the Development Contract or this deed.
- (e) In seeking consent under clauses 6.2(c), KPMG must, as soon as reasonably practicable, provide DCS with a copy of the proposed form of any Public Statement, along with written details of:
  - (i) the proposed means or forum for distribution of the Public Statement;
  - (ii) the proposed date of publication; and
  - (iii) such other details as reasonably required by DCS.
- (f) Nothing in this clause 6.2 prevents:

- (i) KPMG from making any Public Statement to the extent required by law (including any securities exchange or similar body) or to enable KPMG to report internally to its partners or personnel; or
- (ii) DCS, any Minister or any other Government Agency from making a Public Statement regarding the Building Assurance Solution, Project Remediate, the Development Contract or DCS' relationship with KPMG.

### **6.3 Promotional events**

KPMG must, at its sole cost, provide a reasonable number of NSW Government Ministers and DCS personnel with an opportunity to attend launches and promotional events connected with the Building Assurance Solution.

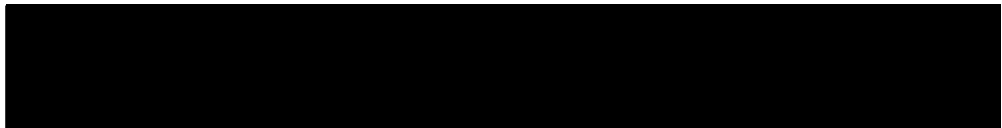
### **6.4 Media enquiries**

If, during the term of this deed, KPMG receives any media enquiries in relation to the Building Assurance Solution or if, at any time, KPMG receives any media enquiries in relation to Project Remediate, KPMG must promptly refer such enquiries to DCS' Authorised Representative and must not respond to such media enquiries other than in accordance with the instructions of DCS' Authorised Representative.

### **6.5 Use of logos and trade marks**

(a) KPMG must:

- (i) not use the logos, branding or graphic trade marks of DCS or the NSW Government in any publication without obtaining DCS' prior written consent; and



(b) DCS must:

- (i) not use the logos, branding or graphic trade marks of KPMG in any publication without obtaining KPMG's prior written consent; and
- (ii) must, to the extent reasonably practicable, comply with the KPMG branding guidelines outlined Schedule 2 of this deed or such other guidelines as notified by KPMG to DCS and agreed by DCS in writing (with approval not to be unreasonably withheld). However, KPMG acknowledges and agrees that DCS is not required to comply with KPMG's branding guidelines:
  - A. to the extent restricted or prevented from doing so by the NSW Government brand guidelines or any other NSW Government policy or guidelines; or
  - B. in relation to the sizing or positioning of the KPMG logo on NSW government correspondence.

(c) Either Party may, at any time, acting reasonably, withdraw its consent to the ongoing use of its (or additionally in the case of DCS, the NSW Government's) logos, graphic trade marks or branding.

(d) Nothing in this clause affects the ownership of either Party's intellectual property rights.

## 6.6 No exclusivity or commitment

KPMG acknowledges and agrees that:

- (a) Subject to clause 9, and the confidentiality obligations and intellectual property rights provisions contained in the Development Contract, DCS may communicate, liaise and collaborate with other persons in respect of the development of a technical solution with the same or similar features to the Building Assurance Solution;
- (b) DCS is not restricted in any way from carrying out, or engaging any person to carry out, any activities in connection with the development of a technical solution the same or similar to the Building Assurance Solution; and
- (c) by entering into this deed and the Development Contract, DCS does not make any representation that DCS, the State of NSW, Government Agency or Other Government Entity will use or uptake the Building Assurance Solution or that the Building Assurance Solution will be the sole solution that is put to market.

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## 7. Licence fees

### 7.1 Future uses by DCS and other NSW Government Agencies

- (a) Upon the expiry or termination of the Development Contract, KPMG acknowledges and agrees that, on DCS' or other Government Agencies' request, it will make available the Building Assurance Solution to DCS and any other Government Agencies on terms and rates agreed between DCS and the relevant Government Agencies.
- (b) In acknowledgement of DCS' and the State of NSW's significant investment in the development of the Building Assurance Solution, following the expiry or termination of the Development Contract, KPMG agrees, to the fullest extent permitted by law, to treat DCS and other Government Agencies as a "most favoured customer" and to offer them terms and fee arrangements at a price no higher than the lowest net price available to other customers of KPMG.

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## 8. Engagement of Mirvac

- (a) In its tender submission for the Development Contract, KPMG represented that it has a relationship with Mirvac and can leverage this for the benefit of the development and commercialisation of the Building Assurance Solution.
- (b) Unless otherwise directed by DCS, KPMG must use its best endeavours to engage Mirvac as its sub-contractor in developing the Building Assurance Solution.

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## 9. Learnings

### 9.1 Sharing Learnings

Subject to the confidentiality and intellectual property provisions under this deed and the Development Contract, for the duration of the Development Contract, KPMG agrees to share with DCS (verbally or in writing) any learnings or "lessons learnt" which it acquires in connection with the development of the Building Assurance Solution under the Development Contract and that KPMG reasonably considers will support the Objectives (**Learnings**). If requested by DCS, for the duration of the Development Contract, KPMG must participate in a reasonable number of forums or meetings with DCS to exchange Learnings.

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## 10. Data

- (a) KPMG acknowledges and agrees that one key Objective and function of developing the Building Assurance Solution is to index certificates relating to the design and construction of buildings that will be available to future owners and maintainers.
- (b) Accordingly, KPMG must:
  - (i) keep, maintain and backup any data (including in relation to certificates) that is inputted into, stored in or generated by, the Building Assurance Solution (**BAS Data**); and
  - (ii) protect and safeguard BAS Data and check the integrity of all backup BAS Data,to ensure that the Building Assurance Solution remains functional and achieves its Objectives and in a manner that is consistent with KPMG's obligations under the Development Contract with respect to Customer Data.
- (c) Without limiting paragraph (b), all data relating to DCS' or Government Agencies' buildings which constitutes a "state record" under the *State Records Act 1998* (NSW) must be retained by KPMG in accordance with the record retention requirements under that Act.
- (d) Notwithstanding anything else in this deed or the Development Contract, DCS acknowledges and agrees that the Building Assurance Solution is not intended to be used for archival purposes and DCS must retain, maintain and update separate backup copies of all data (including certificates) and Customer Data inputted into, stored in or generated by, the Building Assurance Solution.

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## 11. Consents

- (a) Except for any Customer Data provided by DCS to KPMG, KPMG is solely responsible for obtaining all necessary consents with respect to the collection and use of Learnings as required by law.
- (b) By providing any Learnings to DCS, KPMG represents and warrants that it has the right and authority to do so.

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## 12. Notices

A notice, consent, approval or other communication (**Notice**) under this deed:

- (a) must be in writing;
- (b) must be hand delivered, posted by prepaid express post or emailed to the relevant Party's Authorised Representative's address in Schedule 1 or such other address as may be notified in writing by a Party to the other Party; and
- (c) is taken to be received by the addressee:
  - (i) (in the case of prepaid express post sent) on the second Business Day after the date of posting;
  - (ii) (in the case of delivery by hand) on delivery at the address of the addressee; and

- (iii) (in the case of email), at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply in respect of the email,

provided that if the Notice would be taken to be received on a day which is not a Business Day or after 5:00pm on a Business Day, it is taken to be received at 9:00am on the next Business Day.

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## **13. General**

### **13.1 Further acts and documents**

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by the other Party to give effect to this deed.

### **13.2 Consents**

A consent required under this deed from a Party may be given or withheld, or may be given subject to any conditions, as that Party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

### **13.3 Assignment**

KPMG cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of DCS.

### **13.4 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a Party under this deed is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

### **13.5 No partnership, joint venture or other fiduciary relationship**

Nothing in this deed will be construed or interpreted as constituting the relationship between the Parties as that of partners, joint venturers or any other fiduciary relationship.

### **13.6 Entire deed**

To the extent permitted by law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

### **13.7 Severance**

If, at any time, any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

### **13.8 Variations**

This deed may only be varied by a deed signed by or on behalf of DCS and KPMG.

### **13.9 Survival**

Clauses 6.2 to 6.6 (inclusive), 7, 10, 12 and this clause 13 survive the termination of this deed, together with any other clause of this deed capable of continuing to apply after the termination of this deed.

### **13.10 Counterparts**

This deed may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart constitutes an original of this deed, and all together constitute the one deed.

### **13.11 Governing law and jurisdiction**

- (a) This deed shall be governed by, and construed in accordance with, the laws of the State of New South Wales, Australia.
- (b) Each Party hereby submits to the exclusive jurisdiction of the courts of New South Wales, Australia and any courts that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

### **13.12 Term and termination**

This deed will commence on the date both Parties have executed this deed and will continue until the date that the Development Contract has been terminated or expired.

### **13.13 Confidentiality**

The Parties agree that clause 14 (Confidentiality) of the standard terms and conditions of the Development Contract is expressly incorporated into this deed and applies to any Confidential Information given, shared or disclosed between the Parties in connection with this deed.

Confidential Information has the meaning given under the Development Contract.

### **13.14 Duty of independence**

Nothing under this deed requires KPMG to do, or refrain from doing, anything that may, in KPMG's reasonable opinion, prejudice its ability to comply with any applicable professional standard or auditor independence requirement. If KPMG reasonably believes that its continued conduct under this deed may prejudice its ability to comply with an applicable professional standard or auditor independence requirement the Parties must promptly discuss in good faith any measures that may be reasonably required by KPMG to mitigate such potential issues.

### **13.15 Dispute resolution**

The Parties agree to use reasonable efforts to resolve any dispute which arises between them under this deed in accordance with the dispute resolution procedures under the Additional Conditions under the Development Contract. This clause does not prevent either Party from

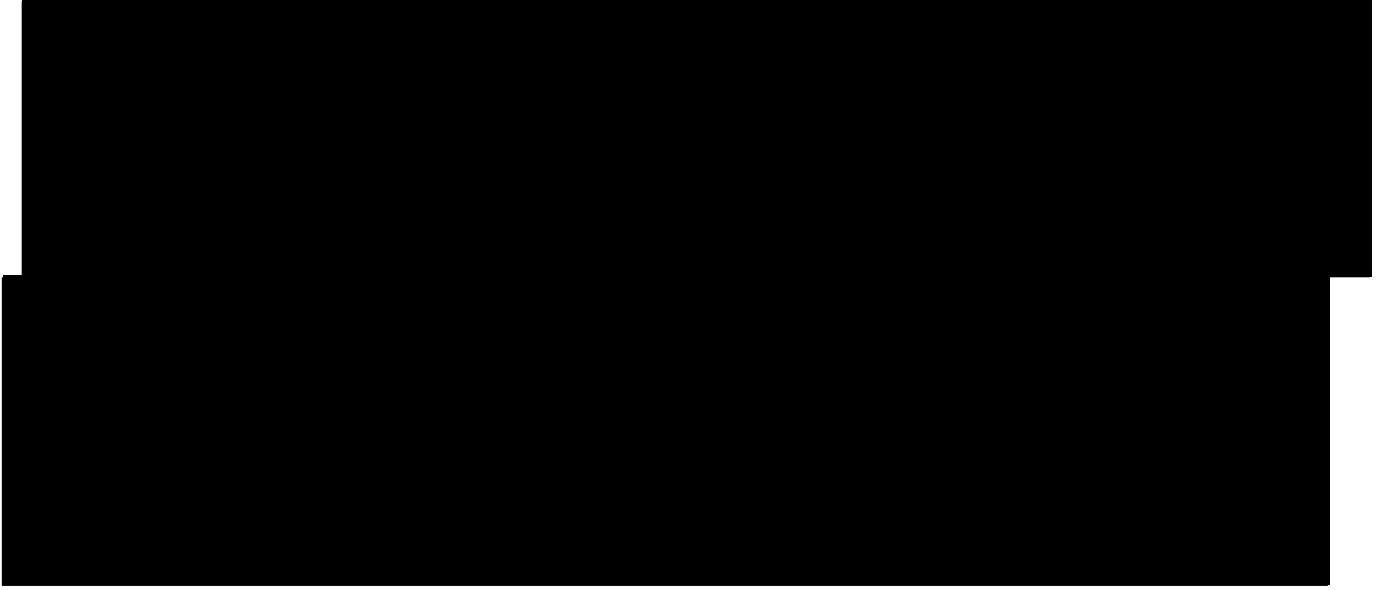
commencing legal action against the other (including instituting court proceedings) for urgent injunctive, interlocutory or declaratory relief in respect of a dispute.



## **SCHEDULE 1: DEED DETAILS**

### **Notices for Authorised Representatives**

#### **DCS' Authorised Representative**



**SCHEDULE 2: KPMG BRANDING GUIDELINES**



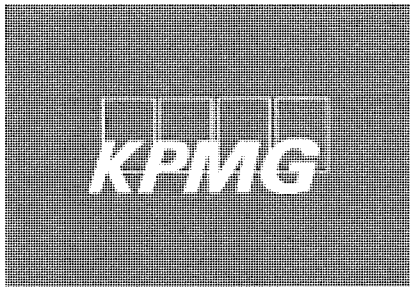
KPMG Logo  
guidelines - Schedule

## Logo version

There are four versions of our logo. Always use the master artwork supplied and never try to re-create our logos.

### Primary logo white

Our primary white logo should be used whenever the logo is sitting on a darker image or color.



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### Primary logo blue

The primary blue logo should be used whenever the logo is sitting on white, or on a lighter image or color.



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### Alternate black logo

Our black logo is used for black and white applications only, when our logo needs to appear on a white or very light background.



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### Alternate solid blue logo

The solid blue logo should not be used on marketing communications. It is only to be used under very specific circumstances, such as signage. Please consult with the KPMG brand team before using the solid blue logo.



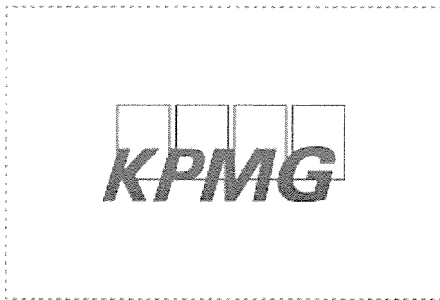
## Logo exclusion zone

For maximum impact, our logo should always be prominent and legible. Clear space gives the logo enough space to make this impact and not be compromised by other elements.

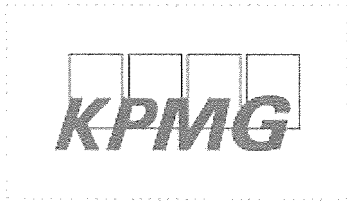
The height and width of the full KPMG logo (boxes and letters) is used to define the clear space. No text, imagery or patterned background should enter this space.

The desired clear space on the left is measured from the far left panel within the logo.

This clear space exists to define the minimum amount of space that should be left clear around the logo. Whenever possible, leave more clear space around the logo than the minimum clear space.



### Minimum clear space

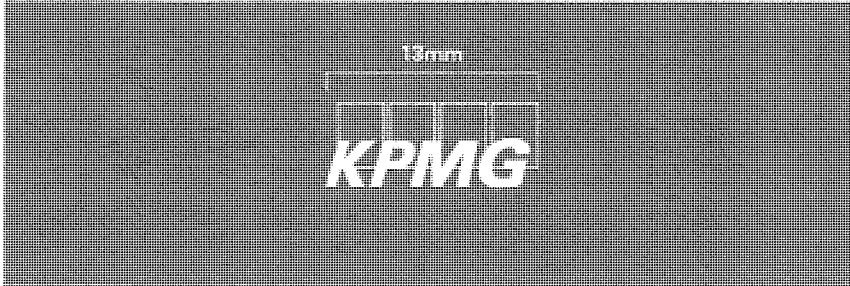


#### Exceptional case clear space

In cases in which space is limited, such as certain digital applications, the exceptional case clear space can be used. This clear space is defined by half the height and width of the full KPMG logo.

## Logo sizing

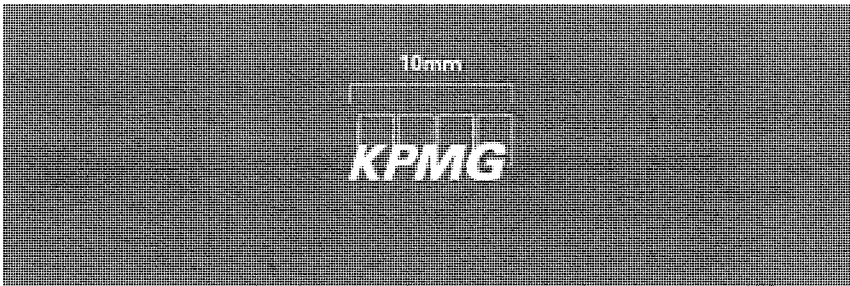
The logo is measured by the full width from the capital K to the last rectangle. The logo must feature prominently on all applications, without dominating the page.



Print minimum size (not to scale)

### Print exceptional cases

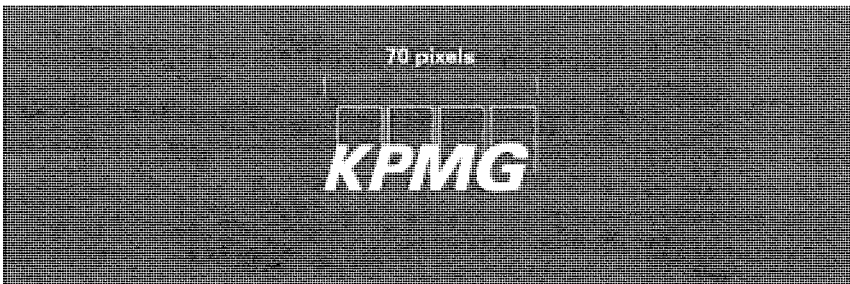
In exceptional circumstances where you need a very small version – on a pen, for example – the absolute minimum width is 10mm.



Print exceptional case minimum size (not to scale)

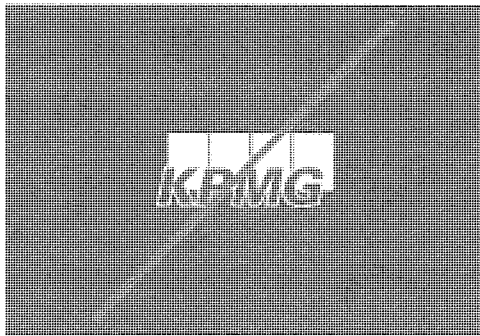
### Digital minimum size

For digital applications, the logo should not be less than 70 pixels wide.

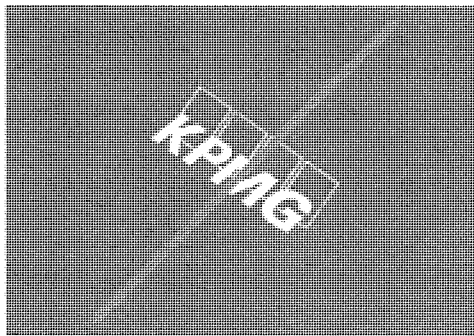


## Logo don'ts

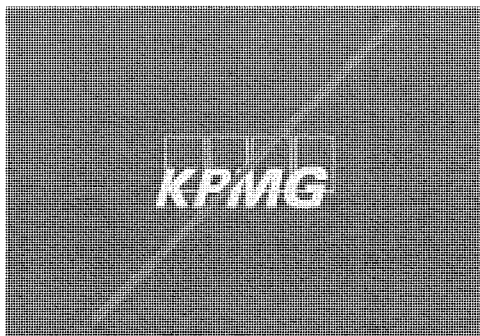
The schematics below illustrate incorrect ways to apply our logo and strapline.



Don't use the solid KPMG logo reversed out.



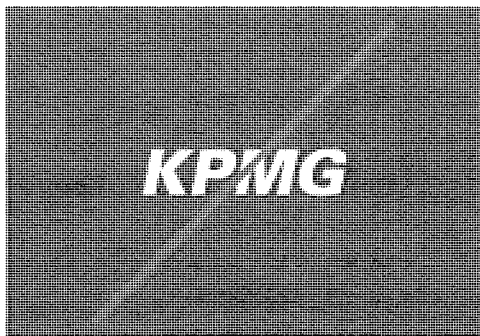
Don't rotate or distort the logo.



Don't change the color of the logo.



Don't alter or rearrange elements within the logo.



Don't remove elements from the logo.



Don't lock the logo up with other text – always respect the exclusion zone.

## Color

Anchored by KPMG blue, our color palette is made up of a selection of colors that gives our system flexibility and adaptability, while still remaining consistent and connected. Please use the appropriate color specifications below whenever creating communications for our brand.

### Primary




<b>KPMG blue</b>	<b>Medium blue</b>	<b>Light blue</b>
Pantone: 297 C	Pantone: 288 C	Pantone: 286 C
CMYK: 100/72/0/12	CMYK: 92/60/0/0	CMYK: 80/100/0
RGB: 0/51/141	RGB: 0/54/154	RGB: 0/145/219
HEX: 000080	HEX: 000080	HEX: 001080




### Secondary

<b>Violet</b>	<b>Purple</b>	<b>Light purple</b>
Pantone: 2105 C	Pantone: 2617 C	Pantone: 260 C
CMYK: 62/0/100/0	CMYK: 94/50/0/12	CMYK: 67/100/45
RGB: 73/54/182	RGB: 71/70/104	RGB: 100/52/119
HEX: 482698	HEX: 473A28	HEX: 633077

<b>Green</b>
Pantone: 3601 C
CMYK: 100/0/0/0
RGB: 0/150/151
HEX: 00A0A1

### Tertiary

		
Pantone: 347 C	Pantone: 361 C	Pantone: 1230
CMYK: 93/0/100/0	CMYK: 77/0/100/0	CMYK: 0/19/89/0
RGB: 0/154/68	RGB: 67/176/42	RGB: 234/176/0
HEX: 009A44	HEX: 43B02A	HEX: EAAA00

		
Pantone: 715C	Pantone: 7636 C	Pantone: 253C
CMYK: 0/54/87/0	CMYK: 0/100/45/12	CMYK: 12/100/0/0
RGB: 246/141/46	RGB: 188/32/75	RGB: 198/0/126
HEX: F68D2E	HEX: BC204B	HEX: C6007E



## KPMG as guest brand

When the partner brand leads a partnership or collaboration, the visual identity of the partner is applied to all materials. A KPMG presence is achieved by adding one of the following (in order of preference).

### Placement

The partner's guidelines will dictate where the KPMG logo will sit.

### KPMG primary logo reversed out

If the background that the KPMG logo is required to sit on is medium or dark in color, use the KPMG white logo. The logo should cover approximately 50% of the equivalent surface area covered by the partner logo.

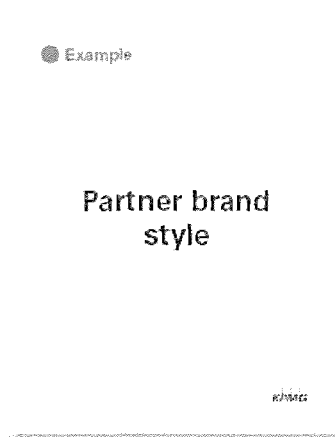
### KPMG blue logo

If the background that the KPMG logo is required to sit on is white or very light, use the KPMG blue logo.

Text can be set above the KPMG logo, for example 'In association with KPMG'.



KPMG white logo on dark background.



KPMG blue logo on light background.

### Text-only endorsement

When no version of the KPMG logo can be reproduced in accordance with our brand identity standards, or use of our logo is not permitted by the partner brand, use a text-only endorsement.

For example:

'In association with KPMG'.

● Example

Partner brand  
style

Text-only endorsement

## Logo size relationships

When the KPMG logo is displayed with another logo, the relative size of the logos should be adjusted to create a visually-balanced relationship.

Take account of the shape and color of the logos and ensure that the correct balance is found between them. Some guidance for logo sizing in each scenario is shown, below.

The KPMG blue logo has been used on these illustrations to make the percentage relationships simple to follow visually.

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### KPMG as the host brand

In this situation the KPMG visual identity needs to be applied. The partner logo should cover up to approximately 50% of the equivalent surface area covered by the KPMG logo.



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### Dual branding

The partner logo should cover approximately 100% of the equivalent surface area covered by the KPMG logo.



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### KPMG as a guest brand

The KPMG logo should cover approximately 50% of the equivalent surface area covered by the partner logo. The partner's guidelines will dictate where the KPMG logo will sit.

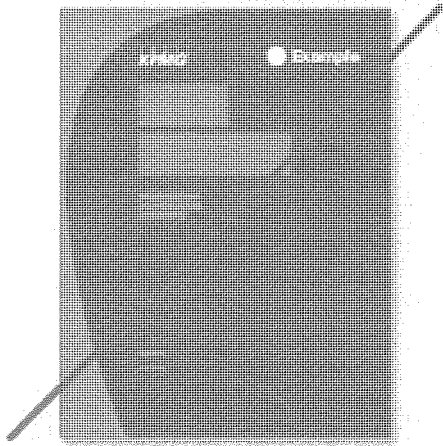


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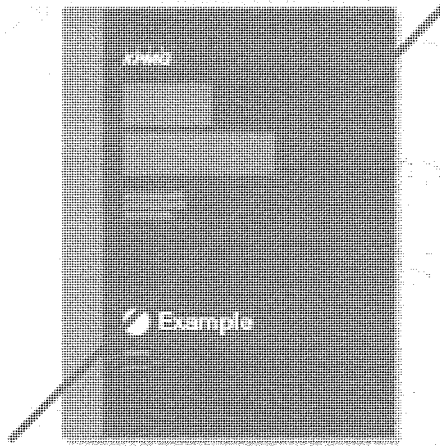
As logos come in many different shapes, we compare logo sizes not by their width or height but by their approximate surface area.

## Co-branding don'ts

The examples below illustrate incorrect ways of co-branding.



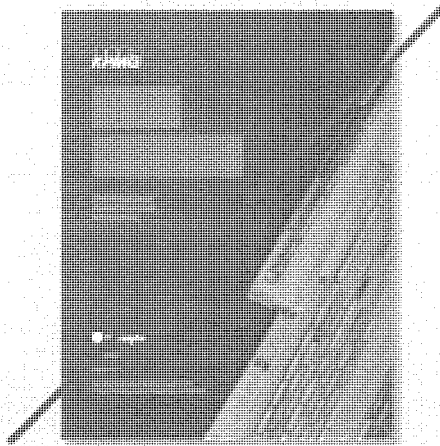
Don't create off-brand hybrid layouts for dual branded communications.



Don't make partner logos too big on communications where KPMG is the host brand.



Don't change the color of the KPMG logo to match the visual identity of a partner brand.



Don't make changes to our visual identity when KPMG is the host brand.



Date 17/05/2021



a partner of that partnership under the authority  
of KPMG Australia.....(name of authorising  
deed) who has no notice of revocation of that  
authority and in the presence of:

