
ePROJECTS PLUS PANEL AGREEMENT

(\$700K - \$4.4M)

(Version 1.0)

BETWEEN

**MINISTER FOR THE PUBLIC SECTOR ON BEHALF OF THE CROWN
IN RIGHT OF THE STATE OF SOUTH AUSTRALIA**

-AND-

[INSERT NAME OF SUPPLIER]

[Insert ACN of Supplier]

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THIS AGREEMENT is made the day of 2015

BETWEEN:

MINISTER FOR THE PUBLIC SECTOR ON BEHALF OF THE CROWN IN RIGHT OF THE STATE OF SOUTH AUSTRALIA of Level 6, 45 Pirie Street, Adelaide, South Australia 5000

(**“State”**)

AND:

[Insert name and ACN/ABN and address of the Supplier]

(**“Supplier”**)

1. FORMAL CONSIDERATION

In consideration of the Supplier undertaking obligations under this Agreement, the State must pay the consideration of ten (\$10) dollars on demand by the Supplier.

2. PANEL ARRANGEMENT

- 2.1 The State appoints the Supplier as a member of the **“eProjects Plus Panel”**, subject to the Panel Rules set out in Schedule 6.
- 2.2 The terms and conditions of this Agreement are set out in Schedule 1.
- 2.3 The Schedules, including the Panel Rules, may be varied by the State from time to time upon prior notice to the Supplier.
- 2.4 As a member of the eProjects Plus Panel the Supplier is authorised by the State to enter into Customer Agreements with State Agencies for the provision of Deliverables for ICT Projects with a total estimated cost between \$700,001 and \$4,400,000 (including GST).

3. FORMATION OF CUSTOMER AGREEMENTS

- 3.1 In order to acquire Deliverables under this Agreement, a State Agency must enter into a Customer Agreement.
- 3.2 The Schedules contain standard terms, conditions and requirements applicable to all Customer Agreements as well as additional requirements which may be included for particular projects.
- 3.3 In order to enter into a Customer Agreement, a State Agency and the Supplier must execute a CA Memorandum in the form, and addressing the subject matter, set out in Schedule 18.
- 3.4 Items 1 to 6 of the CA Memorandum must be completed in order to form a valid Customer Agreement.

- 3.5 If requested by the State, the Supplier must notify the State of each Customer Agreement it enters into with a State Agency and must provide a copy of the Customer Agreement Memorandum to the State's Principal Contract Administrator.

4. SUPPLIER OBLIGATION

- 4.1 The Supplier agrees to provide the Deliverables to Customers in accordance with the requirements, Specifications and Prices as set out in each Customer Agreement.

SIGNED for and on behalf of the)
MINISTER FOR THE PUBLIC SECTOR by)
 Kym Winter-Dewhirst, Chief Executive,)
 Department of the Premier and Cabinet in the)
 presence of:) _____

.....
 Signature of Witness

..... Date:
 Name of Witness

The Chief Executive of Department of the Premier and Cabinet as delegate for the Minister for the Public Sector hereby approves clause 23.1 of Schedule 1 of this Agreement for the purposes of clause 13(2) of Schedule 1 of the *Freedom of Information Act 1991 (SA)*.

.....
 Signed by Kym Winter-Dewhirst

EXECUTED for and on behalf of)
[Insert name of Supplier] [Insert ACN or ABN])
 by its duly authorised agent for the purposes of s9)
 of the Electronic Transactions Act (SA) 2000 <and)
s126 of the Corporations Act 2001> by:)

 <Director/Secretary>

.....
 Signature of Witness

.....
 Name: of authorised representative .

.....
 Name of Witness

Date:

SCHEDULE 1

TERMS AND CONDITIONS OF AGREEMENT

(INCLUDING TERMS AND CONDITIONS APPLICABLE TO ALL CUSTOMER AGREEMENTS)

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1. **EPROJECTS PLUS PANEL**

- 1.1 The State has established the Portal as the preferred method of:
 - 1.1.1 entering into this Agreement; and
 - 1.1.2 communicating with members of the eProjects Plus Panel.
- 1.2 The Portal is the primary point of contact between the Supplier and Customers. Unless otherwise agreed by the State, all offers to provide Deliverables under this Agreement must be uploaded to the Portal.
- 1.3 The State will issue the Supplier with a password to access the Portal. The Supplier's password is Confidential Information and the Supplier is responsible for all activity occurring within the Portal under its password.
- 1.4 The Supplier acknowledges, warrants and agrees that:
 - 1.4.1 access to the Portal may not be continuous, uninterrupted or secure at all times and may be interfered with by factors or circumstances outside of the control of the State and Customers;
 - 1.4.2 neither the State nor any Customer is liable to the Supplier for the unavailability of the Portal;
 - 1.4.3 Supplier materials uploaded to the Portal will not infringe the Intellectual Property Rights of any person; and
 - 1.4.4 the State and Customers may use Supplier materials uploaded to the Portal in any manner contemplated by this Agreement.
- 1.5 The Supplier must not lodge or upload any material to the Portal that is in any way defamatory, libellous, hateful, discriminatory, obscene, pornographic or similarly illegal, immoral or offensive and the Supplier agrees that it will be solely responsible for any consequences connected with the lodging or uploading of all material.

2. **NON EXCLUSIVITY**

The Supplier acknowledges that:

- 2.1 it is not the sole supplier of the Deliverables (or products, software and services of a similar nature) to the State and State Agencies; and
- 2.2 the State and State Agencies are at liberty to purchase Deliverables (or products, software and services of a similar nature) from other suppliers at their discretion throughout the Term.

3. **NO MINIMUM PURCHASE**

The Supplier acknowledges that neither the State nor State Agencies are under any obligation to purchase a minimum quantity or level of Deliverables from the Supplier during the Term.

4. **COMMENCEMENT**

This Agreement commences on the date of execution by the Parties (the “**Commencement Date**”).

5. **TERM**

5.1 “**Term**” means:

5.1.1 in relation to this Agreement, the period commencing on the Commencement Date and continuing until terminated in accordance with the provisions of this Agreement; and

5.1.2 in relation to a Customer Agreement, the period commencing on the date specified in the relevant CA Memorandum and continuing in force until the date of expiry specified in that CA Memorandum, taking account of any extensions, in accordance with that CA Memorandum, unless terminated earlier in accordance with the provisions of the Customer Agreement.

5.2 This Agreement expires at the end of the Term and each Customer Agreement expires at the end of its respective Term.

6. **TERMINATION**

Termination of this Agreement

6.1 The State may terminate this Agreement by notice effective immediately:

6.1.1 if the Supplier is in breach of obligations under this Agreement and has failed to rectify the breach within the time allowed in a Default Notice issued by the State under this Agreement;

6.1.2 if the Supplier is in breach of a Customer Agreement and has failed to rectify the breach within the time allowed in a Default Notice issued by the Customer pursuant to the Customer Agreement;

6.1.3 if an Insolvency Event occurs; or

6.1.4 if there is a Change of Control of the Supplier.

6.2 This Agreement may be terminated at will by either Party, by giving twenty (20) Business Days’ written notice of the termination to the other Party.

Effect of Termination

6.3 Upon termination of this Agreement each Party must:

6.3.1 return to the other all Confidential Information provided to it by the other Party; or

6.3.2 destroy all records in its possession or control of that Confidential Information, and provide a written certification to the other party to the effect that all records of the Confidential Information in its possession or control have been destroyed, and that no embodiment of it has been retained,

6.3.3 except to the extent that a Party needs to retain a copy of such information in order to comply with the Law or to continue providing any Deliverables under a Customer Agreement.

6.4 Termination of this Agreement does not:

6.4.1 have the effect of terminating a Customer Agreement; or

6.4.2 affect the accrued rights of the Parties (and rights of a Customer under a Customer Agreement) except to the extent that the Parties (and the Customer in the case of a Customer Agreement) otherwise agree in writing.

7. TERMINATION OF A CUSTOMER AGREEMENT

7.1 A Customer may terminate its Customer Agreement:

7.1.1 if the Supplier is in breach and fails to rectify the breach within the time allowed in a Default Notice issued by that Customer;

7.1.2 if there is a Change of Control of the Supplier;

7.1.3 if an Insolvency Event occurs with respect to the Supplier; or

7.1.4 for convenience, by fourteen (14) days written notice to the Supplier and unless otherwise agreed in a Customer Agreement, the Customer will only be liable to pay for the Deliverables provided to date on a pro-rata basis.

7.2 Subject to clause 7.3, the Supplier may terminate a Customer Agreement by written notice to the Customer if the Customer fails to comply with a Demand Notice issued by the Supplier (pursuant to clause 26.3 of this Agreement) in relation to an Undisputed Invoice. If this occurs, the Supplier must, as soon as practicable, provide the State's Principal Contract Administrator with a copy of the relevant termination notice.

7.3 The right of termination by the Supplier under the preceding sub-clause 7.2 only operates where the amount of the Undisputed Invoice is equal to or exceeds the sum of \$50,000.00.

Survival of Obligations

7.4 Notwithstanding any termination of this Agreement, the following provisions of this Agreement and each provision that applies to a Customer Agreement will survive in their entirety and continue to apply:

7.4.1 clause 6.3 which deals with the return of the Confidential Information;

7.4.2 clause 6.4 - which deals with the effect of a termination on Customer Agreements;

7.4.3 this clause 7.4 – Survival of Obligations;

7.4.4 clause 20 - SOFTWARE (including Schedule 14);

7.4.5 clause 21 - INTELLECTUAL PROPERTY;

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- 7.4.6 clause 22 - VESTING;
 - 7.4.7 clause 24 - LIABILITY;
 - 7.4.8 Clause 23 - CONFIDENTIALITY;
 - 7.4.9 clause 25 - REMEDIES;
 - 7.4.10 clause 28 – STATE AUDIT;
 - 7.4.11 clause 31 – INDEMNITY AGAINST THIRD PARTY CLAIMS;
 - 7.4.12 clause 32 – INDEMNITY PROCEDURES
 - 7.4.13 clause 33 - SUB-CONTRACTING;
 - 7.4.14 clause 37 – APPLICABLE LAW;
 - 7.4.15 clause 39 – JURISDICTION OF COURTS;
 - 7.4.16 clause 42 - READING DOWN AND SEVERANCE; and
 - 7.4.17 clause 46.8 which deals with the discharge of security.

8. ADMINISTRATION AND MANAGEMENT OF CONTRACTS

- 8.1 This Agreement will be administered and managed by each Party's Principal Contract Administrator.
- 8.2 The State and the Supplier must each appoint and maintain a Principal Contract Administrator at all times during the Term.
- 8.3 A Party may change its Principal Contract Administrator by written notice to the other Party.
- 8.4 A Party's Principal Contract Administrator can exercise all the powers and functions of the Party the Principal Contract Administrator represents, and has authority to bind that Party in respect of this Agreement.
- 8.5 Customer Agreements will be administered on behalf of each Party by a Customer Agreement Administrator appointed on that Party's behalf.
- 8.6 A Party's Customer Agreement Administrator may exercise the powers and functions under a Customer Agreement of the Party he or she represents, and has authority to bind it in respect of that Customer Agreement.

9. MEETINGS, REPORTING AND RECORD KEEPING

- 9.1 The Supplier must attend all meetings relating to this Agreement as reasonably requested by the State and Customers.
 - 9.2 The Supplier must provide Reports to:
 - 9.2.1 the State as set out in Schedule 4, and as otherwise reasonably requested; and
 - 9.2.2 Customers required under this Agreement and as set out in each CA Memorandum.
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- 9.3 The Supplier must maintain proper records in relation to matters relative to this Agreement and each Customer Agreements.

10. **LEVY**

The Supplier must comply with its obligations set out in Schedule 4.

11. **SUPPLIER'S WARRANTIES**

The Supplier warrants and represents that:

11.1 in relation to Deliverables that are, or include, Software:

- 11.1.1 the Software made available to (or accessible by) a Customer is properly Licensed so as to authorise its use and access;
- 11.1.2 where the Supplier is not the licensor of the Software, the licensor of the Software will comply with all Warranty Obligations during the Warranty Period given or made by the licensor in relation to that Software; and
- 11.1.3 where the Supplier is the licensor of the Software, the Supplier will comply with all Warranty Obligations in relation to that Software during the Warranty Period;

11.2 in relation to Deliverables that are Products:

- 11.2.1 it has the right to transfer clear title in each Product to Customers and each Product will on Delivery be free from any charge or encumbrance;
 - 11.2.2 each Product purchased by a Customer under a Customer Agreement:
 - (a) will be of 'acceptable quality' in terms of the *Competition and Consumer Act 2010 (Cwth)* and is fit for its intended purpose;
 - (b) will during the Warranty Period operate in accordance with the requirements of this Agreement and the relative Customer Agreement;
 - (c) will during the Warranty Period be free from any Defect or omission in design, performance, workmanship and materials;
 - (d) will (unless otherwise specified) be new and will not have been previously used other than for the purpose of testing by or on behalf of the Customer;
 - (e) does not infringe any third party's Intellectual Property Rights; and
 - (f) the performance of the Product must not deteriorate during the Warranty Period (other than what would be reasonably expected from normal usage and the passage of time) from the level of performance available at the time it is installed.
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- 11.2.3 where the Supplier is not the manufacturer of a Product, the manufacturer of the Product will comply with all Warranty Obligations given or made by the manufacturer in relation to that Product;
 - 11.2.4 where the Supplier is the manufacturer of a Product, the Supplier will comply with all Warranty Obligations in relation to that Product; and
 - 11.2.5 the Warranty Obligations do not apply where it can be proved that the negligence of the Customer has caused a Defect to the Product. In that case the Supplier may charge for the cost of parts and labour necessary to repair the Product and the Warranty Obligations must then be reinstated.
- 11.3 in relation to Deliverables that are Services:
- 11.3.1 it will perform the Services using appropriately qualified Supplier Personnel with the necessary skills, experience and expertise to perform the Services;
 - 11.3.2 the Services, and any Product resulting from the Services, will be reasonably fit for their intended purpose;
 - 11.3.3 it will perform the Services in accordance with the Service Levels;
 - 11.3.4 it has access to all the necessary facilities and equipment to perform the Services; and
 - 11.3.5 the Services will be rendered with due care and skill.
- 11.4 in relation to the supply of Deliverables by resale:
- 11.4.1 it has the right to resell the Deliverables sourced from third party suppliers; and
 - 11.4.2 if requested by the Customer, must produce evidence of its right to resell the Deliverables, including without limitation, evidence of good title.

12. **PROCEDURE MANUALS**

The Supplier must comply with any relevant procedures applicable to the provision of Services (where Services form part or whole of the Deliverables) set out in the Customer's procedures manuals or as otherwise required by the Customer.

13. **OWNERSHIP AND RISK IN PRODUCTS**

- 13.1 Title in a Product and any licence rights pass to the Customer on the Acceptance Date.
 - 13.2 Risk in a Product passes to the Customer on Delivery.
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14. CUSTOMER PREMISES REQUIREMENTS

- 14.1 While the Supplier's Personnel are on a Customer's premises for the performance of a Customer Agreement, the Supplier must ensure that they comply with that Customer's reasonable requirements and policies applicable to those premises, including without limitation, in relation to work health and safety, and staff behaviour.
- 14.2 Before the Supplier's Personnel enter a Customer's premises in the performance of a Customer Agreement, the Supplier must enquire into, and the Customer must disclose, the Customer's requirements and policies applicable to those premises, as referred to in the previous sub-clause 14.1.

15. ICT THREATS AND MALICIOUS SOFTWARE

- 15.1 The Supplier must not:
 - 15.1.1 introduce or permit the introduction into the State's ICT Infrastructure or a Customer's ICT Infrastructure of any software, including, but not limited to, Malicious Software, unless its introduction has been authorised in writing by the State or a Customer; or
 - 15.1.2 undertake, facilitate or permit any unauthorised communication with the State's ICT Infrastructure or a Customer's ICT Infrastructure that has the effect or purpose of disrupting, damaging or degrading the performance of that infrastructure, for example a "denial of service attack".
- 15.2 The Supplier must indemnify the State and Customer's in respect of all loss, damage, claims and expenses arising from a breach of sub-clause 15.1.
- 15.3 The Supplier is not required to indemnify the State under sub-clause 15.2 if the Supplier can demonstrate that in respect of the breach it:
 - 15.3.1 exercised all reasonable care;
 - 15.3.2 implemented appropriate security and protection measures, including suitable anti-virus and threat management software; and
 - 15.3.3 promptly applied all updates and virus signatures for its anti-virus and threat management software.

16. DOCUMENTATION

- 16.1 If requested, the Supplier must provide to the State and a Customer on demand and at no cost, a copy of all and any Documentation.
 - 16.2 The Supplier must provide Documentation in printed or electronic format (or both) as specified by the State or Customer.
 - 16.3 The Supplier grants to the State a perpetual, royalty free, non-exclusive, irrevocable licence to access, use, copy and distribute the Documentation.
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17. **POLICIES, STANDARDS AND OTHER REQUIREMENTS**

- 17.1 The Supplier must comply with the Policies, Standards, guidelines and other requirements set out in the Schedules and a CA Memorandum (if any).
- 17.2 The Supplier must notify the State's Principal Contract Administrator of any Customer Agreement proposed by a Customer the substance of which may give rise to a potential breach of any of the Policies, Standards, guidelines and other requirements set out in Schedule 7.

18. **PRICE**

- 18.1 The Prices set out in or determined in accordance with Schedule 9 apply to the provision of the Deliverables, except to the extent otherwise provided in a Customer Agreement.

Prices and Contract Levy

- 18.2 In all pricing and quotes for pricing provided by the Supplier to a Customer, the Contract Levy payable by a Customer to the Supplier is to be shown as an additional item and then be included in the final listed price for that Customer.

GST Component Payable

- 18.3 In addition to any amount payable by a Customer by reference to the price ("**Base Consideration**"), a Customer must pay to the Supplier an additional amount of consideration ("**GST Consideration**") calculated by multiplying the GST Rate by the Base Consideration. The GST Consideration is payable at the same time and subject to the same conditions as the Base Consideration.

19. **INVOICING AND PAYMENT**

- 19.1 Unless otherwise agreed by the Parties, the Supplier is entitled to invoice Customers on a calendar monthly basis for payment in respect of:
- 19.1.1 a Product, only when the Product has been Accepted by the Customer; and
- 19.1.2 a Service (excluding any service conducted under a Warranty Obligation) when the Service has been provided in accordance with the Customer Agreement.
- 19.2 A Customer does not have to pay a Supplier's invoice unless the invoice is properly rendered. An invoice is properly rendered if it:
- 19.2.1 is issued in respect of a Deliverable for which the Supplier is entitled to invoice under the Customer Agreement;
- 19.2.2 issued in respect of a Service which has been provided by the Supplier to the satisfaction of the Customer;
- 19.2.3 reflects the correct Price for the Deliverable under the Customer Agreement;
- 19.2.4 is a valid Tax Invoice; and
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19.2.5 complies with the requirements stipulated in Schedule 10.

19.3 If a Customer does not dispute the amount of a properly rendered invoice (“**Undisputed Invoice**”), that Customer must pay that amount within thirty (30) days of receiving it.

19.4 If a Customer disputes the amount of an invoice:

19.4.1 the Customer must notify the Supplier of the dispute, and of any amount that is undisputed within thirty (30) days of receiving the invoice;

19.4.2 the Supplier may issue an adjustment note and a further Tax Invoice for the undisputed amount (if any) without prejudice to the Supplier’s claim under the disputed invoice;

19.4.3 if the Supplier issues a Tax Invoice for the undisputed amount the Customer must pay that amount within thirty (30) days of receipt of the invoice; and

19.4.4 the Parties must seek to resolve the dispute in accordance with the Dispute Resolution Procedure.

19.5 For the purposes of a disputed invoice under clause 19.4 only, the Party to whom an amount is properly payable and not paid will be entitled to claim interest at the Prescribed Rate from the day the amount is due until the day it is paid.

Recovery of Under-Payment or Over-Payment

19.6 If the Supplier’s Tax Invoice claims more payment than is properly due (whether by reason of miscalculation or for any other reason and howsoever discovered including by way of an audit), even though the Customer pays the full amount and does not dispute it, the Supplier must refund to that Customer the amount of any errors in the Supplier’s favour together with interest at the Prescribed Rate (or at the Customer’s option have the excess amount and interest set off against future payments).

19.7 If a Supplier’s Tax Invoice claims less payment than is properly due (whether by reason of miscalculation or for any other reason and howsoever discovered including by way of an audit) then subject to the Supplier providing an appropriate Tax Invoice for that amount, the Customer must pay that amount to the Supplier.

19.8 A claim by either Party under the preceding two sub-clauses must be supported by sufficient detail of the incorrect Tax Invoice and the amount that should have been invoiced to substantiate the claim.

20. SOFTWARE

The rights and obligations of the Parties with regard to Software are as set out in Schedule 14.

21. INTELLECTUAL PROPERTY

Mutual Obligation

- 21.1 The Parties agree to perform their respective responsibilities under this Agreement in a manner that does not constitute an Infringement of any Intellectual Property Rights or other proprietary rights of each other, or of any third party.

Indemnity

- 21.2 The Supplier must keep the State indemnified against all costs, expenses and liabilities whatsoever arising out of or in connection with any claim against the State that the performance of obligations under this Agreement by the Supplier Infringes the Intellectual Property Rights of any person except to the extent that the claim arises out of or in connection with the use, in accordance with this Agreement, by the Supplier of software or material provided to the Supplier by or on behalf of the State.
- 21.3 The State must keep the Supplier indemnified against all costs expenses and liabilities whatsoever arising out of or in connection with any claim against the Supplier that the use, in accordance with this Agreement, by the Supplier of software or material provided to the Supplier by or on behalf of the State Infringes the Intellectual Property Rights of any person.
- 21.4 Each Party must keep the other Party indemnified against all costs, expenses and liabilities whatsoever arising out of or in connection with any claim that the performance by the Indemnifying Party of its obligations under this Agreement Infringes the Intellectual Property Rights of any person.
- 21.5 Other rights and obligations of the Parties with regard to Intellectual Property Rights are as set out in Schedule 15.

22. VESTING

- 22.1 Unless an IP Model (as specified in Schedule 15) is nominated in a CA Memorandum:
- 22.1.1 the Intellectual Property Rights in the Contract Work and any embodiment of the Contract Work automatically vest in the Supplier; and
 - 22.1.2 property in any separate physical embodiment of the Contract Work automatically vests in the Supplier.
- 22.2 This Agreement does not vest in the Supplier:
- 22.2.1 Intellectual Property Rights in any Customer's methodologies or other proprietary information in existence at or prior to the date of the Customer Agreement giving rise to the creation of the Contract Work is executed;
 - 22.2.2 Intellectual Property Rights in the Customer's software tools or object libraries whether in existence before or after the date of the Customer Agreement giving rise to the creation of the Contract Work is executed; or
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22.2.3 Intellectual Property Rights in existing publications or other work produced by or on behalf of the Customer prior to or otherwise than in the course of receiving the Deliverables,

collectively **“Customer IP”**.

22.3 To the extent that any Customer IP is incorporated in Contract Work, the Customer grants to the Supplier a non-exclusive, perpetual, irrevocable, world-wide, fee free licence to hold, use, execute, reproduce, upload, display, perform and sublicense such Customer IP as part of the Contract Work, and to alter, enhance and reproduce the Customer IP for use by the Supplier provided that the Supplier may not exploit the Customer’s IP for commercial purposes unless it has obtained the Customer’s prior written consent.

22.4 The Supplier grants to the Customer a non-exclusive, perpetual, irrevocable, world-wide, fee free licence to hold, execute reproduce, upload and display the Contract Work and to obtain, enhance and reproduce the Contract Work for use by the Customer and the State provided that the Customer and the State may not exploit the Contract Work for commercial purposes.

23. **CONFIDENTIALITY**

Confidential Contract Conditions

23.1 Subject to this Agreement, the State, the Customer and the Supplier must keep the Confidential Contract Conditions confidential.

23.2 **“Confidential Information”** means:

23.2.1 **“Disclosed Confidential Information”** meaning information that is disclosed by a Party (**“Discloser”**) to the other Party (**“Recipient”**) that is:

- (a) confidential by its nature or by the circumstances in which it is disclosed; or
- (b) designated by the person who discloses it as confidential; or
- (c) is identified or marked in terms connoting its confidentiality; and

23.2.2 **“Confidential Contract Conditions”** means those terms of this Agreement and a Customer Agreement designated as confidential but does not include information which is or becomes public knowledge other than by a breach of the Agreement.

Disclosed Confidential Information

23.3 The Recipient must keep the Disclosed Confidential Information confidential.

23.4 Subject to this Agreement, the Recipient must only use the Disclosed Confidential Information for:

23.4.1 the purpose of performing its obligations under any Contract Document; and

23.4.2 any other purpose as the Discloser may permit by written notice to the Recipient from time to time in respect of the Disclosed Confidential Information.

23.5 The Recipient must, if required by the Discloser, deliver to the Discloser or destroy any documents containing the Disclosed Confidential Information and must for that purpose use all reasonable efforts to retrieve any document containing Disclosed Confidential Information given to or made by an Authorised Person.

Classified Disclosed Confidential Information

23.6 The State or a Customer may stipulate as a condition of its disclosure of Disclosed Confidential Information that the Supplier must implement specific additional measures ("**Classified Information Measures**") to protect the security of that information, and where this occurs then subject only to any other agreement between the Parties, the Supplier must implement the Classified Information Measures in respect of that information.

Permitted Disclosure of Confidential Information

23.7 Subject to any Classified Information Measures, a Party may disclose the Confidential Information in respect of which the Party has an obligation of confidentiality under this Agreement in the following circumstances:

23.7.1 with the prior written consent of the other Party;

23.7.2 to its employee, consultant, sub-contractor or agent (an "**Authorised Person**");

(a) if the Authorised Person needs to know the Confidential Information for the performance of his or her duties to that Party in relation to this Agreement; and

(b) the Authorised Person is first made aware of the confidential nature of the Confidential Information and the requirement that the Authorised Person treat it confidentially; or

23.7.3 if and to the extent that it is legally compelled to disclose the Confidential Information, or

23.7.4 to a Court, legal advisor or any other party to legal proceedings, for the purposes of it prosecuting or defending any legal proceedings to which the Party is a litigant; or

23.7.5 if it is required to disclose the Confidential Information by the rules of any relevant stock exchange.

Disclosure by the State of Confidential Information

23.8 Notwithstanding anything else in this Agreement, the State or a Customer may disclose Confidential Information to:

23.8.1 Parliament, the Governor, a Minister, Cabinet or a Parliamentary or Cabinet committee or subcommittee of the State of South Australia;

23.8.2 any agency, authority, instrumentality or officer of the State of South Australia to whom it is customary for the State or State Agency to disclose the Confidential Information (whether or not it is legally obliged to do so); or

23.8.3 the Australian Competition and Consumer Commission (“**ACCC**”) if the State reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is Cartel Conduct or unlawful collusion in connection with the supply of Deliverables under the Contract Documents.

Protection of Confidential Information

23.9 When a Party is aware of any steps being taken or considered to legally compel that Party or an Authorised Person of that Party to disclose Confidential Information, it must:

23.9.1 to the extent legally permitted, defer and limit the disclosure with a view to preserving the confidentiality of the Confidential Information as much as possible;

23.9.2 promptly notify the other Party; and

23.9.3 do anything reasonably required by the other Party, including the institution and conduct of legal proceedings at the other Party's direction and expense, to oppose or restrict that disclosure.

23.10 Each Party must do everything reasonably possible to preserve the confidentiality of the Confidential Information.

23.11 A Party must notify the other Party promptly if it is aware of any disclosure of the Confidential Information otherwise than as permitted by this Agreement or with the authority of the other Party.

23.12 Nothing in this clause requires either Party to commit an unlawful act, or expose itself to proceedings for contempt or other lawful penalties.

24. LIABILITY

24.1 Subject to this clause 24, the liability of a Party to another Party for breach of this Agreement or a Customer Agreement (or both) or in tort or for any other common law or statutory cause of action arising under and/or in connection with this Agreement or a Customer Agreement (or both) will be determined in accordance with the laws of the State of South Australia.

24.2 A Customer and the Supplier may agree to limit the liability of either Party arising under clause 24.1 in respect of a particular Customer Agreement to the amount stated in the relevant CA Memorandum and determined in accordance with the table set out in Schedule 13. The limit on liability stipulated in a CA Memorandum applies for the benefit of both Parties in respect of an Occurrence. This limitation does not apply to liability for:

24.2.1 personal injury including sickness and death;

24.2.2 loss of or damage to tangible property;

24.2.3 infringement of Intellectual Property Rights;

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- 24.2.4 any liability to a third party arising from any negligent or wrongful act or omission by a party, its employees, agents or sub-contractors, or arising from any breach of a party's contractual obligations in connection with the Contract Documents
 - 24.2.5 an intentional tort;
 - 24.2.6 breach of trust; or
 - 24.2.7 fraud or dishonesty.
- 24.3 The liability of a Party for loss or damage sustained by the other Party shall be reduced proportionately to the extent that the loss or damage was caused or contributed to by the other Party's failure to comply with its obligations and responsibilities under and/or in connection with a Customer Agreement and/or negligence, unlawful or wilful act or omission of the other Party.
- 24.4 Each Party shall use all reasonable endeavours to mitigate its loss, damage and expenses arising under and/or in connection with a breach of a Customer Agreement or in tort or for any other common law or statutory cause of action arising under and/or in connection with a Customer Agreement.

25. **REMEDIES**

- 25.1 This clause does not exhaustively list remedies.

Service Debits

- 25.2 If the Supplier fails to provide the Deliverables in accordance with the applicable Service Levels specified in Schedule 5 (if any), the Customer Agreement or PIPP or as otherwise agreed between the Customer and the Supplier, the Customer is entitled to Service Debits as set out in Schedule 8.

Resort to Other Supplier

- 25.3 If the Supplier fails to provide a Service to a Customer to the standard required under a Customer Agreement or at all ("**Relevant Service**") and:
- 25.3.1 a Default Notice has been given and the default has not been rectified within twenty (20) Business Days of the Default Notice; or
 - 25.3.2 where the default cannot be rectified within that time, rectification has commenced but has not proceeded to the Customer's reasonable satisfaction with all urgent speed; or
 - 25.3.3 if the standard of performance of the Service or lack of performance of the Service by the Supplier is such that the Customer's financial position is significantly impacted; or
 - 25.3.4 a threat to public health or safety emerges as a result of such failure,

then that Customer may engage another supplier to provide the Relevant Service and, in that event, is not liable to pay to the Supplier charges associated with that Relevant Service.

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- 25.4 If a Customer engages another supplier to provide a Relevant Service pursuant to the preceding sub-clause the Supplier is liable to pay the Customer the reasonably incurred extra costs associated with and resulting from the provision of Relevant Services by that provider.
- 25.5 If a Customer procures services from another supplier where the Supplier is in default, the Supplier must promptly provide such information and assistance as is necessary to enable that other supplier to provide services effectively to the Customer, subject to the execution by the other supplier of a confidentiality agreement reasonably necessary to protect the Supplier's Confidential Information.

26. **DEFAULT AND RECTIFICATION**

- 26.1 Either Party may give to the other a notice ("**Default Notice**") requiring any default under this Agreement or Customer Agreement (as the case may be) to be rectified within a period that must be specified of not less than twenty (20) Business Days of the date of that notice ("**Rectification Period**").
- 26.2 The Party receiving a Default Notice must:
- 26.2.1 rectify that default within the Rectification Period; or
 - 26.2.2 within two (2) Business Days of receipt of a Default Notice advise the other in writing that it does not agree that a default has occurred, and pursue the Dispute Resolution Procedure.

Demands for Money

- 26.3 Either Party ("**Claimant**") may give to the other a notice demanding the payment of any money payable by the other Party to the Claimant and due but unpaid ("**Demand Notice**").
- 26.4 The Party receiving a Demand Notice must either:
- 26.4.1 if the money is acknowledged to be payable, pay it within ten (10) Business Days; or
 - 26.4.2 if liability to pay is disputed, promptly advise the other in writing that it does not acknowledge that the money is payable, and pursue the Dispute Resolution Procedure.

Escalation

- 26.5 The Supplier acknowledges that a Customer may refer to the State the matter of a Default Notice or Demand Notice issued by that Customer and not complied with by the Supplier.

Making Good Default

- 26.6 If the Supplier fails to perform an obligation under this Agreement or a Customer Agreement the State or Customer (as the case may be) may, without being obliged to, perform the obligation and claim the cost of so doing from the Supplier.
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Set-Off

- 26.7 Either Party may set off against money due and payable by that Party to the other Party any moneys which are due from the other Party that have not been paid.

Remedies Concurrent

- 26.8 Each Party's remedies under this Agreement are concurrent unless otherwise specified.

27. ADMINISTRATION AND SUPPLIER PERSONNEL

Supplier Personnel

- 27.1 At the commencement date of a Customer Agreement, the Supplier must supply to the Customer's Customer Agreement Administrator the:

- 27.1.1 full name;
- 27.1.2 job title;
- 27.1.3 description of job function and the nature of access required; and
- 27.1.4 such other information as may be reasonably requested by the Customer from time to time (other than such information which would cause a breach of confidentiality obligations as between the Supplier and the Supplier Personnel),

of all Supplier Personnel who will be engaged to provide the Services, or to undertake any task for the purposes of a Customer Agreement that requires access to Customers' premises ("**Supplier Designated Personnel**"), and must provide revisions to those details promptly upon any change in the Supplier Designated Personnel.

- 27.2 The Customer may require that Supplier Designated Personnel undergo security clearance at any level (up to Negative Vetting Level 2) under the Customer's auspices. If the Supplier Designated Personnel do not undergo or do not meet the clearance requirements, the Supplier must not, except to the extent explicitly authorised by the Customer, permit the Supplier Personnel ("**Uncleared Personnel**") to have access to the State's ICT Infrastructure or to the Customer's premises.
- 27.3 If necessary, the Supplier must engage alternative personnel with requisite knowledge and expertise who can meet the security clearance requirements pursuant to the preceding sub-clause, enabling the performance of the tasks that were to have been performed by the Uncleared Personnel.
- 27.4 If required by a Customer, the Supplier must obtain from nominated Supplier Personnel:
- 27.4.1 a deed of confidentiality in the form of acceptable to the Customer; and
 - 27.4.2 any consents and information required by the Customer to enable the Customer to establish, at the Customer's sole discretion, that
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any of the Supplier's Personnel are suitable persons to provide the Services.

- 27.5 A Customer may (but need not) conduct any investigations necessary to ascertain the matters referred to in clause 27.4.2.
- 27.6 If a Customer (in the Customer's sole discretion) forms the view that any of the Supplier's Personnel being an employee is not suitable to provide the Services, the Customer may (at the Customer's absolute discretion and without liability to the Supplier or the relevant employee) direct the Supplier to cease to employ or engage the relevant employee for the purpose of the Services.
- 27.7 The Supplier must notify the Customer immediately that it becomes aware of any information that may affect the Customer's approval of any Supplier Personnel.
- 27.8 Nothing in clauses 27.1 to 27.7 warrant (inclusive) relieves the Supplier of any obligation with respect to its obligations under this Agreement.
- 27.9 The Supplier must minimise Supplier Personnel turnover, particularly in relation to Supplier Personnel who interact with Customer Staff.
- 27.10 If during the term of a Customer Agreement, the Customer believes that the Supplier's Personnel turnover is excessive, the Supplier must on the Customer's request meet with the Customer with a view to addressing the Customer's concern.
- 27.11 A Customer may, after consultation with the Supplier, and on an exception basis, nominate any one or more Supplier Personnel as Key Supplier Personnel if the Customer reasonably believes that because of the particular expertise or experience of that person, the withdrawal of that person from his or her duties in carrying out Services under a Customer Agreement would have a material adverse effect on the provision of the Deliverables.
- 27.12 The Supplier must not without prior consultation with the relevant Customer move, replace or change the duties of Key Supplier Personnel nominated in accordance with the preceding clause.

28. STATE AUDIT

- 28.1 The Supplier must provide the State and any of its auditors and advisers full access from time to time as required by the State to:
 - 28.1.1 any premises (including any premises of the Supplier's sub-contractors) at which or from which the Supplier (or the Supplier's sub-contractor as the case may be) provides the Deliverables; and
 - 28.1.2 all relevant equipment, software, systems, data, accounts, documents, personnel, reports and records (whether prepared by the Supplier or not) relating specifically to the Deliverables,

sufficient to enable the State to audit and verify the Deliverables provided to Customers under the CAs and this Agreement, the charges invoiced by the Supplier, any amounts paid or set off by the Supplier to the credit of Customers or the State, the Contract Levy charged and collected and the State Levy payable and remitted.

28.2 If a State appointed external auditor or advisor requires access for the purposes of an audit, the State must:

28.2.1 give no less than fourteen (14) days' notice to the Supplier; and

28.2.2 ensure that the relevant auditor or advisor enters into a confidentiality undertaking acceptable to the State that obliges the relevant auditor or advisor to keep the Supplier's confidential information confidential.

28.3 Each Party must be responsible for its own costs associated with an audit under the preceding sub-clause save that if an audit shows an error exceeding 5% or ten thousand dollars (\$10,000) (whichever is less) whether in favour of the Supplier, State or a Customer or Customers in relation to:

28.3.1 the State Levy payable over the period the subject of the audit;

28.3.2 amounts charged in any one invoice;

28.3.3 amounts charged to a Customer over a period of six (6) months; or

28.3.4 amounts charged to a number of Customers over a period of six (6) months,

then the Supplier must pay the State's costs associated with the audit, (including auditor's fees) in addition to refunding to the Customer or Customers the amount of any errors in the Supplier's favour together with interest at the Prescribed Rate.

29. **DISPUTES**

No Legal Proceedings without Dispute Resolution

29.1 Except in a case of genuine urgency where a Party seeks immediate interlocutory relief or an interim remedy, neither Party may take legal proceedings in respect of any dispute in relation to this Agreement without first attempting resolution in accordance with this clause.

Notice

29.2 In the event of a dispute a Party may issue to the other Party a written notice of dispute ("**Dispute Notice**"), describing the issue in dispute and requiring that the process in this clause be followed.

29.3 Each Party must record in sufficient detail the nature and scope of the dispute, and the issues raised by it, in writing and submit the record to the other Party.

29.4 The Parties must meet and attempt to resolve the dispute as soon as practicable.

Principal Contract Administrators

29.5 If the Parties up to this point are not represented in the Dispute Resolution Procedure by their Principal Contract Administrators, and if they are unable to resolve the dispute within twenty (20) Business Days of the Dispute Notice, then (unless they agree to an extension of that time), each of them

must prepare a written record of the attempts to settle the dispute and refer that record:

29.5.1 in the case of the State or a Customer, to the State's Principal Contract Administrator; and

29.5.2 in the case of the Supplier, to the Supplier's Principal Contract Administrator,

within a further twenty (20) Business Days.

29.6 Each Party must sufficiently brief its Principal Contract Administrator so that the Principal Contract Administrators are able to meet to endeavour to resolve the dispute without detailed reference to another party within ten (10) Business Days or a longer period if agreed between the Parties. In doing so, a Principal Contract Administrator may be supported (at its election) by legal, financial, technical or other experts.

30. **DISPUTE RESOLUTION INVOLVING OTHER SUPPLIERS**

30.1 The Deliverables supplied by the Supplier may interact in some way with products or services supplied by another supplier to the Customer. If a problem occurs, a situation may arise where there is difficulty identifying whether the problem exists because of the Deliverables, or in the product or service of another supplier.

30.2 If the Customer requires it, the Supplier must engage in a multi-supplier discussion. A **"multi-supplier discussion"** is a discussion between the Supplier and the other supplier or suppliers, in an effort to:

30.2.1 determine the cause or causes of the problem, or determine a course of action that will assist in identifying the cause or causes of the problem; and

30.2.2 determine a course of action to resolve the problem.

30.3 The Customer may at its discretion participate in or facilitate or observe the multi-supplier discussion, or may choose to be absent.

31. **INDEMNITY AGAINST THIRD PARTY CLAIMS**

Each Party must indemnify the other Party for all costs reasonably incurred by the Indemnified Party in respect of any claim or legal proceedings against the Indemnified Party by a third party arising out of any wilful, unlawful or negligent act or omission of the Indemnifying Party.

32. **INDEMNITY PROCEDURES**

Notice of Claim

32.1 Promptly after receipt by the Indemnified Party of notice of the commencement (or threatened commencement) of any civil, criminal, administrative or investigative action or proceeding involving a claim for which it will seek indemnification from the Indemnifying Party, the Indemnified Party must notify the Indemnifying Party in writing that it is obliged to provide indemnification of the claim. A failure by the Indemnified Party to so notify the Indemnifying Party does not relieve the Indemnifying Party of its obligations under this Agreement except to the extent that it can

demonstrate to the reasonable satisfaction of the Indemnified Party that damages are attributable to such failure to notify.

Control by Indemnifying Party

32.2 The Indemnifying Party is entitled to have sole control over the defence and settlement of such claim but:

32.2.1 the Indemnified Party must provide reasonable assistance to the Indemnifying Party in respect of such claim and may participate in the defence of such claim and employ (at its cost) its own counsel to assist in the handling of that claim; and

32.2.2 the Indemnifying Party must obtain the prior written approval of the Indemnified Party before entering into any settlement of such claim or ceasing to defend against such claim if such settlement or cessation would cause injunctive or other equitable relief to be imposed against the Indemnified Party.

32.3 Any indemnity as to legal costs applies only until assumption of the defence of the claim by the Indemnifying Party.

Reduced Contribution

32.4 Each Party's indemnity obligations under this Agreement must be reduced proportionately by the extent to which the Indemnified Party's act or omission contributed to the claim.

33. SUB-CONTRACTING

33.1 The Supplier must not without prior written consent of the State or a Customer in respect to a Customer Agreement (as the case may be), sub-contract the whole or any part of its obligations under this Agreement or a respective Customer Agreement (as the case may be) to a sub-contractor.

33.2 The Supplier will not be relieved of any of its liabilities or obligations under this Agreement or any Customer Agreement by entering into a sub-contract and the Supplier will be liable for the acts, defaults and neglects of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts, defaults or neglects of the Supplier or the employees or agents of the Supplier.

33.3 The Supplier must ensure that each sub-contractor is suitably qualified and accredited to carry out the obligations required pursuant to this Agreement or any Customer Agreement that is to be sub-contracted.

34. RELATIONSHIP BETWEEN THE PARTIES

34.1 Nothing in this Agreement constitutes any relationship of employer and employee or partnership between the Parties.

34.2 Neither Party has any authority to bind the other Party in any manner without the prior consent of the other Party.

34.3 The Customer has no obligations to the Supplier's Personnel.

34.4 The Supplier must pay all remuneration claims and other entitlements payable to the Supplier's Personnel.

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- 34.5 The Supplier is responsible for complying with the requirements of the *Income Tax Assessment Act 1997 (Cth)*, in respect of the Supplier's employees and the Customer is not required to make PAYG deductions from the Price.

35. **CHANGE OF CONTROL**

- 35.1 The Supplier must, to the extent permitted by law, notify the State (in writing) of any proposed Change of Control of the Supplier.
- 35.2 The Supplier must notify the State (in writing) as soon as legally permissible of any actual Change of Control of the Supplier (regardless of whether notice of the proposed change has been given under the preceding sub-clause).

36. **NO REPRESENTATIONS**

To the maximum extent permitted by law and unless specifically stated in this Agreement, the Supplier acknowledges and agrees that no representation, warranty, guarantee or other statement, express or implied, was made or given to the Supplier by the State or any Customer prior to entering into this Agreement (or any Customer Agreement as the case may be) as to:

- 36.1 the value or volume of Deliverables which the Supplier would be required to provide; or
- 36.2 any other benefits which the Supplier might enjoy as a result of entering into this Agreement.

37. **APPLICABLE LAW**

This Agreement and any Customer Agreement are subject to the laws applicable in the State of South Australia.

38. **LEGAL COMPLIANCE**

- 38.1 The Supplier must comply with the requirements of all Laws in respect to this Agreement and any Customer Agreement.
- 38.2 The Supplier must hold and comply with all licences, authorities, approvals and consents required for the lawful performance of its obligations under this Agreement and any Customer Agreement.

39. **JURISDICTION OF COURTS**

- 39.1 The courts of South Australia have exclusive jurisdiction to determine any proceeding in relation to this Agreement and any Customer Agreement.
- 39.2 Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.

40. **ASSIGNMENT**

- 40.1 Neither Party may assign the whole or part of this Agreement or any Customer Agreement without the other Party's prior written consent, which may be granted or withheld at its unfettered discretion.
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- 40.2 Notwithstanding the preceding sub-clause, it is acknowledged that the rights and liabilities of Ministers of the Crown may be transferred by operation of law under the *Administrative Arrangements Act 1994* (SA).

41. WAIVER

- 41.1 The failure of either Party to enforce this Agreement or any Customer Agreement will in no way be interpreted as a waiver of its rights under this Agreement or any Customer Agreement.
- 41.2 A waiver by a Party of its rights under this Agreement or any Customer Agreement is effective only if it is given expressly in writing signed by that Party, and only to the extent expressed in writing.

42. READING DOWN AND SEVERANCE

In the event that any provision or portion of any provision of this Agreement is held to be unenforceable or invalid by a Court of competent jurisdiction the validity and enforceability of the remaining provisions or portions of such provisions of this Agreement or any Customer Agreement (as the case may be) shall not be adversely affected. The offending provision or part of a provision shall be read down to the extent necessary to give it legal effect, or shall be severed if it cannot be read down, and the remaining part and provisions of this Agreement or any Customer Agreement (as the case may be) shall remain in full force and effect.

43. NOTICES

- 43.1 In relation to this Agreement, a notice or other communication is properly given or served if the Party delivers it by hand, posts it or transmits it by electronic mail or facsimile, to the Principal Contract Administrator of the other Party.
- 43.2 In relation to a Customer Agreement, a notice or other communication is properly given or served if the Party delivers it by hand, posts it or transmits it by electronic mail or facsimile, to the address of the Customer Agreement Administrator of the other Party. The initial address of each Party's Customer Agreement Administrator is designated in the CA Memorandum relative to that Customer Agreement.

Change of Address

- 43.3 Each Party must advise the other of any change in the address of its Principal Contract Administrator and any currently appointed Customer Agreement Administrator.

Receipt of Communications

- 43.4 A notice or other communication is taken to be received if:
- 43.4.1 sent by post, at the time it would have been delivered in the ordinary course of the post to the address to which it was sent;
 - 43.4.2 sent by facsimile or electronic mail or other electronic means, only in the event that the other Party acknowledges receipt by any means; or
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- 43.4.3 delivered by hand, the Party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service.

44. PUBLICITY

- 44.1 The Supplier must not make, or permit to be made, a public announcement or media release about any aspect of any Contract Document unless:
- 44.1.1 the State first gives its consent in writing to the Supplier;
 - 44.1.2 the announcement is required by law or the requirements of a relevant stock exchange; or
 - 44.1.3 the announcement is limited to information already in the public domain.

45. INSURANCE REQUIREMENTS

Minimum Insurance Requirements

- 45.1 The Supplier will maintain in force at its own expense during the Term:
- 45.1.1 'Public and Products' liability insurance in the name of the Supplier for not less than Ten Million Dollars (\$10,000,000) for any one event (and in the aggregate for 'Products Liability' in any one policy period) or such other amount as the State may reasonably require; and;
 - 45.1.2 'Professional Indemnity' insurance in the name of the Supplier for not less than Five Million Dollars (\$5,000,000) for any one event and in the aggregate in any one policy period or such other amount as the State may reasonably require; and
 - 45.1.3 'Workers Compensation' insurance in accordance with the applicable worker's compensation legislation.

State's Disclaimer and Supplier's Acknowledgement

- 45.2 The State acknowledges that it has made an assessment for its own purposes of the adequacy of the Supplier's Insurance, but the State accepts no responsibility and disclaims any representation as to the adequacy of the Supplier's Insurance for any purpose. The Supplier acknowledges it is the Supplier's responsibility to assess and consider the risks and scope of insurances it may require.

Supplier's Obligation to Maintain Supplier's Insurance

- 45.3 The Supplier must not permit any change (other than an increase in cover) to Supplier's Insurance without the prior written approval of the State.
- 45.4 The Supplier will ensure that the insurance policy referred to in clause 45.1.2 is renewed and maintained for a period of not less than four (4) years from the date of expiration or earlier termination of this Agreement
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Review of Supplier's Insurance

- 45.5 The State may require a review of the Supplier's Insurance whenever reasonably required by the State, having regard to the nature and extent of business conducted by the Supplier under any Contract Documents.
- 45.6 The Parties acknowledge that following a review of the Supplier's Insurance, they may agree on changes to the Supplier's Insurance and to amend this Agreement accordingly.

Evidence of Insurance

- 45.7 The Supplier must promptly on request produce to the State, or any Customer, satisfactory evidence that Supplier's Insurance has been maintained and is current, or that the Supplier continues to be an insured under a particular insurance policy.
- 45.8 The Supplier must immediately advise the State and all Customers if at any time during the Term the Supplier ceases to be an insured under an insurance policy as required in this clause, whether through cancellation, lapse or otherwise.

State may take out Insurance

- 45.9 If the Supplier fails to maintain the Supplier's Insurance, then the State may, without being obliged to and without limiting any other rights in respect of the breach, take out insurance policies in the name of the Supplier sufficient to give coverage equivalent to that provided by the Supplier's Insurance, and the cost of so doing is a debt due from the Supplier to the State.

Insurance Requirements for Customer Agreements

- 45.10 Subject to clause 45.11.2, the Supplier's Insurance are deemed to be incorporated into each Customer Agreement.
- 45.11 In addition to the Supplier's Insurance, a Customer may specify in its CA Memorandum that the Supplier must, at its own expense, be insured under and remain the beneficiary of or arrange and maintain:
- 45.11.1 additional insurance policies; and/or
- 45.11.2 an increased level of cover under an existing policy,
- for the term of the Customer Agreement, or such other period specified in the CA Memorandum.

46. SECURITY - FINANCIAL UNDERTAKING

- 46.1 A Customer may, with the approval of the State's Principal Contract Administrator, require the Supplier to arrange for a bank or financial institution (acceptable to the Customer) to give the Customer an unconditional and irrevocable financial undertaking in the form and for the amount required by the Customer ("**Financial Undertaking**"). Any requirement for a Financial Undertaking must be specified in the relevant CA Memorandum.
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- 46.2 The Supplier shall ensure that the Financial Undertaking is delivered to the Customer within five (5) Business Days of the establishment of the Customer Agreement to which it relates, unless otherwise agreed between the Parties.
- 46.3 The Financial Undertaking shall be held as security for the due and proper performance of all the obligations of the Supplier under the relevant Customer Agreement.
- 46.4 The Supplier must not take, nor is it entitled to take, any action or proceeding to obtain an injunction or otherwise prevent the Customer from making a claim or receiving a payment under a Financial Undertaking.

Costs of Financial Undertaking

- 46.5 All charges incurred in obtaining and maintaining the Financial Undertaking must be borne by the Supplier.

Disclosure to Customer

- 46.6 The Supplier must disclose details of any relevant Financial Undertaking in place to a Customer upon request.

Lapse of Security

- 46.7 The Supplier must advise the State and any Customers (as soon as practicable and in any event within five (5) Business Days) if, at any time during the Term, a Financial Undertaking required by this clause ceases to have effect for any reason.

Discharge of Security

- 46.8 The State must consent to the discharge of a Financial Undertaking if, at any time following the termination or expiry of the relevant Customer Agreement, the Supplier can demonstrate to the Customer's reasonable satisfaction that there is no basis for any claim to be made against the Financial Undertaking in the future.

Exercising Rights to Security

- 46.9 If the Supplier commits any breach of a Customer Agreement to which a Financial Undertaking relates and the Supplier fails to comply with a Default Notice or a Demand Notice, then the Customer is entitled to exercise its rights in relation to the Financial Undertaking.
- 46.10 If a Customer is entitled to exercise its rights in relation to a Financial Undertaking, it may require payment under the Financial Undertaking to the extent it considers necessary to rectify the relevant breach and to cover any liability of the Supplier to Customers in respect of that breach.

Effect of Dispute Resolution Procedure

- 46.11 The State's entitlement to exercise its rights in relation to a Financial Undertaking is not subject to any impediment by reason of the fact that the Parties are engaged in a Dispute Resolution Procedure.
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47. UNFORESEEN EVENT

Definition

47.1 “**Unforeseen Event**” means an event or circumstance which prevents a Party from complying with any of its obligations under this Agreement or any Customer Agreement (as the case may be) and which that Party:

47.1.1 did not cause;

47.1.2 cannot control or influence; and

47.1.3 cannot prevent or avoid through prudent management processes, policies and precautions, including the use of alternative resources, the procuring of services from another source, and work around plans.

47.2 An Unforeseen Event includes:

47.2.1 fire, flood, earthquake, elements of nature, acts of God, malicious damage, explosion, sabotage, riot, civil disorder, rebellion or revolution in Australia;

47.2.2 any change of law which makes compliance with the affected Party's obligations under this Agreement illegal; and

47.2.3 other event or state of affairs which is outside of the control of a Party or which would be an event of frustration at law.

Unforeseen Event

47.3 The affected Party's rights and obligations directly affected by the Unforeseen Event and any corresponding entitlement of the other Party will be suspended to the extent and for so long as the performance of the affected Party's rights and obligations are prevented or delayed by the Unforeseen Event.

47.4 The affected Party must notify the other Party if the Unforeseen Event is preventing it from complying with any of its obligations as soon as it becomes aware of the Unforeseen Event.

47.5 The affected Party must:

47.5.1 use its best endeavours to work around or overcome the effect of the Unforeseen Event;

47.5.2 keep the other Party informed of the continuation and expected duration of the Unforeseen Event and of measures taken to comply with this clause; and

47.5.3 recommence performance of its obligations as soon as possible without delay after the Unforeseen Event has ceased to exist.

47.6 If the affected Party is materially unable to perform its obligations under this Agreement or any Customer Agreement (as the case may be) by reason of an Unforeseen Event for a continuous period of three (3) months or a culminated period of six (6) months, then the other Party may terminate this

Agreement or any Customer Agreement (as the case may be) by written notice without prejudice to the terminating Party.

48. PROBITY

Incentive

- 48.1 In performing its obligations under any Contract Document, the Supplier must not, in the State's reasonable opinion act improperly including:
- 48.1.1 offer an Incentive to any person involved in the establishment of this Agreement on behalf of the State until the expiry of twelve (12) months from the Commencement Date;
 - 48.1.2 offer an Incentive to any person involved in the procurement of Deliverables to Customers under any Contract Document during the Term;
 - 48.1.3 engage in any practice such as collusion with other potential competitors, secret commission or any other deceptive practice;
 - 48.1.4 submit a Declaration in Relation to Unlawful Collusion which is found to be false in any particular; or
 - 48.1.5 engage in any practice that would give the Supplier an improper advantage over competitors.

No Conflict

- 48.2 At the Commencement Date, the Supplier warrants that it is not aware of any conflict of interest (or potential conflict of interest) that would preclude it from properly performing its obligations under any Contract Document.
- 48.3 The Supplier must disclose to the State in writing, all actual and potential conflicts of interest that exist or arise (either for the Supplier or Supplier Personnel) in the course of performing its obligations under any Contract Document as soon as practical after it becomes aware of that conflict.

Probity

- 48.4 In performing its obligations under any Contract Document, the Supplier must not be a party to any act or thing which, in the State's reasonable opinion:
- 48.4.1 is prejudicial to the goodwill, reputation or overall public image of the State or any State Agency; or
 - 48.4.2 puts at risk the probity of any transaction conducted under any Contract Document.
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SCHEDULE 2

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Agreement and in any Customer Agreement made under this Agreement:

- 1.1 **“Accept”** or **“Acceptance”** means when acceptance by the Customer of a Deliverable occurs, which shall be:
 - 1.1.1 where the Customer requires that the Supplier undertake Acceptance Testing, when the Acceptance Testing has been completed and the results have been provided to the Customer in accordance with clause 7 of Schedule 5; or
 - 1.1.2 where the Customer undertakes its own Acceptance Testing, the period specified in clause 7 of Schedule 5; or
 - 1.1.3 where the Customer has required installation services, the date on which the Customer advises the Supplier that the Deliverable has been satisfactorily installed; or
 - 1.1.4 where no Acceptance Testing or installation services are required, then the date which is two (2) Business Days after the Deliverable is delivered to the Customer or commissioned for use by the Customer unless within those two (2) Business Days the Customer has Rejected the Product;
- 1.2 **“Acceptance Certificate”** means written acknowledgement by a Customer that signifies Acceptance has occurred;
- 1.3 **“Acceptance Date”** means the date Acceptance occurs in accordance with a Customer Agreement (if any);
- 1.4 **“Acceptance Test Data”** means the data (provided by a Customer to the Supplier) which is reasonably representative of the data to be processed by a Deliverable;
- 1.5 **“Acceptance Testing”** means the standard acceptance testing requirements detailed in clause 7 of Schedule 5;
- 1.6 **“Agreement”** means this agreement and all schedules, annexures, exhibits and any attachments;
- 1.7 **“Authorised Person”** has the meaning set out in clause 23.7.2 of Schedule 1;
- 1.8 **“Business Day”** means any day that is not a Saturday or a Sunday or a public holiday in South Australia;

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- 1.9 **“CA Memorandum”** is the document required to form a Customer Agreement as set out in Schedule 18 and includes the totality of all commercial, technical and operational specifications and requirements detailed (or referenced) in that document;
- 1.10 **“Cartel Conduct”** means conduct by two or more parties who are competitors (or would be but for the conduct) who enter into a contract, arrangement or understanding that involves price fixing, output restrictions, allocating customers, suppliers or territories, or bid-rigging, as defined in s44ZZRD of the *Competition and Consumer Act 2010 (Cth)*;
- 1.11 **“Change of Control”** means, in relation to a corporation, that the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect, including through one or more entities):
- 1.11.1 to control more than half of the voting power of the corporation;
 - 1.11.2 to control the composition of the board of directors or the corporation; or
 - 1.11.3 to control more than half of the issued share capital of the corporation excluding any part thereof which carries no right to participate beyond a specified amount in the distribution of either profit or capital,
- resides with a person other than those holding that power on the Commencement Date;
- 1.12 **“Claimant”** has the meaning as set out in clause 26.3 of Schedule 1;
- 1.13 **“Commencement Date”** has the meaning set out in clause 4 of Schedule 1;
- 1.14 **“Confidential Contract Conditions”**, for the purposes of:
- 1.14.1 this Agreement, are the terms and conditions of this Agreement appearing in Schedule 16; and
 - 1.14.2 a Customer Agreement, means those terms of the Customer Agreement designated as confidential by the Parties in the CA Memorandum;
- 1.15 **“Confidential Information”** means Disclosed Confidential Information and Confidential Contract Conditions but does not include information which is or becomes public knowledge other than by breach of this Agreement or a Customer Agreement (as the case may be) or the contents of this Agreement (other than those contents designated in Schedule 16 or a CA Memorandum);
- 1.16 **“Contract Document”** means this Agreement and any Customer Agreement made under this Agreement including:
- 1.16.1 all respective schedules, annexures, attachments and exhibits; and
 - 1.16.2 all documents incorporated by reference together with their respective schedules, annexures, attachments and exhibits;

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- 1.17 **“Contract Levy”** has the meaning as set out in clause 1.3 of Schedule 4;
- 1.18 **“Contract Work”** means any work (as defined in the *Copyright Act 1968 (Cth)*) produced by the Supplier in the course of and for the purposes of this Agreement, including any Customer Agreement;
- 1.19 **“Contracting and Official Records Standard”** means the standard relating to records management issued by the Manager (Director), State Records pursuant to section 14(1) of the *State Records Act 1997 (SA)* as amended from time to time, a copy of which can be found at:
http://government.archives.sa.gov.au/sites/default/files/20111202%20Contracting%20and%20Official%20Records%20Standard%20Final%20V1.2_Copy.pdf;
- 1.20 **“Customer”** means a State Agency that has entered into a Customer Agreement with the Supplier;
- 1.21 **“Customer Agreement”** or **“CA”** means an agreement between a State Agency and the Supplier entered into pursuant to this Agreement and includes the CA Memorandum giving rise to the Customer Agreement;
- 1.22 **“Customer Agreement Administrator”** in respect of a Customer Agreement means the person appointed as such by each of the Supplier and the Customer in respect of that agreement;
- 1.23 **“Customer’s Data”** means data belonging to the Customer and third parties including call data, billing data and records and other information generated, collected or stored by the Supplier in whatever form that information may exist;
- 1.24 **“Customer’s ICT Infrastructure”** means the computing and communications infrastructure owned or used by the Customer;
- 1.25 **“Customer’s Staff”** means all persons representing the Customer including without limitation, the Customer’s officers, employees, agents and sub-contractors (and their staff);
- 1.26 **“Customer Supplied Items”** or **“CSI”** means the items supplied by the Customer under a Customer Agreement and set out in a CA Memorandum;
- 1.27 **“Data Services”** means those Services more particularly described in clause 14 of Schedule 5 and any other services incidental to those Services;
- 1.28 **“Declaration in Relation to Unlawful Collusion”** means a declaration in relation to unlawful collusion submitted by the Supplier;
- 1.28.1 to the State in the procurement process preceding this Agreement; or;
- 1.28.2 to a Customer in respect to any procurement process preceding the supply of Deliverables under a Customer Agreement;
- 1.29 **“Default Notice”** means a notice issued under clause 26 of Schedule 1;
- 1.30 **“Defect”** or **“Defective”** means a Deliverable that:
- 1.30.1 is a Product and is delivered in a damaged condition;

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- 1.30.2 does not comply with the requirements specified in a Customer Agreement;
 - 1.30.3 does not operate in accordance with the Specifications or other requirements of this Agreement or a Customer Agreement;
 - 1.30.4 deteriorates in performance (other than what would be reasonably expected from normal usage and the passage of time) from the level of performance available at the time it is installed; or
 - 1.30.5 is otherwise faulty in any way;
- 1.31 **“Deliver”** or **“Delivered”** or **“Delivery”** means to deliver a Product or provision a Service to (or at) the Delivery Point;
- 1.32 **“Deliverables”** means Products, Software or Services (or a combination of them) provided by the Supplier to Customers under this Agreement and any Customer Agreement;
- 1.33 **“Delivered Date”** means the date a Deliverable is Delivered;
- 1.34 **“Delivery Point”** means the location (if any) at which the Deliverables are to be Delivered as specified in a CA Memorandum;
- 1.35 **“Demand Notice”** means a notice issued under clause 26.3 of Schedule 1;
- 1.36 **“Designated Operating Environment”** means the particular hardware and software environment in which the Licensed Software or Developed Software, as the case may be, is designed to be used, which environment is specified in a CA Memorandum;
- 1.37 **“Design Specification”** means the Specification to be provided in accordance with clauses 11.7 to 11.12 (inclusive) of Schedule 5;
- 1.38 **“Developed Software”** means:
- 1.38.1 software code that is to be developed; and/or
 - 1.38.2 the customised or modified parts of the Licensed Software that is to be customised or modified (except for minor customised or modified parts),
- as detailed in a Customer Agreement;
- 1.39 **“Disclosed Confidential Information”** meaning information that is disclosed by a Party (**“Discloser”**) to the other Party (**“Recipient”**) that is:
- 1.39.1 confidential by its nature or by the circumstances in which it is disclosed; or
 - 1.39.2 designated by the person who discloses it as confidential; or
 - 1.39.3 is identified or marked in terms connoting its confidentiality;
- but does not include information which is or becomes public knowledge other than by a breach of this Agreement or a Customer Agreement; or the contents of this Agreement or a Customer Agreement;

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- 1.40 **“Dispute Notice”** means a notice issued under clause 29.2 of Schedule 1;
- 1.41 **“Dispute Resolution Procedure”** the procedure contemplated in clause 29 of Schedule 1;
- 1.42 **“Documentation”** means the documentation used by the Supplier for the purpose of providing the Deliverables to Customers and includes:
- 1.42.1 user manuals comprising details regarding the operation, functionality and proper use of Products;
 - 1.42.2 technical reference materials containing information about the specification and configuration of the Products;
 - 1.42.3 licence certificates for any Software supplied by the Supplier; and
 - 1.42.4 any other materials that the Supplier would normally provide to its customers acquiring the same or similar Products or Services;
- 1.43 **“Employment Contribution Test”** has the meaning ascribed to that term in the South Australian Industry Participation Policy;
- 1.44 **“eProjects Plus Panel”** has the meaning set out in clause 1.1 of Schedule 1;
- 1.45 **“GST”** means the tax imposed by the GST Law;
- 1.46 **“GST Consideration”** means an amount payable by a Party in addition to an amount otherwise payable under this Agreement (for instance the Price or price for Deliverables payable by a Customer) (defined as “Base Consideration” for the purposes of distinguishing it from the GST Consideration) calculated by multiplying the GST Rate by the Base Consideration;
- 1.47 **“GST Law”** has the meaning attributed in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- 1.48 **“GST Rate”** is the percentage of the value of a Taxable Supply (as defined in the GST Law) calculated as GST under the GST law;
- 1.49 **“ICT”** means information and communications technology;
- 1.50 **“ICT Project Management Services”** means those Services more particularly described in clause 15 of Schedule 5;
- 1.51 **“Incentive”** means employment or consultancy, any gift, reward, gratuity or other valuable consideration of any kind;
- 1.52 **“Indemnified Party”** means a party that has the benefit of an indemnity under this Agreement or a Customer Agreement;
- 1.53 **“Indemnifying Party”** means a party that gives an indemnity under this Agreement or a Customer Agreement;
- 1.54 **“Industry Participation Advocate”** or **“IPA”** means the person who from time to time has been appointed to the position of ‘Industry Participation Advocate’ within the ‘Office of the Industry Advocate’ or his or her successor;

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- 1.55 **“Information Privacy Principles”** or **“IPPS”** means those ‘Principles’ more particularly described in the State’s ‘Information Privacy Principles (IPPS) Instruction’ (as amended from time to time), a copy of the latest instruction may be viewed at:
http://dpc.sa.gov.au/sites/default/files/pubimages/Circulars/PC012_Privacy.pdf;
- 1.56 **“Infringement”** includes unauthorised acts which would, but for the operation of Section 163 of the Patents Act 1990 (Cth), Section 96 of the Designs Act 2003 (Cth) and Section 183 of the Copyright Act 1968 (Cth) constitute an infringement. “Infringe” has a corresponding meaning;
- 1.57 **“Insolvency Event”** in relation to the Supplier means:
- 1.57.1 an administrator is appointed to the Supplier or action is taken to make an appointment;
 - 1.57.2 the Supplier resolves to be wound up;
 - 1.57.3 an application is made to a court for an order or an order is made that the Supplier be wound up (whether on grounds of insolvency or otherwise);
 - 1.57.4 the Supplier ceases to carry on business;
 - 1.57.5 a receiver or a receiver and manager of property of the Supplier is appointed whether by a court or otherwise;
 - 1.57.6 an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Supplier or one of them is appointed, whether or not under an order;
 - 1.57.7 the Supplier enters into a compromise or arrangement with its creditors or a class of them; or
 - 1.57.8 the Supplier is or states that it is unable to pay its debts as and when they fall due;
- 1.58 **“Intellectual Property Model”** or **“IP Model”** means ‘IP Model 1’ or ‘IP Model 2’ as set out in Schedule 15;
- 1.59 **“Intellectual Property Rights”** means any patent, copyright, trademark, trade name, design, trade secret, knowhow, semi-conductor, circuit layout, or other form of intellectual property right whether arising before or after the execution of this Agreement and the right to registration and renewal of those rights;
- 1.60 **“ISMF”** or **“Information Security Management Framework”** means the State Government of South Australia’s ‘Information Security Management Framework’ as updated from time to time, a copy of the current version is available at <http://www.sa.gov.au/policy/ismf>;
- 1.61 **“Key Supplier Personnel”** means the nominated personnel as contemplated under clause 27.11 of Schedule 1. Key Supplier Personnel may be identified in a CA Memorandum;

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- 1.62 **“Laws”** means any legislation, regulation, by-law, ordinance or subordinate legislation in force from time to time in the State of South Australia applicable to the performance of this Agreement;
- 1.63 **“Licence”** means all the necessary licence rights to use the Licensed Software being of the class and nature specified in a CA Memorandum;
- 1.64 **“Licence Period”** means the period of the Licence specified in the CA Memorandum, including any extension of the Licence, or as otherwise agreed between the Customer and the Supplier;
- 1.65 **“Licensed Software”** means any software:
- 1.65.1 specified or referenced in a CA Memorandum and Licensed to the Customer including any Updates or New Releases, modifications, enhancements, Documentation, flow charts, logic diagrams and listings; or
 - 1.65.2 made available by the Supplier as Software-as-a-Service;
- 1.66 **“Malicious Software”** means software designed or intended to cause harm either by damaging or disrupting the performance of the State’s ICT Infrastructure or Customers’ ICT Infrastructure or by transmission of information without the authority of the State or a Customer;
- 1.67 **“Milestone”** means the predetermined task, group of tasks or Deliverable(s) to be supplied or performed by the Supplier under a Customer Agreement;
- 1.68 **“Minister”** means a Minister of the Crown in right of the State of South Australia whether acting as a corporation or not;
- 1.69 **“Negative Vetting Level 2”** means a level where a person can access information or resources classified ‘Protected’, ‘Confidential’, ‘Secret’ and ‘Top Secret’;
- 1.70 **“New Release”** means Software (including the latest current version) which has been produced primarily to extend, alter or improve the Software, as the case may be, by providing additional functionality or performance enhancement (whether or not defects in the Software are also corrected) while still retaining the original designated purpose of the Software;
- 1.71 **“Nominated Agency”** means the State Agency nominated by the State which is to calculate, invoice and receive the State Levy in accordance with Schedule 4;
- 1.72 **“Occurrence”** means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one root cause, as the case may be;
- 1.73 **“Packaged Software”** means Software (being in the nature of ‘shrink wrap’), specified or referenced in a CA Memorandum including any Updates or New Releases, modifications, enhancements, Documentation, flow charts, logic diagrams and listings;
- 1.74 **“Party”** means:

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- 1.74.1 in the context of this Agreement, the State or the Supplier (as the case may be) and **"Parties"** means both the State and the Supplier; and
- 1.74.2 in the context of a Customer Agreement, the relevant Customer or the Supplier (as the case may be) and **"Parties"** means both the Customer and the Supplier;
- 1.75 **"Personal Information"** means information to which the Supplier has access in connection with this Agreement, comprising information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
- 1.76 **"Policies"** means the policies as specified in the Schedules and any Customer specific policies specified in a CA Memorandum;
- 1.77 **"Portal"** means an Internet presence (including one or more websites, systems, processes or other mechanisms) established by the State to facilitate the operation of the eProjects Plus Panel (amongst others);
- 1.78 **"Prescribed Rate"** means the rate of interest that is two percentage points (2%) higher than the "benchmark rate" published by the National Australia Bank Limited (ABN 12 004 044 937), or its successor rate (as nominated by the State);
- 1.79 **"Price"** means the price payable by the Customer for the Deliverables as set out in, or as otherwise determined in accordance with Schedule 9 and specified in a CA Memorandum;
- 1.80 **"Principal Contract Administrator"**, in respect of a Party means the person appointed in respect of that Party from time to time under clause 8 of Schedule 1;
- 1.81 **"Product"** means any ICT hardware (including certain Software related to that hardware) to be supplied by the Supplier and as further described in a CA Memorandum;
- 1.82 **"Project, Implementation and Payment Plan"** or **"PIPP"** means the plan completed by clause 4 of Schedule 5;
- 1.83 **"Rectification Period"** has the meaning set out in clause 26.1 of Schedule 1;
- 1.84 **"Reject"** or **"Rejected"** or **"Rejection"** means where a Customer rejects as deliverable as set out in clause 6.6 of Schedule 5;
- 1.85 **"Relevant Service Level"** has the meaning ascribed to that term in Schedule 8;
- 1.86 **"Report"** means a report required to be submitted to the State or a Customer (as the case may be) by the Supplier as set out in the Schedules or as otherwise agreed between the Parties;
- 1.87 **"Reporting Period"** means each calendar month or other period (or periods) set out in any Schedule during the Term or such other period agreed by the Customer or State (as the case may be) and the Supplier;

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- 1.88 **“Services”** means the services described in Schedule 5;
- 1.89 **“Services Ceiling Price”** means the Price for a Service as listed and published from time to time on the Portal;
- 1.90 **“Service Debits”** means a credit or rebate payable in relation to a failure to meet a Relevant Service Level and as further described in Schedule 8;
- 1.91 **“Service Levels”** means those levels of service designated in or determined in accordance with Schedule 5, a Customer Agreement or a PIPP;
- 1.92 **“Software”** means:
- 1.92.1 in respect of a Product, any software embedded in the Product or other software required to be installed on the Product by the Supplier in terms of a Customer Agreement, and
 - 1.92.2 Licensed Software and Developed Software as the context requires;
- 1.93 **“Software-as-a-Service”** or **“SaaS”** means the provision of a Service that allows a Customer and a Customer’s Staff to access Licensed Software that is made available to that Customer and that Customer’s Staff via Supplier managed infrastructure, computer platforms and software tools on a pay-for-use basis or subscription based on user metrics;
- 1.94 **“Software Development Services”** means the Services described in Schedule 5 and more particularly specified in a Customer Agreement and provided by the Supplier to produce the Developed Software;
- 1.95 **“South Australian Industry Participation Policy”** or **“SAIPP”** means the ‘South Australian Industry Participation Policy’ as updated from time to time, a copy of the current version of that policy is available at: <http://www.dpc.sa.gov.au/office-industry-advocate>;
- 1.96 **“Specifications”** mean the totality of technical or descriptive specifications of functional, operational, performance or other characteristics relating to a Deliverable as specified in:
- 1.96.1 Schedule 5;
 - 1.96.2 Customer Agreements;
 - 1.96.3 CA Memoranda;
 - 1.96.4 Project, Implementation and Payment Plans or
 - 1.96.5 Documentation provided by the Supplier;
- 1.97 **“Stage”** means a Milestone or group of Milestones identified in a PIPP for the performance of a Customer Agreement and “Stage One” refers to the first occurring Stage, “Stage Two” the second Stage and so forth;
- 1.98 **“Standards”** means the standards as specified in Schedule 7;
- 1.99 **“State”** means the Crown in right of the State of South Australia acting through the Minister for the Public Sector;

1.100 **“State Agency”** means:

- 1.100.1 an administrative unit under the *Public Sector Management Act 2009 (SA)* and any statutory authority or other agency or instrumentality of the Crown in right of the State of South Australia subject to direction by a Minister;
- 1.100.2 any other body established for a public purpose subject to direction or control by a Minister;
- 1.100.3 any body required to comply with the requirements of the State Procurement Board under the *State Procurement Act 2004 (SA)*, including any body that is a prescribed public authority; and
- 1.100.4 such other bodies as may be agreed between the Parties;

1.101 **“State Government Critical Information Infrastructure”** or **“SGCII”** has the meaning ascribed to that term in the ISMF and the guidelines to the ISMF copies of which may be found at <http://www.sa.gov.au/policy/ismf>;

1.102 **“State’s Data”** has the meaning as set out in clause 8.1.1 of Schedule 11;

1.103 **“State’s ICT Infrastructure”** means the computing and communications infrastructure owned or used by the State or a Customer;

1.104 **“State Levy”** has the meaning as set out in clause 1.1 of Schedule 4;

1.105 **“Supplier”** means the person identified as the “Supplier” on page 1 of this Agreement;

1.106 **“Supplier’s Industry Participation Plan”** means a plan produced by the Supplier as contemplated by the South Australian Industry Development Policy;

1.107 **“Supplier’s Insurance”** means the supplier’s insurance policies set out in clause 45.1 of Schedule 1;

1.108 **“Supplier Personnel”** means all persons representing the Supplier under the Contract Documents including without limitation, the Supplier’s officers, employees, agents and sub-contractors (and their staff);

1.109 **“System”** means:

- 1.109.1 a Customer’s group of operationally related Products and Software agreed between the Parties and specified in a CA Memorandum; and/or
- 1.109.2 the Products, Software or Services (or a combination of them) the Supplier is to supply to a Customer, which integrates with the CSI, if any, in accordance with the Specifications,

which configuration represents the operational system intended to meet the Customer’s processing requirements;

1.1 **“System Integration Services”** means those Services more particularly described in clause 13 of Schedule 5;

1.110 **“Tax Invoice”** has the meaning attributed in the GST law;

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- 1.111 **“Term”** has the meaning ascribed in clause 5 of Schedule 1;
- 1.112 **“Undisputed Invoice”** has the meaning as set out in clause 19.3 of Schedule 1;
- 1.113 **“Unforeseen Event”** has the meaning set out in clause 47 of Schedule 1;
- 1.114 **“Update”** means Software which has been produced primarily to overcome defects in, or to improve the operation of the Software without significantly altering the Software’s specifications, whether or not the Software has also been extended, altered or improved by providing additional functionality or performance enhancement;
- 1.115 **“Warranty Obligations”** means the warranty obligations (if any) in relation to the Deliverables set out in Schedule 5 and in a CA Memorandum;
- 1.116 **“Warranty Period”** means the period during which the Warranty Obligations are required to be provided pursuant to any Documentation, industry standards, and also as specified in a CA Memorandum or if no period is so specified, means the period that is not less than ninety (90) days after the Acceptance of the Deliverable to which the warranty period relates; and
- 1.117 **“Work-in-Progress Diary”** means a written record in a form agreed between the Supplier and a Customer of all relevant activities undertaken in respect of an ICT project for the supply of Deliverables, which accurately reflects the progress of the project.

2. **INTERPRETATION**

- 2.1 This Agreement and any Customer Agreement made under this Agreement will be interpreted in accordance with this clause 2 unless the Agreement provides otherwise.

Conditional Permissions

- 2.2 Where the Agreement makes provision for a Party to permit or approve something, the Party may permit or approve it subject to conditions specified by the Party.

Other Interpretation Provisions

- 2.3 Clause headings will be disregarded in interpreting the Agreement.
- 2.4 References to legislation include:
- 2.4.1 legislation repealing, replacing or amending that legislation; or
 - 2.4.2 any statutory instrument made under that legislation.
- 2.5 A reference to the singular includes the plural and *vice versa*.
- 2.6 A reference to a person includes:
- 2.6.1 the person’s heirs, executors or permitted assigns; or
 - 2.6.2 a corporation, partnership, trust or other legal entity, or to a joint venture.

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- 2.7 A reference to a body corporate includes its successors or permitted assigns.
- 2.8 A reference to monetary amount is a reference to that amount in Australian currency.
- 2.9 A reference to days or months means calendar days or months unless otherwise indicated.
- 2.10 The fact that a Party proposed or drafted a provision of a contract document is not relevant to its interpretation.
- 2.11 Where a provision of a Contract Document includes an example of the operation of a provision:
- 2.11.1 the example shall not be taken to be exhaustive; and
- 2.11.2 if the example is inconsistent with the provision, the provision prevails.
- 2.12 In this Agreement and unless otherwise indicated, a reference to a clause, part, schedule, annexure, exhibit, appendix or attachment refers to a clause, part, schedule, annexure, exhibit, appendix or attachment of this Agreement.
- 2.13 Except in this Schedule 2, reference in a schedule to a part, clause or table is a reference to a part, clause or table within that Schedule unless otherwise indicated in that Schedule.

Priority of Documents

- 2.14 The schedules, annexures, appendices, exhibits and attachments of this Agreement form part of this Agreement.
- 2.15 This Agreement, and its schedules, annexures, exhibits, appendices and attachments have priority in that order.
- 2.16 If and to the extent that any provision of this Agreement is inconsistent with a Customer Agreement, in the sense that it would not be possible to comply with both, this Agreement prevails.

SCHEDULE 3

NOT USED

SCHEDULE 4

LEVY

1. STATE LEVY AND CONTRACT LEVY

- 1.1 The State requires the Supplier to make payments (“**State Levy**”) to the Nominated Agency for the purposes of funding administrative functions associated with the eProjects Plus Panel.
- 1.2 The amount of the State Levy is determined as a proportion of the aggregate Levy Exclusive Amount charged to Customer under each Customer Agreement up to the maximum amount of \$40,000 (inc. GST).
- 1.3 In order to fund the State Levy, the State authorises the Supplier to charge each Customer a levy (“**Contract Levy**”) determined as a proportion of the Levy Exclusive Amount charged to that Customer under a Customer Agreement up to the maximum amount of \$40,000 (inc. GST).

2. STATE LEVY AND GST

In addition to the State Levy, the Supplier must pay GST Consideration calculated by applying the GST Rate to the amount of the State Levy.

3. STATE LEVY RATE

The State Levy rate will be 1.3% or such other rate as advised from time to time by the State’s Principal Contract Administrator.

4. CALCULATION AND INVOICING OF THE STATE LEVY AND GST

- 4.1 Subject to the following provisions, the State Levy is to be calculated by applying the rate for the State Levy to the aggregate of Levy Exclusive Amounts charged to a Customer during each three (3) month period during the Term of a Customer Agreement and at the expiry of each Customer Agreement.
- 4.2 Where the State elects to change the rate of the State Levy, it shall provide not less than thirty (30) days written notice to the Supplier of such change and the new rate will come into effect from the next ensuing calendar month following expiry of the notice.
- 4.3 The Nominated Agency will calculate the State Levy and the GST Consideration and issue a Tax Invoice to the Supplier following expiry of the relevant three (3) month period during the Term of a Customer Agreement and at the expiry of each Customer Agreement.

5. PAYMENT OF THE STATE LEVY

- 5.1 The Supplier must pay to the Nominated Agency the State Levy plus the associated GST Consideration within thirty (30) days of receipt by the Supplier of a Tax Invoice from the Nominated Agency.
- 5.2 If the Supplier does not pay to the Nominated Agency the amount of the State Levy (plus the associated GST Consideration) when due and payable, the Nominated Agency will be entitled to claim interest at the

Prescribed Rate on the amount due from the date it should have been paid until the day it is paid.

6. **CONTRACT LEVIES**

- 6.1 To fund the payment of the State Levy, the Supplier will charge each Customer a Contract Levy.
- 6.2 The Contract Levy will be calculated by applying the rate stipulated for the State Levy to the Levy Exclusive Amount chargeable to that Customer up to the maximum amount of \$40,000 (inc. GST).
- 6.3 A Contract Levy cannot be charged at a changed rate, except in respect of a period commencing at the beginning of the first calendar month following expiry of thirty (30) days from notification (to the Supplier by the State's Principal Contract Administrator) of the change to the rate.
- 6.4 The Supplier is entitled to charge the Customer the Levy Inclusive Amount (Base Consideration) plus the amount chargeable by reference to GST (GST Consideration).

7. **INVOICING**

- 7.1 The Supplier must, in each invoice issued by the Supplier to a Customer:
 - 7.1.1 calculate the Contract Levy applicable to the invoice;
 - 7.1.2 calculate the GST Consideration applicable to the Contract Levy and include it in the invoice; and
 - 7.1.3 clearly show the amount of the Contract Levy and the Levy Exclusive Amount chargeable to that Customer for that invoice.
- 7.2 For the purposes of clause 8.1, the Contract Levy may be calculated and displayed as:
 - 7.2.1 the aggregate invoiced amount; or
 - 7.2.2 a separate amount for each Deliverable that is included in the invoice.

8. **CONTRACT LEVY REPORT**

- 8.1 The Supplier must provide to the Nominated Agency throughout the Term of each Customer Agreement each three (3) month period and at the expiration of a Customer Agreement a report ("**Contract Levy Report**").
- 8.2 The Contract Levy Report must be provided to the Nominated Agency via e-mail no later than ten (10) Business Days after the end of the period to which it relates.
- 8.3 The Contract Levy Report must specify for the relevant three (3) month period or other period up to the closure of a project:
 - 8.3.1 the names and addresses of all Customers;

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- 8.3.2 the dates of the invoices issued by the Supplier to Customers;
 - 8.3.3 the invoice numbers of the invoices issued by the Supplier to Customers;
 - 8.3.4 the total Levy Exclusive Amount charged to each Customer;
 - 8.3.5 the amount of the Contract Levy charged to each Customer;
 - 8.3.6 the Levy Inclusive Amount charged to each Customer;
 - 8.3.7 the GST attributable to the Levy Inclusive Amount charged to each Customer; and
 - 8.3.8 such other information as the Supplier agrees with the Principal Contract Administrator.

9. **COPIES OF INVOICES**

If requested by the State's Principal Contract Administrator, the Supplier must make available to the State's Principal Contract Administrator (at no cost to the State or a Customer) electronic copies of all invoices issued by the Supplier to Customers under each Customer Agreement in either Microsoft Word™, Microsoft Excel™ or Adobe "Portable Document Format" (as directed by the State's Principal Contract Administrator).

10. **DEFINITIONS**

In this Schedule:

- 10.1 **"Levy Exclusive Amount"** means the amount chargeable to a Customer and specified in an invoice issued by the supplier to a Customer under a Customer Agreement; and
- 10.2 **"Levy Inclusive Amount"** means the sum of the Levy Exclusive Amount and the Contract Levy for which a Customer is invoiced.

SCHEDULE 5
DELIVERABLES – SCOPE, SPECIFICATIONS AND SERVICE LEVELS

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PART 1 - SCOPE OF PRODUCTS AND SERVICES (AS APPLICABLE)

1. GENERAL SCOPE

1.1 The Deliverables within the scope of this Agreement are as follows:

1.1.1 ICT Project Services set out in Part 2; and

1.1.2 Incidental Products and Services as set out in Part 3,
of this Schedule 5.

2. PARTIES OBLIGATIONS

2.1 The Supplier must provide the Deliverables to Customers as specified in each Customer Agreement and in accordance with the requirements, Specifications and Service Levels (if any) set out in this Schedule 5 unless otherwise agreed between the Parties in the CA Memorandum or a PIPP.

2.2 The Customer shall:

2.2.1 take all reasonable measures in accordance with currently accepted commercial practices to ensure that any information provided by the Customer to the Supplier is accurate and complete;

2.2.2 perform the specific tasks assigned to it in the Customer Agreement or a PIPP (if any); and

2.2.3 use its reasonable endeavours to ensure that any personnel it makes available to work with the Supplier, have the competencies, skills and experience requisite to the tasks that they are required to perform.

3. WARRANTY OBLIGATIONS

3.1 The Supplier must promptly rectify any Defects in Deliverables at no charge during the Warranty Period, unless the Defect is caused by the Customer's misuse or wilful damage. The Customer is responsible for all costs associated with the rectification of Defects caused by the Customer's misuse or wilful damage.

3.2 Where the Supplier supplies a Deliverable that it has procured from a third party, the Supplier shall promptly give the Customer written notice and details of any warranties given by that third party.

3.3 The Supplier must do all things necessary to transfer to the Customer any manufacturer's warranties and any other warranty rights conferred by the manufacturer or seller of a Product on the Supplier. If warranty rights are not effectively conferred on the Customer in accordance with this clause, the Supplier must perform or procure performance of the warranty obligations itself.

3.4 Additional warranty provisions apply in respect to specific Services as detailed in this Schedule 5.

4. PROJECT IMPLEMENTATION AND PAYMENT PLAN

- 4.1 If specified in the CA Memorandum, the Supplier must develop a PIPP in respect to a project.
- 4.2 The PIPP should address the relevant aspects of the project including (if appropriate) the following:-
 - 4.2.1 A description of the nature and extent of the Deliverables to be furnished under the project (e.g., report, interim reports, plans, models, specifications, other deliverables etc.) including provisions about the form (e.g. hard copy, data storage system, sound or visual images etc.) in which the Deliverables are to be produced and any equipment necessary for access to the Deliverables;
 - 4.2.2 Due dates for Delivery of each Deliverable;
 - 4.2.3 Identify and describe accurately all related project tasks;
 - 4.2.4 Start Date for the project and any dates for all tasks;
 - 4.2.5 Completion Date for the project and any dates for all tasks;
 - 4.2.6 Detail the tasks to be performed by the Customer's Staff;
 - 4.2.7 Detail the initial system set-up and support for data conversion;
 - 4.2.8 Details of Delivery Point preparation;
 - 4.2.9 Details of prototyping;
 - 4.2.10 For any System Integration Services project, details of how and what phases the integration the Products, Licensed Software and Developed Software are to be achieved;
 - 4.2.11 For each task to be performed or Milestone to be achieved, the various responsibilities of the Supplier and the Customer shall be specified;
 - 4.2.12 Details of any work which can be performed 'off-site' or not at the Delivery Point;
 - 4.2.13 Details of the organisational and human resource management of the project team shall be set out and include:
 - (a) hierarchy of personnel (both Customer Staff and Supplier Personnel);
 - (b) responsibilities of personnel involved in the project;
 - (c) qualifications of the Supplier's Personnel assigned to perform tasks under the project; and
 - (d) whether or not Supplier Personnel have passed security clearances.

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- 4.2.14 Specify the times and places for the supply of Customer Supplied Items
 - 4.2.15 Specify the project methodology to be applied to the project; and
 - 4.2.16 Details of training to be given to the Customer's Staff.

Implementation

- 4.3 The timeframe for any Services, production and/or implementation of Deliverables, should be set out specifying all relevant dates.
- 4.4 The following aspects should be considered as part of any project implementation:
 - 4.4.1 start date;
 - 4.4.2 Acceptance Testing program;
 - 4.4.3 Customer Supplied Items;
 - 4.4.4 Delivery Point preparation;
 - 4.4.5 Delivered Dates and installation dates;
 - 4.4.6 relevant date that copies of source code and other code is lodged with the escrow agent;
 - 4.4.7 training (if any);
 - 4.4.8 specified any Service Debits applicable; and
 - 4.4.9 project end date.
- 4.5 Where a Financial Undertaking is in place to support the project and progressive reductions of the amount of the Financial Undertaking has been negotiated between the Parties based on Milestones, then the PIPP may include these Milestones and the progressive reduction amounts.
- 4.6 If specified in the PIPP, the Customer agrees to notify the provider of the Financial Undertaking of each progressive reduction as each Milestone is reached and the Deliverables provided during the project.
- 4.7 Where staged implementation is specified in the PIPP, the Supplier shall not commence any work in a Stage until it receives prior written notification from the Customer to proceed with the work in that Stage.
- 4.8 The formation of the Customer Agreement shall be deemed to be sufficient notification to proceed with work in Stage One at the time and in the manner specified in the Customer Agreement and the PIPP.
- 4.9 The Customer shall keep the Supplier reasonably informed of its intention with respect to proceeding to any subsequent Stage.
- 4.10 Nothing in a Customer Agreement shall be construed as obliging the Customer to give the notification in respect of any subsequent Stage.

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- 4.11 The Customer shall not be liable to the Supplier in any way for not giving notification to proceed to any subsequent Stage.

Payment Plan

- 4.12 The PIPP should address the relevant progress payments (if appropriate) for the Deliverables and include the following:
- 4.12.1 amounts linked to Milestones or Stages (or both);
 - 4.12.2 whether the payments are subject to Acceptance Testing; and
 - 4.12.3 other issues relevant to payments including any retention amounts and Service Debits.

Delivery Point Specification and Preparation

- 4.13 Where requested by a Customer and specified in the PIPP, the Supplier shall inspect the Delivery Point and provide the Customer with a suitable Specification, within a reasonable time after such inspection, for approval by the Customer.
- 4.14 A Customer shall promptly notify the Supplier of any amendments to the Specification relating to the Delivery Point that the Customer reasonably requires. The Supplier shall make amendment to the Specification to take account of the Customer's reasonable requirements and submit the amended Specification to the Customer for approval.
- 4.15 A Customer shall, within a reasonable period of receipt of the Supplier submitted 'Delivery Point' Specification (if any), notify the Supplier of its approval or otherwise.
- 4.16 A Customer is responsible:
- 4.16.1 to prepare and maintain the Delivery Point in accordance with any such approved Specifications; or
 - 4.16.2 where there is no 'Delivery Point' Specification required to be prepared by the Supplier or to the extent that the Supplier's submitted 'Delivery Point' Specification is not adopted by the Customer, to prepare and maintain the Delivery Point conditions to enable the supply of a Deliverable in accordance with the Customer Agreement.
 - 4.16.3 Each Party shall ensure it has a safe place and system of work for any personnel made available to it by the other Party, while on its premises.

5. PROJECT MANAGEMENT COMMITTEE

- 5.1 If specified in the CA Memorandum, the Parties shall establish a project management committee ("**Committee**") by the date specified in the CA Memorandum or as otherwise agreed between the Parties.
- 5.2 The Committee shall, unless the Parties agree otherwise in writing, comprise:

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- 5.2.1 each Parties' project manager nominated by the respective Party to manage the project on their behalf;
 - 5.2.2 a minute secretary nominated by the Party convening the Committee meeting; and
 - 5.2.3 such other persons as are agreed between the Parties.
- 5.3 The persons referred to in clause 5.2 or their authorised representatives, shall each attend the Committee meetings unless otherwise agreed.
- 5.4 The Committee shall:
- 5.4.1 meet at such intervals, times and locations as agreed between the Parties;
 - 5.4.2 preview and monitor progress of the project and report to, the Customer's Customer Agreement Administrator; and
 - 5.4.3 carry out such other functions as are set out in the PIPP (if any) or agreed in writing between the Parties.
- 5.5 All persons, including the members of the Committee, who attend the Committee meetings shall be suitably qualified and informed in relation to the matters to be considered by the Committee and be able to provide sufficient information on a relevant matter to the Committee to enable it to properly assess progress of the project.

6. ACCEPTANCE AND REJECTION

Time for Acceptance

- 6.1 In accordance with clause 7 of this Schedule, a Customer may undertake, or require the Supplier to undertake, Acceptance Testing as set out in a Customer Agreement or PIPP.
- 6.2 Where a Customer decides to undertake Acceptance Testing, that Customer has five (5) Business Days from Delivery to complete this process before a Deliverable is deemed to be Accepted.
- 6.3 Where a Customer requests that the Supplier performs Acceptance Testing, that Customer has five (5) Business Days from receipt of the Acceptance Testing results from the Supplier to either advise the Supplier:
 - 6.3.1 that it is satisfied with the Acceptance Testing outcomes, at which time Acceptance will be deemed to occur; or
 - 6.3.2 that it is not satisfied with the Acceptance Testing outcomes, in which case further Acceptance Testing may be required or the Customer may Reject the Deliverable.
- 6.4 Where a Customer fails to advise the Supplier of its Acceptance or rejection of a Deliverable in accordance with clause 6.3, Acceptance will be deemed to occur five (5) Business Days from the receipt of the Acceptance Testing results by the Customer.

Effect of Acceptance

- 6.5 Acceptance of the Deliverables by a Customer does not relieve the Supplier of its obligations or warranties under a Customer Agreement.

Rejection

- 6.6 Subject to clause 6.7, the Customer may reject a Deliverable if it is Defective.
- 6.7 A Customer may not Reject a Deliverable under clause 6.6 after Acceptance.
- 6.8 If a Customer Rejects a Deliverable the Customer may, acting reasonably, in consultation with the Supplier require repair or replacement of the Deliverable (or that part of the Product that is Defective) if the Deliverable is a Product. A Customer will not be liable to pay for the Rejected Product until such time as such Rejected Product is repaired or replaced to the Customer's reasonable satisfaction in accordance with this clause.
- 6.9 In the event of Rejection of any Product under this clause 6, risk in that Deliverable shall, at the time the Supplier takes possession of the Deliverable, pass to the Supplier.

Effect of Rejection

- 6.10 Rejection by a Customer under sub-clause 6.8 of this Schedule does not:
- 6.10.1 affect the Parties obligations in respect of any other Deliverable that has already been Delivered and Accepted, or any Deliverable, not Rejected, which is still to be Delivered; and
 - 6.10.2 preclude that Customer from recovering the amount of any loss suffered by the Customer resulting from the Deliverable being Defective.
- 6.11 Upon Rejection by a Customer under sub-clause 6.8 of this Schedule, the Supplier must immediately refund to that Customer any moneys previously paid by the Customer to the Supplier in respect of the Rejected Deliverable.

Requirement to Remove

- 6.12 If a Customer Rejects a Deliverable being a Product, the Supplier must remove or decommission the Deliverable (as appropriate) from the Customer's premises within five (5) Business Days from the date of the rejection or such other period as may be agreed. If the Supplier fails to comply with the request within ten (10) Business Days of receipt of the request, a Customer may:
- 6.12.1 return the Product to the Supplier and claim from the Supplier the costs incurred in doing so; or
 - 6.12.2 move the Product to another location for storage and claim the costs of transport and storage from the Supplier.

7. ACCEPTANCE TESTING

- 7.1 A Customer Agreement or PIPP may specify that Acceptance Testing is required in relation to a particular Deliverable and where required must be undertaken by the Supplier or the Customer in accordance with the PIPP or otherwise agreed between the Parties.
- 7.2 If a Customer requires Acceptance Testing by the Supplier then, the Customer Agreement or PIPP must specify Acceptance Testing requirements including:
 - 7.2.1 the time required for Acceptance Testing and the time allowed for Acceptance of the Deliverable;
 - 7.2.2 the nature and extent of the Acceptance Testing;
 - 7.2.3 whether the Customer will carry out the Acceptance Testing or requires the Supplier to do so; and
 - 7.2.4 the content and form of any reports required of the Acceptance Testing results.
- 7.3 If the Deliverable does not satisfy the Acceptance Testing, the Deliverable is taken to be Defective and the Customer has the rights set out in clause 6 in respect of the Defective Deliverable.
- 7.4 If Acceptance Testing is to be conducted by a Supplier, the Customer Agreement or the PIPP must provide:
 - 7.4.1 the location where the Acceptance Testing is to be conducted;
 - 7.4.2 the opportunity for the Customer, at the Customer's cost, to observe or participate in the conduct of the Acceptance Testing;
 - 7.4.3 documentation of the test results; and
 - 7.4.4 certification by the Supplier of the accuracy and completeness of the test results.
- 7.5 If Acceptance Testing is conducted by the Supplier, the Supplier must ensure that:
 - 7.5.1 the Acceptance Testing is rigorously carried out;
 - 7.5.2 the results of testing are fully and accurately reported; and
 - 7.5.3 that any failing or Defect in the Deliverable is fully reported to the Customer.

8. INSTALLATION SUPPORT

Where applicable, the Supplier must provide all the advice, assistance and information reasonably required to enable installation and configuration of Deliverables by a Customer or a third party nominated by the Customer.

9. CUSTOMER SUPPLIED ITEMS (CSI)

- 9.1 A Customer shall provide the CSI (if any) specified in the CA Memorandum.
- 9.2 CSI must be safe for the purposes for which they are being used, provided those premises and that equipment are used in accordance with the Supplier's obligations under a Customer Agreement.
- 9.3 CSI remains the property of the Customer. If no longer required for the purposes of a Customer Agreement, the CSI must be returned to the Customer as soon as practicable unless other arrangements are agreed in writing by the Parties.
- 9.4 The Supplier must:
 - 9.4.1 not use or allow others to use any CSI other than for the purposes of a Customer Agreement without the prior written approval of the Customer;
 - 9.4.2 not part with possession of any CSI unless the Customer has provided its written consent, nor create or allow the creation of any lien, charge or mortgage over any CSI;
 - 9.4.3 take all reasonable care of all CSI including accounting for, preserving, installing or handling of CSI;
 - 9.4.4 pay the costs, if any, set out in the CA Memorandum, in connection with the CSI;
 - 9.4.5 not substantially modify any CSI without the prior written approval of the Customer;
 - 9.4.6 promptly inform the Customer of any loss, destruction or damage to any CSI;
 - 9.4.7 comply with any instruction of the Customer for preserving, forwarding or disposing of any damaged CSI at its own cost; and
 - 9.4.8 indemnify the Customer for any loss or destruction of, or damage to, any CSI caused by any act or omission of the Supplier or the Supplier's Personnel.
- 9.5 Provided the Supplier complies with its obligations under clause 9.4, a Customer shall repair or replace the CSI within a reasonable time of becoming aware that the CSI no longer comply with the Specifications, if any, set out in a Customer Agreement.
- 9.6 A Customer shall provide the CSI in a timely manner and in accordance with any reasonable requirements specified in the PIPP (if any) or the CA Memorandum.

10. PROGRESS REPORTING

- 10.1 If specified in the CA Memorandum, the Supplier shall maintain a Work-in-Progress Diary which shall be available at all reasonable times to the Committee.

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- 10.2 If the Customer disagrees with the facts recorded in the Work-in-Progress Diary, then the Customer may record its version of the facts in the Work-in-Progress Diary.
- 10.3 At least twenty-four (24) hours prior to a Committee meeting, the Supplier's project manager shall submit to a Customer's project manager a report of progress under the Customer Agreement ("**Project Progress Report**"), including:
- 10.3.1 details (including dates) of Deliverables and Milestones commenced, completed or accepted;
 - 10.3.2 any delays or defaults, including reasons and plans for the management of such delays and defaults in respect of the supply of the Deliverables;
 - 10.3.3 proposed draft updates of relevant parts of the Specifications;
 - 10.3.4 any proposed variations to a Customer Agreement or PIPP; and
 - 10.3.5 such additional information as required by the Customer.

PART 2 - ICT PROJECT SERVICES

11. SOFTWARE DEVELOPMENT SERVICES

Period of Software Development Services

- 11.1 If specified in a CA Memorandum, the Supplier must provide the Software Development Services for the Development Service Period, unless a Customer Agreement is terminated earlier in accordance with its terms.

Provision of Software Development Services

- 11.2 The Supplier must provide the Software Development Services in accordance with a Customer Agreement.
- 11.3 The Supplier must develop, install (if applicable) and test the Software Solution to ensure its conformity with the Specifications and the Design Specifications.

Nature of Software Development Services

- 11.4 The Supplier must, in accordance with the PIPP (if any), implement all activities set out in the PIPP for the performance of the Software Development Services and perform any other Services specified in the CA Memorandum.
- 11.5 Where a PIPP has not been prepared or the PIPP does not provide, in whole or in part for the relevant Software Development Services, the Supplier shall perform any Software Development Services as specified in the CA Memorandum.
- 11.6 A PIPP for Software Development Services shall, unless otherwise specified in the CA Memorandum, include all of the following:
- 11.6.1 **Stage One** - assessment and definition of the:

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- (a) Customer's existing System or the Designated Operating Environment;
 - (b) Customer's goals, requirements and expectations in respect of the Software Solution which shall include a statement:
 - (i) of the Supplier's understanding of the Customer's and/or User's experience and requirements in relation to the Software Solution;
 - (ii) identifying the roles and responsibilities of the Parties, including Supplier Personnel and Customer Staff;
 - (iii) of the objectives to be met by the Supplier; and
 - (iv) of the scope and parameters of the Software Solution;
 - (c) required Deliverables;
 - (d) resources required (including any resources to be made available by the Customer); and
 - (e) the complexity of the project.
- 11.6.2 **Stage Two** - a feasibility study in which the Supplier makes the determination (and includes any appropriate recommendations) as to whether the Supplier's Software Development Services proposals are capable of meeting the Customer's and/or User's requirements as detailed in the assessment and definition Stage taking into account budgetary, operational, technical and time considerations;
- 11.6.3 **Stage Three** - development of a strategy for the creation of the Software Solution that is appropriate to the Customer's and/or User's requirements as detailed in the assessment and definition Stage of the PIPP for the Customer's needs and its User population covering all appropriate planning and timetabling issues associated with the Software Development Services including:
- (a) identification of the Services to be performed;
 - (b) identification and procurement of necessary Products;
 - (c) allocation of responsibilities within each Party's organisation;
 - (d) staging of the project;
 - (e) development of a Milestone and payment schedule; and
 - (f) implementation of the Services;
- 11.6.4 **Stage Four** - development of a Design Specification for the Software Solution which shall be completed and approved in accordance with clause 11.12;
- 11.6.5 **Stage Five** - development of the Software Solution (including prototyping if applicable); and
- 11.6.6 **Stage Six** - testing and Acceptance of the Software Solution in accordance with the Agreement.

Design Specification

- 11.7 The Supplier shall prepare a written Design Specification for the Software Solution by the date specified in the PIPP (if any).

-
- 11.8 The Supplier agrees that the Design Specification for the Software Solution shall:
- 11.8.1 be based on, and be consistent with, the Specifications; and
 - 11.8.2 enable the Software Solution to be installed in the Designated Operating Environment.
- 11.9 The Design Specification shall provide a detailed technical explanation of how the Software Solution shall provide the functions specified in the Specifications, including, as applicable, details of processes, visual displays, screen layouts, system flowcharts, user interfaces, data flow diagrams, estimates of transaction and data volumes, prototypes and any associated Data Dictionary.
- 11.10 The Supplier shall keep the Customer sufficiently informed while the Design Specification is being prepared so that the Customer shall have a reasonable knowledge of the content of the Design Specification by the time the Design Specification is delivered by the Supplier to the Customer for approval.
- 11.11 If the Customer has any objection to the Design Specification provided by the Supplier it must notify the Supplier promptly of any alterations it reasonably requires. The Supplier must not unreasonably refuse to amend the Design Specification to take account of the Customer's reasonable requirements.
- 11.12 The Design Specification shall, when approved and signed by the Parties, become part of the Specifications and will vary the Specifications as applicable.

Methodology

- 11.13 The Supplier's methodology for the development of the Software Solution must, as a minimum:
- 11.13.1 identify and control software components of, and changes to, the Software Solution to maintain the integrity and traceability of the Software Solution at all Stages of the development;
 - 11.13.2 ensure control, development and supply of Documentation relating to the Software Solution;
 - 11.13.3 control the issue of development revisions of the Software Solution and associated Documentation;
 - 11.13.4 identify the extent of the performance of the Supplier in accordance with the PIPP (if any);
 - 11.13.5 ensure that the Software Solution is written and documented, as far as practicable, in a way which would enable future modification without further reference to the Supplier;
 - 11.13.6 reference and document procedures for corrective action in respect of the Software Solution and associated Documentation prior to Acceptance including:
 - (a) adoption of a system to report problems and deficiencies;
 - (b) examination of problem and deficiency reports to determine their causes, and to prepare corrective measures;

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- (c) analysis of deficiency trends, to ensure the Software Solution conforms to the Specifications;
 - (d) review of corrective measures, to determine their effectiveness; and
 - (e) provision for ensuring that timely corrective action is taken by reviewing deficiencies and tracking their clearance;
- and
- 11.13.7 adhere to any other requirements specified in the CA Memorandum.

Source Code

- 11.14 If specified in the CA Memorandum and where the Supplier wholly owns the Intellectual Property Rights in the Software Solution in accordance with this Agreement, the Supplier must enter into an escrow arrangement suitable to, and in agreement with, the Customer.
- 11.15 Where the Customer wholly owns the Intellectual Property Rights in the Software Solution in accordance with this Agreement, the Supplier shall provide the source code to the Customer in a format and on a medium which is suitable for compilation and use in the Designated Operating Environment at the completion of the Customer Agreement.
- 11.16 The Supplier must inform the Customer as to the nature and use of software tools, Object Libraries, methodologies or other devices owned by the Supplier or any other person, in the production of the Software Solution.

Use Prior to Acceptance

- 11.17 The Customer may not use the Software Solution in a production environment prior to Acceptance unless it is specified in the CA Memorandum or otherwise agreed by the Parties.

12. SOFTWARE SUPPORT SERVICES

Period of Services

- 12.1 If specified in a CA Memorandum, the Supplier shall provide the Software Support Services for the Support Service Period, unless the Customer Agreement is terminated earlier in accordance with its terms.
- 12.2 In relation to Software licensed under a Customer Agreement, the Start Date in respect of Software Support Services will not occur until the expiry of any relevant Warranty Period for that Software, unless otherwise specified in the CA Memorandum.

Software Support Services

- 12.3 The Supplier must supply to the Customer the Software Support Services for the Support Service Period in accordance with the Customer Agreement.
- 12.4 The Supplier agrees that the Software Support Services shall, as a minimum, ensure that the:

12.4.1 Supported Software remains in conformity with the Specifications;
and

12.4.2 Supported Software remains in conformity with the Service Levels.

Updates and New Releases

12.5 During the Software Support Period, the Supplier must offer the Customer at no additional costs to the Price for Software Support Services:

12.5.1 all Updates applicable to the Supported Software; and

12.5.2 all New Releases applicable to the Supported Software.

12.6 If requested to do so by the Customer, the Supplier must:

12.6.1 demonstrate the extent to which each Update or New Release is capable of providing the functionality and performance specified in the Specifications; and

12.6.2 provide training at the costs (if any) agreed in writing by the Parties, to enable the Customer and the Customer's Staff, to operate the Update or New Release with the Supported Software on the Designated Operating Environment.

12.7 The Customer is not obliged to accept an Update or New Release offered by the Supplier pursuant to clause 12.5. If the Customer elects not to accept an Update or New Release, the Supplier shall not be liable for any loss or damage that the Customer suffers as a result of Defects in the Supported Software, which are remedied by the Update or New Release.

12.8 If the Customer rejects the offer by the Supplier of an Update or New Release, the Supplier must continue to maintain the version of the Software, which the Customer is using, for a period of not less than eighteen (18) months (or such other period as is agreed in writing between the Parties) from the date of the written rejection of the Update or New Release by the Customer.

12.9 If the Customer accepts an Update or New Release:

12.9.1 the Supplier must Deliver the Update or New Release to the Customer;

12.9.2 where the Customer requires the Update or New Release to be installed by the Supplier, any installation costs shall be as agreed in writing between the Parties;

12.9.3 the Customer Agreement shall continue to apply in all respects to the Update or New Release;

12.9.4 the Specifications shall be deemed to be amended to the extent that the specifications for the Update or New Release supersede the existing Specifications; and

12.9.5 the Customer must upon request return to the Supplier all copies of the original Supported Software or the part that has been superseded by the Update or New Release or otherwise deal with all such copies in accordance with the Supplier's reasonable directions.

Software Support Services – Service Levels

12.10 The Supplier must carry out the Software Support Services to a standard that ensures continuity of performance of the Supported Software in accordance with the Customer Agreement including any Service Levels specified in the Customer Agreement.

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- 12.11 The Supplier may, before the response times and/or resolution times referred to in the Service Levels have expired, take such measures as are appropriate in all the circumstances (including a 'Work-around Solution') to enable the Customer to continue to productively use the Supported Software.
- 12.12 If the Supplier fails to achieve the specified Service Levels, as specified in the Customer Agreement, the Customer is entitled to apply the Service Debits.
- 12.13 The Supplier must maintain a Defect Log containing the information specified in the Customer Agreement and containing the information specified in the table below and shall promptly make the Defect Log available to the Customer upon written request.

Defect	Identification Number	Call tracking number for problem identification	Date Defect Notified	Date Defect Resolved

Exclusions

- 12.14 Unless specified to the contrary, the Software Support Services do not include services involving correction of faults, errors or Defects caused by:
- 12.14.1 operation of the Supported Software in a manner which contravenes the Customer's obligations as specified in the Customer Agreement;
 - 12.14.2 failure by the Customer to operate the Supported Software in accordance with the Specifications which have been made known by the Supplier to the Customer;
 - 12.14.3 use by the Customer of the Supported Software in an information technology environment other than that provided for in the Specifications;
 - 12.14.4 failure by the Customer to use the Supported Software in conformity with user Documentation provided by the Supplier under the Customer Agreement;
 - 12.14.5 equipment maintenance performed by a person other than the Supplier or the Supplier's Personnel;
 - 12.14.6 any other service expressly excluded in the Customer Agreement or related Service Levels; or
 - 12.14.7 modifications to the Support Software made by the Customer or a third party, unless authorised by the Supplier.

13. SYSTEM INTEGRATION SERVICES

Supply and Integrate the System

- 13.1 If specified in a CA Memorandum, the Supplier shall, in accordance with the Customer Agreement, supply and Integrate the System to comply with the Specifications.

Supplier as Agent

- 13.2 Where the Customer engages the Supplier to provide System Integration Services, the Customer authorises the Supplier to acquire, as an agent of the Customer, Products and Services specified in the Customer Agreement providing that those Products and Services are procured on the terms and conditions expressed in this Agreement.
- 13.3 The Supplier must obtain the written approval of the Customer prior to any acquisition under clause 13.2 and to the terms and conditions in respect of such acquisition. Such approval shall not be construed as in any way lessening the Supplier's obligation to ensure the System meets Specifications.
- 13.4 Nothing in this clause 13 shall be taken to authorise the Supplier, when it is acting as the agent of the Customer under the Customer Agreement, to institute any legal action or arbitration proceedings in the name of the Customer.
- 13.5 Where the Supplier is authorised to act as an agent of the Customer, the Supplier shall discharge the obligations of the Customer in respect of the Acceptance Testing (if any) required pursuant to the Customer Agreement for relevant Deliverables on behalf of the Customer.

Deliverables

- 13.6 The Supplier shall supply the Deliverables specified in the Customer Agreement.

Maintenance of CSI

- 13.7 If specified in the Customer Agreement, the Supplier shall be appointed as agent to manage any existing maintenance obligations in respect of CSI specified in the Customer Agreement, during the Term of the Customer Agreement.
- 13.8 If specified in the CA Memorandum, the Supplier shall provide maintenance of the CSI during the Term of the Customer Agreement.

System Warranty

- 13.9 In the provision of System Integration Services:
 - 13.9.1 the Supplier warrants that the System and/or that part of the System shall, during the applicable Warranty Period, comply with the Specifications, which shall be subject to the CSI complying with the Specifications;
 - 13.9.2 during the applicable Warranty Period, the Supplier shall at its own cost, undertake such repair, replacement or other work in respect of the System as is necessary, in a timely and workmanlike manner, to ensure that the System complies with the Specifications. Where the Supplier has been required to rectify a Defect or remove Malicious Software, it shall be done to the satisfaction of the Customer within a reasonable time. Where this occurs within the last third of the Warranty Period, the rectification work shall be warranted for:
 - (a) a further period of time, equivalent to a third of the original Warranty Period applicable to the Deliverable as at its Acceptance Date, and the further period of warranty shall

commence at the conclusion of the existing period of warranty applicable to the Deliverable; or

- (b) any other Warranty Period as agreed in writing by the Parties.

13.9.3 where the Supplier replaces parts of a Product the:

- (a) replacement parts shall be new or warranted as new;
- (b) replacement parts shall become the property of the Customer on installation (where the Supplier has replaced components owned by the Customer);
- (c) replaced components shall become the property of the Supplier but the Supplier shall comply with any directions given by the Customer concerning the protection of the Customer's Confidential Information; and
- (d) the Customer shall reimburse the Supplier any reasonable and substantiated costs incurred by the Supplier in complying with any directions given under clause 13.9.3(c).

13.9.4 where the Supplier does not comply with clause 13.9.3 within a reasonable time after receipt of notice to do so, the Customer shall, at its discretion, have the right to perform or have performed that work or replacement as the case may be, at the cost of the Supplier, which reasonable cost shall be taken as money due to the Customer under the Customer Agreement.

13.10 For the purposes of undertaking the Supplier's Warranty Obligations under clause 13.9, the Customer shall appoint the Supplier as agent for the Customer to enforce any warranty in respect of CSI.

13.11 To the extent that the Supplier is unable, through no fault of the Supplier, to enforce warranties for CSI referred to in clause 13.10 and the inability affects the Supplier's obligations under clause 13.9, the Supplier shall promptly advise the Customer and shall be entitled to a reasonable extension of time in accordance with the Customer Agreement, in addition to any other rights which have accrued or might accrue.

13.12 At the end of the Warranty Period, if there are any outstanding warranty enforcement matters or maintenance obligations in respect of CSI, the Supplier shall promptly notify the Customer in writing of those outstanding matters and obligations.

System Acceptance Testing

13.13 The Supplier must cooperate with the Customer in the conduct of Acceptance Testing as specified in the Customer Agreement and/or the CA Memorandum.

14. DATA SERVICES

Customer Data

- 14.1 If specified in a CA Memorandum and subject to clause 5 of Schedule 17, the Customer shall, by the date and in the manner specified in the PIPP, extract and provide the Specified Customer Data to the Supplier for the purposes of Data Conversion and Migration.
- 14.2 To the extent that the Customer fails to meet its obligations under clause 14.1, the Supplier may request an extension of time to conduct the Data Services and the Customer is obliged to grant such an extension.

Data Cleansing

- 14.3 Data Cleansing is the process whereby the Supplier 'cleans' the Specified Customer Data to achieve accuracy and consistency in the Specified Customer Data by:
 - 14.3.1 eliminating duplicate records;
 - 14.3.2 correcting misspellings and errors;
 - 14.3.3 ensuring that there are consistent descriptions, punctuation, and syntax;
 - 14.3.4 resolving any other accuracy and consistency issues in relation to the content; and
 - 14.3.5 undertaking any other relevant actions, as specified by the Customer in the Customer Agreement.
- 14.4 If and to the extent specified in the Customer Agreement, the Supplier shall conduct an analysis of the Specified Customer Data and provide a written report to the Customer.

Data Conversion and Migration

- 14.5 Data Conversion and Migration is the process whereby the Supplier:
 - 14.5.1 conducts all activities set out in the PIPP for the conversion and migration of the Specified Customer Data; and
 - 14.5.2 perform any other Service specified in the PIPP and do all such other things necessary to ensure the successful conversion and migration of the Specified Customer Data.
- 14.6 The PIPP for Data Conversion and Migration shall, unless otherwise specified in the CA Memorandum, include the following Stages:
 - 14.6.1 **Stage 1** - assessment and definition of the:
 - (a) Customer's existing System;
 - (b) Customer Data Conversion and Migration goals;
 - (c) required Deliverables; and
 - (d) the complexity of the project, User experience and requirements;
 - 14.6.2 **Stage 2** - development of a 'Data Conversion and Migration' strategy that is appropriate for the Customer's needs and its User

population covering all appropriate planning and timetabling issues associated with the Data Conversion and Migration including:

- (a) identification of the Services to be performed;
- (b) identification and procurement of necessary Products (if any);
- (c) allocation of responsibilities within each Party's organisation;
- (d) staging of the project;
- (e) development of a Milestones and payment schedule; and
- (f) implementation of the Services;

14.6.3 **Stage 3** - preparation/pre-migration which may include recovering data, designing extraction and functional specifications, and developing contingency arrangements should the migration of the specified Customer Data not be successful;

14.6.4 **Stage 4** - procurement or design and development of relevant software and systems to effect the Data Conversion and Migration. This Stage is to be conducted in conjunction with the requirements for Software Development Services;

14.6.5 **Stage 5** - migration including installation of the migrated data including as applicable development of associated Documentation and training of Users; and

14.6.6 **Stage 6** - Acceptance Testing of the migrated data in accordance with this Agreement to ensure that the conversion and migration of the Specified Customer Data has been successful.

Supplier Tools and Methodologies

14.7 Where the Data Migration Software has been produced using software tools, Object Libraries, methodologies or other devices owned by the Supplier or any other party, the Supplier shall inform the Customer as to the nature and use software tools, Object Libraries, methodologies or other devices in the production of the Data Migration Software.

14.8 If the Supplier owns the software tools, Object Libraries, methodologies or other devices required to use, maintain or enhance the Data Migration Software, the Supplier shall (at no cost to the Customer, unless otherwise specified in the PIPP), upon being required in writing by the Customer to do so, at any time during the Term of the Customer Agreement, provide a licence to the Customer, on terms acceptable to both Parties to use the software tools, Object Libraries, methodologies or other devices for the purpose of using, maintaining and enhancing the Data Migration Software.

Migrated Data Warranty

14.9 Subject to clause 14.10, the Supplier warrants for the Warranty Period that the Specified Customer Data, when fully migrated, shall accurately reflect the data that existed prior to migration, as from the Acceptance Date for the Data Services.

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- 14.10 If the Specified Customer Data is amended or otherwise edited or enhanced by the Supplier in the course of and as part of the Data Services, the Supplier warrants for the Term of the Customer Agreement that the Specified Customer Data when migrated in accordance with the Customer Agreement complies with the Specifications.

Data Warehousing

- 14.11 If Data Warehousing is specified in a CA Memorandum as a required Data Service, the Supplier shall, in accordance with the PIPP:
- 14.11.1 implement all activities set out in the PIPP for the establishment of a Data Warehouse; and
 - 14.11.2 subject to clause 14.14, manage the Data Warehouse so established.
- 14.12 The Supplier shall, unless otherwise specified in the Customer Agreement, ensure that the Data Warehouse:
- 14.12.1 provides a consolidated view of the Specified Customer Data;
 - 14.12.2 promotes data integration between people, applications, and processes in a way which:
 - (a) ensures access to all of the Specified Customer Data, including legacy and relational data sources;
 - (b) enables data and information to be extracted from various production data sources either as they are generated or in periodic stages, as specified in the Customer Agreement; and
 - (c) ensures that the Customer Data can be delivered to anyone in the Customer's organisation anytime and anywhere or as otherwise specified in Customer Agreement;
 - 14.12.3 simplifies, cleanses, and enriches the Specified Customer Data producing high-quality information to meet all Customer organisational reporting requirements as notified in writing to the Supplier from time to time;
 - 14.12.4 is specifically structured for dynamic queries, facilitates analytical processing and encourages widespread ad hoc reporting;
 - 14.12.5 enables the Customer to run efficient queries over data that originally came from different sources;
 - 14.12.6 improves query performance and response times;
 - 14.12.7 significantly reduces the expenses incurred by the Customer per query;
 - 14.12.8 reduces data processing from the Customer's operational environment; and
 - 14.12.9 performs any other function specified in the Customer Agreement.

14.13 The PIPP for Data Warehousing shall, unless otherwise specified in the Customer Agreement, include the following Stages:

14.13.1 **Stage 1** - assessment and definition of the:

- (a) Customer's existing System;
- (b) Customer Data Warehousing goals;
- (c) required Deliverables; and
- (d) complexity of the project, User experience and requirements;

14.13.2 **Stage 2** - development of a Data Warehousing strategy that is appropriate for the Customer's needs and its User population covering all appropriate planning and timetabling issues associated with the Data Warehousing including:

- (a) identification of the Services to be performed;
- (b) identification and procurement of necessary Products;
- (c) allocation of responsibilities within each Party's organisation;
- (d) staging of the project;
- (e) development of a Milestones and payment schedule; and
- (f) implementation of the Services;

14.13.3 **Stage 3** - design, and development of the Data Warehouse architecture (if applicable including prototyping) using Software Development Services representing the overall structure of the Specified Customer Data, communication, processing and presentation of the Specified Customer Data that is required for User computing within the Customer's organisation; and

14.13.4 **Stage 4** – Acceptance Testing of the Data Warehouse in accordance with this Agreement.

14.14 Management of the Data Warehouse must be specified in the Customer Agreement.

15. **ICT PROJECT MANAGEMENT SERVICES**

ICT Project Management

15.1 Where the Supplier is requested to provide ICT Project Management Services under a Customer Agreement, then the Supplier must provide those Services in accordance with the PRINCE2™ methodology for ICT project management.

15.2 Unless otherwise specified in the Customer Agreement, the Supplier will conduct the nominated ICT project applying a four (4) phases approach including:

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- 15.2.1 concept/appraisal phase;
 - 15.2.2 planning/design phase;
 - 15.2.3 implementation phase; and
 - 15.2.4 termination/succession phase.
- 15.3 The Deliverables are to be considered and included in all activities required to be undertaken from the conclusion of the planning/design phase (up to and including project termination/succession phase).
- 15.4 The Project Manager will assume project management responsibility for achieving the project objectives, budget and program. These Services will include coordinating the material and services of other project contractors engaged to conduct part or all the project activities.
- 15.5 Without limiting the requirements to provide the Services in terms of the Customer Agreement, the Supplier is to carry out the following tasks in relation to the project:
- 15.5.1 approval management;
 - 15.5.2 time management;
 - 15.5.3 cost management;
 - 15.5.4 risk management;
 - 15.5.5 quality management;
 - 15.5.6 communication management;
 - 15.5.7 progress reporting;
 - 15.5.8 dispute resolution;
 - 15.5.9 commissioning and handover; and
 - 15.5.10 all such other requirements as could be reasonably expected from a project manager to ensure that the project objectives, budget and program are met.

Project Meetings

- 15.6 The Project Manager will convene and conduct regular project management meeting including representatives from the Customer and any other nominated stakeholders.
- 15.7 The Project Manager will prepare and issue invitations and an agenda and circulate to attendees (generally not less than 7 days prior to the proposed meeting time).
- 15.8 The Project Manager will maintain accurate minutes of all project management meeting.

Project Management Committee

- 15.9 If requested by the Customer, the Project Manager will establish a Committee in terms of clause 5 of this Schedule 5.

16. SOFTWARE-AS-A-SERVICE (SaaS)

- 16.1 If specified in a CA Memorandum, the Supplier must provide SaaS in accordance with the Specifications and Service Levels set out in that CA Memorandum.
- 16.2 Where required by a Customer, the Supplier must customise the SaaS or its configuration in accordance with the Specifications set out in the CA Memorandum.

Service Warranty

- 16.3 In the provision of SaaS the Supplier warrants and guarantees that:
- 16.3.1 the Service is fit for its intended purpose;
 - 16.3.2 is free from Defects;
 - 16.3.3 the Service is compatible with the Designated Operating Environment;
 - 16.3.4 the Service comprise with any industry standard or international standard represented by the Supplier;
 - 16.3.5 the Service shall, during the applicable Term of the Customer Agreement, comply with the Specifications and Service Levels set out in the CA Memorandum; and
 - 16.3.6 it has secured the necessary rights from third parties (including subcontractors and resellers) to ensure that the Service is accessible and available to the Customer for the Term (and any period of Transition-out Services) of the applicable Customer Agreement.

Usage Rights

- 16.4 For the duration of the the Term (and any period of Transition-out Services) of a Customer Agreement for SaaS, the Supplier grants the Customer (and all users authorised by the Customer to access the SaaS) the irrevocable right to:
- 16.4.1 use and access the infrastructure supporting the SaaS from the Customer's computing environment or computer system;
 - 16.4.2 permit the Customer to adapt and configure the SaaS to the extent necessary to enable access from the Designated Operating Environment;
 - 16.4.3 conduct any Acceptance Testing agreed in the Customer Agreement; and
 - 16.4.4 assign the usage rights to another State Agency.

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- 16.5 The Supplier must ensure that neither the Customer nor any user authorised by the Customer to access the Service is required to accept or comply with any usage or other terms in relation to the Service.

Schedule 14

- 16.6 Clause 1 of Schedule 14 does not apply to Software licensed to a Customer under the provision of SaaS.

Transition Out

- 16.7 Upon expiry or termination of a Customer Agreement, the Supplier must, if requested by the Customer in writing within fourteen (14) days after the expiry or termination of that Customer Agreement:

16.7.1 continue to provide the SaaS to the Customer for a period of up to one hundred and twenty (120) days (or such shorter period as required by the Customer) after the date of expiry or termination; and

16.7.2 cooperate with the Customer to assist the Customer in transition from the SaaS to new services or software being used by the Customer as a replacement for the SaaS,

(**“Transition-out Services”**).

- 16.8 Where the Customer elects to exercise its right under clause 16.7 of this Schedule, the provision of Transition-out Services will be on the same terms and conditions of the Customer Agreement and for the Price for the Service (determined on a pro-rata basis for the period of the Transition-out Services).

Trial Period

- 16.9 Upon receiving access to the Services and completion by Supplier of any customisation required under clause 16.2, the Customer has the period (if any) specified in the CA Memorandum (**“Trial Period”**) to determine whether the Service is compatible with the Designated Operating Environment and offers the functionality as described in the CA Memorandum.

- 16.10 During the Trial Period (if any):

16.10.1 the Customer has no obligation to pay the Price for the Services;

16.10.2 either Party may terminate the Customer Agreement immediately by giving written notice to the other Party at any time before the end of the Trial Period.

- 16.11 If the Customer does not terminate a Customer Agreement in accordance with clause 16.10.2 of this Schedule then the Customer is deemed to have accepted the Services and must comply with the terms and conditions of that Customer Agreement for the remainder of its Term.

PART 3 - INCIDENTAL PRODUCTS AND SERVICES

17. INCIDENTAL PRODUCTS AND SERVICES

Scope

- 17.1 The State recognises that in some instances, the provision of ICT Services within the scope of the eProjects Plus Panel arrangement may involve the procurement of “incidental” products and/or services that do not fall within the scope of the eProjects Plus Panel arrangement, including:
 - 17.1.1 hardware acquisition, installation and maintenance;
 - 17.1.2 Packaged Software; and
 - 17.1.3 data base management services.
- 17.2 The State also recognises and that in some circumstances, it is practical to acquire limited incidental products and/or services under a single agreement. Accordingly, while State Agencies are generally not permitted to use the eProjects Plus Panel to purchase products and/or services of the kind described above, they may do so if (and only if):
 - 17.2.1 the products and/or services are truly “incidental” to the in-scope Services;
 - 17.2.2 the State Agency demonstrates that it is not practicable and/or cost effective to procure the products and/or services under existing South Australian Government procurement arrangements or as a “stand alone” procurement; and
 - 17.2.3 the State Agency first obtains the State’s Principal Contract Administrator’s prior written approval.

PART 5 – SERVICE LEVELS

18. SERVICE LEVELS

- 18.1 Unless otherwise agreed in a Customer Agreement, the Supplier must provide Services that meet the appropriate Service Levels specified in this Part 5.
- 18.2 Where a Customer Agreement or PIPP does not specify Service Levels, then the following minimum Service Levels will apply in respect to the appropriate Services forming the whole or part of the Deliverables specified in that Customer Agreement.

SERVICE LEVEL	DESCRIPTION	MEASUREMENT
Responsiveness - Service Requests during Warranty Period	Responsiveness of the Supplier to a Service Requests during a Warranty Period.	The Supplier must ensure that it responds to each 'Service Request' within 24 hours of the request being made by a Customer during a Warranty Period.
Timeliness – Meet Milestones	Frequency of the Supplier to meet a Milestone within the designated timeframe set in Customer Agreement or PIPP.	The Supplier must meet not less than 85% of all Milestones dates specified in a Customer Agreement or PIPP as the case may be.
Timeliness to Remedy Defects	In respect to Software Development Services and/or Software Support Services, the Supplier must remedy identified Defects within agreed timeframes.	The Supplier must remedy a Defect or implement a work-around in not less than 85% of all identified Defects within agreed timeframes and if no timeframe is agreed, within 48 hours of the Supplier becoming aware of the Defect.
Timeliness - Provision of Reports	Supplier must provide required reports to Customers within the timeframes specified in the Customer Agreement or PIPP.	The Supplier must provide Customers with the required Reports within the specified timeframes set out in the Customer Agreement or the PIPP to meet a level of 95% for an overall project.
Accuracy of Invoicing	Supplier's invoices must be accurate.	95% of all of the Supplier's invoices issued for a project must be accurate.

19. DEFINITIONS

In this Schedule 5, unless the contrary intention appears:

- 19.1 **“Completion Date”** means either:
 - 19.1.1 the completion date specified in the CA Memorandum or the PIPP; or
 - 19.1.2 where no completion date is specified in the CA Memorandum or the PIPP, the date when either Party cancels the Services by providing prior written notice to the other Party of not less than thirty (30) days, unless an alternative period is agreed in writing between the Parties;
- 19.2 **“Data Cleansing”** means the Services described in clause 14.3;
- 19.3 **“Data Conversion and Migration”** means the Services described in clause 14.5;
- 19.4 **“Data Dictionary”** means a reference tool that describes each data item that may include field names, number of characters, data type, number of decimal places, or a description of the purpose of each field of data;
- 19.5 **“Data Migration Software”** means the software created or procured for the purposes of clause 14.7;
- 19.6 **“Data Services”** mean the Services specified in a Customer Agreement to be provided by the Supplier to the Customer in respect of the Customer’s Data, which includes Data Cleansing, Data Conversion and Migration and Data Warehousing;
- 19.7 **“Data Warehouse”** or **“Data Warehousing”** means a framework for managing information or data within an organisation and includes the Services set out in clause 14.12;
- 19.8 **“Defect Log”** means a brief description of each Defect in a chronological record;
- 19.9 **“Designated Operating Environment”** means the technical environment from which SaaS is to be used and accessed by the Customer as set out in the Specifications or CA Memorandum;
- 19.10 **“Design Specification”** means the Specification to be provided in accordance with clauses 11.7 to 11.12 (inclusive) of this Schedule 5;
- 19.11 **“Development Service Period”** means the period during which the Supplier provides Software Development Services, commencing from the Start Date and ceasing on the Completion Date;
- 19.12 **“Integration”** or **“Integrate”** means, in respect of an ICT system, the implementation and setting to work of the ICT system;
- 19.13 **“Object Libraries”** means a collection of non-volatile files designed to be used by programs on a computer system;

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- 19.14 **“PRINCE2™”** means the internationally recognised project management methodology endorsed by the UK government as the project management standard for public projects;
- 19.15 **“Project Manager”** means the person (or persons) being a member(s) of the Supplier’s Personnel nominated by the Supplier and approved by the Customer to act as the project manager in the provision of ICT Project Management Services;
- 19.16 **“Site”** means a Delivery Point or other location specified as a ‘site’ in a CA Memorandum for provision of System Integration Services;
- 19.17 **“Software Solution”** means Contract Work in the form of software that is a developed or modified software solution specified in a CA Memorandum to be created by the Supplier for the Customer;
- 19.18 **“Software Support Services”** means the Services specified in the CA Memorandum to be provided by the Supplier to the Customer in respect of the Supported Software;
- 19.19 **“Specified Customer Data”** means that portion of the Customer’s Data that is to be used for the Data Services;
- 19.20 **“Start Date”** means either:
- 19.20.1 the date specified in the CA Memorandum or the PIPP, being the date on which the Supplier is to provide the Services; or
 - 19.20.2 where no start date is specified, the date the Customer Agreement is signed by both Parties and where the Parties do not sign on the same day, the later date of signing;
- 19.21 **“Support Service Period”** means the period during which the Supplier provides the Software Support Services, commencing from the Start Date and ceasing on the Completion Date;
- 19.22 **“User”** means:
- 19.22.1 in relation to Software Development Services and Software Support Services, a person who may use the Software Solution for the purpose of performing their work; and
 - 19.22.2 in relation to Data Services, any person who has been given the authority by the Customer to use some or all of the functionality provided by the Customer’s System; and
- 19.23 **“Work-around Solution”** means the workaround solution proposed by the Supplier as an interim procedure or alternative that shall enable the Customer to continue operations until a Defect has been corrected.

20. INTERPRETATION

- 20.1 Other capitalised words and expressions used in this Schedule 5 and not specifically defined take their meaning from the defined terms in Schedule 2.
- 20.2 A reference to a clause or sub-clause only is a reference to a clause or sub-clause in this Schedule 5.

SCHEDULE 6

PANEL RULES

Rule 1:

The Supplier acknowledges and understands that the eProjects Plus Panel is a procurement arrangement intended for ICT projects with an overall total value of between Seven Hundred Thousand and One dollars (\$700,001) (inclusive of GST) and Four Million Four Hundred Thousand Dollars (\$4,400,000) (inclusive of GST).

Rule 2:

The Supplier must not knowingly provide quote(s) to a State Agency in respect to an ICT project where the tasks have been divided so as to give the impression that the ICT project has an overall value between Seven Hundred Thousand and One Dollars (\$700,001) (inclusive of GST) and Four Million Four Hundred Thousand Dollars (\$4,400,000) (inclusive of GST) in order to circumvent Rule 1.

Rule 3:

The Supplier acknowledges that, subject to Rule 4 below, State Agencies are generally required to seek quotes from not less than three (3) members of the eProjects Plus Panel for an ICT project.

Rule 4:

A State Agency may enter into direct negotiations with a single member of the eProjects Plus Panel for the purposes of establishing a Customer Agreement provided that the State Agency has obtained all of the necessary prior approvals from its procurement approving authority.

Rule 5:

eProjects Plus Panel members are expected to use the Portal as the preferred method of communicating with State Agencies.

Rule 6:

Each eProjects Plus Panel member will be issued with a password granting it access to the Portal. eProjects Plus Panel members must maintain confidentiality of its password and will be responsible for all activity that occurs under it.

Rule 7:

Members of the eProjects Plus Panel must not lodge or upload any material on the Portal that is defamatory, libellous, hateful, discriminatory, obscene, pornographic or similarly illegal, immoral or offensive, and the member agrees that it will be solely responsible for any consequences connected with the lodging or uploading of all material.

SCHEDULE 7

POLICIES, STANDARDS, GUIDELINES AND OTHER REQUIREMENTS

1. POLICIES

1.1 The Supplier must:

- 1.1.1 be aware of, and ensure that relevant Supplier Personnel are familiar with, the policies, standards, guidelines and other documents (each a “**Policy Document**”) indicated in the table below;
- 1.1.2 comply with each Policy Document but only where the Supplier’s activities in performance of this Agreement are activities of the nature that the Policy Document is intended to regulate;
- 1.1.3 not do anything that would impede or prevent a State Agency from complying with its obligations under a Policy Document; and
- 1.1.4 perform its obligations in the manner most likely to ensure or facilitate compliance with a Policy Document.

1.2 The State or Customer shall provide the Supplier with a copy of each Policy Document that is not publicly available on the Internet.

1.3 The Supplier acknowledges that each Policy Document that is not publicly available on the Internet is Confidential Information.

Policies, Standards, Guidelines and Other Requirements
<u>ICT Policy Statement 1 – Compliant Authorities¹</u>
<u>ICT Ruling 1 – Exemptions²</u>
OCIO/S6.1.5 Technology – Standard for Microsoft desktops
OCIO/S6.8.1 Technology – Threat Protection – Infrastructure Threat Protection Software Standard
OCIO/S6.4.3 Technology - Services Software - Messaging Services
StateNet Services – Change Process
StateNet Services – Incident Management Process
StateNet Services – Problem Management Process
Such other policies, standards, guidelines and other requirements as notified by the State from time to time

¹ Available on the Internet at: <http://www.dpc.sa.gov.au/policies-standards-and-guidelines>

² Available on the Internet at: <http://www.dpc.sa.gov.au/policies-standards-and-guidelines>

2. EQUAL OPPORTUNITY

- 2.1 This clause applies where the Supplier is a relevant employer within the meaning of the *Workplace Gender Equality Act 2012* (Cth) ("**WGE Act**").
- 2.2 The Supplier must comply with its obligations under the WGE Act and remain compliant until the expiry or termination of this Agreement.
- 2.3 The Supplier must take reasonable steps to ensure that any sub-contractor appointed for the purposes of performing this Agreement and any Customer Agreement also complies with the WGE Act if that sub-contractor is a relevant employer within the meaning of the WGE Act.
- 2.4 If the Supplier (or a sub-contractor to the Supplier) fails to comply with any of its obligations under the WGE Act, the State may terminate this Agreement and any Customer may terminate a Customer Agreement on not less than twenty (20) Business Days written notice to the Supplier without prejudice to any other rights or remedies of the State or the Customer.

3. RESTRICTION ON EMPLOYMENT OF FORMER PUBLIC SECTOR EMPLOYEES

- 3.1 The Supplier must not, for the purpose of performing Services, employ or engage any person who was formerly a public sector employee and has received a separation package from the State Government of South Australia ("**Former Employee**"), the conditions of which required the Former Employee to refrain from supplying services to the State Government of South Australia, whether as employee of the Supplier or directly as a supplier or consultant, during a period which has not yet expired (the "**Limitation Period**").
- 3.2 The Limitation Period is typically three (3) years from the date when the Former Employee receives the separation package.
- 3.3 The term "**public sector employee**" has the meaning attributed to it in the *Public Sector Act 2009* (SA).

4. AUDITOR-GENERAL

- 4.1 The Supplier acknowledges that the Auditor-General has, without limitation, the power to inspect any such accounts, records or other documents and retain them for such time as he thinks fit, and make copies of them or any of their contents and enter any building or other premises for the purpose of undertaking an audit of a public authority under the *Public Finance and Audit Act 1987* (SA).
- 4.2 Notwithstanding the preceding sub-clause nothing in this Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).
- 4.3 The Supplier must ensure that any sub-contract the Supplier enters into in relation to any Customer Agreement contains equivalent acknowledgments by the Supplier's sub-contractors as set out in this clause.

5. CONTRACTS DISCLOSURE POLICY

- 5.1 Subject to any obligations of confidence assumed by the State in relation to this Agreement or any Contract Document, the State may publicly disclose this Agreement or any Contract Document in its entirety, or a summary of this Agreement or Contract Document, in printed or electronic form, either generally to the public, or to a particular person as a result of a specific request.
- 5.2 The Supplier consents to disclosure by the State as set out in this clause.

6. CONTRACTING AND OFFICIAL RECORDS STANDARD

The Supplier agrees that in performing its obligations under this Agreement it will act in a manner that ensures that Customers are able to comply with the Contracting and Official Records Standard.

7. INDUSTRY PARTICIPATION POLICY

- 7.1 The Supplier agrees to comply with the requirements of the South Australian Industry Participation Policy including, but not limited to, any requirement in that policy to provide Customers with:
- 7.1.1 Employment Contribution Tests; and/or
- 7.1.2 Supplier's Industry Participation Plans.
- 7.2 A Customer may, at the time of entering into a CA Memorandum, require the Supplier to complete an Employment Contribution Test template or prepare a Supplier's Industry Participation Plan in accordance with the South Australian Industry Participation Policy and the Supplier must deliver to that Customer a copy of a completed Employment Contribution Test template or the Supplier's Industry Participation Plan prepared in accordance with the South Australian Industry Participation Policy within 28 calendar days of date of that CA Memorandum.
- 7.3 The Supplier must implement each Supplier's Industry Participation Plan (if any).
- 7.4 The Supplier must attend any meeting scheduled by the Industry Participation Advocate during the Term to review how the Supplier's Industry Participation Plans (if any) are being implemented and advanced, and for this purpose, the Supplier must provide all information reasonably requested by the Industry Participation Advocate. The Industry Participation Advocate must give the Supplier not less than ten (10) Business Days' notice of any such meeting.
- 7.5 The Supplier's failure to comply, in whole or in part, with the commitments contained within a Supplier's Industry Participation Plan (if any) will be a factor taken into account in the award of future contracts for the State Government of South Australia.

8. INFORMATION PRIVACY

- 8.1 In the course of performing this Agreement and any Customer Agreement, the Supplier must comply with:
 - 8.1.1 the requirements set out in Schedule 11 with respect to Personal Information; and
 - 8.1.2 all applicable laws relating to the protection of privacy.
- 8.2 The Supplier must not do anything on the State's behalf, or use Personal Information in any manner that would contribute to or constitute a contravention of the Information Privacy Principles.

SCHEDULE 8

SERVICE DEBITS

1. GENERAL

- 1.1 If the Supplier fails to satisfy one or more Relevant Service Levels, the Supplier will incur a Service Debit (if any) specified in a CA Memorandum.
- 1.2 For the purposes of this Schedule, “**Relevant Service Level**” means:
 - 1.2.1 those service level performance requirements specified in a CA Memorandum (if any); or
 - 1.2.2 as otherwise agreed between the Supplier and a Customer and set out in a PIPP.
- 1.3 If the Supplier incurs a Service Debit then, subject to clause 2 of this Schedule, the Supplier must deduct from the amount otherwise payable by a Customer to the Supplier, the amount of the relevant Service Debit.
- 1.4 The Supplier must deduct the Service Debit from the next ensuing Tax Invoice immediately after the failure to meet the Relevant Service Level occurs.
- 1.5 If no further Tax Invoices are to be issued by the Supplier to a Customer entitled to a Service Debit, then the Supplier must remit the amount of the Service Debit to that Customer within (thirty) 30 days of the end of the term of the Customer Agreement.

2. DISPUTED SERVICE DEBITS

- 2.1 If a Customer disputes whether a Service Debit is due, or its calculation, then:
 - 2.1.1 the Customer must notify the Supplier in writing;
 - 2.1.2 the Supplier must respond to the issue raised by the Customer within ten (10) Business Days of being notified of the dispute pursuant to the preceding sub-clause; and
 - 2.1.3 the Parties must seek to negotiate a resolution of the dispute within twenty (20) Business Days.
- 2.2 If the Parties cannot negotiate a resolution of the dispute pursuant to clause 2.1.3 of this Schedule, then the Parties must further seek to resolve the dispute in accordance with the Dispute Resolution Procedures.

3. LIQUIDATED DAMAGES

- 3.1 The Parties acknowledge that Service Debits are a form of liquidated damages for a failure to achieve Relevant Service Levels required under this Agreement.

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- 3.2 The Customer may by written notice to the Supplier elect not to receive the payment of Service Debits in relation to a failure to satisfy a Relevant Service Level and to thereby preserve its rights or entitlements to damages or financial compensation.
- 3.3 The payment of Service Debits does not have any effect on the right of the State or the Customer to terminate the Agreement or a Customer Agreement (as the case may be).

SCHEDULE 9

PRICES

1. GENERAL

- 1.1 This Schedule 9 sets out the basis upon which the Prices for the supply of Deliverables under a Customer Agreement are to be determined.
- 1.2 The Supplier acknowledges that the Prices for all Deliverables are inclusive of:
 - 1.2.1 Delivery, all taxes and charges (excluding GST) and all Warranty Obligations; and
 - 1.2.2 all the costs to the Supplier relating to this Agreement (including State Levy) except as specified elsewhere in this Agreement.
- 1.3 No part of this Schedule prevents Customers from negotiating a reduced price for the Deliverables.

2. SERVICES CEILING PRICE

- 2.1 The Supplier must not charge Customers higher than the Services Ceiling Price for Services provided under a Customer Agreement.
- 2.2 The Supplier acknowledges that its Services Ceiling Price rates are indicative of the range of fees charged by the Supplier. The rates are included to assist State Agencies to select members of the eProjects Plus Panel for the purpose of obtaining quotes and to facilitate negotiations of Customer Agreements.

3. PRICE REVIEW

- 3.1 The Supplier may review its Services Ceiling Prices and upload any changes in the rates to the Portal.

4. MOST FAVOURED PRICE

- 4.1 The Supplier must offer to all Customers a Price for a Product and/or Service which is no less favourable than the Price paid by any other Customer of substantially similar Products and/or Services.
 - 4.2 Where the Supplier offers more favourable prices to any Customer, it must promptly make the more favourable price available to all other State Agencies entitled to the benefit of this Agreement for future Customer Agreements and in respect of a Price for Services, the Contractor must amend its Services Ceiling Price rates accordingly.
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SCHEDULE 10

INVOICES

1. INVOICE TIMING AND FORMAT

- 1.1 The Supplier must invoice Customers directly.
- 1.2 The Supplier must provide a valid Tax Invoice for the Deliverables supplied to a Customer in accordance with each Customer Agreement. Tax Invoices must be issued within fifteen (15) days of the end of the calendar month to which the invoice relates unless otherwise agreed by a Customer.
- 1.3 The Supplier must:
 - 1.3.1 make Tax Invoices and associated billing data available to Customers on a secure “on line” basis or in hard copy (as Customers require); and
 - 1.3.2 enable Customers to undertake detailed analysis of billing data down to business unit level.
- 1.4 The Supplier must include the adjustments for any Deliverable changed or terminated by a Customer in the Tax Invoice for the month in which the change or termination of the Deliverable occurred.

2. INVOICE REPORTING

Within fifteen (15) Business Days of a request of a Customer, the Supplier must provide hierarchical reporting so that all Tax Invoices that have been issued by the Supplier can be aggregated.

3. INFORMATION TO BE INCLUDED IN INVOICES

The Supplier must specify the following information in all Tax Invoices:

- 3.1 Supplier’s name, address, ABN and ACN (where applicable);
- 3.2 the designated “eProjects Plus Panel Agreement number”;
- 3.3 Supplier’s Customer number;
- 3.4 Customer’s name and address;
- 3.5 the words “Tax Invoice” or “Adjustment Note”;
- 3.6 an invoice number;
- 3.7 invoice date;
- 3.8 itemise each Product or Service (or both) and the Price for each included in the invoice amount;
- 3.9 the levies or fees charged pursuant to Schedule 4;

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- 3.10 the amount of GST;
 - 3.11 payment due date;
 - 3.12 the Supplier's facsimile and e-mail addresses for payment;
 - 3.13 details of any Service Debits applicable; and
 - 3.14 such other information as agreed between a Customer and the Supplier.

4. **VERIFICATION OF INVOICES**

Within five (5) Business Days of being requested by a Customer, the Supplier must provide to the Customer, supporting information sufficient to enable the Customer to verify that the billing information is appropriate and accurate for the purposes of payment of invoices.

SCHEDULE 11

INFORMATION PRIVACY

1. USE

The Supplier must not obtain access to, record, retain, amend or disclose Personal Information except:

- 1.1 to the extent necessary to comply with obligations under this Agreement; or
- 1.2 if and to the extent expressly authorised by the State.

2. SECURITY OF PERSONAL INFORMATION

The Supplier must ensure that:

- 2.1 any Personal Information is protected against loss, unauthorised access, use, modification, disclosure or other misuse; and
- 2.2 access to Personal Information is limited to those employees or sub-contractors of the Supplier who need it for the purposes of carrying out their duties for the purpose of this Agreement.

3. EMPLOYEE AWARENESS OF PRIVACY REQUIREMENTS AND UNDERTAKING

The Supplier must ensure that any employee of the Supplier requiring or having access to any Personal Information held in connection with this Agreement:

- 3.1 is contractually obliged to observe the Information Privacy Principles; and
- 3.2 is informed that failure to comply with these obligations may lead the Supplier to take disciplinary action against the employee.

4. SUB-CONTRACTOR OBLIGATIONS

If Personal Information is to be available to or in the custody of a sub-contractor, the Supplier must ensure that the sub-contractor assumes legally enforceable obligations to implement these requirements as to privacy.

5. NOTIFICATION

- 5.1 The Supplier must immediately notify the State if it becomes aware that a disclosure of Personal Information may be required by law.
- 5.2 The Supplier must in respect of any Personal Information held or accessed in connection with this Agreement immediately notify the State in writing if the Supplier becomes aware of a breach of the provisions of this Schedule.

6. REASONABLE REQUESTS, DIRECTIONS AND GUIDELINES

The Supplier must in respect of any Personal Information held in connection with this Agreement cooperate with any reasonable requests or directions of the State including, but not limited to, the issuing of any guideline concerning the handling of Personal Information.

7. HEALTH PORTFOLIO

- 7.1 Where a Customer is an Agency forming part of the SA Health portfolio, the Supplier must comply with the Department of Health's Code of Fair Information Practice (a copy of which can be found at <http://www.sahealth.sa.gov.au/wps/wcm/connect/d001ee004cc5dfa1ad1bbda496684d9f/CodeOfFairInformationPractice-PIGR-1206.pdf?MOD=AJPERES&CACHEID=d001ee004cc5dfa1ad1bbda496684d9f>) ("**Code of Fair Information Practice**") and implement as far as practicable the Code of Fair Information Practice, related policies, principles and guidelines or directions at the request of that Customer as it relates to Personal Information held or acquired under a Customer Agreement; and
- 7.2 allow the Customer to undertake, and cooperate with any audit or investigation which the Customer deems necessary to verify that the Supplier is complying with the Code of Fair Information Practice.

8. DATA

Acknowledgement

- 8.1 The Supplier acknowledges that:
- 8.1.1 by virtue of this Agreement it may be in possession of data belonging to the State, Customers and third parties including records and other information generated, collected or stored by the Supplier in whatever form that information may exist including billing data ("**State's Data**"); and
 - 8.1.2 it is only the custodian of the State's Data, and must deliver that data to the State or the relevant Customer on demand, regardless of any other legal right or remedy that the Supplier may then have.

No Rights

- 8.2 Nothing in this Agreement has the effect of giving the Supplier any right over the State's or a Customer's Data.
- 8.3 If the Supplier receives a subpoena or any other demand from a court or other adjudicative person or body or from any person having legal authority to demand production of data connected to the State or State's Data, it must:
- 8.3.1 promptly advise the State of receipt of the demand, and promptly provide the State with a copy of the demand (to the extent it has been reduced to writing); and
 - 8.3.2 seek and, to the extent it can lawfully do so, comply with the State's instructions as to the response to the demand (including delaying compliance for as long as possible).
- 8.4 Nothing in this clause requires the Supplier to commit an unlawful act, or expose itself to proceedings for contempt or other lawful penalties.

No Lien

- 8.5 The Supplier must ensure that the State and Customers have access to the State's Data in accordance with this Agreement at all times, whether or not any dispute exists between the State or Customers and the Supplier.
- 8.6 Specifically, and without limiting any of the State's rights, the Supplier acknowledges:
 - 8.6.1 it has no right to withhold State's Data from the State or relevant Customer or third party;
 - 8.6.2 the State, Customers or any other person may seek immediate injunctive relief to secure access to the State's Data; and
 - 8.6.3 the Supplier must not obstruct hinder or oppose any such application for relief.

SCHEDULE 12

SUPPLIER PERFORMANCE

1. SUPPLIER PERFORMANCE

- 1.1 At the closure of each project or engagement, a Customer may review the Supplier's performance under a Customer Agreement and:
 - 1.1.1 provide a report to the State; and
 - 1.1.2 publish that report on the Portal.
- 1.2 The State may at any time (and from time to time) monitor, review and evaluate the Supplier's performance of this Agreement and Customer Agreements and advise State Agencies of the outcome of the review.
- 1.3 The Supplier must co-operate in the conduct of a review conducted under this clause.
- 1.4 On completion of each project or engagement, the Supplier may provide feedback to a Customer via the Portal.

SCHEDULE 13

LIMITATION OF LIABILITY¹

Assessed Risk Profile	Minimum Acceptable Limitation of Liability
Low	1 times (1x) total contract value
Medium	2 times (2x) total contract value
High	5 times (5x) total contract value

Conditions:

1. State Agencies must ascertain the risk profile using its standard agency project risk assessment framework to assign a level of risk to the proposed contract.
2. For projects rated as 'high' risk, a more detailed risk assessment must be carried out by a State Agency and if the amount specified in the above table is inadequate, a higher limitation of liability must be negotiated specifically for that contract.
3. The proposed project is not within scope of a strategic across-Government ICT contract established and/or managed by the Strategic Procurement directorate in the Department of the Premier and Cabinet.
4. The limitations set out in the table above must not be used for ICT system audits which do not involve ICT development, implementation, maintenance or support.
5. A Customer Agreement must not be an integral part of a larger ICT or other contract.
6. The 'prescribed heads of liability' set out in clause 24.2 of Schedule 1 must not be limited.

¹ Cap on liability to be determined in accordance with the Across Government Approved Liability Capping Framework for ICT contracts with a value of \$5M or lower. Refer to:
<http://intra.sa.gov.au/Finance/LLRC/files/AcrossGovtICTProcurementContractsFinal.pdf>

SCHEDULE 14

SOFTWARE

1. SOFTWARE LICENSING

- 1.1 In respect of Software supplied to a Customer in performance of any Contract Document, the Supplier must:
 - 1.1.1 where the Supplier is the Software proprietor, grant a licence for the Software to the Customer (or the State for the benefit of Customers' use) on the terms set out in clause 1.3 below; and
 - 1.1.2 where the Supplier is not the Software proprietor ensure that the Customer (or the State for the benefit of Customers' use) is granted a licence to the Software by any third party Software author ("**3rd Party Licensor**") on the terms set out in clause 1.3 below,

(individually or collectively as the context requires "**Licence**").
- 1.2 The Customer may either:
 - 1.2.1 negotiate a Licence directly with the 3rd Party Licensor where the Customer requests the Supplier to install Software owned by that 3rd Party Licensor; or
 - 1.2.2 accept the terms of the License that are provided with Software which is procured by the Supplier from the 3rd Party Licensor for the benefit of the Customer.
- 1.3 Unless otherwise agreed between the Parties, each Licence must:
 - 1.3.1 be 'perpetual' in nature in that the Customer (or the State for the benefit of Customers' use) is granted a licence to use the Software operating without limit of time;
 - 1.3.2 if the License is granted to a Customer, be readily assignable by the Customer to the Crown in right of the State of South Australia or to any other State Agency;
 - 1.3.3 commence no later than the first use of the Software;
 - 1.3.4 include the right to permit the Customers' service providers to operate, use and display the Software for the purpose of carrying out business of that Customer;
 - 1.3.5 include the right to make back up copies; and
 - 1.3.6 (except where software maintenance is ordered) entail no additional payments by the State or a Customer.
- 1.4 In performing its obligations and receiving the Deliverables contemplated by this Agreement, a Customer is entitled to assume (unless otherwise informed) that the Software (and any other software) made available or

accessible by the Supplier to Customers or the State is licensed so as to authorise the use and access permitted by the Supplier or 3rd Party Licensor (as the case may be).

2. INFRINGING SOFTWARE

In relation to Software:

- 2.1 if it is determined by any independent tribunal of fact or law, or if it is agreed between the Parties to a dispute, that an infringement of Intellectual Property Rights has occurred, and this infringement has any effect on the right of a Customer or the State to use any of the Deliverables or Software ("**Offending Item**"), then the Supplier must:
 - 2.1.1 obtain for the Customer the right to continue using the Offending Item;
 - 2.1.2 modify or replace the Offending Item (without detracting from its overall performance) so as to avoid the infringement, and compensate the Customer for the amount of any direct loss or damage sustained or incurred by the Customer during or as a result of such modification or replacement;
 - 2.1.3 if the solutions in either of the two preceding paragraphs cannot be achieved on reasonable terms, the Supplier must:
 - (a) remove any Offending Item from the Customer's premises;
 - (b) refund the moneys paid for the Offending Item and any Deliverables or Software which can only be used for the Customer's purposes in conjunction with the Offending Item;
 - (c) terminate and cease to charge for the provision of the Offending Item; and
 - (d) except in the case contemplated in sub-clause 2.2, pay to the Customer the amount of any direct loss or damage sustained as a result of the unavailability of the Offending Item, unless the State in its sole discretion, determines that it is necessary to retain and continue to use the Offending Item. Any payments required to be made to a third party as a consequence of this action must be reimbursed by the Supplier to the State;
- 2.2 if the Offending Item is Software for which a Licence was provided by, or obtained for, the Customer by the Supplier, it will be presumed (unless the Customer can demonstrate otherwise) that the Supplier cannot on reasonable terms obtain rights to use, or modify or replace the Offending Item so as to avoid infringement of Intellectual Property Rights; and
- 2.3 for the purposes of this clause, "**infringement**" includes unauthorised acts which would, but for the operation of the Section 163 of the *Patents Act 1990 (Cth)*, Section 96 of the *Designs Act 2003 (Cth)* and Section 183 of the *Copyright Act 1968 (Cth)* constitute an infringement.

3. TERMINATION AND CONVERSION

- 3.1 Where a Customer wishes to terminate the Licence and convert it to a different licensing model that is offered by the Supplier or 3rd Party Licensor (as the case may be) in respect of Software licensed to the Customer, the Parties shall act reasonably in negotiating an appropriate conversion, having regard to the relevant factors including the:
 - 3.1.1 Price that has been previously paid by the Customer for the Licence;
 - 3.1.2 term of the licence, type or class of licence, number of users; and
 - 3.1.3 similarity of the proposed licence to the Licencewhich is to be terminated by the Customer.
- 3.2 A Customer may terminate a Licence by providing the Supplier or 3rd Party Licensor (as the case may be) with not less than thirty (30) days prior written notice of its intention to terminate.
- 3.3 A Customer shall not be entitled to any refund from the Supplier or 3rd Party Licensor (as the case may be) for any payment(s) made by the Customer relating to the Licence following the date of termination.
- 3.4 If requested by the Supplier, the Customer shall after termination of the Licence destroy or return to the Supplier all copies of the Licensed Software and all related Documentation, save that the Customer may retain a copy of the Licensed Software and its related Documentation as may be reasonably required by the Customer to comply with any relevant Laws.

SCHEDULE 15

INTELLECTUAL PROPERTY RIGHTS

(INTELLECTUAL PROPERTY MODELS)

IP MODEL 1: CUSTOMER OWNS IP

1. Intellectual Property in Contract Work

- 1.1 Subject only to the exceptions set out in clause 1.2:
 - 1.1.1 the Intellectual Property Rights in the Contract Work and any embodiment of the Contract Work automatically vest in the Customer; and
 - 1.1.2 property in any separate physical embodiment of the Contract Work automatically vests in the Customer.
- 1.2 This Agreement does not vest in the Customer:
 - 1.2.1 Intellectual Property Rights in the Supplier's methodologies or other proprietary information in existence at or prior to the date of the CA Memorandum giving rise to the creation of the Contract Work;
 - 1.2.2 Intellectual Property Rights in the Supplier's software tools or object libraries whether in existence before or after the date of the CA Memorandum giving rise to the creation of the Contract Work; or
 - 1.2.3 Intellectual Property Rights in existing publications or other work produced by or on behalf of the Supplier prior to or otherwise than in the course of providing the Deliverables,collectively "**Supplier IP**".

2. Licence to Supplier IP

- 2.1 To the extent that any Supplier IP is incorporated in Contract Work, the Supplier grants to the Customer a non-exclusive, perpetual, irrevocable, world-wide, fee free licence to hold, use, execute, reproduce, upload, display, perform and sublicense such Supplier IP as part of the Contract Work, and to alter, enhance and reproduce derivative works from the Supplier IP as a whole for use by the Customer and the State (including other State Agencies) provided that the Customer, the State and State Agencies may not exploit the Supplier IP for commercial purposes.
- 2.2 The Supplier warrants that it has the necessary rights to grant the licences to the Customer and the State expressed in clause 2.1 above.

3. **Updates and New Releases**

- 3.1 Where, during the Term of a Customer Agreement, the Supplier creates any Updates or New Releases, the Supplier shall promptly provide those Updates or New Releases to the Customer without additional cost, so as to enable the Update or New Release to be incorporated into relevant Deliverables. Where the Update or New Release is relevant to Contract Work, it shall become part of the Contract Work and vest in the Customer in accordance with clause 1.1 of this IP Model 1.

4. **Escrow of Source Code**

- 4.1 If requested in writing by the Customer at any time during the Term of a Customer Agreement, the Supplier must deposit the source code and/or the object code of any Deliverable and all other relevant Software, Documentation, drawings and plans necessary to enable a competent programmer who is experienced with the standard Software included in the Deliverables (and any standard development tools used to create the Deliverable) to keep the Deliverables in good repair as specified in the escrow agreement ("**Escrow Material**") with an escrow agent approved by the Customer.
- 4.2 The Customer may access the Escrow Material in accordance with the escrow agreement.
- 4.3 The Supplier must maintain the escrow arrangement until the Customer gives written notice that it is no longer required.
- 4.4 The Customer must pay the fees associated with the establishment and maintenance of the escrow agreement including any ongoing escrow fees.

IP MODEL 2: CUSTOMER OWNS IP - LICENCES BACK TO SUPPLIER

5. Intellectual Property in Contract Work

5.1 Subject only to the exceptions set out in clause 5.2:

5.1.1 the Intellectual Property Rights in the Contract Work and any embodiment of the Contract Work automatically vest in the Customer; and

5.1.2 property in any separate physical embodiment of the Contract Work automatically vests in the Customer.

5.2 This Agreement does not vest in the Customer:

5.2.1 Intellectual Property Rights in the Supplier's methodologies or other proprietary information in existence at or prior to the date of the CA Memorandum giving rise to the creation of the Contract Work;

5.2.2 Intellectual Property Rights in the Supplier's software tools or object libraries whether in existence before or after the date of the CA Memorandum giving rise to the creation of the Contract Work; or

5.2.3 Intellectual Property Rights in existing publications or other work produced by or on behalf of the Supplier prior to or otherwise than in the course of providing the Deliverables,

collectively "**Supplier IP**".

6. Licence to Supplier IP

6.1 To the extent that any Supplier IP is incorporated in Contract Work, the Supplier grants to the Customer a non-exclusive, perpetual, irrevocable, world-wide, fee free licence to hold, use, execute, reproduce, upload, display, perform and sublicense such Supplier IP as part of the Contract Work, and to alter, enhance and reproduce derivative works from the Supplier IP as a whole for use by the Customer and the State (including other State Agencies) provided that the Customer, the State and State Agencies may not exploit the Supplier IP for commercial purposes.

6.2 The Supplier warrants that it has the necessary rights to grant the licences to the Customer and the State expressed in clause 6.1 above.

7. Licence back to Supplier

7.1 The Customer grants to the Supplier a non-exclusive, perpetual, irrevocable, royalty free and fee free licence (including the right to sublicense), without additional cost to the Supplier, to:

7.1.1 use;

7.1.2 exploit (whether commercially or otherwise); and/or

7.1.3 otherwise exercise all rights comprised in the copyright in relation to, the Contract Works, including all Updates and New Releases.

8. **Updates and New Releases**

- 8.1 Where, during the Term of a Customer Agreement, the Supplier creates any Updates or New Releases, the Supplier shall promptly provide those Updates or New Releases to the Customer without additional cost, so as to enable the Update or New Release to be incorporated into relevant Deliverables. Where the Update or New Release is relevant to Contract Work, it shall become part of the Contract Work and vest in the Customer in accordance with clause 5.1 of this IP Model 2.

9. **Escrow of Source Code**

- 9.1 If requested in writing by the Customer at any time during the Term of a Customer Agreement, the Supplier must deposit the source code and/or the object code of any Deliverable and all other relevant Software, Documentation, drawings and plans necessary to enable a competent programmer who is experienced with the standard Software included in the Deliverables (and any standard development tools used to create the Deliverable) to keep the Deliverables in good repair as specified in the escrow agreement ("**Escrow Material**") with an escrow agent approved by the Customer.
- 9.2 The Customer may access the Escrow Material in accordance with the escrow agreement.
- 9.3 The Supplier must maintain the escrow arrangement until the Customer gives written notice that it is no longer required.
- 9.4 The Customer must pay the fees associated with the establishment and maintenance of the escrow agreement including any ongoing escrow fees.
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SCHEDULE 16

CONFIDENTIAL CONTRACT CONDITIONS

The Parties to this Agreement designate the following information of this Agreement as confidential:

- A. All pricing information, including the Supplier's Service Ceiling Prices as listed and published on the Portal.
- B. All pricing for Deliverables as set out in each CA Memorandum, Customer Agreement or PIPP (if any).
- C. Any amount of liability cap appearing in any CA Memorandum.
- D. Copies of 'Policy Documents' provided to the Supplier pursuant to clause 1.2 of Schedule 7 that are not publically available on the Internet.

SCHEDULE 17

SECURITY REQUIREMENTS

1. DEFINITIONS

In this Schedule:

- 1.1 **“Australian Government Protective Security Policy”** means the protective security policy established by the Australian Government and updated from time to time, a copy of the current version may be viewed at: <http://www.protectivesecurity.gov.au/ExecutiveGuidance/Pages/default.aspx>;
- 1.2 **“Certification”** means the process by which an organisation’s ISMS is examined against the AS/NZS ISO/IEC 27001 standard by an accredited certification body;
- 1.3 **“ISMS” or “Information Security Management System”** means a management system based on a systematic business risk approach to establish, implement, operate, monitor, review, maintain and improve information security. It is an organisational approach to information security; and
- 1.4 **“AS/NZS ISO/IEC 27001”** means the standard for information security that focuses on an organisation’s ISMS.

2. SUPPLIER RESPONSIBILITIES

- 2.1 In supplying the Deliverables, the Supplier must be aware of, comply with and promote the use of:
 - 2.1.1 policies, standards, guidelines and other requirements as set out in this Schedule 17 (as amended from time to time);
 - 2.1.2 any additional policies, standards, guidelines and other requirements as notified by the State from time to time throughout the Term;
 - 2.1.3 the State’s document handling procedure for classified documents; and
 - 2.1.4 any reasonable site security requirements of a Customer.
- 2.2 An amendment or addition to the policies, standards, guidelines and other requirements pursuant to the preceding sub-clause may arise from any implementation by the State of the Australian Government Protective Security Policy.
- 2.3 The Supplier must ensure that other suppliers and sub-contractors it engages with (in the provision of Deliverables) are aware of, comply with and promote the use of the policies, standards, guidelines and other requirements as contemplated by the preceding sub-clauses 2.1 and 2.2.

2.4 The Supplier must provide each Customer with a quote detailing any additional costs it will incur as a result of the Supplier complying with, and implementing any:

2.4.1 policy, standard, guideline or other requirement additional to that contained in this Schedule on execution of this Agreement; or

2.4.2 amendment to a policy, standard, guideline or other requirement contained in this Schedule.

The quote must be open for acceptance by the Customer for at least twenty (20) Business Days. If accepted by the Customer the quote will take effect as if it had been raised by a Customer Agreement. Unless the quote is accepted, the Supplier is not obliged to comply with or implement those requirements in clauses 2.4.1 and 2.4.2 of this Schedule 17 in relation to which the quote was provided.

2.5 Where the Supplier is not generally certified to AS/NZS ISO/IEC 27001, the Supplier warrants that it has an information security framework that reflects the principles and intent of both AS/NZS ISO/IEC 27001 and AS/NZS ISO/IEC 27002 and the Supplier must comply with the requirements of its information security framework.

2.6 Where the Supplier is generally certified to AS/NZS ISO/IEC 27001, the Supplier must comply with AS/NZS ISO/IEC 27001 and AS/NZS ISO/IEC 27002.

2.7 The Supplier must notify the State's Principal Contract Administrator of any Customer Agreement proposed by a Customer the substance of which may give rise to a potential breach of any of the policies, standards, guidelines and other requirements set out in this Schedule 17.

2.8 In the course of using or having access to or connecting its infrastructure with the State's ICT Infrastructure, the Supplier must comply with the State's 'conditions of connection' a copy of which will be made available to the Supplier and as determined by the State from time to time.

3. **POLICIES, STANDARDS, GUIDELINES and other REQUIREMENTS**

Without limiting the above provisions, the Supplier must be aware of, comply with and promote the use of the following policies, guidelines, standards and other requirements as amended from time to time:

	Policies, Standards, Guidelines and Other Requirements
3.1	Cabinet Circular #30 <i>Protective Security Management Framework</i> ¹
3.2	OCIO/F4.1 <i>Security - Information Security Management Framework</i> ²
3.3	StateNet Conditions of Connection

¹ Available on the Internet at: <http://www.sa.gov.au/policy/ismf>

² Available on the Internet at: <http://www.sa.gov.au/policy/ismf>

	Policies, Standards, Guidelines and Other Requirements
3.4	OCIO ICT Support Plan
3.5	such other policies, standards, guidelines and other requirements as notified by the State from time to time

- 3.1 The State shall provide the Supplier with a copy of each of those policies, guidelines, standards and other requirements that are not publically available on the Internet.
- 3.2 The Supplier acknowledges that each of those policies, guidelines, standards and other requirements that are not publically available on the Internet are Confidential Information.

4. **LOCATION AND STORAGE OF DATA**

- 4.1 The Supplier must not send or store State Data, Customer Data, Personal Information or other related information any of which uses (or requires the use of) 'protective markings' as described in the ISMF (i.e. security classified information) outside of Australia.
- 4.2 The Supplier must not send or store State Data, Customer Data, or other related data or information associated with State Government Critical Information Infrastructure outside of Australia without the express written consent of the State's Principal Contract Administrator. The approval of the State's Principal Contract Administrator may be given conditionally.
- 4.3 If the State's Principal Contract Administrator does not provide an unconditional approval under clause 4.2, then the Parties must, at either Party's request, negotiate with a view to resolving the issues that arise for the Supplier as a result of the withholding of the approval, or the imposition of conditions, as the case may be.
- 4.4 The Supplier must not send or store Customer Data outside of Australia without the express written consent of the Customer's chief executive (or his or her delegate). The approval of the Customer's chief executive (or his or her delegate) may be given conditionally.
- 4.5 If the Customer's chief executive (or his or her delegate) does not provide an unconditional approval under clause 4.4, then the Customer and the Supplier must negotiate with a view to resolving the issues that arise for the Supplier as a result of the withholding of the approval, or the imposition of conditions, as the case may be.

SCHEDULE 18

CUSTOMER AGREEMENT MEMORANDUM

Project Number:	<insert>
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1. PARTIES

This is a Customer Agreement (“**CA**”) made on the date specified in Item 1 of the Table of Particulars (“**the Table**”) between the Supplier as supplier on the one hand and the State Agency as Customer on the other hand (specified in Items 2 and 3 of the Table respectively) under the terms of the eProjects Plus Panel Agreement numbered [insert number of the Supplier's eProjects Plus Panel Agreement] made between the Minister for the Public Sector on behalf of the Crown in right of the State of South Australia and the Supplier (“**eProjects Plus Agreement**”).

2. PRODUCTS AND SERVICES

This CA is an agreement between the Supplier and the Customer to supply Deliverables to the Customer, as specified in Item 4 of the Table.

3. PRICE

The Prices determined in accordance with Schedule 9 of the eProjects Plus Agreement as set out in Item 5 of the Table apply to the provision of the Deliverables under this CA.

4. TERM

This CA commences and expires on the dates specified in Item 1 of the Table unless it is terminated earlier in accordance with the provisions of the eProjects Plus Agreement or this CA.

5. CONTRACT ADMINISTRATORS

The Customer Agreement Administrators are specified in Item 6 of the Table.

6. CONTRACT CONDITIONS

6.1 This CA is subject to the terms and conditions set out in the Schedules to the eProjects Plus Agreement, and the special conditions (if any) set out in Item 8 of the Table (“**Special Conditions**”).

6.2 The Special Conditions do not prevail if they are inconsistent with the terms and conditions set out in the eProjects Plus Agreement; unless the prior written approval of the State’s Principal Contract Administrator has been obtained.

7. CONFIDENTIAL CONTRACT CONDITIONS

The Parties designate the provisions of the CA set out in Item 9 of the Table as Confidential Contract Conditions.

8. SPECIFIED REQUIREMENTS

8.1 The Parties agree that the provision of the Deliverables shall be made and performed in accordance with the:

8.1.1 specified requirements detailed in the Table;

8.1.2 requirements of Schedule 5; and

8.1.3 the Project Implementation and Payment Plan (if any).

TABLE OF PARTICULARS

MANDATORY REQUIREMENTS	Item no.	Item	Particulars
	1	Date of this CA Term of this CA	Date: Commencement Date: Expiry Date:
	2	Supplier	(A.B.N.)
	3	State Agency (Customer)	
	4	Deliverables within the scope of this Agreement	
	5	Price	
	6	Customer Agreement Administrators	<u>State Agency:</u> Name: Address: Telephone: Facsimile: E-mail: <u>Supplier:</u> Name: Address: Telephone: Facsimile: E-mail:
	7	Cap on Liability Amount ^{1, 2}	per Occurrence

¹ Clause 24.2 of Schedule 1

² Liability Cap must be determined in accordance with Schedule 13

OPTIONAL REQUIREMENTS	8	Special Conditions (if any) ³	
	9	Confidential Contract Conditions ⁴ (if any)	
	10	Vesting ⁵ (IP Model - Schedule 15)	
	11	Additional Insurance ⁶ (if any)	
	12	Service Levels ⁷	
	13	Additional Report Requirements (if any) including any additional cost (if any)	
	14	Financial Undertaking ⁸ (if required)	
	15	Project, Implementation and Payment Plan ⁹ (if specified)	
	16	Work-in-progress Diary ¹⁰ (if any)	
	17	Project Management Committee ¹¹ (if required) Date to be established ¹² (if applicable)	Yes/No

³ Clause 7.1.4 of Schedule 1

⁴ Clause 23.2.2 of Schedule 1

⁵ Clause 22.1 of Schedule 1

⁶ Clause 45.11 of Schedule 1

⁷ Clause 18.1 of Schedule 5

⁸ Clause 46 of Schedule 1

⁹ Clause 4 of Schedule 5

¹⁰ Clause 10 of Schedule 5

¹¹ Clause 5 of Schedule 5

¹² Clause 5.1 of Schedule 5

OPTIONAL REQUIREMENTS	18	Delivery Point/ Specifications ¹³ (if applicable)	
	19	Customer Supplied Items ¹⁴ (if any) Additional costs ¹⁵ (if any)	
	20	Key Supplier Personnel ¹⁶ (if any)	
	21	Policies Standards and other Customer Requirements ¹⁷ (if any)	
	22	Additional Warranty Period (if any)	
	23	Escrow of Source Code ¹⁸ (if required)	
	24	Designated Operating Environment ¹⁹ (if required)	
	25	Industry Participation Policy Plan (required) ²⁰	Yes/No
	26	Industry Participation Policy ECT (required) ²¹	Yes/No
	27	Service Debits ²² (Relevant Service Levels) (Amount)	

¹³ Clause 4.13 of Schedule 5

¹⁴ Clause 9.1 of Schedule 5

¹⁵ Clause 9.4.4 of Schedule 5

¹⁶ Clause 27.11 of Schedule 1

¹⁷ Clause 17.1 of Schedule 1

¹⁸ Clause 11.14 Schedule 5

¹⁹ Clauses 11 & 12 of Schedule 5

²⁰ Clause 7 of Schedule 7

²¹ Clause 7 of Schedule 7

²² See Schedule 8

	28	Customer Specific Reports ²³	
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EXECUTION

This Agreement is signed by the **[Insert name of Supplier]** ACN or ABN **[Insert ACN/ABN]** in accordance with s127 of the Corporations Act 2001 by:)
)
)
)
)

.....
Signed

.....
Signed

.....
Name

.....
Name

.....
Position

.....
Position

SIGNED by **[insert details of relevant Minister, organisation or delegate]** in the presence of:)
)
)

.....
Witness

.....

Print Name

The **[Insert relevant Minister or delegate's details]** hereby approves clause 23.1 of the eProjects Plus Agreement as it applies to this Customer Agreement for the purposes of clause 13(2) of Schedule 1 of the *Freedom of Information Act 1991* (SA).

.....
Signed by **[insert name]**

²³ Clause 9.2.2