

PROCURE IT VERSION 3.2



Print and Imaging as a Service

Contracting framework

General Order Form

Schedules

Version: 13.09.18

General Order Form. Schedule 1 to the Customer Contract

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

CUSTOMER

Item 1 Name of Customer

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Customer's full legal name:	The Technical and Further Education Commission (ABN 89 755 348 137)

Item 2 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Customer's service/delivery address:	TAFE NSW Ground Floor, Building B, Harris Street, Ultimo NSW 2007

Item 3 Customer's Representative

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Representatives (clause 23.1)	
Specify an employee who is the Customer's Authorised Representative:	

CONTRACTOR

Item 4 Name of Contractor

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Contractor's full legal name:	Ricoh Australia Pty Ltd (ABN 30 000 593 171)

Item 5 Service Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
Specify the Contractor's service/delivery address:	Suite G2, 2 Richardson Place North Ryde, NSW 2113

Item 6 Contractor's Representative

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

Item 7 Head Agreement

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

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.1)	Not applicable
Specify the Head Agreement number:	Not applicable
Specify the Head Agreement title:	Not applicable
Specify the Term of the Head Agreement: <ul style="list-style-type: none"> Start Date: End Date: If the Term of the Head Agreement has expired the Customer must obtain the Contract Authority's approval to enter into a further Customer Contract, and this approval should be attached to this General Order Form.	Not applicable
Insurance (clause 16.2)	Not applicable
Specify the insurances required under the Head Agreement:	Not applicable
The default insurance requirement under the Head Agreement is public liability insurance with an indemnity of at least \$10,000,000 in respect of each claim for the period of cover. Specify any higher limit of cover that is required by the Head Agreement:	Not applicable
The default insurance requirement under the Head Agreement is product liability insurance with an indemnity of at least \$10,000,000 for the total aggregate liability for all claims for the period of cover. Specify any higher limit that is required by the Head Agreement:	Not applicable
Specify if professional indemnity/errors and omissions insurance was required under the Head Agreement. If so, the default insurance requirement is for a limit of cover of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover.	Not applicable

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify any higher limit that is required by the Head Agreement:	
Workers' compensation insurance in accordance with applicable legislation:	Not applicable
Specify any other type of insurance required under the Head Agreement and the specified amount:	Not applicable
Performance Guarantee (clause 17.1)	
Specify if the Contractor was required to provide a Performance Guarantee under the Head Agreement:	Not applicable

Item 8 Modules that form Part of the Customer Contract

Formation (clause 3.8(a))			
<i>Indicate, by marking with an X, the Modules that apply</i>			
Module 1 – Hardware Acquisition and Installation	<input type="checkbox"/>	Module 11 – Telecommunications as a Service	<input type="checkbox"/>
Module 2 – Hardware Maintenance and Support Services	<input type="checkbox"/>	Module 12 – Managed Services	<input type="checkbox"/>
Module 3 – Licensed Software	<input checked="" type="checkbox"/>	Module 13 – Systems Integration	<input type="checkbox"/>
Module 4 – Development Services	<input type="checkbox"/>	Module 13A – Major Project Systems Integration Services	<input type="checkbox"/>
Module 5 – Software Support Services	<input checked="" type="checkbox"/>	Module 14 – Print and Imaging as a Service	<input checked="" type="checkbox"/>
Module 6 – Contractor Services	<input type="checkbox"/>		
Module 7 – Professional Services	<input type="checkbox"/>		
Module 8 – Training Services	<input type="checkbox"/>		
Module 9 – Data Migration	<input type="checkbox"/>		
Module 10 – As a Service	<input type="checkbox"/>		

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

Formation (clause 3.8(b))			
<i>Indicate, by marking with an X, the Schedules that apply</i>			
Schedule 1 – General Order Form	Applies	Schedule 7 – Statutory Declaration - Subcontractor	<input checked="" type="checkbox"/>
Schedule 2 – Agreement Documents	<input checked="" type="checkbox"/>	Schedule 8 – Deed of Confidentiality	<input checked="" type="checkbox"/>
Schedule 3 – Service Level Agreement	<input checked="" type="checkbox"/>	Schedule 9 – Performance Guarantee	<input type="checkbox"/>
Schedule 4 – Variation Procedures	<input checked="" type="checkbox"/>	Schedule 10 – Financial Security	<input type="checkbox"/>

Item 12 Delivery Address

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Delivery (clause 5.1)	
Specify the address of the Site where delivery is to be made:	As set out in Attachment 1 of the Module 14 Order Form.
Specify any delivery instructions:	As set out in Attachment 1 of the Module 14 Order Form.
Specify the hours during which delivery may be made to the Site:	Business hours, being 9am to 5pm on Business Days unless otherwise agreed

Item 13 Contract Specifications

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Formation (clause 3.4)	
If the Contract Specifications are the User Documentation leave this Item blank. If the Contract Specifications comprise other documents, list those documents in order of priority:	In order of priority: 1. Module 14 Order Form 2. Agreement Documents 3. User Documentation
System (clauses 5.11 and 9.3)	
Specify whether the Products and Services comprise a System.	The Products and Services comprise a System for the purposes of clauses 5.11 and 9.3.

Item 14 Payment

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Payment (clauses 11.1 and 11.2)	As set out in Attachment 1 of the Module 14 Order Form.
Invoicing (clauses 11.7 and 11.9)	
Specify the Customer's officer to receive invoices:	
Specify address to which invoices should be sent:	
Specify the number of days from receipt of a Correctly Rendered Invoice that the Customer must make payment. If this Item is not completed, the Customer must pay the Contractor within 30 days from receipt of a Correctly Rendered Invoice.	30 days
Specify when the Contract Price must be paid: E.g. if the earlier Price is to be paid on delivery, insert "The Contract Price is due on delivery". If payment is to be made on more than one occasion then consider using a PIPP under Item 20.	As set out in Attachment 1 of the Module 14 Order Form.
Specify whether the Contract Price is fixed:	As set out in Attachment 1 of the Module 14 Order Form.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
E.g. does the unit Price per Item vary for inflation or other factors? If so, specify the calculation for Price variations:	

Item 15 User Documentation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
User Documentation (clause 5.4(b))	
Specify the Price of any additional copies of the User Documentation:	

Item 16 Management Committee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Management Committee (clause 6.4)	
List the name/s of the Contractor's project manager, officers or other relevant persons who will sit on the management committee:	As set out in Attachment 1 of the Module 14 Order Form.
Management Committee (clause 6.6)	
Specify the function to be performed by the management committee:	As set out in Attachment 1 of the Module 14 Order Form.
List the name/s of the Customer's project manager, officers or other relevant persons who will sit on the management committee:	As set out in Attachment 1 of the Module 14 Order Form.
Management Committee (clause 6.8)	
Specify the details, including the contents of the progress report to be submitted to the Customer's project manager:	As set out in Attachment 1 of the Module 14 Order Form.
Specify any other details:	Parties to comply with all such other governance requirements (including in respect of governance bodies) as set out in clause 17 of Attachment 1 of the Module 14 Order Form.

Item 17 Performance Review Procedures

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Performance Reviews (clause 6.10)	
Specify if a service and performance review/s of the Contractor's performance of the Customer Contract is to apply:	Performance reviews in accordance with clause 6.10 will apply.
Specify any specific time intervals for service and performance reviews:	As set out in Attachment 1 of the Module 14 Order Form.

Item 18 Site Preparation and Maintenance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Site Specifications (clause 6.12)	
Specify: <ul style="list-style-type: none"> • Site location; and • whether a Site Specification is required. 	As set out in Attachment 1 of the Module 14 Order Form.
Access to Customer's Site (clause 7.1(b))	
Specify any other requirements in relation to the Site access:	As set out in Attachment 1 of the Module 14 Order Form.
Specify any requirements for the preparation and maintenance of the Site:	As set out in Attachment 1 of the Module 14 Order Form.

Item 19 Implementation Planning Study

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Implementation Planning Study (clauses 6.14 to 6.16)	
Specify if the Contractor must provide an implementation planning study:	As set out in Attachment 1 of the Module 14 Order Form.
Specify the implementation planning study objectives and time for provision of study:	As set out in Attachment 1 of the Module 14 Order Form.
Date for delivery of the implementation planning study to the Customer:	As set out in Attachment 1 of the Module 14 Order Form.
Specify if the implementation planning study need to undergo Acceptance Tests in accordance with clause 10.1(b):	As set out in Attachment 1 of the Module 14 Order Form.

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

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Project Schedule (clause 6.17)	
Invoicing (clause 11.7)	
Specify if a PIPP has been created. If so, identify the document in this Item and attach as an Annex to this General Order Form: E.g. the PIPP is in a document "PIPP v1_1 27/10/11" and Annexure 1 to the Customer Contract.	Not applicable. Instead, a Transition In Plan (as defined in Module 14) will be prepared and agreed by the parties as set out in Module 14 and the Module 14 Order Form.
Staged Implementation (clause 6.20)	
Specify if there is to be Staged Implementation: If so, details of the Deliverables that comprise each Stage must be stated in the	Not applicable

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
PIPP together with the period during which the Customer must give written notice to move to the next Stage (if greater than 10 Business Days):	

Item 21 Liquidated Damages

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Liquidated Damages (clauses 6.28 to 6.34)	Not applicable
Specify if Liquidated Damages (LDs) will apply:	Not applicable
Specify the Milestones which are LD Obligations:	Not applicable
Specify the Due Date for completion of each LD Obligation:	Not applicable
Specify the calculation and amount of LDs for each LD obligation:	Not applicable
Specify the maximum number of days LDs are to be paid for each LD obligation:	Not applicable

Item 22 Customer Supplied Items (CSI) and Customer Assistance

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Supplied Items (CSI) (clause 6.36)	
Specify each CSI to be provided by the Customer: CSI may be: <ul style="list-style-type: none"> office access, desks etc (specify location, standards, times of access); Hardware or software (specify equipment, capacity, versions of software and dates of availability); VPN access or other remote access (specify capacity and hours available). [Note: details of any Customer Personnel should be specified in Item 26].	As set out in Attachment 1 of the Module 14 Order Form.
Specify if any CSI must be covered by support and maintenance contracts including the period of cover, the Contractor's rights of access to any third party support help desk, the hours and service levels to which support and maintenance must be available to the Contractor:	As set out in Attachment 1 of the Module 14 Order Form.
Specify the times when each CSI is to be provided:	As set out in Attachment 1 of the Module 14 Order Form.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify any requirements to attach to any CSI: E.g. any standards that the CSI must meet.	As set out in Attachment 1 of the Module 14 Order Form.
Specify if the Contractor must conduct any verification checks of CSI's to ensure they are satisfactory:	As set out in Attachment 1 of the Module 14 Order Form.
If so, specify the verification check process for each CSI: Include: <ul style="list-style-type: none"> a process to manage satisfactory and unsatisfactory verification checks; a process to manage 'reissued' CSI's; a process to manage repeat CSI verification checks; a process to manage 'draft' or 'incomplete' and 'updated' CSI's; a process to manage rejected CSI's; a process to manage previously satisfactory CSI which becomes defective; a list of required verification check forms and/or registers and a corresponding data entry process; a list of Customer and Contractor nominee/s for responsibility to undertake verification checks; 	As set out in Attachment 1 of the Module 14 Order Form.
Specify any amount payable by the Contractor to the Customer for any Item of CSI:	Nil
Customer Assistance (clause 6.41)	
Specify the instructions, information, data, documents, specifications, plans, drawings and other materials that must be provided by the Customer to the Contractor:	As set out in Attachment 1 of the Module 14 Order Form.

Item 23 Escrow

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

Item 24 Business Contingency Plan

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Business Contingency (clauses 6.45 to 6.47)	
Specify if a Business Contingency Plan is required:	A Business Contingency Plan is required.
Specify when the Business Contingency Plan is required:	Draft Business Contingency Plan: within 30 days prior to first Service Commencement Date. Final Business Contingency Plan: any time prior to first Service Commencement Date.
Specify any information to be included in the Business Contingency Plan including the business contingency services required and the period of the services:	<p>The Business Contingency Plan must include in terms of meeting the Contractor's performance requirements specified in the Customer Contract, the following:</p> <p>objectives:</p> <ul style="list-style-type: none"> A Prevention - risk management planning; <ul style="list-style-type: none"> 1. Preparation - identification and prioritisation of the key activities of the Customer's business that may be adversely affected by any disruptions 2. Response – incident response planning 3. Recovery planning B Risk management plan; C Insurance as required under the Customer Contract; D Data security and back up procedures; E Business impact analysis based on likely disruptions to the availability of the Solution; F Critical incident response procedures; G Roles and responsibilities and key contacts; H Recovery plan; I Continuous improvement, monitoring and review of the plan and procedures, <p>and the Business Contingency Plan must be in accordance with Attachment 1 of the Module 14 Order Form, and without limiting the foregoing, must be in accordance with the Supplier's business continuity management policy attached to this General Order Form as an Agreement Document.</p>
Specify the periods that the Business Contingency Plan must be reviewed, updated by the Contractor:	Annually and immediately following any critical incident, and otherwise as specified in Attachment 1 of the Module 14 Order Form or the Service Level Agreement.
Contractor participation in Customer's BCP activities	

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer

Item 25A Transfer of Records outside NSW - Customer Data

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Customer Data (clause 7.5)	
<p>Specify whether any State Records will be transferred to the Contractor's possession under the Customer Contract.</p> <p>If yes, Customer to state whether consent is provided to transfer State Records outside the jurisdiction of New South Wales.</p> <p>If consent is granted, Customer to specify:</p> <ul style="list-style-type: none"> the jurisdiction(s) for which consent is granted the conditions on which such consent is granted. <p>[Note: Clause 7.5 of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]</p>	

Item 25B Transfer of Records outside NSW – Personal Information

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Privacy (clause 15)	
<p>Customer to specify whether consent is provided to transfer Personal Information outside the jurisdiction of New South Wales.</p> <p>If consent is granted, Customer to specify:</p> <ul style="list-style-type: none"> the jurisdiction(s) for which consent is granted the conditions on which such consent is granted. <p>[Note: Clause 15.1(h) of the Customer Contract requires that the Contractor must not transfer, take or send Customer Data which is a State Records without the Customer's prior written consent.]</p>	

Item 25 Secrecy and Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Access to Customer's Site (clause 7.11)	
<p>Specify any secrecy or security requirements that the Contractor and its Personnel must comply with: E.g. insert a reference to any document that includes a security requirement.</p>	<p>The Solution and Services must meet the standards and policies for security and secrecy management specified in Attachment 1 of the Module 14 Order Form and Module 14.</p>
Timeframes for response to a Security Issue	
<p>Specify whether Customer agrees to any alternate timeframe for:</p> <ul style="list-style-type: none"> Notification of actual, alleged or suspected security breach (clause 7.12(a)) <p>[Note: default is immediate notification]</p> <ul style="list-style-type: none"> Investigation of Security Issue (clause 7.12(b)) <p>[Note: default is within 48 hours from notification]</p> <ul style="list-style-type: none"> Remedy the Security Breach (clause 7.12(c)). <p>[Note: the default is within 24 hours from conclusion of investigation].</p> <p>Any alternate timeframes agreed to in this General Order Form must:</p> <ul style="list-style-type: none"> be approved by the Customer's Chief Information Officer; and comply with the NSW Government Digital Information Security Policy, NSW Government Information Security Event Reporting Protocol, NSW Government Cloud Policy and all other applicable NSW Government policies; comply with applicable security standards; and comply with the Customer's Information Security Management System and other Customer security and policy requirements. 	<p>Customer does not agree to alternate time frames.</p>

Item 26 Customer's Personnel

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Personnel General (clause 8.5)	
<p>Specify the Customer's Personnel who will be available to work with the Contractor and their roles and responsibilities:</p>	<p>As set out in Attachment 1 of the Module 14 Order Form</p>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Also specify the times and duration of their involvement as well as their authority levels:	

Item 27 Specified Personnel

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specified Personnel (clause 8.8)	
Specify the identity and roles and responsibilities of any of the Contractor's Specified Personnel:	As set out in Attachment 1 of the Module 14 Order Form.

Item 28 Subcontractors

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Agents and Subcontractors (clause 8.17)	
Specify which subcontractors are required to provide a Statutory Declaration - Subcontractor, substantially in the form of Schedule 7:	All Subcontractors are required to provide a Statutory Declaration, substantially in the form of Schedule 7

Item 29 Quality Standard Accreditation

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contractor Warranties (clause 9.1(h))	
Specify any quality standard accreditation arrangements the Contractor must hold during the Contract Period:	Quality Management System – ISO 9001:2008

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

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contractor Warranties (clause 9.1(g))	
Specify any laws (other than Statutory Requirements) the Contractor is to comply with:	<p>Without derogating from the generality of clause 9.1(g) of the Customer Contract, the Contractor must comply and ensure that its Personnel comply with the following New South Wales legislation:</p> <ul style="list-style-type: none"> • <i>Electronic Transactions Act 2000</i> • <i>Government Information (Public Access) Act 2009</i> ("GIPAA") • <i>Health Records and Information Privacy Act 2002</i> ("HRIPA") • <i>Privacy and Personal Information Protection Act 1998</i> ("PPIPA") • <i>State Records Act 1998</i>

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify any codes, policies, guidelines or standards the Contractor is to comply with:	<p>The codes, policies, guidelines or standards specified in the Attachment 1 of the Module 14 Order Form and Module 14, together with:</p> <ul style="list-style-type: none"> • ISO/IEC: 27001:2013 • AS/NZS ISO 31000:2009 Risk Management Standard • ISO 9901 • ISO 14001:2004 • ISO 14064-1:2006 • carboNZeroCertTM

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

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

Item 32 Acceptance Testing

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Part 3 Dictionary (clauses 1.2 to 1.5)	
<p>Acceptance Test Notification Period is the period from the end of the Acceptance Test Period, within which the Customer must provide to the Contractor written notice of the result of the Acceptance Test. Specify this period:</p> <p>If no period is specified, the period is 2 Business Days:</p>	As set out in Attachment 1 of the Module 14 Order Form.
<p>Acceptance Test Data is the data that is provided by the Customer, and agreed by the Contractor that reflects the data the Customer will use in the Deliverable, that is to be used for Acceptance Testing. Specify the Acceptance Test Data:</p>	As set out in Attachment 1 of the Module 14 Order Form.
<p>Acceptance Test Period is the period for the performance of any Acceptance Tests for any Deliverable. Specify this period:</p> <p>If no period is specified, the period is 10 Business Days from the date of delivery of the Deliverable to the Customer.</p>	As set out in Attachment 1 of the Module 14 Order Form.
Acceptance (clause 10.1)	
For each Deliverable, specify whether each Deliverable is to undergo Acceptance Testing:	As set out in Attachment 1 of the Module 14 Order Form.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
If not, the Deliverable will be Accepted under clause 10.1(a)	
If a Deliverable is not to undergo Acceptance Tests, specify the period required following delivery of the Deliverable as required by the Order Documents when the Actual Acceptance Date for a Deliverable occurs: If no period is specified, then the period is 2 Business Days.	10 Business Days or otherwise specified by the Customer.
Conducting Acceptance Tests (clause 10.3)	
For each Deliverable that is to undergo Acceptance Tests, specify details of the Acceptance Testing requirements:	As set out in Attachment 1 of the Module 14 Order Form.
Specify the identification of the Deliverables or Part of the Deliverables to be tested:	As set out in Attachment 1 of the Module 14 Order Form.
Specify the allocation of each Party's responsibilities in relation to testing, including the Party responsible for conducting the Acceptance Tests:	As set out in Attachment 1 of the Module 14 Order Form.
Specify which Party is to provide the test environment, including hardware, software, power, consumables and other resources and when the environment and resources must be ready for use:	As set out in Attachment 1 of the Module 14 Order Form.
Specify the methodology and process for conducting Acceptance Tests:	As set out in Attachment 1 of the Module 14 Order Form.
Specify the scheduling of Acceptance Tests including the Acceptance Test Period and the Acceptance Test Notification Period:	As set out in Attachment 1 of the Module 14 Order Form.
Specify the Acceptance Criteria used to test whether the Deliverable meets the Contract Specification and other requirements of the Customer Contract:	As set out in Attachment 1 of the Module 14 Order Form.
Specify the Acceptance Test Data required:	As set out in Attachment 1 of the Module 14 Order Form.
If an Acceptance Test document has been created that addresses the above points it can be attached to the General Order Form by identifying the document here:	As set out in Attachment 1 of the Module 14 Order Form.

Item 33 Credit/Debit Card

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Payment (clause 11.3)	
Specify any credit/ debit card or electronic facility that the Customer may use to pay the Contractor:	Not applicable

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify any fee that is applicable for payment by credit/debit card	Not applicable

Item 34 Intellectual Property

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Existing Material (clauses 13.7, 13.9 and 13.10)	
Specify any terms and condition applicable for granting a licence for Existing Material owned by a third party:	<p>The following third party Licensed Software is licensed by the Contractor to the Customer on the terms and conditions set out in Module 3:</p> <p>■ [REDACTED]</p> <p>[REDACTED]</p>
<p>If a perpetual and irrevocable licence to use certain Existing Material cannot be provided (for example because it is licensed under subscription for a defined period), specify:</p> <ul style="list-style-type: none"> the duration of the licence to use that Existing Material and/or the terms on which the licence may be revoked. 	[REDACTED]
Specify any fees to be charged for any licence to use any of Contractor's Existing Materials:	[REDACTED]
Customer Owned New Material (clause 13.11)	
<p>Specify whether clause 13.11 applies ie. whether the Customer owns any New Material.</p> <p>If so, specify:</p> <ul style="list-style-type: none"> which items of New Material are Customer Owned New Material; and whether the Contractor is granted any licence by the Customer to use the Customer Owned New Material, and if so, what licence terms apply to the Contractor's use of the Customer Owned New Material. <p>If clause 13.11 does not apply, state "Not applicable".</p>	[REDACTED]

Item 35 Confidentiality

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Confidentiality (clause 14.4)	
Specify if the Contractor must arrange for its Subcontractors to execute a Deed of Confidentiality substantially in the form of Schedule 8 - Deed of Confidentiality:	The Contractor must arrange for its Subcontractors to execute a Deed of Confidentiality substantially in the form of Schedule 8 – Deed of Confidentiality

Item 36 Insurance Requirements

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Insurance (clause 16.7)	All insurances required under the Customer Contract must be provided by an insurer approved by the Australian Prudential Regulation Authority or similar regulatory authority
Level of indemnity of public liability insurance in respect of each claim for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if a higher limit of cover that is required by the Customer Contract:]	\$20,000,000 per occurrence
Level of indemnity of product liability insurance for the total aggregate liability for all claims for the period of cover. The default requirement in the Customer Contract is \$10,000,000 [Only specify if any higher limit of cover that is required by the Customer Contract:]	\$20,000,000 per occurrence
If Services are being provided under the Customer Contract the default level of indemnity of professional indemnity insurance for the total aggregate liability for all claims for the period of cover is \$1,000,000 [Only specify if a higher limit that is required by the Customer Contract:]	\$20,000,000 per occurrence.
Specify any additional insurance that the Contractor is to hold, including the type of insurance, the term of the insurance and the amount of the insurance:	None

Item 37 Performance Guarantee

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Performance Guarantee (clause 17.2)	
Specify if the Contractor must arrange for a guarantor to enter into a Performance Guarantee:	None required
Specify the date by which the Performance Guarantee must be provided to the Customer. If no date is specified the	N/A

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contractor must provide the Performance Guarantee to the Customer within 30 days of the Commencement Date.	

Item 38 Financial Security

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Financial Security (clause 17.4)	
Specify if the Contractor must provide a Financial Security: If so, specify the amount of the Financial Security:	None required
Specify the date by which the Financial Security must be provided to the Customer: If no date is specified, the Contractor must provide the Financial Security within 14 days of the Commencement Date.	N/A

Item 39 Limitation of Liability

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Limitation of Liability (clause 18)	
<p>If the Parties cannot agree the amount that is legally payable under the Customer Contract for the:</p> <ul style="list-style-type: none"> • Non-Recurring Service or Product; and/or • Short Term Recurring Service <p>(as applicable) insert the amount that the Parties agree is the best estimate of the Contract Value for the relevant Item (the Estimated Contract Price).</p> <p>Note: It may be necessary to separately identify the amounts payable under a single Customer Contract into separate amounts that are attributable to each of the different types of Product/ Service.</p> <p>(See the definition of Contract Value in Part 3)</p>	Not applicable.
<p>If Services are being provided under any of the following Modules:</p> <ul style="list-style-type: none"> • Module 6 – Contractor Services; • Module 7 – Professional Services; or • Module 8 – Training Services, • specify whether the Parties regard the relevant Services as being: • the supply of a service of the same type on a periodic basis, and so are to be classified as Recurring 	Not applicable.

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
<p>Services for the purpose of the limitation of liability; or</p> <ul style="list-style-type: none"> provided in respect of a specific project where the Contractor has been engaged by a Customer to produce, create or deliver a specified outcome or solution that may be subject to Acceptance Testing, in which case the Services are to be classified as Non-Recurring Services for the purpose of the limitation of liability. <p>(See definition of Non-Recurring Services and Recurring Services in Part 3)</p> <p>Specify the alternative cap of liability (clause 18.3):</p>	<p>This section must only be used if the Customer Contract is for Products or Services that are to be used for a Prescribed Use or where the Contract Price exceeds \$20,000,000</p>

Item 40 Performance Management Reports

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Reporting (clause 21.1)	
Specify the reports required, (if any), the time for provision and the agreed format:	The Contractor must provide the reports specified in Module 14; the Service Level Agreement; any other reports required to be provided under the Customer Contract from time to time during the Contract Period, including such reports specified in Attachment 1 of the Module 14 Order Form.

Item 40A Audit

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

Item 42 Termination for Convenience

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Dispute Resolution (clause 24)	
Specify the threshold amount in AU\$ for issues to be resolved by expert determination under clauses 24.7-24.8.	\$250,000
Specify type of issue/s not to be determined by expert determination under clauses 24.7 to 24.8.	Not applicable

Item 42 Termination for Convenience

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Termination for Convenience by the Customer (clause 25.4)	
Specify whether an amount is payable under clause 25.4(b) if the Customer exercises its right of termination for convenience under clause 25.3, and if so, specify that amount:	An amount is payable under clause 25.4 (b) as set out in Attachment 1 of the Module 14 Order Form.

Item 43 Additional Conditions

[illegible]

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

SIGNED AS AN AGREEMENT

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

Signed for and on behalf of **The Technical and Further Education Commission** ABN 89 755 348 137

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

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

Signature of Customer

Print name

Date

Signature of Witness

Print name

Date

Signed by Ricoh Australia Pty Ltd
(ABN 30 000 593 171) in accordance
with section 127(1) of the *Corporations*
Act 2001 (Cth) by:

Signature of director/company secretary

Signature of director

Print name

Print name

Date

Schedule 2 Agreement Documents

Itemise all documentation (including any supplemental terms and conditions agreed to by the Customer, accepted tenders, offers or quotes from the Contractor, and any letter of acceptance or award issued by the Customer) between the Customer and the Contractor. All such documentation must be itemised in this Schedule 2 and listed below in descending date order (i.e. the latest document is listed first.)

Document	Date of Document
<div></div>	

Document	Date of Document

Schedule 3 Service Level Agreement

Schedule 4 Variation Procedures

1. Procedures

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

for approval immediately after it has notified the Contractor that it approves the Change Request.

2. Status

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

Change Request Form

1. Change request brief details

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

2. Change request history log

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

3. Details of change request

3.1 Summary

[Insert a summary of the changes, if required]

4. Scope

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

5. Effect of change on Contract specification

[Insert any changes to the Contract Specification]

6. Effect of change on Project timetable

[Insert changes to the project timetable]

6.1 New PIPP (annexed)

[Annex new PIPP if required]

7. Effect of change on charges and timing of payment

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

8. Changes to CSI

[Insert any changes to the CSI]

9. Changes to Customer personnel

[Insert any changes to the Customer's Personnel]

10. Changes to Customer assistance

[Insert any changes to the Customer's Assistance]

11. Plan for implementing the change

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

12. The responsibilities of the parties for implementing the change

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

12.1 Responsibilities of the Contractor

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

12.2 Responsibilities of the Customer

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

13. Effect on acceptance testing of any Deliverable

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

14. Effect of change on performance of any Deliverable

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

15. Effect on users of the system/solution

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

16. Effect of change on documentation Deliverables

Changes will be required to the following documents:

[Add any other documents which may be affected.]

17. Effect on training

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

18. Any other matters which the parties consider important

[Insert if there are any other matters.]

19. Assumptions

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

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

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

20. List of documents that form part of this change request

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

21. Customer Contract clauses, schedules affected by the proposal are as follows:

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

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

22. Authorisation

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

SIGNED AS AN AGREEMENT

Signed for and on behalf of **The Technical and Further Education Commission** ABN 89 755 348 137

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

Signature of Customer Representative

Print name

Date

Signed for and on behalf of **Ricoh Australia Pty Ltd** ABN 30 000 593 171

Signature of Authorised Signatory

Print name

Date

Schedule 5 Escrow Deed

Deed dated the day of 20

Between *[insert name, and ACN/ABN, if applicable]* ("Escrow Agent")

And *[insert name, and ACN/ABN if applicable]* ("the Contractor")

And *[insert name of Government Party]* ("the Principal")

RECITALS

- A. By Licence Agreement made on the day of 201[], the Contractor has agreed to grant a licence to the Principal to use the Licensed Software. By the Support Agreement made on the day of 201[], the Contractor has agreed to provide Software Support Services to the Principal in respect of that Licensed Software.
- B. The Contractor and the Principal have agreed to appoint an escrow agent and the Escrow Agent has agreed to act as an escrow agent and to hold the Escrow Material for the Licensed Software on the following terms and conditions.

NOW THIS DEED WITNESS:

1. Agreed Terms and Interpretation

- 1.1 In this Deed the following words have the following meaning:

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

Contract Specifications has the same meaning as in the Licence Agreement;

Deed means this Deed of Agreement;

Defect means a defect, error or malfunction in that software such that the Licensed Software does not comply with and cannot be used in accordance with the Contract Specifications;

Escrow Fees means the fees set out in Attachment 1 to this Deed;

Escrow Materials means the source code and/or object code of the Licensed Software and all other software programs all as owned by the Contractor, documentation, drawings and plans as well as a list of any third party software

programs that would enable a competent programmer skilled in the use of the Licensed Software and any necessary development tools to keep the Licensed Software in good order and repair that are stated in Attachment 3;

Insolvency Event means that a party to this Deed:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent with the meaning of section 95A of the *Corporations Act* 2001 (Cth);
- (c) must be presumed by a court to be insolvent by reason of an event set out in section 459C(2) of the *Corporations Act* 2001 (Cth);
- (d) fails to comply with a statutory demand within the meaning of section 459F(1) of the *Corporations Act* 2001 (Cth);
- (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (f) has a mortgagee enter into possession of any property of that party;
- (g) has a controller within the meaning of the section 9 of the *Corporations Act* 2001 (Cth) or similar officer or appointed to all or any of its property; or
- (h) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

Licence Agreement means the Customer Contract entered into under the *Procure IT Framework* dated [*insert date*] pursuant to which the Contractor is providing Licensed Software to the Principal referred to in Recital A;

Licensed Software means the standard off-the-shelf software provided by the Contractor to the Customer and includes any Updates or New Releases of that software that may be provided to the Customer from time to time in accordance with the Software Support Agreement.

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

Software Support Services means the services to be provided by the Contractor under the Support Agreement;

Support Agreement means the Customer Contract entered into under the *Procure IT Framework* dated [*insert date*] pursuant to which the Contractor is providing Software Support Services to the Principal in respect of Licensed Software referred to in Recital A; and

Update means software which has been produced primarily to overcome Defects in, or to improve the operation of, the Licensed Software without significantly altering the Contract Specifications whether or not the Licensed

Software has also been extended, altered or improved by providing additional functionality or performance enhancement.

1.2 In this Deed, unless the contrary intention appears:

- (a) monetary references are references to Australian currency;
- (b) the clause and sub clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its sub clauses;
- (d) words in the singular number include the plural and vice versa;
- (e) the words "include(s)" and "including" are not words of limitation;
- (f) words importing a gender include any other gender;
- (g) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (h) a reference to a clause or sub clause is a reference to a clause or sub clause of this Deed;
- (i) a reference to an Attachment is a reference to an Attachment to this Deed; and
- (j) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

1.3 Where an obligation is imposed on a party under this Deed, that obligation shall include an obligation to ensure that no act, error or omission on the Part of that party's employees, agents or subcontractors or their employees or agents occurs which will prevent the discharge of that party's obligation.

COMPLIANCE WITH CONSUMER LAWS

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

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

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

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

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

2. Duration

Subject to all applicable fees under this Deed being paid by the Principal in accordance with this Deed, this Deed remains in force until the Escrow Material is released in accordance with this Deed or this Deed is terminated or expires in accordance with its terms.

3. Appointment of Escrow Agent

The Escrow Agent is hereby appointed jointly by the Principal and the Contractor to hold the Escrow Material and, if the conditions for release under clause 8 below are met, to release the Escrow Material in accordance with this Deed.

4. Contractor's Obligations

- 4.1 The Contractor shall deliver to, and deposit with, the Escrow Agent one copy of the Escrow Material within 7 days of the date of this Deed (or such other time as otherwise agreed).
- 4.2 The Contractor shall maintain, amend, modify, up-date and enhance the Escrow Material quarterly and shall ensure on a quarterly basis that the Escrow Material deposited with the Escrow Agent is kept fully up-to date and accurately reflects the Licensed Software including all modifications, amendments, Updates and New Releases made to, or in respect of, the Licensed Software.
- 4.3 The Contractor warrants to the Principal that the Escrow Material is, to the best of the knowledge of the Contractor, free from any virus or program device which would prevent the Licensed Software from conforming with the Contract Specifications or which would prevent or impede a thorough and effective verification thereof.

5. Escrow Agent's Obligations

- 5.1 The Escrow Agent shall accept custody of the Escrow Material on the date of delivery in accordance with clause 4.1 above and, subject to the terms and conditions of this Deed, shall hold the Escrow Material on behalf of the Principal and the Contractor.
- 5.2 The Escrow Agent shall take all reasonable necessary steps to ensure the preservation, care, maintenance, safe custody and security of the Escrow Material while it is in the possession, custody or control of the Escrow Agent, including storage in a secure receptacle and in an atmosphere which does not harm the Escrow Material or in a secure electronic environment.
- 5.3 The Escrow Agent shall bear all risks of loss, theft, destruction of or damage to the Escrow Material while it is in the Escrow Agent's possession, custody or control

where such loss, theft, destruction or damage is caused by negligent, malicious, reckless or unlawful act or omission of the Escrow Agent, its employees or agents.

- 5.4 If the Escrow Material is lost, stolen, destroyed or damaged while it is in the possession, custody or control of the Escrow Agent, the Escrow Agent shall immediately notify the Principal and the Contractor.
- 5.5 Unless this Deed is terminated in accordance with clause 9.2(b), the Contractor shall, upon receipt of notice from the Escrow Agent under clause 5.4 above, promptly deposit a replacement copy of the Escrow Material with the Escrow Agent.
- 5.6 Without limiting any other rights the Contractor and the Principal may have under this Deed or at law, where the loss, damage or destruction of the Escrow Material is caused by the negligent, malicious, reckless or unlawful act or omission of the Escrow Agent, the Escrow Agent must reimburse the Contractor for the reasonable cost of depositing a replacement copy of the Escrow Material.
- 5.7 The Escrow Agent is not obliged to determine the nature, completeness or accuracy of the Escrow Material lodged with it.
- 5.8 To the extent permitted by law, the Escrow Agent's liability, to both the Principal and the Contractor collectively, in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out, of or in connection with, this Deed shall not exceed in aggregate for all claims that arise out, of or in connection with, this Deed the greater of:
 - (a) \$100,000; or
 - (b) two times the Escrow Fees paid, or due and unpaid, in the year that the claim first arises.

6. Escrow Fee and Expenses

- 6.1 The Principal shall pay all applicable Escrow Fees plus any applicable GST to the Escrow Agent.
- 6.2 All expenses and disbursements incurred by the Escrow Agent in connection with this Deed shall be borne wholly and completely by the Escrow Agent.
- 6.3 All expenses and disbursements incurred by the Contractor in connection with this Deed shall be borne wholly and completely by the Contractor.

7. Testing and Verification

- 7.1 The Principal may engage the Escrow Agent or an independent assessor to undertake analysis and tests of the Escrow Material for verification purposes on its behalf.
- 7.2 The Escrow Agent shall release the Escrow Material to the independent party upon presentation of a release form signed by the Principal and the Contractor specifying the material to be released and identifying the person to whom that material may be released.

- 7.3 The Escrow Material released pursuant to clause 7.2 above must be returned to the Escrow Agent or its employees or agents and the Principal shall ensure that the confidentiality of the Escrow Material so released is preserved and that it is not used for any purpose other than the verification that the Contractor has complied with its obligations under this Deed.
- 7.4 All costs that Escrow Agent incurs in assisting the assessment shall be borne by the Principal, and must be paid within 7 days of receipt of an invoice from the Escrow Agent.

8. Release of the Escrow Material

- 8.1 The Escrow Agent shall not release, or allow access to, the Escrow Material except in accordance with the provisions of this Deed.

- 8.2 If:

- (a) an Insolvency Event has occurred in relation to the Contractor; or
- (b) the Principal has validly terminated the Support Agreement for cause (each of (a) and (b) being a **Trigger Event**),

and the Principal wishes the Escrow Agent to release the Escrow Material to it, the Principal must within 20 Business Days of the Trigger Event provide written notice in the form of a statutory declaration to both the Escrow Agent and the Contractor stating which Trigger Event has occurred. If the Contractor does not, within 20 Business Days of receiving the notice, rectify the Trigger Event or provide another remedy that is satisfactory to the Principal, the Principal may provide the Escrow Agent with a further statutory declaration confirming that the Contractor has not rectified the Trigger Event in the required time or provided another remedy that is satisfactory to the Principal and require the Escrow Agent to immediately release the Escrow Material to the Principal ("**Final Release Notice**"). The Escrow Agent shall release the Escrow Material to the Principal promptly after receiving the Final Release Notice.

- 8.3 Where:

- (a) the Licence Agreement has been lawfully terminated by the Contractor or the period of licence has expired;
- (b) the Support Agreement has been lawfully terminated by the Contractor or the period of Software Support Services has expired;
- (c) the Principal has agreed to the release;
- (d) this Deed is terminated in accordance with clause 9 below; or
- (e) the Contractor is not obligated under the Agreement to execute a substantially similar Deed to replace this Deed,

the Escrow Agent shall, upon written request from the Contractor, release the Escrow Material to the Contractor.

- 8.4 In the event that the Escrow Materials are released to the Principal under this Deed, the Principal:

- (a) is granted a limited right to use the Escrow Materials:

- (i) for the same usage rights as the Principal has been granted the right to use the Licensed Software under the Licence Agreement; and
- (ii) to correct Defects in the Licensed Software; and
- (b) subject to (c), must use the Escrow Materials subject to all the other terms of the Licence Agreement, as if the Escrow Material is included in the definition of Licensed Software in that Licence Agreement; and
- (c) must keep the Escrow Materials strictly confidential and not disclose them to any person, and must not use them for any purpose other than that referred to in clause 8.4(a) above.

This clause 8.4 survives expiry or termination of this Deed.

9. Termination

- 9.1 The Escrow Agent may, by giving 3 months prior written notice to the Principal and the Contractor, terminate this Deed subject to the pro-rata refund of any advance payment of the Escrow Fee.
- 9.2 The Principal or the Contractor may terminate this Deed immediately if the Escrow Agent:
 - (a) has become subject to any form of insolvency administration; or
 - (b) is in breach of any obligation under this Deed so that there is a substantial failure by the Escrow Agent to perform or observe this Deed.
- 9.3 If this Deed is terminated in accordance with this clause 9 while the Agreement remains in force, and the Principal continues to use the Licensed Software, the Principal and the Contractor shall enter into a new escrow agreement on substantially the same terms and conditions as are set out in this Deed, with an alternative escrow agent who is acceptable to both the Principal and the Contractor.
- 9.4 The Principal and the Contractor may, upon giving 30 days prior written notice to the Escrow Agent, jointly terminate this Deed, however in this case, no refund of advance payment of the Escrow Fee will be payable by the Escrow Agent.

10. Confidentiality

- 10.1 The Escrow Agent shall not, except as permitted by this Deed, make public or disclose to any person any information about this Deed or the Escrow Material.
- 10.2 The Escrow Agent shall not reproduce, or cause to have reproduced, a copy of the Escrow Material or any Part thereof, except as may be necessary to electronically store (and maintain a back up) of the Escrow Material.
- 10.3 The obligations under this clause 10 shall survive the termination of this Deed.

11. Compliance with Laws

- 11.1 The Escrow Agent shall, in carrying out this Deed, comply with the provisions of any relevant statutes, regulations, by-laws and the requirements of any Commonwealth, State or local authority.

12. Resolution of Disputes

- 12.1 The Parties agree to resolve any conflicts or issues between them in relation to this Deed as follows:

NEGOTIATION

- (a) if there is a disagreement between the parties arising out of this Deed (**Dispute**), then within 10 Business Days of a Party notifying the other party or parties of the Dispute, a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

MEDIATION

- (b) If the Dispute is not settled within 10 Business Days of notification under clause 12.1(a), the parties must submit the Dispute to mediation administered by one of the following bodies as agreed by the parties:
- (i) the Australian Disputes Centre Limited (**ADC**); or
 - (ii) the Resolution Institute,
- failing agreement, the ADC.
- (c) The mediator will be an independent person agreed between the parties or, failing agreement, a mediator will be appointed by the President of the body determined under clause 12.1(b) above.
- (d) Any mediation meetings and proceedings under this clause 12.1 must be held in Sydney, New South Wales.

COURT PROCEEDINGS AND OTHER RELIEF

- (e) A party may not start court proceedings in relation to a Dispute until it has followed the procedures in this clause 12.1 but the parties have not agreed a resolution within 30 Business Days of the appointment of the mediator, unless the party seeks injunctive or other interlocutory relief.

CONTINUATION OF RIGHTS AND OBLIGATIONS

- (f) Despite the existence of a Dispute, each party must continue to perform this Deed.

13. Applicable Law

This Deed shall be governed by and construed in accordance with the laws from time to time in force in New South Wales. The parties shall submit to the exclusive jurisdiction of the courts of New South Wales.

14. Variation and Waiver

- 14.1 This Deed shall not be varied either in law or in equity except by a deed duly executed by the Escrow Agent, the Principal and the Contractor.
- 14.2 A waiver by one party of a breach of a provision of this Deed by another party shall not constitute a waiver in respect of any other breach or of any subsequent breach of this Deed. The failure of a party to enforce a provision of this Deed shall not be interpreted to mean that party no longer regards that provision as binding.

15. Assignment

The Contractor, Principal and the Escrow Agent, or any of these, shall not assign, in whole or in part, its benefits under this Deed without the written consent of the other two parties, which shall not be unreasonably withheld.

16. Severability

Each provision of this Deed, and each Part of it shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable part, so that if any provision, or Part of a provision is void or otherwise unenforceable for any reason, then that provision, or Part shall be severed and the remainder shall be read and construed as if the severable Part had never existed.

17. Notices

- 17.1 A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party must confirm receipt by some other means. The address for services of notice for a party is, in the case of the:

ESCROW AGENT

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

CONTRACTOR

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

PRINCIPAL

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

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

- 17.2 A notice or other communication is deemed to be received if:
- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
 - (b) sent by post from and to an address within Australia, after three (3) Business Days;
 - (c) sent by post from or to an address outside Australia, after ten (10) Business Days;
 - (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours); or
 - (e) sent by email, when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).

EXECUTED AS A DEED

Signed, sealed and delivered by [*insert full legal name of Escrow Agent and ACN/ABN*]

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

Signature of Director

Print name

Date

Signature of Director/Secretary

Print name

Date

Signed, sealed and delivered by [*insert full legal name of Contractor and ACN/ABN*]

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

Signature of Director

Print name

Date

Signature of Director/Secretary

Print name

Date

Signed, sealed and delivered for and on behalf of **[insert name of Principal]**, ABN **[insert ABN]**

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

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

Signature Principal's representative

Print name

Date

Signature of Principal's witness

Print name

Date

Escrow Deed of Agreement

ATTACHMENT 1

Details of escrow fees:

REVIEW OF FEES

Escrow Deed of Agreement

ATTACHMENT 2

Details of licensed software to be held in escrow

Source Code:

Flow Charts:

Diagrams:

Listings:

ATTACHMENT 3

Supporting Materials

Insert details of support material relevant to the Licensed Software, for example:

- technical documentation sufficient to allow a competent computer programmer to understand and maintain the version of the software to which the documentation relates.
- relevant maintenance tools and compilers and assemblers (if standard tools, description thereof will suffice) and third party software utilities.
- description of code generation.
- description of third party software required for support and availability thereof.
- identification of key personnel involved with the development of the software.
- operational manuals, listings, flow charts etc.
- details of machine/processor/system configuration.

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Schedule 6 Deed Poll – Approved Agents

51

This Deed Poll is made on **[insert date]** by **[insert full legal name of Approved Agent and ACN/ABN]** (Approved Agent) in favour of **[insert full legal name of Contract Authority]** (Contract Authority)

1. Definitions

- 1.1 **Customer** means **[insert full legal name of the Customer]**.
- 1.2 **Customer Contract** means the agreement dated **[insert date]** signed by the Customer and the Approved Agent as agent for the supply of the Products and/or Services under that agreement.

BY THIS DEED:

1. The Approved Agent warrants to the Customer that it is the lawful agent of the Contractor to provide the Products and/or Services under the Customer Contract.

Signed, sealed and delivered by **[insert full legal name of Approved Agent and ACN/ABN]**

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

Signature of Director

Print name

Date

Signature of Director/Secretary

Print name

Date

Schedule 7 Statutory Declaration – Subcontractor

Oaths Act (NSW), 1900 Eighth Schedule

I,, do solemnly and sincerely declare that

1. **[insert full Subcontractor company name and its ACN/ABN]** (Subcontractor) has been selected as subcontractor to, **[insert name of the Contractor and its ACN/ABN]** (Contractor) under an agreement between the **[insert name of Customer]** (Customer) and the Contractor dated **[insert date of Customer Contract]**.
2. The Subcontractor will offer to enter into an agreement with the Contractor in connection with the Customer Contract on terms that are not inconsistent with the terms of the Customer Contract in so far as those terms are relevant to the Subcontractor.
3. As at the date of this Statutory Declaration there are no reasons of which I am aware that would prevent the Subcontractor's agreement with the Contractor from being performed in a manner that would allow the satisfactory and timely performance of that subcontract.

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

Declared at: on

[place]

[date]

.....
[signature of declarant]

in the presence of an authorised witness, who states:

I,, a

[name of authorised witness]

[qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it: **[*please cross out any text that does not apply]**

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

[describe identification document relied on].

.....

[signature of authorised witness]

.....

[date]

Schedule 8 Deed of Confidentiality

54

Deed of Agreement dated the

day of

20

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

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

RECITALS

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

WHAT IS AGREED

RECITALS

The Parties acknowledge the truth and accuracy of the Recitals.

1. Interpretation

DEFINITIONS

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

Agreement means the Customer Contract entered into under the *Procure IT Framework* between the Contractor and the Customer under which the Contractor will supply Deliverables to the Customer dated **[insert date]**.

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

Confidential Information means information that:

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

but excludes any information which the Subcontractor can establish was:

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

Contractor means [*insert name of Contractor*].

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

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

Intellectual Property Rights means all intellectual property rights including:

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

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

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

State means the State of New South Wales.

2. General

- 2.1 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply
- 2.2 A reference to:
- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (d) anything (including a right, obligation or concept) includes each Part of it.
- 2.3 If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- 2.4 A singular word includes the plural, and vice versa.
- 2.5 A word which suggests one gender includes the other gender.
- 2.6 The words “include(s)” and “including” are not words of limitation.
- 2.7 If a word is defined, another Part of speech of that word has a corresponding meaning.

3. Non disclosure

- 3.1 The Subcontractor must not disclose the Confidential Information to any person without the prior written consent of the Customer.
- 3.2 The Customer may grant or withhold its consent in its discretion.
- 3.3 If the Customer grants its consent, it may impose conditions on that consent, including a condition that the Subcontractor procures the execution of a Deed in these terms by the person to whom the Subcontractor proposes to disclose the Confidential Information.
- 3.4 If the Customer grants consent subject to conditions, the Subcontractor must comply with those conditions.
- 3.5 Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- (a) to its directors, officers, employees and contractors;
 - (b) to the Contractor and its directors, officers, employees and the Contractor's other contractors who are engaged in the supply of the Deliverables and their directors, officers, employees,

each referred to as **permitted recipients**, where such disclosure is essential to carrying out their duties in respect of the Express Purpose.

- 3.6 Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- (a) to its lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the performance under this Deed; or
 - (b) if the Subcontractor is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.
- 3.7 Before disclosing the Confidential Information to a permitted recipient, the Subcontractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.8 The Confidential Information must not be copied or reproduced by the Subcontractor or the permitted recipients without the expressed prior written permission of the Customer, except as for such copies as may be reasonably required for the Express Purpose.
- 3.9 If any person, being any director, officer, contractor or employee of the Subcontractor, who has had access to the Confidential Information in accordance with this clause 3 leaves the service or employ of the Subcontractor then the Subcontractor will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Subcontractor, would be a breach of the obligations of the Subcontractor under this Deed.

4. Restriction on use

- 4.1 The Subcontractor must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Customer use the Confidential Information for any purpose other than the Express Purpose.
- 4.2 The Subcontractor must, unless otherwise authorised by the prior written consent of the Customer:
- (a) treat as confidential and secret all of the Confidential Information which the Subcontractor has already acquired or will acquire from the Customer;
 - (b) take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and take all necessary action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;
 - (c) not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;
 - (d) not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and

- (e) ensure that the permitted recipients comply with the terms of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

5. Survival

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

6. Rights of the Customer

PRODUCTION OF DOCUMENTS

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

LEGAL PROCEEDINGS

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

7. Indemnity and release

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

8. No exclusion of law or equity

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

9. Waiver

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

10. Remedies cumulative

CUMULATIVE

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

OTHER INSTRUMENTS

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

11. Variations and amendments

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

12. Applicable law

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

13. Notices

- 13.1 Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Subcontractor, at the Subcontractor's registered office.
- 13.2 All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post, email or facsimile transmission.
- 13.3 If delivery or receipt of a notice is not made on a Business Day, then it will be taken to be made on the next Business Day.
- 13.4 If delivery of a notice is made by email, the notice will be taken to have been received when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).

EXECUTED AS A DEED

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

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

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

Signature of Customer

Print name

Date

Signature of Witness

Print name

Date

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

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

Signature of Director

Print name

Date

Signature of Director/Secretary

Print name

Date

Schedule 9 Performance Guarantee

Deed dated the

day of

20

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

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

Purpose [*insert full legal name and ACN/ABN of the Contractor*] (Contractor) has agreed to offer to supply Products and Services to the Customer under a contract dated [*insert date of Customer Contract*] (Customer Contract).

1. Definitions

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

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

Head Agreement means [*insert date and parties to the Head Agreement*].

Insolvency Event means where the Contractor:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent with the meaning of section 95A of the *Corporations Act* 2001 (Cth);
- (c) must be presumed by a court to be insolvent by reason of an event set out in section 459C(2) of the *Corporations Act* 2001 (Cth);
- (d) fails to comply with a statutory demand within the meaning of section 459F(1) of the *Corporations Act* 2001 (Cth);
- (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (f) has a mortgagee enter into possession of any property of that Party;
- (g) has a controller within the meaning of the section 9 of the *Corporations Act* 2001 (Cth) or similar officer appointed to all or any of its property; or
- (h) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

Notice in Writing means a notice signed by a party's authorised representative or his/her delegate or agent.

BY THIS DEED

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

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

GUARANTOR

Physical address

Postal address

Email address

Fax number

CONTRACTOR

Physical address

Postal address

Email address

Fax number

CUSTOMER

Physical address

Postal address

Email address

Fax number

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

10. A Notice in Writing is deemed to be received if:
 - (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
 - (b) sent by post from and to an address within Australia, after 3 Business Days;
 - (c) sent by post from or to an address outside Australia, after 10 Business Days;
 - (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at 9.00 am the next Business Day); or
 - (e) sent by email; when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).
11. The laws of New South Wales govern this Deed of Guarantee and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

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

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

By [*insert name of Customer representative*]

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

Signature of Customer representative

Print Name

Date

Signature of Customer's Witness

Print Name

Date

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

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

Signature of Director

Print name

Date

Signature of Director/Secretary

Print name

Date

Schedule 10 Financial Security

Deed dated the

day of

20

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

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

DEFINITIONS

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

BY THIS DEED:

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

5. The laws of New South Wales govern this Guarantee and the parties submit to the exclusive jurisdiction of the courts of New South Wales.
6. A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy by facsimile to the address last advised by one of them to the other. Where the notice is given or served by facsimile, the sending party must confirm receipt by any other means.
7. The address for services of notice for a party is, in the case of the:

GUARANTOR

Physical address

Postal address

Phone number

Email address

Fax number

CONTRACTOR

Postal address

Phone number

Email address

Fax number

CUSTOMER

Postal address

Phone number

Email address

Fax number

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

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

- (e) sent by email; when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).

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

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

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

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

Signature of Customer Representative

Print name

Date

Signature of Customer witness

Print name

Date

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

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

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

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

Signature of Director/Secretary

Print name

Date

Signature of Director/Secretary

Print name

Date

Schedule 11 Dispute Resolution Procedures

1. Expert Determination

- 1.1 If a Referral Notice is submitted under clause 24.7 of the Customer Contract, the expert is to be agreed between the Parties. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated on the application of either Party by the Chief Executive Officer, Australian Disputes Centre of NSW.
- 1.2 The expert nominated must be a person who is an experienced Australian legal practitioner or a person with practical experience in the technology that is the subject matter of the dispute, unless otherwise agreed. The expert must not be:
 - (a) an employee of the Parties;
 - (b) a person who has been connected with this Customer Contract or has a conflict of interest, as the case maybe; or
 - (c) a person who the Parties have not been able to agree on.
- 1.3 The expert may appoint any person that the expert believes will be able to provide the specialists skills that are necessary to make a determination, including an Australian legal practitioner. The expert must consult with both Parties prior to appointing such person.
- 1.4 When the person to be the expert has been agreed or nominated, the Customer, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
 - (a) the issue referred to the expert for determination;
 - (b) the expert's fees;
 - (c) the procedure for the determination set out in this Schedule; and
 - (d) any other matter which is relevant to the engagement.

2. Submissions

- 2.1 The procedure for submissions to the expert is as follows:
 - (a) The Party that has referred the issue to expert determination must make a submission in respect of the issue, within 30 Business Days after the date of the letter of engagement referred to in clause 1.4.
 - (b) The other Party must respond within 30 Business Days after receiving a copy of that submission. That response may include cross-claims.
 - (c) The Party referred to in clause 2.1(a) may reply to the response, but must do so within 20 Business Days after receiving the response, and must not raise new matters.
 - (d) The other Party may comment on the reply, but must do so within 20 Business Days after receiving the reply, and must not raise new matters.

- (e) The expert must ignore any submission, response, reply, or comment not made within the time given in this clause 2.1, unless the Customer and the Contractor agree otherwise.
- (f) The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the request and response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- (g) All submissions, responses, replies, requests and comments must be in writing. If a Party gives information to the expert, it must at the same time give a copy to the other Party.

3. Conference

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

4. Questions to be determined by the Expert

- 4.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
 - (a) is there an event, act or omission that gives the claimant a right to compensation under the Customer Contract:
 - (i) for damages for breach of the Customer Contract, or
 - (ii) otherwise in law?
 - (b) if so:
 - (i) what is the event, act or omission?
 - (ii) on what date did the event, act or omission occur?
 - (iii) what is the legal right which gives rise to the liability to compensation?

- (iv) is that right extinguished, barred or reduced by any provision of the Customer Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
- (c) in the light of the answers to clause 1.4:
 - (i) What compensation, if any, is due from one Party to the other and when did it fall due?
 - (ii) What interest, if any, is due when the expert determines that compensation?
- 4.2 The expert must determine for each issue any other questions required by the Parties, having regard to the nature of the issue.
- 4.3 The Parties must share equally the fees of the expert, any other costs associated with the process, including room hire expenses, transcript expenses and the like and the fees of any person appointed by the expert under clause 1.3 for the determination, and bear their own expenses.
- 4.4 If the expert determines that one Party must pay the other an amount exceeding the amount specified in General Order Form (calculating the amount without including interest on it and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 4.5 Unless a Party has a right to commence litigation or otherwise resolve the dispute under the Customer Contract:
 - (a) in the absence of a manifest error the Parties must treat each determination of the expert as final and binding and give effect to it; and
 - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 20 Business Days.

5. Role of Expert

- 5.1 The expert must:
 - (a) act as an expert and not as an arbitrator, adjudicator or as expert witness;
 - (b) make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise;
 - (c) act impartially, free of bias and with no vested interest in the outcome of the dispute;
 - (d) adopt procedures for the Expert Determination suitable to the circumstances of the dispute so as to provide for an expeditious cost effective and fair means for the determination of the dispute; and
 - (e) issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 45 Business Days after the receipt of the information in clause 2.1(d).
- 5.2 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the

description of any person, matter or thing, or a defect of form, then the expert must correct the certificate and give notice to the Parties of such correction.

6. Confidentiality

- 6.1 Each Party involved in the expert determination process, including the expert, the Parties, their advisors and representatives shall maintain the confidentiality of the expert determination process and may not use or disclose to anyone outside of the expert determination process, the expert's determination, or any information received or obtained, in the course of the expert determination process, including the existence of that information, except to the extent:
- (a) the Parties have otherwise agreed in writing;
 - (b) the information is already in the public domain;
 - (c) disclosure is required to a Party's insurers, auditors, accountants or other professional advisers;
 - (d) disclosure is required for the purposes of any legal proceedings relating to the dispute or the expert's determination; or
 - (e) disclosure is otherwise required by law.