

**PROCURE IT FRAMEWORK
VERSION 3.1**

PART 2: CUSTOMER CONTRACT

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1. Recitals

PROCURE IT FRAMEWORK

- 1.1 The New South Wales Department of Finance and Services administers the *Procure IT Framework*.
- 1.2 The NSW Procurement Board ('the Board') is established under section 164 of the Public Works and Procurement Act 1912 (NSW) ('PWP Act'). The Board may pursuant to section 174 (1) of the PWP Act, establish a scheme under which a Government Agency accredited by the Board may procure goods and services for that agency or for other government agencies, subject to any terms and conditions of its accreditation.
- 1.3 The Contract Authority is the head of a Government Agency, which may procure goods and services for that agency or for other government agencies consistent with any applicable policies and directions of the Board, the terms of its accreditation (if any) by the Board, and the principles of probity and fairness.
- 1.4 The relevant Contract Authority is responsible for the administration of the Head Agreement on behalf of Eligible Customers and has authority to act on behalf of these entities in this respect.
- 1.5 The *Procure IT Framework* is designed so that Products and Services can be acquired:
- (a) as a result of a panel arrangement where an entity acts as the Contract Authority and establishes a master purchasing arrangement where one or more Contractors agree to offer certain Products and/or Services to Eligible Customers at pre-agreed Prices and on pre agreed core terms and conditions, for a defined Term (**Panel Arrangement**); or
 - (b) using an alternate procurement process that does not involve a Panel Arrangement (**Non-Panel Arrangement**).

PANEL ARRANGEMENT

- 1.6 Where the *Procure IT Framework* is used for a Panel Arrangement, the Contract Authority will undertake a procurement process and the successful Contractors will sign the Head Agreement and go onto the panel. The Head Agreement requires that all Eligible Customers who acquire Products and Services under the Panel Arrangement acquire the Products and Services using the form of Customer Contract that is set out in the *Procure IT Framework*.
- 1.7 The Head Agreement describes the relationship between the Contract Authority and the Contractor for the administration of the Panel Arrangement, including the Products and Services that can be acquired under the Panel Arrangement, how those Products and Services can be updated during the Term, the Pricing for the Products and Services, which entities are entitled to acquire Products and Services under the Panel Arrangement, which Approved Agents can be used by the Contractor to supply the Products and Services, the Term of the Panel Arrangement, the minimum insurance requirements and any Performance Guarantee that might apply to Customer Contracts entered into under the Head Agreement, as well as the general terms and conditions applicable to the relationship.

NON-PANEL ARRANGEMENT

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

CUSTOMER CONTRACT

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

DICTIONARY

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

2. Scope of Contract

PRODUCTS AND SERVICES

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

PRICING

- 2.3** The amounts set out in Annexure 3 to the Head Agreement are the maximum amounts payable by a Customer for the Products or Services acquired during the Term of the Head Agreement, subject to any increase made in accordance with any price variation mechanism stated in Annexure 3 to the Head Agreement. Nothing in this clause 2.3 prevents:
- (a) the Contractor from charging a Customer for any item, service, expense or other thing which is permitted to be charged for under a Customer Contract; or
 - (b) the Contractor and the Customer agreeing Prices which will apply to a Customer Contract which are lower than the amounts stated in Annexure 3 to the Head Agreement.

CONTRACT PERIOD

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

NOMINEE PURCHASER

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

3. Formation of Customer Contract**FORMATION**

- 3.1** A Customer Contract is entered into under a Head Agreement only where the Head Agreement is cross referenced in Item 7 of the General Order Form.
- 3.2** Where the Customer Contract is entered into, (and there is either a Head Agreement or the Customer is not the Contract Authority) the Contractor and the Customer:
- (a) agree that the Contract Authority may enforce the Customer Contract as agent for the Customer, even though the Contract Authority is not a party to the Customer Contract in its own right and in such circumstances, the applicable limitations and exclusions of liability in respect of the relevant claim will be those set out in clause 18 below, rather than those set out in clause 12 of the Head Agreement; and
 - (b) may seek to include any Additional Conditions that vary any of the terms and conditions of the Customer Contract including the Protected Clauses, provided that the Customer first obtains the written approval of the Director General, NSW Department of Finance and Services and the Contractor has received a copy of such written approval.
- 3.3** A Customer Contract between the Contractor and Customer is created upon:
- (a) the Parties completing and agreeing the Order Details and any Additional Conditions; and
 - (b) the Customer and the Contractor signing the General Order Form.
- 3.4** The Parties must, at a minimum, include in the Order Documents details of the Parties (stated in Item 1 and Item 4 of the General Order Form), Item 7 (if the Customer Contract is placed under a Head Agreement), the relevant Modules that are to be included in Item 8, the Contract Period in Item 10, the Products and Services (stated in Item 11 of the General Order Form or in the relevant Module Order Form), Price (or such details as are required to calculate the Price including those stated in Item 11 of the General Order Form or in the relevant Module Order Form), delivery details (including those stated in Item 12 of the General Order Form), the Contract Specifications (as stated in Item 13 of the General Order Form) and any details from the Module Order Forms that are required to describe the Products or Services.

- 3.5 The Parties may use a shortened version of the General Order Form (in hard or electronic format) which omits Items that the Parties agree are not required for the Customer Contract, provided that:
- (a) the minimum Order Details stated in clause 3.4 are included in that form, as well as any other Order Details that the Parties may agree to include;
 - (b) the structure and form of the General Order Form is consistent with Schedule 1 (even if some Items are omitted. Where Items are omitted subsequent Items that are included must retain their current Item number or heading so that the references in the Procure IT Framework remain accurate);
 - (c) the document readily identifiable as a General Order Form that comprises part of this Customer Contract and:
 - (i) uses the heading:

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

“This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of Part 2 as if repeated in full in this General Order Form.”

and
 - (d) the shortened document is signed by both Parties.
- 3.6 The Parties may use an electronic form of any Order Document, provided that an electronic form of the relevant Order Document is lawful.
- 3.7 To the extent that an Item in the Order Documents has not been completed or is omitted, that Item will be deemed not applicable.
- 3.8 The Customer Contract comprises:
- (a) any Modules that are stated as forming part of the Customer Contract in Item 8 of the General Order Form and the corresponding Module Order Forms;
 - (b) any Schedules that are stated as forming part of the Customer Contract in Item 9 of the General Order Form other than Schedule 1 (General Order Form), Schedule 2 (Agreement Documents), Schedule 3 (Service Level Agreement) or Schedule 12 (PIPP);
 - (c) any Additional Conditions in Schedule 1 (if applicable);
 - (d) the other provisions of Schedule 1;
 - (e) these clauses 1 to 26;
 - (f) Part 3, the Dictionary;
 - (g) any PIPP agreed by the Parties based on Schedule 12 (PIPP);
 - (h) any Service Level Agreement agreed by the Parties based on Schedule 3 (Service Level Agreement);

- (i) all other Order Documents;
- (j) Annexure 3 to the Head Agreement (if applicable); and
- (k) the Agreement Documents (if any).

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

3.10 For clarity:

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

COMPLIANCE WITH CONSUMER LAWS

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

3.12 To the extent that there is a failure to comply with a guarantee under sections 54 to 59 in schedule 2 of the CCA in respect of goods which are not goods of a kind that are ordinarily acquired for personal, domestic or household use or consumption, then to the extent permitted by law, the 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.

3.13 To the extent that there is a failure to comply with a guarantee in respect of the supply of services under sections 60 to 62 in schedule 2 of the CCA, then to the extent permitted by law, the 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.

4. Relationship

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

5. Deliverable Specific Issues

DELIVERY

- 5.1 The Contractor must deliver any Deliverables to the Site between the hours stated in Item 12 of the General Order Form as otherwise agreed in writing.
- 5.2 The Contract Price is inclusive of any additional or separate delivery costs, unless otherwise stated in the Order Documents including Item 11 of the General Order Form.
- 5.3 The Parties must perform their obligations in accordance with any Service Level Agreement. Either Party may periodically review the Service Level Agreement and may recommend or request a change to a Service Level Agreement. Any change to a Service Level Agreement must be implemented as a Change Request in accordance with the procedures stated in Schedule 4 – Variation Procedures.

DOCUMENTATION

- 5.4 The Contractor must provide the User Documentation and any Bespoke User Documentation to the Customer in either hard copy or electronic format. If the User Documentation is provided in hard copy format:
 - (a) the Contractor must make available, at no additional cost to the Customer, at least one copy of the User Documentation and such related material as the Contractor usually makes available free to its other customers, upon supply of the Product or Service to the Customer, or at the time(s) stated in the PIPP; and
 - (b) additional copies of the User Documentation must, if requested by the Customer, be provided by the Contractor at the Price stated in Item 15 of the General Order Form, or if the Price is not stated in the Order Documents, at the Contractor's then current commercial price.
- 5.5 The Contractor must ensure that any User Documentation and Bespoke User Documentation:
 - (a) is of a reasonable standard in terms of its presentation, accuracy and scope;
 - (b) provides an explanation of functions, capacity and operations of the relevant Product, Service or Deliverable;
 - (c) in the case of User Documentation only, is the most current and up-to-date version available; and
 - (d) is in the English language.
- 5.6 Where the Customer identifies any Defect in the User Documentation or Bespoke User Documentation within 30 days of the date of supply of the User Documentation or Bespoke User Documentation to the Customer, the Contractor must amend the defective User Documentation or Bespoke User Documentation and must promptly supply to the Customer the amended User Documentation or Bespoke User Documentation (or the relevant part) at no additional cost to the Customer.
- 5.7 The Contractor grants the Customer a right to use the User Documentation in connection with the authorised use of the Product or Service including for training purposes. Where the User Documentation is only provided in an electronic format the Customer may print ad hoc pages of the User Documentation. The Customer must not otherwise copy or adapt (including incorporating parts of the User Documentation into other Documents) without the Contractor's prior written consent (not to be unreasonably withheld).

NORMAL USE

5.8 For the purposes of the CCA, the Deliverables provided under this Customer Contract are ordinarily supplied for the use in connection with processing internal data for business applications which:

- (a) do not require very high levels of availability or completely error free use;
- (b) are not used for a Prescribed Use;
- (c) are not for resale.

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

PRODUCT SAFETY

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

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

5.10 The Customer agrees that:

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

6. Delivery Management**PROJECT MANAGEMENT**

6.1 Where the Customer Contract is made under a Head Agreement, the Customer shall have the right to appoint a representative of the Contract Authority to act as the Customer's agent for the purpose of exercising any of the Customer's rights arising out of, or in connection with, the Customer Contract.

6.2 The following clauses 6.3 to 6.9 apply if and to the extent stated in the Order Documents.

MANAGEMENT COMMITTEE

6.3 If it is stated on the General Order Form that a management committee is to be established, the Parties must agree and establish a management committee and a process for the conduct of the management committee's business by the date stated in the Order Documents.

6.4 The management committee must consist of the Party's project managers or officers, or such other persons as stated in the Order Documents including Item 16 of the General Order Form.

- 6.5** All members of the management committee must be authorised and properly qualified, informed and instructed to enable the management committee to properly assess progress under the Customer Contract.
- 6.6** The management committee must:
- (a) review and monitor progress under the Customer Contract; and
 - (b) carry out any other functions stated in Item 16 of the General Order Form.
- 6.7** Unless agreed otherwise, the members of the management committee or their authorised delegates must meet weekly at the Customer's offices at an agreed time.
- 6.8** At least 1 Business Day prior to a management committee meeting, the Contractor's project manager must submit to the Customer's project manager a report of progress under the Customer Contract including:
- (a) details (including dates) of Deliverables and Milestones commenced, completed or Accepted;
 - (b) details of any delays or issues arising from the project, including any known reasons for the delay or issue arising, and plans for the management of such delays and issues;
 - (c) a review of any:
 - (i) minutes and actions from the last meeting;
 - (ii) issues log;
 - (iii) risk management plan, which must be prepared and maintained in accordance with AS/NZS ISO 31000 Risk Management Standard or equivalent, unless agreed otherwise in writing;
 - (iv) details of any outstanding invoices and any payments that are about to become due;
 - (d) draft updates of relevant parts of the Contract Specifications;
 - (e) any new Change Requests or Contract Variations (if applicable); and
 - (f) details of the progress of any draft Change Requests or Contract Variations (if applicable).
- 6.9** If the Customer disagrees with the details recorded in the report, then the Customer must, within 2 Business Days of receipt of the report, make a written endorsement on the report recording its version of the details. The amended report must be provided to the Contractor within 1 Business Day of the Customer updating the report.

PERFORMANCE REVIEWS

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

- 6.11** All reviews must be undertaken by representatives of both Parties who have the authority, responsibility and relevant expertise in financial and operational matters appropriate to the nature of the review. Where the Customer Contract is made under a Head Agreement, either Party may request the involvement of the Contract Authority in any review.

SITE SPECIFICATIONS

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

IMPLEMENTATION PLANNING STUDY

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

PROJECT SCHEDULE

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

CHANGE CONTROL

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

STAGED IMPLEMENTATION

- 6.19** The Parties agree to perform the Customer Contract in accordance with the Stages stated in the PIPP.

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

EXTENSION OF TIME

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

LIQUIDATED DAMAGES

- 6.28** Where the Parties have agreed in Item 21 of the General Order Form that liquidated damages will be payable for the late completion of an LD Obligation, clauses 6.29 to 6.34 apply.
- 6.29** Where the Contractor has not completed an LD Obligation by the Due Date, or if the Due Date has been varied by a Change Request or otherwise in accordance with the Customer

Contract, such varied Due Date, the Contractor must pay liquidated damages stated in Item 21 of the General Order Form to the Customer unless the late completion of the LD Obligation is:

- (a) caused by an Event;
- (b) caused by the Customer or its Personnel;
- (c) caused by the act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer; or
- (d) permitted because an extension of time for completion of the LD Obligation has been granted by the Customer in accordance with the Customer Contract.

- 6.30** The Customer must promptly give the Contractor Notice in Writing setting out the grounds on which the Customer claims that liquidated damages are payable.
- 6.31** Each Party acknowledges that the liquidated damages stated in Item 21 of the General Order Form are a genuine pre-estimate of the loss, damage or expense that the Customer will suffer during the period in which liquidated damages are payable under clause 6.32 as a result of the Contractor not completing the LD Obligation by the Due Date.
- 6.32** The Contractor must pay any liquidated damages that are due from the Due Date until the earlier of:
- (a) the date that the Contractor successfully completes the LD Obligation in relation to which the liquidated damages have been applied; or
 - (b) the date on which the maximum number of days for which liquidated damages are payable as stated in Item 21 of the General Order Form have elapsed (the **Longstop Date**).
- 6.33** Liquidated damages paid under clause 6.32:
- (a) are the Customer's sole and exclusive financial remedy for the Customer's loss, damage and expense that the Customer suffers during the period in which liquidated damages are payable under clause 6.32 out of or in connection with the Contractor not completing the LD Obligation by the Due Date, subject only to the Customer's rights under clause 6.34; but
 - (b) do not relieve the Contractor from any other liability or from meeting any other obligation under the Customer Contract.
- 6.34** The Customer may, at any time during the period in which liquidated damages are payable under clause 6.32, issue a Notice in Writing of a Substantial Breach in respect of the Contractor not completing the LD Obligation by the Due Date specifying a period during which the Contractor is required to remedy that Substantial Breach, such period to be the greater of:
- (a) 10 Business Days;
 - (b) the period during which liquidated damages are payable for that Substantial Breach; or
 - (c) such longer period stated in the Notice in Writing,
 - (d) and if the Contractor has not remedied that Substantial Breach (by completing the LD Obligation) by the end of such period, the Customer may terminate the Customer Contract immediately by Notice in Writing to the Contractor.

- 6.35** The Parties agree that where the Contractor has not successfully completed the LD Obligation in relation to which the liquidated damages have been applied by the Longstop Date, the payment of liquidated damages by the Contractor under clause 6.32 is without prejudice to the Customer's right to claim damages at large in respect of loss, damage and expense that arises after the Longstop Date out of or in connection with the Contractor not completing the LD Obligation by the Longstop Date.

CUSTOMER SUPPLIED ITEMS (CSI)

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

CUSTOMER ASSISTANCE

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

ESCROW

- 6.42** If stated in Item 23 of the General Order Form, the Contractor must arrange:
- (a) for itself, the Customer and an escrow agent approved by the Customer to enter into an Escrow Agreement in relation to the Escrow Materials; or
 - (b) for the Customer to become a party to an escrow arrangement which already covers the Escrow Materials which the Customer regards as a satisfactory arrangement.

6.43 Any escrow arrangements to which the Customer becomes a Party under clause 6.42 must endure for at least the period stated in Item 23 of the General Order Form unless otherwise agreed. The Parties will bear the costs connected with such escrow arrangements in the proportions agreed by them in the Escrow Agreement.

6.44 The Contractor must consult with and comply with the reasonable directions of the Customer in any negotiations with the escrow agent arising under clauses 6.42.

BUSINESS CONTINGENCY

6.45 If stated in Item 24 of the General Order Form that a Business Contingency Plan is required, the Contractor must, within the time stated in Item 24 of the General Order Form or as otherwise agreed in writing, prepare a Business Contingency Plan for the approval of the Customer.

6.46 The Business Contingency Plan must include the details stated in Item 24 of the General Order Form or as otherwise agreed in writing. The Contractor must provide the Customer with a copy of the approved Business Contingency Plan.

6.47 The Business Contingency Plan must be reviewed, updated and tested by the Contractor at the intervals stated in Item 24 of the General Order Form.

6.48 If there is an interruption to the Customer's business that is contemplated by the Business Contingency Plan the Contractor must perform the obligations in the Business Contingency Plan. The Customer must provide the Contractor with any assistance reasonably required by the Contractor to create and perform the Business Contingency Plan.

7. Access

ACCESS TO CUSTOMER'S SITE

7.1 Without prejudice to the Contractor's obligations under clauses 6.12 and 6.13, the Customer must prepare and maintain the Site:

- (a) to enable the supply of the Deliverables; and
- (b) in accordance with the Site Specification that is approved under clauses 6.12 to 6.13, or as otherwise stated in Item 18 of the General Order Form.

7.2 Where the Customer provides the Contractor with access to the Customer's Site, the Contractor:

- (a) must ensure that its Personnel comply with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security; and
- (b) is liable for any damage to the extent that such damage is caused by the negligent act or omission of its Personnel on the Customer's Site.

- 7.3 The Customer may temporarily deny or suspend access to the Customer's Site in its discretion.
- 7.4 The Contractor must comply, and must ensure that its Personnel comply, with the secrecy and security requirements of the Customer as stated in Item 25 of the General Order Form, or of which the Customer subsequently provides the Contractor by written notice.

8. Personnel

PERSONNEL - GENERAL

- 8.1 Neither Party may, without the prior written consent of the other Party, engage, employ or induce or cause a third party to induce the other Party's Personnel engaged in the performance of the Customer Contract to enter into a contract for service or a contract of employment with it.
- 8.2 The restriction in clause 8.1 shall apply during the Contract Period and for a period of six months after the end of the Contract Period.
- 8.3 A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of clause 8.1.
- 8.4 The Parties agree that the restrictions in clauses 8.1 to 8.3 are necessary to protect the legitimate interests of each Party.
- 8.5 The Customer must make available its Personnel to work with the Contractor as stated in the Order Documents including Item 26 of the General Order Form. The Parties will identify such Personnel and their roles in the Order Documents.
- 8.6 The Customer must use reasonable efforts to ensure that its Personnel who are made available to work with the Contractor have the requisite authority, qualifications, competencies, skills and experience to perform their tasks.
- 8.7 The Contractor must ensure a safe system of work for any of the Customer's Personnel who the Customer makes available to perform work under the control and direction of the Contractor at the Contractor's premises.

SPECIFIED PERSONNEL

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

APPROVED AGENTS AND SUBCONTRACTORS

- 8.10 The Contractor may supply Deliverables to the Customer through Approved Agents.
- 8.11 If a Customer Contract is entered into between the Customer and an Approved Agent, the Contractor is deemed to have entered into a Customer Contract with the Customer.
- 8.12 The Contractor must ensure that its Approved Agents supply the Deliverables only in accordance with the terms of the Customer Contract under which the Approved Agent is to supply the Deliverables.

- 8.13** If requested in writing by the Customer, the Contractor must arrange for its Approved Agents to execute a Deed Poll substantially in the form of Schedule 6 – Deed Poll.
- 8.14** The Contractor must not subcontract the performance or supply of any Services under the Customer Contract without obtaining the prior written consent of the Customer which will not be unreasonably withheld or delayed and which may be given on such conditions as the Customer thinks fit.
- 8.15** Where the Customer believes that any Subcontractor is in material breach of its obligations to the Contractor, or its performance of obligations or services is unsatisfactory, so that the Contractor is likely to be in material breach of the Customer Contract as a result, the Customer may:
- (a) provide Notice in Writing to the Contractor setting out the details of its concerns;
 - (b) meet with the Contractor within 3 Business Days of the Contractor's receipt of the Notice in Writing to discuss the concerns; and
 - (c) if, following the discussions with the Contractor, the Customer is satisfied that the Contractor will be in material breach of the Customer Contract as a result of the performance of the Subcontractor, the Customer may give Notice in Writing that it is withdrawing its consent to allow the Subcontractor to continue to work in connection with the Customer Contract and require the Contractor to procure that the Subcontractor promptly ceases performing any work in connection with the Customer Contract subject to any contrary requirements of the Customer in respect of effecting an orderly transition notified to the Contractor, and in such circumstances, the Contractor agrees that the Customer will have no liability whatsoever to the Contractor for any loss suffered by the Contractor arising out of any termination of, or the continuation of, the relevant subcontract.
- 8.16** The Contractor:
- (a) must ensure that each Subcontractor is aware of all the terms and conditions of the Customer Contract that are relevant to the Subcontractor's performance of its work;
 - (b) is not relieved of its liabilities and obligations arising out of, or in connection with, a Customer Contract by subcontracting any work; and
 - (c) must ensure that the Subcontractor ceases work upon receipt of a Notice in Writing from the Customer of withdrawal of the consent given under clause 8.15(c).
- 8.17** If stated in Item 28 of the General Order Form, the Contractor must obtain from the Subcontractor a signed statutory declaration substantially in the form of Schedule 7 – Statutory Declaration by Subcontractor.

9. General Warranties

CONTRACTOR WARRANTIES

- 9.1** The Contractor warrants to the Customer that:
- (a) as at the Commencement Date, the Contractor is properly constituted and has the right and authority to enter into the Customer Contract;
 - (b) to the best of its knowledge and belief there is no Conflict of Interest of the Contractor or its Personnel as at the Commencement Date, and during the Contract Period the

Contractor will use its reasonable efforts not to permit a Conflict of Interest of the Contractor or its Personnel to arise in the performance of its obligations;

- (c) the information provided to the Customer in terms of the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its Personnel, was to the best of the Contractor's knowledge and belief correct when it was provided to the Customer;
- (d) as at the Commencement Date, to the best of its knowledge and belief the Contractor has all the necessary licences, approvals and consents necessary to perform its obligations under the Customer Contract;
- (e) it will not maliciously or negligently introduce any Virus into the Customer's systems during the Contract Period;
- (f) that to the best of its knowledge and belief, the Contractor has the necessary Intellectual Property Rights and has procured the necessary consents in relation to Moral Rights, to grant the Customer the rights to use and/or own (if applicable) the Deliverables (other than any open source software) in accordance with the Customer Contract;
- (g) it will perform its obligations in accordance with:
 - (i) the Statutory Requirements,
 - (ii) any other laws that are stated in Item 30 of the General Order Form;
 - (iii) the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182) ensuring that the Deliverables have not been produced using "worst forms of child labour" as defined; and
 - (iv) the codes, policies, guidelines and standards listed in Item 9 of the Head Agreement Details and Item 30 of the General Order Form;
- (h) it will maintain the quality standard accreditation stated in Item 29 of the General Order Form during the Contract Period; and
- (i) it is responsible for the acts and omission of its Personnel as if they were its own acts and omissions.

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

CUSTOMER WARRANTIES

- 9.3** The Customer warrants to the Contractor that:

- (a) it has complied with all laws and policies, including procurement policies in awarding the Customer Contract to the Contractor;
- (b) it will provide the Contractor and its Personnel with a safe place to work;
- (c) it will supply any CSI in accordance with the requirements stated in the Order Documents;
- (d) it is responsible for the acts and omission of its Personnel as if they were its own acts and omissions;

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

MUTUAL WARRANTIES

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

- (a) co-operate with the other Party and its respective Personnel to ensure timely progress and fulfilment of the Customer Contract, provided that nothing in this clause 9.4 requires the disclosure of a Party's Confidential Information or granting of any Intellectual Property Rights;
- (b) act reasonably and in good faith with respect to matters that arise out of, or in connection with, the Customer Contract;
- (c) work together in a collaborative manner;
- (d) to the extent that is reasonably possible, perform its obligations so as to avoid hindering the performance of the other Party;
- (e) hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other Party on a regular basis to ensure the other Party is fully informed of the progress of work required under the Customer Contract; and
- (f) perform its obligations and responsibilities by the dates stated in the Customer Contract.

10. Acceptance

ACCEPTANCE

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

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

ACCEPTANCE TESTING

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

CONDUCTING ACCEPTANCE TESTS

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

- (h) Where the details of the Acceptance Tests are not stated in the Order Documents, the Contractor shall, not less than 60 Business Days before the relevant Deliverable is due to be delivered (or such other period as the Parties may agree), notify the Customer that details of the Acceptance Tests (including those in (a) to (g) above have not yet been agreed and must be agreed at least 20 Business Days before the relevant Deliverable is due to be delivered (or such other period as the Parties may agree). Any failure of the Parties to agree any matter relating to the Acceptance Tests will be dealt with in accordance with clause 24 below, and the 20 Business Days requirement referred to above will not apply.
- 10.4** The Customer must provide the Contractor with the Acceptance Test Data at least 14 Business Days prior to the start of the Acceptance Test Period.
- 10.5** Where the Contractor is conducting the Acceptance Tests, the Customer's representative must be available during Business Hours on each day during the Acceptance Test Period to give any assistance and/or information reasonably requested by the Contractor.
- 10.6** Each Party must provide all reasonable cooperation and assistance to enable the performance of any Acceptance Test.
- 10.7** The Parties are entitled to observe and, to the extent reasonable, participate in the performance of any Acceptance Test.
- 10.8** The Party conducting the Acceptance Test must provide the other Party within the Acceptance Test Notification Period a written test notification specifying:
- (a) a written summary of the Acceptance Test;
 - (b) the results achieved from that Acceptance Test; and
 - (c) a Defects List (if there are any Defects).

ACCEPTANCE TEST OUTCOMES

- 10.9** Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable meets the Contract Specifications and other requirements under the Customer Contract, the Customer must issue a certificate of acceptance to the Contractor within the Acceptance Test Notification Period.
- 10.10** Where at the end of the Acceptance Test Period the Acceptance Tests demonstrate that the Deliverable does not meet the Contract Specifications and other requirements under the Customer Contract then, if the Defects are only Minor the Customer must give the Contractor written notice within the Acceptance Test Notification Period that the Customer either:
- (a) waives the requirement for the Acceptance Test to be satisfactorily completed;
 - (b) conditionally accepts the Deliverable, subject to the Contractor agreeing, at its own expense, to deliver a Workaround or to otherwise rectify any item on the Defects List within the Warranty Period in a manner that is acceptable to the Customer; or
 - (c) accepts the Deliverable subject to an agreed reduction in the Contract Price.
- 10.11** Where the Customer conditionally accepts the Deliverable in accordance with clause 10.10(b) then:
- (a) the AAD occurs on the date that the Customer gives written notice that it conditionally accepts the Deliverable; and

- (b) the Customer may use the Deliverable in a business or production environment from the AAD.

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

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

10.13 The Deliverables are deemed accepted if:

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

10.14 Where the Acceptance Test relates to a Deliverable that is a Document, it is not a failure to provide the Document in accordance with the Contract Specifications and the other requirements of the Customer Contract where the Customer requests a change to:

- (a) any opinion expressed in the Document, provided that the opinion expressed in the Document is the professional opinion held by the Contractor;
- (b) the style, formatting or layout of the Document, unless the style, formatting or layout is part of the Contract Specifications; or

- (c) semantics.

- 10.15** The Warranty Period (if any) of a Deliverable commences on the AAD of that Deliverable.
- 10.16** In the event of power failure, air-conditioning failure or other cause outside the control of the Contractor:
- (a) the Customer must approve an extension of the Acceptance Test Period to accommodate any delays caused directly as a result of those circumstances; and
 - (b) the Contractor must ensure that the Deliverable is ready to resume or recommence Acceptance Tests when conditions are again satisfactory and stable.

11. Payment and Invoicing

PAYMENT

- 11.1** In consideration for the Contractor providing a Deliverable in accordance with the Customer Contract, the Customer must pay the Contractor the Contract Price in the amounts and at the times stated in the Order Documents (including the PIPP) and/or Item 14 of the General Order Form. If the time for payment is not stated in the Order Documents and/or Item 14 of the General Order Form, then the Contract Price is due:
- (a) on AAD for Products;
 - (b) monthly in arrears for Recurring Services, other than Services provided under Modules 2 and 5;
 - (c) annually in advance for Services provided under Modules 2 and/or 5.
- 11.2** The Prices are fixed for the Contract Period, unless otherwise stated in the Order Documents including Item 14 of the General Order Form.
- 11.3** A Customer may pay any amount due under the Customer Contract by credit/debit card or electronic facility stated in Item 33 of the General Order Form. The Contractor may only charge a fee for payment by credit/debit card where the fee is stated in Item 33 of the General Order Form.
- 11.4** If the Contractor refuses, neglects or fails to perform an obligation to provide a Deliverable in accordance with the Customer Contract, the Customer may withhold the payment associated with that failure until the Contractor performs the relevant obligation in accordance with the Customer Contract unless the Customer Contract entitles the Customer to some alternative specific financial remedy for such refusal, neglect or failure, for example liquidated damages or services credits, but not a general right to damages.
- 11.5** The Customer may retain a proportion of the payment for any Milestones in the amount and for the period stated in a PIPP for the due and proper performance and completion of the Contractor's delivery obligations under the Customer Contract incurred prior to the end of the Warranty Period or a period otherwise stated in the PIPP.
- 11.6** The Customer must upon the completion of the Contractor's delivery obligations in accordance with the Customer Contract (incurred prior to the end of the Warranty Period or a period otherwise nominated in the PIPP) pay to the Contractor any amount retained under clause 11.5.

INVOICING

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

12. Taxes

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

13. Intellectual Property Rights

OWNERSHIP

- 13.1** All Intellectual Property Rights in:
- (a) any Existing Material remain vested in the person that owns the Intellectual Property Rights at the Commencement Date (**Owner**); and

- (b) any adaptation, translation or derivative of that Existing Material, vests in, or, is hereby transferred or assigned to the Owner, immediately upon creation.

CONTRACTOR OWNED NEW MATERIAL

- 13.2** The provisions of clauses 13.3 to 13.5 apply to New Material, unless clause 13.10 applies.
- 13.3** All Intellectual Property Rights in any New Material vests in, or, is hereby transferred or assigned to, the Contractor, immediately upon creation.
- 13.4** On the AAD of a Deliverable that incorporates the relevant New Material, the Contractor grants the Customer a non-exclusive, perpetual, irrevocable, royalty free, transferable licence to use, copy, adapt, translate, reproduce and in any way exploit that New Material in connection with, or for the operation, modification, support and/or use of, the Deliverable in which it is incorporated, subject to the restrictions set out in clause 13.5.
- 13.5** The licence to New Material in clause 13.4:
- (a) does not permit the Customer to disclose the New Material to any other person, except as stated in clauses 13.5(c) to (e);
 - (b) does not permit the Customer to manufacture, sell, license, transfer, commercialise or otherwise exploit any of the New Material or any Existing Material except as stated in clauses 13.5(c) to (e);
 - (c) permits the Customer to sublicense any of the rights in clause 13.4 without additional charge to any Division of the Government Service as defined under the *Public Sector Employment and Management Act 2002 (NSW)*, a NSW Public Sector Service (as defined under the *Public Sector Employment and Management Act 2002 (NSW)*), a NSW Government Agency (as defined in the *Interpretation Act 1987 (NSW)*), and any Public Health Organisation as defined under the *Health Services Act 1997 (NSW)*, where the Customer is a Division of the Government Service as defined under the *Public Sector Employment and Management Act 2002 (NSW)*, a NSW Public Sector Service (as defined under the *Public Sector Employment and Management Act 2002 (NSW)*), a NSW Government Agency (as defined in the *Interpretation Act 1987 (NSW)*), or a Public Health Organisation as defined under the *Health Services Act 1997 (NSW)*;
 - (d) permits the Customer's subcontractors to access the New Material, without additional charge, for the internal purposes of the Customer provided that, unless otherwise required by the Contractor, the Customer's subcontractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract; and
 - (e) permits the Customer to sublicense any of the rights in clause 13.4 without additional charge, (on one or more occasions) on a limited time basis to a contractor that is providing outsource services to the Customer that includes the operation of the New Material, provided that:
 - (i) the New Material is used solely for the internal business purposes of the Customer for the period of the outsource arrangement and the sublicense automatically terminates at the end of the period of the outsource arrangement; and
 - (ii) unless otherwise required by the Contractor, the contractor first signs an agreement or undertaking in a form reasonably acceptable to the Contractor that protects the use and disclosure of the New Material in the same manner as stated in the Customer Contract.

EXISTING MATERIAL

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

CUSTOMER OWNED NEW MATERIAL

- 13.10** If it is stated on the General Order Form that this clause applies to some or all of the New Materials and subject to clauses 13.12 and 13.13, upon the AAD of the relevant Deliverable that incorporates the New Material:
- (a) any Intellectual Property Rights in the New Material vests in, or is hereby transferred or assigned by the Contractor to, the Customer; and
 - (b) the Customer grants the Contractor a non-exclusive, perpetual, irrevocable, royalty free, transferrable licence to the New Material to use, copy, adapt, translate, manufacture and in any other way exploit the Intellectual Property Rights in that New Material.

CUSTOMER MATERIAL

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

KNOW HOW ETC

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

OPEN SOURCE LICENCE

- 13.13** Nothing in this clause 13 affects the Intellectual Property Rights in any open source software. Any Intellectual Property Rights in any open source licence are subject to the terms of the open source licence under which it is provided.

14. Confidentiality

- 14.1** Except to the extent necessary to comply with any Statutory Requirement or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with the Customer Contract, unless the other Party gives its prior written consent.
- 14.2** Each Party may disclose the Confidential Information of the other Party:
- (a) to the Contract Authority;
 - (b) the Director General, NSW Department of Finance and Services and to its Personnel;
 - (c) to its Personnel where the disclosure is essential to enable them to carry out their duties in connection with the Customer Contract or any Head Agreement; or
 - (d) to its Personnel, Related Companies and their directors, officers, employees, agents, contractors, lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the Party's performance under, the Customer Contract or any Head Agreement; or
 - (e) if the receiving Party is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.
- 14.3** Each Party must ensure that any Confidential Information of the other Party is used solely for the purposes permitted under clause 14.2.
- 14.4** The Customer may at any time require the Contractor to arrange for its Subcontractors to execute without delay a Deed of Confidentiality between the Customer and the Subcontractor substantially in the form of Schedule 8 – Deed of Confidentiality.

15. Privacy

15.1 The Contractor must:

- (a) use, access, retain or disclose Personal Information obtained in connection with the Customer Contract only for the purpose for which the Personal Information was acquired;
- (b) not do any act or engage in any practice that would breach an IPP, or which if done or engaged in by the Customer, would be a breach of that IPP;
- (c) comply with, carry out and discharge the obligations contained in the IPPs as if it were the Customer carrying out and discharging those obligations;
- (d) notify the Customer immediately upon becoming aware of a breach or possible breach of any of the obligations in this clause 15.1, whether by the Contractor, its Approved Agents or their Personnel;
- (e) notify any individual that makes a complaint to the Contractor regarding the Contractor's acts or practices in relation to such individual's Personal Information, that the complaint may be investigated by the Privacy Commissioner;
- (f) comply with all reasonable directions of the Customer in relation to the care and protection of Personal Information held in connection with the Customer Contract and take all reasonable measures to ensure that such information is protected against loss, unauthorised access or use, modification or disclosure and other misuse;
- (g) ensure that any of the Contractor's Personnel who are required to deal with the Personal Information for the purposes of the Customer Contract are made aware of the obligations of the Contractor under this clause 15.1; and
- (h) ensure that any agreement with any Approved Agent or Subcontractor who may be fulfilling a requirement in relation to the Customer Contract which includes the handling of Personal Information, contains the same or equivalent obligations to this clause 15.1 which are enforceable by the Contractor against the Approved Agent or the Subcontractor, as applicable.

16. Insurance

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

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

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

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

- 16.3** If the Customer Contract is for the provision of Services, the Contractor must hold and maintain, or be an insured under, one or more insurance policies that include professional indemnity or errors and omissions insurance that provide indemnity cover of at least the amount of \$1,000,000 in respect of the total aggregate liability for all claims for the period of cover. The Contractor must maintain the coverage required under this clause 16.3 during the Contract Period and until the date that is 4 years from the last day of the Contract Period.
- 16.4** The insurance policies in clauses 16.1(a), 16.1(b) and 16.3 must include cover for the Contractor's liability for the acts and omissions of the Contractor's subcontractors to the same extent as if they were the acts and omissions of the Contractor.
- 16.5** All policies of insurance must be entered into with an insurer which has a rating of A- or better by AM Best or an equivalent rating organisation at the date when cover is commenced, or for workers' compensation insurance the insurer (including any self-insurance) must be authorised by law.
- 16.6** The Contractor must within 30 days of the start of the Contract Period or of a request in writing from the Customer provide the Customer with a certificate of currency issued by its insurer or insurance broker (or other form of evidence acceptable to the Customer) confirming that all the insurance policies required by the Customer Contract are current and that the insurance has the required limits of cover. Where the Contractor is insured under a Related Company's insurance policy, the certificate of currency must also show that the insurance policy includes the Contractor as an insured.
- 16.7** The Contractor agrees to hold, maintain or be an insured under, any additional insurance stated in Item 36 of the General Order Form.
- 16.8** Where the Contractor does not wish to hold and maintain, or be an insured under, insurance required by clauses 16.1 to 16.5, or does not wish to enter into one or more of those insurance policies with an insurer of the type required by clause 16.5, the Contractor may make application to the Customer to be exempted from the provisions of clauses 16.1 to 16.6. Such application must be supported by such documentation as may be required by the Customer, (including the Contractor's financial records (limited to publicly available financial records where a Contractor or any of its Related Companies is publicly traded)). The Customer may accept, conditionally accept or reject the Contractor's application. The Customer must provide the Contractor with written notice within 30 days of receipt of the Contractor's application of the Customer determination under this clause 16.8, and in absence of receipt of such written notice, the Contractor's application is deemed accepted by the Customer.
- 16.9** Where the Customer Contract is entered into under a Head Agreement:
- (a) the Customer cannot grant the Contractor consent to be exempt from any insurance requirements required under the Head Agreement;
 - (b) if the Contractor has obtained the Contract Authority's and the Director General's, NSW Department of Finance and Services consent to be exempt from the any insurance requirements under any Head Agreement, then the Customer must accept the Contractor's application for an application for any similar exemption under the Customer Contract.
- 16.10** The effecting of insurance does not limit or expand the liabilities or obligations of the Contractor under the other provisions of the Customer Contract.

17. Guarantees

PERFORMANCE GUARANTEES

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

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

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

FINANCIAL SECURITY

- 17.4** If reasonably required by the Customer and agreed in Item 38 of the General Order Form, the Contractor must provide a Financial Security in the amount stated in Item 38 of the General Order Form substantially in the form of the agreement stated in Schedule 10 – Financial Security, or in the standard form that is usually provided by the issuing entity. The Contractor must, following such a request, ensure that the Financial Security is provided within 14 days of the Commencement Date, or such other period as agreed in Item 38 of the General Order Form.
- 17.5** The Financial Security will be held as security for the due and proper performance and completion of all the obligations of the Contractor under the Customer Contract.
- 17.6** The Financial Security must be issued by an Australian domiciled bank, insurance company or other financial institution (**Issuer**) acceptable to the Customer.
- 17.7** If the Contractor fails to properly perform and complete its obligations under the Customer Contract, and the Customer suffers loss or damage arising from, or in connection with, such failure by the Contractor, the Customer may deduct its loss or damage (in so far as those losses and damages may be payable by the Contractor taking into account the terms and

conditions of the Customer Contract, including the provisions of clause 18) from the Financial Security.

- 17.8** The Contractor agrees that the Customer will have no liability for any loss or damage suffered or incurred by the Contractor where the Customer exercises its rights in accordance with clause 17.7 in good faith.
- 17.9** Upon performance of part of the Customer Contract in accordance with its terms, the Contractor may request the Customer to consent to the discharge of the Financial Security provided under the Customer Contract and the substitution of another Financial Security in substantially the same form but for a lesser maximum aggregate sum. The Customer must not unreasonably withhold its consent to the substitution where the part performance of the Customer Contract has proportionately reduced the risk for which the Financial Security was originally provided.
- 17.10** The Financial Security will end on the sooner of:
- (a) the date when payment is made by the Issuer up to the maximum amount required under the Financial Security;
 - (b) one year from the date that the last Deliverable under the Customer Contract is scheduled to pass its Acceptance Tests, or if no Acceptance Tests were required, the date that is scheduled to be 180 days from the date of delivery of the last Deliverable or performance of the last Service under the Customer Contract;
 - (c) the date the Customer and Contractor agree in writing to release the Issuer;
 - (d) the date the Customer notifies the Issuer that the Financial Security is no longer required.
- 17.11** The Customer must reimburse the Contractor for any reasonable costs it incurs, including the fees payable to the Issuer, in connection with providing the Financial Security. These costs and fees must be reimbursed to the Contractor within 30 days of the Contractor providing a Correctly Rendered Invoice for the costs and fees.

18. Liability

- 18.1** To the extent permitted by law, and subject to clauses 18.2 to 18.7, the Contractor's liability in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out, of or in connection with, the Customer Contract shall not exceed in aggregate for all claims that arise out, of or in connection with, the Customer Contract, the greater of:
- (a) \$100,000; or
 - (b) in respect of claims that arise from:
 - (i) a Non-Recurring Service or Product; two times the Contract Value for the Non-Recurring Service or Product;
 - (ii) a Short Term Recurring Service; the Contract Value for the Short Term Recurring Service; or
 - (iii) a Recurring Service other than a Short Term Recurring Service;
 - (A) if the claim arose after the Recurring Services had been provided for 12 months; the amount paid or unpaid but due and outstanding, for

the Recurring Service for the 12 months prior to the date that the claim first arose; or

- (B) if the claim arose prior to the Contractor providing 12 months of Recurring Services; the amount that is 12 times the average monthly amount that was paid or unpaid but due and outstanding for the Recurring Service prior to the date on which the claim first arose.

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

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

- (a) where the Contract Price under the Customer Contract is greater than \$20,000,000; or
- (b) where the Customer Contract is for Deliverables that are to be used for a Prescribed Use,

the Parties must discuss and agree an alternative cap of liability in Item 39 of the General Order Form.

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

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

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

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

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

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

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

19. Indemnities

CONTRACTOR INDEMNITY

- 19.1** The Contractor must indemnify and hold harmless the Customer, its officers and employees against any loss or expense which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) to the extent it:
- (a) arises out of or in connection with the Contractor's breach of any privacy obligations under or pursuant to clause 15.1;
 - (b) is the result of a claim against the Customer, its officers or employees made by a third party arising out of or in connection with a malicious or negligent act or omission of the Contractor, its directors, officers, employees, agents and subcontractors in the performance of the Contractor's obligations to the Customer under the Customer Contract; or
 - (c) is the result of a claim against the Customer, its officers or employees made by a third party that the use of the Deliverable in accordance with the Customer Contract infringes any Intellectual Property Rights, including the Moral Rights, of the third party claimant, that are enforceable in Australia (**IP Claim**).
- 19.2** The Customer must promptly, and in any event within 5 Business Days of being notified of a claim for which it is seeking an indemnity under clause 19.1(b) or 19.1(c), provide the Contractor with Notice in Writing of the details of the claim. The Customer must (unless there is any government policy that prohibits the Contractor from handling the process for the settlement of the claim) permit the Contractor, at the Contractor's expense, to handle the process for the settlement of such claim and, as permitted by law, to control and direct any litigation that may follow a claim under clause 19.1(b) or 19.1(c) (including selecting solicitors and counsel), subject to the Contractor agreeing to comply at all times with the government policy relevant to the conduct of the litigation.
- 19.3** If the Customer does not permit the Contractor to handle the process for the settlement of such claim under clause 19.2 and, as permitted by law, to control and direct any litigation that may follow a claim under clause 19.1(b) or 19.1(c), then the Customer must promptly and fully defend the claim (whilst complying with government policy), and not settle the claim without the Contractor's prior written consent, such consent not to be unreasonably withheld. The Customer must keep the Contractor fully informed throughout the period of the claim, including providing copies of all relevant documents.
- 19.4** The Customer must, upon the Contractor confirming its obligations under the indemnity in clause 19.1, provide the Contractor with reasonable assistance in defending, settling or otherwise conducting the negotiations or litigation, at the Contractor's expense, including providing all relevant documents, permitting its Personnel to testify for the Contractor if requested by the Contractor and using any defence that might be available to the person being indemnified.
- 19.5** Notwithstanding clause 19.1(c), the Contractor is not required to indemnify the Customer, its officers and employees to the extent that the IP Claim is caused by:
- (a) any open source software that forms part of the Deliverable;
 - (b) the combination, operation or use of the Deliverable with any other product, equipment business method, software or data;
 - (c) any Intellectual Property Rights including Moral Rights, material or thing provided by any person other than the Contractor or its Personnel, including any Customer Supplied Items;

- (d) any modification of the Deliverable by any person other than the Contractor or its agents;
 - (e) the Contractor following the designs, specifications or instructions provided by the Customer or other person on the Customer's behalf; or
 - (f) the continued use of the Deliverable after the Contractor has provided the Customer a new software version, patch or correction, or a replacement part or other correction that would have overcome the infringement.
- 19.6** Without prejudice to the Customer's rights under clause 19.1(c), if there is an IP Claim then the Contractor may, with the consent of the Customer, at the Contractor's expense, either:
- (a) obtain for the Customer the right to the continued use of the Deliverable in accordance with the Customer Contract;
 - (b) replace or modify the Deliverable so that the alleged infringement ceases and the replaced or modified Deliverable provides the Customer with substantially similar functionality and performance as required in the Contract Specifications; or
 - (c) if, in the opinion of the Contractor, neither 19.6(a) nor 19.6(b) is reasonably commercially available and the Customer is not subject to the benefits of the legislation in clause 19.10, the Contractor may terminate the Customer Contract, and will be liable for damages to the Customer for such termination.
- 19.7** Notwithstanding clause 19.1, the Contractor is not required to indemnify the Customer under clause 19.1(b) or 19.1(c) (as applicable), its officers and employees:
- (a) if the third party making a claim under clause 19.1(b) or the IP Claim (as applicable) is the Contract Authority or any other Eligible Customer who is obtaining the benefit of, or being provided with, the Product, Service or Deliverable under the Customer Contract; or
 - (b) where the third party claim under clause 19.1(b) or the IP Claim arises from, or in connection with, the supply of any Product, Service or Deliverable (or the supply of any item based on any Product, Service or Deliverable) to the third party, whether the supply was made by the Customer or any person who has, directly or indirectly, acquired the Product, Service or Deliverable or item based on the Product, Service or Deliverable from the Customer.
- 19.8** The Contractor's liability in respect of the indemnity provided under:
- (a) clauses 19.1(a), is subject to clauses 18.4, 18.6 and 18.7;
 - (b) clause 19.1(b), is subject to clauses 18.1 to 18.7;
 - (c) clause 19.1(c), is subject to clauses 18.4, 18.6 and 18.7.
- 19.9** The Customer must give the Contractor 10 Business Days' Notice in Writing of an intention to claim a liability, loss or expense in accordance with clause 19.1(a) including in that notice an explanation of how that liability or expense was assessed and the Contractor's proposed share of that liability.
- 19.10** For the purposes of clause 19.1(c) an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of the Patents Act (Cth) 1990 s.163, the Designs Act (Cth) 2003 ss 96, 100, the Copyright Act (Cth) 1968 s.183 and the Circuits Layout Act 1989 (Cth) s.25, constitute an infringement.

20. Conflict of Interest

20.1 The Contractor must:

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

21. Performance Management

REPORTING

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

22. Government Policy

POLICY

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

23. Contract Administration

REPRESENTATIVES

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

NOTICE OF CHANGE OF CONTROL

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

RECORD KEEPING

- 23.4** The Contractor must keep financial records and other information relevant to the performance of the Customer Contract including as are required to comply with any applicable Statutory Requirement. The Contractor must give the Customer access to and copies of such records and information (excluding information relating to profit margins) within a reasonable time of a written request from the Customer.

NOTICES

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

24. Dispute Resolution

- 24.1** The Parties agree to resolve any conflicts or issues between them that arise during the Contract Period out of, or in connection with, the Customer Contract in accordance with clause 24.
- 24.2** If a dispute arises out of, or in connection with the Customer Contract during the Contract Period, then, subject to clause 24.13, the aggrieved Party must submit a Notice in Writing to the other Party of the issue, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of the agreement which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Issue Notice**). The Issue Notice must be submitted within a reasonable time of the Party becoming aware of the issue. If the Party submitting the Issue Notice is the Contractor, then where the Customer Contract is made under a Head Agreement, the Contractor must send a copy of the Issue Notice to the Contract Authority.
- 24.3** If a Party submits an Issue Notice under clause 24.2, each Party must nominate in writing, within 7 days, a senior executive who will attempt to resolve the dispute. The nominated senior executives will promptly meet at a time and place that is mutually convenient with the objective of resolving the issue. The nominated senior executives may invite other personnel to attend the mutually convenient conference subject to a list of additional invited personnel being provided to the other nominated senior executive at least 24 hours prior to the conference.
- 24.4** If the Parties are able to agree upon a resolution to the dispute, the terms of the agreement are to be documented and signed by both nominated senior executives. Such an agreement will be binding on both Parties.
- 24.5** Each Party will bear its own costs under clauses 24.2 to 24.4.

- 24.6** If the dispute is not resolved within 21 days of the date that the Issue Notice was received by the other Party, either Party may then refer the dispute to expert determination in accordance with clauses 24.7 to 24.8.
- 24.7** The Party that requires that the dispute is resolved by expert determination must submit a Notice in Writing to the other Party specifying the issue to be decided by expert determination, and if the issue relates to an allegation of breach of contract or any damages the notice must include details of the breach, including the relevant clauses of the agreement which are alleged to have been breached, and (if applicable) the damages claimed and how the damages are calculated (**Referral Notice**).
- 24.8** If the dispute is to be resolved by expert determination the Parties will be bound by the provisions and procedures contained in Schedule 11 – Dispute Resolution Procedures, unless agreed otherwise in writing.
- 24.9** If a Referral Notice has not been submitted within 20 Business Days of becoming entitled under clause 24.6 then the issue is barred from expert determination or any other action or proceedings, subject to clause 24.13. The Customer and the Contractor may, in writing, agree to extend this 20 Business Days period for the purposes of continuing to negotiate a resolution of a particular dispute for up to another 20 Business Days.
- 24.10** Notwithstanding the existence of a dispute each Party must continue to perform its obligations under the Customer Contract during the period of the attempt to resolve this issue under clauses 24.2 to 24.8.
- 24.11** Unless the Parties otherwise agree in writing, clauses 24.7 to 24.8 do not apply to disputes for which:
- (a) either Party's claim exceeds \$250,000 or the amount stated in Item 41 of the General Order Form;
 - (b) includes any dispute that involves a party claiming that a statutory guarantee under the CCA is involved in the dispute; or
 - (c) relates to an issue of the type stated in Item 41 of the General Order Form.
- In this case if the dispute is not resolved within 15 Business Days of the date that the Issue Notice was received by the other Party, either Party may commence any other form of resolution, including court proceedings.
- 24.12** The amount specified in Item 41 of the General Order Form shall include the total amount being claimed by both Parties including the amount of any cross claim but excludes any set offs, interest and legal costs. If the Parties are unable to agree on the total amount being claimed each Party shall submit a claim to the other Party detailing the nature of the claim, the relevant term of the Customer Contract which has been breached and how it calculated the amount of its claim. Where only one Party is submitting a claim the other Party shall be entitled to submit its estimate of the amount of the claim to the other Party. If the calculations of each Party differ from one another the amount in dispute for the purposes of Item 41 of the General Order Form shall be calculated by totaling the value of all the claims or estimated amount of the claims together and dividing that amount by the total number of claims and estimated claims.
- 24.13** The provisions of clauses 24.2 to 24.12 do not apply where a party seeks urgent interlocutory relief or where a Party has terminated the Customer Contract for a Substantial Breach or Fundamental Breach of the Agreement.

25. Termination

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

TERMINATION FOR CAUSE BY THE CUSTOMER

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

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

TERMINATION FOR CONVENIENCE BY THE CUSTOMER

- 25.3** The Customer may by Notice in Writing at any time terminate the Customer Contract for convenience, such termination to be effective immediately unless stated otherwise on the Notice In Writing. The Contractor must immediately comply with any directions given in the Notice in Writing and must do everything that is reasonably practical to mitigate its losses arising in consequence of termination of the Customer Contract under this clause 25.3.
- 25.4** If the Customer exercises its right under clause 25.3, the Customer must:
- (a) indemnify the Contractor against any liabilities or expenses, which are reasonably and properly incurred by the Contractor to the extent that those liabilities or expenses were

incurred as a result of termination of the Customer Contract in accordance with clause 25.3; and

- (b) pay any amount that is stated in the Order Documents including Item 42 of the General Order Form.

25.5 Once the Customer has paid the amounts in clause 25.4 no further compensation is payable for any termination under clause 25.3.

TERMINATION FOR CAUSE BY THE CONTRACTOR

25.6 The Contractor may terminate the Customer Contract immediately by providing the Customer Notice in Writing if the Customer has:

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

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

- (d) suffered an Insolvency Event.

CONSEQUENCES OF TERMINATION

- 25.7** In the event of termination under clause 25.2, the Customer may obtain from any other source a reasonably similar alternative to the Deliverable in which case the Contractor shall, subject to clause 18, be liable to the Customer for any reasonable expenses incurred and any losses sustained (including any price difference between the Deliverable and the similar alternative) by the Customer.
- 25.8** If the Customer Contract:
- (a) is terminated by the Customer for cause or it expires, then the Customer may provide the Contractor with written notice requiring the Contractor at its expense to remove Deliverables or to dismantle or remove work from the Customer's premises by a date stated in that notice;
 - (b) is terminated by the Contractor for cause, then the Contractor may provide the Customer with written notice requiring the Customer to return any Deliverables that have not been paid for in full, and the Customer must return those Deliverables at its expense by the date stated in that notice; and
 - (c) such termination or expiry is without prejudice to any right of action or remedy that has accrued or may accrue to either Party.

26. General

VARIATION

- 26.1** Subject to any other rights given under this Customer Contract to vary its terms and the following provisions of clause 26.2, neither a Change Request nor a Contract Variation shall be valid unless agreed in writing and signed by both the Customer and the Contractor.
- 26.2** Where the Customer Contract is entered into, the Customer must obtain the written approval of the Director General, NSW Department of Finance and Services prior to agreeing to a variation of any term or condition including a variation to any of the Protected Clauses. In such circumstances, the Contractor must obtain a copy of such written approval from the Customer before entering into the relevant Change Request that varies a term or condition including a Protected Clause.

ASSIGNMENT AND NOVATION

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

- 26.6** The Customer may, at its own cost, assign or novate the Customer Contract to any other Eligible Customer with the prior written consent of the Contractor, such consent not to be unreasonably delayed or withheld.

WAIVER

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

MATERIAL ADVERSE EVENTS

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

UNFORESEEN EVENTS

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

SEVERABILITY

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

ENTIRE AGREEMENT

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

RIGHTS ARE CUMULATIVE

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

SURVIVAL

- 26.15** The provisions of clauses 3.11 to 3.13, 6.42 to 6.44, 8.1 to 8.4, 13.4 to 13.8, 13.12, 13.13, 14.1 to 14.3, 15, 16.3, 18, 19, 25.7, 25.8, 26.15 and 26.17 and any other clause which naturally should survive termination or expiry of the Customer Contract shall survive termination or expiry of the Customer Contract.

COUNTERPARTS

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

APPLICABLE LAW

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

SIGNED AS AN AGREEMENT

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

The State of New South Wales by its Department of Education (ABN 40 300 173 822)

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



Signature of Customer Representative

Print name

MARK SCOTT

Date

4.9.17

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

Adobe Systems Software Ireland Limited (ABN 18 586 921 900) in its capacity as authorised agent of Adobe Systems Pty Ltd (ABN 72 054 247 835)



George Hronis (Aug 24, 2017)

Signature of Authorised Signatory

George Hronis

Print name

Aug 24, 2017

Date

Pages 42 – 120
Intentionally Not Used

Schedule 1: General Order Form

Schedule 1 to the Customer Contract (which is Part 2 of the ProcureIT Framework version 3.1)



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 State of New South Wales by its Department of Education ABN 40 300 173 822

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:	35 Bridge Street, Sydney NSW 2000

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:	Peter Vicary, Executive Director, Communication & Engagement, or his delegate T 02 9561 8431 E peter.vicary1@det.nsw.edu.au

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:	Adobe Systems Software Ireland Limited, ABN 18 586 921 900, in its capacity as authorized agent of Adobe Systems Pty Ltd

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:	4-6 Riverwalk, Citywest Business Campus, Dublin 24, Ireland Notices to be sent to: ContractNotifications@adobe.com

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:	Anna Mascarello, Enterprise Account Manager, Education T 02 8622 4074 E amascare@adobe.com

Item 7 Head Agreement – Not Used

Item 8 Modules that form part of the Customer Contract

Formation (clause 3.8(a))

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

- | | | | |
|--|-------------------------------------|---|--------------------------|
| Module 1 – Hardware Acquisition and Installation | <input type="checkbox"/> | Module 11 – Telecommunications Services | <input type="checkbox"/> |
| Module 2 – Hardware Maintenance and Support Services | <input type="checkbox"/> | Module 12 – Managed Services | <input type="checkbox"/> |
| Module 3 – Licensed Software | <input type="checkbox"/> | Module 13 – Systems Integration | <input type="checkbox"/> |
| Module 4 – Development Services | <input type="checkbox"/> | Module 14 –Hosting Services | <input type="checkbox"/> |
| Module 5 – Software Support Services | <input type="checkbox"/> | Module 15 Satellite Services | <input type="checkbox"/> |
| Module 6 – Contractor Services | <input type="checkbox"/> | | <input type="checkbox"/> |
| Module 7 – Professional Services | <input type="checkbox"/> | | <input type="checkbox"/> |
| Module 8 – Training Services | <input type="checkbox"/> | | <input type="checkbox"/> |
| Module 9 – Data Migration | <input type="checkbox"/> | | <input type="checkbox"/> |
| Module 10 – X as a Service | <input checked="" type="checkbox"/> | | |

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

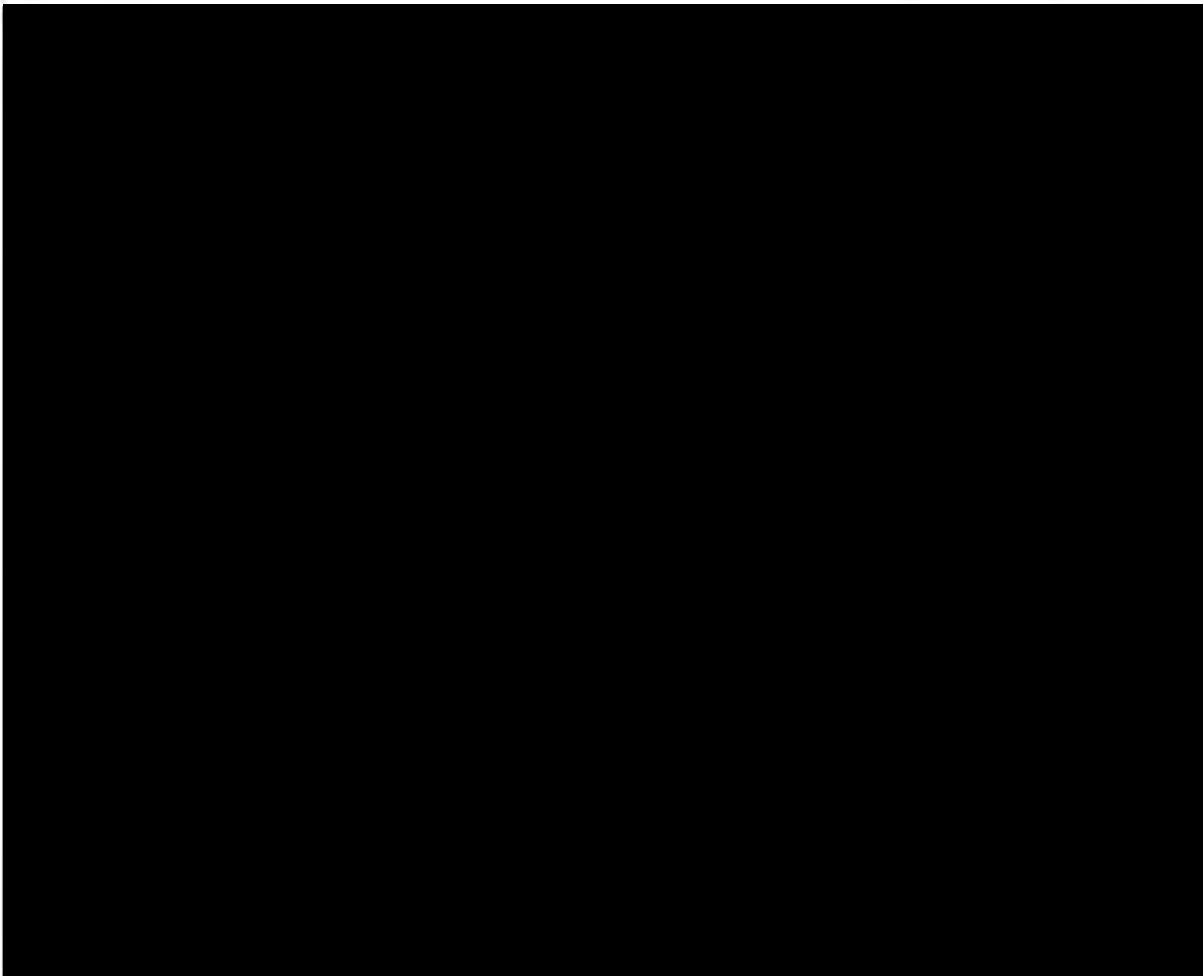
Formation (clause 3.8(b))

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

- | | | | |
|--|-------------------------------------|---|--------------------------|
| Schedule 1 – General Order Form | Applies | Schedule 7 – Statutory Declaration - Subcontractor | <input type="checkbox"/> |
| Schedule 2 – Agreement Documents | <input checked="" type="checkbox"/> | Schedule 8 – Deed of Confidentiality | <input type="checkbox"/> |
| Schedule 3 – Service Level Agreement | <input type="checkbox"/> | Schedule 9 – Performance Guarantee | <input type="checkbox"/> |
| Schedule 4 – Variation Procedures | <input checked="" type="checkbox"/> | Schedule 10 – Financial Security | <input type="checkbox"/> |
| Schedule 5 – Escrow Agreement | <input type="checkbox"/> | Schedule 11 – Dispute Resolution Procedures | <input type="checkbox"/> |
| Schedule 6 – Deed Poll – Approved Agents | <input type="checkbox"/> | Schedule 12 – Project Implementation and Payment Plan | <input type="checkbox"/> |

Item 10 Contract Period

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Contract Period (Clause 2.4)	



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:	NSW DEPARTMENT OF EDUCATION AUSTRALIAN TECHNOLOGY PARK LEVEL 8 (WEST), 8 CENTRAL AVENUE EVELEIGH, New South Wales, 2015 AUSTRALIA
Specify any delivery instructions:	N/A
Specify the hours during which delivery may be made to the Site:	Business hours unless otherwise specified in the Sales Order(s).

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:	The Contract Specifications consist of the following documents (listed in order of priority from highest to lowest if there is any inconsistency between these documents): <ol style="list-style-type: none"> 1. Module 10 (As a Service); 2. Schedule 1 (General Order Form); then

Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
	3. Schedule 2 (Agreement Documents).

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)	
Invoicing (clause 11.7 and 11.9)	
Specify the Customer's officer to receive invoices:	Christina Allan, Customer and Engagement Directorate
Specify address to which invoices should be sent:	c&e@det.nsw.edu.au unless otherwise notified to the Contractor.
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 All invoices will only be delivered electronically to Customer via email to the email provided above.
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.	In accordance with the billing cycle for each of the Sales Order(s)
Specify whether the Contract Price is fixed: E.g. does the unit Price per item vary for inflation or other factors? If so, specify the calculation for Price variations:	The pricing for the professional services is based on the quantity of hours, to be calculated as set out in the relevant Sales Order. The pricing for the Adobe On-demand Services and Managed Services is based on the quantity of the unit of measure as set out in the relevant Sales Order.

Item 15 User Documentation – Not used

Item 16 Management Committee – Not used

Item 17 Performance Review Procedures – Not used

Item 18 Site Preparation and Maintenance – Not used

Item 19 Implementation Planning Study – Not used

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)	

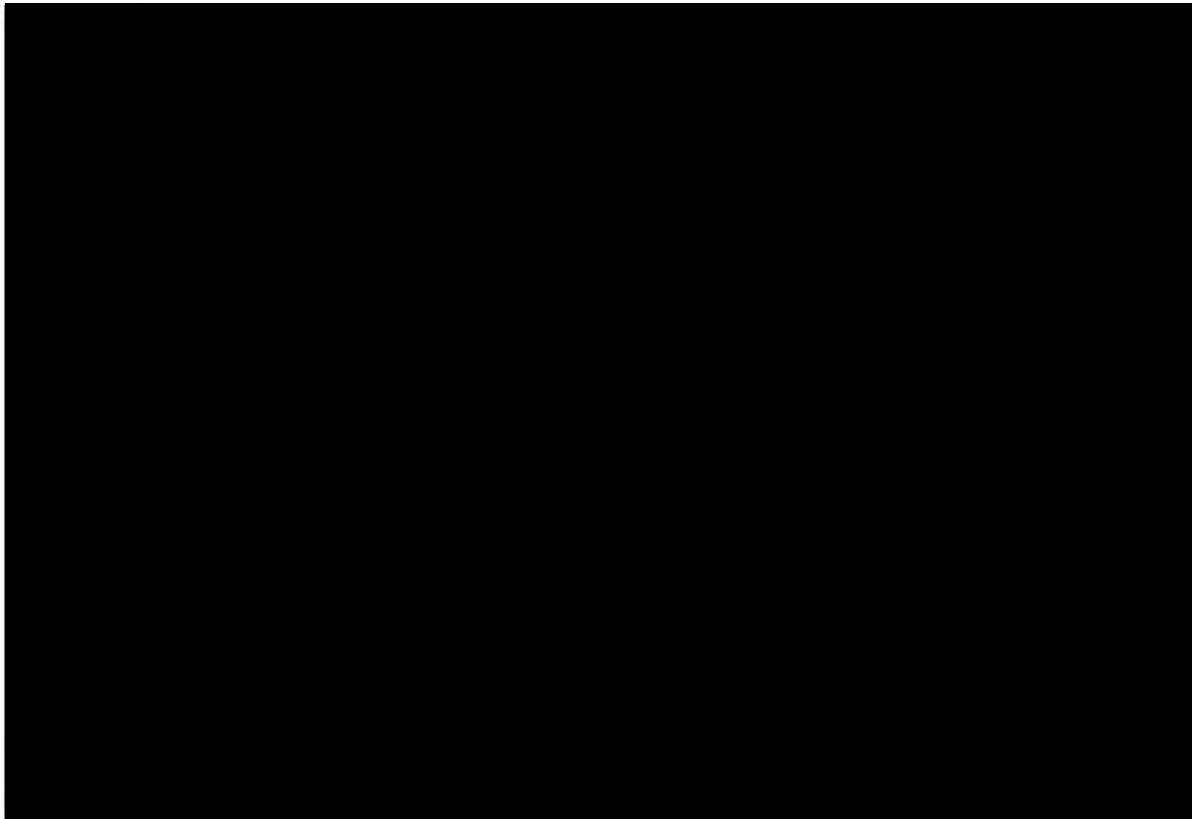
Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Specify if a PIPP has been created. If so, identify the document in this Item and attach as an Annex to this General Order Form: E.g. the PIPP is in a document "PIPP v1_1 27/10/11" and Annexure 1 to the Customer Contract.	Not required.
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 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):	No Staged Implementation.

Item 21 Liquidated Damages – Not used

Item 22 Customer Supplied Items (CSI) and Customer Assistance – Not used

Item 23 Escrow – Not used

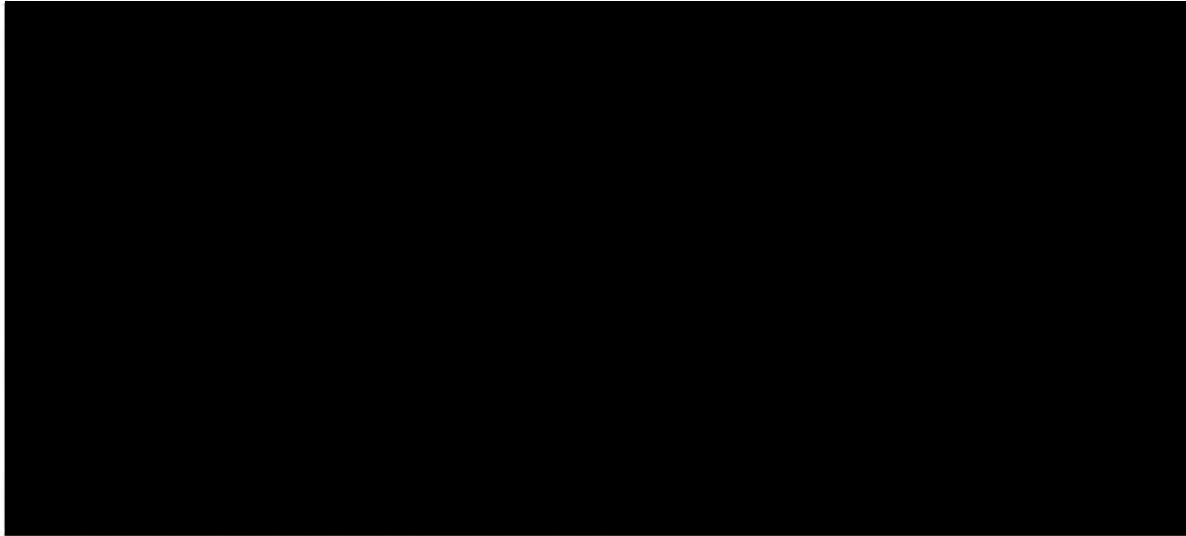
Item 24 Business Contingency Plan – Not used



Item 28 Subcontractors – Not used

Item 29 Quality Standard Accreditation – Not used

Item 30 Contractor’s Compliance with Standards, Codes and Laws – Not used



Item 32 Acceptance Testing – Not used

Item 33 Credit/Debit Card – Not used

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 and 13.9)	
Specify any terms and condition applicable for granting a license for Existing Material owned by a third party:	Not applicable
Specify any fees to be charged for any license to use any of Contractor’s Existing Materials:	Fees for the Contractor’s Existing Materials which are listed in the relevant Adobe Sales Orders are as set out in such Sales Orders and are included in the Contract Price
Customer Owned New Material (clause 13.10)	
Specify if clause 13.10 applies, and if so, to which items of New Material:	Clause 13.10 does not apply.

Item 35 Confidentiality – Not used

Item 36 Insurance Requirements – Not used

Item 37 Performance Guarantee – Not used

Item 38 Financial Security – Not used

Item 39 Limitation of Liability – Not used

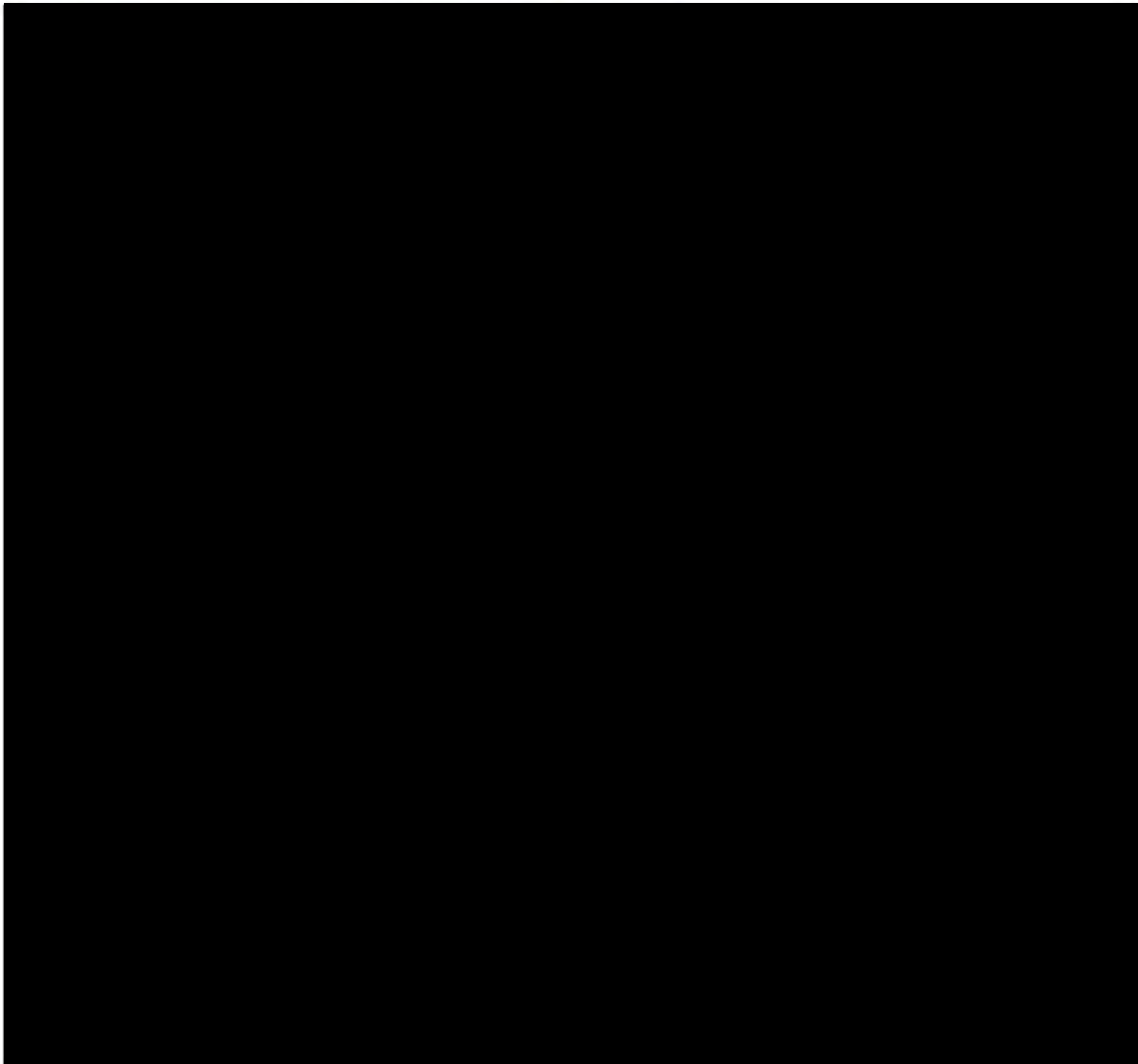
Item 40 Performance Management Reports

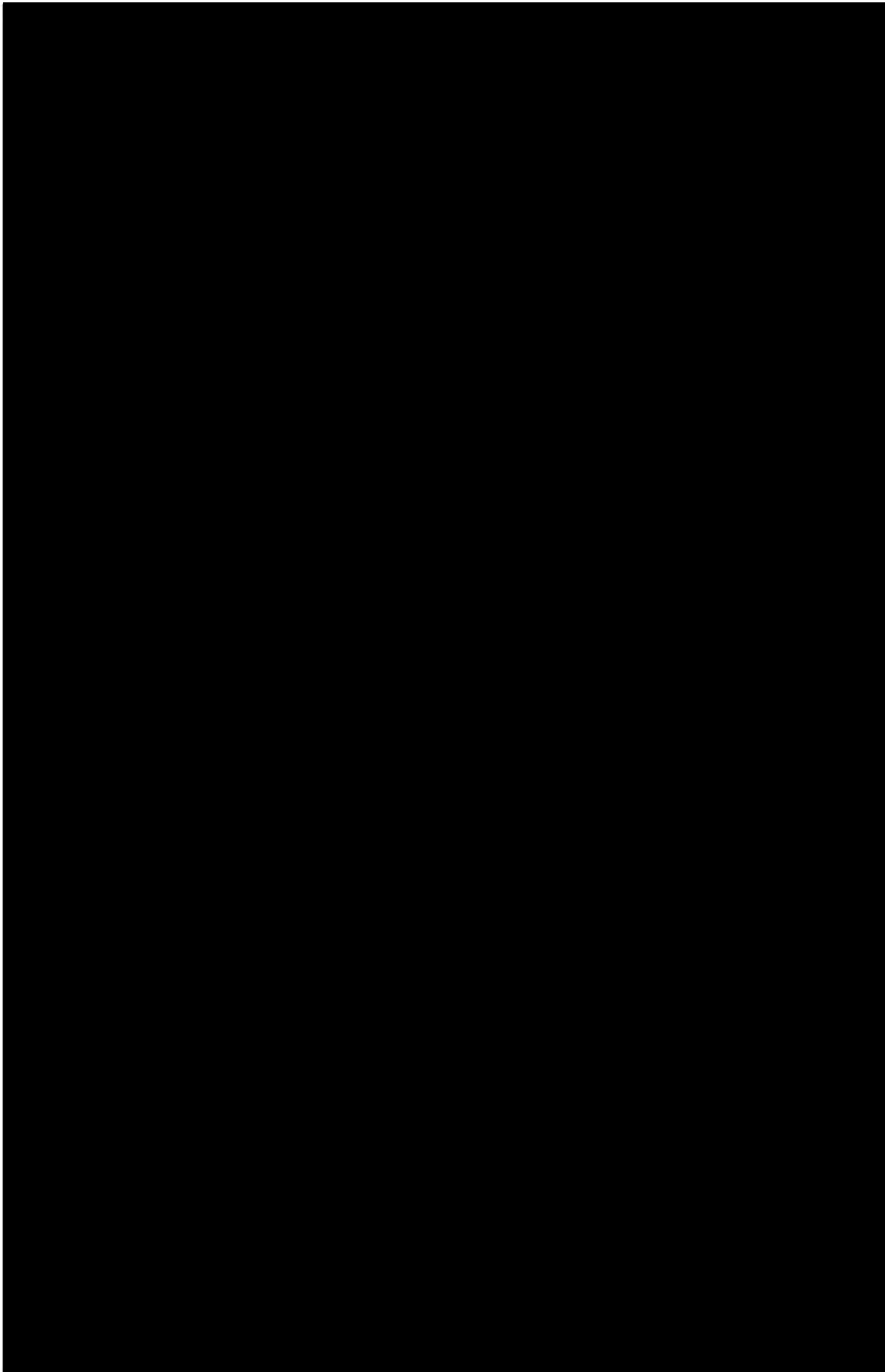
Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Reporting (clause 21.1)	
Specify the reports required, (if any), the time for provision and the agreed format:	As set out in the relevant Sales Order and the Contract Management Plan agreed in writing by the Parties.

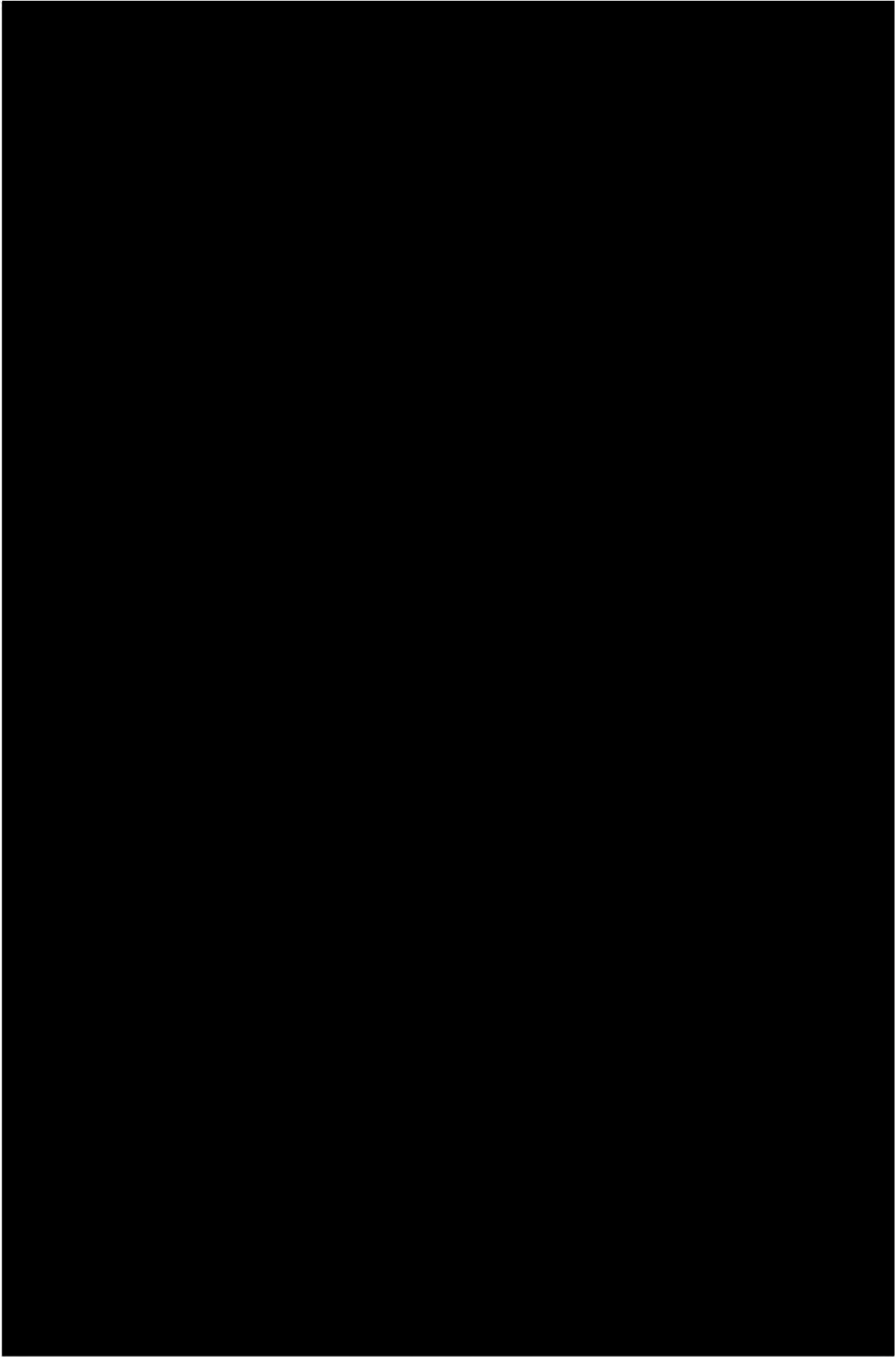
Item 41 Dispute Resolution

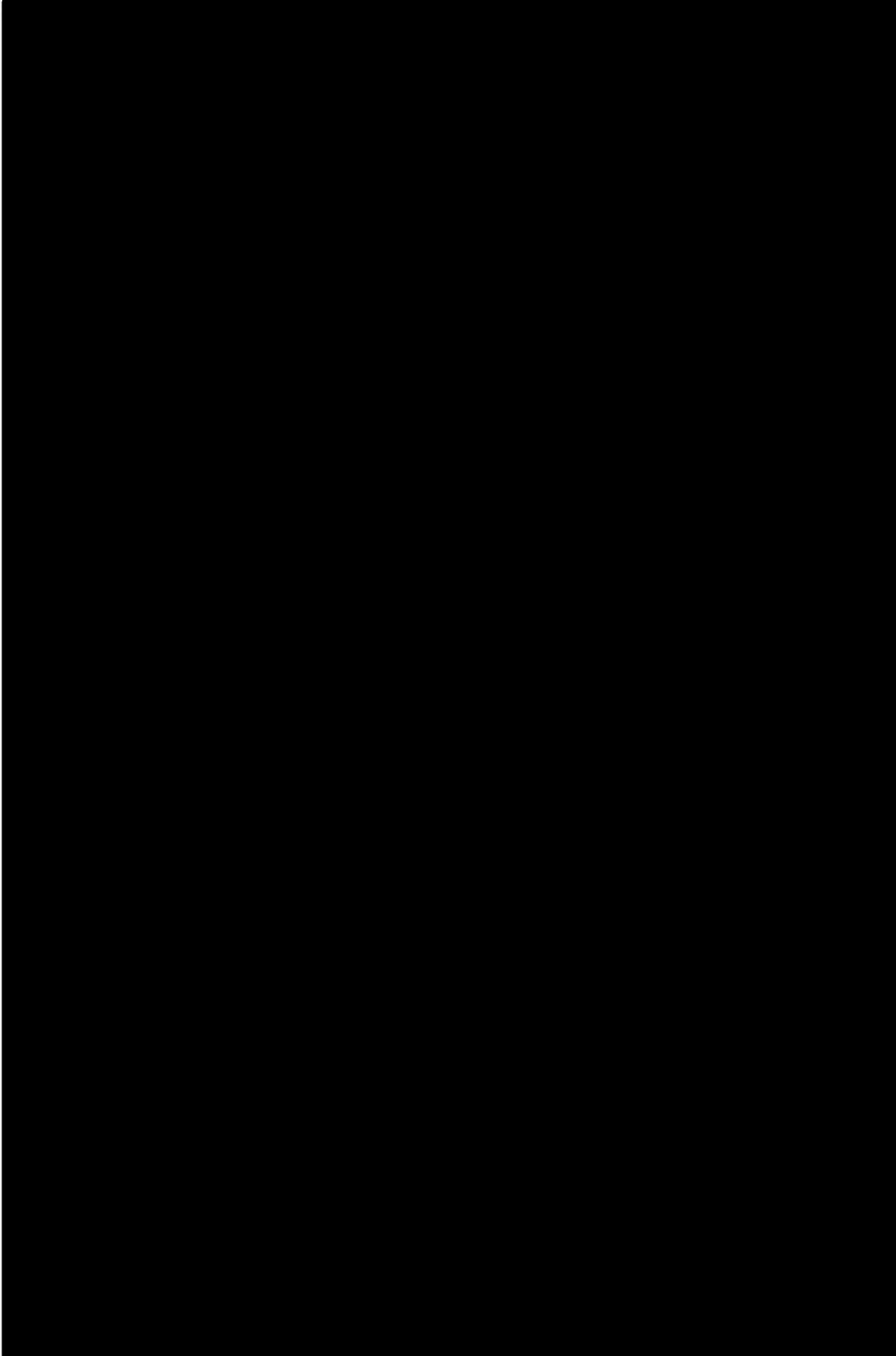
Details to be included from the Customer Contract	Order Details agreed by the Contractor and the Customer
Dispute Resolution (clause 24.11)	
Specify the threshold amount in AU\$ for issues to be resolved by expert determination under clauses 24.7 to 24.8.	
Specify type of issue/s not to be determined by expert determination under clauses 24.7 to 24.8.	All contractual issues.

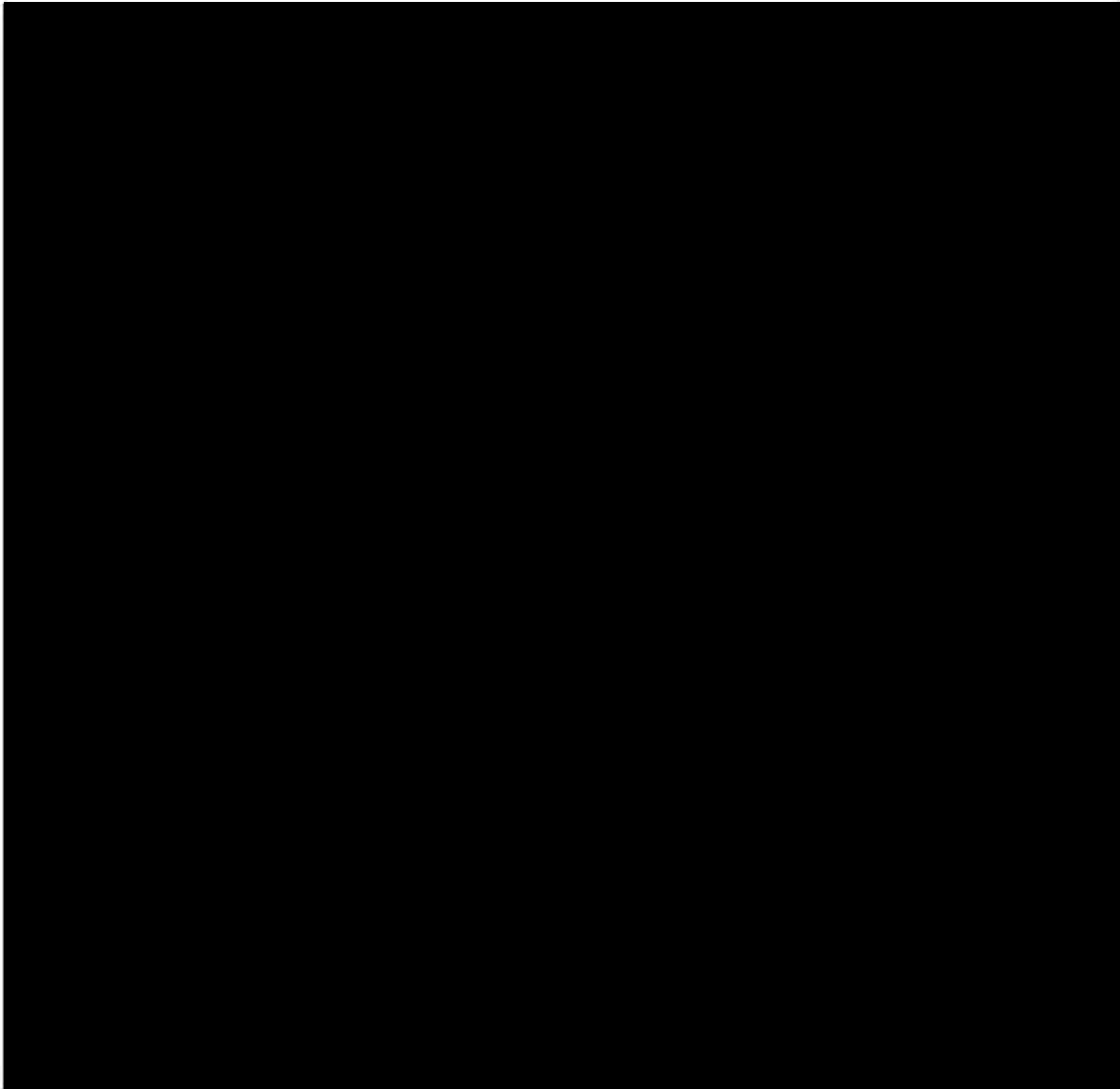
Item 42 Termination for Convenience – Not used











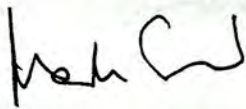
This General Order Form is part of the Customer Contract and incorporates all Parts, terms and conditions and other documents listed in clause 3.8 of Part 2 as if repeated in full in this General Order Form.

SIGNED AS AN AGREEMENT

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

The State of New South Wales by its Department of Education (ABN 40 300 173 822)

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



Signature of Customer Representative

MARK SCOTT

Print name

4.9.17

Date

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

Adobe Systems Software Ireland Limited, ABN 18 586 921 900, in its capacity as authorized agent of Adobe Systems Pty Ltd



George Hronis (Aug 24, 2017)

Signature of Authorised Signatory

George Hronis

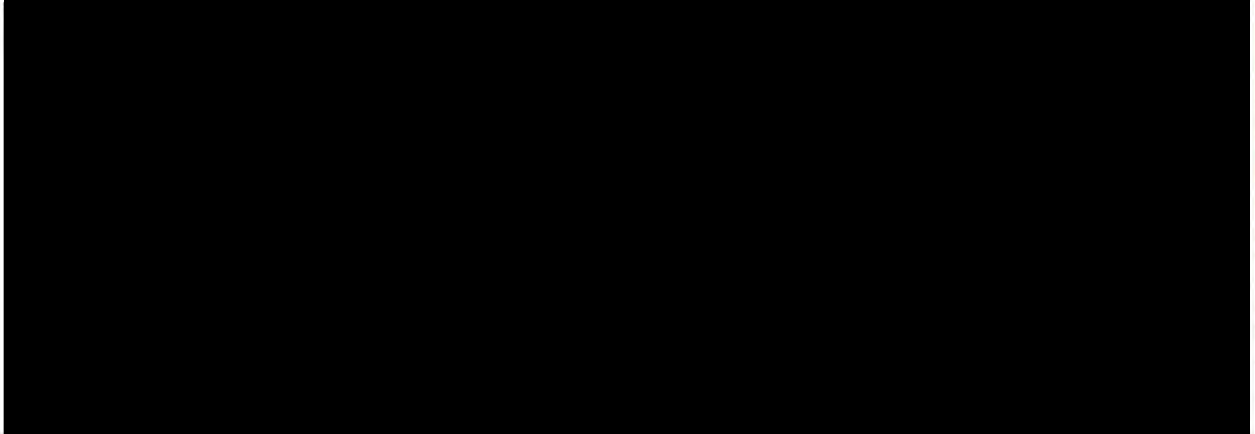
Print name

Aug 24, 2017

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.)





Adobe Sales Order

Customer [REDACTED]
Agreement Number [REDACTED]
Currency AUD

Adobe Systems Software Ireland Limited,

as authorized agent of Adobe Systems Pty Ltd

Products and Services Pricing Detail:

[REDACTED]

[REDACTED]

Line Number	SKU	Product Description	Billing Cycle	Quantity	Unit Of Measure	License Term Start Date	License Term End Date	Unit Price	Total Fees
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Adobe On-demand Services: [REDACTED]

[REDACTED]

[REDACTED]

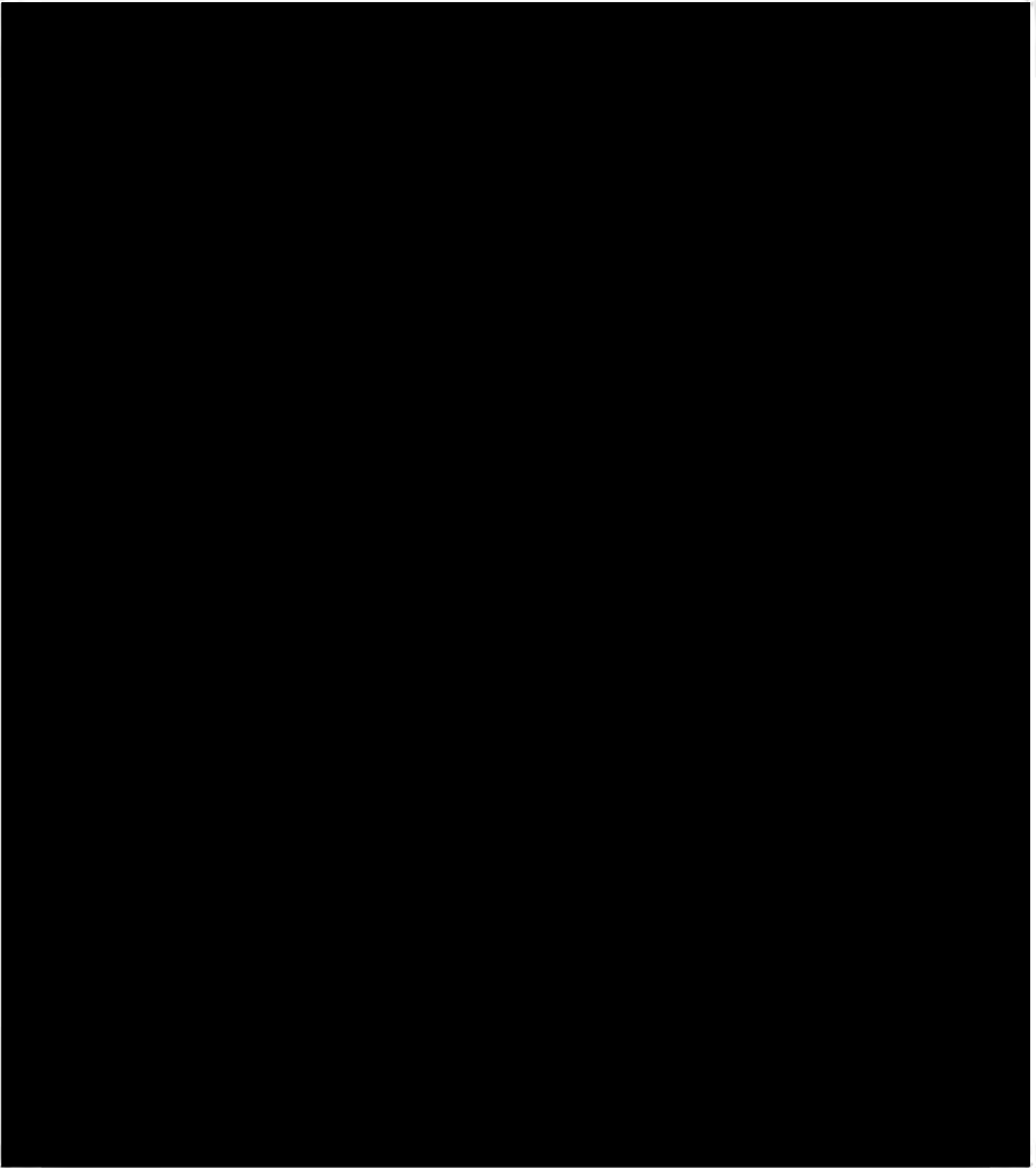
[REDACTED]

Line Number	SKU	Product Description	Billing Cycle	Quantity	Unit Of Measure	License Term Start Date	License Term End Date	Unit Price	Total Fees
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

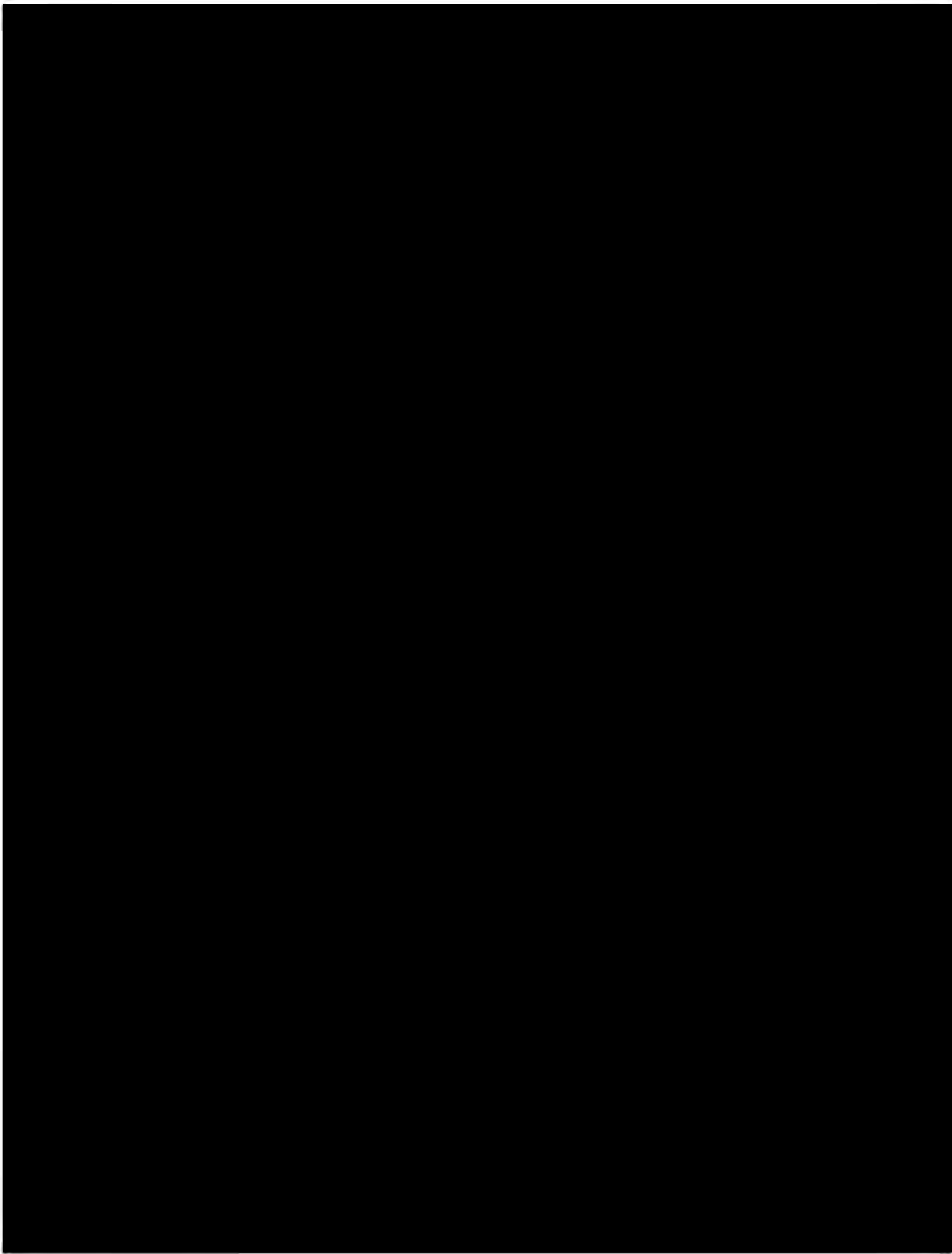


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[7260426; 19797348_1]CONFIDENTIAL

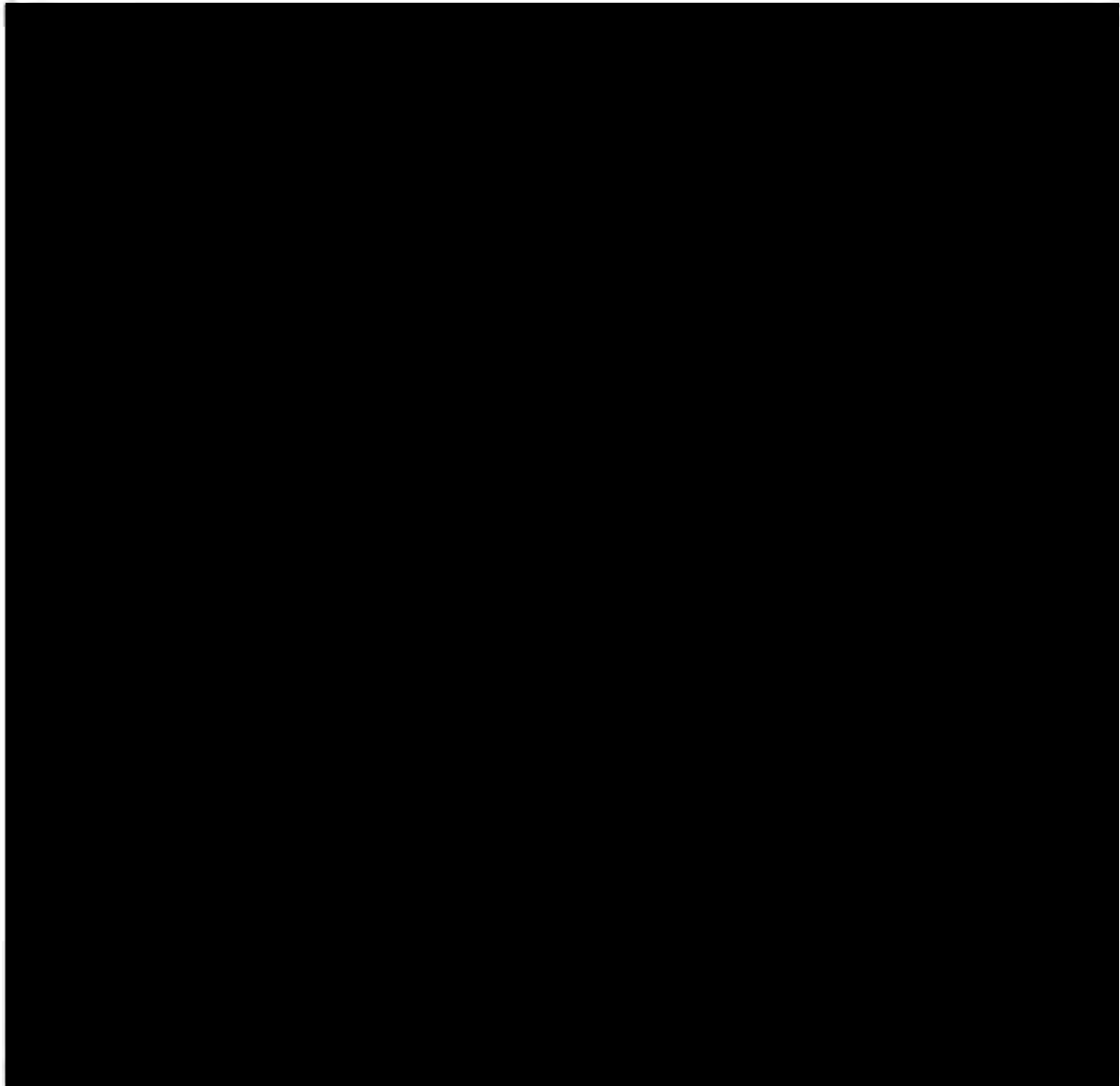
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Page 3 of 7

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Page 4 of 7

[7260426; 19797348_1]CONFIDENTIAL

DDCERT: CH - 24/08/17 - 64 of 158

By signing below, each Party acknowledges that it has carefully read and fully understood this Agreement, and each agrees to be bound by the terms of this Agreement. This Agreement becomes effective upon the date of last signature (the "Effective Date"). The individuals signing this Agreement represent that they have the authority to bind the respective Parties to the terms of this Agreement.

Adobe Systems Software Ireland Limited, as authorized agent of Adobe Systems Pty Ltd (ABN 72 054 247 835)
4-6 Riverwalk, City West Business Campus, Dublin 24
Ireland



George Hronis (Aug 24, 2017)

Authorized Signature

George Hronis

Print Name

Head of Sales Operations, Asia Pacific

Title

Aug 24, 2017

Date

NSW DEPARTMENT OF EDUCATION
35 BRIDGE STREET,
SYDNEY, NEW SOUTH WALES 2000 AUSTRALIA



Authorized Signature

MARK SCOTT

Print Name

SECRETARY, NSW DEPT OF EDUCATION

Title

4.9.17

Date

Purchase Order Number:
ECC ID Number: 0001463316

Customers outside USA, Canada & Mexico

End User : 0001472952	Bill-To : 0001472953	Ship-To : 0001472952
NSW DEPARTMENT OF EDUCATION Communication and Engagement Directorate, Level 3, 35 Bridge Str Sydney, New South Wales, 2000 AUSTRALIA	NSW DEPARTMENT OF EDUCATION COMMUNICATION AND ENGAGEMENT DIRECTORATE, LEVEL 3, 35 BRIDGE STR SYDNEY, NEW SOUTH WALES, 2000 AUSTRALIA	NSW DEPARTMENT OF EDUCATION COMMUNICATION AND ENGAGEMENTDIRECTORATE, LEVEL 3, 35 BRIDGE STR SYDNEY, NEW SOUTH WALES, 2000 AUSTRALIA
	Invoicing Contact Name: Contact Email: c&e@det.nsw.edu.au	Customer Admin Name: Peter Buckmaster Contact Email: peter.buckmaster1@det.nsw.edu.au

Instructions for sending signed original agreements to Adobe:

Please return your signed original agreement per the appropriate instructions below. If you have questions regarding these instructions, please contact your Adobe Account Manager or [Adobe Customer Service](#).

For Customers located in the United States, Canada and Mexico only please use one of the following methods to return the signed original agreement to Adobe:		
Mailing Address	Email	FAX
Mail two signed agreement originals to: Adobe Systems Incorporated 345 Park Avenue San Jose, California 95110-2704 USA Attention: Contract Operations Group	Scan and email signed agreement to: *Email: rgcordus@adobe.com mailto:ccoordin@adobe.com	FAX signed agreement to: FAX: (801) 437-2883

For Customers located in Japan, Asia, Australia or New Zealand please email your contract to ccordap@adobe.com For customers located in EMEA or Latam please email your contract to ccordir@adobe.com If your customer requires originals/wet signatures and is located in Australia please send your contract by courier to the Adobe Australia office (see postal address below) If your customer is located in EMEA or LATAM please send originals by courier to the Adobe Dublin office (see postal address below)		
Mailing Address	Email	Mailing address for Australia contracts only
Mail two signed agreement originals to: Adobe Systems Software Ireland Limited 4-6 Riverwalk City West Business Campus Dublin 24, Ireland Attention: Contract Operations Group	Scan and email signed agreement to: *Email: ccordir@adobe.com Or *Email: ccordap@adobe.com	Mail two signed agreement originals to: Adobe Systems Pty Ltd. Tower 2, 27th floor 201 Sussex Street Sydney, NSW 2000 Australia Tel: +61(2)9778-4100

EXHIBIT B TO SCHEDULE 2: ON-DEMAND AND MANAGED SERVICES

This Exhibit B forms part of the Customer Contract and applies to any On-demand and Managed Services offerings licensed by Customer.

1. DEFINITIONS

- 1.1 **"Adobe"** means the Contractor.
- 1.2 **"Customer Content"** means any material, such as audio, video, text, or image that is imported into the On-demand Services or Managed Services by or on behalf of Customer, in connection with Customer's use of the On-demand Services or Managed Services, including for collaboration, content delivery, digital publishing, targeted advertising, or indexing.
- 1.3 **"Customer Data"** means has the same meaning given in Module 10, except that for the purposes of the Customer Contract, it will also include any information that is collected via the Distributed Code, in connection with Customer's use of the Products and Services.
- 1.4 **"Customer Site"** means any current or future website or application that is owned and operated by Customer or is hosted or operated by a third party or Adobe on Customer's behalf, and which contains a privacy policy or terms of use governing data collection practices that Customer controls.
- 1.5 **"Distributed Code"** means HTML tags, JavaScript code, object code, plugins, SDKs, APIs, or other code provided by Adobe for use of the On-demand Services or Managed Services.
- 1.6 **"Documentation"** means the User Documentation, and comprises the technical user manuals made generally available by Adobe that accompanies the Products and Services and the product descriptions of the Products and Services published by the Contractor on <https://helpx.adobe.com/product-descriptions.html>, which may be updated from time to time. "Documentation" does not include any forum or content by any third party.
- 1.7 **"Managed Services"** means the technology services hosted by or on behalf of Adobe and provided to Customer as a dedicated instance, as set out in the Sales Order.
- 1.8 **"On-demand Service"** means the technology services hosted by or on behalf of Adobe and provided to Customer as a dedicated instance, as set out in the Sales Order.
- 1.9 **"On-premise Software"** means the Licensed Software that is deployed by or on behalf of the Customer on hardware designated by the Customer.
- 1.10 **"Personal Data"** means Personal Information (as that term is defined in the Customer Contract).
- 1.11 **"Report"** means any graphical or numerical display of Customer Data that contains Adobe's proprietary design, look and feel that is generated by the On-demand Services or Managed Services.
- 1.12 **"Sensitive Personal Data"** is given the meaning under relevant privacy or data protection laws relating to this term or any similar term (such as "sensitive information" or "sensitive personal information") used in the applicable laws, or where no such laws apply, means an individual's financial information (including financial account information), sexual preferences, medical or health information, and personal information of children protected under any child protection laws (such as the personal information defined under the US Children's Online Privacy Protection Act).
- 1.13 **"User"** means Permitted User (as that term is defined in Module 10).

2. LICENCE AND RESTRICTIONS

2.1 **Licence Grant for On-demand Services and Managed Services.** If Customer purchases On-demand Services or Managed Services, Adobe grants Customer, during the Licence Term, a non-transferable and non-exclusive licence to:

- (A) permit Users to access the On-demand Services or Managed Services and where applicable, Reports, through the applicable interfaces;
- (B) install, implement, and use the Distributed Code on Customer Sites; and
- (C) develop and test Customer Customizations (as defined in the PSLT for the applicable Managed Services) to evaluate potential configurations of the Managed Services,

in accordance with the terms of this Agreement and solely in connection with Customer's use of the On-demand Services or Managed Services in accordance with the Documentation for its direct beneficial business purposes. Unless otherwise specifically limited in the Sales Order, Adobe will provide Customer with User login IDs and passwords in a quantity agreed between Customer and Contractor. Customer must not disclose its login IDs and passwords, and is responsible for unauthorized access to its login IDs and passwords. Customer must not allow the use of the same login ID simultaneously by two or more Users.

2.2 **Licence Restrictions.** Except as permitted under this Agreement, Customer must not:

- (A) use the Products and Services (1) in violation of any applicable law, or in connection with unlawful material (such as material that violates any obscenity, defamation, harassment, privacy, or intellectual property laws); or (2) in a manner that would cause a material risk to the security or operations of the Contractor or any of its customers, or to the continued normal operation of other Contractor customers;
- (B) copy, use, distribute, republish, download, display, transmit, sell, rent, lease, host, or sub-license the Products and Services;
- (C) offer, use, or permit the use of the Products and Services in a computer service business or third-party outsourcing service, on a membership or subscription basis, on a service bureau basis, on a time-sharing basis, as part of a hosted service, or on behalf of any third party;
- (D) attempt to interact with the operating system underlying the On-demand Services or Managed Services, or modify, create derivative works of, adapt, translate, reverse engineer, decompile, or otherwise attempt to discover the source code in, any Adobe Technology. This restriction will not apply to the extent it limits any non-waivable right Customer may enjoy under applicable law;
- (E) remove, obscure, or alter any proprietary notices associated with the Products and Services (including any notices in Reports);
- (F) use any software components, modules, or other services that may be delivered with the Products and Services, but which are not licensed to Customer and identified in the Sales Order; or
- (G) Contractor reserves all other rights not expressly granted in this Agreement.

2.3 **Third-Party Providers.** If Customer uses certain features of the On-demand Services or Managed Services in conjunction with third-party data, products, services, and platforms (e.g. social media platforms, media partners, wireless carriers, or device operating systems), then Customer is responsible for complying with the terms and conditions required by such third-party providers, and all such use is at Customer's own risk. For clarity and without limitation, for the purposes of this section 2.3, 'third party' does not include any of the Contractor's Personnel.

3. CUSTOMER CONTENT AND DATA

- 3.1 **Ownership.** Customer owns (or where applicable, must ensure it has a valid license to) the Customer Data and Customer Content, subject to Contractor's underlying intellectual property in the Adobe Technology.
- 3.2 **Permitted Use.** Customer grants Contractor and its Affiliates a non-exclusive, worldwide, royalty-free license to use, copy, transmit, sub-license, index, store, and display Customer Data and Customer Content solely: (A) to the extent necessary to perform its obligations or enforce its rights under this Agreement; or (B) where required or authorized by law.
- 3.3 **Anonymized and Aggregated Data.** Customer acknowledges that, as part of their ordinary business operations, Contractor and its Affiliates collect statistics and data about how their end users (including Customer) use their Products and Services. This may include data such as web browser, screen resolution, and mobile device-type information, as well as statistics about the types of transactions and data that are processed on behalf of end users. This data is recorded on an anonymous basis, and may be aggregated with data from other users. Nothing in this Agreement prevents Contractor or its Affiliates from collecting or using these anonymous data, aggregated data or both, to support their ordinary business operations, which include improving Contractor's products and services and conducting various analytics activities.
- 3.4 **Responsibility.** Customer retains complete control over the installation and configuration of Distributed Code, and each Customer Site and Customer Content. Customer is responsible for ensuring that all Customer Sites used with the On-demand Services or Managed Services, and all Customer Data and Customer Content comply with all applicable laws and regulations. Customer will take reasonable steps to identify and promptly remove any Customer Data or Customer Content that violates the requirements of section 2.2(A) ("**Unlawful Content**"), in accordance with applicable laws and regulations. If there is Unlawful Content, Contractor may suspend services or remove the Unlawful Content.
- 3.5 **Consumer-Generated Content.** If content generated by consumers of Customer is uploaded to Contractor's On-demand Services and Managed Services, the following terms apply:
- (A) Contractor does not review all content uploaded to Contractor On-demand Services and Managed Services, but Contractor may use available technologies or processes to screen for certain types of illegal content (for example, child pornography) or other abusive content or behavior (for example, patterns of activity that indicate spam or phishing); and
 - (B) Contractor may access or disclose information about Customer, its consumers, or Customer's use of the On-demand Services and Managed Services when it is required or authorized by law (e.g. when Contractor receives a valid subpoena or search warrant).
- 3.6 **Data Retention.** Regarding On-demand Services, Customer Data will be permanently deleted from Contractor's servers (or made permanently inaccessible) 26 months from the date of its collection or receipt, unless specified otherwise in the applicable PSLT.
- 3.7 **Customer's Users.** Contractor does not communicate with Customer's users directly. Customer is responsible for complying with (including giving any notifications, obtaining any consents, and making any disclosures required under) applicable privacy and data protection laws, regulations, rules, guidelines, and codes. Customer must ensure it does not directly or indirectly cause Contractor or third-party providers that operate servers or host data for the On-demand Services or Managed Services, as applicable, to breach any laws, regulations, rules, guidelines, and codes in the collection, storage, access, transfer, use or disclosure of Personal Data arising from or in connection with this Agreement. Where required under applicable privacy and data protection laws, regulations, rules, guidelines, or codes, Customer must ensure that each Customer Site contains a notice to its users that identifies the collection, use, disclosure, and transfer of their Personal Data by Customer,

Contractor, or third-party host providers in connection with the On-demand Services or Managed Services, as applicable.

- 3.8 **Sensitive Personal Data.** Customer agrees not to collect, process, or store any Sensitive Personal Data using the On-demand Services or Managed Services. Customer agrees not to transmit, disclose, or make available Sensitive Personal Data to Contractor or Contractor's third-party providers.
- 3.9 **Professional Services.** For Professional Services, Customer will not provide access to Personal Data unless specifically agreed to in writing.

4. SECURITY MEASURES

- 4.1 **Warranty.** Contractor warrants that it will only store and use Customer Data and Customer Content:
- (A) to the extent necessary to provide the On-Demand Services or Managed Services and Reports to Customer (and any back-ups for those services);
 - (B) to the extent necessary to perform its obligations or enforce its rights under this Agreement; and
 - (C) where required or authorised by law,
- and not for any other purpose without the specific prior consent of Customer.
- 4.2 **Security Measures.** Contractor has implemented reasonable and appropriate information security practices regarding the protection of Customer Data as required by law, including administrative, technical and physical security processes.

5. OTHER CLAIMS

- 5.1 **Customer's Obligations.** Customer will ensure that Customer Customizations, Customer Content and Customer Data do not breach the law or infringe the rights of any third-party. For clarity, Customer will not be responsible for any such breach or infringement to the extent it is caused by the intellectual property in the Adobe Technology itself.

6. WARRANTIES

- 6.1 **Limited Warranty and Remedy for On-demand Services and Managed Services.** Contractor warrants that the On-demand Services and Managed Services, as delivered to Customer, will substantially conform to the applicable Documentation during the Licence Term, to the extent that the On-demand Services and Managed Services constitute Indemnified Technology. Customer must notify Contractor of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appeared. To the extent permitted by law, Customer's sole and exclusive remedy and Contractor's sole liability under or in connection with this warranty will be a replacement of the Distributed Code (as applicable), or if replacement is not commercially reasonable, a termination of the applicable On-demand Service or Managed Service and a refund of any pre-paid unused fees for the applicable On-demand Service or Managed Service.

7. EFFECT OF TERMINATION OR EXPIRATION

- 7.1 Upon termination or expiration of this Agreement or any Licence Term for the Products and Services:

- (A) Customer must, at its expense remove all references and links to the On-demand Services or Managed Services from the Customer Sites. Some or all of the Products and Services may cease to operate without prior notice upon expiration or termination of the Licence Term; and
 - (B) Customer Data and Customer Content stored within the On-demand Services will be available to Customer for 30 days after the termination or expiration in the same format then available within the reporting interface(s).
- 7.2 Customer will be liable for any fees for any On-demand Services and Managed Services that are still in use or which remain active after termination or expiration of this Agreement. These fees will be invoiced to Customer at the rate set out in the Sales Order.
- 7.3 If Contractor reasonably determines that Customer's deployment of the On-demand Services or Managed Services contains or creates a material risk to Adobe Technology, Contractor's Confidential Information, the security or business operations of Contractor, any customer of Contractor, or to the continued normal operation of other Contractor customers, then Contractor may, at any time, upon written notice to Customer, immediately suspend or terminate Customer's access, in whole or in part, to the On-demand Services or Managed Services, until such risk is resolved. Contractor will use commercially reasonable efforts to mitigate any such security or operational risk prior to suspension or termination, and only will look to such efforts as a final option to avoid such risks.

Exhibit C to Schedule 2: PSLT - Adobe Experience Manager: Managed Services (2016v1)

1. Pre-Production Phase

- 1.1 During the Pre-Production Phase, Customer will:
- (A) create and provide a complete and accurate Runbook to Adobe for review and obtain Adobe’s written approval of such Runbook;
 - (B) create and test Customer Customizations for the purpose of evaluating potential configurations of the Managed Services; and
 - (C) conduct quality testing of those configurations by performing bug elimination, simulations, and integration with other Customer systems.

2. Production Phase

- 2.1 If Customer desires to make any Customer Customizations to the Managed Services once the Managed Services are in the Production Phase:
- (A) Customer will request that Adobe launch a cloned staging server, implement such Customer Customizations, and request that such Customer Customizations be reviewed and approved by Adobe;
 - (B) the Managed Services will then revert back to the Pre-Production Phase in connection with such Customer Customizations on such cloned server; and
 - (C) Adobe will continue to simultaneously run the Managed Services in the Production Phase while such Customer Customizations are in the Pre-Production Phase.

3. Customer Customization.

- 3.1 Adobe will not be responsible for any defect or failure in the Managed Services caused by Customer Customizations or by Customer’s failure to meet the obligations in sections 1 and 2 (Pre-Production Phase and Production Phase).
- 3.2 Customer is solely responsible for all security testing of Customer Customizations, and Adobe has no obligation in connection with any failure or defect caused by Customer Customizations or Customer’s failure to meet the obligations in section 1 and 2 (Pre-Production Phase and Production Phase).

4. Development Consultant. Any Development Consultant(s) appointed by Customer under this PSLT works expressly and exclusively at Customer’s direction and Customer is responsible for any acts or omissions of such Development Consultant(s). Adobe may deny access to any Development Consultant it deems is adversely impacting the Managed Services or other Managed Services customers. References to Customer in this PSLT refer to both Customer and its Development Consultant(s).

5. Runbook. Customer’s Runbook must, at a minimum, include the subject matters listed below in the format provided by Adobe. Customer must promptly update the Runbook each time it creates new Customer Customizations that are accepted by Adobe for use in the Production Phase. Adobe may, in its sole discretion, from time to time during the License Term, change or modify the subject matters required to be included in the Runbook, and Customer will promptly update its Runbook to include such new subject matters. Customer will immediately update the Runbook upon any Adobe request.

5.1 Runbook Table:

Runbook Subject Matter	Description
System Configuration	Adobe may provide Customer with information regarding the Managed Services, and Customer

Runbook Subject Matter	Description
	must verify whether this information is correct and utilized.
Customizations	<p>A list of all Customer Customizations.</p> <p>A list and description of the functionality of all software (including of any bugs) installed by Customer in connection with the Managed Services.</p> <p>A list of all Adobe LiveCycle Reader Extensions credentials or PKI certificates applied to the Managed Services by Customer.</p> <p>Any Customer-specific backup schedule for Customer's implementation of the Managed Services.</p>
System Monitoring	<p>A list of any connections between the Managed Services and any other systems on which the Managed Services is dependent.</p> <p>A list of parameters for such connections that should be monitored by Adobe to ensure functioning of the Managed Services.</p> <p>A list of parameters associated with any Customer Customizations that should be monitored by Adobe to ensure functioning of the Managed Services.</p>
User Acceptance Testing Documentation	<p>Describe the load testing scenarios conducted by Customer.</p> <p>Describe the user acceptance testing scenarios conducted by Customer.</p> <p>Describe the positive and negative outcomes of such testing.</p>
Post Production Changes	Describe the changes to the Managed Services in the Production Phase made by Adobe and approved by Adobe as a result of change requests made by Customer.
Events and Responses	<p>List all known weaknesses in Customer Customizations to the Managed Services.</p> <p>Recommend actions to be taken by Adobe when providing support for the Managed Services.</p> <p>Include the following information, at a minimum:</p> <ul style="list-style-type: none"> • All log files created by Customer; • all information source or recipient repositories; • all data bases and other info storage occurring in the Managed Services; • any encryption models implemented in the Managed Services; • all communications with any upstream data sources, including forms; • any additional executables/WAR Files added to the Managed Services; • all information required for long-term administration of the Customer Customizations; and • the most common failure modes and recommendations for recovery from such failures.

Runbook Subject Matter	Description
Contacts and Contracts	<p>Specify a Customer contact who Adobe should notify if the system goes down.</p> <p>Specify a Customer resource who has technical knowledge of the Managed Services and who can answer questions from Adobe.</p> <p>Specify any links between Customer's IT gate keeper for the Managed Services and other Customer systems (e.g., LDAP, data repositories, etc.).</p> <p>Specify the Customer relationship manager for Development Consultant.</p> <p>Specify the Development Consultant contact who Adobe can contact in a support emergency.</p> <p>Specify the Development Consultant contact for management escalation.</p> <p>Specify the Development Consultant contact with whom Adobe will work to test upgrades to the Managed Services.</p> <p>Describe the agreement between Customer and Development Consultant. Include details on Development Consultant's response time requirements and other special instructions from Customer regarding such response times.</p>

6. Long-Term Storage and Encryption

- 6.1 Adobe stores all long-term Customer Content, Customer Data, and related operational data on mechanisms external to the virtual machines supporting Customer's Managed Services deployment.
- 6.2 Adobe encrypts all Customer Content, Customer Data and related operational data stored outside the virtual machine at a standard of no less than AES-256.

7. Backup

- 7.1 Adobe backs-up long-term Customer Content, Customer Data, and related operational data such that Adobe can make a rapid recovery of the Managed Services in the event of a loss of the primary data within a system.
- 7.2 Adobe encrypts all backups at the same standard or better as set forth above for long-term storage. All backed-up Customer Data, Customer Content and related operational data will, after encryption, be distributed across multiple data centers within a given cloud region to allow for recovery within these data centers in the event of the loss of function of the primary data center.
- 7.3 All backups will be taken at a frequency specified by Customer in Customer's Runbook, or daily if no specification is made.
- 7.4 Adobe will retain all backups for a period specified in Customer's Runbook, or for one week if no specification is made. Adobe may delete and overwrite all backup files from media seven days after the end of the retention period unless Adobe is otherwise requested to retain these files, in writing, by Customer or law enforcement.

- 7.5 Customer Data and Customer Content stored within the Managed Services will be available to Customer until the expiration or termination of the License Term in the same format then available within the Managed Services.
8. **Adobe Experience Targeting – Data Retention.** To the extent that Customer has licensed Managed Services that include bundled Adobe Experience Targeting, Customer Data collected by Adobe Experience Targeting will be permanently deleted from Adobe’s servers (or made permanently inaccessible) within a month after the expiry of (a) 90 days after collection for visitor profile data, and (b) 12 months after collection for Customer Site activity data. Customer Data and Customer Content associated with Adobe Experience Targeting are stored outside of the Managed Services, in the Adobe Experience Targeting On-demand Service environment.
 9. **License for Development Software.** Customer may install and use a reasonable number of copies of the On-premise Software versions of the licensed Managed Services in a development environment only, strictly for testing and quality assurance purposes and not for production purposes.
 10. **Use of Fonts.** Except as otherwise detailed in the Agreement, Adobe’s proprietary or licensed fonts are embedded with the Products and Services only for use within the user interface of the Products and Services.
 11. **Patches.** Customer is prohibited from applying patches to the Managed Services, unless expressly approved by Adobe in the Runbook.
 12. **Service Level Agreement.** Adobe’s Minimum Uptime Percentage obligations are detailed in the Service Level Agreement and the Service Level Exhibit for AEM Managed Services found here: <http://www.adobe.com/legal/service-commitments.html> (together the “Service Level Agreement”).
 13. **Customer Success Engineer.** Adobe will make available a resource (“Customer Success Engineer”) that will answer questions from a maximum of 10 named Customer technical support contacts regarding the initial implementation of the Managed Services, the upgrade process, and Managed Services best practices. Such Customer Success Engineer will be available from 9am – 5pm Pacific Standard Time. Adobe provides no specific response times in association with such Customer Success Engineer.
 14. **Support Services.** All priority issues and issues related to the performance of the Managed Services should be submitted pursuant to the Support Policies: Terms and Conditions described at: <https://helpx.adobe.com/support/programs/support-policies-terms-conditions.html> (each a “Service Request”). If a Service Request relates to a problem in the usage of the Managed Services, Customer will provide Adobe with sufficient access and detail to permit Adobe to understand and reproduce the problem. If it is mutually determined by Customer and Adobe, acting reasonably, that the problem represents an error in the Managed Services that causes it to not operate in substantial conformity with applicable Documentation, Adobe will process the Service Request as detailed in the Support Policies: Terms and Conditions. In addition, Adobe may, at its sole discretion and from time to time, implement fix releases.
 15. **Software Updates and Upgrades**
 - 15.1 **Standard Upgrades.** During the License Term, all Managed Services include the updates and upgrades that are released to the general Adobe customer base.
 - (A) **Types of Upgrades.** From time to time during the License Term, Adobe may implement upgrades to the Managed Services. Those upgrades may include a Customer-specific upgrade, an emergency upgrade necessary for the security of the Managed Services or to address issues causing Adobe not to meet the Minimum Uptime Percentage (each an “Emergency Upgrade”), a minor upgrade (i.e., a maintenance release or a new minor version change to the Managed Services for purposes including but not limited to, error correction), or a major upgrade (i.e., a new version of the Managed Services).
 - (B) **Upgrade Events Sequence.** Adobe will make all reasonable efforts to first install all upgrades on a server in the Pre-Production Phase at a mutually agreed upon time described in section 14.(C) (Upgrade Timing) below. Once Adobe performs such installation, Customer will work with Adobe to test the upgrade’s implementation in a timely fashion and will notify their Adobe contacts, as listed in the Runbook, of the success or failure of such testing. In the event of successful test

results, Adobe will install the upgrade on server(s) in the Production Phase on a schedule described in section 14(C) (Upgrade Timing) below. In the event of the failure of the upgrade, Adobe will take corrective action if the issue is with Adobe's software. If the issue is with Customer Customizations, Adobe will take reasonable steps to support Customer in Customer's efforts to make adjustment to the code underlying Customer Customizations. Upon successful resolution of any such issues, Adobe will install the upgrade on the Production Phase server(s) as described above. A Customer may elect to defer or decline any such upgrade (excluding Emergency Upgrades) as set forth in section 14(D) (Upgrade Deferrals) below.

- (C) **Upgrade Timing.** Emergency Upgrades will be implemented by Adobe as needed. All other upgrades will be implemented by Adobe throughout the License Term upon prior written notice to Customer as specified in the Runbook. Adobe will notify Customer, with as much lead time as possible, of the availability of such upgrades. After Adobe provides such notification, Adobe will work with Customer to determine a mutually agreed upon time to provide a Pre-Production Phase system for Customer to start testing the upgrade. Unless Adobe agrees in writing to a longer test period, Customer must finish its testing within 5 business days after Adobe makes the upgraded Managed Services available. In the event that Customer notifies Adobe that the tests on the Pre-Production Phase system have passed, Adobe will work with Customer to determine a mutually agreed upon maintenance window or other time period to implement the upgrade.
- (D) **Upgrade Deferrals.** A Customer may elect to defer or decline any upgrade (excluding Emergency Upgrades). If Customer defers or declines an upgrade that is required to maintain the Managed Services within at least 1 major upgrade of the then-current, generally commercially available version of the Adobe Experience Manager Managed Services (each a "Support Upgrade") for any reason (including but not limited to, unwillingness to accept the Support Upgrade or unwillingness to make Customer Customizations that enable the Managed Services to become compatible with a Support Upgrade), Customer agrees to pay Adobe an additional Extended Operations Uplift Fee calculated as an additional 50% increase to any fees incurred after the effective date of Customer's deferral or declining of the Support Upgrade. Notwithstanding the foregoing, Customer is not obligated to pay to Adobe any such Extended Operations Uplift Fees if Customer is willing to install the Support Upgrade, but an action by Adobe causes such Support Upgrade to fail to be backward compatible with the then-current version of the Managed Services; however, Customer will work with Adobe to install the applicable Support Upgrade within a reasonable period of time.
- (E) **Emergency Upgrades.** Notwithstanding anything to the contrary herein, Customer must accept all Emergency Upgrades.

16. Additional Definitions

- 16.1 "**Customer Customizations**" means the customizations made to the Managed Services by Customer. Customer Customizations do not constitute Indemnified Technology.
- 16.2 "**Development Consultant**" means a third-party systems integrator that (a) Customer has authorized, under section 5 of the General Terms, to access, test and customize the Managed Services during the Pre-Production Phase, and (b) has a minimum of one individual on the development team who has an AEM 6 Architect Certification and will be significantly engaged and involved in the Managed Services development project.
- 16.3 "**Minimum Uptime Percentage**" means the minimum Uptime Percentage (as defined in the Service Level Agreement) identified in the Sales Order and Documentation for each Managed Service licensed by Customer. Generic Non-production Instances have no guaranteed Minimum Uptime Percentage.
- 16.4 "**Pre-Production Phase**" means the period of time before the Production Phase.
- 16.5 "**Production Phase**" means the period of time when Managed Services Users use the Managed Services (A) on Customer Sites; or (B) for its internal operations.

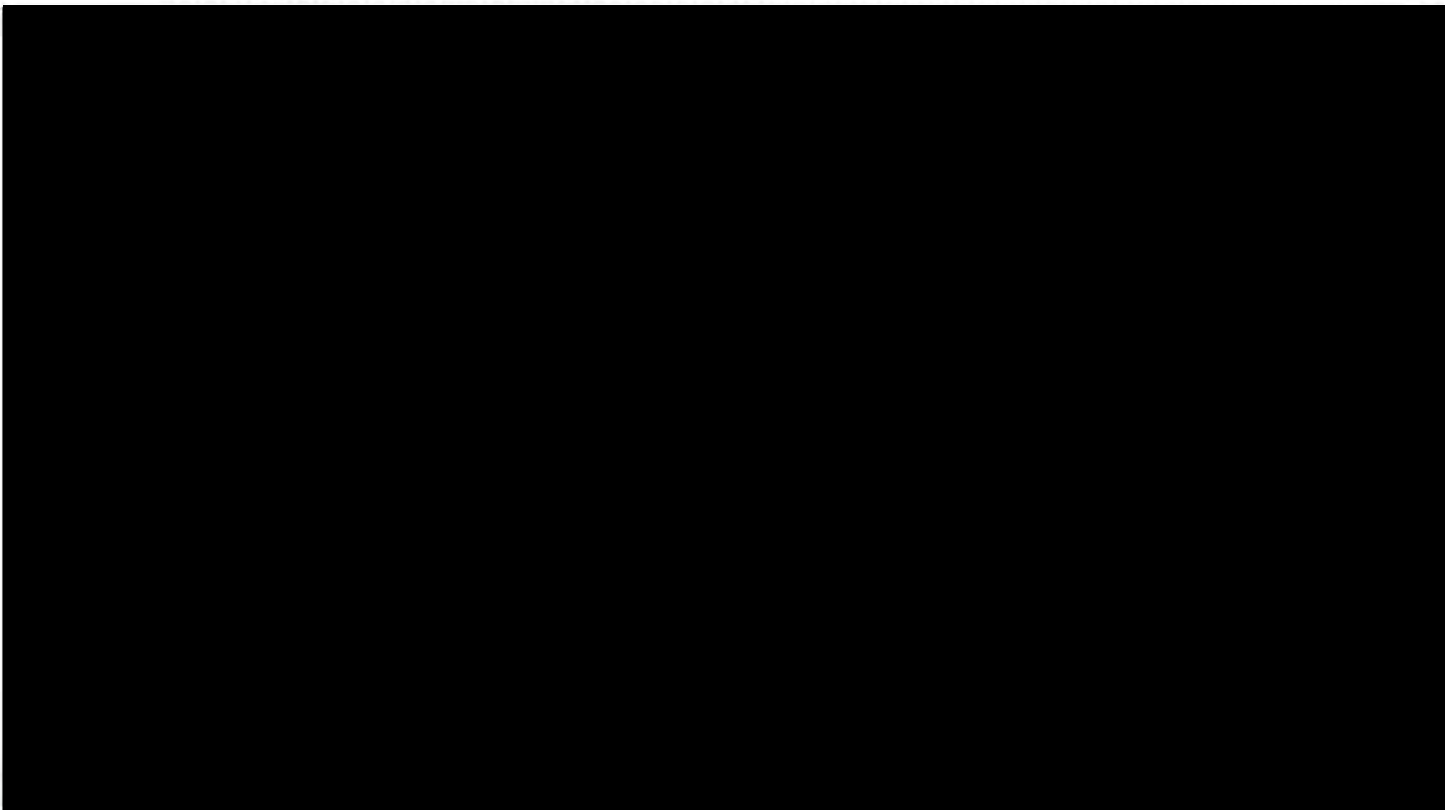
- 16.6 **“Runbook”** means a document written by Customer that provides Adobe with a list of Customer Customizations and configurations Customer made to the Managed Services. Such list is intended to assist Adobe in running and supporting the Managed Services in the Production Phase.



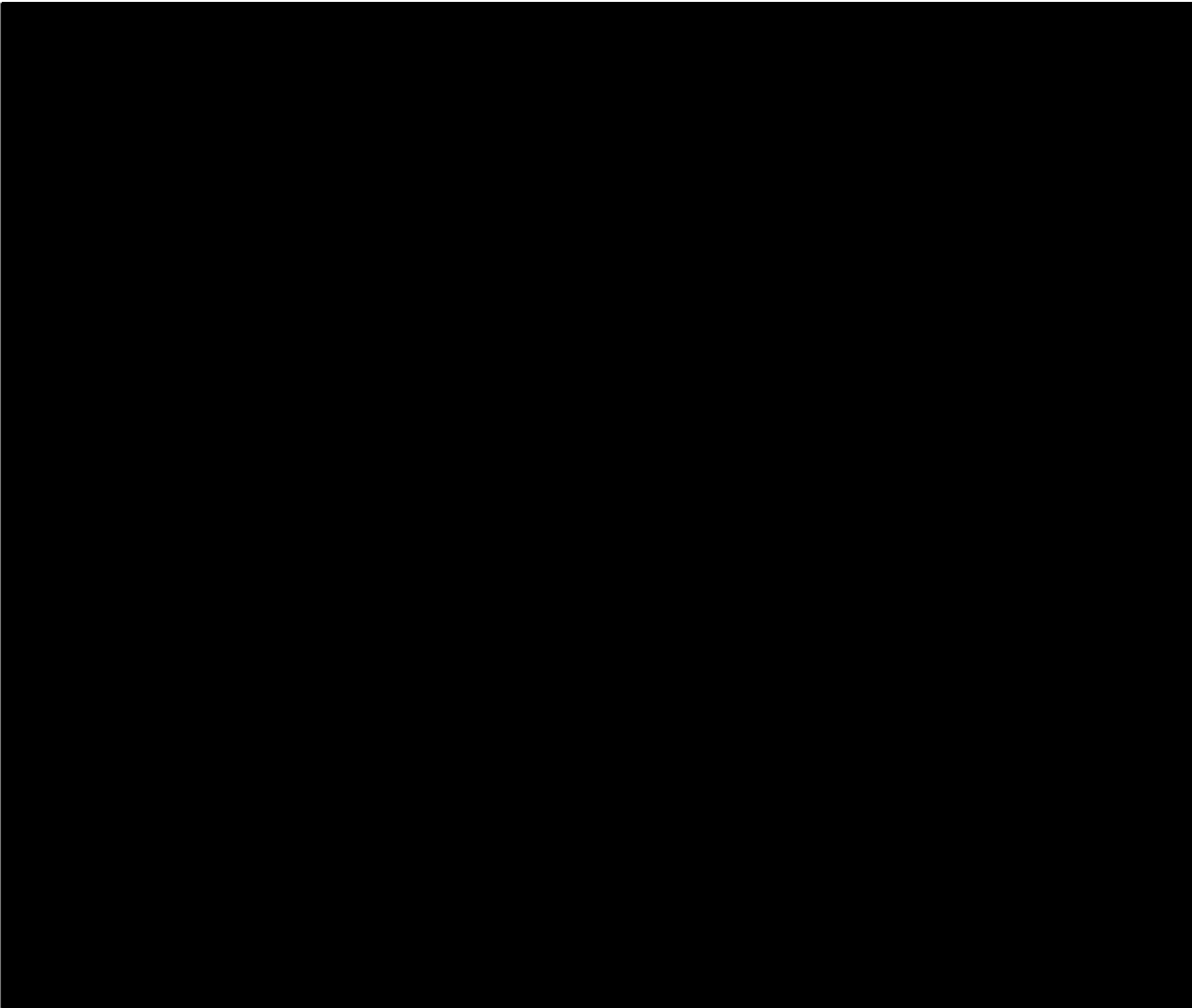
Adobe Sales Order

Customer NSW DEPARTMENT OF EDUCATION
Agreement Number [REDACTED]
Currency AUD

Adobe Systems Software Ireland Limited,
as authorized agent of Adobe Systems Pty Ltd
Products and Services Pricing Detail:



Summary of Fees



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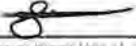
Page 2 of 9

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By signing below, each Party acknowledges that it has carefully read and fully understood this Agreement, and each agrees to be bound by the terms of this Agreement. This Agreement becomes effective upon the date of last signature (the "Effective Date"). The individuals signing this Agreement represent that they have the authority to bind the respective Parties to the terms of this Agreement.

Adobe Systems Software Ireland Limited, as authorized agent of Adobe Systems Pty Ltd (ABN 72 054 247 835)
4-6 Riverwalk, City West Business Campus, Dublin 24
Ireland

NSW DEPARTMENT OF EDUCATION
Communication and Engagement Directorate, Level 3, 35
Bridge Street, Sydney, New South Wales 2000 AUSTRALIA



Authorized Signature

George Hronis

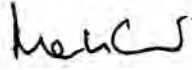
Print Name

Head of Sales Operations, Asia Pacific

Title

Aug 24, 2017

Date



Authorized Signature

MARK SCOTT

Print Name

SECRETARY, NSW DEPT OF EDUCATION

Title

4.9.17

Date

Purchase Order Number:
ECC ID Number: 0001463316

Customers outside USA, Canada & Mexico

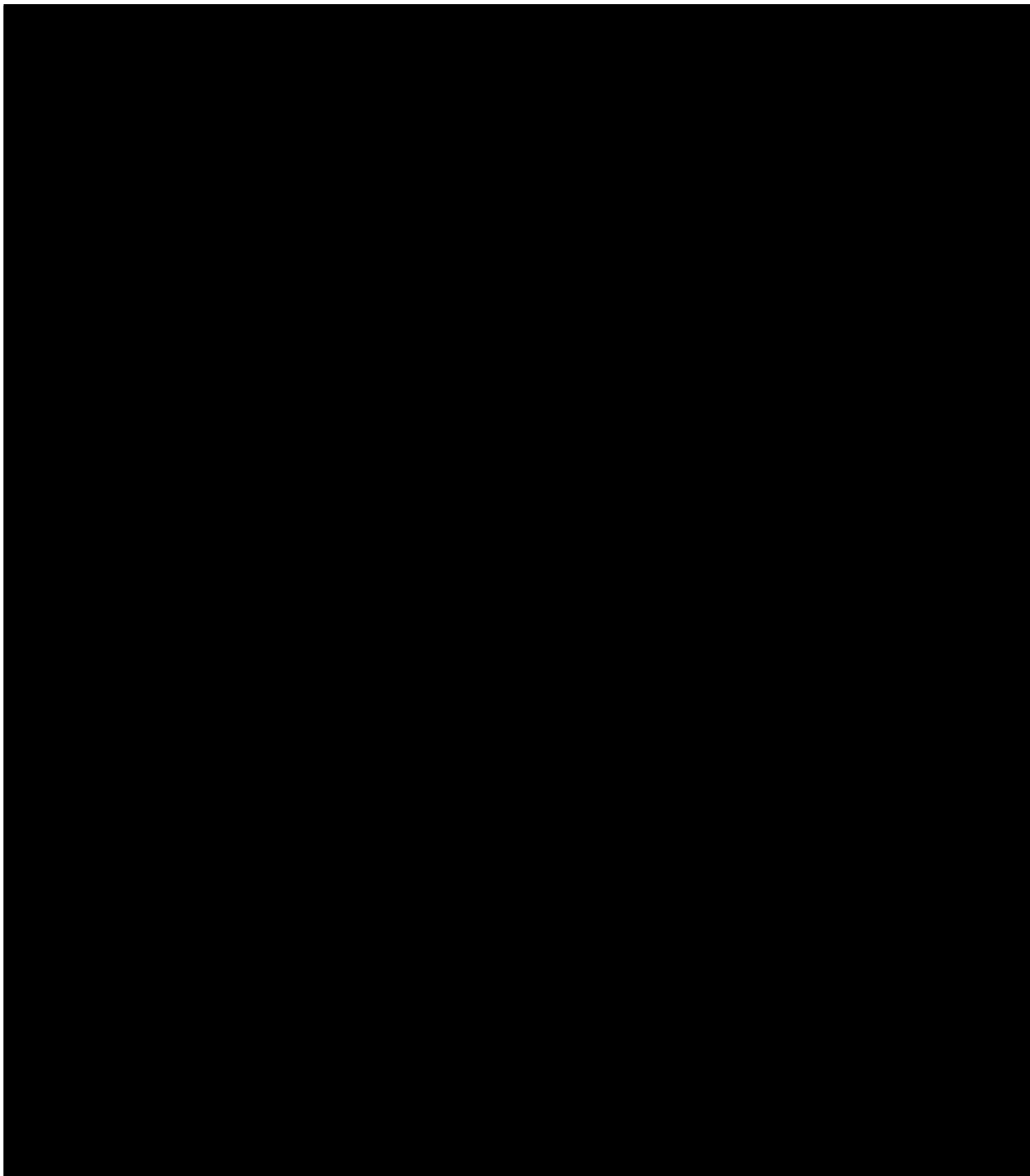
End User : 1463316	Bill-To : 0001463316	Ship-To : 1463316
NSW DEPARTMENT OF EDUCATION COMMUNICATION AND ENGAGEMENT DIRECTORATE, LEVEL 3, 35 BRIDGE STREET, SYDNEY, NEW SOUTH WALES 2000, AUSTRALIA	NSW DEPARTMENT OF EDUCATION COMMUNICATION AND ENGAGEMENT DIRECTORATE, LEVEL 3, 35 BRIDGE STREET, SYDNEY, NEW SOUTH WALES 2000, AUSTRALIA	NSW DEPARTMENT OF EDUCATION COMMUNICATION AND ENGAGEMENT DIRECTORATE, LEVEL 3, 35 BRIDGE STREET, SYDNEY, NEW SOUTH WALES 2000, AUSTRALIA
	Invoicing Contact Name: Christina Allan Contact Email: c&e@det.nsw.edu.au	Customer Admin Name: Peter Buckmaster Contact Email: peter.buckmaster1@det.nsw.edu.au

Instructions for sending signed original agreements to Adobe:

Please return your signed original agreement per the appropriate instructions below. If you have questions regarding these instructions, please contact your Adobe Account Manager or [Adobe Customer Service](#).

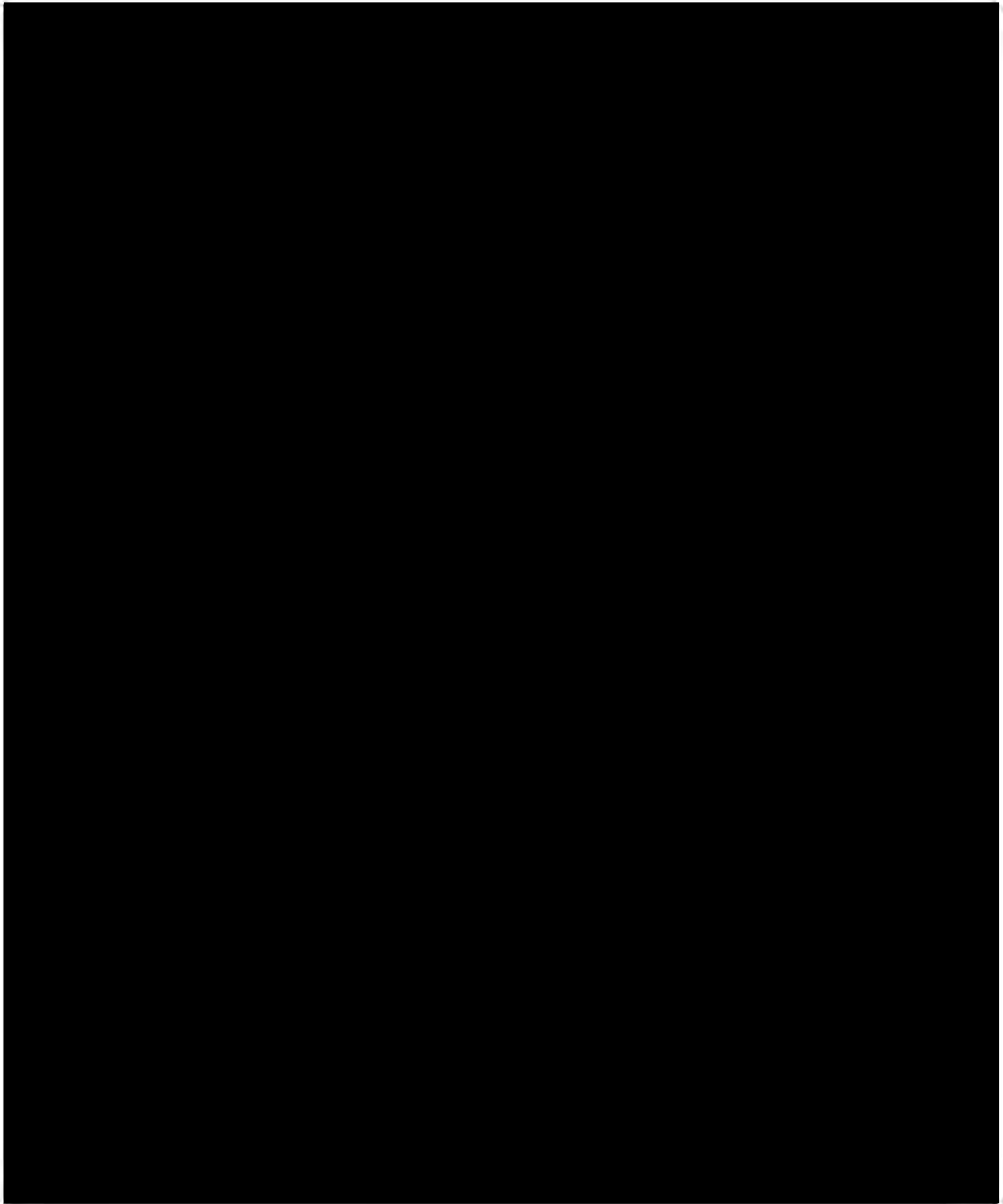
For Customers located in the United States, Canada and Mexico only please use one of the following methods to return the signed original agreement to Adobe:		
Mailing Address	Email	FAX
Mail two signed agreement originals to: Adobe Systems Incorporated 345 Park Avenue San Jose, California 95110-2704 USA Attention: Contract Operations Group	Scan and email signed agreement to: *Email: rgcordin@adobe.com mailto:ccoordin@adobe.com	FAX signed agreement to: FAX: (801) 437-2883

For Customers located in Japan, Asia, Australia or New Zealand please email your contract to ccordap@adobe.com For customers located in EMEA or Latam please email your contract to ccordir@adobe.com If your customer requires originals/wet signatures and is located in Australia please send your contract by courier to the Adobe Australia office (see postal address below) If your customer is located in EMEA or LATAM please send originals by courier to the Adobe Dublin office (see postal address below)		
Mailing Address	Email	Mailing address for Australia contracts only
Mail two signed agreement originals to: Adobe Systems Software Ireland Limited 4-6 Riverwalk City West Business Campus Dublin 24, Ireland Attention: Contract Operations Group	Scan and email signed agreement to: *Email: ccordir@adobe.com Or *Email: ccordap@adobe.com	Mail two signed agreement originals to: Adobe Systems Pty Ltd. Tower 2, 27th floor 201 Sussex Street Sydney, NSW 2000 Australia Tel: +61(2)9778-4100



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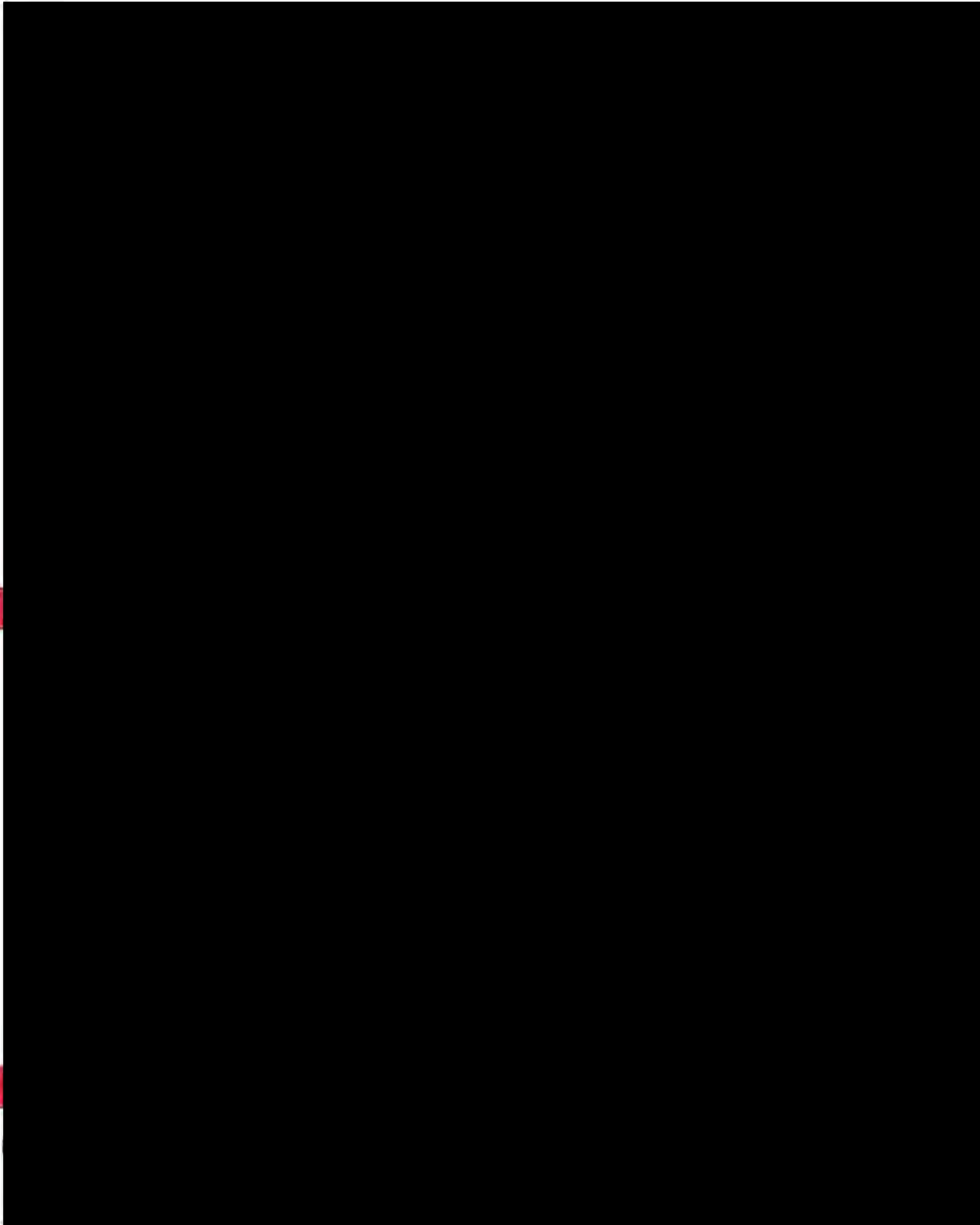


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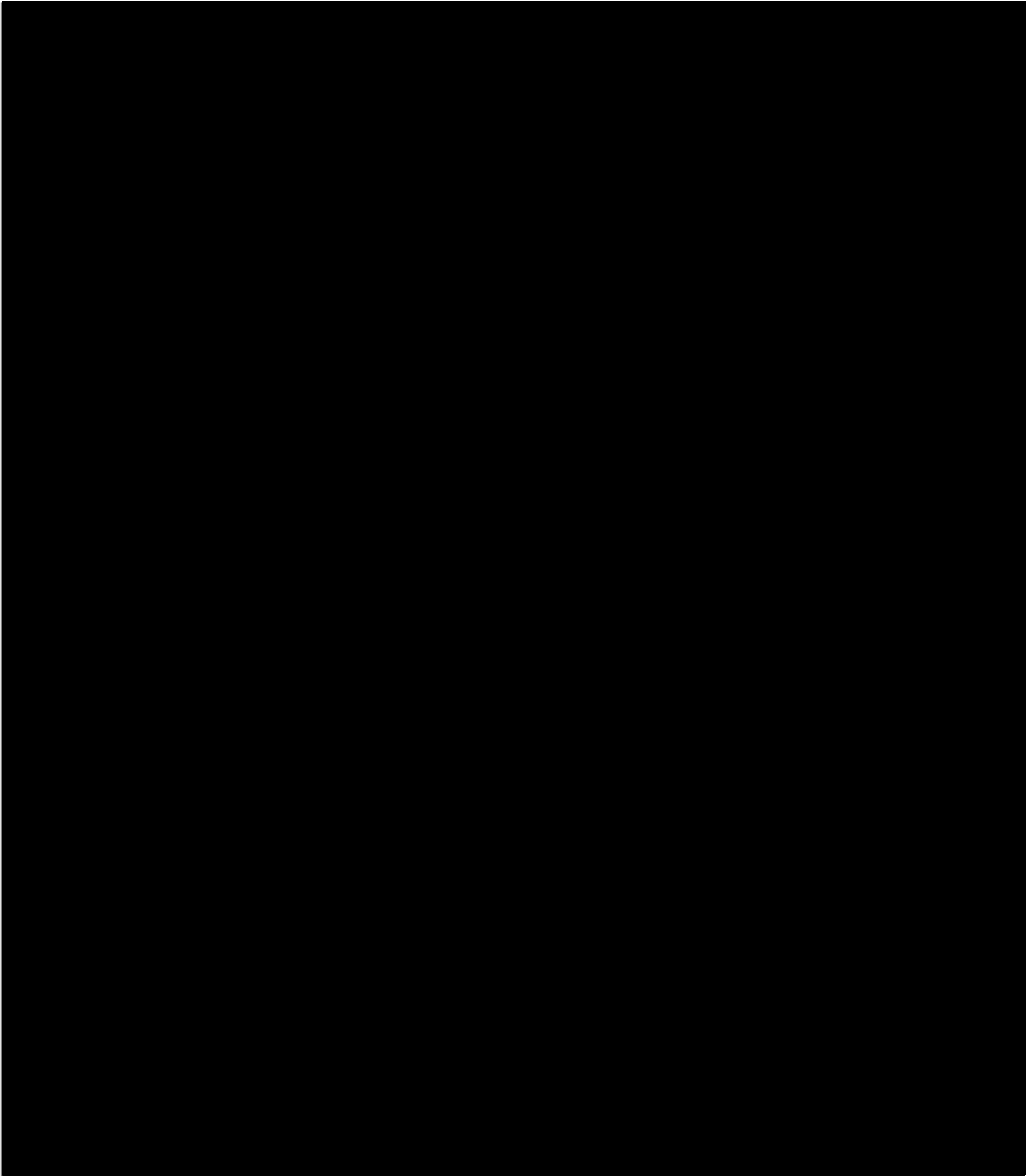
Page 7 of 9

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DETAILS OF CHANGE REQUEST

Summary

The Parties agree that, with effect from execution of this Change Request by the last signing Party (the **Variation Date**) the Contractor agrees to provide professional services to the Customer under the

SCOPE

1. The Customer agrees to purchase, and the Contractor agrees to deliver, the professional services as specified in the Sales Order (the **SWS Professional Services**).
2. The SWS Professional Services are separate to any such services specified in the Customer Contract immediately prior to this Change Request being executed.
3. The Module 7 Order Form attached as Schedule 1 (Module 7 Order Form) will apply to the Additional Professional Services.

EFFECT OF CHANGE ON CONTRACT SPECIFICATION

N/A.

EFFECT OF CHANGE ON PROJECT TIMETABLE

N/A.

New PIPP (annexed)

N/A.

EFFECT OF CHANGE ON CHARGES AND TIMING OF PAYMENT

The Customer through its Communication and Engagement Directorate must pay the charges for the SWS Professional Services specified in the Sales Order, at the times specified in the Sales Order and in accordance with the Customer Contract.

CHANGES TO CSI

N/A.

CHANGES TO CUSTOMER PERSONNEL

N/A.

CHANGES TO CUSTOMER ASSISTANCE

N/A.

PLAN FOR IMPLEMENTING THE CHANGE

N/A.

THE RESPONSIBILITIES OF THE PARTIES FOR IMPLEMENTING THE CHANGE

N/A.

Responsibilities of the Contractor

N/A.

Responsibilities of the Customer

N/A.

EFFECT ON ACCEPTANCE TESTING OF ANY DELIVERABLE

None.

EFFECT OF CHANGE ON PERFORMANCE OF ANY DELIVERABLE

None.

EFFECT ON USERS OF THE SYSTEM/SOLUTION

None.

EFFECT OF CHANGE ON DOCUMENTATION DELIVERABLES

None.

EFFECT ON TRAINING

None.

ANY OTHER MATTERS WHICH THE PARTIES CONSIDER IMPORTANT

N/A.

ASSUMPTIONS

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

See Adobe Sales Order

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

LIST OF DOCUMENTS THAT FORM PART OF THIS CHANGE REQUEST

1. Module 7 Order Form (Schedule 1)
2. Exhibit D: Adobe Sales Order (Schedule 2)

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

The following clauses in the Customer Contract and relevant Schedules are amended on and from the Variation Date:

1. Schedule 1 – General Order Form
(A) at item 8, checking the box labelled "Module 7 – Professional Services"; and

- (B) at item 11, the figures listed in the Products and Services Pricing Detail section of Exhibit A to Schedule 2: Adobe Enterprise Term Licence Agreement Sales Order are adjusted to also accommodate the additional charges for the SWS Professional Services as specified in the Sales Order; and
- (C) at item 14, add the words "For the SWS Professional Services: Communication and Engagement Directorate"
- (D) at item 43, the following is inserted:

"The Parties' rights (including termination) against, and obligations to, each other arising out of or relating to the SWS Professional Services apply only to the SWS Professional Services. The other Deliverables under this Customer Contract are not affected by anything arising out of or relating to the SWS Professional Services."

2. Schedule 2 – Agreement Documents

Exhibit D: Adobe Sales Order (Agreement Number: DR2018511 is added to the Agreement Documents set out in Schedule 2 to the Customer Contract:

Note that variations to any of the Protected Clauses require the Customer to obtain the Contract Authority's and the Director General, NSW Department of Finance and Services approval (clause 26.2))

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 [insert name of Customer]

The State of New South Wales by its Department of Education through its Communication and Engagement Directorate

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

Peter Buchmaster, Director Digital Services



Signature of Customer Representative

Peter Buchmaster

Print name:

30.06.17

Date:

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

Adobe Systems Software Ireland Limited, in its capacity as agent for Adobe Systems Pty Ltd (ABN 72 054 247 835)

Signature of Authorised Signatory

Print name:

Date:



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Use Guidelines

This Module should be used when the Customer is buying the services of personnel with IT related skills where the Contractor’s services are not subject to day to day supervision by the Customer.

See the Procure IT User Guide for more details.

This text is not to be used in interpreting the Module.

1. Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 7** form part of the Customer Contract when the Parties state that the Professional Services Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 **Exception** means the reasons that excuse the Contactor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 7.
- 1.2 **Professional Services** means the Services that are set out on the Module Order Form that are to be supplied by the Contractor to the Customer under this Module, which may include any information, communications or technology related service, including:
- (a) strategy advice;
 - (b) development, enhancement or support of software (not otherwise provided for under Modules 4 or 5);
 - (c) writing reports;
 - (d) reviews or quality assurance activities;
 - (e) change management services;
 - (f) project management services;
 - (g) knowledge transfer services;
 - (h) other information, communications or technology related services agreed by the Parties which are provided under the direction and control of the Customer.

The term Professional Services does not include services provided under the direction, control and supervision of the Customer. These services are Contractor Services and are subject to Module 6 Contractor Services.

The term Professional Services does not include training services. These services are subject to Module 8 Training Services.

INTERPRETATION

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

2. Professional Services Period

- 2.1 Unless otherwise agreed in the General Order Form or the relevant Module Order Form, the Professional Services must be provided for the Contract Period unless the Customer Contract is terminated earlier in accordance with its terms.
- 2.2 If no Contract Period is specified in the Order Documents and the Professional Services are provided on a time and materials basis, then the Professional Services will be provided from

the Commencement Date until either Party cancels the Professional Services by providing 30 days prior Notice in Writing to the other.

3. Scope of Professional Services

SCOPE

- 3.1 The Parties will set out in the Module Order Form or a PIPP the details of the Professional Services which may include:
- (a) the Contract Period;
 - (b) the details of the Professional Services that the Contractor is to provide;
 - (c) the details of any Specified Personnel;
 - (d) the details of any Deliverables and their Contract Specifications;
 - (e) the location of where the Professional Services are to be provided;
 - (f) whether any Deliverable must undergo an Acceptance Test;
 - (g) the Price, expenses and any other charges that apply in respect of the Professional Services; and
 - (h) how the Prices, expenses and charges will be paid, including any Payment Milestones and whether the Professional Services are provided on a time and materials basis, fixed price or some other basis.

PROJECT IMPLEMENTATION AND PAYMENT PLAN (PIPP)

- 3.2 If there is no PIPP agreed at the time the Customer Contract is signed by the Parties, and it is stated on the Module Order Form that a PIPP is required, the Contractor must prepare a draft PIPP for the approval of the Customer prior to the commencement of the Professional Services. Within 5 Business Days of receipt of the draft PIPP the Customer must:
- (a) approve the PIPP;
 - (b) provide written notice of any changes to the draft PIPP that it requires, and provided those changes are reasonable, the Contractor must update the PIPP and re-submit it for approval by the Customer.
- 3.3 Once the PIPP has been approved by the Customer it forms part of the Customer Contract and the Contract Specifications are updated accordingly.

REPORTING

- 3.4 The Contractor must monitor the progress of the Professional Service and provide the Customer with status reports at monthly intervals, or such other intervals as is agreed by the Parties which, at a minimum, include the following issues:
- (a) the issues and risks that the Contractor recommends be pro-actively addressed to avoid delays;
 - (b) any actions that the Parties need to take, or decisions that need to be made, to ensure the provision of the Professional Services in accordance with the requirements of the Customer Contract, including any PIPP;
 - (c) the progress of the work against any project plan;

- (d) the amounts charged, and amount of work in progress against the budget;
- (e) whether it is anticipated that the budget is likely to be exceeded, and if so the reasons; and
- (f) any other issues that the Parties agree should be included in the reports.

CUSTOMER DIRECTIONS

- 3.5 The Contractor must comply with all reasonable directions of the Customer as may be given to the Contractor from time to time in respect of the delivery of the Professional Services, provided that such directions are consistent with the requirements of the Customer Contract. Where such direction:
- (a) causes the Contractor's costs to increase, the Customer must pay for any increase in the Contractor's costs at the Contractor's time and materials rates (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) plus any expenses; and
 - (b) causes the Contractor not to be able to meet any timetable for delivery, then the timetable must be extended to the extent that it is reasonable given the nature of the direction and the impact on the Professional Services.
- 3.6 Nothing in clause 3.5 affects the Contractor's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the Customer's reasonable directions or otherwise to comply with the Contractor's obligations under the Customer Contract.
- 3.7 Subject to otherwise complying with its obligations under the Customer Contract, the Contractor must exercise its independent discretion as to the most appropriate and efficient manner of providing the Professional Services and satisfying the Contractor's obligations under this Customer Contract.

EMPLOYEE RELATIONSHIP

- 3.8 The Contractor undertakes to comply with all Statutory Requirements in relation to itself and any of its employees or contractors, including in relation to workers compensation, payroll tax, income tax, fringe benefits tax, PAYG tax, group tax, superannuation contributions, annual leave, long service leave and personal leave awards, industrial instruments and any other employment entitlement.
- 3.9 The Contractor acknowledges and agrees that:
- (a) it is solely responsible for the obligations in clause 3.8; and.
 - (b) neither it, nor its personnel have, pursuant to this Customer Contract, any entitlement from the Customer in relation to any form of employment or related benefit.

4. Acceptance Tests and Use

- 4.1 Where the Professional Services are for the creation of a specific Deliverable for which the Parties have agreed that the Deliverable is to undergo Acceptance Tests then:
- (a) the Customer must not use any part of the Deliverable for its business purposes and/or in a production environment without first undertaking Acceptance Tests in accordance with clause 10 of Part 2; and
 - (b) it is acknowledged and agreed by the Customer that if the Customer uses the Deliverable for its business purposes and/or in a production environment before the Deliverable has passed its Acceptance Tests in accordance with clause 10.9 of Part 2

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(as opposed to where the Deliverable is merely deemed to have passed its Acceptance Tests under clause 10.13) the Customer is taking a significant risk in using untested Deliverables, and accordingly the Contractor is not liable for any loss, damage or expense caused by such use of the Deliverable.

5. Restraint

- 5.1 The Customer must not, without the prior written consent of the Contractor, whether on its own behalf or on behalf of any other person and in any capacity:
- (a) encourage any of individual who has performed any Professional Services, to:
 - (i) stop working for or providing services to the Contractor; or
 - (ii) work for or provide services to the Customer, any Agency or Department or any other person;
 - (b) employ, contract, or enter into any arrangement, to receive the benefit of the services of the individual who has performed any Professional Services,
- for the following restraint periods:
- (c) during the period that the individual performed the Professional Services and a period of 12 months thereafter;
 - (d) during the period that the individual performed the Professional Services and a period of 9 months thereafter;
 - (e) during the period that the individual performed the Professional Services and a period of 6 months thereafter;
 - (f) during the period that the individual performed the Professional Services and a period of 3 months thereafter;
 - (g) during the period that the individual performed the Professional Services.
- 5.2 Clause 5.1 is to be construed and have effect as the number of separate restraints that arise by separately combining each of the subclauses in 5.1(a) and (b)(i) and (ii) above with the restraint periods listed in each of the subclauses in (c) to (g) above. Each of the covenants that result from a combination of the restraints in subclauses 5.1(a), (b)(i) and (ii) with the restraint periods in subclauses (c) to (g), constitute and are to be construed as having effect as separate, distinct, severable and independent provisions from the other covenants, but cumulative in overall effect. If any of the covenants or parts of the covenants resulting from the operation of this clause, are unenforceable they will be severed from the remaining enforceable covenant or part thereof.
- 5.3 The Customer agrees that the remedy of damages may be inadequate to protect the interests of the Contractor from a breach of the Customer's obligations under this clause 5 and the Contractor is entitled to seek and obtain injunctive relief, or any other remedy, in any court.
- 5.4 A general solicitation for employment which is placed in good faith such as a newspaper advertisement shall not constitute a breach of clause 5.1.
- 5.5 The Parties agree that the restrictions in clauses 5.1 to 5.4 are necessary to protect the legitimate interests of the Contractor.

6. Specific Warranties

SCOPE

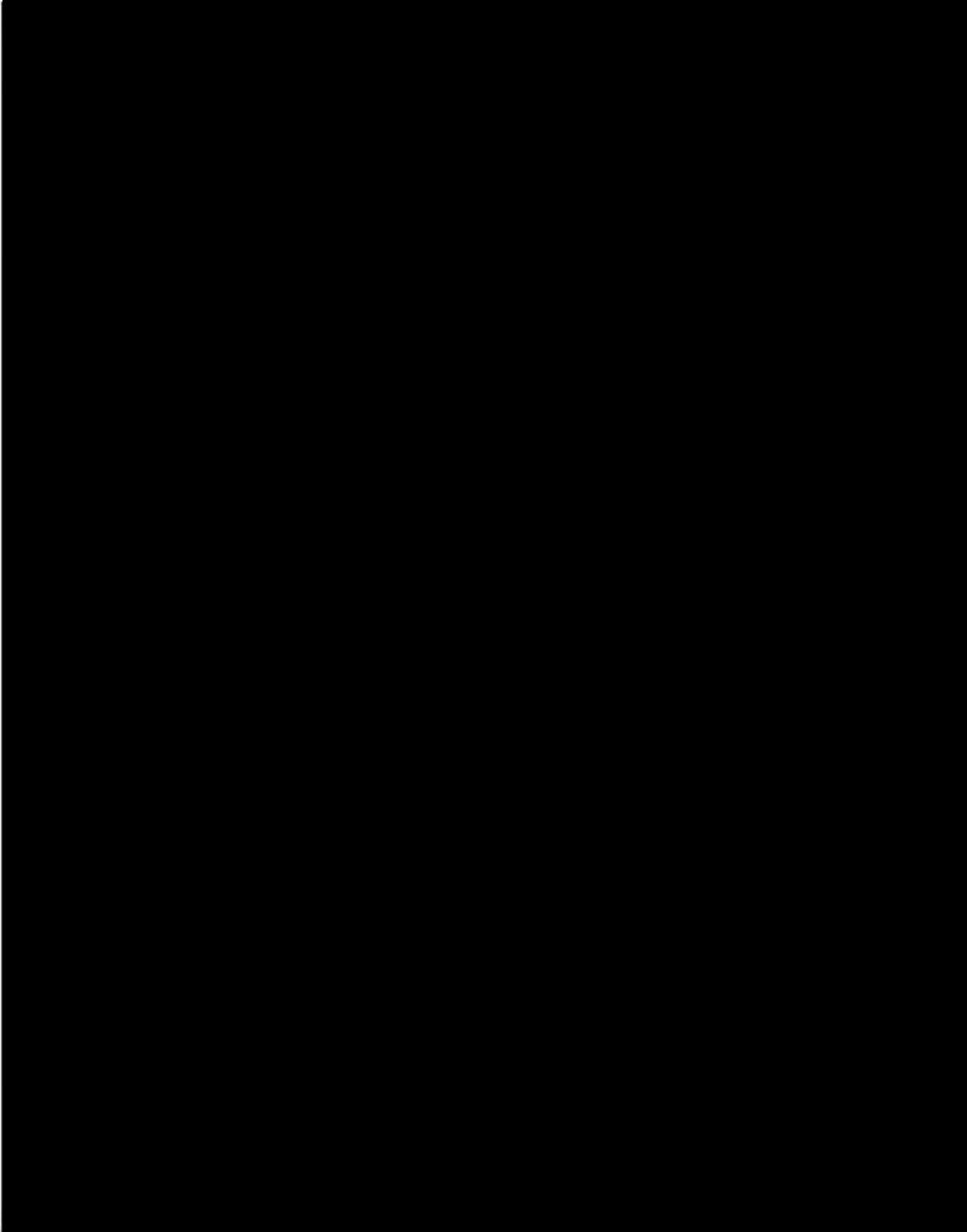
- 6.1 Where the Professional Services are provided on a fixed price basis:
- (a) the Contractor warrants that any Deliverable (other than any Customer Supplied Item) will meet the Contract Specifications in all material respects during the Warranty Period, subject to the Exceptions; and
 - (b) if an unmodified version of the Deliverable (other than any Customer Supplied Item) fails to perform in accordance with the requirements of the Customer Contract and the Customer provides the Contractor with written notice of the Defect within the Warranty Period, then the Contractor may, at its option, promptly remedy those Defects, implement a Workaround, or replace the relevant part of the Deliverable, at its own expense, or refund the Price payable for the deficient Deliverable. Any remedy that is implemented is warranted only during the remainder of the Warranty Period.
- 6.2 Owing to the nature of the subject matter, but subject to clauses 6.1, 6.3, 6.4 and 7, the Contractor expressly excludes any warranty that:
- (c) any Deliverable will be error free;
 - (d) any Deliverable will operate without interruption;
 - (e) it will correct all program errors;
 - (f) any Deliverable will be compatible with any hardware, software or data not supplied by the Contractor (except as specified in the Contract Specification);
 - (g) any Deliverable will meet the Customer's requirements.
- 6.3 The Customer must provide reasonable assistance to the Contractor in order to assist the Contractor to identify and resolve the Defect, including installing patches and Workarounds.
- 6.4 The Contractor warrants that, subject to the Exceptions, from the Commencement Date until the end of the Warranty Period in relation to the Professional Services that the Contractor will provide the Professional Services in accordance with the requirements of the Contract Specifications in all material respects and with due care and skill.

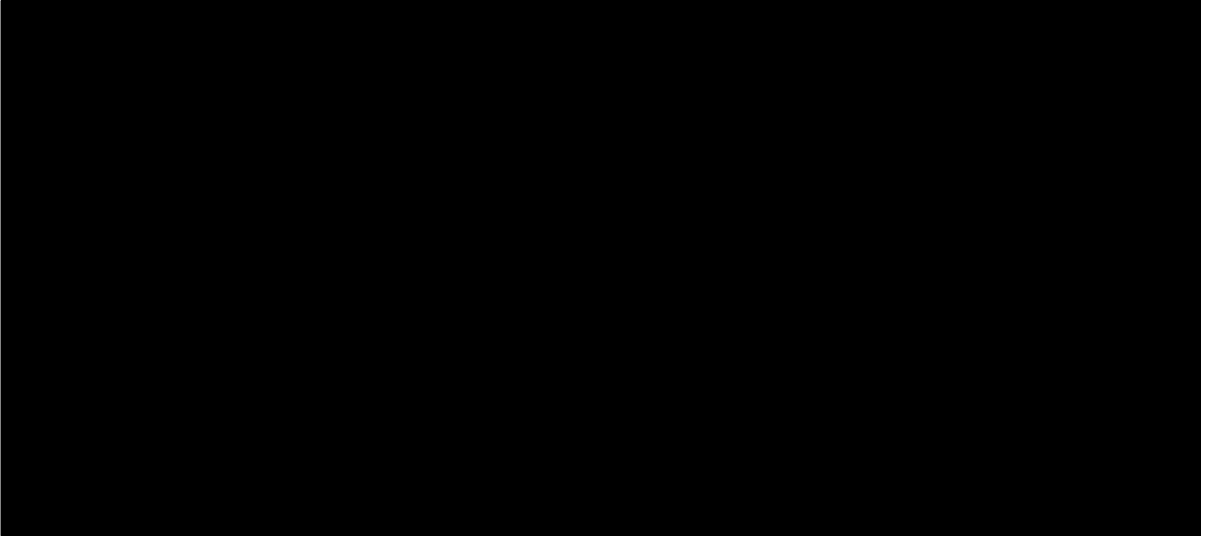
7. Exceptions

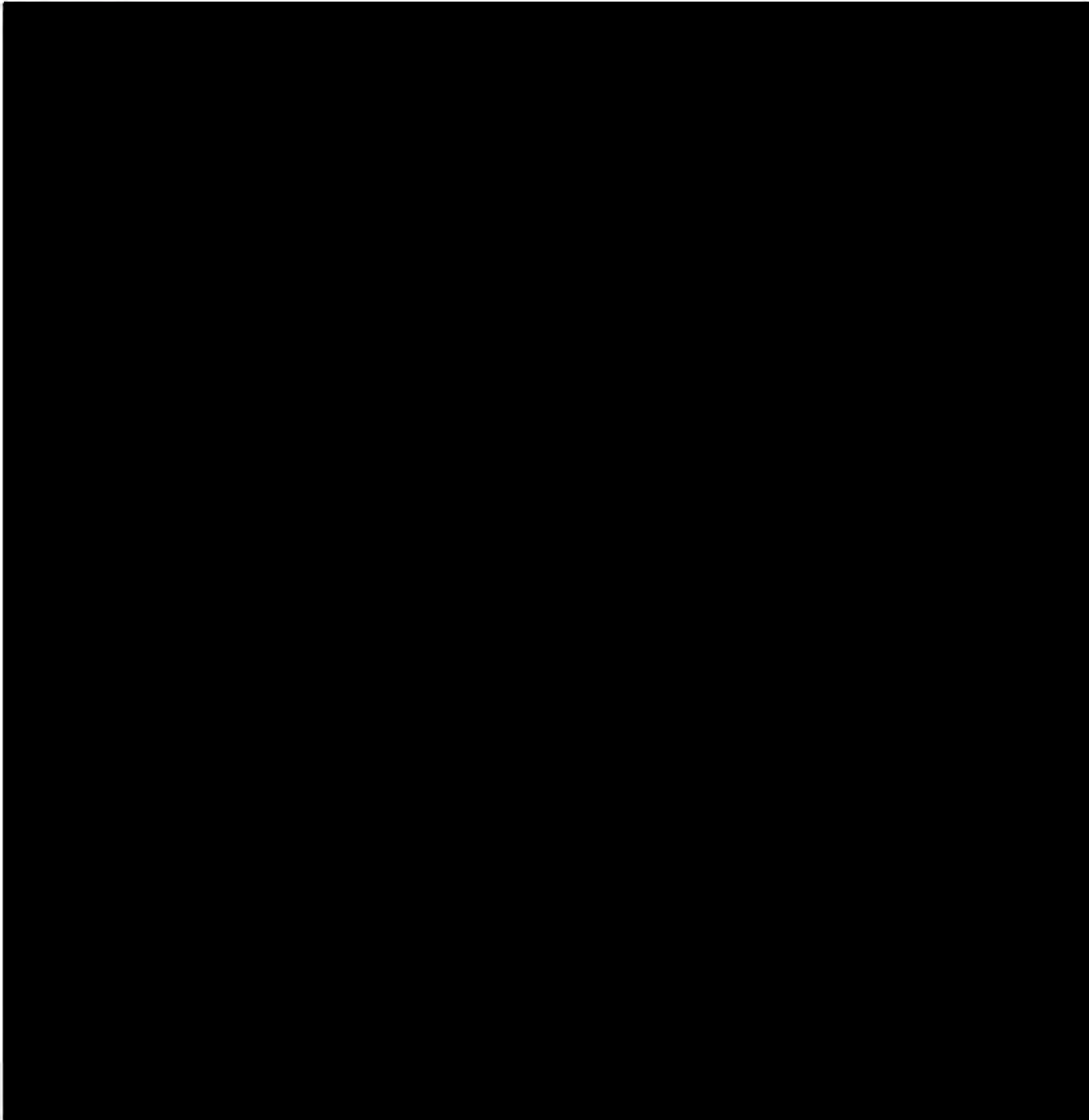
- 7.1 The Contractor is not liable for any breach of the Customer Contract which arises as the result of:
- (a) any Customer Supplied Item not operating in accordance with its documentation or the requirements in this Customer Contract;
 - (b) modifications to any Deliverable that were effected or attempted by a person other than the Contractor or its authorised representative, other than where such modifications were recommended by the Contractor;
 - (c) any act, error, fault, neglect, misuse or omission of the Customer;
 - (d) damage caused by the operation of the Deliverable other than in accordance with recommended operating procedures or otherwise than in accordance with the directions or recommendations of the original IP owner, authorised distributor or the Contractor;

- (e) any Virus, denial of service attack or other malicious act that adversely affects the Software Solution, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specification;
 - (f) improper use or mismanagement by the Customer; or
 - (g) an Event.
- 7.2 Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect (or to be a Defect in a Customer Supplied Item) then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.

MODULE ORDER FORM
MODULE 7 – PROFESSIONAL SERVICES

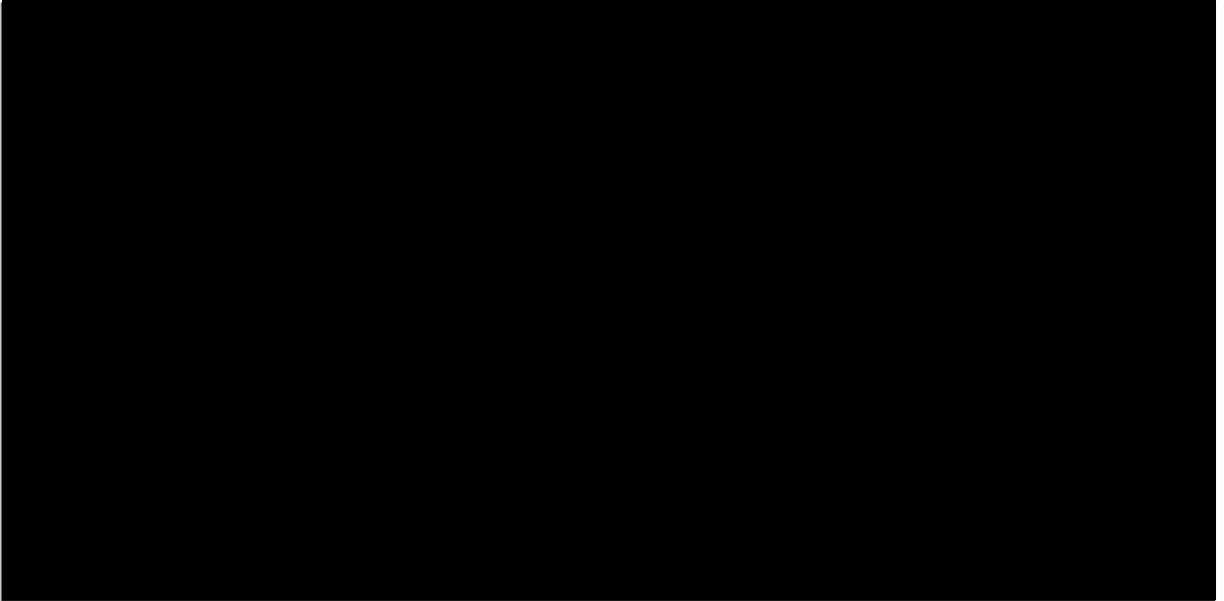






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By signing below, each Party acknowledges that it has carefully read and fully understood this Agreement, and each agrees to be bound by the terms of this Agreement. This Agreement becomes effective upon the date of last signature (the "Effective Date"). The individuals signing this Agreement represent that they have the authority to bind the respective Parties to the terms of this Agreement.

Adobe Systems Software Ireland Limited, as authorized agent of Adobe Systems Pty Ltd (ABN 72 054 247 835)
4-6 Riverwalk, City West Business Campus, Dublin 24
Ireland

NSW DEPARTMENT OF EDUCATION
AUSTRALIAN TECHNOLOGY PARK, LEVEL 8 (WEST), 8
CENTRAL AVENUE,
EVELEIGH, New South Wales 2015 AUSTRALIA

Authorized Signature

Authorized Signature

Print Name

Print Name

Title

Title

Date

Date

Purchase Order Number:
ECC ID Number: 0001463316



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Customers outside USA, Canada & Mexico

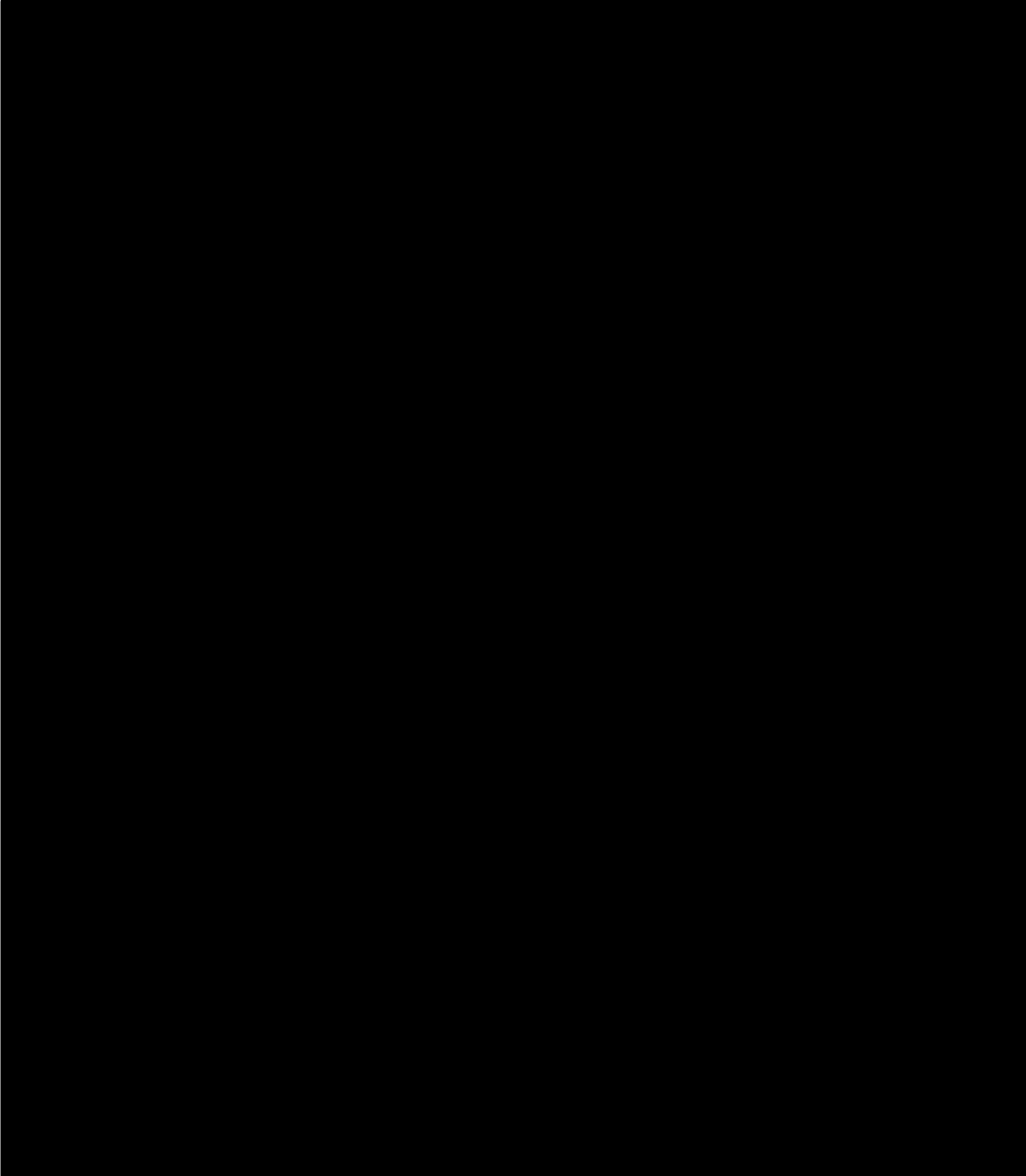
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NSW DEPARTMENT OF EDUCATION AUSTRALIAN TECHNOLOGY PARK, LEVEL 8 (WEST), 8 CENTRAL AVENUE EVELEIGH, New South Wales, 2015 AUSTRALIA	NSW DEPARTMENT OF EDUCATION AUSTRALIAN TECHNOLOGY PARK, LEVEL 8 (WEST), 8 CENTRAL AVENUE EVELEIGH, New South Wales, 2015 AUSTRALIA	NSW DEPARTMENT OF EDUCATION AUSTRALIAN TECHNOLOGY PARK, LEVEL 8 (WEST), 8 CENTRAL AVENUE EVELEIGH, New South Wales, 2015 AUSTRALIA
	Invoicing Contact Name: Contact Email: apacdealdesk@adobe.com	Customer Admin Name: Peter Buckmaster Contact Email: peter.buckmaster1@det.nsw.edu.au

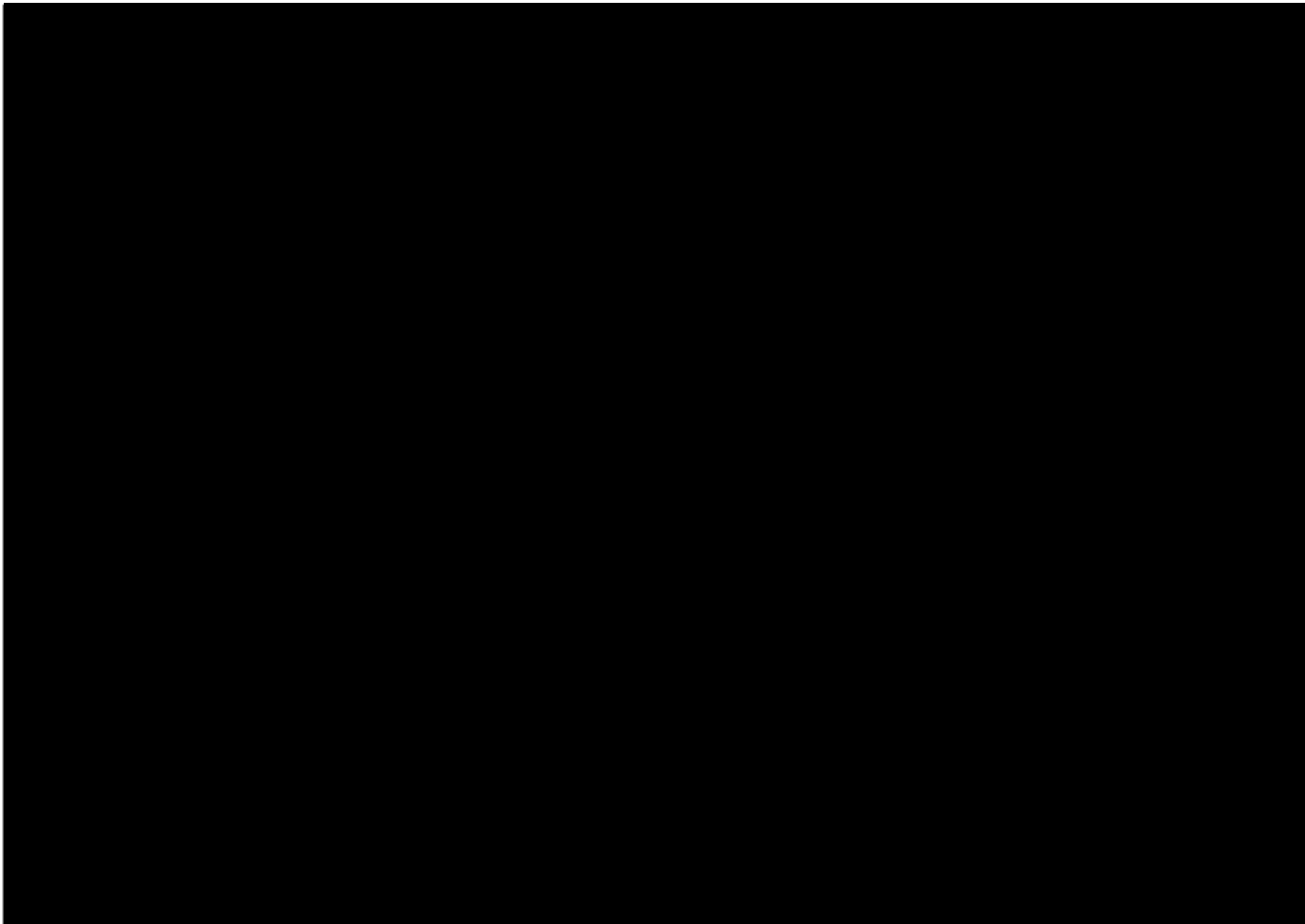
Instructions for sending signed original agreements to Adobe:

Please return your signed original agreement per the appropriate instructions below. If you have questions regarding these instructions, please contact your Adobe Account Manager or [Adobe Customer Service](#).

For Customers located in the United States, Canada and Mexico only please use one of the following methods to return the signed original agreement to Adobe:		
Mailing Address	Email	FAX
Mail two signed agreement originals to: Adobe Systems Incorporated 345 Park Avenue San Jose, California 95110-2704 USA Attention: Contract Operations Group	Scan and email signed agreement to: *Email: rgcordus@adobe.com	FAX signed agreement to: FAX: (801) 437-2883

For Customers located in Japan, Asia, Australia or New Zealand please email your contract to ccordap@adobe.com For customers located in EMEA or Latam please email your contract to ccordir@adobe.com If your customer requires originals/wet signatures and is located in Australia please send your contract by courier to the Adobe Australia office (see postal address below) If your customer is located in EMEA or LATAM please send originals by courier to the Adobe Dublin office (see postal address below)		
Mailing Address	Email	Mailing address for Australia contracts only
Mail two signed agreement originals to: Adobe Systems Software Ireland Limited 4-6 Riverwalk City West Business Campus Dublin 24, Ireland Attention: Contract Operations Group	Scan and email signed agreement to: *Email: ccordir@adobe.com Or *Email: ccordap@adobe.com	Mail two signed agreement originals to: Adobe Systems Pty Ltd. Tower 2, 27th floor 201 Sussex Street Sydney, NSW 2000 Australia Tel: +61(2)9778-4100





Schedule 3: Service Level Agreement

NOT USED

**(The Service Levels are referred to in the Module 10 (As a Service)
and Module 10 Order Form.)**

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;
 - (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;
 - (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 a Protected Clause and the Customer approves of the Change Request, the Customer must submit the Change Request to the Contract Authority and the Director General, NSW Department of Finance and Services, for approval immediately after it has notified the Contractor that it approves the Change Request.

2. Status

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

3. Change Request Form

CHANGE REQUEST BRIEF DETAILS

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>

CHANGE REQUEST HISTORY LOG

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

DETAILS OF CHANGE REQUEST

Summary

[Insert a summary of the changes, if required]

SCOPE

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

EFFECT OF CHANGE ON CONTRACT SPECIFICATION

[Insert any changes to the Contract Specification]

EFFECT OF CHANGE ON PROJECT TIMETABLE

[Insert changes to the project timetable]

New PIPP (annexed)

[Annex new PIPP if required]

EFFECT OF CHANGE ON CHARGES AND TIMING OF PAYMENT

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

CHANGES TO CSI

[Insert any changes to the CSI]

CHANGES TO CUSTOMER PERSONNEL

[Insert any changes to the Customer's Personnel]

CHANGES TO CUSTOMER ASSISTANCE

[Insert any changes to the Customer's Assistance]

PLAN FOR IMPLEMENTING THE CHANGE

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

THE RESPONSIBILITIES OF THE PARTIES FOR IMPLEMENTING THE CHANGE

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

Responsibilities of the Contractor

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

Responsibilities of the Customer

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

EFFECT ON ACCEPTANCE TESTING OF ANY DELIVERABLE

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

EFFECT OF CHANGE ON PERFORMANCE OF ANY DELIVERABLE

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

EFFECT ON USERS OF THE SYSTEM/SOLUTION

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

EFFECT OF CHANGE ON DOCUMENTATION DELIVERABLES

Changes will be required to the following documents:

[Add any other documents which may be affected.]

EFFECT ON TRAINING

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

ANY OTHER MATTERS WHICH THE PARTIES CONSIDER IMPORTANT

[insert if there are any other matters.]

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.

LIST OF DOCUMENTS THAT FORM PART OF THIS CHANGE REQUEST

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

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 Protected Clauses require the Customer to obtain the Contract Authority's and the Director General, NSW Department of Finance and Services approval (clause 26.2))

AUTHORISATION

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

SIGNED AS AN AGREEMENT

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

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

Signature of Customer Representative

Print name

Date

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

Signature of Authorised Signatory

Print name

Date

Schedule 5: Escrow Deed

NOT USED

Schedule 6: Deed Poll – Approved Agents

NOT USED

Schedule 7: Statutory Declaration – Subcontractor

NOT USED

Schedule 8: Deed of Confidentiality

NOT USED

Schedule 9: Performance Guarantee

NOT USED

Schedule 10: Financial Security

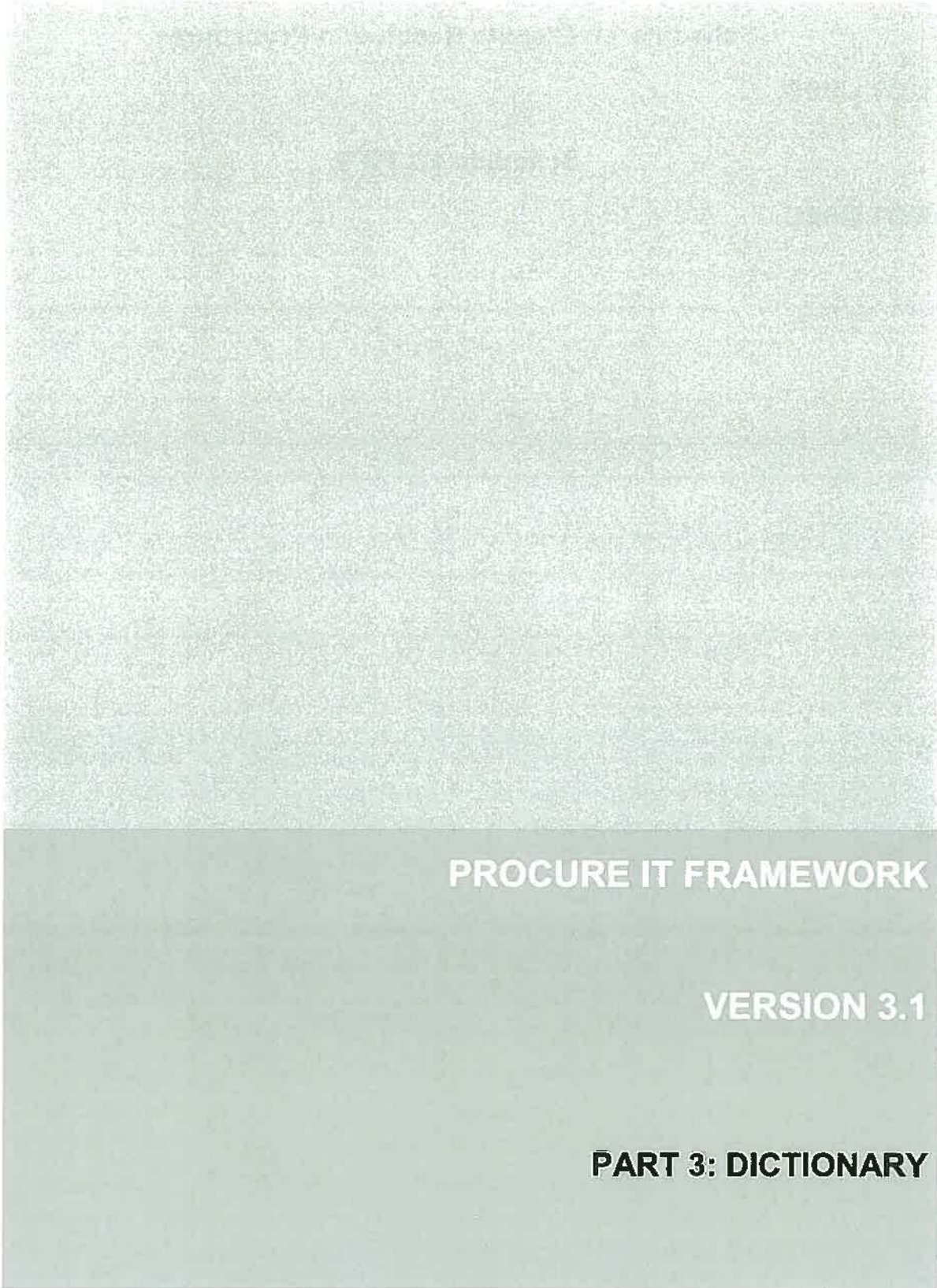
NOT USED

Schedule 11: Dispute Resolution Procedures

NOT USED

Schedule 12: PIPP

NOT USED



PROCURE IT FRAMEWORK

VERSION 3.1

PART 3: DICTIONARY

1. AGREED TERMS & INTERPRETATION

AGREED TERMS

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

(a) stated in the Head Agreement Details or otherwise approved by the Contract Authority; or

(b) where there is no Head Agreement, approved by the Customer,

but excludes the directors, officers or employees of the Approved Agent.

- 1.12 Authorised Representative** means a person who has authority to act on behalf of a Party in accordance with the Head Agreement (Part 1) or the Customer Contract (Part 2) (as applicable).
- 1.13 Bespoke User Documentation** means documents created for the Customer as a Deliverable under a Customer Contract that describe the features and functions of a Product or Service that has been created, modified or adapted for the Customer under a Customer Contract, in a hard copy, electronic or online format as stated in the Contract Specifications.
- 1.14 Business Contingency Plan** means a plan detailing the nature and scope of the business contingency services to be provided by the Contractor to overcome interruptions to the Customer's business, including as applicable, information about time-frames, scheduling, service levels, methodologies, systems, processes or programs for the implementation of such services and any other requirement, as stated in Item 24 of the General Order Form.
- 1.15 Business Day** means any day that is not Saturday, Sunday or a public holiday in New South Wales.
- 1.16 CCA** means the *Competition and Consumer Act 2010* (Cth).
- 1.17 Change in Control** means a circumstance in which control is or may be exercised over the Contractor:
- (a) by virtue of the change of a direct holding of at least fifteen percent of the voting shares in the Contractor or a holding company of the Contractor; or
- (b) by any other means whatsoever.
- 1.18 Change Request** means a change requested by either Party which, if signed by the Parties will result in a variation to any part of the Customer Contract.
- 1.19 Commencement Date** means:
- (a) the Commencement Date stated in Item 10 of the General Order Form; or
- (b) if no Commencement Date is stated in the General Order Form, the date the Customer Contract is signed by the Customer and the Contractor.
- 1.20 Confidential Information** means information that:
- (a) is by its nature confidential; or
- (b) is communicated by the disclosing party to the confidant as confidential; or
- (c) the confidant knows or ought to know is confidential; or
- (d) relates to:
- (i) the Products and Services;

- (ii) the financial, the corporate and the commercial information of any Party;
- (iii) the affairs of a third party (provided the information is non-public); and
- (iv) the strategies, practices and procedures of the State and any information in the Contractor's possession relating to the State public service,

but excludes any information which the confidant can establish was:

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

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

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

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

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

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

1.24 Contract Period means the period of the Customer Contract stated in Item 10 of the General Order Form, including any period or periods of extension of the Customer Contract made in accordance with clause 2.4 of the Customer Contract (Part 2).

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

1.26 Contract Specifications means the totality of any technical or descriptive specifications of functional, operational, performance or other characteristics required of a Deliverable provided by the Contractor under the Customer Contract being only:

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

1.27 Contract Value means:

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

1.28 Contract Variation means a variation to the terms and conditions of the Customer Contract that requires the consent of the Director General, NSW Department of Finance and Services in accordance with clause 26.2 of the Customer Contract (Part 2).

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

1.30 Contractor Information means information relating to:

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

- (d) the shareholdings in the Contractor, or the corporate structure, directorship or shareholdings of the Contractor,

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

- 1.31 Correctly Rendered Invoice** means an invoice that is rendered in the form of a Tax Invoice where:
- (a) the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars;
 - (b) the invoice is set out as an itemised account, which identifies the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the amount payable;
 - (c) the invoice is accompanied by documentary evidence that signifies that acceptance (where appropriate) has occurred in accordance with the Customer Contract; and
 - (d) the invoice is addressed to the officer stated in Item 6 of the General Order Form to receive invoices.
- 1.32 Customer** means the person or body corporate named in Item 1 of the General Order Form that enters into a Customer Contract with the Contractor. Customer does not include any of the Customer's Personnel.
- 1.33 Customer Contract** means those Parts, terms and conditions and other documents listed in clause 3.6 of Part 2.
- 1.34 Customer Supplied Item or CSI** means the items set out in Item 22 of the General Order Form to be supplied by the Customer under a Customer Contract.
- 1.35 Cyberterrorism** means an assault on any electronic communications network.
- 1.36 Defect** means a fault, error, failure, degradation, deficiency or malfunction that causes the relevant Deliverable not to meet the Contract Specifications and other requirements under the Customer Contract.
- 1.37 Defects List** means a written notice stating details of the actual results of the Acceptance Test, and for any alleged defect(s) in the specific requirement(s) of the Customer Contract that is not met and a statement as to whether the alleged defect is Minor. The Defects List is not required to include the cause of the defect.
- 1.38 Deliverable** means any Product, Service or output from any Service that is required to be provided to the Customer under the Customer Contract.
- 1.39 Document** includes:
- (a) any paper or other material on which there is writing;
 - (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device; and/or
 - (d) a piece of text or text and graphics stored electronically as a file for manipulation by document processing software.
- 1.40 Due Date** means the date by which an LD Obligation must be met, as stated in Item 21 of the General Order Form.

- 1.41 Eligible Customer** means any NSW Government Body or Eligible non-Government Body.
- 1.42 Eligible non-Government Body** means a public body being eligible to buy under a specific Head Agreement, including the following bodies (as identified under the Public Works and Procurement Regulation 2014 clause 6:
- (a) a private hospital;
 - (b) a local council or other local authority
 - (c) a charity or other community non-profit organisation;
 - (d) a private school or a college,
 - (e) a university;
 - (f) a public authority of the Commonwealth, any other State or Territory;
 - (g) a public authority or of any other jurisdiction (but only if it carries on activities in this State);
 - (h) any contractor to a public authority (but only in respect of things done as such a contractor);
- 1.43 Escrow Agreement** means an agreement under which an independent third party receives the source code or object code of certain software from the Contractor for delivery to the Customer or the Contractor upon the fulfilment of pre-specified conditions and is substantially in the form of Schedule 5 to Part 2 unless otherwise agreed by the Parties.
- 1.44 Escrow Materials** means the source code and/or object code of any software Deliverable 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 software Deliverable and any necessary development tools to keep the Deliverables in good order and repair that are stated in Item 23 of the General Order Form.
- 1.45 Estimated Contract Price** means the Parties' estimate of the amount payable under the Customer Contract for the relevant:
- (a) Non-Recurring Service or Product; or
 - (b) Short Term Recurring Service,
- as stated in Item 39 of the General Order Form.
- 1.46 Event** means a circumstance beyond the reasonable control of a Party that results in that Party being unable to perform an obligation on time and includes:
- (a) natural events like fire, flood, or earthquake;
 - (b) national emergency;
 - (c) terrorist acts (including Cyberterrorism) and acts of vandalism; or
 - (d) war.

- 1.47 Existing Material** means any Licensed Software or any other Material that is developed:
- (a) prior to the Commencement Date; or
 - (b) independently of the Customer Contract,
- and that is incorporated into a Deliverable under the Customer Contract.
- 1.48 Financial Security** means the security in Item 38 of the General Order Form which is in substantially the form of Schedule 10 to Part 2.
- 1.49 Fundamental Breach** means a breach of the Customer Contract by the Customer which prevents the Contractor from carrying out its obligations under the Customer Contract.
- 1.50 General Order Form** means Schedule 1 to Part 2 that includes the Order Details that are relevant to that Customer Contract.
- 1.51 Government Agency** means any of the following:
- (a) a government sector agency (within the meaning of the *Government Sector Employment Act 2013*)
 - (b) a NSW Government agency
 - (c) any other public authority that is constituted by or under an Act or that exercises public functions (other than a State owned corporation),
 - (d) any State owned corporation prescribed by the regulations.
- 1.52 GST** has the same meaning as in the GST Law.
- 1.53 GST Law** means any law imposing or relating to a GST and includes *A New Tax System (Goods & Service Tax) Act (Cth)*, *A New Tax System (Pay As You Go) Act 1999* and any regulation based on those Acts.
- 1.54 Hardware** means the physical components of a computer including the microprocessor, hard discs, RAM, motherboard and peripheral devices.
- 1.55 Head Agreement** means an agreement between the Contract Authority and the Contractor, comprising those Parts, terms and conditions and other documents listed in clause 4.2 of Part 1.
- 1.56 Head Agreement Details** means those details stated in Annexure 1 to Part 1.
- 1.57 Head Agreement Documents** means the documentation listed in Annexure 2 to Part 1.
- 1.58 Insolvency Event** means where a Party:
- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
 - (b) is insolvent with the meaning of Section 95A of the *Corporations Act 2001 (Cth)*;
 - (c) must be presumed by a court to be insolvent by reason of an event set out in Section 459C(2) of the *Corporations Act 2001 (Cth)*;

- (d) fails to comply with a statutory demand within the meaning of Section 459F(1) of the *Corporations Act 2001 (Cth)*;
 - (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
 - (f) has a mortgagee enter into possession of any property of that Party;
 - (g) has a controller within the meaning of the Section 9 of the *Corporations Act 2001 (Cth)* or similar officer appointed to all or any of its property; or
 - (h) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.
- 1.59 Install** means to set up the Hardware so that the manufacturer's installations tests can be completed successfully.
- 1.60 Intellectual Property Rights** means all intellectual property rights including:
- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade name and other protected rights, or related rights, existing worldwide; and
 - (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a),
- but does not include the right to keep confidential information confidential, Moral Rights, business names, company names or domain names.
- 1.61 Information Privacy Principle or IPP** means the Information Protection Principles contained in sections 8 to 19 of the *Privacy and Personal Information Protection Act 1998 (NSW)*.
- 1.62 LD Obligation** means an obligation that is stated in Item 21 of the General Order Form as being an obligation for which the late completion by the Contractor may require the payment of liquidated damages in accordance with clauses 6.28 to 6.35 of the Customer Contract.
- 1.63 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 Customer Contract.
- 1.64 Material** means any Document or other thing in which Intellectual Property Rights subsist.
- 1.65 Material Adverse Event** means any matter that:
- (a) substantially and adversely affects the Contractor's ability to perform any of its material obligations under the relevant Part, which may result from:
 - (i) any material litigation or proceeding against the Contractor;
 - (ii) the existence of any material breach or default of any agreement, or of any order or award that is binding on the Contractor;

- (iii) matters relating to the commercial, technical or financial capacity of the Contractor or in the knowledge of the Contractor, any Approved Agent or subcontractor proposed to be engaged in respect of this agreement; or
 - (iv) any obligation under another contract the compliance with which may place the Contractor in material breach of the relevant Part; or
- (b) the Contractor knows, or should reasonably know, will, or has the potential to, cause material reputational damage to the Contract Authority or the Customer as a result of the Contract Authority and/or the Customer's association with the Contractor.
- 1.66 Milestone** means the groups of tasks relating to and including the provision of Deliverables to be performed or provided by the Contractor under the Customer Contract.
- 1.67 Minor** means, unless otherwise agreed in the Order Documents:
- (a) in respect of a Deliverable that is not a Document, a Defect that would not prevent the Deliverable from being used in a production environment even though there may be some insubstantial inconvenience to users of the Deliverable, provided that the Defect does not compromise security; and
 - (b) in respect of a Deliverable that is a Document, errors that are limited to errors in formatting, style, spelling or grammar or minor errors of fact or interpretation that do not detract from the usefulness or intent of the document.
- 1.68 Module** means a document that describes the additional terms and conditions that are specific to a particular Product or Service or method of acquisition of a Product or Service. The Modules are stated in Part 4.
- 1.69 Module Order Form** means a document that includes the Order Details that are relevant to the particular Module. The Module Order Forms are stated in Part 5.
- 1.70 Moral Rights** means a person's moral rights as defined in the *Copyright Act 1968 (Cth)*.
- 1.71 New Material** means any Material that is:
- (a) newly created by or on behalf of the Contractor during the performance of its obligations under the Customer Contract;
 - (b) incorporated into a Deliverable; and
 - (c) delivered to the Customer in accordance with the requirements of the Customer Contract,
- except for any Material that is Existing Material or any adaptation, translation or derivative of that Existing Material.
- 1.72 Nominee Purchaser** means a contractor to a Customer that is authorised to enter into the Customer Contract as the Customer's agent.
- 1.73 Non-Recurring Services** means Services which are provided by the Contractor under any of the following Modules:
- (a) Module 4 – Development Services;
 - (b) Module 13– Systems Integration Services; and
 - (c) Module 14 – Hosting Services

- and, if agreed by the Parties in Item 39 of the General Order Form:
- (d) Module 6 – Contractor Services
 - (e) Module 7 – Professional Services;
 - (f) Module 8- Training Services
 - (g) Module 12- Managed Services;
- 1.74 Notice in Writing** means a notice signed by a Party's authorised representative or his/her delegate or agent which must not be an email, or a document scanned and sent by email.
- 1.75 Order Details** means the details of the Customer Contract specific to the transaction contemplated by the Customer Contract which are included in the Order Documents and agreed by the Customer and Contractor.
- 1.76 Order Documents** means the General Order Form and the documents that are stated on the General Order Form as being incorporated into the Customer Contract, which may include:
- (a) any Schedule to Part 2;
 - (b) any document referred to in, or based on, any Schedule to Part 2; and
 - (c) one or more Modules and their relevant Module Order Forms.
- 1.77 Part** means each pro forma document that is designated as a Part of the Procure IT Framework, being:
- (a) Part 1; the Head Agreement, including its Annexures;
 - (b) Part 2; the Customer Contract, including its Schedules;
 - (c) Part 3; the Dictionary;
 - (d) Part 4; the Modules; and
 - (e) Part 5; the Module Order Forms.
- 1.78 Parties** means:
- (a) in relation to the Head Agreement: the Contract Authority and the Contractor; and
 - (b) in relation to the Customer Contract: the Customer and the Contractor.
- 1.79 Performance Criteria** means the criteria applicable to the performance of the Contractor including the:
- (a) quality of Products or Services offered or delivered;
 - (b) competitiveness of the Products or Services and pricing;
 - (c) Contractor's sales and marketing performance;
 - (d) Contractor's financial stability;
 - (e) Contractor's management and suitability of its Personnel;

- (f) Contractor's administration of the Head Agreement, any Customer Contracts and risk;
 - (g) Contractor's management of environmental issues;
 - (h) Contractor's Occupational, Health, Safety and Rehabilitation (OHS&R) Management;
 - (i) Contractor's industrial relations performance; and
 - (j) claims on insurance and other financial assurances made in respect of the Contractor's business or the Head Agreement and any Customer Contracts.
- 1.80 Performance Guarantee** means a document substantially in the form of Annexure 5 to the Head Agreement or Schedule 9 to Part 2 (as applicable).
- 1.81 Personal Information** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
- 1.82 Personnel** means an entity's directors, officers, employees, agents and subcontractors, and
- (a) for the Contractor; includes its Approved Agents and their Personnel; and
 - (b) for the Customer; includes any Nominee Purchaser and its Personnel, but excludes the Contractor and its Personnel.
- 1.83 Prescribed Use** is limited to the use of a Product or Service in a business environment where the direct result of a failure of the Product or Service being supplied results in a serious risk of significant loss of life or personal injury or substantial damage to buildings or other tangible property in the following business environment:
- (a) planning, construction, maintenance or operation of an air traffic control system;
 - (b) planning, construction, maintenance or operation of a mass transit system (e.g. aircraft/trains/ferries/roads);
 - (c) planning, construction, maintenance or operation of a nuclear facility; or
 - (d) planning, construction, maintenance or operation of facilities or programs in respect of biological or chemical environments, including quarantine.
- 1.84 Price** means an itemised Price (including a rate for a unit), payable in Australian dollars by a Customer for a Product or Service under the Customer Contract in Item 11 of the General Order Form. Price includes GST and any other Tax.
- 1.85 Procure IT Framework** means the suite of pro forma documents described in clause 1 of the Customer Contract and clause 1 of the Head Agreement that provide the framework for the procurement Products and Services as represented by each of the Parts.
- 1.86 Product** means Hardware and Licensed Software only.
- 1.87 Project Implementation and Payment Plan or PIPP** means a document that includes Order Details relating to the implementation of a project and associated payment arrangements which is included in a Customer Contract if stated in Item 20 of the General Order Form. An example template of a PIPP is set out in Schedule 12 to the Customer Contract.
- 1.88 Protected Clauses** means the following clauses of the Customer Contract:

- (a) Additional Conditions (clause 3.2 (b));
- (b) Formation (part of clause) and Compliance with Consumer Laws (clauses 3.6 to 3.10);
- (c) Product Safety (clauses 5.9 to 5.10);
- (d) Intellectual Property Rights (clause 13);
- (e) Privacy (clause 15);
- (f) Insurance (clause 16)
- (g) Liability (clause 18);
- (h) Indemnities (clause 19);
- (i) Conflict of Interest (clause 20);
- (j) Notice of Change in Control (clause 23.3);
- (k) Dispute Resolution (clause 24 and Schedule 11 – Dispute Resolution Procedures);
- (l) Termination (clause 25);
- (m) Assignment and Novation (clauses 26.3 to 26.6); and
- (n) Applicable Law (clause 26.17).

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

- (a) Module 2 – Hardware Maintenance and Support Services;
- (b) Module 5 – Software Support Services;
- (c) Module 11– Telecommunications Services
- (d) Module 12– Managed Services;

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

- (e) Module 6 – Contractor Services
- (f) Module 7 – Professional Services;
- (g) Module 8- Training Services
- (h) Module 10 X as a Service
- (i) Module 14 Hosting Services

1.90 Related Company means an entity owned by, controlling, controlled by, or under common control with, directly or indirectly, a Party. For this purpose, one entity “controls” another entity if it has the power to direct the management and policies of the other entity (for example, through the ownership of voting securities or other equity interest, representation on its board of directors or other governing body, or by

contract). A Related Company includes a "related body corporate" as that expression is defined in the Corporations Act 2001 (Cth).

- 1.91 Reseller** means any entity who provides Products or Services but:
- (a) is not the original equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service; or
 - (b) is not a Related Company of the original equipment manufacturer or owner of the Intellectual Property Rights in the Product or Service.
- 1.92 Schedule** means a schedule to Part 2.
- 1.93 Service** means any item or thing to be provided under a Customer Contract that is not a Product, including the services provided under the Modules that provide for Hardware Maintenance and Support Services, Development Services, Software Support Services, IT Personnel, Professional Services, Training Services, Data Migration, X as a Service, Telecommunications Services, , Managed Services, Systems Integration Services.
- 1.94 Service Address** means:
- (a) in the case of the Contract Authority; the address set out in the Head Agreement;
 - (b) in the case of the Contractor;
 - (i) the address set out in the Head Agreement or such other address of which the Contactor gives Notice in Writing to the Contract Authority; or
 - (ii) in relation to a Customer Contract at its address set out in Item 5 of the General Order Form or such other address of which the Contactor gives Notice in Writing to the Customer; or
 - (c) in the case of the Customer; the address set out in Item 2 of the General Order Form or the address of which the Customer gives Notice in Writing.
- 1.95 Service Level Agreement or SLA** means the document or clauses that set out the performance expectations of the Parties and defines the benchmarks for measuring the performance of the Services. An example template of an SLA is set out in Schedule 3 to Part 2.
- 1.96 Service Levels** means the minimum performance levels to be achieved by the Deliverable, as specified in a Service Level Agreement.
- 1.97 Short Tem Recurring Services** means Recurring Services that are stated to be provided for a period of 12 months or less in the Order Documents at the Commencement Date.
- 1.98 Site** means the Customer's offices or other Customer-controlled locations stated in Item 18 of the General Order Form to which a Deliverable is to be delivered and/or at which a Deliverable is to be installed.
- 1.99 Site Specification** means the document which details the environmental, operational, safety and management requirements in relation to the Site that are necessary for the provision of the Deliverable(s).
- 1.100 Specified Personnel** means the key personnel of the Contractor who are required to undertake the provision of the Deliverables or part of the work constituting the Deliverables, as stated in Item 27 of the General Order Form.

- 1.101 Stage** means one or more Milestones that are identified as a stage in the Project, Implementation and Payment Plan.
- 1.102 State** means the State of New South Wales.
- 1.103 Statement of Requirements** means the Customer's statement of any requirements that the Contractor must fulfil in respect of the Deliverables which may include all relevant instructions, information, data, documents, specifications, plans, drawings and other materials and particulars.
- 1.104 Statutory Requirements** means the Australian laws, regulation or by-laws relating to the performance of the Party's obligations under the relevant Part.
- 1.105 Subcontractor** means a third party to which the Contractor has subcontracted the performance or supply of any Services.
- 1.106 Substantial Breach** means:
- (a) a breach of the Customer Contract by the Contractor which deprives the Customer of substantially all of the benefit of the Customer Contract; or
 - (b) the following breaches by the Contractor of the Customer Contract:
 - (i) a delay by the Contractor in performing its obligations under the Customer Contract which continues beyond the extension of time granted under clauses 6.26 and 6.27;
 - (ii) failing to provide suitable replacement personnel as required under clause 8.9 where such failure prevents the Contractor from performing fundamental obligations under the Customer Contract;
 - (iii) breaching any warranty under clause 9.1;
 - (iv) where Acceptance Tests are required in order for the Deliverable to achieve AAD (and the obligation to ensure the Deliverable achieves AAD by a certain date is not an LD Obligation), failing to pass Acceptance Tests which results in rejection of the Deliverable by the Customer under clause 10.12(e);
 - (v) where Acceptance Tests are not required in order for a Deliverable to achieve AAD (and the obligation to ensure the Deliverable achieves AAD by a certain date is not an LD Obligation), failing to deliver the Deliverable by the date required in the Customer Contract;
 - (vi) failing to effect and maintain insurance policies as required under clauses 16.1, 16.2, 16.3 or 16.7 (other than to the extent that the Contractor received an exemption under clause 16.8);
 - (vii) failing to provide a Performance Guarantee as required under clause 17.2;
 - (viii) failing to provide a Financial Security as required under clause 17.4; or
 - (ix) the existence of a Conflict of Interest which in the Customer's reasonable opinion prevents the full and proper performance of the Contract by the Contractor and the Contractor has not complied with clause 20.1(b) within a reasonable period.
- 1.107 Tax** means any sales tax, value added tax, duty, withholding tax, levy, impost or other charge or duty levied by any government in Australia or elsewhere, which arises out of

or in connection with the Contractor's performance of its obligations under the relevant Part, but excludes GST and any Tax based on the net income of the Contractor.

- 1.108 **Tax Invoice** has the same meaning as provided for in the GST Law.
- 1.109 **Taxable Supply** has the same meaning as provided for in the GST Law.
- 1.110 **Term** means the term of the Head Agreement, set out in Item 6 of the Head Agreement Details and any extension of the Term in accordance with clause 2.1 of the Head Agreement.
- 1.111 **User Documentation** means the Contractor's standard off the shelf documents that describe the features and functions of a Product or Service, in a hard copy, electronic or online format that are provided by the Contractor to the Customer. User Documentation excludes any Document that is designed by the Contractor to be training materials.
- 1.112 **Virus** means a computer program, code, device, product or component that is designed to or may in the ordinary course of its operation, prevent, inhibit or impair the performance of a Deliverable in accordance with the Deliverable's Contract Specifications, but does not include any code, mechanism or device that is included in the software by the licensor for the purpose of managing the licensed use of the software.
- 1.113 **Warranty Period** means:
 - (a) in relation to Hardware, 365 days from AAD;
 - (b) in relation to Licensed Software, 90 days from AAD; and
 - (c) in relation to Services where there is an Acceptance Test process, 30 days from AAD.
- 1.114 **Workaround** means a fix or alternative procedure to temporarily address a Defect.

INTERPRETATION

- 1.115 The following rules also apply in interpreting any Part, except where the context makes it clear that a rule is not intended to apply.
 - (a) A reference to:
 - (i) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) monetary references are references to Australian currency;
 - (iii) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as varied, assigned or novated;
 - (iv) a reference to a "Part [number]" is a reference to that specific Part only; e.g. "Part 3" is a reference to Part 3 only. A reference to "Part" without a number is a reference to the Part in which the reference to that Part appears e.g. if the phrase "clause 3 in this Part" appears in a clause in Part 2, then this is a reference to clause 3 in Part 2 only;
 - (v) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity; and

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



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1. AGREED TERMS AND INTERPRETATION

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

In this Module, unless the contrary intention appears:

- 1.1 **Application** means any application software which may or may not be delivered as an Online Service, for use by Permitted Users.
- 1.2 **Approved Purpose** means the purpose agreed in the Order Documentation for which the Customer and Permitted Users shall use the Service.
- 1.3 **As a Service** means Infrastructure as a Service, Platform as a Service and/or Software as a Service that is being supplied in accordance with the Order Documents, and each such As a Service is a Service for the purposes of the Customer Contract.
- 1.4 **Consolidation Period** means the first month of the provision of the As a Service (commencing on the Service Commencement Date of the relevant As a Service), or such other period, or no such period, stated in the Order Documents.
- 1.5 **Customer Access Facilities** means telecommunications, networks, systems and other facilities used, or required by, or on behalf of the Customer for accessing and making use of the Service.
- 1.6 **Customer Data** means data or information, including Personal Information as defined by the *Privacy and Personal Information Protection Act 1998 (NSW)*, that is submitted by the Customer or Permitted Users into the As a Service to be stored or processed and made accessible from the As a Service in any form, regardless of the format, location or medium.
- 1.7 **Cutover Date** means the date when the Contractor advises the Customer that the Customer can commence loading Customer Data into the As a Service following the completion of the Transition In Services.
- 1.8 **Data Access** means the ability to retrieve, view, edit, transmit or otherwise make use of, Customer Data.
- 1.9 **Data Centre Region** means the physical location, by country or region, of the Contractor's computing hardware and software, including any back-ups used to store, host and process Customer Data.
- 1.10 **Environment** means the entire set of technology components required for the provision of the As a Service.
- 1.11 **Infrastructure as a Service** means a computing data centre with the equipment used to support operations, including storage, hardware, servers and networking components, delivered as an Online Service.
- 1.12 **Online Service** means computing services and capabilities such as application software, software platforms, hardware platforms, infrastructure and similar capabilities, which are delivered by the Contractor to the Customer over an IP network (including the Internet), rather than provided locally or on-site. Typically, the software and hardware assets are owned by the Contractor and the Customer is billed for usage.
- 1.13 **Permitted User** means such persons that the Customer has permitted to use the As a Service for an Approved Purpose, in accordance with the Customer Contract, including individual end users.

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

2. TERM OF SERVICES

2.1 The Contract Period:

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

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

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

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

3. SCOPE

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

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

4 CUSTOMER USE AND ACCESS TO THE AS A SERVICE

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

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

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

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

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

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

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

5 DATA CONTROL AND AUDIT

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

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

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

6. SERVICE LEVELS

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

7. RESTRICTIONS

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

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

8. LIABILITY

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

The Contractor has:

- (a) Subject to paragraph (b) below, no financial cap on its legal liability where that liability arises from:

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

- (b) A financial cap on its legal liability for all claims in the aggregate arising from:

- (i) the Contractor's indemnity for IP Claims under clause 19.1(c) ; or
- (ii) liability arising from or in relation to Customer Data,

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

9. INFORMATION OWNERSHIP, INTEGRITY AND PRIVACY

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

10. ADDITIONAL SERVICES

Transition in services

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

Transition out services

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

Training services

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

Documentation

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

11. WARRANTIES

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

12. PAYMENT AND INVOICING

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

13. TERMINATION

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

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

14. NO ASSIGNMENT OR NOVATION

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

15. INFRASTRUCTURE AS A SERVICE

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

(b) comply with the terms of all licences referred to in paragraph (a) and above clause 15.2(a);

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

16. PLATFORM AS A SERVICE

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

17. SOFTWARE AS A SERVICE

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

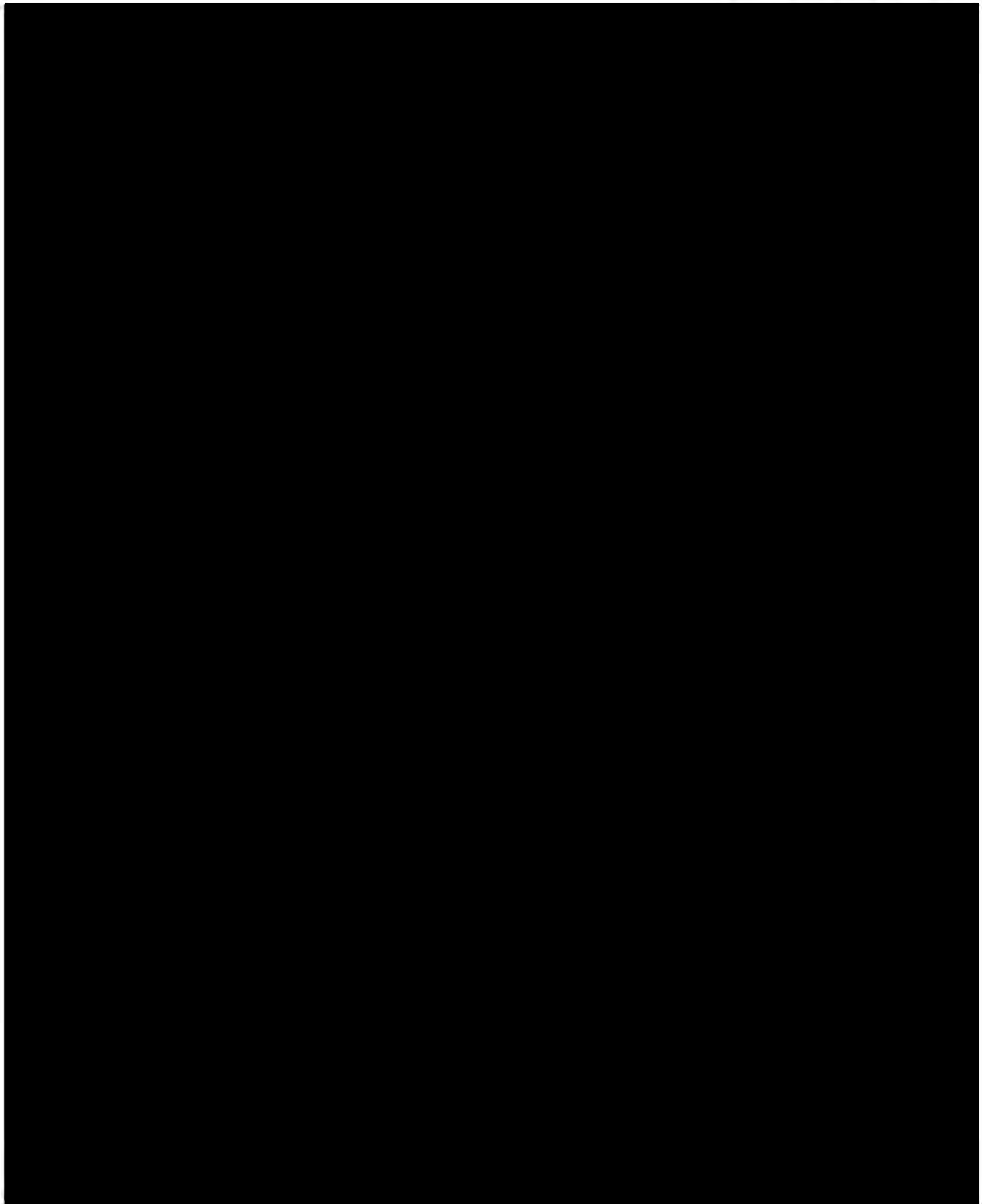
17.2 The Contractor or third parties may from time to time make available to the Customer (e.g., through an online exchange) third-party products or services, including but not limited to Third Party Applications. Any acquisition by the Customer of such Third Party Applications, products or services,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

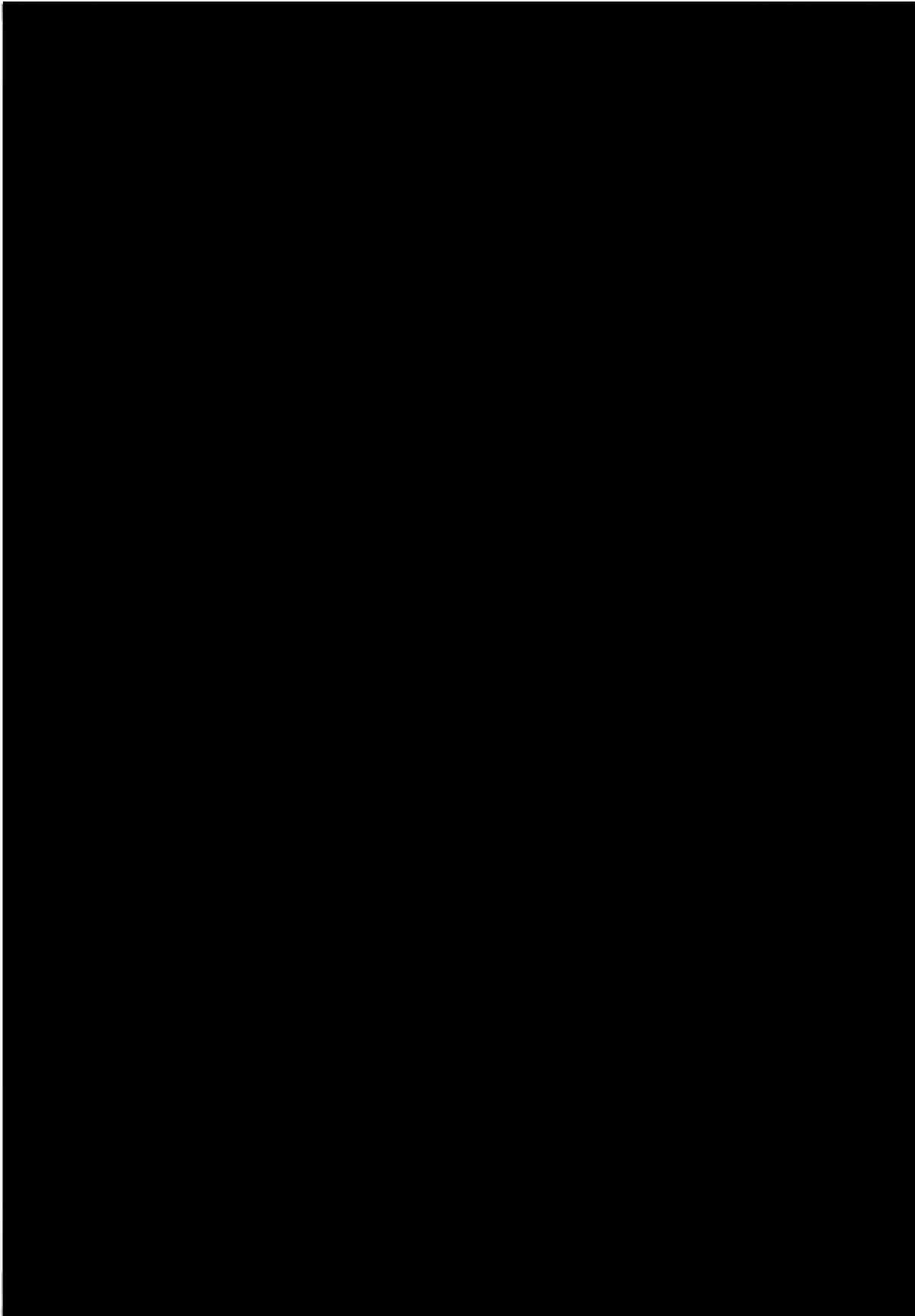
17.3 Any Third Party Applications supplied under Order Documents between Customer and Contractor shall be supplied by the Contractor in accordance with such Order Documents.

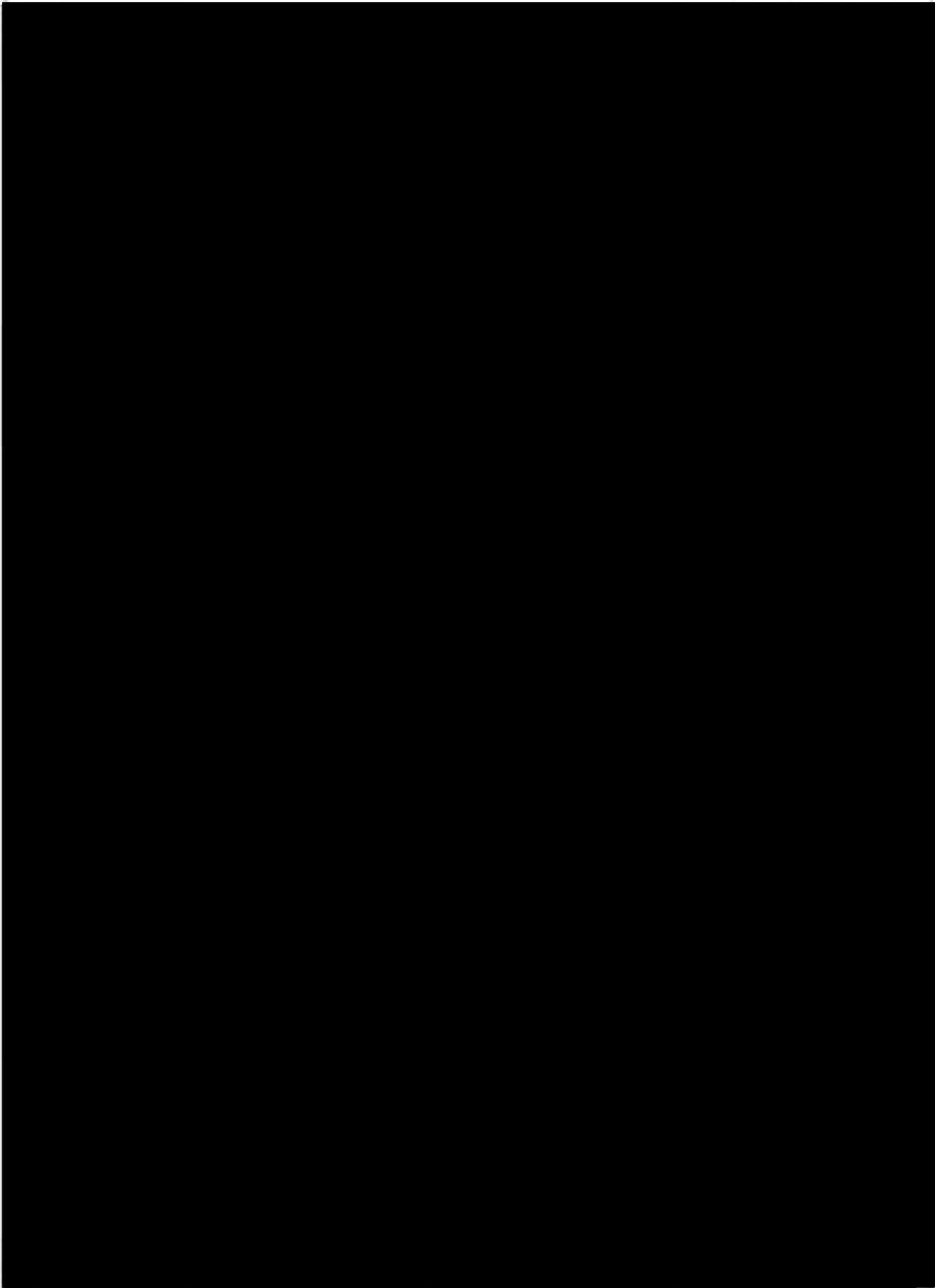
17.4 **Third Party Applications and Customer Data** . If the Customer installs or enables Third Party Applications for use with Services, the Customer acknowledges that the Contractor may allow providers of those Third Party Applications to access Customer Data as required for the interoperation and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

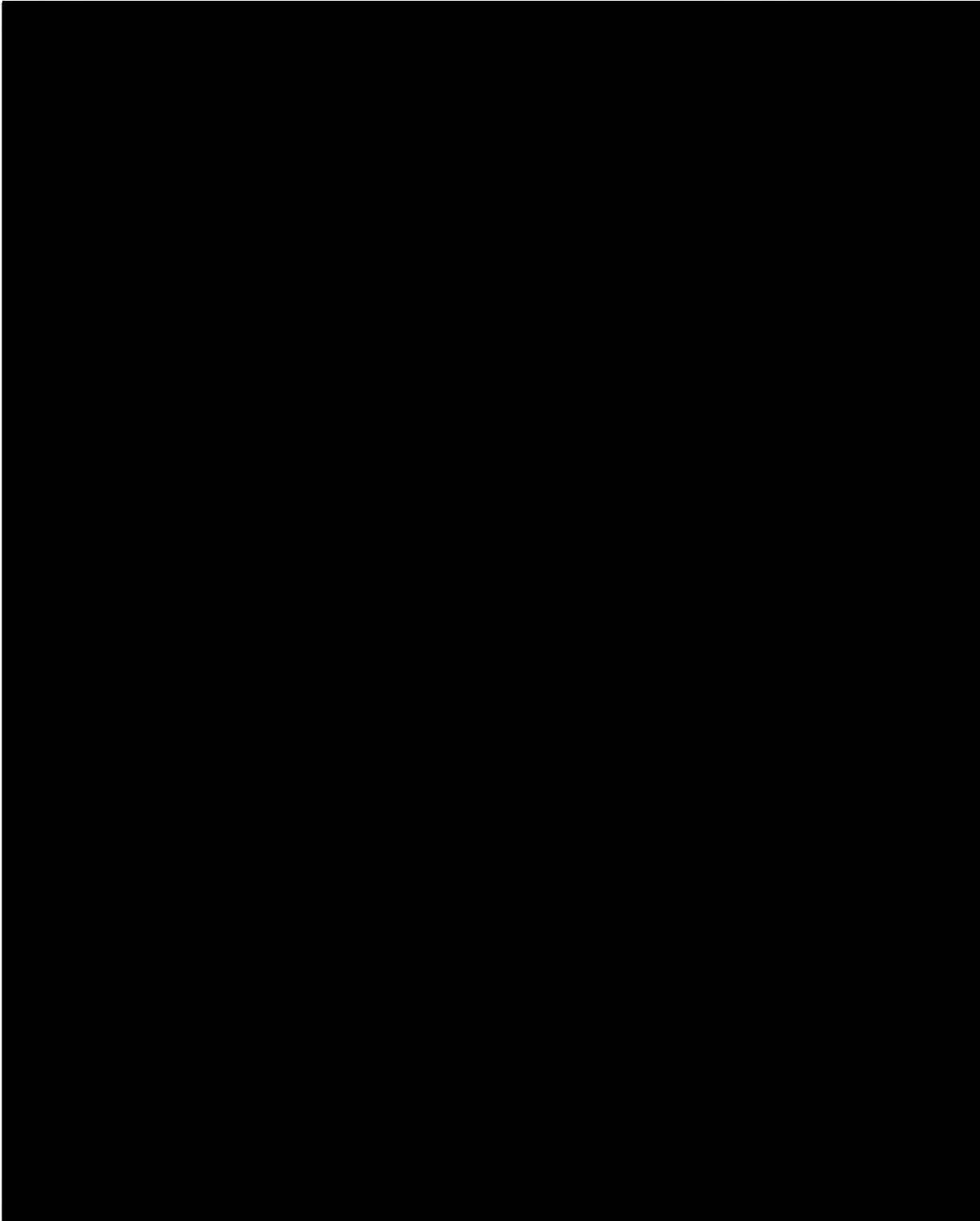
17.5 **Reservation of Rights in Service** . Subject to the limited rights expressly granted hereunder, the Contractor reserves all rights, title and interest in and to the As a Service, including all related intellectual property rights. No rights are granted to the Customer hereunder other than as expressly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

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









Box 3 Customer Use and Access to the As a Service

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

