

MODULE 13A – MAJOR PROJECT SYSTEMS INTEGRATION SERVICES

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1 INTERPRETATION

1.1 The terms and conditions included in this Module 13 form part of the Customer Contract and apply when the Parties state that the Major Project Systems Integration Services forms part of the Customer Contract in Item 8 of the General Order Form.

1.2 Depending on the structure of the relevant project, the Customer may elect to acquire various other Deliverables from the Contractor (in connection with the Major Project Systems Integration Services) pursuant to various other Modules that may be incorporated into this Contract.

1.3 In this Module 13A, unless the contrary intention appears:

“Acceptance Testing Requirements” means the Customer’s requirements for:

- (a) the Acceptance Tests to be conducted by the Contractor; and
- (b) the Acceptance Tests to be conducted by the Customer,

including the points at which that testing will be performed and containing the information referred to in clause 15, as set out the Customer’s Order Documents (and as further specified in the Order Details, where applicable).

“Additional Hardware” has the meaning given in clause 6.2(a)(iv).

“Capacity Forecast” means the Customer’s estimate of the likely future capacity requirements of the System, as set out in the capacity forecast included in the Order Details.

“Contractor Delivered Software” means software (other than the Licensed Software) that is developed or provided by the Contractor under this Module 13A, including without limitation:

- (a) the software developed by the Contractor under clause 6;
- (b) the Contractor Interfaces; and
- (c) any other Deliverables which comprise software.

“Contractor Interface” has the meaning given in clause 8.1.

“Customer’s Data” means:

- (a) the Customer’s data to be migrated to the System, as specified in the data migration requirements set out the Customer’s Order Documents (and as further specified in the Order, where applicable); and
- (b) any other data of the Customer residing on either the Customer Environment or the System.

“Customer Environment” means the Customer’s information technology environment, including software, hardware and systems, but excluding the System, as set out in the Customer’s Order Documents (and as further specified in the Order Details, where applicable).

“Customer Interface” has the meaning given in clause 8.1.

“Customer Objectives” means the objectives set out in the Customer’s Standard Order Requirements Folder.

“Customer Outcomes” means the required outcomes set out in the Customer’s Standard

Order Requirements Folder,

“Customer Site(s)” means the location(s) at which the System is to be physically installed and operated from, and the location(s) at which the System is to be used by end-users, as specified in the Order Details (or such other location(s) as may be nominated by the Customer from time to time).

“Customer’s Standard Order Requirements Folder” means the Customer’s requirements that are:

- (a) collated in a designated folder of documents;
- (b) applicable to all of the Customer’s Orders; and
- (c) deemed to be incorporated into and form part of each Order (except where and to the extent expressly stated otherwise in the Order).

“Data Migration Plan” means the plan described in clause 14.1.

“Data Migration Requirements” means the Customer’s requirements for the migration of data to the System, as set out in the Customer’s Standard Order Documents (and as further specified in the Order, where applicable).

“Delay Event” has the meaning given in clause 11.1.

“Delay Notice” has the meaning given in clause 11.2.

“Detailed Interface Specifications” has the meaning given in clause 4.1(a)(iv).

“Further Project Documents” has the meaning given in clause 4.1(a).

“Go Live Acceptance Date” has the meaning given in clause 15.2(a).

“Hardware Sizing” has the meaning given in clause 4.1(a)(iii).

“Initial Project Documents” means:

- (a) each of the following documents included in the Customer’s Standard Order Documents (incorporating requirements that are common to all of the Customer’s Orders):
 - (i) functional specifications;
 - (ii) Performance Requirements;
 - (iii) architectural requirements;
 - (iv) product requirements;
 - (v) Data Migration Requirements;
 - (vi) Acceptance Testing Requirements;
 - (vii) Stability Period Requirements;
 - (viii) quality assurance requirements;
 - (ix) security requirements;
 - (x) knowledge transfer requirements; and

- (b) each of the following documents, which may be included in the Customer's Standard Order Documents and/or the Order (depending on whether the relevant requirements are common to all of the Customer's Orders, or specific to a single Order only):
- (i) draft Project Implementation and Payment Plan;
 - (ii) Resourcing Plan;
 - (iii) Interface Requirements;
 - (iv) Customer Environment;
 - (v) system requirements;
 - (vi) Capacity Forecast;
 - (vii) implementation requirements; and
 - (viii) training requirements.

"Interface Requirements" means the Customer's interface requirements included in the Customer's Order Documents (and as further specified in the Order, if applicable).

"IT Service Provider" means any provider of information technology or telecommunications goods or services to the Customer, excluding the Contractor.

"Legal Requirements" means Australian laws, regulations and by-laws, and the lawful requirements of any Australian authority.

"Licensed Software" means the software that is to be integrated within the Customer Environment and which therefore forms the basis of the System, which is licensed to the Customer either:

- (a) by the Contractor under Module 3; or
- (b) by a third party under a separate agreement.

"Major Project Systems Integration Services" means the Services specified in this Module 13A and the Customer's Order Documents (and as further specified in the Order), which are required to be provided by the Contractor to the Customer in accordance with the terms set out in this Module 13 and Part 2Customer Contract.

"Non-Contractor Tasks" means those tasks that are required to be performed and deliverables that are required to be provided by the Customer and IT Service Providers in relation to the implementation of the System, and which are described within the detailed Project Implementation and Payment Plan prepared by the Contractor as contemplated by clause 5.

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

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

to any third parties.

“Payment Milestone” has the meaning given in clause 31.1.

“Performance Requirements” means the Customer’s requirements for the performance of the installed and integrated System, as set out the Customer’s Order Documents (and as further specified in the Order, where applicable).

“Project Documents” means the Initial Project Documents and the Further Project Documents.

“Regulatory Change” has the meaning given in clause 30.3(a).

“Required Configuration” has the meaning given in clause 4.1(a)(ii).

“Resourcing Plan” means the resourcing plan annexed to the Order.

“Stability Period” means the period required to assess the stability of a Deliverable, such period to commence on the Go Live Acceptance Date and to continue until the Stability Requirements are met.

“Stability Requirements” means the requirements that a Deliverable must meet in the production environment for a continuous period of 6 months, as set out the Customer’s Order Documents (and as further specified in the Order, where applicable).

“System” means the system described in the Project Documents, comprising among other things the Licensed Software and the Contractor Delivered Software.

“Third Party Suppliers” means suppliers of services (other than the Contractor) pursuant to contractual arrangements that were in place with the Customer, or with any third party supplying services to the Customer, prior to the Commencement Date.

“Third Party Supply Agreements” means those agreement (or any party of those agreement, where so specified that are entered into between the Customer and Third Party Suppliers and listed in the Order.

“Transition-out Charges” has the meaning given in clause 36.4(b).

“Transition-out Period” has the meaning given in clause 36.1(a).

“Transition-out Services” has the meaning given in clause 36.1(b).

1.4 Other capitalised words and expressions used in this Module 13A are defined in the Dictionary **1.5** In addition to all of the terms of Part 1 and Part 2 which otherwise apply to this Module 13:

- (a) clauses 6.3-6.9 (inclusive), 6.14-6.17 (inclusive), and 6.19-6.45(inclusive) of the Customer Contract apply to this Module 13; and
- (b) for the purposes of clauses 6.1 and 6.2 of the Customer Contract, this clause 1.5 fulfils all of the requirements relating to the application of the clauses referred to in clause 1.5(a) of this Module 13, and nothing further is required to be specified in the Order; and
- (c) for the purposes of clause 26.1 and 26.2 of the Customer Contract, this clause 1.5 gives rise to a Contract Variation in relation to the application of the clauses referred to in clause 1.5(a) of this Module 13 (in accordance with the procedures set out in Schedule 4).

2 **Period of services**

2.1 The Major Project Systems Integration Services must be provided for the period commencing on the commencement date of the Major Project Systems Integration Services (as set out in

the Order Details) and continuing until the Major Project Systems Integration Services have been fully performed by the Contractor, unless earlier terminated in accordance with the Agreement.

3 Stages

- 3.1 The preparation and approval of the Further Project Documents under clause 4 is Stage 1 of the Major Project Systems Integration Services. The other Stages of the Major Project Systems Integration Services will be as set out in the Project Implementation and Payment Plan.

4 Development of Further Project Documents

4.1 Preparation of Further Project Documents by the Contractor

- (a) In consultation with the Customer, and by the dates set out in the Project Implementation and Payment Plan, the Contractor must prepare:
- (i) detailed technical specifications for the System;
 - (ii) a configuration for:
 - (A) the Licensed Software and the Contractor Delivered Software; and
 - (B) the hardware on which the System is to be installed,**("Required Configuration")**;
 - (iii) a hardware sizing, setting out the hardware on which the Contractor recommends the System is installed in order to meet the Capacity Forecast and the Performance Requirements (**"Hardware Sizing"**);
 - (iv) detailed specifications for the interfaces identified in the Interface Requirements (**"Detailed Interface Specifications"**);
 - (v) a more detailed version of the Project Implementation and Payment Plan, as described in clause 5;
 - (vi) a Data Migration Plan, as described in clause 14.1;
 - (vii) the Acceptance Test plans referred to in clause 10 of the Customer Contract (which do not need to be included in the Order, as described in that clause, but rather are to be developed as part of the Further Project Documents), consistent with clause 15 and the Acceptance Testing Requirements;
 - (viii) a quality plan, setting out the quality assurance requirements that the Contractor will meet in performing the Major Project Systems Integration Services, based on the quality assurance requirements, as set out the Customer's Order Documents (and as further specified in the Order, where applicable),

(each a **"Further Project Document"**), which must be based on and incorporate all of the requirements set out in the Contract, including without limitation the Initial Project Documents.

- (b) In preparing the Further Project Documents the Contractor must not seek to limit its obligations under the Contract or impose obligations on the Customer through the insertion of assumptions, dependencies or the like, unless those limitations or obligations are contemplated by the Initial Project Documents.

4.2 Revisions to Further Project Documents

- (a) Without limiting the Contractor's obligations under clause 4.1, the Contractor must promptly make any amendments to a Further Project Document that the Customer

requests in order for such Further Project Document to comply with clause 4.1.

- (b) The Contractor must ensure that each Further Project Document includes a version number, change log and the relevant approval date and details for each version of that Further Project Document.

4.3 Approval of Further Project Documents by the Customer

- (a) Once the Customer is satisfied with each Further Project Document, the Customer will approve that Further Project Document in writing.
- (b) Once approved, each Further Project Document will be binding on the Parties, and will be deemed to be incorporated into and form part of the Order.

4.4 Inconsistencies

- (a) If there is any inconsistency between the Initial Project Documents and the Further Project Documents, the Initial Project Documents will prevail.
- (b) If, in the course of developing the Further Project Documents, the Customer agrees to amend its requirements as set out in the Initial Project Documents, then the Parties must amend the Initial Project Documents accordingly in accordance with clause 26.1 and 26.2 of the Customer Contract.

4.5 Statement of Requirements

The Contractor acknowledges that the Initial Project Documents constitute the Statement of Requirements that the Customer is required to provide.

5 Project Implementation and Payment Plan

5.1 Each Order will include a draft Project Implementation and Payment Plan. One of the Further Project Documents that the Contractor must prepare under clause 4 is a more detailed version of this draft Project Implementation and Payment Plan, which must describe in detail the specific work steps that the Contractor proposes to take in performing its obligations under the Order.

5.2 Once the more detailed version of the Project Implementation and Payment Plan is approved by the Customer under clause 4.3, it will replace the draft Project Implementation and Payment Plan originally included in the Order.

6 Required Configuration and Hardware Sizing

6.1 Reliance on Required Configuration and Hardware Sizing

- (a) The Customer is responsible for configuring the hardware on which the System is installed, as specified in the Required Configuration and Hardware Sizing.
- (b) The Contractor acknowledges that the Customer has relied on the Required Configuration and Hardware Sizing for the purpose of enabling the System to meet the requirements set out in the Project Documents.
- (c) The Customer acknowledges, however, that the Hardware Sizing has been designed by the Contractor on the basis of Capacity Forecast and the Performance Requirements.

6.2 Unsuitability

- (a) If the Customer has complied with the Required Configuration and Hardware Sizing, and the hardware provided by the Customer:
 - (i) causes the System to fail to meet the Project Documents;
 - (ii) causes the System to fail to meet the Acceptance Criteria; or
 - (iii) causes a breach of the warranties provided by the Contractor under the Contract,

at any time before expiry of the Warranty Period other than due to the Capacity Forecast proving to be inadequate, the Customer may:

- (iv) require the Contractor to make any necessary modifications to that hardware (which may include the procurement of additional hardware ("Additional Hardware")), and the Contractor must:
 - (A) pay 90% of the costs associated with such modifications (including where applicable the costs of procuring the Additional Hardware); and
 - (B) carry out any necessary work or modifications it believes necessary or that are requested by Customer to ensure that the Additional Hardware is suitable to enable the System to meet the Project Documents, Acceptance Criteria and the warranties provided by the Contractor; or
 - (v) terminate the Contract and receive a full refund of all monies paid to the Contractor up until the date of termination.
- (b) Paragraph (a) sets out the Customer's sole remedy with respect to:
- (i) a failure of the System to meet the Project Documents;
 - (ii) a failure of the System to fail to meet the Acceptance Criteria; or
 - (iii) a breach of the warranties provided by the Contractor under the Contract,
- where such failure or breach is caused by the hardware at any time before expiry of the Warranty Period.

6.3 Sufficiency of Required Configuration and Hardware Sizing for future needs

The Customer is relying on the Required Configuration and Hardware Sizing to determine the required investment in hardware for the ensuing three year period after the Actual Acceptance Date. Accordingly, the Contractor must ensure that any modifications it makes or recommends be made to the System (including the implementation of new versions) during that three year period do not require a change in that hardware, except where such change is a result of the Customer's Capacity Forecast proving to be inadequate.

7 Software development

7.1 The Contractor must:

- (a) develop the software components necessary to provide an integrated System, as described in the Project Documents (which will comprise "**Contractor Delivered Software**"); and
- (b) ensure that such Contractor Delivered Software integrates with each other component of the System.

8 Development of interfaces

8.1 Responsibilities of the Contractor

- (a) The Interface Requirements included in the Customer's Order Documents (and as further specified in the Order, if applicable) will specify whether each interface between the System and the Customer Environment is to be developed or provided by:
 - (i) the Contractor (a "Contractor Interface"); or
 - (ii) the Customer or its other contractors (a "Customer Interface").
- (b) It is the responsibility of the Contractor, in preparing the Detailed Interface Specifications,

to confirm that the Interface Requirements identify all of the interfaces that are necessary in order for the System to properly interface with the Customer Environment and to comply with the Project Documents. If, in preparing the Detailed Interface Specifications, the Contractor:

- (i) identifies a missing interface, and the Customer wishes that interface to be a Contractor Interface, the Contractor agrees to vary the Interface Requirements accordingly pursuant to a Contract Variation;
- (ii) identifies a missing interface, and the Customer wishes that interface to be a Customer Interface, that interface will be considered added to the Interface Requirements and that addition will not be considered a Contract Variation; or
- (iii) fails to identify an interface that is later found to be necessary, that interface will be a Contractor Interface and will be considered to be added to the Interface Requirements and that addition will not be considered a Contract Variation.

8.2 Development of Contractor Interfaces

The Contractor must develop or provide all of the Contractor Interfaces, and in doing so:

- (a) where an IT Service Provider requires certification prior to the interfacing of the System with any other system, the Contractor must obtain that certification on a timely basis and in any event within sufficient time to enable compliance with the Project Implementation and Payment Plan; and
- (b) unless otherwise stated in the Interface Requirements, the Contractor is responsible for the entire development and provision of that interface at both ends of the interface, including without limitation any necessary interfacing requirements of the relevant part of the Customer Environment at the other end of the interface. In order to do so, the Contractor must work with and where necessary (but subject to clauses 8.14, 8.15, 8.16 and 8.17 of the Customer Contract) engage as a subcontractor any IT Service Provider who is responsible for providing any other software, hardware or system at the other end of that interface.

8.3 Assistance with Customer Interfaces

The Contractor must provide to the Customer and any other relevant IT Service Provider:

- (a) everything necessary for a reasonably qualified IT professional to provide or develop each Customer Interface without further reference to the Contractor (including without limitation specifications and APIs); and
- (b) any other relevant co-operation and assistance to the Customer or those other contractors that may be reasonably requested by the Customer from time to time in relation to each Customer Interface.

9 Delivery, installation and integration

9.1 Delivery and installation

The Contractor must:

- (a) deliver to the Customer Site(s) all of the components of the System (other than the Licensed Software, where that is licensed by a third party under a separate agreement), together with the relevant Documentation; and
- (b) install and configure all of the components of the System (including the Licensed Software) at those Customer Site(s) and on the Customer's hardware, by the date(s) specified in the Project Implementation and Payment Plan.

9.2 Integration of the System

The Contractor must, by the date(s) specified in the Project Implementation and Payment Plan, integrate all of the components of the System with each other and the Customer Environment in accordance with the Project Documents.

9.3 Performance of other obligations

The Contractor must perform all of its other obligations described in the Project Documents in accordance with the Project Implementation and Payment Plan.

9.4 Knowledge experts

If, prior to the expiry of the Stability Period, the Customer has notified the Contractor of a technical issue in relation to the Licensed Software, the Services or any other Deliverables and this issue cannot be resolved by the Contractor's Australian-based personnel, the Contractor will arrange at the earliest possible opportunity for experienced knowledge experts from the Contractor's head office (or such other location where the relevant specialized expertise is located) to be available to assist with the issue in a timely manner as required (whether via electronic means or on location) to provide advice and assistance as required in relation to the relevant issue (at the Contractor's cost).

10 Minimisation of Customer interruption

10.1 The Contractor must, to the extent reasonably practicable, perform the Major Project Systems Integration Services with minimal interruption to the normal business activities of the Customer.

11 Delays

11.1 If:

- (a) an Event occurs; or
- (b) there is a delay by the Customer or a IT Service Provider in the performance of a Non-Contractor Task,

which adversely affects the ability of the Contractor to perform its obligations under the Contract by the dates set out in the Project Implementation and Payment Plan (a "**Delay Event**"), then the affected dates may be extended in accordance with the procedures described in this clause 11.

11.2 If a Delay Event occurs, the Contractor must:

- (a) submit to the Customer a written notification of the Delay Event within three working days of the date on which the Contractor first became aware, or ought reasonably to have become aware, of its occurrence ("**Delay Notice**"):
 - (i) proposing extended dates for the Project Implementation and Payment Plan, which must be reasonable having regard to the circumstances and clause 11.4; and
 - (ii) describing with reasonable particularity the reason for the delay, an estimate of the likely duration of the Delay Event, and the impact of the Delay Event on the Project Implementation and Payment Plan; and
- (b) take all reasonable actions within its control to adhere to the Project Implementation and Payment Plan and mitigate the impact of the Delay Event, including the use of alternate sources and the development of suitable work-around plans where appropriate.

11.3 Within three working days of receiving a Delay Notice the Customer must do one of the following:

- (a) accept the Delay Notice, in which case the extensions to the dates in the Project Implementation and Payment Plan will be made;
- (b) reject the Delay Notice on the basis that the Customer does not believe that the length of the extension claimed is reasonable having regard to the circumstances and clause 11.4, and issue an amended Delay Notice setting out the extension the Customer believes is reasonable having regard to the circumstances and clause 11.4; or
- (c) reject the Delay Notice on the basis that the Customer does not believe that the event is a Delay Event, or clause 11.4 applies so that the Contractor is not entitled to any extension.

If the Contractor disagrees with the Customer's notice, the matter will be resolved in

accordance with the issue resolution procedures set out in the Agreement.

- 11.4** The Contractor will not be entitled to an extension of the dates set out in the Project Implementation and Payment Plan to the extent that:
- (a) the Delay Event has been caused or contributed to by the Contractor, including without limitation as a result of the Contractor failing to perform its project management obligations if applicable; or
 - (b) the Contractor has failed to comply with clause 11.2(b).
- 11.5** Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a Delay Event, then to the extent that the delays are concurrent, the Contractor will not be entitled to an extension of the timeframes in the Project Implementation and Payment Plan.
- 11.6** The provisions set out in this clause 11 apply instead of those set out in clause 6.25 and 6.26 of the Customer Contract, which does not apply to this Module 13A.
- 11.7** Clause 6.29(d) of the Customer Contract will apply to this Module 13A as if it included a reference to any extension to the dates in the Project Implementation and Payment Plan under this clause 11.

12 Licence rights extending to IT Service Providers

- 12.1** The licence(s) granted to the Customer under clause 13.5 of the Customer Contract also permit:
- (a) any IT Service Providers to install, configure and maintain the System for the Customer; and
 - (b) the Customer to sublicense the rights granted to the Customer to any of its IT Service Providers,

provided that the relevant IT Service Providers may only exercise such rights for the benefit of the Customer, subject always to compliance with the terms and conditions contained in the Customer Contract.

13 Source code

- 13.1** When delivering any Contractor Delivered Software to the Customer, the Contractor must deliver the source code for that Contractor Delivered Software suitable for compilation together with Documentation to enable the Customer to amend the source code if necessary.
- 13.2** The source code must be provided in a format and on a medium which is suitable for compilation and use in the operating environment in which the Contractor Delivered Software is designed to be used.
- 13.3** Interim copies of the source code must be delivered by the Contractor to the Customer at the times specified in the Project Implementation and Payment Plan or at any time upon request by the Customer.

14 Data migration

14.1 Preparation of Data Migration Plan

One of the Further Project Documents that the Contractor must prepare under clause 4 is the Data Migration Plan. This Data Migration Plan must include:

- (a) an assessment and definition of the:
 - (i) existing Customer systems from which the Customer's Data is to be extracted;
 - (ii) the Customer's data migration goals;

- (iii) required Deliverables; and
 - (iv) the user requirements;
- (b) a data conversion and migration strategy that is appropriate for the Customer's needs and its user population covering all appropriate planning and timetabling issues associated with the data conversion and migration including:
 - (i) identification of the Services to be performed;
 - (ii) identification and procurement of necessary Products;
 - (iii) allocation of responsibilities within each Party's organisation;
 - (iv) staging of the project; and
 - (v) implementation of the Services;
- (c) preparation/pre-migration which may include recovering data, designing extraction and functional specifications, and developing contingency arrangements should the migration of the Customer's Data not be successful;
- (d) procurement or design and development of relevant software and systems to effect the data conversion and migration;
- (e) testing and acceptance of the data prior to the migration of the data into the production environment in accordance with clause 10 of the Customer Contract to ensure that the conversion and cleansing of the Customer's Data has been successful; and
- (f) migration including installation of the migrated data and as applicable development of associated documentation and training of users,

all in accordance with the Data Migration Requirements.

14.2 Data cleansing

- (a) If the Order states that data cleansing is to be performed by the Contractor, the Contractor must achieve an agreed level of accuracy and consistency as specified in the Data Migration Plan for the Customer's Data by:
 - (i) eliminating duplicate records;
 - (ii) correcting misspellings and errors;
 - (iii) ensuring that there are consistent descriptions, punctuation, and syntax; and
 - (iv) resolving any other accuracy, omission and consistency issues in relation to the content specified in the Data Migration Requirements as the Contractor's responsibility.
- (b) The Customer shall perform its responsibilities or tasks related to the data cleansing in accordance with the Data Migration Plan.

14.3 Customer's Data for migration

If specified in the Order, the Customer must by the date specified in the Project Implementation and Payment Plan, extract and provide the Customer's Data to the Contractor for data migration and conversion into the production environment.

14.4 Data conversion and migration

The Contractor must convert and migrate the Customer's Data to the System in accordance with the Project Implementation and Payment Plan and the Data Migration Plan, including

without limitation by:

- (a) managing the data conversion and migration process;
- (b) implementing all activities set out in the Data Migration Plan for the conversion and migration of the Customer's Data;
- (c) performing any other Services specified in the Data Migration Plan; and
- (d) doing all such other things within the Parties agreed roles and responsibilities under the Contract necessary to ensure the successful conversion and migration of the Customer's Data.

14.5 Migrated data warranty

- (a) Subject to paragraph (b), the Contractor warrants that the Customer's Data, when fully migrated into the production environment, will accurately reflect the data that existed prior to migration. The Contractor is not responsible for any errors or omissions that are contained in the Customer's Data that it is not required to correct under this clause 14.
- (b) If the Customer's Data is amended or otherwise edited or enhanced by the Contractor in the course of and as part of performing its obligations under this clause 14, the Contractor warrants that the Customer's Data when migrated in accordance with the Contract complies with the Data Migration Plan.

15 Acceptance Testing

15.1 Acceptance Tests are not to be performed just once, as is the case for other Modules, but rather on an iterative basis a number of times throughout the Contract Period. The Parties therefore agree that the Acceptance Tests described in clause 10 of the Customer Contract will apply:

- (a) in relation to converted and cleansed Customer Data, as contemplated by clause 14.1(e); and
- (b) at every other point described in the Acceptance Testing Requirements.

15.2 Because the Acceptance Tests are to be performed a number of times:

- (a) there will be multiple conditional acceptance dates. The conditional acceptance date which occurs immediately before a Deliverable is to be used in the production environment is the **Go Live Acceptance Date**. There will be multiple Go-Live Acceptance Dates. A reference the Customer Contract to the Actual Acceptance Date is a reference to date when all of the Stability Requirements for all of the Deliverables have been met for the duration of the Stability Periods; and
- (b) the fact that a Deliverable may have been tested and accepted by the Customer as part of one Acceptance Test does not mean that the Customer has actually accepted that Deliverable, and notwithstanding clause 10 of the Customer Contract a Deliverable will not be considered to have been actually accepted by the Customer until the date when all of the Stability Requirements for all of the Deliverables have been met for the duration of the Stability Periods.

15.3 The Acceptance Testing Requirements will describe, for each of the Acceptance Tests referred to in clause 15.2(a):

- (a) the Deliverables that are to be tested;
- (b) the entry criteria that must be satisfied before the Acceptance Test is to commence;
- (c) the allocation of each Party's responsibilities in relation to testing, and in particular whether the Acceptance Test is to be conducted by the Contractor or the Customer;
- (d) the scheduling of the Acceptance Tests;

- (e) the testing methodology to be applied; and
- (f) the Acceptance Criteria for that Acceptance Test.

For the purposes of this Module 13, the Acceptance Criteria defined in the Dictionary in Part 3 means the Acceptance Criteria set out in the Acceptance Testing Requirements.

The provisions set out in this clause 15.3 apply instead of those set out in clause 10.3 of the Customer Contract, which do not apply to this Module 13.

16 Stability periods

- 16.1 Without limiting its other obligations under this Agreement, the Contractor must remedy any failure to meet the Stability Requirements that occurs during any Stability Period.
- 16.2 A failure of the System to meet the Stability Requirements at any time during a Stability Period will be considered a Substantial Breach, entitling the Customer to terminate the Customer Contract.
- 16.3 If the Customer terminates the Contract as contemplated by clause 16.2, the Customer will be entitled, without limiting its other rights or remedies, to receive a full refund of all moneys paid by the Customer to the Contractor up until the date of termination.

17 Additional Documentation requirements

- 17.1 The "Documentation" that is defined in the Dictionary in Part 3 includes any documentation that the Project Documents describe as being the responsibility of the Contractor to provide.
- 17.2 When providing the Documentation under clause 5.4 of the Customer Contract:
 - (a) the Contractor must comply with any timing requirements for provision of that Documentation that are set out in the Project Implementation and Payment Plan; and
 - (b) the Contractor must provide both hard copy and editable electronic copies of that Documentation, so that the Customer can alter the Documentation and use it to create other documentation for use in accordance with the Contract. The Contractor is not responsible for any such alterations made by the Customer which the Contractor has not approved.
- 17.3 If the correction of Defects or faults in the Deliverables necessitates an amendment to the Documentation, the Contractor shall supply such number of copies of the amended Documentation (or the amendments to the Documentation) to the Customer as is necessary to update the Customer's existing Documentation within 90 days of the correction or within a shorter period reasonably specified by the customer if in all the circumstances the Customer requires copies of those amendments within that shorter period.

18 Management of third party supply agreements

- 18.1 The Third Party Supply Agreements will be managed by the Contractor from the applicable date specified in the Order as follows:
 - (a) The Contractor must assume operational responsibility, taking all reasonable steps to effectively manage Third Party Suppliers, for the matters identified in clause 18.1(b) in relation to each of the Third Party Supply Agreements, from the Commencement Date until the date that the Customer no longer requires the products and services provided pursuant to the relevant Third Party Supply Agreement.
 - (b) For so long as the Contractor is required to manage the Third Party Supply Agreements under clause 18.1(a):
 - (i) the Contractor will manage the relevant Third Party Supply Agreements in accordance with directions provided by the Customer from time to time, including:

- (A) planning all activities necessary and identifying the parties needed to perform activities and the time when those activities must be performed, including Third Party Suppliers activities;
 - (B) managing and co-ordinating Third Party Suppliers involved in the activities, including managing inter-provider dependencies;
 - (C) monitoring Third Party Suppliers' performance against delivery dates for any deliverables for which they are responsible and notifying the Customer where a Third Party Supplier is at risk of not meeting such delivery dates; and
 - (D) exclusively managing communications that are of an operational nature between all Third Party Suppliers and the Customer;
- (ii) the Contractor is not liable for any acts or omissions of any third party under the relevant Third Party Supply Agreements except to the extent any such acts or omissions are directly caused by the Contractor (including any failure by the Contractor to comply with its management obligations under this clause 18);
 - (iii) the Customer grants or will grant to the Contractor the rights of access to, and benefits and use of, any third party software, facilities, equipment, documentation, materials and/or services under the Third Party Supply Agreements, to the extent that the Customer is able to pursuant to its existing contractual arrangements, to enable the Contractor to perform its obligations under this clause 18 (provided that the Contractor is excused from those obligations to the extent that it is prevented from performing them because the Customer is unable to grant the rights contemplated in this clause 18.1(b)(iii)), and the Customer must notify the Contractor of any such circumstances in writing in advance);
 - (iv) the Contractor must manage the operational aspects of Third Party Supply Agreements, and assume responsibility for services delivered under the Third Party Supply Agreements as follows:
 - (A) the Contractor must obtain the Customer's prior written consent before exercising or deciding not to exercise any right or performing or deciding not to perform any obligation under or in relation to a Third Party Supply Agreement ("act or omission") if such act or omission may adversely affect the Customer or its business in a material respect;

- (B) in relation to invoices issued pursuant to the Third Party Supply Agreement, the Contractor must:
 - (1) take delivery of all such invoices (with notification of such redirection to the relevant supplier to be co-ordinated with the Customer); and
 - (2) carry out all verification processes (including audits, where applicable under the relevant Third Party Supply Agreement) necessary to ascertain the validity of such invoices; and
- (C) advise the Customer in writing in a timely manner as to the outcome of such verification processes and audits, and the appropriate amount payable under such invoices (after allowing for any available deductions),
 provided that the Customer continues to be responsible for paying directly to the Third Party the charges payable under those Third Party Supply Agreements;
- (v) the Contractor must act in accordance with its contractual obligations under this Agreement and with regard to the best interests of the Customer, and not in the interests of a Third Party Supplier in relation to the Third Party Supply Agreements; and
- (vi) the Contractor, subject to clauses 18 and, 19 of the Customer Contract, agrees to be liable for any losses suffered or incurred as a result of any breach by the Contractor of its obligations under this clause 18 in relation to a Third Party Supply Agreement (but does not extend to any other losses suffered by the Customer in relation to any Third Party Supply Agreements).
- (c) Subject to the Contractor complying with its obligations under clauses 18.1(a) and (b), the Contractor will escalate to the Customer any matters that are unable to be resolved in a timely matter and act in accordance with the Customer's directions in relation to such matters.
- (d) Nothing in clause 18.1(b)(i),
 - (i) obliges the Contractor to perform services on behalf of Third Party Suppliers and the Contractor is not liable for the contractual obligations of any Third Party Supplier to the Customer; or
 - (ii) affects the Contractor's obligations under this Module 13.
- (e) The Contractor acknowledges that the Customer has used all reasonable endeavours to provide the Contractor with all available copies of the Third Party Supply Agreements (including all updates and amendments to the same). The Customer will continue to make available copies of any amendments to the Third Party Supply Agreements entered into by the Customer from time to time, and the Contractor is excused from liability to the extent that it is prevented from performing any obligations under this clause 18 in relation to any particular Third Party Agreement where and to the extent that it does not have a copy of all or part of the relevant Third Party Supply Agreement.

19 Business contingency arrangements

19.1 The Business Contingency Plan prepared by the Contractor under clause 6.45 of the Customer Contract must specify:

- (a) the steps that the Contractor will take, to the extent that it is reasonably able to do so, to ensure that it is able to continue performing the Major Project Systems Integration Services regardless of any disruption for whatever reason;
- (b) the process that the Contractor will follow for:
 - (i) altering the Customer of any risks to the continuity of performing the Major Project Systems Integration Services; and

- (ii) keeping the Customer informed of its performance of the steps referred to in paragraph (a); and
- (c) the post-incident reviews that the Contractor will conduct with the Customer following any disruption to the Major Project Systems Integration Services.

19.2 The Contractor must comply with its obligations under the Business Contingency Plan.

20 Security

20.1 The Contractor must:

- (a) implement and maintain appropriate security measures relating to the Major Project Systems Integration Services with the purpose of the prevention of unauthorised access by any third party to the System or the Customer Environment;
- (b) ensure that all software deployed in the delivery of the Major Project Systems Integration Services incorporates industry best practice in relation to the implementation of encryption systems, anti-virus protection, patches, updates and upgrades for security purposes;
- (c) implement and maintain appropriate measures to maintain the confidentiality and integrity of the Customer's Data and any other data of the Customer;
- (d) provide an applicable information security management system in accordance with AS/NZS ISO/IEC 17799:2001 Information Technology – Code of Practice for Information Security Management (as updated from time to time) and, as relevant, AS 13335 Parts 1 to 5 Information Technology – Guidelines for the Management of IT Security (as updated from time to time) or equivalent;
- (e) meet the following standards:
 - (i) “Information Security Guidelines for NSW Government – Part 3: Information Security Baseline Controls” (June, 2003), as updated from time to time (available from <http://www.oict.nsw.gov.au>);
 - (ii) AS/NZS 7799.2:2000 (previously known as 4444.2) Information Security Management - Specification for Information Security Management Systems, as updated from time to time; and
 - (iii) relevant information privacy statutes and codes of practice issued pursuant to such privacy statutes; and
- (f) address any specific security needs of the Customer in relation to the Major Project Systems Integration Services, as notified to the Contractor in writing from time to time, provided that to the extent such request is in addition to the requirements for compliance with this clause 20, the Customer must bear the cost of such additional requirements.

20.2 The Contractor must provide to the Customer:

- (a) as soon as reasonably practicable following a request by the Customer:
 - (i) a statement of the types and severity of any security risks to confidentiality and integrity against which the Contractor's systems are safeguarded from time to time;
 - (ii) a copy of the Contractor's then current security policy; and
 - (iii) the details of any changes made to the security policy since the last time a copy was provided to that Customer; and
- (b) following any security incident affecting the Customer, the Contractor or any IT Service

Provider in respect of the Major Project Systems Integration Services:

- (i) notification of the security incident within one working day; and
- (ii) a detailed security incident report within three working days.

21 Viruses

21.1 The Contractor must ensure that:

- (a) the Contractor Delivered Software is free of Viruses;
- (b) the other components of the System, including the Licensed Software, is free of Viruses to the extent that the Contractor, conducting quality assurance tests in accordance with best industry practices, can detect such Viruses; and
- (c) it does not, as a result of the performance of the Major Project Systems Integration Services, insert any Viruses into the Customer Environment.

21.2 Without limiting clause 21.1, the Contractor must not activate any Virus for the purpose of disabling or limiting the Customer's use of the System at any time, even after termination or expiry of the Contract. This clause 21.2 will survive the termination or expiry of the Contract.

22 Licensed Software

22.1 Where the Licensed Software is licensed to the Customer by a third party under a separate agreement, the Order will specify whether:

- (a) the Licensed Software is a Customer Supplied Item, in which case the Contractor is granted a non-exclusive, non-transferable licence for the Contract Period to use the Customer's Material's to the extent necessary for the Contractor to use the Licensed Software in order to provide the Deliverables; or
- (b) the Licensed Software is not a Customer Supplied Item, in which case the Contractor is responsible for obtaining, and must comply with, its own licence to use the Licensed Software.

23 Open Source Software

23.1 The Contractor must ensure that:

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

23.2 Where the Customer gives its approval in relation to the use of any Open Source Software under clause 23.1:

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

24 Risk management and reporting

24.1 Risk management

The Customer must implement a comprehensive risk management program for the Major Project Systems Integration Services, including without limitation;

- (a) assessing issues and risks that may affect the Major Project Systems Integration Services, and an analysis of their likelihood and impact;
- (b) developing and implementing mitigation and control strategies to minimise the likelihood or impact of those issues or risks occurring;
- (c) continuously monitoring and reviewing those issues and risks to ensure that those mitigation and control strategies remain effective; and
- (d) maintaining an issues and risks register setting out the information referred to in paragraphs (a) and (b).

24.2 Progress reporting

Each report provided by the Contractor under clause 21.1 of the Customer Contract must include:

- (a) progress against the Project Implementation and Payment Plan, and a summary of any issues that may impact on the meeting of that Project Implementation and Payment Plan and the Contractor's recommendations to resolve such issues;
- (b) a narrative report outlining the progress made since the last report was provided, including compliance with the Project Implementation and Payment Plan and progress in relation to the Deliverables;
- (c) a Gantt chart with status updated by assessment of actual achievements and projection of future progress;
- (d) details of any newly identified issues or risks that may affect the Major Project Systems Integration Services, and any changes that have been made to the issues and risks register referred to in clause 24.1(d); and
- (e) such other information as the Customer reasonably requests be included within those reports that is relevant to the Contract.

24.3 Ad hoc reporting

The Customer may, from time to time and by notice to the Contractor, require ad hoc reports on specific issues in relation to the Contract. Within seven days of such notification, the Contractor must provide to the Customer a written report on the issues raised by the Customer.

25 Accreditation and methodology

25.1 Accreditation

The Contractor must:

- (a) be and remain at all times during the Contract Period an accredited or certified implementer of the Licensed Software, where the original licensor runs any form of accreditation or certification program; and
- (b) perform the Major Project Systems Integration Services in accordance with a methodology that has been certified or approved by the original licensor of the Licensed Software, where one exists, except where the Contractor is the original licensor of the Licensed Software.

25.2 Methodology

The Contractor's methodology for the performance of the Major Project Systems Integration Services must as a minimum:

- (a) identify and control components of, and changes to, the System to maintain the integrity and traceability of the System at all stages of its development;

- (b) ensure concurrent control, development and supply of Documentation relating to the System;
- (c) control the issue of development revisions of the System and associated Documentation;
- (d) ensure that the System is implemented and documented in a way which would enable future modification without further reference to the Contractor;
- (e) reference and document procedures for corrective action in respect of the System and associated Documentation prior to acceptance including:
 - (i) adoption of a system to report problems and deficiencies;
 - (ii) examination of problem and deficiency reports to determine their causes, and to prepare corrective measures;
 - (iii) analysis of deficiency trends, to ensure the System conforms to the Contract;
 - (iv) review of corrective measures, to determine their effectiveness; and
 - (v) provision for ensuring that timely corrective action is taken by reviewing deficiencies and tracking their clearance; and
- (f) adhere to any other requirements specified in the Customer's Standard Order Documents (and as further specified in the Order, if applicable).

26 Personnel and resourcing

26.1 Contractor's Personnel

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

26.2 Specified Personnel

- (a) The Contractor acknowledges that the Specified Personnel have a critical role in the provision of the Deliverables and will directly affect the quality of the Deliverables.
- (b) The Contractor must:
 - (i) utilise the Specified Personnel to provide the Deliverables as and when required in accordance with the Project Implementation and Payment Plan and the Contract (although the Contractor may also use other Contractor Personnel in addition to those Specified Personnel to provide the Deliverables);
 - (ii) properly manage the allocation of holidays or any other absences of Specified Personnel to ensure that at all times it has sufficient resources to provide the Deliverables;
 - (iii) if required by the Customer, promptly provide temporary substitute personnel approved by the Customer to replace any absent Specified Personnel;

- (iv) ensure that involvement by Specified Personnel in:
 - (A) the Contractor's servicing of any other client; or
 - (B) the Contractor's internal requirements,does not interfere with the provision of the Deliverables under the Contract;
 - (v) use its best endeavours to minimise the turnover rate of Specified Personnel to a reasonable level; and
 - (vi) not remove or replace the Specified Personnel (or any replacements) without the Customer's prior written consent, except that the Contractor may replace Specified Personnel where they are no longer available due to personal hardship, serious illness, death or resignation.
- (c) Any replacement Specified Personnel must be approved by the Customer acting reasonably. The Contractor must provide the Customer with such information as the Customer reasonably requires concerning any proposed replacement of any Specified Personnel (including a resume), and an opportunity to interview them.
- (d) The provisions set out in this clause 26.2 apply instead of those set out in clause 8.9 of the Customer Contract, which does not apply to this Module 13.

26.3 Resourcing Plan

- (a) In addition to, and without limiting the Contractor's obligations in relation to Specified Personnel under clause 26.2, the Contractor must provide appropriately skilled and experienced resources for the performance of the Major Project System Integration Services in accordance with the applicable Resourcing Plan.

27 Sub-contracting

27.1 Right to require assignment

- (a) The Contractor must, on receipt of a request from the Customer to do so, immediately assign or novate to the Customer or its nominee any sub-contract entered into by the Contractor where the Customer is entitled to terminate, or has terminated, the Contract pursuant to clause 25 of the Customer Contract.
- (b) The Contractor hereby appoints the Customer as its attorney and authorises the Customer in the name of the Contractor to do everything (including execution of any document) that is reasonably necessary to give effect to paragraph (a).
- (c) Where a sub-contract is assigned or novated to the Customer under this clause 27.1, the scope of the Major Project Systems Integration Services will automatically reduced so as to no longer include those goods or services that the subcontractor is providing directly to the Customer or its nominee, and the Contract Price will be reduced by the amounts that the Customer is required to pay the sub-contractor directly.
- (d) For the avoidance of doubt, nothing in this clause 27.1 prevents the Customer from negotiating the terms of any sub-contract directly with the subcontractor in such circumstances where it so chooses.
- (e) This clause 27.1 will survive the termination or expiry of the Contract.

27.2 Withdrawal of consent

- (a) Without limiting any other provision of the Contract, the Customer may at any time revoke its consent for any subcontractor under clause 8.15 of the Customer Contract where:
 - (i) the Customer reasonably believes that the subcontractor's performance has been

- deficient (including, without limitation, for reasons relating to lack of progress in the performance of the subcontractor's obligations, poor quality in the standard of any of the Deliverables provided by the subcontractor, or where the subcontractor conducts itself in a manner such as to bring the Customer into disrepute);
- (ii) any of the events described in the definition of the term "Contractor's Insolvency" occur in relation to that subcontractor;
 - (iii) the Customer has reasonable concerns regarding the subcontractor's ability to render future performance;
 - (iv) the Customer reasonably believes that there have been misrepresentations by or concerning the subcontractor; or
 - (v) there has been a material breakdown in the relationship between the Contractor and the subcontractor which threatens to impede the performance of the Contract.
- (b) Upon revocation of consent for any subcontractor under clause 8.15, of the Customer Contract, the Contractor must:
- (i) comply with clause 8.16(c) of the Customer Contract ;
 - (ii) terminate the relevant subcontract within the time-frame reasonably specified by the Customer;
 - (iii) use its best efforts to enter into a new subcontract with a replacement subcontractor in accordance with clause 8.15 of the Customer Contract within the time-frame reasonably specified by the Customer;
 - (iv) ensure that any resulting disruption or delay in providing the Deliverables is minimised so far as is practicable; and
 - (v) otherwise do everything possible to mitigate the Contractor's and the Customer's losses arising in consequence of such termination.
- (c) The Customer will not be liable to the Contractor for any loss, cost or damage suffered or incurred by the Contractor as a result of the revocation of consent for a subcontractor under paragraph (a) or the actions required to be taken by the Contractor under paragraph (b).

27.3 Terms of each sub-contract

Without limiting any other provision of the Contract, the Contractor must ensure that each sub-contract placed with any subcontractor for the purposes of the Contract reserves a right of:

- (a) assignment and novation; and
- (b) termination on no more than 30 days notice in the circumstances described in clause 27.2,

to take account of the Customer's rights under this clause 27.

28 Cooperation with IT Service Providers

28.1 Without limiting clause 27, the Contractor agrees to comply with the Customer's reasonable requests for cooperation and assistance for the Customer and its IT Service Providers in connection with the Major Project Systems Integration Services, but which cooperation must at a minimum include providing all reasonable co-operation and assistance in relation to the following matters:

- (a) ensuring that the Major Project Systems Integration Services are able to be delivered in conjunction with other relevant projects and services in a coordinated, effective and timely manner; and

- (b) providing:
 - (i) any information regarding the System constraints, protocols, interfaces, architecture and other operating parameters which provision is necessary for any IT Service Provider to perform any related services; and
 - (ii) agreeing on procedures with the Customer and any IT Service Providers for the division of responsibilities in relation to services and functions that may overlap between the Contractor and IT Service Providers.

28.2 If the Contractor provides information to an IT Service Provider under this clause 28, that IT Service Provider must, if required by the Contractor, sign a non-disclosure undertaking in a form reasonably requested by the Contractor.

29 Co-operative problem resolution procedures

29.1 Where the Contractor in good faith considers that a problem relating to the Major Project Systems Integration Services is not the responsibility of the Contractor under the Contract but is the responsibility of the Customer or a IT Service Provider, the Contractor must work diligently to determine the cause of the problem until the Contractor:

- (a) determines that it is responsible for resolving the problem, in which case the Contractor must notify the Customer accordingly and proceed to remedy the problem in a timely manner and in accordance with its obligations under the Contract; or
- (b) has handed over responsibility for the resolution of the problem to the Customer or a IT Service Provider (as the case may be) in accordance with this clause 29.

29.2 The Contractor may only hand over responsibility for the resolution of a problem referred to in this clause 29 to the Customer or a IT Service Provider where the Contractor:

- (a) has investigated the problem in accordance with this clause 29;
- (b) has reasonable grounds to believe that the cause of the problem is a factor for which the Customer or a IT Service Provider is responsible; and
- (c) has given the Customer and (where applicable) the IT Service Provider:
 - (i) notice that it has investigated the problem;
 - (ii) a description of the factor or factors which the Contractor considers to have caused the problem; and
 - (iii) a copy of such supporting data that is in the Contractor's possession, or is able to be generated by the Contractor via its systems, as reasonably necessary to establish that the cause of the problem is a factor for which the Customer or the IT Service Provider is responsible.

29.3 If, after handing over responsibility for the resolution of a problem to the Customer or a IT Service Provider in accordance with this clause 29, the Customer or a IT Service Provider subsequently notifies the Contractor that it believes that the Contractor is responsible for the resolution of the problem, the matter will be resolved in accordance with the issue resolution procedures set out in the Agreement.

30 Privacy

30.1 The Information Privacy Principles or IPP defined in the Dictionary in Part3 include any other privacy requirements specified in the Order.

30.2 Compliance with Legal Requirements

The Contractor must ensure that on the Go Live Acceptance Date:

- (a) the System complies with all applicable Legal Requirements; and
- (b) if the System contains a reference to or performs any functions that are based on the requirements of any Legal Requirements, it will do so in compliance with the Legal Requirements in effect on the Go Live Acceptance Date.

30.3 Regulatory Changes

- (a) The Contractor must comply with clause 30.2, notwithstanding any changes to Legal Requirements (“**Regulatory Change**”) occurring after the Commencement Date and before the Go Live Acceptance Date.
- (b) Where a Regulatory Change occurs after the Go-Live Acceptance Date, any liability for costs associated with such Regulatory Change will be borne by the Customer and determined in accordance with time and materials basis in accordance with the rates set out in the Order Documents

31 Payment Milestones

31.1 As contemplated by clause 11.1 of the Customer Contract, the Project Implementation and Payment Plan will specify the various milestones on which the Contract Price is payable by the Customer (each a “Payment Milestone”).

31.2 Subject to clause 31.3, if the Contractor fails to meet a Payment Milestone by the date set out in the Project Implementation and Payment Plan:

- (a) the Customer is not required to pay the Contract Price in respect of that Payment Milestone unless and until it is met; and
- (b) when the Customer does pay the Contract Price in respect of that Payment Milestone, the Customer may withhold [X]% of the amount payable for each week (or part thereof) that the Payment Milestone was not met, up to a maximum amount of [X]% of the amount payable.

31.3 If different percentages are specified in the Order for the purposes of clause 31.2(b), they will apply in place of the percentages specified in clause 31.2(b).

31.4 Any amounts withheld by the Customer under clause 31.2(b) in relation to a Payment Milestone relating to an event before the Go Live Acceptance Date:

- (a) are only payable by the Customer to the Contractor if the Payment Milestone which relates to the Go Live Acceptance Date is subsequently met by the date set out in the Project Implementation and Payment Plan; and
- (b) will be forfeited and will not be payable by the Customer in the event that the Contractor does not meet that Payment Milestone by that date.

32 Charges under a Contract Variation

32.1 Where the Contractor proposes any effect on the Charges under a Contract Variation, then in addition to the requirements of Schedule 4 of the Customer Contract:

- (a) any increase or decrease in the Charges must be:
 - (i) reasonable;
 - (ii) commensurate with the increased or decreased resources that the Contractor requires to perform the varied Change Management Services; and
 - (iii) consistent with the pricing principles (if any) as set out in the Customer’s Standard Order Documents;
- (b) the Contractor must propose any additional Charges on both a:

- (i) fixed-price basis; and
 - (ii) time and materials basis in accordance with the rates set out in Annexure 3 of the Head Agreement, or the Order Documents and the Customer may elect which of these two Charging methodologies it wishes to accept; and
- (c) the Contractor must provide the Customer with reasonable documentation to support any increase in the Charges.

33 Contractor's warranties

33.1 The Contractor warrants that:

- (a) it has evaluated all aspects of the Initial Project Documents and has satisfied itself that it has all necessary skills, experience and resources to provide the System and the Deliverables in accordance with the Customer Contract;
- (b) any representations made, and any materials provided, by the Contractor to the Customer prior to the Commencement Date are true and correct and not misleading;
- (c) it will use appropriate procedures and care to avoid damage to the Customer Environment;
- (d) the System and Deliverables described in the Further Project Documents will be capable of meeting the Customer's requirements as set out in the Initial Project Documents and the Contract;
- (e) the Required Configuration and Hardware Sizing will enable the System to meet the requirements set out in the Project Documents;
- (f) at all times during the Warranty Period:
 - (i) the System and the Deliverables will comply with the Project Documents and the Contract;
 - (ii) the System will be properly installed in a professional and competent manner;
 - (iii) each component of the System will be compatible, interoperable and integrate properly with each other component of the System;
 - (iv) the System will be compatible, interoperable and integrate properly with the Customer Environment;
 - (v) the System will meet the Capacity Forecast and Performance Requirements;
 - (vi) the System will be free from material defects or omissions in design, material, workmanship and installation; and
 - (vii) the source code for the Contractor Delivered Software will be complete, understandable and usable by programmers with relevant skills and experience.

34 Defects

34.1 For the purpose of this Module 13A, the Defects defined in the Dictionary in Part 3 include:

- (a) any failure to comply with the warranties set out in clause 33; and
- (b) any other failure by the Contractor, the System or a Deliverable to comply with the Contract.

35 Audit

- 35.1** The Contractor must maintain records and supporting documentation sufficient to permit a complete audit of the provision of the Major Project Systems Integration Services by the Customer or the Contract Authority in accordance with this clause 35.
- 35.2** The Customer or the Contract Authority may request an audit of the Contractor's performance of the Major Project Systems Integration Services, no more than once in any twelve month period unless a second or subsequent audit during that period is required to be conducted:
- (a) at the request of the internal audit department of the Contract Authority or the Customer in the course of conducting an agency-wide audit;
 - (b) for the purpose of verifying the accuracy of any incident report provided by the Contractor in relation to a significant failure, or recurring failures, in relation to the Major Project Systems Integration Services;
 - (c) for the purpose of verifying that the Contractor has undertaken any actions required as a result of a previous audit, provided that the Customer or Contract Authority (as the case may be) cannot reasonably achieve that purpose without conducting an audit; or
 - (d) at the request or direction of a regulator.
- 35.3** The Contractor is to do all things reasonably necessary to facilitate a prompt and efficient audit of the Major Project Systems Integration Services. Reasonable notice is to be provided of an intended Contract Authority audit. The audit is to be carried out during normal business hours (unless the Contractor agrees otherwise) at a time and date mutually agreed between the Customer or Contract Authority (as the case may be) and the Contractor and in a manner that does not unduly interfere with the Contractor's normal business activities. The Customer or the Contract Authority (as the case may be) (and their auditors) are to comply with the Contractor's standard security procedures whilst on the Contractor's premises. Any audit will be conducted subject to the confidentiality provisions set out in the Agreement.
- 35.4** The Contractor must, at no additional cost to the Customer or the Contract Authority:
- (a) provide all co-operation reasonably required by the Customer or Contract Authority (as the case may be) and their auditors; and
 - (b) provide the Customer or the Contract Authority (as the case may be) and their auditors with access to all documentation, materials and other information (including information in electronic form) relating to the provision of Major Project Systems Integration Services or relating to the Contract for the purposes and to the extent reasonably necessary to enable the conduct of audit of the Contractor's provision of the Major Project Systems Integration Services.
- 35.5** The Customer or the Contract Authority (as the case may be) and their auditors are not entitled to have access to any information that would enable them to determine the costs of the Contractor.
- 35.6** The Customer or the Contract Authority (as the case may be) will pay for the Contractor's reasonable costs of the audit unless the audit discloses a material breach of the Contract, in which case the Contractor will bear its own costs of the audit and will also pay for the Customer's or the Contract Authority's reasonable costs of the audit.

36 Transition-out

36.1 Application

- (a) This clause 36 applies, at the option of the Customer as notified to the Contractor in writing, during the period:
 - (i) commencing on the date on which the Contract expires or is terminated (including as a result of the Customer electing not to proceed with work for any subsequent Stage); and

- (ii) ending on the date specified in the Customer's notice, provided that such date must be no later than 12 months after the date of expiry or termination, (the "**Transition-out Period**").
- (b) The Services that the Contractor must continue to provide during the Transition-out Period, and any additional services which the Contractor is required to provide under this clause 36, are referred to in this clause 36 as the "**Transition-out Services**".

36.2 Performance of Transition-out Services

- (a) The Contractor must:
 - (i) except to the extent otherwise requested by the Customer, continue to provide the Services (including any associated reporting and other related services required under the Contract) during the Transition-out Period in accordance with the terms of the Contract;
 - (ii) do everything within its control to ensure that there is no disruption to such Services during the Transition-out Period; and
 - (iii) provide for the orderly hand over of such Services to the Customer or a third party supplier nominated by the Customer,

all in accordance with the detailed Transition-out Plan referred to in clause 36.3(c) (or, if that detailed Transition-out Plan has not been approved, then in accordance with the draft Transition-out Plan set out in the Customer's Standard Order Documents (and as further specified in the Order, if applicable)).

- (b) All Transition-out Services will be provided by the Contractor subject to and in accordance with the terms and conditions of the Contract. The Contractor will perform the Transition-out Services with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency as it provided and was required to provide the same or similar services prior to the date of expiry or termination.
- (c) The Customer may terminate the Transition-out Services, in whole or in part, at any time by giving the Contractor five working days written notice of such termination.

36.3 Development of detailed Transition-out Plan

- (a) Within three months following the Commencement Date or such other timeframe as is nominated by the Customer, each Party must:
 - (i) nominate a transition-out project manager to supervise and project manage the performance of their respective obligations in relation to Transition-out Services; and
 - (ii) notify the other Party of the name and contact details of its transition-out project manager.
- (b) The Parties' transition-out project managers must meet no later than three days after each Party has nominated a transition-out project manager, and enter into negotiations in good faith to develop a detailed Transition-out Plan describing the Transition-out Services to be provided by the Contractor. The detailed Transition-out Plan must:
 - (i) incorporate the requirements set out in the draft Transition-out Plan set out in the Customer's Standard Order Documents (and as further specified in the Order, if applicable); and
 - (ii) require the Contractor to provide the following services:
 - (A) provision of programming and knowledge transfer services (as reasonably

- requested by the Customer;
 - (B) assistance in data migration and testing processes until the expiration of the period of Transition-out Services as reasonably requested by the Customer;
 - (C) provision of a complete and up-to-date, electronic copy of the knowledge management materials) in the format and on the media reasonably specified by the Customer;
 - (D) provision of other technical assistance as reasonably requested by the Customer; and
 - (E) provision of training as reasonably requested by the Customer or any permitted sub licensee in the use and modification of any source code that the Customer is licensed to use under the Contract.
- (c) Once approved by the Customer, the detailed Transition-out Plan will be incorporated into the Contract and will replace the draft Transition-out Plan set out in the Customer's Order Documents (and as further specified in the Order, if applicable).
- (d) At least five working days prior to the commencement of the Transition-out Period, the Parties' transition-out project managers must enter into negotiations in good faith to update the detailed Transition-out Plan prepared pursuant to paragraphs (b) and (c), to incorporate the specific details of those Transition-out Services required during the pending Transition-out Period, including among other things the specific activities for which each Party is responsible, and the activity completion dates.

36.4 Payment for Transition-out Services

- (a) The Contractor will provide the Transition-out Services at the applicable rates set out in Schedule 3, except if the Transition-out Services are being provided following a termination by the Customer under **clause 25.2** of the Customer Contract, in which case without limiting the Customer's other rights or remedies the Contractor will provide the Transition-out Services at cost.
- (b) The Contractor must provide Transition-out Services to the Customer regardless of the reason for the expiration or termination of the Contract, provided that if the Agreement is terminated by the Contractor for the Customer's failure to pay undisputed amounts, then the Customer will be required to:
- (i) pay the Contractor ninety (90) days in advance for the Transition-out Services to be provided or performed for each quarter during which the Contractor will perform Transition-out Services; and
 - (ii) remain current on all other payments due to the Contractor under the Contract, (the "**Transition-out Charges**"). If the Customer fails to pay the Contractor any Transition-out Charges by their due date, the Contractor may notify the Customer that such Charges are overdue. If the Customer fails to pay the Contractor such Charges within fifteen (15) days after the date of such notice, the Contractor may notify the Customer of its intention to suspend its provision of Transition-out Services until the Customer becomes current on all payments due to the Contractor, effective ten (10) days thereafter. Such suspension shall take effect on such date unless the Customer pays the Contractor such outstanding Charges before such effective date of suspension.