

# 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.