



Australian Government

SourceIT

Hardware Acquisition and Maintenance Contract

Release version 2.0

[Insert name of Customer] (**Customer**)

[Insert name of Contractor] (**Contractor**)

Hardware Acquisition and Maintenance Contract

Contract Information	4
Agreed Terms	5
Part 1 – Hardware supply and Services	5
1. Definitions and interpretation	5
2. Priority of Contract documents	11
3. Duration of Contract	11
4. Deliverables and Services to other Agencies	12
5. General obligations of the parties	12
6. Open Source Software	12
7. Supply and Delivery of Hardware	13
8. Timetable for supply and Installation	13
9. Removal of equipment	13
10. Transfer of title and risk	14
11. Warranty Period	14
12. Third party product warranties	14
13. Provision of Deliverables and Services	14
14. Maintenance Services	17
15. Preventative Maintenance	17
16. Remedial Maintenance	18
17. Exclusions	18
18. Maintenance records	19
19. Engineering changes and upgrades	19
20. Documentation	20
21. Varying the Deliverables or Services	20
22. Co-operation with Personnel and contractors	21
23. Monitoring progress	21
24. Acceptance testing	22
25. Measuring performance	23
26. Personnel	23
27. Intellectual Property Rights	24
28. Moral Rights	26

Part 2 – General requirements	27
29. Payment	27
30. GST	27
31. Indemnity	28
32. Liability	29
33. Insurance	30
34. Confidentiality and privacy	31
35. Protection of personal information	32
36. Conflict of interest	33
37. Security	34
38. Books and records	34
39. Audit and access	35
40. Unforeseen events	36
41. Dispute resolution	37
42. Termination	38
43. Knowledge transfer	40
44. Notices and other communications	40
45. Miscellaneous	41
Schedule 1 – Contract Details	43
Schedule 2 – Statement of Work	48
Schedule 3 – Payment	52
Schedule 4 – Designated Confidential Information	56
Schedule 5 – Customer Requirements	57
Schedule 6 – Change Order	58
Schedule 7 – Agency Order Form	59
Schedule 8 – Open Source Licence	61
Schedule 9 – Confidentiality and privacy undertaking	62
Signing page	63

Contract Information

Date *[insert date]*

Parties

Name *[insert name of Customer]*
Short form name **Customer**

Name *[insert name of Contractor]*
Short form name **Contractor**

Background

- A The Customer requires the provision of certain hardware and related services.
- B The Contractor has fully informed itself on all aspects of the work required to be performed and has represented that it has the requisite skills and experience to perform that work.
- C The Customer has agreed to engage the Contractor to provide the hardware and related services on the terms and conditions contained in this Contract.

Agreed Terms

Part 1 – Hardware supply and Services

1. Definitions and interpretation

1.1 Definitions

In this Contract, except where the contrary intention is expressed, the following definitions are used:

Accept	the Hardware or Services have been accepted by the Customer in accordance with the procedures set out in clause 24. Accepted and Acceptance have the corresponding meanings.
Acceptance Criteria	the requirements set out in the Specifications and any other requirements set out in the Statement of Work.
Acceptance Date	the date the Customer Accepts the Hardware or Services.
Accounting Standards	means the standards of that name maintained by the Australian Accounting Standards Board (created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
Advisers	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
Agency	(a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation (including a local authority); (b) a body established by the Governor-General or by a Minister of State of the Commonwealth including departments; or (c) an incorporated company over which the Commonwealth exercises control.
Agency Order Form	the form set out in Schedule 7.
Agreed Terms	clauses 1 to 45 of the Contract which set out terms and conditions agreed by the parties.
Auxiliary Material	any Material, other than Contract Material, which is made available by a party for the purpose of this Contract, on or following the Commencement Date, and includes: (a) Third Party Material; (b) any modifications that may be required under clause 27.7(b);

	<ul style="list-style-type: none"> (c) error corrections or translations to that Material; or (d) derivatives of that Material where such derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material.
Business Day	<ul style="list-style-type: none"> (a) for receiving a notice under clause 44, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and (b) for all other purposes, any day that is not a Saturday or Sunday or a national public holiday, and a 'national public holiday' is a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.
Business Hours	from 8.00am to 6.00pm on a Business Day at the place where the Services are to be provided, unless specified otherwise in item 5 of the Contract Details.
Change Order	the form set out in Schedule 6.
Commencement Date	the date on which this Contract commences, as specified in item 6 of the Contract Details.
Commonwealth	the Commonwealth of Australia.
Commonwealth Protective Security Manual	the <i>Commonwealth Protective Security Manual 2005</i> , as amended or replaced from time to time.
Confidential Information	<p>information that is by its nature confidential; and</p> <ul style="list-style-type: none"> (a) is designated by a party as confidential and is described in Schedule 4 of this Contract; or (b) a party knows or ought to know is confidential, but does not include: <ul style="list-style-type: none"> (c) information which is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation.
Contract	this agreement between the Customer and the Contractor, as amended from time to time in accordance with clause 45.2, and includes its schedules and any attachments.
Contract Details	the details set out in Schedule 1.
Contract Material	any Material created by the Contractor on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Contract and includes any modifications that may be required under clause 27.7(b).
Contract Period	the Initial Contract Period plus any extension in accordance with clause 3.2.

Contractor	the party specified in item 2 of the Contract Details and includes its subcontractors and Personnel.
Contractor Representative	the person identified in item 4 of the Contract Details.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Customer	the party specified in item 1 of the Contract Details.
Customer Data	all data and information relating to the Customer, and its operations, facilities, customers, Personnel, assets and programs (including personal information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Customer.
Customer Material	any Auxiliary Material provided to the Contractor by the Customer, including the Material (if any) specified in item 26 of the Contract Details.
Customer Representative	the person identified in item 3 of the Contract Details.
Deliverable	any Hardware, Contract Material or other item to be supplied by the Contractor under this Contract.
Delivery Date	the date or dates specified in the Statement of Work for the delivery of the Hardware.
Delivery Place	the place for the delivery of the Hardware specified in the Statement of Work.
Documentation	the documentation to be provided by the Contractor under clause 20.
Hardware	the hardware to be provided by the Contractor to the Customer, as specified in the Statement of Work.
Hardware Charges	the charges payable to the Contractor relating to the Hardware, as specified in Schedule 3.
Hardware Maintenance Charges	the charges payable to the Contractor relating to Hardware Maintenance, as specified in Schedule 3.
Harmful Code	any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of any software.
Initial Contract Period	the period of time for which this Contract is intended to continue, as specified in item 7 of the Contract Details.
Installation	installation of the Hardware, by the Contractor, in accordance with this Contract so as to render the Hardware operable and suitable for use and includes integration of the Hardware into the Customer's operating environment. Install has the corresponding meaning.

Installation Date	the date specified in the Statement of Work as the date for the Installation of the Hardware.
Intellectual Property Rights	<p>all intellectual property rights, including but not limited to, the following rights:</p> <ul style="list-style-type: none"> (a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, <p>whether or not such rights are registered or capable of being registered.</p>
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
LEADR	the dispute resolution association with that name and the Australian Business Number 69 008 651 232.
Legal Services Directions	the Commonwealth Attorney General's Legal Services Directions issued under section 55ZF of the <i>Judiciary Act 1903</i> (Cth), as amended or replaced from time to time.
Losses	liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party).
Maintenance Services	the hardware maintenance services to be provided by the Contractor in respect of the Supported Hardware, as specified in the Statement of Work and includes the Preventative Maintenance and Remedial Maintenance.
Material	any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
Milestone	any fixed date to be met by the Contractor in performing any of its obligations under this Contract, as specified in the Statement of Work, and includes Delivery Dates and Installation Dates.

Moral Rights	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
Nominated Agency	an Agency, listed in item 10 of the Contract Details, which may require the provision of Deliverables or Services under this Contract.
Notice	a notice, demand, consent, approval or communication issued under this Contract.
Open Source Licence	the open source licence agreement set out in Schedule 8.
Personnel	in relation to a party, any natural person who is an employee, officer, agent or professional adviser of that party or, in the case of the Contractor, of a subcontractor.
Preventative Maintenance	scheduled maintenance provided by the Contractor in accordance with clause 15 to ensure that the Supported Hardware remains in good working order and conforms to the Specifications.
Problem	a fault, failure or difficulty with the Hardware.
Remedial Maintenance	unscheduled maintenance provided by the Contractor in accordance with clause 16, to address a Problem.
Resolution Time	the time specified in the Statement of Work within which the Contractor must resolve a Problem.
Response Time	the time specified in the Statement of Work within which the Contractor must respond to a notice provided by the Customer of a Problem.
Schedules	the schedules to this Contract.
Service Charges	the Hardware Charges, Hardware Maintenance Charges and any other fees or charges that may be payable to the Contractor in accordance with Schedule 3.
Service Levels	the standards of service which the Contractor must achieve in providing the Services to the Customer as set out in the Statement of Work, including the Response Times and Resolution Times.
Service Rebates	an amount calculated in accordance with Schedule 3 which is payable by the Contractor to the Customer under clause 25.2.
Services	the services to be provided by the Contractor, as specified in the Statement of Work, and includes Maintenance Services.

Specifications	in order of priority: (a) the Customer's functional and technical requirements for the Hardware as described in the Statement of Work, as amended from time to time; and (b) all applicable manufacturers' specifications and applicable standards.
Specified Personnel	the Contractor's subcontractors and Personnel specified in item 25 of the Contract Details.
Statement of Work	the details of the Deliverables to be supplied and Services to be performed under this Contract, as set out in Schedule 2.
Support Hours	Business Hours, unless otherwise specified in the Statement of Work.
Support Period	the period during which the Customer is to acquire Maintenance Services in accordance with this Contract, as set out in clause 14.1.
Supported Hardware	the Hardware specified in the Statement of Work to be supported by the Contractor under this Contract.
Third Party Material	Auxiliary Material in which a third party holds Intellectual Property Rights.
Warranted Materials	the Auxiliary Material provided by the Contractor, the Deliverables and Contract Material.
Warranty Period	90 days from the Acceptance Date, unless otherwise specified in item 13 of the Contract Details.

1.2 Interpretation

In this Contract, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to the time in the place where the obligation is to be performed;
- (g) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- (i) if the Contractor is a trustee, the Contractor enters the Contract personally and in its capacity as trustee and warrants that it has the power to perform its obligations under this Contract;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (l) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (m) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (q) headings are for ease of reference only and do not affect interpretation.

1.3 Completion of Schedules

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, that item will be taken to be 'not applicable' for the purpose of this Contract.

2. Priority of Contract documents

If there is inconsistency between any of the documents forming part of this Contract, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Open Source Licence;
- (b) Agreed Terms;
- (c) Schedules (other than the Open Source Licence);
- (d) any attachments to the Schedules; and
- (e) documents incorporated by reference in this Contract.

3. Duration of Contract

3.1 Initial Contract Period

This Contract begins on the Commencement Date and continues for the duration of the Initial Contract Period unless terminated in accordance with clause 40.3 or 42.

3.2 Option to extend Contract Period

- (a) The Initial Contract Period may be extended by the Customer for further period(s), specified in item 8 of the Contract Details (each an **Option Period**), on the terms and conditions then in effect, by giving written notice to the Contractor. Such notice must:
 - (i) be at least 30 days; or
 - (ii) such other period as specified in item 9 of the Contract Details (**Option Notice Period**),before the end of the current Contract Period.
- (b) Any extension exercised in accordance with this clause 3.2 takes effect from the end of the then current Contract Period.

4. Deliverables and Services to other Agencies

4.1 Obligation to provide Deliverables and Services

The Contractor offers to provide the Deliverables and Services to any Nominated Agency in accordance with the requirements set out in this clause 4.

4.2 Request

A Nominated Agency may request the supply of the Deliverables and Services in accordance with clause 4.1, by giving the Contractor a completed Agency Order Form.

4.3 Separate contracts

Each Agency Order Form agreed with the Contractor in accordance with this Contract will create a separate contract between the Contractor and:

- (a) the Commonwealth represented by the Nominated Agency (where that agency is subject to the *Financial Management and Accountability Act 1997* (Cth)); or
- (b) the Nominated Agency,

as the case requires, for the supply by the Contractor of the requested Deliverables or Services to the Nominated Agency. For the sake of clarity, the terms and conditions governing each such separate contract will be the same as the provisions of this Contract.

5. General obligations of the parties

The parties will, at all times:

- (a) act reasonably in performing their obligations and exercising their rights under this Contract;
- (b) diligently perform their respective obligations under this Contract; and
- (c) work together in a collaborative manner.

6. Open Source Software

6.1 Grant of Licence

To the extent that the Hardware includes any software that is licensed under an open source software arrangement:

- (a) the terms of the Open Source Licence will apply to that software; and

- (b) the provisions of the Open Source Licence will prevail over the Agreed Terms in the event and to the extent of any inconsistency.

7. Supply and Delivery of Hardware

7.1 Supply of Hardware

- (a) The Contractor must supply to the Customer the Hardware specified in the Statement of Work.
- (b) The Hardware must:
 - (i) be newly manufactured, unless specified otherwise in item 11 the Contract Details;
 - (ii) be free from defects in workmanship and materials; and
 - (iii) comply with the Specifications.

7.2 No application to leasing

The supply of the Hardware to the Customer is by way of sale and this Contract has no application to leasing of Hardware to the Customer.

7.3 Delivery Place

Unless otherwise set out in the Statement of Work, the Contractor must supply and deliver the Hardware to the Delivery Place.

8. Timetable for supply and Installation

8.1 Compliance with Delivery Dates

The Contractor must supply the Hardware in accordance with the Delivery Dates and the requirements set out in the Statement of Work.

8.2 Compliance with Installation Dates

The Contractor must Install the Hardware in accordance with the Installation Dates and the requirements set out in the Statement of Work and the Specifications.

8.3 Delay

- (a) The Contractor must, on becoming aware that it will be unable to meet a Milestone promptly notify the Customer and provide details of the cause of the delay.
- (b) The provisions of clause 25.2 apply to any failure to meet a Milestone.

9. Removal of equipment

- (a) The Contractor is not required to remove or arrange the removal of any equipment from a Delivery Place unless specified otherwise in item 12 of the Contract Details.
- (b) Where the Contractor is required, under clause 9(a), to remove or arrange the removal of equipment, the Contractor must remove the equipment specified in the Statement of Work:
 - (i) on or by the relevant Installation Date in respect of the Hardware;
 - (ii) during Business Hours or at such other times as are agreed between the parties; and
 - (iii) in a way that causes the least possible disruption to the Customer's operations.

10. Transfer of title and risk

10.1 Risk

The Customer accepts risk for loss of or damage to the Hardware from the time the Customer takes delivery of the Hardware, except to the extent that the loss or damage is caused or contributed to by the Contractor during delivery or Installation.

10.2 Title

Title in the Hardware passes to the Customer on Acceptance.

11. Warranty Period

- (a) During the Warranty Period, the Contractor must:
 - (i) remedy all Problems in the relevant item of Hardware either by repair, replacement or modification; and
 - (ii) pay all costs in relation to performance of its obligations under the warranty including any packing, freighting, repair, modification, disassembly and reassembly costs, except if the Problem is due to negligence of the Customer.
- (b) Nothing in this clause limits the application of any indemnity provided under this Contract.

12. Third party product warranties

Without limiting any obligation of the Contractor under this Contract, the Contractor must, unless specified otherwise in item 14 of the Contract Details:

- (a) ensure the Customer receives all standard manufacturer and other relevant third party warranties in respect of Hardware provided under this Contract; and
- (b) ensure the Customer receives a copy and is fully advised of and approves all such warranties prior to any order or commitment being made in respect of any Hardware.

13. Provision of Deliverables and Services

13.1 General obligations

The Contractor must supply the Deliverables and Services:

- (a) with due skill and care and to the best of the Contractor's knowledge and expertise;
- (b) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines, including any specified in item 15 of the Contract Details;
- (c) in accordance with all applicable Laws;
- (d) in accordance with Commonwealth policies and specific requirements set out in Schedule 5;
- (e) so as to meet the Milestones and other project plan requirements, and where no Milestones or project plan requirements are specified, promptly and without delay; and
- (f) otherwise in accordance with the provisions of this Contract.

13.2 Service obligations

Where the Contractor is supplying Services, the Contractor must supply them:

- (a) in accordance with the Service Levels;
- (b) using the Specified Personnel (if any); and
- (c) in accordance with any reasonable directions given by the Customer from time to time.

13.3 Contractor warranties – General

The Contractor represents and warrants that:

- (a) it has the right to enter into this Contract; and
- (b) it has all rights, title, licences, interests and property necessary to lawfully perform its obligations.

13.4 Contractor warranties – Hardware

Where the Contractor is supplying Hardware, the Contractor represents and warrants that on the Delivery Date:

- (a) the Hardware will:
 - (i) not introduce into the Customer's systems or any Contract Materials, any Harmful Code; and
 - (ii) if any Harmful Code is introduced, the Contractor will:
 - (A) use all reasonable efforts promptly to report that introduction to the Customer;
 - (B) take all necessary action to eliminate the Harmful Code; and
 - (C) promptly, at its own cost, repair any harm or destruction caused by that Harmful Code;
 - (iii) be newly manufactured, unless specified otherwise in item 11 of the Contract Details;
 - (iv) be free from any material defect in workmanship, design and materials;
 - (v) be free from any encumbrances;
 - (vi) be fit for the purpose as set out in the Statement of Work;
 - (vii) be compliant with the Specifications and Documentation; and
- (b) the Documentation will be complete, accurate and free from material faults in design.

13.5 Contractor warranties – Services

- (a) Where the Contractor is supplying Services, the Contractor represents and warrants that:
 - (i) it and its subcontractors and Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge and competence to perform its obligations under this Contract; and
 - (ii) the Services will be fit for the purpose as set out in the Statement of Work.
- (b) Where the Contractor is providing Maintenance Services, the Contractor represents and warrants that:
 - (i) any replacement parts for the Supported Hardware will comply, at the date of delivery, with the requirements set out in clause 13.4(a);

- (ii) it will not, nor will it suffer or permit any third party under its direction or control to negligently introduce into the Customer's systems or any Deliverables any Harmful Code in the course of providing the Maintenance Services; and
- (iii) if any Harmful Code is introduced, it will use all reasonable efforts promptly to report that introduction to the Customer and, where that Harmful Code is introduced as a result of a breach of clause 13.5(b)(ii), it will:
 - (A) take all necessary action to eliminate the Harmful Code; and
 - (B) promptly, at its own cost, repair any harm or destruction caused by that Harmful Code.

13.6 Access to Customer's premises

The Customer must cooperate with the Contractor by providing access to its premises and facilities as reasonably necessary to enable the Contractor to provide the Deliverables and Services.

13.7 Conduct at Customer's premises

The Contractor must, if using or accessing the Customer's premises or facilities, comply with all reasonable directions and procedures relating to occupational health and safety and security in operation at those premises or facilities whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.

13.8 Subcontracting

The Contractor must:

- (a) not subcontract any aspect of the provision of the Deliverables or Services other than to those entities set out in item 16 of the Contract Details, without the prior written approval of the Customer, which will not be unreasonably withheld;
- (b) not, in any event, enter into a subcontract under this Contract with a subcontractor named by the Director of Equal Opportunity for Women in the Workplace in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth); and
- (c) ensure that any subcontractor approved under this Contract complies with:
 - (i) Clause 34 (Confidentiality and privacy);
 - (ii) Clause 35 (Protection of personal information);
 - (iii) Clause 36 (Conflict of interest);
 - (iv) Clause 37 (Security);
 - (v) Clause 39.2 (Access by Customer); and
 - (vi) Clause 43 (Knowledge transfer).

14. Maintenance Services

14.1 Support Period

Unless otherwise specified in item 17 of the Contract Details:

- (a) the Support Period will commence on the expiry of the Warranty Period and will continue until the end of the Contract Period; and
- (b) the Maintenance Services must be provided to the Customer at no charge during the Warranty Period.

14.2 Provision of Maintenance Services

The Contractor must during the Support Period:

- (a) provide the Maintenance Services specified in the Statement of Work;
- (b) comply with the requirements set out in the Statement of Work in providing the Maintenance Services;
- (c) provide the Maintenance Services so as to meet or exceed the Service Levels; and
- (d) provide the Maintenance Services at the times specified in the Statement of Work or otherwise by prior arrangement with the Customer and at times likely to cause the least possible disruption to the Customer's operations.

14.3 Replacement parts

The Contractor must, for 3 years from the Delivery Date or such other period agreed by the parties in writing, ensure that replacement parts for the Hardware are available so that the Contractor can meet its obligations under this Contract.

15. Preventative Maintenance

- (a) The Contractor must provide the Preventative Maintenance as set out in the Statement of Work.
- (b) Unless specified otherwise in the Statement of Work, Preventative Maintenance includes, as a minimum:
 - (i) maintenance of the Supported Hardware in good operating condition;
 - (ii) Problem detection and resolution;
 - (iii) replacement of unserviceable or faulty parts, subject to clause 14.3;
 - (iv) cleaning and, where possible, lubrication; and
 - (v) adjustment of any mechanical or similar devices.
- (c) The Customer may postpone Preventative Maintenance on 5 Business Days notice to the Contractor at its discretion and reschedule the Preventative Maintenance to occur as soon as practicable.
- (d) No additional charge will be payable by the Customer in respect of postponement or rescheduling of Preventative Maintenance under clause 15(c).

16. Remedial Maintenance

16.1 Remedial Maintenance

The Contractor must provide the Remedial Maintenance as set out in the Statement of Work.

16.2 Technical support

Unless specified otherwise in item 18 of the Contract Details, the Contractor must provide technical support to the Customer by:

- (a) telephone, fax and email, the details of which are set out in the Statement of Work; and
- (b) on-site contact, if necessary to resolve a reported Problem.

16.3 Reporting Problems

The Customer must report all Problems in accordance with the procedures and methods set out in the Statement of Work.

16.4 Rectifying Problems

After being notified of a Problem, the Contractor must promptly:

- (a) replace or repair parts as required to rectify a Problem;
- (b) comply with any Response Times specified in the Statement of Work;
- (c) to the extent practical, implement measures to minimise disruption to the Customer's operations during the provision of Remedial Maintenance, including taking any measures specified in the Statement of Work;
- (d) regularly keep the Customer informed as to the status of the rectification of the Problem;
- (e) where any part of the Supported Hardware is replaced and the part does or may contain Customer Data, take all practicable steps to remove and return to the Customer the Customer Data; and
- (f) comply with any other requirements as specified in the Statement of Work.

16.5 Contractor tests

At the discretion of the Customer, before completing Remedial Maintenance, the Contractor must either:

- (a) test the Hardware by running a diagnostic program and performing any other relevant tests necessary to show that the Maintenance Services have been successful; or
- (b) explain and demonstrate to the Customer, the effect of the Maintenance Services, and if requested must provide written confirmation of the test results or explanation.

17. Exclusions

Unless specified otherwise in item 19 of the Contract Details, the Contractor is not required to perform Maintenance Services in respect of:

- (a) Hardware that has been altered, damaged or modified by a person other than the Contractor;
- (b) Problems caused by the Customer's negligence, abuse or misapplication of the Hardware or by failure to use the Supported Hardware as specified in the Documentation;
- (c) Problems caused by electrical failure, air conditioning or humidity control or any other environmental factor on the Customer's premises;

- (d) accessories, attachments, supplies or items associated with the Supported Hardware other than those provided by the Contractor under this Contract; or
- (e) performance issues resulting from changes in the Customer's operating environment not approved by or agreed with the Customer.

18. Maintenance records

- (a) The Contractor must keep full records of the Maintenance Services provided including records of all:
 - (i) Problems reported, including the time of each report;
 - (ii) Problems detected;
 - (iii) remedial action taken, including the time each action is taken;
 - (iv) parts replaced and repaired; and
 - (v) the time each Problem is resolved.
- (b) The Contractor must provide copies of records kept under this clause 18 to the Customer within five Business Days of request or within any other period agreed by the Customer.

19. Engineering changes and upgrades

19.1 Engineering changes and upgrades

- (a) Except to the extent specified in item 20 of the Contract Details, Maintenance Services include implementation of all engineering changes and upgrades designed to improve the safety, performance and reliability of the Supported Hardware.
- (b) Except where the engineering change or upgrade is classified by the manufacturer as mandatory for safety reasons, the Customer may, at its discretion, determine not to proceed with any engineering change or upgrade.
- (c) To allow the Customer to evaluate proposed engineering changes and upgrades fully, the Contractor must use its best endeavours to give the Customer at least 10 Business Days prior notification in writing of:
 - (i) the purpose of the change;
 - (ii) details of how the Supported Hardware will be affected;
 - (iii) proposed timing of introduction;
 - (iv) estimated time to complete testing requirements; and
 - (v) estimated time to remove such changes in the event of failure to allow the Supported Hardware to return to a satisfactory operating condition.
- (d) The Contractor must provide the Customer with other assistance and information as is reasonably required to enable the Customer to determine whether to proceed with the engineering change or upgrade.

19.2 Testing

- (a) The Customer may conduct Acceptance tests in respect of any proposed engineering change or upgrade in accordance with the procedures set out in clause 24.

- (b) If an engineering change or upgrade which is Acceptance tested under clause 19.2(a) does not pass the Acceptance tests, the Customer may determine not to proceed with the engineering change or upgrade.

19.3 Continued support

Unless specified otherwise in item 21 of the Contract Details, refusal of an engineering change or upgrade will not affect the Customer's entitlement to ongoing Maintenance Services under this Contract.

20. Documentation

20.1 Provision of Documentation

The Contractor must provide the Customer with up to date technical and operator Documentation containing sufficient information to enable the Customer to make full use of the Hardware at all times. The Documentation must be provided in accordance with the Statement of Work.

20.2 Documentation requirements

The Documentation must at the time of delivery:

- (a) be current and accurate and consistent with the Specifications;
- (b) adequately explain key terms and symbols; and
- (c) unless specified otherwise in item 22 of the Contract Details, be in English.

20.3 Updating Documentation

- (a) Maintenance Services include providing all necessary amendments, revisions and updates of the Documentation.
- (b) The Contractor must amend or substitute the Documentation periodically in order to address and adequately explain the implications of:
 - (i) any repair or replacement of the Supported Hardware if such repair or replacement is likely to result in varying operational procedures involving the use of the Supported Hardware; and
 - (ii) any engineering change or upgrade supplied pursuant to this Contract.
- (c) The Contractor must provide or make available Documentation updated in accordance with this clause 20 to the Customer within five Business Days of delivery of the engineering changes or upgrade to which the updated Documentation relates.

21. Varying the Deliverables or Services

21.1 Variations proposed by Customer

If the Customer wants to vary the Deliverables or Services:

- (a) the Customer must request the Contractor in writing setting out the proposed variations;
- (b) within 14 days after receiving the Customer's request or within another period agreed by the parties, the Contractor must respond in writing to the Customer specifying what impact those variations will have on:
 - (i) the Service Charges (see clause 21.3);
 - (ii) the Deliverables;
 - (iii) the Services;

- (iv) the Contractor's ability to perform its obligations under this Contract (including its ability to meet Service Levels or Milestones); and
- (v) this Contract; and
- (c) within 14 days after receiving the Contractor's response, or within another period agreed by the parties, the Customer must give the Contractor a written notice accepting or rejecting the response.

21.2 Variations proposed by Contractor

If the Contractor wants to vary the Deliverables or Services:

- (a) the Contractor must request the Customer in writing setting out the proposed variations and specifying what impact those variations will have on:
 - (i) the Service Charges (see clause 21.3);
 - (ii) the Deliverables;
 - (iii) the Services;
 - (iv) the Contractor's ability to perform its obligations under this Contract (including its ability to meet Service Levels or Milestones); and
 - (v) this Contract; and
- (b) within 14 days after receiving the request or within another period agreed by the parties, the Customer must give the Contractor a written notice accepting or rejecting the Contractor's request.

21.3 Changes to Service Charges

Changes to Service Charges associated with a variation in the Deliverables or Services must:

- (a) not exceed any reasonable additional cost; and
- (b) take fully into account any reduction in cost.

21.4 Effective date of variation

Any variation in the Deliverables or Services takes effect from the date on which the parties execute a Change Order. This Contract will be amended to give effect to the Change Order.

22. Co-operation with Personnel and contractors

The Contractor must in the performance of its obligations under the Contract:

- (a) fully co-operate with the Customer's Personnel and other contractors; and
- (b) use its best efforts to coordinate its activities so as to support and facilitate, in the Customer's best interests, the timely and efficient completion of all work and other activities to be performed for the Customer by any person.

23. Monitoring progress

23.1 Progress meetings

The parties will meet at the times set out in the Statement of Work (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Deliverables or Services. The Contractor must ensure that the Contractor Representative and the Customer must ensure the Customer Representative is reasonably available to attend such meetings and answer any queries relating to the provision of the Deliverables or Services raised by either party.

23.2 Reporting

The Contractor must provide the Customer with reports in accordance with the Statement of Work.

24. Acceptance testing

24.1 Acceptance testing

- (a) Each item of the Hardware and Services is subject to Acceptance by the Customer.
- (b) Unless specified otherwise in item 23 of the Contract Details, the Hardware will be Accepted on the date the Contractor delivers the Hardware in accordance with the requirements set out in the Statement of Work.
- (c) Where:
 - (i) Acceptance of Hardware is to occur on delivery under clause 24.1(b), clauses 24.2 to 24.6 of this Contract do not apply to the extent that they relate to Acceptance of the Hardware; and
 - (ii) item 23 of the Contract Details specifies that Acceptance testing of Hardware is required, clauses 24.2 to 24.6 apply to that process.

24.2 Preparation for Acceptance testing

The Contractor must:

- (a) promptly notify the Customer when the Hardware or Services are ready for Acceptance testing; and
- (b) at its own cost provide all assistance reasonably required by the Customer for Acceptance testing.

24.3 Conduct of Acceptance testing

Unless otherwise specified in the Statement of Work, the Contractor must:

- (a) perform the Acceptance tests in order to demonstrate that the Hardware or Services meet the Acceptance Criteria; and
- (b) at its own cost provide all assistance reasonably requested by the Customer for the purposes of performing the Acceptance tests,

in accordance with any relevant timeframes specified in the Statement of Work.

24.4 Timeframe for notice

The Customer must, within 5 Business Days of the completion of Acceptance testing (or such other period as specified in item 24 of the Contract Details) either Accept or reject the Hardware or Services. If the Customer rejects the Hardware or Services it must provide a list of defects and deficiencies to the Contractor at the time of rejection.

24.5 Rectification of non-compliant Hardware and Services

If the Customer notifies the Contractor that all or part of the Hardware or Services do not meet the Acceptance Criteria, the Contractor must:

- (a) take all necessary steps to ensure that the Hardware or Services are promptly corrected;
- (b) give notice to the Customer when the Hardware or Services have been corrected; and
- (c) allow the Customer to repeat the Acceptance tests for all or part of the Hardware or Services,

within five Business Days after the date of the notice or such other time as agreed between the parties in writing.

24.6 Right to terminate

If any part of the Hardware or Services fail the Acceptance tests on two or more occasions, the Customer may (in addition to its other remedies) terminate the Contract immediately under clause 42.2 by giving the Contractor written notice.

25. Measuring performance

25.1 Measurement and monitoring tools

The Contractor must:

- (a) implement and maintain during the Contract Period, measuring and monitoring tools capable of measuring its performance against the Service Levels, as set out in the Statement of Work;
- (b) provide the Customer with access to the data and information gathered by those tools;
- (c) if requested by the Customer demonstrate to the Customer the operation and accuracy of those tools; and
- (d) investigate any failure to provide the Services in accordance with the Service Levels and report its findings to the Customer.

25.2 Service Rebates

If specified in Schedule 3, and to the extent that the Contractor is responsible for any failure to achieve a Service Level, the Contractor:

- (a) must pay to the Customer Service Rebates, the amount of which will be determined in accordance with Schedule 3. The parties agree that the amount of Service Rebates payable by the Contractor under this Contract will not exceed the total amount of the Service Charges payable to the Contractor under this Contract;
- (b) acknowledges that any Service Rebates calculated in accordance with Schedule 3 are a genuine pre-estimate of the loss and damage the Customer will suffer as a result of a failure to achieve a Service Level;
- (c) acknowledges that payment of Service Rebates under this Contract will be without prejudice to any other rights or remedies that the Customer may have against the Contractor under, or arising from, this Contract as a result of the Contractor's failure to achieve a Service Level; and
- (d) will not be liable to pay any Service Rebates arising from the Contractor's failure to achieve a Service Level to the extent that failure arose as a result of:
 - (i) the Customer's failure to fulfil its obligations under this Contract; or
 - (ii) an event arising under clause 40.1.

26. Personnel

26.1 Use of Specified Personnel

The Contractor must:

- (a) provide the Services or any part of the Services to which their particular expertise relates, with the active involvement of, and using the expertise of the Specified Personnel; and

- (b) ensure that each of the Specified Personnel is aware of and complies with the Contractor's obligations in providing the Services.

26.2 If the Specified Personnel are not available

Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in providing the Services, the Contractor must notify the Customer immediately. The Contractor must:

- (a) if requested by the Customer, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and
- (b) obtain the Customer's written consent prior to appointing any such replacement person. The Customer's consent will not be unreasonably withheld.

26.3 Customer may request replacement of Personnel

The Customer may at any time request the Contractor to remove from work in respect of this Contract any of the Specified Personnel or the Contractor's subcontractors or Personnel. The Contractor must promptly arrange for the removal of such subcontractors or Personnel and their replacement in accordance with the process outlined in clause 26.2.

27. Intellectual Property Rights

27.1 Auxiliary Material

This clause 27 does not affect the ownership of the Intellectual Property Rights in any Auxiliary Material.

27.2 Third Party Material

The Contractor must obtain all necessary copyright and other Intellectual Property Right permissions before making any Third Party Material available as Auxiliary Material for the purpose of this Contract.

27.3 Selecting an ownership model for Intellectual Property Rights in Contract Material

NOTE TO USERS:

Two models for ownership of Intellectual Property Rights in Contract Material are set out below.

Under the first model, the Contractor owns the Intellectual Property Rights in the Contract Material and provides a licence to the Customer to use the Contract Material. Under the second model, the Customer owns the Intellectual Property Rights in the Contract Material and provides a licence to the Contractor to use the Contract Material.

Users are to select a model through item 26 of the Contract Details. If no model is selected, the first model will apply. The first model is not, however, intended to represent a default position. The Customer should, therefore, not rely on the position set out in the first model without considering the appropriateness of both ownership models and whether other ownership and licensing models would be more suitable. Please refer to the User Notes for further guidance.

This note should be deleted prior to execution of the Contract.

- (a) The ownership model for Intellectual Property Rights in Contract Material is the model set out in item 26 of the Contract Details.
- (b) If no ownership model is selected in item 26 of the Contract Details, clause 27.4 applies and clause 27.5 in its entirety, does not apply to this Contract.

- (c) Each party must at its own cost, do all things and execute all documents necessary or convenient to give effect to the ownership model.

27.4 Contractor ownership of Intellectual Property Rights in Contract Material

- (a) All Intellectual Property Rights in the Contract Material vest in the Contractor.
- (b) Unless otherwise specified in item 27 of the Contract Details, to the extent that:
 - (i) the Customer needs to use any of the:
 - (A) Auxiliary Material provided by the Contractor; or
 - (B) Contract Material,to receive the full benefit of the Deliverables or Services, the Contractor grants to, or must obtain for, the Customer for the period specified in item 27 of the Contract Details, a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Material; or
 - (ii) the Contractor needs to use any of the Customer Material for the purpose of performing its obligations under this Contract, the Customer grants to the Contractor, subject to any conditions or restrictions specified in item 28 of the Contract Details and any direction by the Customer, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate such Material solely for the purpose of providing the Deliverables and Services.
- (c) The licence granted to the Customer under clause 27.4(b)(i) does not include a right to exploit the Auxiliary Material or the Contract Material for the Customer's commercial purposes.

27.5 Customer ownership of Intellectual Property Rights in Contract Material

- (a) If specified in item 26 of the Contract Details, all Intellectual Property Rights in the Contract Material vest in the Customer.
- (b) Unless otherwise specified in item 29 of the Contract Details, to the extent that:
 - (i) the Customer needs to use any of the Auxiliary Material provided by the Contractor to receive the full benefit of the Services (including the Contract Material), the Contractor grants to, or must obtain for, the Customer for the period specified in item 29 of the Contract Details, a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Auxiliary Material;
 - (ii) the Contractor needs to use any of the:
 - (A) Customer Material; or
 - (B) Contract Material,for the purpose of performing its obligations under this Contract, the Customer grants to the Contractor, subject to any conditions or restrictions specified in item 28 of the Contract Details and any direction by the Customer, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate such Material solely for the purpose of providing the Services.
- (c) The licence granted to the Customer under clause 27.5(b)(i) does not include a right to exploit the Auxiliary Material for the Customer's commercial purposes.

27.6 Warranty

The Contractor warrants that:

- (a) the Warranted Materials and the Customer's use of those Warranted Materials, will not infringe the Intellectual Property Rights of any person; and
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in this clause 27.

27.7 Remedy for breach of warranty

If someone claims, or the Customer reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights, the Contractor must, in addition to the indemnity under clause 31 and to any other rights that the Customer may have against it, promptly, at the Contractor's expense:

- (a) use its best efforts to secure the rights for the Customer to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

28. Moral Rights

28.1 Obtaining consents

To the extent permitted by applicable Laws and for the benefit of the Customer, the Contractor must:

- (a) give, where the Contractor is an individual; and
- (b) use its best endeavours to ensure that each of the Personnel used by the Contractor in the production or creation of the Contract Material gives,

genuine consent in writing, in a form acceptable to the Customer, to the use of the Contract Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights.

28.2 Specified Acts

In this clause, **Specified Acts** means:

- (a) falsely attributing the authorship of any Contract Material, or any content in the Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
- (b) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
- (c) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
- (d) adding any additional content or information to the Contract Material.

Part 2 – General requirements

29. Payment

29.1 Obligation to pay charges

Subject to this clause and Acceptance of the Hardware and Services, the Customer must pay to the Contractor the Service Charges as set out in Schedule 3.

29.2 Contractor to provide invoice

The Contractor must provide a correctly rendered invoice to the Customer:

- (a) for the Service Charges; and
- (b) for the Hardware Maintenance Charges, after the expiry of the Warranty Period,

in accordance with the requirements specified in Schedule 3.

29.3 Due date for payment

Unless otherwise specified in Schedule 3, the Customer must make payment of a correctly rendered invoice within 30 days after receiving the invoice.

29.4 Incorrect invoices, under/over payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Customer to the Contractor under this Contract.

29.5 Expenses

Unless specified otherwise in Schedule 3, the Contractor must not charge the Customer for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Service Charges. The Customer is under no obligation to pay any amount in excess of the Service Charges.

30. GST

30.1 Interpretation

In this clause 30, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

30.2 GST gross up

If a party (**Supplier**) makes a supply under or in connection with this Contract in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier, an additional amount equal to the GST payable on the supply (**GST Amount**).

30.3 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 30.2.

30.4 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

30.5 Adjustments

- (a) If the GST payable by a Supplier on any supply made under or in connection with this Contract varies from the GST Amount paid or payable by the Recipient under clause 30.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 30.2.
- (c) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.

30.6 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.

31. Indemnity

31.1 Indemnity by the Contractor

The Contractor indemnifies the Customer and its subcontractors and Personnel against Losses reasonably sustained or incurred by the Customer as a result of a claim made or threatened by a third party arising out of or in connection with:

- (a) any negligent, unlawful or wilfully wrong act or omission of the Contractor or its subcontractors or Personnel;
- (b) an allegation that any Services or Warranted Materials (including the use of any Services or Warranted Materials by the Customer or its subcontractors or Personnel) infringes the Intellectual Property Rights or Moral Rights of the third party. For the purposes of this clause 31.1(b), an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.

31.2 Customer's obligations

Where the Customer wishes to enforce an indemnity under clause 31.1 it must:

- (a) give written notice to the Contractor as soon as practical;
- (b) make reasonable efforts to mitigate the relevant Loss;
- (c) subject to the Contractor agreeing to comply at all times with clause 31.3, permit the Contractor, at the Contractor's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and
- (d) in the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer, under clause 31.2(c), provide all reasonable assistance to the Contractor in the handling of any negotiations and litigation.

31.3 Contractor's obligations

In the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer under clause 31.2, the Contractor must:

- (a) comply with government policy and obligations, as if the Contractor were the Customer, relevant to the conduct of the litigation and any settlement negotiation (including but not limited to the Legal Services Directions) and any direction issued by the Attorney General to the Commonwealth or delegate;
- (b) keep the Customer informed of any significant developments relating to the conduct of the defence or settlement of any claim; and
- (c) provide to the Customer such information and documentation as are reasonably requested by the Customer, to enable the Customer to ascertain whether the defence or settlement by the Contractor of any claim is being conducted in accordance with the requirements of the Legal Services Directions, including any requirements relating to legal professional privilege and confidentiality.

32. Liability

32.1 Relevant Law

The liability of a party for breach of this Contract, or in tort, or for any other common law or statutory cause of action arising out of the operation of this Contract, will be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

32.2 Limitation

- (a) The liability of each party arising out of or in connection with this Contract (including under any indemnity) is, subject to clause 32.2(b), limited to the amount specified in item 30 of the Contract Details.
- (b) Unless specified otherwise in item 31 of the Contract Details, any limit on the liability of each party under clause 32.2(a) does not apply in relation to liability relating to:
 - (i) personal injury (including sickness and death);
 - (ii) loss of, or damage to, tangible property;
 - (iii) an infringement of Intellectual Property Rights;
 - (iv) a breach of any obligation of confidentiality, security matter or privacy; or
 - (v) any breach of any statute or any wilfully wrong act or omission including, in the case of the Contractor, any act or omission that constitutes repudiation of the Contract.
- (c) Unless specified otherwise in item 32 of the Contract Details, the limitation of liability specified in clause 32.2(a) applies in respect of each single occurrence or a series of related occurrences arising from a single cause.

32.3 Review of limitation

- (a) The parties acknowledge that the limitation of liability specified in item 30 of the Contract Details will be subject to review in the event that the Contract is varied or extended.
- (b) For the avoidance of doubt, a party may require a review of the limitation of liability specified in clause 32.2 as a condition of its acceptance to a variation request under clause 21, but only for the purpose of achieving a proportionate adjustment to reflect any alteration to that party's risk exposure arising out of that variation.

32.4 Contribution

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

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

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

32.5 Application to Service Rebates

- (a) If Service Rebates become payable under clause 25.2, the Customer may, at its discretion:
 - (i) elect to set-off the amount the Contractor must pay against any subsequent liability for Service Charges; or
 - (ii) issue a notice requiring payment of the Service Rebates within no less than 10 Business Days of receipt of the notice.
- (b) The set-off or payment of Service Rebates by the Contractor will (unless stipulated to the contrary in item 33 of the Contract Details) be taken into account for the purposes of quantifying any Losses which are subject to any limitation of liability under clause 32.2.

33. Insurance

33.1 Obligation to maintain insurance

In connection with the provision of the Deliverables and Services, the Contractor must have and maintain:

- (a) for the Contract Period, valid and enforceable insurance policies for:
 - (i) public liability;
 - (ii) either professional indemnity or errors and omissions (except where Maintenance Services are not being provided);
 - (iii) product liability;
 - (iv) workers' compensation as required by law; and
 - (v) any additional types specified in item 34 of the Contract Details; and
- (b) for seven years following the expiry or termination of the Contract, valid and enforceable insurance policies for either professional indemnity or errors and omissions (except where Maintenance Services are not being provided),

in the amounts specified in item 35 of the Contract Details.

33.2 Certificates of currency

The Contractor must, on request by the Customer, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this clause 33.

34. Confidentiality and privacy

34.1 Confidential Information not to be disclosed

- (a) Subject to clause 34.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

34.2 Written undertakings

- (a) A party may at any time require the other party to arrange for:
 - (i) its Advisers; or
 - (ii) any other third party, other than a Customer's employee, to whom information may be disclosed pursuant to clause 34.3(a) or (e),

to give a written undertaking in the form set out in Schedule 9 or, where Schedule 9 does not include a form of undertaking, in the form of a deed reasonably acceptable to the other party and relating to the use and non-disclosure of the other party's Confidential Information.
- (b) If the other party receives a request under clause 34.2(a), it must promptly arrange for all such undertakings to be given.

34.3 Exceptions to obligations

The obligations on the parties under this clause 34 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Contract related activities;
- (c) is disclosed by the Customer to the responsible Minister;
- (d) is disclosed by the Customer, in response to a request by a House or a Committee of the Parliament of the Commonwealth;
- (e) is shared by the Customer within the Customer's organisation, or with another Agency, where this serves the Commonwealth's legitimate interests;
- (f) is authorised or required by law, including under this Contract, under a licence or otherwise, to be disclosed; or
- (g) is in the public domain otherwise than due to a breach of this clause 34.

34.4 Obligations on disclosure

Where a party discloses Confidential Information to another person:

- (a) pursuant to clauses 34.3(a), (b) or (e), the disclosing party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or

- (b) pursuant to clauses 34.3(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information.

34.5 Additional confidential information

- (a) The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.
- (b) Where the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of the Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both parties have signed this documentation.

34.6 Period of confidentiality

The obligations under this clause 34 continue, notwithstanding the expiry or termination of this Contract:

- (a) in relation to an item of information described in Schedule 4, for the period set out in that Schedule in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the parties in writing in respect of that information.

34.7 No reduction in privacy obligations

Nothing in this clause 34 derogates from any obligation which either party may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Contract, in relation to the protection of personal information.

35. Protection of personal information

35.1 Application of the clause

This clause applies only where the Contractor deals with personal information when, and for the purpose of, providing Deliverables and Services under this Contract.

35.2 Obligations

The Contractor acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (the **Privacy Act**), and agrees in respect of the provision of Deliverables and Services under this Contract:

- (a) to use or disclose personal information obtained during the course of providing Deliverables and Services under this Contract, only for the purposes of this Contract;
- (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
- (d) to notify individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Contractor, unless:

- (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Contract; or
 - (ii) in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the NPP or APC;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;
 - (g) to immediately notify the Customer if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 35, whether by the Contractor or any subcontractor;
 - (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 35; and
 - (i) to ensure that any employee of the Contractor who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause 35.

35.3 Subcontracts

The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to subcontracts.

35.4 Indemnity

The Contractor agrees to indemnify the Customer in respect of any Loss suffered or incurred by the Customer which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 35, or a subcontractor under the subcontract provisions referred to in clause 35.3.

35.5 Definitions

In this clause 35, the terms ‘agency’, ‘approved privacy code’ (**APC**), ‘Information Privacy Principles’ (**IPPs**), and ‘National Privacy Principles’ (**NPPs**) have the same meaning as they have in section 6 of the Privacy Act, and ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, 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 an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion’.

36. Conflict of interest

36.1 Warranty that there is no conflict of interest

The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

36.2 Notification of a conflict of interest

If, during the performance of this Contract a conflict of interest arises, or appears likely to arise, the Contractor must:

- (a) notify the Customer immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the Customer reasonably requires to resolve or otherwise deal with the conflict.

37. Security

37.1 Compliance with Customer requirements

The Contractor must, and must ensure that its subcontractors and Personnel comply with:

- (a) all relevant security and other requirements specified in the Commonwealth Protective Security Manual;
- (b) any additional security requirements specified in item 36 of the Contract Details; and
- (c) any other security procedures or requirements notified, in writing, by the Customer to the Contractor. The Contractor must comply with such a security procedure or requirement, from the date specified in the notice, or if none is specified, within five Business Days of receipt of the notice.

37.2 Security clearance

- (a) The Customer may, from time to time, notify the Contractor of the level of security or access clearance applicable to the Contractor's subcontractors or Personnel, and the date from which, or the period during which, that clearance will be effective and the Contractor must comply with and ensure its subcontractors and Personnel act in accordance with that notice.
- (b) Unless otherwise specified in item 37 of the Contract Details, the Contractor is responsible for all costs associated with obtaining security clearances.

37.3 Removal of Customer Data

The Contractor must not, and must ensure that its subcontractors and Personnel do not:

- (a) remove Customer Data or allow Customer Data to be removed from the Customer's premises; or
- (b) take Customer Data or allow Customer Data to be taken outside of Australia, without the Customer's prior written consent.

38. Books and records

38.1 Contractor to keep books and records

The Contractor must:

- (a) keep and require its subcontractors to keep adequate books and records, in accordance with Australian Accounting Standards, in sufficient detail to enable the amounts payable by the Customer under this Contract to be determined; and
- (b) retain and require its subcontractors to retain for a period of seven years after termination or expiration of this Contract all books and records relating to the Services.

38.2 Costs

The Contractor must bear its own costs of complying with this clause.

38.3 Survival

This clause applies for the Contract Period and for a period of seven years from the termination or expiry of this Contract.

39. Audit and access

39.1 Right to conduct audits

The Customer or a representative may conduct audits relevant to the performance of the Contractor's obligations under this Contract. Audits may be conducted of:

- (a) the Contractor's operational practices and procedures as they relate to this Contract, including security procedures;
- (b) the accuracy of the Contractor's invoices and reports in relation to the provision of the Services under this Contract;
- (c) the Contractor's compliance with its confidentiality, privacy and security obligations under this Contract;
- (d) material (including books and records) in the possession of the Contractor relevant to the Services or Contract; and
- (e) any other matters determined by the Customer to be relevant to the Services or Contract.

39.2 Access by Customer

- (a) The Customer may, at reasonable times and on giving reasonable notice to the Contractor:
 - (i) access the premises of the Contractor to the extent relevant to the performance of this Contract;
 - (ii) require the provision by the Contractor, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Customer by use of the Customer's existing computer hardware and software;
 - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Contractor, its employees, agents or subcontractors; and
 - (iv) require assistance in respect of any inquiry into or concerning the Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Customer, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Contractor must provide access to its computer hardware and software to the extent necessary for the Customer to exercise its rights under this clause, and provide the Customer with any reasonable assistance requested by the Customer to use that hardware and software.

39.3 Conduct of audit and access

The Customer must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 39.1; and
- (b) the exercise of the general rights granted by clause 39.2 by the Customer,

do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under the Contract.

39.4 Costs

- (a) Except as set out in clause 39.4(b), each party must bear its own costs of any reviews and/or audits.
- (b) If the Contractor is able to substantiate that it has incurred direct expenses in the Customer's exercise of the rights granted under clause 39.1 or clause 39.2 which, having regard to the value of this Contract, are substantial, the Customer and the Contractor will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

39.5 Auditor-General and Privacy Commissioner

The rights of the Customer under clause 39.2(a)(i) to 39.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.

39.6 Contractor to comply with Auditor-General's requirements

The Contractor must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Privacy Commissioner's or his or her delegate's requirements, notified under clause 39.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.

39.7 No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with the Contract.

39.8 Subcontractor requirements

The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause.

39.9 No restriction

Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Customer under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

39.10 Survival

This clause applies for the Contract Period and for a period of seven years from the termination or expiry of this Contract.

40. Unforeseen events

40.1 Occurrence of unforeseen event

A party (**Affected Party**) is excused from performing its obligations under this Contract to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of the Contractor only), including but not limited to acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation.

40.2 Notice of unforeseen event

When the circumstances described in clause 40.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.

40.3 Termination

If non-performance or diminished performance by the Affected Party due to the circumstances under clause 40.1 continues for a period of more than 14 consecutive days or other period as specified in item 38 of the Contract Details, the other party may terminate the Contract immediately by giving the Affected Party written notice.

40.4 Consequences of termination

If this Contract is terminated under clause 40.3:

- (a) each party will bear its own costs and neither party will incur further liability to the other; and
- (b) where the Contractor is the Affected Party, it will be entitled to payment for Services Accepted or work performed prior to the date of intervention of the circumstances described in clause 40.1.

41. Dispute resolution

41.1 No arbitration or court proceedings

If a dispute arises in relation to the conduct of this Contract (**Dispute**), a party must comply with this clause 41 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 41.

41.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

41.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 41.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

41.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 41.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

41.5 Role of mediator and obligations of parties

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 41.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

41.6 Confidentiality

Any information or documents disclosed by a party under this clause 41:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

41.7 Costs

Each party to a Dispute must pay its own costs of complying with this clause 41. The parties to the Dispute must equally pay the costs of any mediator.

41.8 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 41.1 to 41.5. Clauses 41.6 and 41.7 survive termination of the dispute resolution process.

41.9 Breach of this clause

If a party to a Dispute breaches clauses 41.1 to 41.8, the other party does not have to comply with those clauses in relation to the Dispute.

42. Termination

42.1 Termination and reduction for convenience

- (a) The Customer may, at any time, by notice, terminate this Contract or reduce the scope of the Deliverables or Services, including for a machinery of government change.
- (b) On receipt of a notice of termination or reduction the Contractor must:
 - (i) stop work as specified in the notice;
 - (ii) take all available steps to minimise loss resulting from that termination and to protect Customer Material and Contract Material; and
 - (iii) continue to provide any part of the Deliverables and Services not affected by the notice.
- (c) If this Contract is terminated under clause 42.1, the Customer is liable only for:
 - (i) payments under clause 29 for Deliverables and Services rendered before the effective date of termination; and
 - (ii) reasonable costs incurred by the Contractor and directly attributable to the termination.
- (d) If the scope of the Deliverables or Services is reduced, the Customer's liability to pay the Service Charges or to provide Customer Material abates in accordance with the reduction in the Deliverables or Services.
- (e) The Customer is not liable to pay compensation under clause 42.1(c)(ii) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, exceed the total Service Charges payable under this Contract.
- (f) The Contractor is not entitled to compensation for loss of prospective profits.

42.2 Termination by the Customer for default

- (a) Without limiting any other rights or remedies the Customer may have against the Contractor arising out of or in connection with this Contract, the Customer may terminate this Contract effective immediately by giving notice to the Contractor if:
 - (i) the Contractor breaches a material provision of this Contract where that breach is not capable of remedy;
 - (ii) the Contractor breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or
 - (iii) an event specified in clause 42.2(c) happens to the Contractor.
- (b) Without limitation, for the purposes of clause 42.2(a), each of the following constitutes a breach of a material provision:
 - (i) breach of warranty under clause 13.3, 13.4 or 13.5 (Contractor warranties);
 - (ii) a failure to comply with clause 26 (Personnel);
 - (iii) a failure to comply with clause 27 (Intellectual Property Rights);
 - (iv) a failure to comply with clause 33 (Insurance);
 - (v) a failure to comply with clause 34 (Confidentiality and privacy);
 - (vi) a failure to comply with clause 35 (Protection of personal information); or
 - (vii) a failure to notify the Customer of a conflict of interest under clause 36 (Conflict of interest).
- (c) The Contractor must notify the Customer immediately if:
 - (i) the Contractor being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Contractor;
 - (ii) the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
 - (iii) the Contractor ceases to carry on business;
 - (iv) the Contractor ceases to be able to pay its debts as they become due;
 - (v) the Contractor being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
 - (vi) the Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
 - (vii) where the Contractor is a partnership, any step is taken to dissolve that partnership.

In this clause, **controller**, **managing controller** and **administrator** have the same meanings as in the Corporations Act.

42.3 Termination by the Contractor for default

Without limiting any other rights or remedies the Contractor may have against the Customer arising out of or in connection with this Contract, the Contractor may terminate this Contract by giving at least 5 Business Days notice to the Customer if the Customer:

- (a) has not paid a correctly rendered invoice or has not notified the Contractor that it disputes the charges specified under an invoice within 60 days of receipt of that invoice; and
- (b) the Contractor has given the Customer:

- (i) a first notice 30 days after the due date of the invoice, specifying the failure to pay and giving the Customer at least 30 days to pay the invoice; and
- (ii) a second notice 15 days after the first notice, referring to the first notice and giving the Customer at least 15 days to pay the invoice.

42.4 After termination

On termination of this Contract the Contractor must:

- (a) stop provision of the Deliverables and stop work on the Services;
- (b) deal with Customer Material as reasonably directed by the Customer; and
- (c) return all the Customer's Confidential Information to the Customer.

42.5 Survival

The following clauses survive the termination and expiry of this Contract:

- (a) Clause 27 (Intellectual Property);
- (b) Clause 31 (Indemnity);
- (c) Clause 33 (Insurance);
- (d) Clause 34 (Confidentiality and privacy);
- (e) Clause 35 (Protection of personal information);
- (f) Clause 37 (Security);
- (g) Clause 39 (Audit and access); and
- (h) Clause 43 (Knowledge transfer).

42.6 Termination does not affect accrued rights

Termination of this Contract does not affect any accrued rights or remedies of a party.

43. Knowledge transfer

Subject to any qualification or provision to the contrary in the Statement of Work, the Contractor must provide the following assistance to the Customer on termination or expiration of this Contract:

- (a) transferring or providing access to the Customer to all information stored by whatever means held by the Contractor or under the control of the Contractor in connection with this Contract; and
- (b) making Specified Personnel and Contractor Personnel available for discussions with the Customer as may be required. The time, length and subject of these discussions will be at the sole discretion of the Customer, provided that any matter discussed is not considered to reveal any 'Commercial-in-Confidence' information of the Contractor.

44. Notices and other communications

44.1 Service of notices

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and

- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in item 39 of the Contract Details, as varied by any Notice given by the recipient to the sender.

44.2 Effective on receipt

A Notice given in accordance with clause 44.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 6.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

45. Miscellaneous

45.1 Ownership of Contract

All copyright and other Intellectual Property Rights contained in this Contract remain the property of the Customer.

45.2 Varying the Contract

This Contract may be varied only in writing signed by each party.

45.3 Approvals and consents

Except where this Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.

45.4 Assignment and novation

A party may only assign its rights or novate its rights and obligations under this Contract with the prior written consent of the other party.

45.5 Costs

Each party must pay its own costs of negotiating, preparing and executing this Contract.

45.6 Counterparts

This Contract may be executed in counterparts. All executed counterparts constitute one document.

45.7 No merger

The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

45.8 Entire agreement

This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

45.9 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.

45.10 Severability

A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of this Contract continue in force.

45.11 Waiver

Waiver of any provision of or right under this Contract:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

45.12 Relationship

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Contract does not create a relationship of employment, agency or partnership between the parties.

45.13 Announcements

- (a) The Contractor must, before making a public announcement in connection with this Contract or any transaction contemplated by it, obtain the Customer's agreement to the announcement, except if required by law or a regulatory body (including a relevant stock exchange).
- (b) If the Contractor is required by law or a regulatory body to make a public announcement in connection with this Contract or any transaction contemplated by this Contract the Contractor must, to the extent practicable, first consult with and take into account the reasonable requirements of the Customer.
- (c) Where reasonably practicable, the Customer must, on or before making a public announcement in connection with this Contract or any transaction contemplated by it, provide notice to the Contractor of the general nature of the announcement. For the avoidance of doubt, the Customer does not require the consent of the Contractor to the making of the announcement.

45.14 Governing law and jurisdiction

This Contract is governed by the law specified in item 40 of the Contract Details and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

Schedule 1 – Contract Details

Item number	Description	Clause Reference	Details
1.	Customer details	1.1	<i>[insert name of Customer]</i> <i>[insert street address]</i> <i>[insert ABN]</i>
2.	Contractor details	1.1	<i>[insert name of Contractor]</i> <i>[insert street address]</i> <i>[insert ABN]</i>
3.	Customer Representative	1.1	<i>[insert position and/or name of the Customer's representative]</i>
4.	Contractor Representative	1.1	<i>[insert position and/or name of Contractor's representative]</i>
5.	Business Hours	1.1	<i>[if Business Hours differ from those specified in the definition, specify alternative hours here. Otherwise insert 'not applicable']</i>
6.	Commencement Date	1.1 and 3.1	<i>[insert date Contract is to commence eg, dd/mm/yy]</i>
7.	Initial Contract Period	1.1 and 3.1	<i>[insert the initial period of time for which the Contract will continue, eg 2 years]</i>
8.	Option Period	3.2	<i>[insert Option Period eg, 2 periods each being 1 year in duration. Otherwise insert 'not applicable']</i>
9.	Option Notice Period	3.2	<i>[if Option Notice Period is to be other than 30 days, insert alternative Option Notice Period (eg, 45 days). Otherwise insert 'not applicable']</i>
10.	Nominated Agency	1.1 and 4	<i>[insert name(s) of any Nominated Agencies. Otherwise insert 'not applicable']</i>
11.	Newly manufactured Hardware and replacement parts	7.1(b)(i), 13.4(a)(iii) and 13.5(b)(i)	<i>[if newly manufactured Hardware and/or replacement parts are not required, state so here. Otherwise insert 'not applicable']</i>
12.	Removal of equipment	9	<i>[if existing equipment is to be removed by the Contractor, state that here and specify the equipment to be removed in the Statement of Work. Otherwise insert 'not applicable']</i>
13.	Warranty Period	1.1 and 11	<i>[if Warranty Period is to differ from that set out in clause 1.1, state alternative period]</i>

Item number	Description	Clause Reference	Details
			<i>here. Otherwise insert 'not applicable'</i>
14.	Third Party product warranties	12	<i>[if Third Party product warranties are not required for some or all Hardware provided under this Contract, specify that Hardware for which Third Party product warranties are not required. Otherwise if the default position is to apply insert 'default position to apply']</i>
15.	Relevant Industry Standards	13.1(b)	<i>[insert relevant Industry Standards, best practice and guidelines (if any). Otherwise insert 'not applicable']</i>
16.	Subcontractors	13.8	<i>[insert names and ABNs of any subcontractors. Otherwise insert 'not applicable']</i>
17.	Support Period	14.1	<i>[if the Support Period is to differ from that specified in clause 14.1, specify here the alternative period. Otherwise insert 'not applicable']</i>
18.	Technical support	16.2	<i>[if technical support is to differ from that specified in clause 16.2, specify here what technical support will be provided. Otherwise insert 'not applicable']</i>
19.	Exclusions from Hardware Maintenance	17	<i>[if the exclusions from Hardware Maintenance are to differ from those in clause 17, specify details of the exclusions here. Otherwise insert 'not applicable']</i>
20.	Engineering changes and upgrades	19.1(a)	<i>[if Maintenance Services are not to include implementation of all engineering changes and upgrades, state that here. Otherwise insert 'not applicable']</i>
21.	Ongoing Maintenance Services	19.3	<i>[if Maintenance Services are only to be provided for a specified period following refusal of an engineering change or upgrade, insert that period here. Otherwise insert 'not applicable']</i>
22.	Language of Documentation	20.2	<i>[if the Documentation is to be in a language other than English, specify the required language here. Otherwise insert 'not applicable']</i>
23.	Acceptance testing of Hardware	24.1	<i>[if Acceptance of Hardware is not to occur on delivery, insert when Acceptance is to occur. Otherwise insert 'not applicable']</i>

Item number	Description	Clause Reference	Details
24.	Period for Acceptance	24.4	<i>[if the period for Acceptance is to be a period other than 5 Business Days from completion of Acceptance testing, specify the relevant timeframe here. Otherwise insert 'not applicable']</i>
25.	Specified Personnel	1.1 and 26	<i>[insert names and positions of Specified Personnel. Otherwise insert 'not applicable']</i>
26.	Intellectual Property Rights – Ownership of Contract Material	27.3	<p><i>[parties are to select one of the following. Refer to the note to users at clause 27.3 for further information]</i></p> <p><input type="checkbox"/> clause 27.4 (Contractor Ownership of and licence to Intellectual Property Rights in Contract Material) is to apply</p> <p><input type="checkbox"/> clause 27.5 (Customer Ownership of and licence to Intellectual Property Rights in Contract Material) is to apply</p>
27.	Intellectual Property Rights - licences	27.4(b)	<p>Where clause 27.4 (Contractor Ownership of and licence to Intellectual Property Rights in Contract Material) is to apply:</p> <ol style="list-style-type: none"> 1. Period of Customer's licence is: <i>[Insert the duration of the Customer's licence to use the Auxiliary Material provided by the Contractor, and Contract Material. For example, will the licence be perpetual, for the Contract Period or for some other period]</i> 2. <i>[If the terms of the licence are to differ from that provided in clause 27.4(b) state the position here]</i>
28.	Customer Material	1.1, 27.4(b) and 27.5(b)	<i>[insert specific Material to be provided to the Contractor by the Customer (if any) and any restrictions on the use of the Material. Otherwise insert 'not applicable']</i>
29.	Intellectual Property Rights – licences	27.5(b)	<p>Where clause 27.5 (Customer ownership of and licence to Intellectual Property Rights in Contract Material) is to apply:</p> <ol style="list-style-type: none"> 1. Period of Customer's licence is:

Item number	Description	Clause Reference	Details
			<p><i>[Insert the duration of the Customer's licence to use the Auxiliary Material provided by the Contractor. For example, will the licence be perpetual, for the Contract Period or for some other period]</i></p> <p>2. <i>[If the terms of the licence are to differ from that provided in clause 27.5(b), state the position here]</i></p>
30.	Limitation of liability - cap	32.2(a)	<i>[specify the amount to which liability is to be limited]</i>
31.	Limitation of liability –limitation on types of liability	32.2(b)	<i>[if the parties are to have limited liability for any of the types of liability described in clause 32.2(b),those types of liability should be specified here]</i>
32.	Limitation of liability – aggregate or per occurrence	32.2(c)	<i>[if the limitation of liability is not to apply in respect of each single occurrence or a series of related occurrences arising from a single cause then specify the basis on which it is to apply e.g., in aggregate over the Contract Period]</i>
33.	Limitation of liability – Service Rebates not included in limitation of liability	32.5(b)	<p><i>[select if the default position in clause 32.5(b) does not apply]</i></p> <p><input type="checkbox"/> the set-off or payment of Service Rebates under clause 32.5(a) <u>will not</u> be taken into account for the purposes of quantifying any Losses which are subject to any limitation of liability</p>
34.	Additional insurance	33.1	<i>[insert any additional types of insurance the Contractor is required to maintain Otherwise insert 'not applicable']</i>
35.	Insurance quantum	33.1	<p>Public liability insurance for an insured amount of [<i>insert amount</i>] per occurrence and not less than [<i>insert amount</i>] in aggregate.</p> <p>Either professional indemnity or errors and omissions insurance for an insured amount of [<i>insert amount</i>] per occurrence and not less than [<i>insert amount</i>] in aggregate.</p> <p>Product liability for an insured amount of [<i>insert amount</i>] per occurrence and not less than [<i>insert amount</i>] in aggregate.</p>

Item number	Description	Clause Reference	Details
			Workers compensation as required by law. <i>[insert amount required of any other type of insurance specified at item 34 above]</i>
36.	Security	37.1	<i>[insert any security requirements additional to those specified in clause 37.1. Otherwise insert 'not applicable']</i>
37.	Costs of security clearances	37.2	<i>[if the position as to payment for security clearances is to differ from that provided in clause 37.2(a),state the position here. Otherwise insert 'not applicable']</i>
38.	Unforeseen events - termination period	40.3	<i>[if a termination period other than 14 days will apply in the event of an 'unforeseen event', specify it here. Otherwise insert 'not applicable']</i>
39.	Address for Notices	44.1	Customer: <i>[insert name and/or position of person to receive notices]</i> <i>[insert postal address]</i> <i>[insert physical address]</i> <i>[insert facsimile number]</i> Contractor: <i>[insert name and/or position of person to receive notices]</i> <i>[insert postal address]</i> <i>[insert physical address]</i> <i>[insert facsimile number]</i>
40.	Governing Law	45.14	<i>[insert the law which is to govern the Contract eg Australian Capital Territory]</i>

Schedule 2 – Statement of Work

Note: Insert particulars of the Deliverables and Services to be provided under this Contract in this Schedule. The format of this Schedule is provided as an example only and may be amended to address particular Customer requirements

1. Purpose (clauses 13.4(a)(vi) and 13.5(a)(ii))

Note: Insert a brief summary of the:

- (a) *business requirements of the Customer relevant to provision of the Deliverables and Services; and*
- (b) *purpose of procuring the Deliverables and Services.*

2. Hardware (clauses 1.1 and 6)

Note: Insert details of Hardware to be provided, including Delivery Dates and Installation Dates

	Hardware	Delivery Place	Delivery Date	Installation Date
1.				
2.				

3. Specifications (clauses 1.1, 6, 8.2 and 13.4(a) and 20.2)

Note: Insert Specifications for the Hardware (attach additional pages if required)

4. Services (clauses 1.1 and 13)

Note: Specify details of Services here, including any specific requirements in relation to equipment/hardware to be removed (clause 9)

	Description of Services (attach additional pages if required)	
1.	Installation of Hardware <input type="checkbox"/> Yes <input type="checkbox"/> No	<i>Insert description</i>
2.	Integration of Hardware <input type="checkbox"/> Yes <input type="checkbox"/> No	<i>Insert description</i>
3.	Removal of equipment <input type="checkbox"/> Yes <input type="checkbox"/> No	<i>Insert description</i>
4.	Preventative Maintenance <input type="checkbox"/> Yes <input type="checkbox"/> No	<i>See item 5.2 below</i>
5.	Remedial Maintenance <input type="checkbox"/> Yes <input type="checkbox"/> No	<i>See item 5.3 below</i>
6.	Other Services	<i>Insert description</i>

5. Maintenance Services (clauses 1.1 and 14)

Note: Insert details of the Supported Hardware in the table below. If the Supported Hardware is the same as the Hardware set out in item 2 above, insert 'As for item 2 above'

5.1 Supported Hardware (clauses 1.1 and 14.2)

	Description of Supported Hardware (attach additional pages if required)
1.	
2.	
3.	

5.2 Preventative Maintenance (clause 15)

Note: Insert details of the Preventative Maintenance Services to be provided by the Contractor (attach additional pages if required)

Description of Services	Frequency of Service	Service Levels	Performance measures
Maintenance of the Supported Hardware in good operating condition			
Problem detection and resolution			
Replacement of unserviceable or faulty parts			
Cleaning and lubrication			
Adjustment of mechanical and similar devices			

5.3 Remedial Maintenance (clause 16)

Note: Insert details of the Remedial Maintenance to be provided (attach additional pages if required)

Description of Services	
Technical Support	<i>Insert details of the technical support to be provided including the telephone, fax and email details</i>
Methods and procedures for reporting Problems	<i>Insert description</i>
Support Hours	<i>Insert hours of Support if different from that defined in clause 1.1</i>

Nature of Problem	Response required	Response Time	Resolution Time	Disruption minimisation measures

6. Documentation (clause 20)

Note: Insert details of Documentation here, including required format and when the Documentation is required to be delivered

	Documentation	Format	Milestone
1.			
2.			
3.			

7. Acceptance Criteria – Hardware (clauses 1.1 and 24)

Note: Insert details of Acceptance Criteria against which the Hardware will be assessed, and the date of assessment

	Hardware	Acceptance Criteria	Acceptance testing date
1.			
2.			
3.			

8. Acceptance Criteria – Maintenance (clauses 1.1, 19.2 and 24)

Note: Insert details of Acceptance Criteria against which the Maintenance Services and the engineering changes and upgrades will be assessed, and the date of assessment

	Maintenance Services	Acceptance Criteria	Acceptance testing date
1.			
2.			
3.			
	Engineering changes and upgrades	Acceptance Criteria	Acceptance testing date
1.			
2.			

9. Progress meetings (clause 23.1)

Note: Insert details of attendees, frequency (eg. weekly, monthly) and place of meetings

Meeting	Attendees	Frequency	Place

10. Reporting (clause 23.2)

Note: Insert details of required reports, including content, frequency (eg. weekly, monthly) and dates due

Report type and content	Frequency	Milestone

11. Knowledge Transfer (clause 43)

Note: If requirements for Knowledge Transfer are different to those specified in clause 43, specify the requirements here

Requirement	Milestone

Schedule 3 – Payment

Note: Insert details of all relevant charges, costs or fees for the provision of the Deliverables and performance of the Services and when each item is payable. All Service Charges are GST exclusive. The format of this Schedule is provided as an example only and may be amended to address particular Customer requirements

1. Summary of Service Charges (clauses 1.1 and 29)

Note: This table is intended to summarise the total charges payable under the Contract. Insert totals from the tables in sections 2, 3 and 4

Item	Charges (exclusive of GST)	GST component	Total Service Charges (inclusive of GST)
Hardware			
Installation Charges			
Hardware Maintenance Charges (per annum charge)			
Other charges (if any)			
TOTAL			

2. Hardware Charges (clauses 1.1 and 29)

Note: Insert per unit Hardware price, exclusive of GST (insert additional rows if required)

Hardware	Quantity	Unit Price (exclusive of GST)	GST component	Total Charges (inclusive of GST)
	1 - 10			
	11 - 50			
	51 - 99			
	100 - 499			

3. Installation Charges (clause 29)

Note: If the Contractor is to install the Hardware, insert per unit installation charge, exclusive of GST (insert additional rows if required). If the Contractor is not installing the Hardware or the installation charges are included in the Hardware Charge, mark this section as 'Not Applicable'

Quantity	Installation Charge (exclusive of GST)	GST component	Total Installation Charges (inclusive of GST)
1 - 10			
11 - 50			
51 - 99			
100 - 499			

4. Hardware Maintenance Charges (clauses 1.1 and 29)

Note: Insert fixed charges for Services. If charges are payable on a time and material basis, mark this section as 'Not Applicable'

Item	Charges (exclusive of GST)	GST component	Total Charges (inclusive of GST)
Hardware Maintenance Charges			
Other charges (if any)			
TOTAL			

5. Hourly rates

Note: Add hourly rates for each person if payment is to be made on a time and materials basis

Personnel	Hourly Rate (exclusive of GST)	GST Component	Maximum Work Effort (Days)	Charges (exclusive of GST)	GST Component
Sub total					
Add GST					
TOTAL					

6. Daily rates

Note: Add daily rates for each person if payment is to be made on a time and materials basis

Personnel	Daily Rate (exclusive of GST)	GST Component	Maximum Work Effort (Days)	Charges (exclusive of GST)	GST Component
Sub total					
Add GST					
TOTAL					

7. Milestone Payments

Note: Insert Milestone payment amounts against the Milestones. If Milestone Payments are not applicable, mark as 'Not Applicable'

Milestone	Milestone/Deliverable	Milestone Payment	GST Component
Sub total			
Add GST			
TOTAL			

8. Service Rebates (clauses 1.1 and 25.2)

Note: Add methodology for calculating Service Rebates here. Refer to the User Notes for examples of Service Rebates methodologies

Service Level	Method of calculation

9. Invoicing requirements (clause 29.2)

Note: Specify invoicing requirements here

10. Payment period (clause 29.3)

Note: Specify an alternative payment period if the 30 day period contemplated in clause 29.3 is not suitable

11. Expenses (clause 29.5)

- (a) Subject to (b) below, the Customer will not pay any travel, accommodation or other expenses unless they have been pre-approved in writing by the Customer.
- (b) The Contractor will be reimbursed for the travel and related accommodation at non-SES rates where they are pre-approved in writing by the Customer. The Contractor must submit an invoice for those expenses and the Customer will reimburse the Contractor in accordance with the invoicing procedures set out in this Schedule.

Schedule 4 – Designated Confidential Information

Note: This Schedule should include each party’s Confidential Information (decided by reference to the Financial Management Guidance No. 3: Guidance on Confidentiality of Contractors’ Commercial Information issued by the Department of Finance and Administration in February 2003). The period of confidentiality should be specified for each item. If the parties agree that different items of information are to be confidential for different periods of time, the different periods should be recorded next to each item. An assessment will need to be made by the parties on a case-by-case basis about what is to be included in the Schedule.

1. Confidential information of the Customer (clause 1.1 and 34)

1.1 Contract provisions / Schedules

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

1.2 Contract-related Material

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

2. Confidential information of the Contractor (clause 1.1 and 34)

2.1 Contract provisions / Schedules

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

2.2 Contract-related Material

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

Schedule 5 – Customer Requirements

Note: Customer to address particular requirements with which the Contractor must comply, for example, Customer specific legislative requirements (including in relation to secrecy and confidentiality), specific Customer policies and/or procedures and specific Commonwealth government policies

Schedule 6 – Change Order

Note: If the proposed changes will vary the Specifications, or the Deliverables or Services, the following form must be completed

This Change Order (including its attachments, if any) serves to vary the Contract in accordance with the terms set out below. Unless specifically stated in this Change Order, all terms and conditions of the Contract continue unaffected.

1.	Change Order number	
2.	Raised by	
3.	Details of change (use attachments if required)	
4.	Implementation date of Change Order	
5.	Effect on Services and / or Deliverables	
6.	Plan for implementing the change	
7.	Effect on Service Charges	
8.	Effect on Service Level Requirements	
9.	Effect on Documentation	
10.	Impact on end users	
11.	Other relevant matters (eg transitional impacts)	

Customer

Name (print)

Position

Signature

Date

Contractor

Name (print)

Position

Signature

Date

Schedule 7 – Agency Order Form

The Contractor has offered under clause 4 of the Contract specified at item 1 below to provide the Deliverables and Services to Nominated Agencies. The Nominated Agency specified in item 3 below accepts this offer on the terms and conditions set out in the Contract and in this Agency Order Form. If there is an inconsistency between this Agency Order Form and any other provisions of the Contract, the terms and conditions in this Agency Order Form will prevail to the extent of any inconsistency.

1.	Contract No. and description	
2.	Names of Parties to the Contract	
3.	Customer	<i>[Insert Nominated Agency name]</i> A reference to <i>[insert name of the contracting Agency]</i> or the Customer in the Contract will be taken as a reference to <i>[the Nominated Agency]</i>
4.	Commencement Date	
5.	Customer Representative	Title: Name: Postal Address: Fax number: Email:
6.	Customer's details for Notices	Postal address: Physical address: Facsimile number:
7.	Contractor Specified Personnel	<i>[insert names]</i>
8.	Deliverables and Services required (including any changes to the Statement of Requirements)	<i>[attach additional pages if required]</i>

Signed for and on behalf of the **[insert name of Customer]** by its duly authorised delegate in the presence of

Signature of witness



Signature of delegate



Name of witness (print)

Name of delegate (print)

Position of delegate (print)

[Select one of the following execution clauses. Where the Contractor is a company with multiple directors, select the first execution block below, otherwise, select the second option.]

Executed by **[insert name of company]** in accordance with Section 127 of the Corporations Act 2001 in the presence of

Signature of director



Signature of director/company secretary
(Please delete as applicable)



Name of director (print)

Name of director/company secretary (print)

Signed by **[insert contracting party name]** in the presence of

Signature of witness



Signature of Contractor



Name of witness (print)

Schedule 8 – Open Source Licence

Note: Insert here the provisions of the Open Source Licence which will govern the use of the Open Source software and provided under this Contract (if any). Note that the terms set out in this schedule will prevail over the Agreed Terms to the extent of any inconsistency

Schedule 9 – Confidentiality and privacy undertaking

Note: Insert here the terms of the confidentiality and privacy undertaking (if any) which a party may be required, under clause 34.2, to arrange for its Advisers or other third parties to give

Signing page

EXECUTED as an agreement.

Signed for and on behalf of the **[insert name of Customer]** by its duly authorised delegate in the presence of

_____	←	_____	←
Signature of witness		Signature of delegate	
_____		_____	
Name of witness (print)		Name of delegate (print)	

		Position of delegate (print)	

[Select one of the following execution clauses. Where the Contractor is a company with multiple directors, select the first execution block below, otherwise, select the second option.]

Executed by **[insert name of company]** in accordance with Section 127 of the Corporations Act 2001 in the presence of

_____	←	_____	←
Signature of director		Signature of director/company secretary (Please delete as applicable)	
_____		_____	
Name of director (print)		Name of director/company secretary (print)	

Signed by **[insert contracting party name]** in the presence of

_____	←	_____	←
Signature of witness		Signature of Contractor	

Name of witness (print)			