
**DIGITAL MARKET PLACE
LOW RISK ICT PROJECTS AGREEMENT
(Version 1.1)**

BETWEEN

**TREASURER OF SOUTH AUSTRALIA ON BEHALF OF THE CROWN
IN RIGHT OF THE STATE OF SOUTH AUSTRALIA**

-AND-

[INSERT NAME OF SUPPLIER]

[Insert ACN of Supplier]



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THIS AGREEMENT is made the _____ day of _____ 2014

BETWEEN:

TREASURER OF SOUTH AUSTRALIA ON BEHALF OF THE CROWN IN RIGHT OF THE STATE OF SOUTH AUSTRALIA of C/- State Administration Centre, 200 Victoria Square, Adelaide, South Australia 5000 (formerly Minister for the Public Sector)

(**“State”**)

AND:

[Insert name and ACN/ABN and address of the Supplier]

(**“Supplier”**)

1 FORMAL CONSIDERATION

In consideration of the Supplier undertaking obligations under this Agreement, the State must pay the consideration of ten (\$10) dollars on demand by the Supplier.

2 PANEL ARRANGEMENT

- 2.1 The State appoints the Supplier as a member of the ‘Digital Market Place Panel’.
- 2.2 Subject to clause 2.3, the terms and conditions of this Agreement are set out in Schedule 1.
- 2.3 The Schedules of this Agreement may be varied by the State from time to time upon prior notice to the Supplier. Where the State exercises this right, the variations to the Schedules will become binding upon the Supplier for any Customer Agreements executed by the Supplier after the date on which it received notice under this clause.
- 2.4 As a member of Digital Market Place Panel the Supplier is authorised by the State to enter into Customer Agreements with State Agencies for the provision of Services which fall within the Scope of Services as outlined in clause 2.5. The Supplier cannot provide Services under a Customer Agreement which do not fall within the Scope of Services.
- 2.5 **“Scope of Services”** means ICT services which are low risk, have a total contract value not exceeding \$100,000 (including GST) and which do not include:
 - 2.5.1 ICT system audit services;
 - 2.5.2 ICT system development, implementation, maintenance or support services;

For the purposes of this definition, Services are deemed to be ‘low risk’ where the State Agency seeking to purchase the Services has determined them to be low risk under that Customer’s standard project risk assessment framework;

- 2.6 The Supplier must not knowingly provide a quote(s) to a State Agency for Services where the value of services to be provided by the Supplier to that Customer has been divided into parts so as to give the impression that the overall value of the Services is equal to or less than \$100,000 (including GST) in order to circumvent the provision in clause 2.5 above.

3 FORMATION OF CUSTOMER AGREEMENTS

- 3.1 In order to contract for low risk Services under this Agreement, a State Agency must enter into a Customer Agreement with the Supplier via a CA Memorandum as set out in Schedule 3.
- 3.2 The Schedules contain standard terms, conditions and requirements applicable to all Customer Agreements as well as additional requirements which may be included for particular Services.
- 3.3 If requested by the State, the Supplier must notify the State of each Customer Agreement it enters into with a State Agency and must provide a copy of the Customer Agreement Memorandum to the State's Principal Contract Administrator.
- 3.4 The Supplier is in breach of this Agreement if it enters into a Customer Agreement on terms other than as provided for in this Agreement without having first obtained the written approval of the State's Principal Contract Administrator.
- 3.5 Neither Party is bound by any terms of a Customer Agreement that are inconsistent with this Agreement unless the prior written approval of the State's Principal Contract Administrator, in respect of the inconsistent terms, was obtained.
- 3.6 Items 1 to 6 of the CA Memorandum must be completed in order to form a valid Customer Agreement.

SIGNED for and on behalf of the)
TREASURER OF SOUTH AUSTRALIA)
by David Reynolds, Chief Executive,)
Department of Treasury and Finance)
duly authorised in that regard and in the)
presence of:)

Date:

.....
Signature of Witness

.....
Name of Witness

The Chief Executive of the Department of Treasury and Finance and delegate for the
TREASURER OF SOUTH AUSTRALIA hereby approves clause 21.1 of Schedule 1
of this Agreement for the purposes of clause 13(2) of Schedule 1 of the *Freedom of
Information Act 1991 (SA)*.

Signed by David Reynolds

EXECUTED for and on behalf of)
[Insert name of company] [Insert ACN])
by its duly authorised agent for the purposes of s9)
of the Electronic Transactions Act (SA) 2000 and)
s126 of the Corporations Act 2001 by:)

Director/Secretary

.....
Signature of Witness

.....
Name: of authorised representative .

.....
Name of Witness

Date:

SCHEDULE 1

TERMS AND CONDITIONS OF AGREEMENT (INCLUDING TERMS AND CONDITIONS APPLICABLE TO ALL CUSTOMER AGREEMENTS)

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1. **DIGITAL MARKET PLACE PANEL**

- 1.1 The State has established a Digital Market Place Portal as the preferred method of:
- 1.1.1 entering into this Agreement; and
 - 1.1.2 communicating with members of the Digital Market Place Panel.
- 1.2 The Digital Market Place Portal is the primary point of contact between the Supplier and Customers. Unless otherwise agreed by the State, all offers to provide Services under this Agreement must be uploaded to the Digital Market Place Portal.
- 1.3 The State will issue the Supplier with a password to access the Digital Market Place Portal. The Supplier's password is Confidential Information and the Supplier is responsible for all activity occurring within the Digital Market Place Portal under its password.
- 1.4 The Supplier acknowledges, warrants and agrees that:
- 1.4.1 access to the Digital Market Place Portal may not be continuous, uninterrupted or secure at all times and may be interfered with by factors or circumstances outside of the control of the State and Customers;
 - 1.4.2 neither the State nor any Customer is liable to the Supplier for the unavailability of the Digital Market Place Portal;
 - 1.4.3 Supplier materials uploaded to the Digital Market Place Portal will not infringe the Intellectual Property Rights of any person; and
 - 1.4.4 the State and Customers may use Supplier materials uploaded to the Digital Market Place Portal in any manner contemplated by this Agreement.
- 1.5 The Supplier must not lodge or upload any material to the Digital Market Place Portal that is in any way defamatory, libellous, hateful, discriminatory, obscene, pornographic or similarly illegal, immoral or offensive and the Supplier agrees that it will be solely responsible for any consequences connected with the lodging or uploading of all material.

2. **NON EXCLUSIVITY**

The Supplier acknowledges that it is not the sole supplier of Services to the State Agencies and that State Agencies are at liberty to purchase Services of a similar nature from other suppliers at their discretion throughout the Term.

3. **NO MINIMUM PURCHASE**

The Supplier acknowledges that neither the State nor State Agencies are under any obligation to purchase a minimum quantity or level of Services from the Supplier during the Term.

4. **COMMENCEMENT**

This Agreement commences on the date of execution by the Parties (the “**Commencement Date**”).

5. **TERM**

5.1 “**Term**” means:

5.1.1 in relation to this Agreement, the period commencing on the Commencement Date and continuing until terminated in accordance with the provisions of this Agreement; and

5.1.2 in relation to a Customer Agreement, the period commencing on the date specified in the relevant CA Memorandum and continuing in force until the date of expiry specified in that CA Memorandum, taking account of any extensions, in accordance with that CA Memorandum, unless terminated earlier in accordance with the provisions of the Customer Agreement.

5.2 This Agreement expires at the end of the Term and each Customer Agreement expires at the end of its respective Term.

6. **TERMINATION**

Termination of this Agreement

6.1 The State may terminate this Agreement by notice effective immediately:

6.1.1 if the Supplier is in breach of obligations under this Agreement and has failed to rectify the breach within the time allowed in a Default Notice;

6.1.2 if the Supplier is in breach of a Customer Agreement and has failed to rectify the breach within the time allowed in a Default Notice;

6.1.3 if an Insolvency Event occurs; or

6.1.4 if there is a Change of Control of the Supplier.

6.2 This Agreement may be terminated at will by either Party, by giving twenty (20) Business Days’ written notice of the termination to the other Party.

Effect of Termination

6.3 Upon termination of this Agreement but subject to a Party retaining a copy of such Confidential Information in order to comply with the Law, each Party must:

6.3.1 return to the other all Confidential Information provided to it by the other Party; or

6.3.2 destroy all Confidential Information and provide a written certification to the other Party that all Confidential Information has been destroyed, and that no embodiment of it has been retained.

6.4 Termination of this Agreement does not:

- 6.4.1 have the effect of terminating a Customer Agreement; or
- 6.4.2 affect the accrued rights of the Parties (and rights of a Customer under a Customer Agreement) except to the extent that the Parties (and the Customer in the case of a Customer Agreement) otherwise agree in writing.

7. **TERMINATION OF A CUSTOMER AGREEMENT**

- 7.1 A Customer may terminate its Customer Agreement:
 - 7.1.1 if the Supplier is in breach and fails to rectify the breach within the time allowed in a Default Notice;
 - 7.1.2 if an Insolvency Event occurs;
 - 7.1.3 if there is a Change of Control of the Supplier; or
 - 7.1.4 for convenience, by fourteen (14) days written notice to the Supplier and unless otherwise agreed in a Customer Agreement, the Customer will only be liable to pay for the goods and services provided to date on a pro-rata basis.
- 7.2 Subject to clause 7.4, the Supplier may terminate a Customer Agreement by written notice to the Customer if the Customer fails to comply with a Demand Notice issued by the Supplier pursuant to clause 23.3 in relation to an Undisputed Invoice.
- 7.3 The Supplier must provide the State's Principal Contract Administrator with a copy of the relevant termination notice.
- 7.4 The right of termination by the Supplier under the clause 7.2 only operates where the amount of the Undisputed Invoice exceeds the sum of \$10,000.00.

Survival of Obligations

- 7.5 Notwithstanding any termination of this Agreement, the following provisions of this Agreement and each provision that applies to a Customer Agreement will survive in their entirety and continue to apply:
 - 7.5.1 clause 6.3 which deals with the return of the Confidential Information;
 - 7.5.2 clause 6.4 - which deals with the effect of a termination on Customer Agreements;
 - 7.5.3 this clause 7.5 – Survival of Obligations;
 - 7.5.4 clause 19 - INTELLECTUAL PROPERTY;
 - 7.5.5 clause 20 - VESTING;
 - 7.5.6 clause 22 - LIABILITY;
 - 7.5.7 Clause 21 - CONFIDENTIALITY;
 - 7.5.8 clause 26 – INDEMNITY AGAINST THIRD PARTY CLAIMS;

- 7.5.9 clause 30 – APPLICABLE LAW;
- 7.5.10 clause 32 – JURISDICTION OF COURTS; and
- 7.5.11 clause 35 - READING DOWN AND SEVERANCE.

8. ADMINISTRATION AND MANAGEMENT OF CONTRACTS

- 8.1 The State and the Supplier must each appoint and maintain a Principal Contract Administrator at all times during the Term.
- 8.2 This Agreement will be administered and managed by each Party's Principal Contract Administrator.
- 8.3 A Party may change its Principal Contract Administrator by written notice to the other Party.
- 8.4 A Party's Principal Contract Administrator can exercise all the powers and functions of that Party and has authority to bind that Party in respect of this Agreement.
- 8.5 Customer Agreements will be administered and managed by each Party's Customer Agreement Administrator.
- 8.6 A Party's Customer Agreement Administrator may exercise the powers and functions of that Party under a Customer Agreement, and has authority to bind it in respect of that Customer Agreement.

9. MEETINGS, REPORTING AND RECORD KEEPING

- 9.1 The Supplier must attend all meetings relating to this Agreement as reasonably requested by the State and Customers.
- 9.2 The Supplier must provide Reports to the State as reasonably requested and provide such other Reports to Customers as set out in each CA Memorandum.
- 9.3 The Supplier must maintain proper records in relation to matters relative to this Agreement and each Customer Agreement.

10. SUPPLIER'S WARRANTIES

The Supplier warrants and represents that:

- 10.1 it will perform all Services using appropriately qualified personnel;
- 10.2 it has access to all the necessary facilities and equipment to perform the Services; and
- 10.3 it has and will utilise the necessary skills, experience and expertise to perform all Services.

11. PROCEDURE MANUALS

- 11.1 The Supplier must comply with any relevant procedures applicable to the provision of Services set out in a Customer's procedures manuals (if any) or as otherwise required by a Customer.

12. CUSTOMER PREMISES REQUIREMENTS

- 12.1 While the Supplier's Personnel are on a Customer's premises for the performance of a Customer Agreement, the Supplier must ensure that they comply with that Customer's reasonable requirements and policies applicable to those premises, including without limitation, in relation to work health and safety, and staff behaviour.
- 12.2 Before the Supplier's Personnel enter a Customer's premises in the performance of a Customer Agreement, the Supplier must enquire into, and the Customer must disclose, the Customer's requirements and policies applicable to those premises, as referred to in the clause 12.1.

13. ICT THREATS AND MALICIOUS SOFTWARE

- 13.1 The Supplier must not:
 - 13.1.1 introduce or permit the introduction into the State's ICT Infrastructure or a Customer's ICT Infrastructure of any software, including, but not limited to, Malicious Software, unless its introduction has been authorised in writing by the State or a Customer; or
 - 13.1.2 undertake, facilitate or permit any unauthorised communication with the State's ICT Infrastructure or a Customer's ICT Infrastructure that has the effect or purpose of disrupting, damaging or degrading the performance of that infrastructure, for example a "denial of service attack".
- 13.2 The Supplier must indemnify the State and Customers in respect of all loss, damage, claims and expenses arising from a breach of clause 13.1.
- 13.3 The Supplier is not required to indemnify the State under clause 13.2 if the Supplier can demonstrate that in respect of the breach it:
 - 13.3.1 exercised all reasonable care;
 - 13.3.2 implemented appropriate security and protection measures, including suitable anti-virus and threat management software; and
 - 13.3.3 promptly applied all updates and virus signatures for its anti-virus and threat management software.

14. DOCUMENTATION

- 14.1 If requested, the Supplier must provide to the State and a Customer on demand and at no cost, a copy of all and any Documentation.
- 14.2 The Supplier must provide Documentation in printed or electronic format (or both) as specified by the State or Customer.
- 14.3 The Supplier grants to the State a perpetual, royalty free, non-exclusive, irrevocable licence to access, use, copy and distribute the Documentation.

15. POLICIES, STANDARDS AND OTHER REQUIREMENTS

General

- 15.1 The Supplier must notify the State's Principal Contract Administrator of any Customer Agreement proposed by a Customer the substance of which may give rise to a potential breach of any of the policies, standards, guidelines and other requirements set out in this Schedule 1 and a CA Memorandum (if any).

State Security Policies and Practices

- 15.2 The Supplier acknowledges that the State has adopted policies and practices for security of the information assets of the State and State Agencies. These are set out in the Information Security Management Framework ("ISMF"). The current version of the ISMF is available at <http://www.sa.gov.au/policy/ismf>.
- 15.3 The Supplier acknowledges that the ISMF is subject to development and variation from time to time. The Supplier must confer, consult and cooperate in dealing with any requirement of the State to implement or vary the State's security policy and practices. To the extent that this necessitates a change to the Services provided, or the Supplier's obligations under this Agreement or a Customer Agreement, then this will be subject to a Contract Variation Proposal.

Security Requirements

- 15.4 The Supplier must comply with:
- 15.4.1 the ISMF;
 - 15.4.2 all site security requirements of the Customer; and
 - 15.4.3 any security policies, standards, guidelines and other requirements set out in this Schedule 1 and a CA Memorandum (if any).

Location and Storage of Data

- 15.5 The Supplier must not send or store Customer Data outside of Australia without the express written consent of the Customer's chief executive (or his or her delegate). The approval of the Customer's chief executive (or his or her delegate) may be given conditionally.

Equal Opportunity

- 15.6 This clause applies where the Supplier is a relevant employer within the meaning of the *Workplace Gender Equality Act 2012* (Cth) ("**WGE Act**").
- 15.7 The Supplier must comply with its obligations under the WGE Act and remain compliant until the expiry or termination of this Agreement.
- 15.8 The Supplier must take reasonable steps to ensure that any sub-contractor appointed by it also complies with the WGE Act if that sub-contractor is a relevant employer within the meaning of the WGE Act.
- 15.9 If the Supplier (or a sub-contractor to the Supplier) fails to comply with any of its obligations under the WGE Act, the State may terminate this

Agreement, and a Customer may terminate a Customer Agreement, on 28 days' written notice to the Supplier without prejudice to any other rights or remedies of the State or the Customer.

Industry Participation Policy

15.10 The Supplier agrees to comply with the South Australian Industry Participation Policy including, but not limited to, the requirement in that policy for the Supplier to:

15.10.1 complete the 'Employment Contribution Test' ("ECT"); and

15.10.2 provide reports to Customers for ECT outcomes at the conclusion of each Customer Agreement.

Auditor General

15.11 Nothing in this Agreement or a Customer Agreement derogates from the powers of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

Contracts Disclosure Policy

15.12 Subject to any obligations of confidence assumed by the State in relation to this Agreement or any Contract Document, the State may publicly disclose this Agreement or any Contract Document in its entirety, or a summary of this Agreement or Contract Document, in printed or electronic form, either generally to the public, or to a particular person as a result of a specific request.

15.13 The Supplier consents to disclosure by the State as set out in this clause.

Contracting and Official Records Standard

15.14 The Supplier agrees that in performing its obligations under this Agreement and any Customer Agreement that it will act in a manner that ensures that Customers are able to comply with the Contracting and Official Records Standard.

Information Privacy

15.15 The Supplier must ensure that it, and any of its employees requiring or having access to any Personal Information held in connection with this Agreement, observe the Information Privacy Principles.

16. PRICE

16.1 Prices for the Services are set out in each Customer Agreement.

General

16.2 The Supplier acknowledges that the Prices for Services in a Customer Agreement are inclusive of:

16.2.1 Delivery, all taxes and charges (excluding GST); and

16.2.2 all the costs to the Supplier relating to this Agreement except as specified elsewhere in this Agreement.

GST Component Payable

16.3 In addition to any amount payable by a Customer by reference to the price (the “**Base Consideration**”), a Customer must pay to the Supplier an additional amount of consideration (“**GST Consideration**”) calculated by multiplying the GST Rate by the Base Consideration. The GST Consideration is payable at the same time and subject to the same conditions as the Base Consideration.

Prices and State Levy

16.4 The State Levy in accordance with clause 17.1 is to be shown as an additional item for pricing and quotes provided by the Supplier to Customers and included in the final listed price for that Customer.

17. STATE LEVY

17.1 Where the Pricing (ex GST) for Services is \$20,000 or higher, the State requires the Supplier to make payments (“**State Levy**”) to the Nominated Agency for the purposes of funding administrative functions associated with the DMP Panel.

17.2 The State Levy is 0% (or such other rate as advised from time to time by the State) of the aggregate amount paid by a Customer to the Supplier under a Customer Agreement in accordance with clause 17.1.

17.3 In addition to the State Levy, the Supplier must pay GST Consideration calculated by applying the GST Rate to the amount of the State Levy in accordance with clause 16.3.

17.4 The Nominated Agency will calculate the State Levy amount and the GST Consideration, and issue a Tax Invoice to the Supplier on closure of a project or engagement with the DMP Panel by a Customer.

17.5 The Supplier must pay to the Nominated Agency the State Levy amount plus the associated GST Consideration within thirty (30) days of receipt by the Supplier of a Tax Invoice from the Nominated Agency.

17.6 If the Supplier does not pay to the Nominated Agency the amount of the State Levy (plus the associated GST Consideration) when due and payable, the Nominated Agency will be entitled to claim interest at the Prescribed Rate on the amount due from the date it should have been paid until the day it is paid.

17.7 If requested by the State’s Principal Contract Administrator, the Supplier must make available to the State’s Principal Contract Administrator (at no cost to the State or a Customer) electronic copies of all invoices issued by the Supplier to Customers under this Agreement.

18. INVOICING AND PAYMENT

18.1 The Supplier must invoice Customers directly.

18.2 Unless otherwise agreed by the Parties:

18.2.1 the Supplier is entitled to invoice Customers on a calendar monthly basis for payment in respect of a Service when the

Service has been provided in accordance with the Customer Agreement; and

- 18.2.2 Tax Invoices must be issued within fifteen (15) days of the end of the calendar month to which the invoice relates.
- 18.3 A Customer does not have to pay a Supplier's invoice unless the invoice is:
 - 18.3.1 issued in respect of a Service for which the Supplier is entitled to invoice under the Customer Agreement;
 - 18.3.2 issued in respect of a Service which has been provided by the Supplier to the satisfaction of the Customer;
 - 18.3.3 reflects the correct Price for the Service under the Customer Agreement;
 - 18.3.4 is a valid Tax Invoice; and
 - 18.3.5 complies with the requirements stipulated in clause 18.4 below.
- 18.4 The Supplier must specify the following information in all Tax Invoices:
 - 18.4.1 the designated "DMP Panel number";
 - 18.4.2 the State Levy (if any);
 - 18.4.3 the amount of GST; and
 - 18.4.4 such other information as agreed between a Customer and the Supplier.
- 18.5 If a Customer does not dispute the amount of a properly rendered invoice ("**Undisputed Invoice**"), that Customer must pay that amount within thirty (30) days of receiving it.
- 18.6 If a Customer disputes the amount of an invoice:
 - 18.6.1 the Customer must notify the Supplier of the dispute, and of any amount that is undisputed within 30 days of receiving the invoice;
 - 18.6.2 the Supplier may issue an adjustment note and a further Tax Invoice for the undisputed amount (if any) without prejudice to the Supplier's claim under the disputed invoice;
 - 18.6.3 if the Supplier issues a Tax Invoice for the undisputed amount the Customer must pay that amount within 30 days of receipt of the invoice; and
 - 18.6.4 the Parties must seek to resolve the dispute in accordance with the Dispute Resolution Procedure.
- 18.7 For the purposes of a disputed invoice under clause 18.6 only, the Party to whom an amount is properly payable and not paid will be entitled to claim interest at the Prescribed Rate from the day the amount is due until the day it is paid.

19. INTELLECTUAL PROPERTY

Mutual Obligation

19.1 The Parties agree to perform their respective responsibilities under this Agreement in a manner that does not constitute an Infringement of any Intellectual Property Rights or other proprietary rights of each other, or of any third party.

Indemnity

19.2 Each Party must keep the other Party indemnified against all costs, expenses and liabilities whatsoever arising out of or in connection with any claim that the performance by the Indemnifying Party of its obligations under this Agreement infringes the Intellectual Property Rights of any person.

20. VESTING

20.1 Unless otherwise agreed in a Customer Agreement:

20.1.1 the Intellectual Property Rights in the Contract Work and any embodiment of the Contract Work automatically vest in the Supplier; and

20.1.2 property in any separate physical embodiment of the Contract Work automatically vests in the Supplier.

20.2 This Agreement does not vest in the Supplier:

20.2.1 Intellectual Property Rights in any Customer's methodologies or other proprietary information in existence at or prior to the date of the Customer Agreement giving rise to the creation of the Contract Work is executed;

20.2.2 Intellectual Property Rights in the Customer's software tools or object libraries whether in existence before or after the date of the Customer Agreement giving rise to the creation of the Contract Work is executed; or

20.2.3 Intellectual Property Rights in existing publications or other work produced by or on behalf of the Customer prior to or otherwise than in the course of receiving the Services,

collectively "**Customer IP**".

20.3 To the extent that any Customer IP is incorporated in Contract Work, the Customer grants to the Supplier a non-exclusive, perpetual, irrevocable, world-wide, fee free licence to hold, use, execute, reproduce, upload, display, perform and sublicense such Customer IP as part of the Contract Work, and to alter, enhance and reproduce the Customer IP for use by the Supplier provided that the Supplier may not exploit the Customer's IP for commercial purposes unless it has obtained the Customer's prior written consent.

20.4 The Supplier grants to the Customer a non-exclusive, perpetual, irrevocable, world-wide, fee free licence to hold, execute reproduce, upload and display the Contract Work and to obtain, enhance and reproduce the

Contract Work for use by the Customer and the State provided that the Customer and the State may not exploit the Contract Work for commercial purposes.

21. CONFIDENTIALITY

Confidential Contract Conditions

21.1 Subject to this Agreement, the State, the Customer and the Supplier must keep the Confidential Contract Conditions confidential.

Disclosed Confidential Information

21.2 The Recipient must keep the Disclosed Confidential Information confidential.

21.3 Subject to this Agreement, the Recipient must only use the Disclosed Confidential Information for:

21.3.1 the purpose of performing its obligations under any Contract Document; and

21.3.2 any other purpose as the Discloser may permit by written notice to the Recipient from time to time in respect of the Disclosed Confidential Information.

21.4 The Recipient must, if required by the Discloser, deliver to the Discloser or destroy any documents containing the Disclosed Confidential Information and must for that purpose use all reasonable efforts to retrieve any document containing Disclosed Confidential Information given to or made by an Authorised Person.

Classified Disclosed Confidential Information

21.5 The State (or a Customer) may stipulate as a condition of its disclosure of Disclosed Confidential Information that the Supplier must implement specific additional measures ("**Classified Information Measures**") to protect the security of that information and where this occurs, then subject only to any other agreement between the Parties, the Supplier must implement the Classified Information Measures in respect of that information.

Permitted Disclosure of Confidential Information

21.6 Subject to any Classified Information Measures, a Party may disclose the Confidential Information in respect of which the Party has an obligation of confidentiality under this Agreement in the following circumstances:

21.6.1 with the prior written consent of the other Party;

21.6.2 to its employee, consultant, sub-contractor or agent (an "**Authorised Person**");

(a) if the Authorised Person needs to know the Confidential Information for the performance of his or her duties to that Party in relation to this Agreement; and

- (b) the Authorised Person is first made aware of the confidential nature of the Confidential Information and the requirement that the Authorised Person treat it confidentially; or

21.6.3 if and to the extent that it is legally compelled to disclose the Confidential Information, or

21.6.4 to a Court, legal advisor or any other party to legal proceedings, for the purposes of it prosecuting or defending any legal proceedings to which the Party is a litigant; or

21.6.5 if it is required to disclose the Confidential Information by the rules of any relevant stock exchange.

Disclosure by the State of Confidential Information

21.7 Notwithstanding anything else in this Agreement, the State or a Customer may disclose Confidential Information to:

21.7.1 Parliament, the Governor, a Minister, Cabinet or a Parliamentary or Cabinet committee or subcommittee of the State of South Australia;

21.7.2 any agency, authority, instrumentality or Officer of the State of South Australia to whom it is customary for the State or State Agency to disclose the Confidential Information (whether or not it is legally obliged to do so); or

21.7.3 the Australian Competition and Consumer Commission (“**ACCC**”) if the State reasonably suspects, or is notified by the ACCC that it reasonably suspects, that there is Cartel Conduct or unlawful collusion in connection with the provision of Services under the Contract Documents.

Protection of Confidential Information

21.8 When a Party is aware of any steps being taken or considered to legally compel that Party or an Authorised Person of that Party to disclose Confidential Information, it must:

21.8.1 to the extent legally permitted, defer and limit the disclosure with a view to preserving the confidentiality of the Confidential Information as much as possible;

21.8.2 promptly notify the other Party; and

21.8.3 do anything reasonably required by the other Party, including the institution and conduct of legal proceedings at the other Party’s direction and expense, to oppose or restrict that disclosure.

21.9 Each Party must do everything reasonably possible to preserve the confidentiality of the Confidential Information.

21.10 A Party must notify the other Party promptly if it is aware of any disclosure of the Confidential Information otherwise than as permitted by this Agreement or with the authority of the other Party.

21.11 Nothing in this clause requires either Party to commit an unlawful act, or expose itself to proceedings for contempt or other lawful penalties.

22. LIABILITY

- 22.1 Subject to this clause 22, the liability of a Party to another Party for breach of this Agreement or a Customer Agreement (or both) or in tort or for any other common law or statutory cause of action arising under and/or in connection with this Agreement or a Customer Agreement (or both) will be determined in accordance with the laws of the State of South Australia.
- 22.2 Unless otherwise agreed between a Customer and the Supplier in a Customer Agreement, the liability of either Party arising under clause 22.1 in respect of any Services is limited to an amount not less than one times the contract value of that Customer Agreement for each occurrence or series of related occurrences arising from a single cause.
- 22.3 The limit on liability referred to in clause 22.2 or a Customer Agreement (as the case may be) applies for the benefit of both Parties in respect of an Occurrence. Unless otherwise agreed between a Customer and the Supplier in a Customer Agreement, this limitation does not apply to liability for:
- 22.3.1 personal injury including sickness and death;
 - 22.3.2 loss of or damage to tangible property; and
 - 22.3.3 infringement of any Intellectual Property Rights.
- 22.4 The liability of a Party for loss or damage sustained by the other Party shall be reduced proportionately to the extent that the loss or damage was caused or contributed to by the other Party's failure to comply with its obligations and responsibilities under and/or in connection with a Customer Agreement and/or negligence, unlawful or wilful act or omission of the other Party.
- 22.5 Each Party shall use all reasonable endeavours to mitigate its loss, damage and expenses arising under and/or in connection with a breach of a Customer Agreement or in tort or for any other common law or statutory cause of action arising under and/or in connection with a Customer Agreement.

23. DEFAULT AND RECTIFICATION

- 23.1 Either Party may give to the other a notice ("**Default Notice**") requiring any default under this Agreement or Customer Agreement (as the case may be) to be rectified within a period that must be specified of not less than 20 Business Days of the date of that notice ("**Rectification Period**").
- 23.2 The Party receiving a Default Notice must:
- 23.2.1 rectify that default within the Rectification Period; or
 - 23.2.2 within two 2 Business Days of receipt of a Default Notice advise the other in writing that it does not agree that a default has occurred, and pursue the Dispute Resolution Procedure.

Demands for Money

- 23.3 Either Party (“**Claimant**”) may give to the other a notice demanding the payment of any money payable by the other Party to the Claimant and due but unpaid (“**Demand Notice**”).
- 23.4 The Party receiving a Demand Notice must either:
- 23.4.1 if the money is acknowledged to be payable, pay it within 10 Business Days; or
 - 23.4.2 if liability to pay is disputed, promptly advise the other in writing that it does not acknowledge that the money is payable, and pursue the Dispute Resolution Procedure.

Escalation

- 23.5 The Supplier acknowledges that a Customer may refer to the State the matter of a Default Notice or Demand Notice issued by that Customer and not complied with by the Supplier.

Making Good Default

- 23.6 If the Supplier fails to perform an obligation under this Agreement or a Customer Agreement the State or Customer (as the case may be) may, without being obliged to, perform the obligation and claim the cost of so doing from the Supplier.

Set-Off

- 23.7 Either Party may set off against money due and payable by that Party to the other Party any moneys which are due from the other Party that have not been paid.

Remedies Concurrent

- 23.8 Each Party’s remedies under this Agreement are concurrent unless otherwise specified.

24. ADMINISTRATION AND SUPPLIER PERSONNEL

Supplier Personnel

- 24.1 At the commencement date of a Customer Agreement, the Supplier must supply to the Customer’s Customer Agreement Administrator the:
- 24.1.1 full name;
 - 24.1.2 job title;
 - 24.1.3 description of job function and the nature of access required; and
 - 24.1.4 such other information as may be reasonably requested by the Customer from time to time (other than such information which would cause a breach of confidentiality obligations as between the Supplier and the Supplier Personnel),

of all Supplier Personnel who will be engaged to provide the Services, or to undertake any task for the purposes of a Customer Agreement that requires access to Customers' premises ("**Supplier Designated Personnel**"), and must provide revisions to those details promptly upon any change in the Supplier Designated Personnel.

- 24.2 If required by a Customer, the Supplier must obtain from nominated Supplier Personnel:
- 24.2.1 a deed of confidentiality in the form of acceptable to the Customer; and
 - 24.2.2 any consents and information required by the Customer to enable the Customer to establish, at the Customer's sole discretion, that any of the Supplier's Personnel are suitable persons to provide the Services.
- 24.3 A Customer may (but need not) conduct any investigations necessary to ascertain the matters referred to in clause 24.2.2.
- 24.4 If a Customer (in the Customer's sole discretion) forms the view that any of the Supplier's Personnel being an employee is not suitable to provide the Services, the Customer may (at the Customer's absolute discretion and without liability to the Supplier or the relevant employee) direct the Supplier to cease to employ or engage the relevant employee for the purpose of the Services.
- 24.5 The Supplier must notify the Customer immediately that it becomes aware of any information that may affect the Customer's approval of any Supplier Personnel.
- 24.6 Nothing in clauses 24.1 to 24.5 warrant (inclusive) relieves the Supplier of any obligation with respect to its obligations under this Agreement.
- 24.7 The Supplier must minimise Supplier Personnel turnover, particularly in relation to Supplier Personnel who interact with Customer Staff.
- 24.8 If during the Term of a Customer Agreement, the Customer believes that the Supplier's Personnel turnover is excessive, the Supplier must on the Customer's request meet with the Customer with a view to addressing the Customer's concern.
- 24.9 A Customer may, after consultation with the Supplier, and on an exception basis, nominate any one or more Supplier Personnel as Key Supplier Personnel if the Customer reasonably believes that because of the particular expertise or experience of that person, the withdrawal of that person from his or her duties in carrying out Services under a Customer Agreement would have a material adverse effect on the provision of the Services.
- 24.10 The Supplier must not without prior consultation with the relevant Customer move, replace or change the duties of Key Supplier Personnel nominated in accordance with the preceding clause.

25. **DISPUTES**

No Legal Proceedings without Dispute Resolution

25.1 Except in a case of genuine urgency where a Party seeks immediate interlocutory relief or an interim remedy, neither Party may take legal proceedings in respect of any dispute in relation to this Agreement without first attempting resolution in accordance with this clause.

Notice

25.2 In the event of a dispute a Party may issue to the other Party a written notice of dispute (“**Dispute Notice**”), describing the issue in dispute and requiring that the process in this clause be followed.

25.3 Each Party must record in sufficient detail the nature and scope of the dispute, and the issues raised by it, in writing and submit the record to the other Party.

25.4 The Parties must meet and attempt to resolve the dispute as soon as practicable.

Principal Contract Administrators

25.5 If the Parties up to this point are not represented in the Dispute Resolution Procedure by their Principal Contract Administrators, and if they are unable to resolve the dispute within 20 Business Days of the Dispute Notice, then (unless they agree to an extension of that time), each of them must prepare a written record of the attempts to settle the dispute and refer that record:

25.5.1 in the case of the State or a Customer, to the State’s Principal Contract Administrator; and

25.5.2 in the case of the Supplier, to the Supplier’s Principal Contract Administrator,

within a further 20 Business Days.

25.6 Each Party must sufficiently brief its Principal Contract Administrator so that the Principal Contract Administrators are able to meet to endeavour to resolve the dispute without detailed reference to another party within 10 Business Days or a longer period if agreed between the Parties. In doing so, a Principal Contract Administrator may be supported (at its election) by legal, financial, technical or other experts.

26. **INDEMNITY AGAINST THIRD PARTY CLAIMS**

Each Party must indemnify the other Party for all costs reasonably incurred by the Indemnified Party in respect of any claim or legal proceedings against the Indemnified Party by a third party arising out of any wilful, unlawful or negligent act or omission of the Indemnifying Party.

27. **RELATIONSHIP BETWEEN THE PARTIES**

27.1 Nothing in this Agreement constitutes any relationship of employer and employee or partnership between the Parties.

- 27.2 Neither Party has any authority to bind the other Party in any manner without the prior consent of the other Party.
- 27.3 The Customer has no obligations to the Supplier's Personnel.
- 27.4 The Supplier must pay all remuneration claims and other entitlements payable to the Supplier's Personnel.
- 27.5 The Supplier is responsible for complying with the requirements of the *Income Tax Assessment Act 1997 (Cth)*, in respect of the Supplier's employees and the Customer is not required to make PAYG deductions from the Price.

28. CHANGE OF CONTROL

- 28.1 The Supplier must, to the extent permitted by law, notify the State (in writing) of any proposed Change of Control of the Supplier.
- 28.2 The Supplier must notify the State (in writing) as soon as legally permissible of any actual Change of Control of the Supplier (regardless of whether notice of the proposed change has been given under the preceding sub-clause).

29. NO REPRESENTATIONS

To the maximum extent permitted by law, the Supplier acknowledges and agrees that no representation, warranty, guarantee or other statement, express or implied, was made or given to the Supplier by the State prior to entering into this Agreement as to any benefits which the Supplier might enjoy as a result of entering into this Agreement.

30. APPLICABLE LAW

This Agreement and any Customer Agreement are subject to the laws applicable in the State of South Australia.

31. LEGAL COMPLIANCE

- 31.1 The Supplier must comply with the requirements of all Laws in respect to this Agreement and any Customer Agreement.
- 31.2 The Supplier must hold and comply with all licences, authorities, approvals and consents required for the lawful performance of its obligations under this Agreement and any Customer Agreement.

32. JURISDICTION OF COURTS

- 32.1 The courts of South Australia have exclusive jurisdiction to determine any proceeding in relation to this Agreement and any Customer Agreement.
- 32.2 Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.

33. ASSIGNMENT

- 33.1 Neither Party may assign the whole or part of this Agreement or any Customer Agreement without the other Party's prior written consent, which may be granted or withheld at its unfettered discretion.

33.2 Notwithstanding the preceding sub-clause, it is acknowledged that the rights and liabilities of Ministers of the Crown may be transferred by operation of law under the *Administrative Arrangements Act 1994 (SA)*.

34. **WAIVER**

34.1 The failure of either Party to enforce this Agreement or any Customer Agreement will in no way be interpreted as a waiver of its rights under this Agreement or any Customer Agreement.

34.2 A waiver by a Party of its rights under this Agreement or any Customer Agreement is effective only if it is given expressly in writing signed by that Party, and only to the extent expressed in writing.

35. **READING DOWN AND SEVERANCE**

In the event that any provision or portion of any provision of this Agreement is held to be unenforceable or invalid by a Court of competent jurisdiction the validity and enforceability of the remaining provisions or portions of such provisions of this Agreement or any Customer Agreement (as the case may be) shall not be adversely affected. The offending provision or part of a provision shall be read down to the extent necessary to give it legal effect, or shall be severed if it cannot be read down, and the remaining part and provisions of this Agreement or any Customer Agreement (as the case may be) shall remain in full force and effect.

36. **NOTICES**

36.1 In relation to this Agreement, a notice or other communication is properly given or served if the Party delivers it by hand, posts it or transmits it by electronic mail or facsimile, to the Principal Contract Administrator of the other Party.

36.2 In relation to a Customer Agreement, a notice or other communication is properly given or served if the Party delivers it by hand, posts it or transmits it by electronic mail or facsimile, to the address of the Customer Agreement Administrator of the other Party. The initial address of each Party's Customer Agreement Administrator is designated in the CA Memorandum relative to that Customer Agreement.

Change of Address

36.3 Each Party must advise the other of any change in the address of its Principal Contract Administrator and any currently appointed Customer Agreement Administrator.

Receipt of Communications

36.4 A notice or other communication is taken to be received if:

36.4.1 sent by post, at the time it would have been delivered in the ordinary course of the post to the address to which it was sent;

36.4.2 sent by facsimile at the time that a correct and complete transmission report is received (providing that the report states that transmission was completed before 5.00 pm), otherwise on the next Business Day;

36.4.3 transmitted by electronic mail:

- (a) when the relevant email appears in the sender's sent log with properties disclosing an appropriate routing; and
- (b) the sender does not receive a message from the system operator to the effect that the relevant email was undeliverable; or

36.4.4 delivered by hand, the Party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service.

37. PUBLICITY

37.1 The Supplier must not make any public announcement or media release in respect of any aspect of this Agreement or any Customer Agreement or the provision of Services without the prior written approval by the State or Customer (as the case may be).

38. INSURANCE REQUIREMENTS

Minimum Insurance Requirements

38.1 The Supplier will maintain in force at its own expense during the Term:

38.1.1 'Public' liability insurance in the name of the Supplier for not less than Five Million Dollars (\$5,000,000), for any one event or such other amount as the State may reasonably require;

38.1.2 'Professional Indemnity' insurance in the name of the Supplier for not less than One Million Dollars (\$1,000,000) for any one event and in the aggregate in any one policy period or such other amount as the State may reasonably require; and

38.1.3 'Workers Compensation' insurance in accordance with the applicable worker's compensation legislation.

State's Disclaimer and Supplier's Acknowledgement

38.2 The State accepts no responsibility and disclaims any representation as to the adequacy of the Supplier's Insurance for any purpose. The Supplier acknowledges it is the Supplier's sole responsibility to assess and consider the risks and scope of insurances it may require.

Supplier's Obligation to Maintain Supplier's Insurance

38.3 The Supplier will ensure that the insurance policy referred to in clause 38.1.2 is renewed and maintained for a period of not less than four (4) years from the date of expiration or earlier termination of this Agreement

Evidence of Insurance

38.4 The Supplier must promptly on request produce to the State, or any Customer, satisfactory evidence that Supplier's Insurance has been maintained and is current, or that the Supplier continues to be an insured under a particular insurance policy.

- 38.5 The Supplier must immediately advise the State and all Customers if at any time during the Term the Supplier ceases to be an insured under an insurance policy as required in this clause, whether through cancellation, lapse or otherwise.

State may take out Insurance

- 38.6 If the Supplier fails to maintain the Supplier's Insurance, then the State may, without being obliged to and without limiting any other rights in respect of the breach, take out insurance policies in the name of the Supplier sufficient to give coverage equivalent to that provided by the Supplier's Insurance, and the cost of so doing is a debt due from the Supplier to the State.

Insurance Requirements for Customer Agreements

- 38.7 Subject to clause 38.8.2, the Supplier's Insurance are deemed to be incorporated into each Customer Agreement.
- 38.8 In addition to the Supplier's Insurance, a Customer may specify in its CA Memorandum that the Supplier must, at its own expense, be insured under and remain the beneficiary of or arrange and maintain:
- 38.8.1 additional insurance policies; and/or
 - 38.8.2 an increased level of cover under an existing policy,
- for the term of the Customer Agreement, or such other period specified in the CA Memorandum.

39. UNFORESEEN EVENT

Definition

- 39.1 "**Unforeseen Event**" means an event or circumstance which prevents a Party from complying with any of its obligations under this Agreement or any Customer Agreement (as the case may be) and which that Party:
- 39.1.1 did not cause;
 - 39.1.2 cannot control or influence; and
 - 39.1.3 cannot prevent or avoid through prudent management processes, policies and precautions, including the use of alternative resources, the procuring of services from another source, and work around plans.
- 39.2 An Unforeseen Event includes:
- 39.2.1 fire, flood, earthquake, elements of nature, acts of God, malicious damage, explosion, sabotage, riot, civil disorder, rebellion or revolution in Australia;
 - 39.2.2 any change of law which makes compliance with the affected Party's obligations under this Agreement illegal; and
 - 39.2.3 other event or state of affairs which is outside of the control of a Party or which would be an event of frustration at law.

Unforeseen Event

- 39.3 The affected Party's rights and obligations directly affected by the Unforeseen Event and any corresponding entitlement of the other Party will be suspended to the extent and for so long as the performance of the affected Party's rights and obligations are prevented or delayed by the Unforeseen Event.
- 39.4 The affected Party must notify the other Party if the Unforeseen Event is preventing it from complying with any of its obligations as soon as it becomes aware of the Unforeseen Event.
- 39.5 The affected Party must:
- 39.5.1 use its best endeavours to work around or overcome the effect of the Unforeseen Event;
 - 39.5.2 keep the other Party informed of the continuation and expected duration of the Unforeseen Event and of measures taken to comply with this clause; and
 - 39.5.3 recommence performance of its obligations as soon as possible without delay after the Unforeseen Event has ceased to exist.
- 39.6 If the affected Party is materially unable to perform its obligations under this Agreement or any Customer Agreement (as the case may be) by reason of an Unforeseen Event for a continuous period of three (3) months or a culminated period of six (6) months, then the other Party may terminate this Agreement or any Customer Agreement (as the case may be) by written notice without prejudice to the terminating Party.

40. ACTING ETHICALLY

In providing the Services the Supplier will conduct itself in a manner that does not invite, directly or indirectly, the State's or any Customer's officers, employees or agents or any public sector employee (as defined in the Public Sector Act 2009) to behave unethically, to prefer private interests over the State's or any Customer's interests or to otherwise contravene the *Code of Ethics for the South Australian Public Sector*.

SCHEDULE 2

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Agreement and in any Customer Agreement made under this Agreement:

- 1.1 **“Agreement”** or **“Digital Market Place Low Risk ICT Projects Agreement”** or **“DMP Low Risk ICT Projects Agreement”** means this agreement and all schedules, annexures, exhibits and any attachments;
- 1.2 **“Authorised Person”** has the meaning set out in clause 21.6.2 of Schedule 1 of this Agreement;
- 1.3 **“Business Day”** means any day that is not a Saturday or a Sunday or a public holiday in South Australia;
- 1.4 **“CA Memorandum”** is the document required to form a Customer Agreement as set out in Schedule 3 of this Agreement and includes the totality of all commercial, technical and operational specifications and requirements detailed (or referenced) in that document;
- 1.5 **“Cartel Conduct”** means conduct by two or more parties who are competitors (or would be but for the conduct) who enter into a contract, arrangement or understanding that involves price fixing, output restrictions, allocating customers, suppliers or territories, or bid-rigging, as defined in s44ZZRD of the *Competition and Consumer Act 2010 (Cth)*;
- 1.6 **“Change of Control”** means, in relation to a corporation, that the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect, including through one or more entities):
 - 1.6.1 to control more than half of the voting power of the corporation;
 - 1.6.2 to control the composition of the board of directors or the corporation; or
 - 1.6.3 to control more than half of the issued share capital of the corporation excluding any part thereof which carries no right to participate beyond a specified amount in the distribution of either profit or capital,

resides with a person other than those holding that power on the Commencement Date;
- 1.7 **“Claimant”** has the meaning as set out in clause 23.3 of Schedule 1 of this Agreement;
- 1.8 **“Commencement Date”** has the meaning set out in clause 4 of Schedule 1 of this Agreement;
- 1.9 **“Confidential Contract Conditions”**, for the purposes of:

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- 1.9.1 this Agreement, means those terms designated as confidential but does not include information which is or becomes public knowledge other than by a breach of this Agreement;
- 1.9.2 a Customer Agreement, means those terms of the Customer Agreement designated as confidential by the Parties in the CA Memorandum; but does not include information which is or becomes public knowledge other than by a breach of this Agreement and
- 1.9.3 all Prices whether appearing on a State internet site for the benefit of State Agencies in relation to this Agreement or appearing in a CA Memorandum or Customer Agreement as Confidential Contract Conditions;
- 1.10 **“Confidential Information”** means Disclosed Confidential Information and Confidential Contract Conditions but does not include information which is or becomes public knowledge other than by breach of this Agreement or a Customer Agreement (as the case may be) or the contents of this Agreement (other than those contents designated in clause 1.9 of Schedule 2 of this Agreement or a CA Memorandum);
- 1.11 **“Contract Document”** means this Agreement and any Customer Agreement made under this Agreement including:
- 1.11.1 all respective schedules, annexures, attachments and exhibits; and
- 1.11.2 all documents incorporated by reference together with their respective schedules, annexures, attachments and exhibits;
- 1.12 **“Contract Work”** means any work (as defined in the *Copyright Act 1968 (Cth)*) produced by the Supplier in the course of and for the purposes of this Agreement, including any Customer Agreement;
- 1.13 **“Contracting and Official Records Standard”** means the standard relating to records management issued by the Manager (Director), State Records pursuant to section 14(1) of the *State Records Act 1997 (SA)*, as amended from time to time, a copy of which can be found at http://government.archives.sa.gov.au/sites/default/files/20111202%20Contracting%20and%20Official%20Records%20Standard%20Final%20V1.2_Copy.pdf;
- 1.14 **“Customer”** means a State Agency that has entered into a Customer Agreement with the Supplier;
- 1.15 **“Customer Agreement”** or **“CA”** means an agreement between a State Agency and the Supplier entered into pursuant to this Agreement and includes the CA Memorandum giving rise to the Customer Agreement;
- 1.16 **“Customer Agreement Administrator”** in respect of a Customer Agreement means the person appointed as such by each of the Supplier and the Customer in respect of that agreement;
- 1.17 **“Customer Staff”** means the Customer’s officers, employees, contractors and agents, and any other person in any other way engaged by the Customer;

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- 1.18 **“Customer’s Data”** means data belonging to the Customer and third parties including call data, billing data and records and other information generated, collected or stored by the Supplier in whatever form that information may exist;
- 1.19 **“Customer’s ICT Infrastructure”** means the computing and communications infrastructure owned or used by the Customer;
- 1.20 **“Default Notice”** means a notice issued under clause 23 of Schedule 1 of this Agreement;
- 1.21 **“Demand Notice”** means a notice issued under clause 23.3 of Schedule 1 of this Agreement;
- 1.22 **“Digital Market Place Panel”** or **“DMP Panel”** has the meaning set out in clause 2.4 of Page 1 of this Agreement;
- 1.23 **“Digital Market Place Portal”** means an Internet presence (including one or more websites, systems, processes or other mechanisms) established by the State to facilitate the operation of the Digital Market Place Panel;
- 1.24 **“Disclosed Confidential Information”** meaning information that is disclosed by a Party (**“Discloser”**) to the other Party (**“Recipient”**) that is:
- 1.24.1 confidential by its nature or by the circumstances in which it is disclosed; or
 - 1.24.2 designated by the person who discloses it as confidential; or
 - 1.24.3 is identified or marked in terms connoting its confidentiality;
- but does not include information which is or becomes public knowledge other than by a breach of this Agreement or a Customer Agreement; or the contents of this Agreement or a Customer Agreement;
- 1.25 **“Dispute Notice”** means a notice issued under clause 25.2 of Schedule 1 of this Agreement;
- 1.26 **“Dispute Resolution Procedure”** the procedure contemplated in clause 25 of Schedule 1 of this Agreement;
- 1.27 **“Documentation”** means the documentation used by the Supplier for the purpose of providing the Services to Customers and includes and includes any other materials that the Supplier would normally provide to its customers acquiring the same or similar Services;
- 1.28 **“Employment Contribution Test”** means the test that Suppliers are required to complete for Customers in accordance with the South Australian Industry Participation Policy contemplated by clause 15.10. of Schedule 1 to this Agreement;
- 1.29 **“GST”** means the tax imposed by the GST Law;
- 1.30 **“GST Consideration”** means an amount payable by a Party in addition to an amount otherwise payable under this Agreement (for instance the Price or price for Services payable by a Customer) (defined as “Base Consideration” for the purposes of distinguishing it from the GST

Consideration) calculated by multiplying the GST Rate by the Base Consideration;

- 1.31 **“GST Law”** has the meaning attributed in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- 1.32 **“GST Rate”** is the percentage of the value of a Taxable Supply (as defined in the GST Law) calculated as GST under the GST law;
- 1.33 **“ICT”** means information and communications technology;
- 1.34 **“Indemnified Party”** means a party that has the benefit of an indemnity under this Agreement or a Customer Agreement;
- 1.35 **“Indemnifying Party”** means a party that gives an indemnity under this Agreement or a Customer Agreement;
- 1.36 **“Information Privacy Principles” or “IPPS”** means those ‘Principles’ more particularly described in the State’s ‘Information Privacy Principles (IPPS) Instruction’ (as amended from time to time), a copy of the latest instruction may be viewed at: <http://dpc.sa.gov.au/premier-and-cabinet-circulars;>
- 1.37 **“Infringement”** 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) and Section 183 of the Copyright Act 1968 (Cth) constitute an infringement. “Infringe” has a corresponding meaning;
- 1.38 **“Insolvency Event”** in relation to the Supplier means:
- 1.38.1 an administrator is appointed to the Supplier or action is taken to make an appointment;
 - 1.38.2 the Supplier resolves to be wound up;
 - 1.38.3 an application is made to a court for an order or an order is made that the Supplier be wound up (whether on grounds of insolvency or otherwise);
 - 1.38.4 the Supplier ceases to carry on business;
 - 1.38.5 a receiver or a receiver and manager of property of the Supplier is appointed whether by a court or otherwise;
 - 1.38.6 an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Supplier or one of them is appointed, whether or not under an order;
 - 1.38.7 the Supplier enters into a compromise or arrangement with its creditors or a class of them; or
 - 1.38.8 the Supplier is or states that it is unable to pay its debts as and when they fall due;
- 1.39 **“Intellectual Property Rights”** means any patent, copyright, trademark, trade name, design, trade secret, knowhow, semi-conductor, circuit layout, or other form of intellectual property right whether arising before or

after the execution of this Agreement and the right to registration and renewal of those rights;

- 1.40 **“ISMF” or “Information Security Management Framework”** means the State Government of South Australia’s ‘Information Security Management Framework’ as updated from time to time, a copy of the current version is available at <http://www.sa.gov.au/policy/ismf>;
- 1.41 **“Key Supplier Personnel”** means the nominated personnel as contemplated under clause 24.9 of Schedule 1 of this Agreement. Key Supplier Personnel may be identified in a CA Memorandum;
- 1.42 **“Laws”** means any legislation, regulation, by-law, ordinance or subordinate legislation in force from time to time in the State of South Australia applicable to the performance of this Agreement;
- 1.43 **“Malicious Software”** means software designed or intended to cause harm either by damaging or disrupting the performance of the State’s ICT Infrastructure or Customers’ ICT Infrastructure or by transmission of information without the authority of the State or a Customer;
- 1.44 **“Minister”** means a Minister of the Crown in right of the State of South Australia whether acting as a corporation or not;
- 1.45 **“Nominated Agency”** means the State Agency nominated by the State which is to calculate, invoice and receive the State Levy in accordance with clause 17 Schedule 1 of this Agreement;
- 1.46 **“Occurrence”** means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one root cause, as the case may be;
- 1.47 **“Party”** means:
- 1.47.1 in the context of this Agreement, the State or the Supplier (as the case may be) and “Parties” means both the State and the Supplier; and
- 1.47.2 in the context of a Customer Agreement, the relevant Customer or the Supplier (as the case may be) and “Parties” means both the Customer and the Supplier;
- 1.48 **“Personal Information”** means information to which the Supplier has access in connection with this Agreement, comprising information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;
- 1.49 **“Policies”** means the policies as specified in this Agreement, Schedules and any Customer specific policies specified in a CA Memorandum;
- 1.50 **“Prescribed Rate”** means the rate of interest that is two percentage points (2%) higher than the “benchmark rate” published by the National Australia Bank Limited (ABN 12 004 044 937), or its successor rate (as nominated by the State);

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- 1.51 **“Price”** means the price payable by the Customer for the Services as set out in, or as otherwise determined in accordance with clause 16 of Schedule 1 of this Agreement and specified in a CA Memorandum;
- 1.52 **“Principal Contract Administrator”**, in respect of a Party means the person appointed in respect of that Party from time to time under clause 8 of Schedule 1 of this Agreement;
- 1.53 **“Rectification Period”** has the meaning set out in clause 23.1 of Schedule 1 of this Agreement;
- 1.54 **“Report”** means a report required to be submitted to the State or a Customer (as the case may be) by the Supplier as set out in the Schedules or as otherwise agreed between the Parties;
- 1.55 **“Scope of Services”** has the meaning set out in clause 2.5 of Page 1 of this Agreement;
- 1.56 **“Services”** means the services to be provided by the Supplier to a Customer under a Customer Agreement as set out in the CA Memorandum;
- 1.57 **“South Australian Industry Participation Policy” or “SAIPP”** means the ‘South Australian Industry Participation Policy’ as updated from time to time, a copy of the current version of that policy is available at: <http://www.dpc.sa.gov.au/office-industry-advocate>;
- 1.58 **“State”** means the Crown in right of the State of South Australia acting through the Minister for the Public Sector;
- 1.59 **“State Agency”** means:
- 1.59.1 an administrative unit under the *Public Sector Management Act 2009 (SA)* and any statutory authority or other agency or instrumentality of the Crown in right of the State of South Australia subject to direction by a Minister;
 - 1.59.2 any other body established for a public purpose subject to direction or control by a Minister;
 - 1.59.3 any body required to comply with the requirements of the State Procurement Board under the *State Procurement Act 2004 (SA)*, including any body that is a prescribed public authority; and
 - 1.59.4 such other bodies as may be agreed between the Parties;
- 1.60 **“State’s ICT Infrastructure”** means the computing and communications infrastructure owned or used by the State or a Customer;
- 1.61 **“State Levy”** has the meaning as set out in clause 17 of Schedule 1 of this Agreement;
- 1.62 **“Supplier”** means the person identified as the “Supplier” on page 1 of this Agreement;
- 1.63 **“Supplier’s Insurance”** means the supplier’s insurance policies set out in clause 38 of Schedule 1 of this Agreement;

- 1.64 **“Supplier Personnel”** means all persons representing the Supplier under the Contract Documents including without limitation, the Supplier’s officers, employees and agents;
- 1.65 **“Tax Invoice”** has the meaning attributed in the GST law;
- 1.66 **“Term”** has the meaning ascribed in clause 5 of Schedule 1 of this Agreement;
- 1.67 **“Undisputed Invoice”** has the meaning as set out in clause 18.5 of Schedule 1 of this Agreement;

2. INTERPRETATION

- 2.1 This Agreement and any Customer Agreement made under this Agreement will be interpreted in accordance with this clause 2 unless the Agreement provides otherwise.

Conditional Permissions

- 2.2 Where the Agreement makes provision for a Party to permit or approve something, the Party may permit or approve it subject to conditions specified by the Party.

Other Interpretation Provisions

- 2.3 Clause headings will be disregarded in interpreting the Agreement.
- 2.4 References to legislation include:
- 2.4.1 legislation repealing, replacing or amending that legislation; or
 - 2.4.2 any statutory instrument made under that legislation.
- 2.5 A reference to the singular includes the plural and *vice versa*.
- 2.6 A reference to a person includes:
- 2.6.1 the person’s heirs, executors or permitted assigns; or
 - 2.6.2 a corporation, partnership, trust or other legal entity, or to a joint venture.
- 2.7 A reference to a body corporate includes its successors or permitted assigns.
- 2.8 A reference to monetary amount is a reference to that amount in Australian currency.
- 2.9 A reference to days or months means calendar days or months unless otherwise indicated.
- 2.10 The fact that a Party proposed or drafted a provision of a contract document is not relevant to its interpretation.
- 2.11 Where a provision of a Contract Document includes an example of the operation of a provision:

- 2.11.1 the example shall not be taken to be exhaustive; and
- 2.11.2 if the example is inconsistent with the provision, the provision prevails.

2.12 In this Agreement and unless otherwise indicated, a reference to a clause, part, schedule, annexure, exhibit, appendix or attachment refers to a clause, part, schedule, annexure, exhibit, appendix or attachment of this Agreement.

2.13 Except in this Schedule 2, reference in a schedule to a part, clause or table is a reference to a part, clause or table within that Schedule unless otherwise indicated in that Schedule.

Priority of Documents

- 2.14 The schedules, annexures, appendices, exhibits and attachments of this Agreement form part of this Agreement.
- 2.15 This Agreement, and its schedules, annexures, exhibits, appendices and attachments have priority in that order.
- 2.16 If and to the extent that any provision of this Agreement is inconsistent with a Customer Agreement, in the sense that it would not be possible to comply with both, this Agreement prevails.

SCHEDULE 3

CUSTOMER AGREEMENT MEMORANDUM

1. PARTIES

This is a Customer Agreement (“**CA**”) made on the date specified in Item 1 of the Table of Particulars (“**the Table**”) between the Supplier as supplier on the one hand and the State Agency as Customer on the other hand (specified in Items 2 and 3 of the Table respectively) under the terms of the Digital Market Place Low Risk ICT Projects Agreement numbered *insert number of the Supplier's DMP Low Risk ICT Projects Agreement* made between the Minister for the Public Sector on behalf of the Crown in right of the State of South Australia and the Supplier (“DMP Low Risk ICT Projects Agreement”).

2. SERVICES

This CA is an agreement between the Supplier and the Customer to provide the Services to the Customer, as specified in Item 4 of the Table.

3. PRICE

The Prices determined in accordance with clause 16 of Schedule 1 of the DMP Low Risk ICT Projects Agreement as set out in Item 5 of the Table apply to the provision of the Services under this CA.

4. TERM

This CA commences and expires on the dates specified in Item 1 of the Table unless it is terminated earlier in accordance with the provisions of the DMP Low Risk ICT Projects Agreement or this CA.

5. CONTRACT ADMINISTRATORS

The Customer Agreement Administrators are specified in Item 6 of the Table.

6. CONTRACT CONDITIONS

6.1 This CA is subject to the terms and conditions set out in the Schedules to the DMP Low Risk ICT Projects Agreement, and the special conditions (if any) set out in Item 7 of the Table (“**Special Conditions**”).

6.2 The Special Conditions do not prevail if they are inconsistent with the terms and conditions set out in the DMP Low Risk ICT Projects Agreement; unless the prior written approval of the State’s Principal Contract Administrator has been obtained.

7. CONFIDENTIAL CONTRACT CONDITIONS

The Parties designate the provisions of the CA set out in Item 8 of the Table as Confidential Contract Conditions.

8. SPECIFIED REQUIREMENTS

8.1 The Parties agree that the provision of the Services shall be made and performed in accordance with the specified requirements detailed in the Table.

TABLE OF PARTICULARS

	Item no.	Item	Particulars
MANDATORY REQUIREMENTS	1	Date of this CA Term of this CA	Date: Commencement Date: Expiry Date:
	2	Supplier	
	3	State Agency (Customer)	
	4	Services	
	5	Price	
	6	Customer Agreement Administrators	State Agency: Name: Address: Telephone: Facsimile: E-mail: Supplier: Name: Address: Telephone: Facsimile: E-mail:
OPTIONAL REQUIREMENTS	7	Special Conditions (if any) ¹	
	8	Confidential Contract Conditions ² (if any)	
	9	Liability Amount ³ (if any)	per Occurrence
	10	Intellectual Property Rights (if any)	
	11	Additional Insurance ⁴ (if any)	

¹ Clause 3.5 Page 1 of this Agreement

² Clause 1.9 of Schedule 2 of this Agreement

³ Clause 22 of Schedule 1 of this Agreement. Cannot be less than 1 times the total Customer Agreement value.

⁴ Clause 38.8 of Schedule 1 of this Agreement

	Item no.	Item	Particulars
OPTIONAL REQUIREMENTS	13	Additional Report Requirements (if any) including any additional cost (if any)	
	14	Key Supplier Personnel ⁵ (if any)	
	15	Industry Participation Policy Employment Contribution Test (if required) ⁶	

EXECUTION

This Agreement is signed by the **[Insert name of Supplier] ACN [Insert ACN]**)
in accordance with s127 of the)
Corporations Act 2001 by:)
)

.....
Signed

Signed

.....
Name

Name

.....
Position

Position

SIGNED by **[insert details of relevant Minister, organisation or delegate]**)
in the presence of:)
)

.....
Witness

Print Name

The **[insert relevant Minister or delegate's details]** hereby approves clause 21.1 of Schedule 1 of the DMP Low Risk ICT Projects Agreement as it applies to this Customer Agreement for the purposes of clause 13(2) of Schedule 1 of the *Freedom of Information Act 1991*(SA).

Signed by **[insert name]**

⁵ Clause 24.9 of Schedule 1 of this Agreement

⁶ Clause 15.10 of Schedule 1 of this Agreement