

## Schedule 4: Variation Procedures

### 1. Procedures

- 1.1** Each request or recommendation for a change to the PIPP or any part of the Customer Contract must be submitted in a form substantially similar to the Change Request form attached to this Schedule.
- 1.2** For each draft Change Request submitted:
- (a) the Customer must allocate it with a sequential number; and
  - (b) the draft Change Request must be logged and its progress documented by recording its status from time to time by the Contractor as follows:
    - (i) requested;
    - (ii) under evaluation;
    - (iii) awaiting authorisation;
    - (iv) cancelled;
    - (v) pending
    - (vi) approved/authorised;
    - (vii) expired;
    - (viii) in progress;
    - (ix) applied;
    - (x) delivered;
    - (xi) accepted.
- 1.3** The Party receiving the draft Change Request must within 5 Business Days of receipt (or such longer period set out in the Change Request):
- (c) request further information; or
  - (d) provide written notification to the other Party of its approval or rejection of the Change Request.
- 1.4** If the Customer submits a draft Change Request to the Contractor, and the Contractor believes that there is more than 1 Business Day's work involved in the evaluation of the Change Request, then prior to commencing work on evaluating the draft Change Request the Contractor may request that the Customer pays for the work involved to evaluate the draft Change Request. The Customer may then either revise the draft Change Request to require less than 1 Business Day's work to evaluate it, or agree to pay for the Contractor's work to evaluate the Change Request in an amount agreed by the Parties, or in absence of agreement, at the Contractor's then current commercial rates.

- 1.5** If the Customer Contract has been entered into under a Head Agreement, and the Change Request seeks to vary any terms or conditions of the Customer Contract, including a Protected Clause and the Customer approves of the Change Request, the Customer must submit the Change Request to the Contract Authority and the Secretary of the New South Wales Department of Customer Service, for approval immediately after it has notified the Contractor that it approves the Change Request.

## **2. Status**

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

### 3. Change Request Form

#### CHANGE REQUEST BRIEF DETAILS

<b>Change Request Number</b>		<i>Insert Change Request Number (supplied by the Customer)</i>
<b>Date of Change Request</b>		<i>Insert date of draft Change Request</i>
<b>Originator of need for Change Request</b>		<i>Customer or Contractor</i>
<b>Proposed Implementation Date of Change</b>		<i>Insert proposed date of implementation</i>
<b>Date of expiry of validity of Change Request</b>		<i>Insert validity expiry date. The Change Request is invalid after this date.</i>
<b>Contractor's estimated time and cost of evaluation</b>		<i>Insert estimated time and cost of evaluation</i>
<b>Amount agreed to be paid to the Contractor for evaluating the draft Change Request, if any</b> (This applies only if the Customer is the Party that originated the need for a Change Request; and the Contractor estimates the cost of evaluating and drafting the Change Request exceeds 2 Business Days)		<i>Insert amount to be paid to the Contractor for evaluating the draft Change Request</i>

#### CHANGE REQUEST HISTORY LOG

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

#### DETAILS OF CHANGE REQUEST

##### Summary

[Insert a summary of the changes, if required]

##### SCOPE

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

**EFFECT OF CHANGE ON CONTRACT SPECIFICATION**

[Insert any changes to the Contract Specification]

**EFFECT OF CHANGE ON PROJECT TIMETABLE**

[Insert changes to the project timetable]

**New PIPP (annexed)**

[Annex new PIPP if required]

**EFFECT OF CHANGE ON CHARGES AND TIMING OF PAYMENT**

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

**CHANGES TO CSI**

[Insert any changes to the CSI]

**CHANGES TO CUSTOMER PERSONNEL**

[Insert any changes to the Customer's Personnel]

**CHANGES TO CUSTOMER ASSISTANCE**

[Insert any changes to the Customer's Assistance]

**PLAN FOR IMPLEMENTING THE CHANGE**

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

**THE RESPONSIBILITIES OF THE PARTIES FOR IMPLEMENTING THE CHANGE**

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

**Responsibilities of the Contractor**

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

**Responsibilities of the Customer**

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

**EFFECT ON ACCEPTANCE TESTING OF ANY DELIVERABLE**

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

**EFFECT OF CHANGE ON PERFORMANCE OF ANY DELIVERABLE**

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

**EFFECT ON USERS OF THE SYSTEM/SOLUTION**

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

#### **EFFECT OF CHANGE ON DOCUMENTATION DELIVERABLES**

Changes will be required to the following documents:

[Add any other documents which may be affected.]

#### **EFFECT ON TRAINING**

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

#### **ANY OTHER MATTERS WHICH THE PARTIES CONSIDER IMPORTANT**

[insert if there are any other matters.]

#### **ASSUMPTIONS**

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

[Insert any assumptions. If none then this section will be deleted].

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

#### **LIST OF DOCUMENTS THAT FORM PART OF THIS CHANGE REQUEST**

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

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

[Insert amendments to clauses in the Customer Contract, relevant Schedules including Service Level Agreement]

Note that variations to any of the terms and conditions of the Procure IT Framework including the Protected Clauses require the Customer to obtain the prior written approval of the Contract Authority and the Secretary, New South Wales Department of Customer Service approval in accordance with directions and policies issued by the Board from time to time. (clause 26.2)

#### **AUTHORISATION**

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

# SIGNED AS AN AGREEMENT

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

[Redacted signature area]

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

[Redacted signature area]

[Redacted signature area]

Signature of Customer Representative

[Redacted signature area]

Print name

[Redacted signature area]

Date

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

[Redacted signature area]

[Redacted signature area]

Signature of Authorised Signatory

[Redacted signature area]

Print name

[Redacted signature area]

Date

## **Schedule 5: Escrow Deed-Not Used**

## **Schedule 6: Deed Poll-Approved Agents-Not Used**



**Schedule 7: Statutory Declaration - Subcontractor - Not Used**

## Schedule 8: Deed of Confidentiality

Deed of Agreement dated the  day of  20

**Between**  [insert name of the Customer (**Customer**)

**And**  [insert name and address of Subcontractor] (**Subcontractor**)

### RECITALS

- (A) In the course of the Subcontractor assisting in the supply by the Contractor of certain Deliverables for the Customer under a subcontract agreement between the Subcontractor and the Contractor, the Subcontractor will have access to, and may become aware of, Confidential Information belonging to, or in the possession of, the Customer.
- (B) Improper use or disclosure of the Confidential Information would severely damage the Customer's ability to perform its governmental/statutory functions and would severely damage the commercial interests of the Customer.
- (C) The Customer requires, and the Subcontractor agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Customer's Confidential Information is kept confidential.
- (D) This Deed sets out the terms on which the Subcontractor will have access to the Confidential Information.

### WHAT IS AGREED

## 1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals.

## 2. Interpretation

### DEFINITIONS

- 1.7** In the interpretation of this Deed unless a contrary intention appears the following expressions will have the following meanings:

**Agreement** means the Customer Contract entered into under the *Procure IT Framework* between the Contractor and the Customer under which the Contractor will supply Deliverables to the Customer dated [insert date].

**Business Day** means any day that is not a Saturday, Sunday or a public holiday in New South Wales.

**Confidential Information** means information that:

- (a) is by its nature confidential; or
- (b) is communicated by the Customer to the Subcontractor as confidential; or
- (c) the Subcontractor knows or ought to know is confidential; or
- (d) relates to:
  - (i) the Products and Services;
  - (ii) the financial, the corporate and the commercial information of the Customer;
  - (iii) the affairs of a third party (provided the information is non-public); and
  - (iv) the strategies, practices and procedures of the State and any information in the Subcontractor's possession relating to the State public service,

but excludes any information which the Subcontractor can establish was:

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

**Contractor** means [insert name of Contractor].

**Deliverables** means any product or service and any associated material offered for supply or provided by the Contractor in accordance in the Agreement.

**Express Purpose** means the Subcontractor performing the obligations under its subcontract agreement with the Contractor.

**Intellectual Property Rights** means all intellectual property rights including:

- (a) copyright, patent, trademark, design, semi-conductor or circuit layout rights, registered design, trademarks or trade name and other protected rights, or related rights, existing worldwide; and
- (b) any licence, consent, application or right, to use or grant the use of, or apply for the registration of, any of the rights referred to in (a),

but does not include the right to keep confidential information confidential, moral rights, business names, company names or domain names.

**Notice** means notice in writing given in accordance with this Deed.

**State** means the State of New South Wales.

## GENERAL

- 1.8** Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply
- 1.9** A reference to:
- (e) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (f) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (g) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
  - (h) anything (including a right, obligation or concept) includes each part of it.
- 1.10** If this Deed expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- 1.11** A singular word includes the plural, and vice versa.
- 1.12** A word which suggests one gender includes the other gender.
- 1.13** The words “include(s)” and “including” are not words of limitation.
- 1.14** If a word is defined, another part of speech of that word has a corresponding meaning.

## 3. Non disclosure

- 1.15** The Subcontractor must not disclose the Confidential Information to any person without the prior written consent of the Customer.
- 1.16** The Customer may grant or withhold its consent in its discretion.
- 1.17** If the Customer grants its consent, it may impose conditions on that consent, including a condition that the Subcontractor procures the execution of a Deed in these terms by the person to whom the Subcontractor proposes to disclose the Confidential Information.
- 1.18** If the Customer grants consent subject to conditions, the Subcontractor must comply with those conditions.
- 1.19** Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- (a) to its directors, officers, employees and contractors;
  - (b) to the Contractor and its directors, officers, employees and the Contractor’s other contractors who are engaged in the supply of the Deliverables and their directors, officers, employees,

each referred to as **permitted recipients**, where such disclosure is essential to carrying out their duties in respect of the Express Purpose.

- 1.20** Despite clause 3.1, the Subcontractor may disclose the Confidential Information:
- (c) to its lawyers, accountants, insurers, financiers and other professional advisers where the disclosure is in connection with advising on, reporting on, or facilitating the performance under this Deed; or
  - (d) if the Subcontractor is required to disclose by law, order of a court or tribunal of competent jurisdiction or the listing rules of an applicable securities exchange.
- 1.21** Before disclosing the Confidential Information to a permitted recipient, the Subcontractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 1.22** The Confidential Information must not be copied or reproduced by the Subcontractor or the permitted recipients without the expressed prior written permission of the Customer, except as for such copies as may be reasonably required for the Express Purpose.
- 1.23** If any person, being any director, officer, contractor or employee of the Subcontractor, who has had access to the Confidential Information in accordance with this clause 3 leaves the service or employ of the Subcontractor then the Subcontractor will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Subcontractor, would be a breach of the obligations of the Subcontractor under this Deed.

## **4. Restriction on use**

- 1.24** The Subcontractor must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Customer use the Confidential Information for any purpose other than the Express Purpose.
- 1.25** The Subcontractor must, unless otherwise authorised by the prior written consent of the Customer:
- (a) treat as confidential and secret all of the Confidential Information which the Subcontractor has already acquired or will acquire from the Customer;
  - (b) take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and take all necessary action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;
  - (c) not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;
  - (d) not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and
  - (e) ensure that the permitted recipients comply with the terms of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

## **5. Survival**

- 1.26** This Deed will survive the termination or expiry of the Agreement for a period of 6 years.

## **6. Rights of the Customer**

### **PRODUCTION OF DOCUMENTS**

- 1.27** The Customer may demand the delivery up to the Customer of all documents in the possession or control of the Subcontractor containing the Confidential Information.
- 1.28** The Subcontractor must immediately comply with a demand under this clause 6.
- 1.29** If the Customer makes a demand under this clause 6, and documents containing the Confidential Information are beyond the Subcontractor's possession or control, then the Subcontractor must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.
- 1.30** In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

### **LEGAL PROCEEDINGS**

- 1.31** The Customer may take legal proceedings against the Subcontractor or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

## **7. Indemnity and release**

- 1.32** The Subcontractor is liable for, and agrees to indemnify and keep indemnified the Customer in respect of, any claim, damage, loss, liability, cost, expense, or payment which the Customer suffers or incurs as a result of:
- (a) a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
  - (b) the disclosure or use of the Confidential Information by the Subcontractor or the permitted recipients other than in accordance with this Deed.

## **8. No exclusion of law or equity**

This Deed does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

## **9. Waiver**

- 1.33** No waiver by the Customer of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.
- 1.34** None of the provisions of this Deed will be taken to have been varied waived discharged or released by the Customer unless by its express consent in writing.

## **10. Remedies cumulative**

## CUMULATIVE

- 1.35** The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies.

## OTHER INSTRUMENTS

- 1.36** Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and do not derogate from any other right or obligation between the parties under any other Deed or agreement to which they are parties.

## **11. Variations and amendments**

No term or provision of this Deed may be amended or varied unless reduced to writing and signed by the parties in the same manner as this instrument.

## **12. Applicable law**

This Deed will be governed and construed in accordance with the laws of the State.

## **13. Notices**

- 1.37** Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Subcontractor, at the Subcontractor's registered office.
- 1.38** All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post, email or facsimile transmission.
- 1.39** If delivery or receipt of a notice is not made on a Business Day, then it will be taken to be made on the next Business Day.
- 1.40** If delivery of a notice is made by email, the notice will be taken to have been received when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).

**EXECUTED AS A DEED**

Signed, sealed and delivered by [insert name of Customer]

[Redacted signature area]

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

[Redacted signature area]

In the presence of: [insert name of witness]

[Redacted signature area]

[Redacted signature area]

Signature of Customer

[Redacted signature area]

Print name

[Redacted signature area]

Date

[Redacted signature area]

Signature of Witness

[Redacted signature area]

Print name

[Redacted signature area]

Date

Signed, sealed and delivered by [insert Subcontractor's name and ACN/ABN]

[Redacted signature area]

in accordance with s127 of the *Corporations Act* 2001 (Cth) by:

[Redacted signature area]

Signature Director

[Redacted signature area]

Print name

[Redacted signature area]

Date

[Redacted signature area]

Signature of Director/Secretary

[Redacted signature area]

Print name

[Redacted signature area]

Date



## Schedule 9: Performance Guarantee

### Performance Guarantee

Deed dated the

day of

20

Between **(Customer)**

The Crown in the right of the State of New South Wales acting through the Department of Communities and Justice ABN 36 433 875 18581

And **(Guarantor)**

Accenture plc

**Purpose:** Accenture Australia Pty Ltd (ABN 49 096 776 895) (**Contractor**) has agreed to offer to supply Products and Services to the Customer and Eligible Customers (who are not Eligible non-Government Customers) under the Accenture AESG PATH ERP Software and Platform as a Service Customer Contract dated \_\_\_\_\_ (**Contract**).

The Customer warrants to the Guarantor that it acts as the agent of each Eligible Customer (who is not an Eligible non-Government Customer) under any Customer Contract(s) that may be entered into under this Contract by that Eligible Customer for the purpose of entering into this Performance Guarantee.

### BY THIS DEED

By this Deed, the Guarantor agrees to provide the guarantees and indemnities stated below:

1. for Products or Services that is entered into under the Contract by Eligible Customers (who are not Eligible non-Government Customers); and
2. to the relevant Eligible Customer (who is not an Eligible non-Government Customer) that entered into the relevant Customer Contract.

The provisions of Attachment 13-3 – Consolidated Dictionary of Schedule 13 (Additional Conditions) in the Contract apply to this Performance Guarantee.

### What is agreed:

The Guarantor guarantees to the Customer the performance of the obligations undertaken by the Contractor under the Customer Contract on the following terms and conditions:

1. If the Contractor (unless relieved from the performance of the Customer Contract by the Customer or Eligible Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings, when due, under the Customer Contract, the Guarantor will, if required to do so by the Customer, complete or cause to be completed the undertakings contained in the Customer Contract.
2. The Guarantor will not be discharged, released or excused from this Deed of Guarantee by an arrangement made between the Contractor and Customer or Eligible Customer with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations

assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise.

3. The obligations of the Contractor will continue in force and effect until the completion of the undertakings of this Deed of Guarantee by the Guarantor.
4. The obligations and liabilities of the Guarantor under this Deed of Guarantee are co-extensive with and will not exceed the obligations and liabilities of the Contractor under the Customer Contract.
5. Where the Contractor has failed to perform, when due, under the Customer Contract, the obligations of the Guarantor will continue even though the Contractor has been the subject of an Insolvency Event.
6. The rights and obligations under this Deed of Guarantee will continue until all obligations of the Contractor under the Customer Contract have been performed, observed and discharged.
7. A notice under this Deed of Guarantee must be a Notice in Writing.
8. The address for services of Notices in Writing under this Deed of Guarantee for a party is, in the case of the:

<b>Guarantor</b>	<b>Accenture plc</b>
Physical address	161 North Clark Street, CHICAGO, ILLINOIS 60601 USA Attention: General Counsel (or, if different, the then current principal business address of the duly appointed General Counsel of Accenture PLC)

<b>Contractor</b>	<b>Accenture Australia Pty Ltd</b>
Physical address	3 Sussex Street, Barangaroo NSW 2000. Attention: Director of Legal Services – ANZ

<b>Customer</b>	<b>The Crown in the right of the State of New South Wales acting through the NSW Department of Communities and Justice</b>
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Physical address	6 Parramatta Square, Parramatta NSW 2150
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Or such other address as a party may notify to the other party in writing from time to time.

9. A Notice in Writing is deemed to be received if:
  - (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service;
  - (b) sent by post from and to an address within Australia, after 3 Business Days; or
  - (c) sent by post from or to an address outside Australia, after 10 Business Days.
10. The laws of New South Wales govern this Deed of Guarantee and the parties submit to the exclusive jurisdiction of the courts of New South Wales.
11. The Guarantor may:
  - (a) merge with another entity;

- (b) enter into a scheme of arrangement, amalgamation, consolidation or other combination; or
- (c) directly or indirectly, through its subsidiaries, sell or transfer all or substantially all of its assets or those of its subsidiaries to another entity or entities,

and, in connection with such transaction/s, assign all its rights and obligations under this Deed of Guarantee to the Guarantor's successor entity (**Successor**).

12. By accepting or relying on this Deed of Guarantee, the Customer:

- (a) consents to such transactions under clause 11, provided the Guarantor confirms that, upon completion of such transactions, the Successor will own and control total consolidated assets substantially equal to, or greater than, those owned and controlled by the Guarantor immediately prior to such transactions and that the Successor delivers to the Customer a deed of guarantee with terms conforming in all material aspects to this Deed of Guarantee; and
- (b) undertakes that it will enter into any instruments necessary or helpful to effect such transactions and transfers of the obligations hereunder between the Guarantor and the Successor.

**EXECUTED BY THE PARTIES AS A DEED AT THE DATE STATED BELOW**

Signed, sealed and delivered by

The Crown in the right of the State of New  
South Wales acting through the NSW  
Department of Communities and Justice

as agent of all Eligible Customers other than Eligible non-Government Customers.

By

[Redacted signature line]

In the presence of:

[Redacted signature line]

[Redacted signature line]

Signature of Customer representative

[Redacted signature line]

Print Name

[Redacted signature line]

Date

[Redacted signature line]

Signature of Customer's Witness

[Redacted signature line]

Print Name

[Redacted signature line]

Date

Signed, sealed and delivered by

Accenture plc

[Redacted signature line]

Signature of Authorised Signatory

[Redacted signature line]

Print name

[Redacted signature line]

Date

## **Schedule 10: Financial Security - Not Used**

## Schedule 11: Dispute Resolution Procedures

### 1. Expert Determination

- 1.1** If a Referral Notice is submitted under clause 24.7 of the Customer Contract, the expert is to be agreed between the Parties. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated on the application of either Party by the Chief Executive Officer, Australian Disputes Centre of NSW.
- 1.2** The expert nominated must be a person who is an experienced Australian legal practitioner or a person with practical experience in the technology that is the subject matter of the dispute, unless otherwise agreed. The expert must not be:
- (a) an employee of the Parties;
  - (b) a person who has been connected with this Customer Contract or has a conflict of interest, as the case maybe; or
  - (c) a person who the Parties have not been able to agree on.
- 1.3** The expert may appoint any person that the expert believes will be able to provide the specialists skills that are necessary to make a determination, including an Australian legal practitioner. The expert must consult with both Parties prior to appointing such person.
- 1.4** When the person to be the expert has been agreed or nominated, the Customer, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
- (a) the issue referred to the expert for determination;
  - (b) the expert's fees;
  - (c) the procedure for the determination set out in this Schedule; and
  - (d) any other matter which is relevant to the engagement.

### 2. Submissions

- 2.1** The procedure for submissions to the expert is as follows:
- (a) The Party that has referred the issue to expert determination must make a submission in respect of the issue, within 30 Business Days after the date of the letter of engagement referred to in clause 1.4.
  - (b) The other Party must respond within 30 Business Days after receiving a copy of that submission. That response may include cross-claims.
  - (c) The Party referred to in clause 2.1(a) may reply to the response, but must do so within 20 Business Days after receiving the response, and must not raise new matters.
  - (d) The other Party may comment on the reply, but must do so within 20 Business Days after receiving the reply, and must not raise new matters.

- (e) The expert must ignore any submission, response, reply, or comment not made within the time given in this clause 2.1, unless the Customer and the Contractor agree otherwise.
- (f) The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the request and response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- (g) All submissions, responses, replies, requests and comments must be in writing. If a Party gives information to the expert, it must at the same time give a copy to the other Party.

### **3. Conference**

- 3.1** The expert must arrange at least one conference with both Parties. The request must be in writing, setting out the matters to be discussed.
- 3.2** Each Party is entitled to be represented at any preliminary conference before the expert by its legal representatives and other authorised representatives, with information and knowledge of the issues.
- 3.3** The expert is not bound by the rules of evidence and may receive information in any manner the expert sees fit, but must observe the requirements of procedural fairness. Consultation between the expert and a Party must only take place in the presence of the other Party, unless a Party fails to attend a conference or meeting which has been convened by the expert and of which prior notice has been given. Any Party providing information to the expert must provide that information to the other Party.
- 3.4** The Parties agree that such a conference is considered not to be a hearing that would give anything under this Schedule the character of arbitration.
- 3.5** In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off or counter-claim.

### **4. Questions to be determined by the Expert**

- 4.1** The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
  - (a) is there an event, act or omission that gives the claimant a right to compensation under the Customer Contract:
    - (i) for damages for breach of the Customer Contract, or
    - (ii) otherwise in law?
  - (b) if so:
    - (i) what is the event, act or omission?
    - (ii) on what date did the event, act or omission occur?
    - (iii) what is the legal right which gives rise to the liability to compensation?

- (iv) is that right extinguished, barred or reduced by any provision of the Customer Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
- (c) in the light of the answers to clause 1.4:
  - (i) What compensation, if any, is due from one Party to the other and when did it fall due?
  - (ii) What interest, if any, is due when the expert determines that compensation?
- 4.2** The expert must determine for each issue any other questions required by the Parties, having regard to the nature of the issue.
- 4.3** The Parties must share equally the fees of the expert, any other costs associated with the process, including room hire expenses, transcript expenses and the like and the fees of any person appointed by the expert under clause 1.3 for the determination, and bear their own expenses.
- 4.4** If the expert determines that one Party must pay the other an amount exceeding the amount specified in General Order Form (calculating the amount without including interest on it and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 4.5** Unless a Party has a right to commence litigation or otherwise resolve the dispute under the Customer Contract:
  - (a) in the absence of a manifest error the Parties must treat each determination of the expert as final and binding and give effect to it; and
  - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 20 Business Days.

## **5. Role of Expert**

- 5.1** The expert must:
  - (a) act as an expert and not as an arbitrator, adjudicator or as expert witness;
  - (b) make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise;
  - (c) act impartially, free of bias and with no vested interest in the outcome of the dispute;
  - (d) adopt procedures for the Expert Determination suitable to the circumstances of the dispute so as to provide for an expeditious cost effective and fair means for the determination of the dispute; and
  - (e) issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 45 Business Days after the receipt of the information in clause 2.1(d).
- 5.2** If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate and give notice to the Parties of such correction.



## **6. Confidentiality**

**6.1** Each Party involved in the expert determination process, including the expert, the Parties, their advisors and representatives shall maintain the confidentiality of the expert determination process and may not use or disclose to anyone outside of the expert determination process, the expert's determination, or any information received or obtained, in the course of the expert determination process, including the existence of that information, except to the extent:

- (a) the Parties have otherwise agreed in writing;
- (b) the information is already in the public domain;
- (c) disclosure is required to a Party's insurers, auditors, accountants or other professional advisers;
- (d) disclosure is required for the purposes of any legal proceedings relating to the dispute or the expert's determination; or
- (e) disclosure is otherwise required by law.