

SOA Module 2 – Software

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SOA Module 2 – Software

1 Application of SOA Module

- (a) The SOA Comprehensive Contract Conditions - ICT Products and/or Services (**SOA Comprehensive Contract Conditions**) apply to this SOA Module.
- (b) The terms and conditions included in this SOA Module form part of the Contract when the parties state in the Details that SOA Module 2 forms part of the Contract.
- (c) The terms and conditions in:
 - (i) clause 3 apply to the supply of any Licensed Software;
 - (ii) clause 4 apply to the supply of any Software Support Services; and
 - (iii) clause 5 apply to the supply of any Developed Software, under the SOA Module Order Form.

2 Interpretation

- (a) The definitions for this SOA Module are set out in clause 6.
- (b) Other definitions and rules of interpretation applicable to this SOA Module are set out in the SOA Comprehensive Contract Conditions.

3 Licensed Software

3.1 Licence

- (a) Subject to clause 3.5(b), the Supplier grants the Customer a non-exclusive licence to:
 - (i) install, use and copy the Licensed Software for the Customer's functions and activities, or such other purposes specified in the SOA Module Order Form, and otherwise in accordance with the terms of the Class of Licence;
 - (ii) adapt and modify the Licensed Software to the extent necessary to enable it to be used on the Designated Environment; and
 - (iii) make necessary copies of the Licensed Software for back-up, disaster recovery and security purposes.
- (b) The Supplier must supply to the Customer the number of copies of the Licensed Software as specified in the SOA Module Order Form.
- (c) The Customer acknowledges that it has no right, title or interest in the Licensed Software except as set out in the Licence. All Intellectual Property Rights in:
 - (i) the Licensed Software remain vested in the Supplier; and
 - (ii) any adaptation, translation or derivative of the Licensed Software vests in, or is transferred or assigned to, the Supplier immediately on creation.
- (d) For the avoidance of doubt, clause 12 of the SOA Comprehensive Contract Conditions does not apply to the supply and licensing of Licensed Software under this SOA Module.

3.2 Licence Period

- (a) Unless the SOA Module Order Form specifies a perpetual licence, the Licence Period for the Licensed Software is the period specified in the SOA Module Order Form.

- (b) The Customer may extend the Licence Period on the same terms and conditions for the extension period specified in the SOA Module Order Form by giving the Supplier written notice by at least the period as specified in the SOA Module Order Form before expiry of the then current Licence Period.
- (c) After termination or expiry of the Licence, the Customer:
 - (i) subject to clause 3.2(c)(ii), must destroy (and provide such evidence of such destruction as the Supplier may reasonably require) or return to the Supplier all copies of the Licensed Software that are in its possession or control; and
 - (ii) may retain a copy of the Licensed Software and its related User Documentation to the extent required by Law, or for the Customer's reasonable internal credit, risk, insurance, legal and audit responsibilities. Such copies may only be used by the Customer to comply with Laws or its internal credit, risk, insurance, legal and audit responsibilities, and the Customer must not use the Licensed Software for any other purpose.

3.3 Supply of Licensed Software through a Reseller

- (a) This clause 3.3 applies where the SOA Module Order Form specifies that the Licensed Software will be supplied via a Supplier that is a Reseller.
- (b) If specified in the SOA Module Order Form that this clause 3.3(b) applies, the Supplier will supply the Licensed Software to the Customer in accordance with all of the provisions of the Contract except that clauses 3.15 and 3.16 do not apply, and the Supplier must:
 - (i) ensure the Customer receives or is provided access to a copy of and approves the Third Party Provider's warranties prior to any order or commitment being made in respect of any Licensed Software;
 - (ii) assign the Third Party Provider's warranty to the Customer;
 - (iii) co-ordinate and manage any warranty claim that is reported by the Customer to the Supplier and must use best efforts to ensure that all benefits of the Third Party Provider's warranty provided under clause 3.3(b)(ii) are used for the benefit of the Customer including by providing such assistance set out in the SOA Module Order Form.
- (c) If specified in the SOA Module Order Form that this clause 3.3(c) applies, the Supplier will provide reseller services which facilitate the supply of the Licensed Software from the Third Party Provider to the Customer, and:
 - (i) the provisions of this SOA Module (other than clauses 1, 2, 3.3, 3.9, 3.13 and 6) and clause 4.1(d) of the SOA Comprehensive Contract Conditions do not apply to the supply of the Licensed Software;
 - (ii) the Supplier must ensure the Customer receives or is provided access to a copy of the terms of the contract for the supply of the Licensed Software between the Customer and the Third Party Provider prior to any order or commitment being made in respect of any Licensed Software;
 - (iii) the terms of the contract for the supply of the Licensed Software between the Customer and the Third Party Provider specified in clause 3.3(c)(ii) will be:
 - (A) attached to the Contract;
 - (B) available for the Customer to accept online from a website nominated by the Supplier (including the website of the Third Party Provider); or
 - (C) in the form of a shrinkwrap licence or licence document that is provided with the Licensed Software (a copy of which is provided in advance of delivery under clause 3.3(c)(ii)),

and such contract will be deemed accepted by the Customer when the Customer enters into the Contract;

- (iv) the Supplier must co-ordinate and manage the provision of the Third Party Provider's warranty service, if any, that is to be provided in respect of any Defect or alleged Defect that is reported by the Customer to the Supplier including by providing such assistance set out on the SOA Module Order Form; and
- (v) the Customer must pay the Price for the Licensed Software to the Supplier, and the Supplier must pay the Third Party Provider the amount agreed between the Supplier and the Third Party Provider for the Licensed Software to the Third Party Provider.

3.4 Sublicensing

- (a) The Customer may sublicense any of the rights granted under Licence:
 - (i) on one or more occasions, on a limited time basis to a contractor that is providing outsource services to the Customer that includes the operation of the Licensed Software, provided that the Licensed Software is used solely for use of the Customer as is permitted under this SOA Module, is limited to the period of the outsource arrangement and the sublicense automatically terminates at the end of the period of the outsource arrangement; or
 - (ii) any entity specified in the SOA Module Order Form,
at no additional cost, unless the additional cost is specified in the SOA Module Order Form.
- (b) Any sublicensing of the rights granted under the Licence under this clause 3.4 is included within the Class of Licence (e.g. if the Class of Licence is based on the number of users, then the number of the users of the contractor or other entity is included within the number of users acquired by the Customer).

3.5 Restrictions on use

- (a) The Customer agrees, except to the extent permitted by this clause 3 of SOA Module 2, the SOA Module Order Form or applicable Law, not to:
 - (i) distribute, sublicense or otherwise transfer all or any part of the Licensed Software to any other person; or
 - (ii) attempt to disassemble, decompile or otherwise reverse engineer the Licensed Software.
- (b) The Customer must comply with any additional licence conditions and restrictions on use of the Licensed Software specified in the SOA Module Order Form.

3.6 Third Party Software

If Third Party Software is associated with the Licensed Software, the Third Party Software will be licensed to the Customer:

- (a) as part of the Licensed Software – in which case the Third Party Software will be deemed to be part of the Licensed Software and the provisions of the Contract will apply to the Third Party Software to the same extent as the Licensed Software; or
- (b) on such other terms specified in the SOA Module Order Form.

3.7 Open Source Software

To the extent that the Licensed Software, or any part of the Licensed Software, is licensed under an Open Source Licence:

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

- (b) the provisions of the Open Source Licence will prevail over the Contract to the extent of any inconsistency provided that any open source code that is incorporated into the Licensed Software is deemed to be part of the Licensed Software for the purpose of clause 3.15.

3.8 Changes to Designated Environment

- (a) If the Class of Licence restricts the use of the Licensed Software to the Designated Environment, the Customer may:
 - (i) transfer the Licensed Software to an alternative environment with substantially the same capacity and performance standards; and
 - (ii) install and run the Licensed Software on any back-up hardware while the Designated Environment is for any reason temporarily inoperable, with the Supplier's prior written consent, such consent not to be unreasonably withheld. Any transfer, change or substitution may be documented using a Change Request under clause 7.8 of the SOA Comprehensive Contract Conditions.
- (b) If the Customer requires the Supplier to assist with the transfer of the Licensed Software to other equipment, then a Change Request under clause 7.8 of the SOA Comprehensive Contract Conditions must be agreed by the parties.

3.9 Delivery and installation

- (a) The Supplier must:
 - (i) deliver or make available the Licensed Software to the Site (if applicable) by the Delivery Date; and
 - (ii) if required by the Customer, install the Licensed Software on the Designated Environment, in accordance with requirements set out in the SOA Module Order Form.
- (b) Unless the SOA Module Order Form specifies that the Supplier is responsible for installing the Licensed Software, the Customer is responsible for downloading (if applicable) and/or installing the Licensed Software. The Customer must perform the installation in accordance with any instructions in the User Documentation or other instructions provided by the Supplier, and provided it does so, the act of installing the Licensed Software will not invalidate any warranty provided by the Supplier under the Contract.
- (c) Where the Supplier makes the Licensed Software and User Documentation available for download from a website, the Supplier must provide the Customer with the relevant access codes promptly following the start date of the Contract.

3.10 Acceptance Testing

If specified in the Details, Acceptance Tests must be conducted in relation to the Licensed Software in accordance with clause 9 of the SOA Comprehensive Contract Conditions.

3.11 Back-up

Unless specified in the SOA Module Order Form that the Supplier is required to take back-ups of data that is loaded into the Licensed Software, the Customer must take and maintain adequate back-ups of any data that is loaded into the Licensed Software.

3.12 Updates and New Releases

- (a) If the SOA Module Order Form specifies that the Customer is entitled to Updates and/or New Releases for the Licensed Software as part of its Licence:
 - (i) the Supplier must make available to the Customer (and install, if specified in the SOA Module Order Form) any Updates and New Releases if and when the Supplier makes them generally available to other customers, at the option of the Customer and at no additional cost to the Customer;

- (ii) if the Customer elects not to accept or use an Update or New Release, it must notify the Supplier within 90 days of the date it is made available to the Customer.
- (b) The Customer may, before electing to accept or not accept an Update or New Release, require the Supplier to provide information to the Customer about the nature of the improvements and/or corrections contained in the Update or New Release including the compatibility of the Update or New Release with the Licensed Software.
- (c) For clarity, the Customer is under no obligation to accept an Update or New Release.
- (d) If the Customer accepts the Update or New Release, the Requirements of the Licensed Software will be deemed to be amended to the extent that the specifications for the Update or New Release supersede the existing Requirements.
- (e) If the Customer decides not to use the Update or New Release then the Customer acknowledges and agrees that:
 - (i) subsequent Updates or New Releases may not operate with the Licensed Software;
 - (ii) the Licensed Software may have its usefulness reduced over time;
 - (iii) the Supplier may not be able to remedy any Defects in the Licensed Software; and
 - (iv) the Supplier is not responsible for any Defect in the Licensed Software, nor any incident or outage, which would not have occurred had the latest version of the Licensed Software been used.

3.13 Ancillary services

The Supplier must provide the ancillary services (if any) in connection with the Licensed Software as specified in the SOA Module Order Form.

3.14 Machinery of Government

The Customer may assign or otherwise transfer the Licence in connection with a Machinery of Government Change in accordance with clause 25.4 of the SOA Comprehensive Contract Conditions.

3.15 Warranties

- (a) The Supplier warrants that the Licensed Software will:
 - (i) during the Warranty Period, comply with and perform in accordance with the Requirements;
 - (ii) during the Warranty Period, be compatible and inter-operate with, and will not detrimentally affect the operation or performance of, the Designated Environment (where applicable) when used in accordance with the User Documentation and Bespoke Documentation (as applicable);
 - (iii) be free from any back door, time bomb, drop dead device or any other code designed to disable the Licensed Software unless the Requirements specify otherwise; and
 - (iv) when delivered to the Customer, be free from any Harmful Code.
- (b) Without limiting this clause 3.15, the Supplier does not guarantee that the Licensed Software will be error-free or will operate without interruption.

3.16 Defects

- (a) Subject to clause 3.16(d), during the Warranty Period the Supplier must, at no cost to the Customer:
 - (i) remedy all Defects in the Licensed Software either by repair or modification; and

- (ii) take all reasonable measures (including providing a Workaround) to enable the Customer to continue to productively use the Licensed Software while remedying Defects.
- (b) The Customer must provide reasonable assistance to the Supplier in order to assist the Supplier to identify and resolve the Defect, including by installing patches and Workarounds provided by the Supplier.
- (c) If the Supplier is unable to rectify a Defect to the reasonable satisfaction of the Customer in a reasonable time and manner, the Customer may itself, or may arrange for a third party to, correct any Defect. In this case:
 - (i) the Supplier must provide the Customer or the relevant third party whatever assistance that may be reasonably required to rectify the Defect;
 - (ii) the Customer will comply, and where the third party is not authorised by the owner of the Intellectual Property Rights in the Licensed Software to be an authorised repairer of the Licensed Software, ensure that the third party complies, with the instructions of the owner of the Intellectual Property Rights in the Licensed Software and any User Documentation in rectifying any Defect; and
 - (iii) the Supplier must reimburse the Customer the costs reasonably incurred by the Customer for the rectification work performed.
- (d) The Supplier is not required to remedy any Defects in the Licensed Software to the extent that the Defect arises as a result of:
 - (i) any failure of the Customer to comply with its obligations under the Contract;
 - (ii) modifications to the Licensed Software that were effected or attempted by a person other than the Supplier, its Personnel or a person authorised by the Supplier;
 - (iii) any failure of a Customer Input (if applicable) to comply with the requirements specified in the Details;
 - (iv) damage caused by the operation of the Licensed Software other than in accordance with the User Documentation and Bespoke Documentation (as applicable) and the Contract;
 - (v) any Harmful Code that adversely affects the Licensed Software, except to the extent that:
 - (A) the Harmful Code was introduced by the Supplier or its Personnel; or
 - (B) the Requirements include a requirement to protect against Harmful Code, and the Defect is caused by a failure to meet the Requirements; or
 - (vi) an Unexpected Event.
- (e) Where the Supplier, acting reasonably, determines that the Defect arises as a result of circumstances set out in 3.16(d), then if the Customer requests the Supplier to remedy the Defect, the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the applicable Pricing Schedule, or if none are stated, at the Supplier's then current commercial rates subject to clause 10.4 of the SOA Comprehensive Contract Conditions (if applicable)) that arise out of or in connection with identifying and attempting to remedy that Defect.

3.17 Records and audit

- (a) The Customer must:
 - (i) if and to the extent stated in the SOA Module Order Form, maintain records of:
 - (A) the location of all copies of the Licensed Software;
 - (B) the usage of the Licensed Software as measured against the Class of Licence;

- (ii) provide copies of the records kept under this clause to the Supplier upon request.
- (b) The Customer must, upon reasonable written notice from the Supplier, allow the Supplier to make investigations in any reasonable manner to the extent required to verify the Customer's compliance with the Licence.
- (c) The Supplier will be responsible for costs incurred by it and its auditors, in relation to an audit, unless the audit shows that the Customer has not used the Licensed Software in accordance with the Licence and as a result has underpaid the Supplier. In this case:
 - (i) the Customer will be liable to the Supplier for the reasonable costs incurred by the Supplier in conducting the audit; and
 - (ii) the Customer must promptly pay to the Supplier the amount of any underpayment.

4 Software Support Services

4.1 Support Period

- (a) The Supplier must provide the Software Support Services for the Support Period specified in the SOA Module Order Form.
- (b) The Customer may extend the Support Period on the same terms and conditions for the extension period specified in the SOA Module Order Form by giving the Supplier written notice by at least the period as specified in the SOA Module Order Form before expiry of the then current Support Period.

4.2 Supply of Software Support Services

- (a) The Supplier must provide the Software Support Services to a standard that ensures continuity of performance of the Supported Software in accordance with the Contract including the Service Levels.
- (b) The Customer must co-operate with the Supplier by providing reasonable access to the Site during Business Hours or as otherwise agreed as necessary to enable the Supplier to provide the Software Support Services subject to the Supplier complying with clauses 6.1, 6.2(b) and 6.3 of the SOA Comprehensive Contract Conditions.
- (c) If specified in the SOA Module Order Form:
 - (i) the Customer must provide the Supplier with remote access to the Supported Software to provide the Software Support Services; and
 - (ii) the Supplier must comply with clauses 6.1 and 6.3 of the SOA Comprehensive Contract Conditions, and any other terms set out in the SOA Module Order Form in relation to such remote access.

4.3 Supply of Software Support Services through a Reseller

- (a) This clause 4.3 applies where the SOA Module Order Form specifies that the Software Support Services will be supplied via a Supplier that is a Reseller.
- (b) If specified in the SOA Module Order Form that this clause 4.3(b) applies, the Supplier will supply the Software Support Services to the Customer in accordance with all of the provisions of the Contract except that clauses 4.5 and 4.7 do not apply, and the Supplier must:
 - (i) ensure the Customer receives a copy and is fully advised of and approves the Third Party Provider's warranties prior to any order or commitment being made in respect of any Software Support Services;
 - (ii) assign the Third Party Provider's warranty to the Customer;

- (iii) co-ordinate and manage any warranty claim that is reported by the Customer to the Supplier and must use best efforts to ensure that all benefits of the Third Party Provider's warranty provided under clause 4.3(b)(ii) are used for the benefit of the Customer including by providing such assistance set out in the SOA Module Order Form.
- (c) If specified in the SOA Module Order Form that this clause 4.3(c) applies, the Supplier will provide reseller services which facilitate the supply of the Software Support Services by the Third Party Provider to the Customer, and:
 - (i) the provisions of this SOA Module (other than clauses 1, 2, 4.1, 4.2, 4.3, 4.4 and 6) and clause 4.1(d) of the SOA Comprehensive Contract Conditions do not apply to the supply of the Software Support Services;
 - (ii) the terms of the contract for the supply of the Software Support Services between the Customer and the Supplier will be:
 - (A) attached to the Contract;
 - (B) available for the Customer to accept online from a website nominated by the Supplier (including the website of the Third Party Provider); or
 - (C) in the form of a shrinkwrap agreement that is provided with the relevant part of the Supported Software (a copy of which is available in advance of delivery, upon request from the Customer),and such contract will be deemed accepted by the Customer when the Customer enters into the Contract;
 - (iii) the Supplier must co-ordinate and manage the provision of any support and warranty services that are to be provided by the Third Party Provider in respect of any Defect or alleged Defect that is reported by the Customer to the Supplier including by providing such assistance set out on the SOA Module Order Form; and
 - (iv) the Customer must pay the Price for the Software Support Services to the Supplier, and the Supplier must pay the Third Party Provider the amount agreed between the Supplier and the Third Party Provider for the Software Support Services to the Third Party Provider.

4.4 General support

The Supplier must provide the general support specified in the SOA Module Order Form during the hours of support specified in the SOA Module Order Form.

4.5 Defects

- (a) After being notified of a Defect or possible Defect in the Supported Software, the Supplier must:
 - (i) remedy the Defect in the Supported Software either by repair or modification in accordance with the Service Levels (if any) or, if no Service Levels apply, in a reasonable time and manner; and
 - (ii) take all reasonable measures (including providing a Workaround) to enable the Customer to continue to productively use the Supported Software while remedying Defects.
- (b) The Customer must provide reasonable assistance to the Supplier in order to assist the Supplier to identify and resolve the Defect, including by installing patches and Workarounds provided by the Supplier.
- (c) If the Supplier is unable to rectify a Defect to the reasonable satisfaction of the Customer in accordance with the Service Levels (if any) or, if no Service Levels are agreed, in a

reasonable time and manner, the Customer may itself, or may arrange for third party to, to correct any Defect. In this case:

- (i) the Supplier must provide the Customer or the relevant third party whatever assistance that may be reasonably required to rectify the Defect;
- (ii) the Customer will comply, and where the third party is not authorised by the owner of the Intellectual Property Rights in the Supported Software to be an authorised repairer of the Supported Software, ensure that the third party complies with the instructions of the owner of the Intellectual Property Rights in the Supported Software and any User Documentation in rectifying any Defect; and
- (iii) the Supplier must reimburse the Customer the costs reasonably incurred by the Customer for the rectification work performed.

4.6 Updates and New Releases

- (a) Unless otherwise specified in the SOA Module Order Form:
 - (i) the Supplier must make available to the Customer any Updates and New Releases if and when the Supplier makes them generally available to other customers, at the option of the Customer and at no additional cost to the Customer; and
 - (ii) if the Customer elects not to accept or use an Update or New Release, it must notify the Supplier within 90 days of the date it is made available to the Customer.
- (b) The Customer may, prior to electing to accept or not accept an Update or New Release, require the Supplier to provide the following information to the Customer:
 - (i) the features of the Update or New Release, and the nature of the improvements and/or corrections contained in the Update or New Release including compatibility of the Update or New Release with the Supported Software;
 - (ii) any adverse effects that the Update or New Release may be expected to have on the Designated Environment; and
 - (iii) sufficient information to enable the Customer to determine whether the Update or New Release will suit the Customer's requirements.
- (c) If the Customer accepts the Update or New Release:
 - (i) the Supplier must, if requested by the Customer, install the Update or New Release, coordinating and scheduling such installation with the Customer. The Customer must pay the Supplier the costs for such installation which must be calculated using the rates set out in the applicable Pricing Schedule, or if none are stated, at the Supplier's then current commercial rates (subject to clause 10.4 of the SOA Comprehensive Contract Conditions (if applicable)). This arrangement may be documented by way of a Change Request under clause 7.8 of the SOA Comprehensive Contract Conditions;
 - (ii) if the Customer installs the Update or New Release, the Customer must do so in accordance with any instructions provided by the Supplier; and
 - (iii) the Requirements of the Supported Software will be deemed to be amended to the extent that the specifications for the Update or New Release supersede the existing Requirements; and
 - (iv) the Supplier must provide the training in respect of the Update or New Release as specified in the SOA Module Order Form.
- (d) The Customer is under no obligation to accept an Update or New Release, and subject to clause 4.6(e), a refusal by the Customer will not affect its entitlement to ongoing Software Support Services under the Contract.
- (e) If the Customer decides not to use the Update or New Release then the Customer acknowledges and agrees that:

- (i) subsequent Updates or New Releases may not operate with the Supported Software;
- (ii) the Supplier may cease to provide Software Support Services for that release of the Supported Software from the date that is 18 months (or such other period stated in the SOA Module Order Form) from the date of the general release of the Update or New Release, and thereafter:
 - (A) the Supported Software may have its usefulness reduced over time;
 - (B) the Supplier may not be able to remedy any Defects in the Supported Software; and
 - (C) the Supplier is not responsible for any Defect in the Supported Software, nor any incident or outage, which would not have occurred had the latest version of the Supported Software been used,

provided that nothing in this clause 4.6(e) reduces the Supplier's obligations under clause 4.7.

4.7 Warranties

The Supplier warrants that the Software Support Services will be performed:

- (a) by appropriately qualified and trained Personnel; and
- (b) to a standard that ensures continuity of performance of the Supported Software in accordance with the Service Levels (or if no service levels are agreed, in a reasonable time and manner) and the Contract.

4.8 Exclusions from Software Support Services

- (a) The Supplier is not required to provide the Software Support Services and is not responsible for any failure to meet the Service Levels to the extent that the Defect or failure to meet the Service Levels arises as a result of:
 - (i) any failure of the Customer to comply with its obligations under the Contract;
 - (ii) modifications to the Supported Software that were effected or attempted by a person other than the Supplier, its Personnel or a person authorised by the Supplier;
 - (iii) any failure of a Customer Input (if applicable) to comply with the requirements specified in the Details;
 - (iv) damage caused by the operation of the Supported Software other than in accordance with the User Documentation and Bespoke Documentation (as applicable) and the Contract;
 - (v) software other than the Supported Software;
 - (vi) any Harmful Code that adversely affects the Supported Software, except to the extent that:
 - (A) the Harmful Code was introduced by the Supplier or its Personnel; or
 - (B) the Requirements include a requirement to protect against Harmful Code, and the Defect is caused by a failure to meet the Requirements; or
 - (vii) an Unexpected Event.
- (b) Where the Supplier, acting reasonably, determines that the Defect arises as a result of circumstances set out in 4.8(a), then if the Customer requests the Supplier to remedy the Defect, the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the applicable Pricing Schedule, or if none are stated, at the Supplier's then current commercial rates subject to clause 10.4 of the SOA Comprehensive Contract Conditions (if applicable)) that arise out of or in connection with identifying and attempting to remedy that Defect.

4.9 Service Levels and Service Credits

- (a) The Supplier must measure its performance against the Service Levels and provide a report to the Customer at the frequency specified in the SOA Module Order Form.
- (b) Subject to clause 4.8, if the Supplier fails to meet the Service Levels, it must apply the Service Credits against the next invoice issued after the relevant Service Credits accrue, or in accordance with the process set out in the SOA Module Order Form. If the Contract has terminated or expired, the Supplier must promptly pay the amount of the Service Credits to the Customer.

4.10 Services records

- (a) The Supplier must maintain records of all:
 - (i) issues reported by the Customer;
 - (ii) remedial action taken by the Supplier,during the performance of the Software Support Services.
- (b) The Supplier must provide a copy of or make such records available to the Customer at no additional cost promptly following request.

5 Developed Software

5.1 Design Specification

- (a) If specified in the SOA Module Order Form, the Supplier will prepare a detailed specification which provides a technical explanation of how the functions in the Requirements for the Developed Software will be met including, as applicable, details of:
 - (i) processes;
 - (ii) visual displays;
 - (iii) screen layouts;
 - (iv) system flowcharts;
 - (v) user interfaces;
 - (vi) data flow diagrams;
 - (vii) estimates of transaction and data volumes;
 - (viii) prototypes; and
 - (ix) any associated Data Dictionary,**(Design Specification)** and submit it to the Customer for approval by the Delivery Date specified in the SOA Module Order Form.
- (b) The Customer will notify the Supplier promptly of any comments on the Design Specification or any alterations it reasonably requires. The Supplier will not unreasonably refuse to amend the Design Specification to take account of the Customer's reasonable requirements.
- (c) The process under this clause 5.1 will be repeated until the Customer has no comments on the Design Specification and approves the Design Specification by written notice to the Supplier.
- (d) The Design Specification will, when approved by the Customer under clause 5.1(c), become part of the Requirements. If there is any inconsistency between the Requirements (excluding the Design Specification) and the Design Specification, the Design Specification will prevail to the extent of any inconsistency.

5.2 Development process

The Supplier's methodology for the development of the Developed Software must as a minimum:

- (a) identify and control software components of, and changes to, the Developed Software to maintain the integrity and traceability of the Developed Software at all stages of the development;
- (b) control the issue of development revisions of the Developed Software and associated documentation;
- (c) ensure that the Developed Software is developed and documented in a way which would enable future modification without further reference to the Supplier;
- (d) reference and document procedures for corrective action in respect of the Developed Software and associated documentation including:
 - (i) adoption of a system to report problems and deficiencies;
 - (ii) examination of problem and deficiency reports to determine their causes, and to prepare corrective measures;
 - (iii) analysis of deficiency trends, to ensure the Developed Software conforms to the Requirements;
 - (iv) review of corrective measures, to determine their effectiveness; and
 - (v) provision for ensuring that timely corrective action is taken by reviewing deficiencies and tracking their clearance.

5.3 Delivery and installation

The Supplier must:

- (a) deliver or make available the Developed Software (and if the Details specify that Intellectual Property Rights in the Developed Software will be owned by the Customer, deliver the source code of the Developed Software) to the Site (if applicable) by the Delivery Date; and
- (b) if specified in the SOA Module Order Form, install the Developed Software on the Designated Environment,

in accordance with the requirements set out in the SOA Module Order Form.

5.4 Intellectual Property Rights in Developed Software

- (a) The Intellectual Property Rights in the New Material in the Developed Software will be owned by either the Customer or the Supplier as specified in the Details.
- (b) Where the Details specify that the Supplier will own the Intellectual Property Rights in the New Material in the Developed Software, the Developed Software will be Licensed Software, and:
 - (i) the terms of clause 3 will apply to the Developed Software; and
 - (ii) clause 12 of the SOA Comprehensive Contract Conditions will not apply to the Developed Software.
- (c) Where the Details specify that the Customer will own the Intellectual Property Rights in the New Material in the Developed Software, clause 12.2 of the SOA Comprehensive Contract Conditions applies.

5.5 Acceptance Testing

If specified in the Details, Acceptance Tests must be conducted in relation to the Developed Software in accordance with clause 9 of the SOA Comprehensive Contract Conditions.

5.6 Ancillary services

The Supplier must provide the ancillary services (if any) in connection with the Developed Software as specified in the SOA Module Order Form.

5.7 Warranties

- (a) The Supplier warrants that all Developed Software will:
 - (i) during the Warranty Period, comply with and perform in accordance with the Requirements;
 - (ii) when delivered to the Customer or, if testing is conducted under clause 9 of the SOA Comprehensive Contract Conditions when the Customer issues an Acceptance Notice in respect of the Developed Software, be compatible and inter-operate with, and will not detrimentally affect the operation or performance of, the Designated Environment when used in accordance with the User Documentation and Bespoke Documentation (as applicable);
 - (iii) be free from any back door, time bomb, drop dead device or any other code designed to disable the Developed Software unless the Requirements specify otherwise; and
 - (iv) when delivered to the Customer, be free from any Harmful Code.
- (b) Without limiting clause 5.7(a), the Supplier does not guarantee that the Developed Software will be error-free or will operate without interruption.

5.8 Defects

- (a) Subject to clause 5.8(b), during the Warranty Period the Supplier must, at no cost to the Customer:
 - (i) remedy all Defects in the Developed Software either by repair or modification; and
 - (ii) take all reasonable measures (including providing a Workaround) to enable the Customer to continue to productively use the Developed Software while remedying Defects.
- (b) The Customer must provide reasonable assistance to the Supplier in order to assist the Supplier to identify and resolve the Defect, including by installing patches and Workarounds provided by the Supplier.
- (c) If the Supplier is unable to rectify a Defect to the reasonable satisfaction of the Customer in a reasonable time and manner, the Customer may itself, or may arrange for a third party to, to correct any Defect. In this case:
 - (i) the Supplier must provide the Customer or the relevant third party whatever assistance that may be reasonably required to rectify the Defect; and
 - (ii) the Customer must comply, and ensure that the third party complies, with the instructions of the Supplier in rectifying any Defect; and
 - (iii) the Supplier must reimburse the Customer the costs reasonably incurred by the Customer for the rectification work performed.
- (d) The Supplier is not responsible for any breach of warranty set out in clause 5.7 and is not required to remedy any Defects in the Developed Software to the extent that the Defect arises as a result of:
 - (i) any failure of the Customer to comply with its obligations under the Contract;
 - (ii) modifications to the Developed Software that were effected or attempted by a person other than the Supplier, its Personnel or a person authorised by the Supplier;
 - (iii) any failure of a Customer Input (if applicable) to comply with the requirements specified in the Details;

- (iv) damage caused by the operation of the Developed Software other than in accordance with the User Documentation and Bespoke Documentation (as applicable) and the Contract;
 - (v) any Harmful Code that adversely affects the Developed Software, except to the extent that:
 - (A) the Harmful Code was introduced by the Supplier or its Personnel; or
 - (B) the Requirements include a requirement to protect against Harmful Code, and the Defect is caused by a failure to meet the Requirements; or
 - (vi) an Unexpected Event.
- (e) Where the Supplier, acting reasonably, determines that the Defect arises as a result of circumstances set out in clause 5.8(d), then if the Customer requests the Supplier to remedy the Defect, the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the applicable Pricing Schedule, or if none are stated, at the Supplier's then current commercial rates subject to clause 10.4 of the SOA Comprehensive Contract Conditions (if applicable)) that arise out of or in connection with identifying and attempting to remedy that Defect.

5.9 Support

Where the Developed Software is to be the subject of Software Support Services, the Software Support Services will be provided by the Supplier under clause 4.

6 Definitions

Class of Licence means the specific rights granted by the Supplier to the Customer to use the Licensed Software that are specified in the SOA Module Order Form.

Data Dictionary means a reference tool that describes each data item that may include field names, number of characters, data type, number of decimal places, or a description of the purpose of each data field.

Design Specification has the meaning given to it in clause 5.1(a).

Developed Software means any new software or software application that is to be developed and which comprises New Material, as further specified in the SOA Module Order Form. Developed Software does not include any configuration or customisation of Licensed Software to activate or implement add-ons, features or functionality within such Licensed Software or any adaptations, translations or derivatives of such Licensed Software.

Licence means the licence granted by the Supplier to the Customer in respect of the Licensed Software under this SOA Module.

Licence Period means the period specified in the SOA Module Order Form for the supply of the Licensed Software.

Licensed Software means the software specified in the SOA Module Order Form, and includes (as applicable):

- (a) any configuration or customisation of the Licensed Software to activate or implement add-ons, features or functionality within the Licensed Software or any adaptations, translations or derivatives of the Licensed Software; or
- (b) Developed Software referred to in clause 5.4(b).

New Release means software provided primarily to provide an extension, alteration, improvement or additional functionality to the Licensed Software or Supported Software (as applicable), but does not include any software that is generally licensed by the Supplier to its customers as a different product.

Open Source Licence means the licence that governs the use of open source code, which is included with the open source code, as specified in the SOA Module Order Form.

Reseller means any entity who provides, or facilitates the provision of, the Licensed Software or Software Support Services (as applicable) to the Customer under the Contract as Supplier, but is not the Third Party Provider or a Related Body Corporate of the Third Party Provider.

Service Credits means the service credits in respect of Software Support Services described in SOA Schedule 8 – Service Levels or such other document referred to in the SOA Module Order Form.

Service Levels means the service levels in respect of the Software Support Services described in SOA Schedule 8 – Service Levels or such other document referred to in the SOA Module Order Form.

Software Support Services means the support services set out in the SOA Module Order Form.

Support Period means the period specified in the SOA Module Order Form for the supply of the Software Support Services.

Supported Software means the software which is supported in accordance with clause 4 and as specified in the SOA Module Order Form.

Third Party Provider means any entity who owns the Intellectual Property Rights in the Licensed Software or Supported Software (as applicable). Third Party Provider does not include a Reseller or a Related Body Corporate of the Supplier.

Third Party Software means software components, applications, plug-ins or other programs that are owned by third parties and are stated on the SOA Module Order Form as being Third Party Software.

Update means a version of the software produced primarily to overcome Defects in the Licensed Software or Supported Software (as applicable).

Workaround means a fix or alternative procedure to temporarily address a Defect.