

	Procure IT v3.2 Key Changes	Procure IT v3.1
<b>Customer Contract</b>	<p><b>Customer Data</b>            Clause 7.4: Establishes the default position re ownership of Customer Data by the Customer.            Clauses 7.5 and 7.6: Customer Data which comprises “State Records” cannot be transferred outside of NSW without the Customer’s prior written consent or as specified in new Item 25A of General Order Form.  <i>State Records are broadly defined to include any record made or kept, or received and kept, by any person in the course of the exercise of official functions in a public office, or for any purpose of a public office, or for the use of a public office” (State Records Act 1998).</i></p> <p>Clauses 7.7 to 7.9: Obligations relating retention and destruction of Customer Data use of Customer Data for testing, and Customer Data backup obligations.            Clause 25.9: obligations re Customer Data on termination.</p>	<p><b>Customer Data</b>            Clauses 7.4 to 7.9 did not exist in Procure IT v3.1</p> <p>Clause 25.9 did not exist in Procure IT v3.1</p>
	<p><b>Security</b>            Clause 7.10(a): obligations relating to safety and security of Customer Data and Customer’s Confidential Information.            Clause 7.10(b): obligations to notify the Customer of safety and security procedures and safeguards, including any amendments from time to time.            Clause 7.12: obligations relating to breaches of secrecy and security requirements.</p>	<p><b>Security</b>            Clauses 7.10 and 7.12 did not exist in Procure IT v3.1</p>
	<p><b>Systems</b>            Clause 5.11(a) extends the operation of Procure IT to “Systems” (where applicable), with final acceptance being deferred until the System as a whole passes all Acceptance Tests.            Clause 9.3 contains warranties in relation to the overall System.</p>	<p><b>Systems</b>            Clause 5.11 did not exist in Procure IT v3.1</p> <p>Clause 9.3 did not exist in Procure IT v3.1</p>
	<p><b>Liability</b>            All references to "loss", "damage" and "expense", “cost” and “liabilities” have been updated to "loss, damage and expense" for consistency.</p>	<p><b>Liability</b>            Procure IT v3.1: some inconsistency in the language relating to loss, damages, costs and expenses, etc.</p>
	<p><b>Termination for Convenience</b>            Clause 25.4: clarifies that the contractor will <b>either</b> be paid (i) the amount specified on the order form; or (ii) those losses, damages or expenses which are reasonably and properly incurred by the Contractor as a direct result of the termination of the contract</p>	<p><b>Termination for Convenience</b>            Clause 25.4 in Procure IT v3.1: previous drafting left open the question as to whether the Contractor could claim both item (i) and item (ii) (ie: double-dip on termination payments) when the customer terminates for convenience.</p>
	<p><b>Escrow</b>            Clause 6.42(a): amended to enable some flexibility in the form of the Escrow Agreement, provided that it must be in a form “reasonably acceptable to the Customer”.</p>	<p><b>Escrow</b>            Clause 6.24(a) in Procure IT v3.1 required the parties to enter into an escrow agreement on the terms of the Escrow Agreement in Schedule 5 of the Customer Contract</p>

**Audit**

Clauses 23.5 to 23.11 govern the conduct of audits to confirm a Contractor's compliance with the Customer Contract and the accuracy of invoices.

**Regulatory Compliance**

New definition of "Privacy Laws" and amended definition of "Personal Information" are incorporated.

Clause 15.1 has been amended for compliance with Privacy Laws.

Amendments require the contractor to:

- exercise its rights in relation to Personal Information "only for the purposes of performing its obligations under the Customer Contract",
- comply with applicable Privacy Laws "as if it were a person subject to the Privacy Laws",
- not disclose Personal Information to any other person without the prior written consent of the Customer or as expressly required by Statutory Requirements,
- comply with any "reasonable" direction from the Customer with respect to remedying breaches, or in relation to the rights of individuals to access and correct Personal Information,
- "take all technical, organisation and other security measures reasonably within the Contractor's power to protect the Personal Information from misuse, interference and loss", and
- not allow, or permit access to, or transfer any Personal Information falling within the scope of clause 15.1(h) outside of Australia without first obtaining the Customer's approval in writing or as specified in Item 25B of the General Order Form.

Clauses 26.12 to 26.16 have been inserted to reflect requirements under the GIPA Act and other relevant obligations.

**Intellectual Property Rights**

New definition of "Online Service".

Amended definition of "Open Source Software" consistent with the Commonwealth Government's Source IT ICT procurement templates.

Clause 13.5(c) is updated to reflect changes in legislation, including the introduction of the Government Sector Employment Act 2013 (NSW).

Clause 13.6(e) expands the grant of a non-exclusive licence in respect of Existing Material to include an Online Service procured under Module 10 (As a

**Audit**

Clauses 23.5 to 23.11 did not exist in Procure IT v3.1

**Regulatory Compliance**

Clause 15.1 of the Procure IT v3.1 require the contractor to:

- use personal information "only for the purpose for which the Personal Information was acquired;
- reference was made to the IPPs instead of the 'Privacy Laws'
- additional privacy safeguards have been incorporated, which were not present in prior version

Clauses 26.12 to 26.16 did not exist in Procure IT v3.1

**Intellectual Property Rights**

The concept of "online service" did not exist in Procure IT v3.1

Clause 13.5 previously referred to legislation such as Public Sector Employment and Management Act 2002 (NSW) – now repealed.

Clause 13.6(e) did not exist in Procure IT v3.1

	<p>Service).</p> <p>Clause 13.9 incorporates the grant of a perpetual and irrevocable licence for certain Existing Materials and methodologies that are provided in connection with a Deliverable, but only to the extent required for the Customer to receive the benefit of the Products and the Services. This grant of licence does not extend to Licensed Software under clauses 13.6(a) and (b), or to Online Services under clause 13.6(e). This grant of licence may be varied under the General Order Form.</p> <p>Clause 13.11(b) incorporates an option for the Customer to grant certain licence rights back to the Contractor in respect of New Materials that are vested in the Customer. This grant of licence is at the Customer’s discretion, and the Customer is entitled to determine the scope of the licence.</p> <p>Clause 13.14 provides that the Contractor is not permitted to use Open Source Software for the purpose of developing or enhancing Deliverables or incorporating Open Source Software into Deliverables unless it obtains the prior written consent of the Customer. This creates a trigger for assessing the impact of Open Source Software on Deliverables where applicable.</p> <p>Clause 13.15 provides that where the Customer consents to the use of Open Source Software, the Contractor has certain obligations to ensure that this does not lead to adverse consequences for the Customer.</p> <p>Clause 19.5 is amended so that the Contractor’s indemnity applies in relation to IP claims caused by (i) the use of Deliverables in combination with other items (ie: other products, equipment, business methods, software or data) where approved by the Contractor or where it is in accordance with the Contract Specifications; or (ii) modifications to any Deliverables which are not made by the Contractor or its Personnel, but are approved by the Contractor.</p>	<p>Clause 13.9 did not exist in Procure IT v3.1</p> <p>Clause 13.11(b) which was clause 13.11(b) in Procure IT v3.1 did not give this discretion to the Customer.</p> <p>Clause 13.14 - did not exist in Procure IT v3.1</p> <p>Clause 13.15 - did not exist in Procure IT v3.1</p> <p>Clause 19.5 in Procure IT v3.1 did not require the Contractor to indemnify the Customer for IP claims in these circumstances.</p>
<p><b>General Order Form and Schedules</b></p>	<p><u>new Item 25A Transfer of Records outside NSW- Customer Data:</u> Customer to specify whether any State Records will be transferred to the Contractor’s possession, and if so: (i) whether consent is granted to transfer State Records outside NSW, (ii) if yes, the jurisdiction(s) for which consent is granted, and (iii) the conditions on which such consent is granted.</p>	<p>Item 25A did not exist in Procure IT v3.1</p>
	<p><u>new Item 25B Transfer of Records outside NSW- Personal Information:</u> Customer to specify whether consent is granted to transfer Personal Information outside NSW, the jurisdiction(s) for which consent is granted, and the conditions on which such consent is granted.</p>	<p>Item 25B did not exist in Procure IT v3.1</p>
	<p><u>Item 25 Secrecy and Security:</u> Incorporates an option for Customer to specify changes to the default timeframes for: (i) notification of actual, alleged or suspected security breach (default timeframe: immediate), (ii) investigation (default timeframe: within 48 hours) and (iii) time to remedy the breach (default timeframe: within 24 hours of completion of investigation). Any</p>	<p>Item 25 in Procure IT v3.1 did not offer this flexibility</p>

<p><b>Reformatted Module 13 and 13A</b></p>	<p>alternate timeframe is subject to approval by the Customer’s CIO and compliance with certain policy requirements - see guide note for Customers contained in the General Order.</p>	
	<p><u>Item 34 Intellectual Property: Existing Material</u>: Where a Deliverable incorporates Existing Material that is owned by a third party, and the default licensing terms in clause 13.7(b) are not intended to apply, then Item 34 should specify the terms and conditions on which the Customer is granted a non-exclusive licence for those third party Existing Materials (and any fees, if applicable);</p>	<p>Item 34 in Procure IT v3.1 did not offer this flexibility</p>
	<p><u>Item 34 Intellectual Property: Customer Owned New Material</u>: Where the Customer elects to grant certain licence rights back to the Contractor under clause 13.11(b) in respect of New Materials that are vested in the Customer, and the Customer does not wish to adopt the default licensing terms in clause 13.11(b), then the Customer will specify the licensing terms in this Item 34.</p>	<p>This part is new and did not exist in Procure IT v3.1</p>
	<p><u>Item 40A Audit</u>: Incorporates an option for the parties to specify that the default audit provisions in clauses 23.5-23.8 do not apply, and to specify an alternate audit mechanism. This is subject to compliance with the Contractor’s obligations relating to Customer Data, security and privacy, and with such other obligations required by the Customer and reasonably agreed by the Contractor – see guide note for Customers contained in the General Order.</p>	<p>Item 40A did not exist in Procure IT v3.1</p>
<p><b>Reformatted Module 13 and 13A</b></p>	<p>No Procure IT v.3.1 Module 13 or 13A were ever released. Agencies and suppliers were directed to use Procure IT v.3.0 Module 13 and 13A and corresponding order forms. To assist stakeholders, DFSI has refreshed these forms and made them available under Procure IT v.3.2</p>	<p>There are no substantive changes to the current Procure IT v.3.0 Module 13 and 13A documents.</p>