

SOA General Contract Conditions - ICT Products and/or Services

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These SOA General Contract Conditions - ICT Products and/or Services are to be used in connection with the Details.

1 The Contract

1.1 When Contract is formed

A Contract will be formed between the Customer and the Supplier on the date when the Authorised Representatives of both parties have signed the appropriate section of the Details.

A Contract will not be formed where, at the time the parties sign the Details in accordance with this clause, the SOA is suspended, has expired or been terminated.

The Contract may consist of a number of counterparts and if so, the counterparts taken together constitute one document.

1.2 Interpretation

The definitions and rules of interpretation for the Contract are set out in clause 24.

1.3 Hierarchy

If there is any inconsistency between the documents which make up the Contract, then the following will prevail in descending order of precedence:

- (a) Part C of the SOA Details;
- (b) items 10 and 12 of the SOA Details;
- (c) these SOA General Contract Conditions- ICT Products and/or Services;
- (d) the Details (excluding any Additional Provisions and any document which the Details state will form part of the Contract or is otherwise expressly incorporated by reference in the Contract);
- (e) any Additional Provisions;
- (f) any statement of work formed under clause 7;
- (g) any schedules (excluding any document which the Details state will form part of the Contract or is otherwise expressly incorporated by reference in the Contract); and
- (h) any document which the Details state will form part of the Contract or is otherwise expressly incorporated by reference in the Contract.

1.4 Additional Provisions

- (a) Subject to clause 1.4(b), the Customer and the Supplier may agree to include Additional Provisions.
- (b) Additional Provisions take effect only to the extent they are additional to, and do not detract from the parties' rights and obligations under, the terms and conditions of the General Contract Conditions, provided that any Additional Provisions included to enable the Customer to comply with applicable legislative or policy requirements are deemed not to detract from the parties' rights and obligations.

2 Non exclusivity

Unless expressly stated otherwise in the Details, the Customer may engage other suppliers to (or itself) provide products, services and other deliverables the same as or similar to the Deliverables.

3 Term

The Contract starts on the start date specified in the Details and continues for the period set out in the Details unless any extension options are exercised under this clause 3.

The Customer may extend the Term on the same terms and conditions for any extension period(s) specified in the Details by giving the Supplier written notice by at least the period as specified in the Details before expiry of the then current Term.

Subject to clause 21.1(c), the Term of the Contract (including extensions) continues after the SOA ends.

4 Supplier general obligations

The Supplier:

- (a) **(time)** must meet all Delivery Dates specified in the Details or as otherwise agreed in writing, and perform all other obligations in a prompt, diligent and competent manner;
- (b) **(delay)** will promptly notify the Customer if it believes it will not be able to meet any Delivery Date;
- (c) **(Deliverables)** must provide the Deliverables in accordance with the Contract and ensure that the Deliverables comply in all aspects with:
 - (i) the requirements and specifications specified in item 12 of Part A and Part C of the SOA Details;
 - (ii) all applicable Laws;
 - (iii) all applicable Government codes, policies or guidelines; and
 - (iv) any current Australian/New Zealand Standard and where an Australian/New Zealand Standard does not exist, the relevant International Standard (ISO), which govern the provision of the Deliverables under this Contract;
- (d) **(Requirements)** must meet, and ensure that the Deliverables meet, the Requirements;
- (e) **(Service Levels)** must meet or exceed the Service Levels (if any);
- (f) **(quality)** must ensure that all Deliverables are of a high quality, professional standard and fit for their usual purpose;
- (g) **(interference)** must, when present at the Site, avoid unnecessary interference with the Customer's business and activities;
- (h) **(policies)** must, where relevant to the Supplier's obligations under the Contract, comply with all Customer policies, codes of conduct, rules, standards and procedures (including in respect of work health and safety and security) which apply to the Site, the Customer's IT System, the Customer's Personnel or use of the Customer Inputs listed in the Details, and all other Customer policies, codes of conduct, rules, standards and procedures listed in the Details. If the Customer amends a relevant, or introduces a new, policy, code of conduct, rule, standard or procedure relevant to the Supplier's obligations under the Contract, it will notify the Supplier and the Supplier must comply with the amended or new policy, code of conduct, rule, standard or procedure from the date of notification. Copies of the relevant policies are available on request;

- (i) **(access to Customer's IT System)** must, where access to the Customer's IT System is required to provide the Deliverables or is otherwise granted to the Supplier by the Customer:
 - (v) only access and use that part of the Customer's IT System for which the Supplier is authorised, and only for the purpose of performing the Contract and to the extent necessary to perform the Contract; and
 - (vi) not tamper with, hinder the operation of (except as expressly permitted by the Contract) or make unauthorised modifications to the Customer's IT System or maliciously or negligently introduce any Harmful Code to the Customer's IT System;
- (j) **(directions)** must comply with all reasonable directions of the Customer in relation to the Supplier's performance of the Contract;
- (k) **(Customer Inputs)** must take care of Customer Inputs, and only use Customer Inputs for the purpose of performing the Contract, to the extent necessary to perform the Contract, and in accordance with the requirements specified in the Details. The Supplier must promptly inform the Customer of any loss, destruction or damage (other than fair wear and tear) to any Customer Input. If the Supplier loses or damages any Customer Input (other than fair wear and tear), the Supplier must, at the election of the Customer, promptly replace such Customer Input or pay the Customer the reasonable replacement cost of such Customer Input. As between the Supplier and the Customer, the Customer retains all right, title and interest (including all Intellectual Property Rights) in the Customer Input. As soon as practicable after termination or expiry of the Contract, the Supplier must return to the Customer all equipment, records, documents and materials (including Customer Inputs) provided by the Customer for the purposes of the Contract, except to the extent that such documents and records are required by Law to be retained, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities. This clause 4(k) does not apply to any Customer Input which comprises Customer Data;
- (l) **(cooperation)** must cooperate with the Customer's Personnel and other suppliers to the Customer who provide goods and services relating to the Deliverables;
- (m) **(Laws)** must comply with all Laws in performing its obligations under the Contract;
- (n) **(Documentation)** must during the Term supply all Documentation to the Customer, and at no additional cost, any revisions, replacements or additions to the Documentation so that the Documentation includes the most current and up-to-date versions generally available to customers of the Supplier;
- (o) **(training)** must provide to the Customer the training (if any) specified in the Details;
- (p) **(records)** must create and maintain records of its performance of the Contract in accordance with applicable Laws and usual industry practice for provision of products and services similar to the Deliverables;
- (q) **(insurance)** must at its cost and by the start date of the Contract, take out and maintain or be insured under, the insurance policies described in the Details with an insurer authorised and licensed to operate in Australia or otherwise with an insurer with a security rating of A- or better from AM Best (or equivalent rating organisation), on terms that are reasonably commercially available. The Supplier must promptly notify the Customer if any policy is cancelled or there is any significant change in any of those policies which may impact the Supplier's ability to meet its obligations under

the Contract. The Supplier must maintain all required insurance policies which are maintained on a “claims made” basis for a minimum period of 4 years after the Contract ends, or such other period specified in the Details. The Supplier must, on request, provide to the Customer an insurance certificate of currency confirming that the Supplier has effected and renewed or is insured under the insurance policies described in the Details. The Customer may at its sole discretion, agree to the Supplier being self-insured provided that the Supplier provides the Customer with such supporting documentation as may be required by the Customer, including the Supplier’s financial records (limited to publically available financial records where the Supplier or its Related Body Corporate is publically traded);

- (r) **(authorisations)** must obtain and maintain the authorisations described in item 10 of Part A of the SOA Details and the Details and any other licences, permits, permissions and authorities necessary for the Supplier to perform the Contract. The Supplier must, upon request, provide evidence that it has complied with this clause;
- (s) **(security requirements)** must, if specified in the Details, provide a bank guarantee, performance guarantee and/or other specified security (**security**) to guarantee the proper performance of the Supplier’s obligations under the Contract. The security must be in a format reasonably acceptable to the Customer. The security must meet all additional conditions specified in the Details. The Customer will not have any liability to the Supplier in connection with the Customer’s enforcement of the security;
- (t) **(further assurances)** must do anything and execute any document that the Customer reasonably requests, to give effect to the Contract;
- (u) **(reports)** must provide reports in the timeframe and format specified in the Details and **such** other reports as and when reasonably requested by the Customer;
- (v) **(meetings)** must attend the meetings at the frequency set out in the Details and at such other reasonable times, if the Customer requests;
- (w) **(competitive neutrality)** must if the Supplier is a government owned business, local government, or Commonwealth, State or Territory or authority, price its offer to comply with the competitive neutrality principles of the Supplier’s jurisdiction;
- (x) **(expertise)** warrants that it has the necessary skills and expertise to properly perform the Contract, and all its Personnel performing duties in relation to the Contract are competent and have the necessary skills and expertise to properly perform the duties allocated to them concerning the Contract;
- (y) **(access and inspection)** on reasonable prior written notice from the Customer, must give the Customer reasonable access during Business Hours to the Supplier’s premises where the Deliverables (excluding As a Service supplied under clause 5.6) are being performed or produced, and to the Supplier’s documentation, records and Personnel, to enable the Customer to verify that the Supplier is complying with its obligations under the Contract, and will promptly address any non-compliance identified by the Customer and notified to the Supplier. Nothing in this clause 4(y) requires the Supplier to provide the Customer with access to any documents or records of or in respect of a third party; and
- (z) **(Ethical Supplier Threshold)** must comply with the Ethical Supplier Threshold during the Term. If the Customer reasonably suspects that the Supplier is not compliant with the Ethical Supplier Threshold, the Customer may issue a written show cause notice to

the Supplier, which the Supplier must respond to in writing within 14 Business Days of receipt.

5 ICT terms and conditions specific to Deliverables

5.1 Hardware

The following terms and conditions apply to the supply of any Hardware under the Contract:

- (a) **(delivery)** the Supplier must deliver the Hardware to the **Site by the Delivery Date, in accordance with the Details and the Customer's** instructions;
- (b) **(packaging)** the Supplier must adequately pack and protect the Hardware to withstand transit and storage, and provide a packing note or manifest with the Hardware which identifies the items of Hardware and quantities in the delivery package;
- (c) **(installation)** if specified in the Details, the Supplier must install the Hardware at the Site in accordance with the requirements set out in the Details;
- (d) **(condition)** all items of Hardware must be new, unused and of recent origin unless otherwise specified in the Details;
- (e) **(risk)** risk in the Hardware will transfer to the Customer when delivered to the Site in accordance with the Details and the Customer's delivery instructions;
- (f) **(title)** unless specified otherwise in the Details, title in the Hardware will transfer on the earlier of its delivery to the Site or payment of the applicable Price;
- (g) **(ancillary services)** the Supplier must provide the ancillary services (if any) in connection with the Hardware as specified in the Details;
- (h) **(warranties)** the Supplier warrants that the Hardware:
 - (i) will, during the Warranty Period, comply with and perform in accordance with the Requirements;
 - (ii) will, during the Warranty Period, 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 Documentation;
 - (iii) may be used in accordance with the Documentation without risk to health or safety; and
 - (iv) will not be subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a Law that cannot be excluded by contract;
- (i) **(manufacturer warranties)** if the Supplier is not the original equipment manufacturer, the Supplier must:
 - (i) ensure the Customer receives a copy and is fully advised of and approves all manufacturer's warranties prior to any order or commitment being made in respect of any Hardware; and
 - (ii) assign or otherwise provide the benefit of any manufacturer's warranty to the Customer;
- (j) **(Defects)** subject to clause 5.1(k), during the Warranty Period the Supplier must, at no cost to the Customer:
 - (i) remedy all Defects in the Hardware either by repair, replacement or modification; and

- (ii) take all reasonable measures (including providing a Workaround) to enable the Customer to continue to productively use the Hardware while remedying Defects; and
- (k) **(exceptions)** the Supplier is not required to remedy any Defect in the Hardware to the extent 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 Hardware that were effected or attempted by a person other than the Supplier, its Personnel or a person authorised by the Supplier;
 - (iii) damage caused by operation of the Hardware other than in accordance with the Documentation and the Contract; or
 - (iv) damage caused by use of consumables or parts with the Hardware which are not authorised by the Supplier.

Where the Supplier, acting reasonably, determines that the Defect arises as a result of circumstances set out in this clause 5.1(k), 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 Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier's then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that Defect.

5.2 Hardware Maintenance Services

The following terms and conditions apply to the supply of any Hardware Maintenance Services under the Contract:

- (a) **(maintenance period)** the Supplier must provide the Hardware Maintenance Services for the period specified in the Details;
- (b) **(replacement parts)** where specified in the Details, the Supplier must maintain a stock of frequently required Supported Hardware parts as may be necessary to meet the Service Levels;
- (c) **(general support)** the Supplier must provide the general support specified in the Details during the hours of support specified in the Details;
- (d) **(preventative maintenance)** the Supplier must provide preventative maintenance services on a scheduled basis as set out in the Details;
- (e) **(remedial maintenance)** after being notified of a Defect or possible Defect in the Supported Hardware, the Supplier must provide remedial maintenance services as set out in the Details.

Where the Supplier replaces parts of the Supported Hardware:

- (i) the replacement parts will be new unless otherwise specified in the Details;
- (ii) title and risk in the replacement parts will transfer to the Customer on installation unless otherwise specified in the Details; and
- (iii) title and risk in the replaced parts will transfer to the Supplier on its removal of the replaced parts;
- (f) **(Service Levels)** the Supplier must measure its performance against the Service Levels and provide a report to the Customer at the frequency specified in the Details;
- (g) **(Service Credits)** subject to clause 5.2(j), 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 specified in the

Details. If the Contract has terminated or expired, the Supplier must promptly pay the amount of the Service Credits to the Customer;

- (h) **(engineering changes)** the Supplier must, at no additional cost to the Customer, implement any Mandatory Engineering Changes to the Supported Hardware;
- (i) **(warranties)** the Supplier warrants that the Hardware Maintenance Services will be performed:
 - (i) using appropriate materials of high quality;
 - (ii) by appropriately qualified and trained Personnel; and
 - (iii) to a standard that ensures continuity of performance of the Hardware Maintenance Services in accordance with the Service Levels (or if no service levels are agreed, in a reasonable time and manner) and the Contract; and
- (j) **(exceptions)** the Supplier is not required to provide the Hardware Maintenance 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) damage arising from changes, alterations, additions or modifications effected or attempted by a person other than the Supplier, its Personnel or a person authorised by the Supplier;
 - (iii) damage caused by operation of the Supported Hardware other than in accordance with the Documentation and the Contract; or
 - (iv) damage caused by use of consumables or parts with the Supported Hardware which are not authorised by the Supplier.

Where the Supplier, acting reasonably, determines that the Defect or failure arises as a result of circumstances set out in this clause 5.2(j), then if the Customer requests the Supplier to remedy the Defect or failure, the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier's then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that Defect or failure.

5.3 Licensed Software

The following terms and conditions apply to the supply of any Licensed Software under the Contract:

- (a) **(licence)** subject to clause 5.3(e), 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 Details, 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) **(licence period)** unless the Details specify a perpetual licence, the licence period for the Licensed Software is the period specified in the Details;
- (c) **(sublicensing)** the Customer may sublicense any of the rights granted under clause 5.3(a) to the Licensed Software to:
- (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 clause 5.3, 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 Details at no additional cost, unless the additional cost is specified in the Details;
- (d) **(restrictions on use)** the Customer agrees, except to the extent permitted by the Contract 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;
- (e) **(additional conditions and restrictions)** the Customer must comply with any additional licence conditions and restrictions on use of the Licensed Software specified in the Details;
- (f) **(copies)** the Supplier must supply to the Customer the number of copies of the Licensed Software as specified in the Details;
- (g) **(delivery and installation)** 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 Details;
- (h) **(Updates and New Releases)** if the Details specify that the Customer is entitled to Updates and/or New Releases for the Licensed Software as part of its licence to the Licensed Software:
- (i) the Supplier must make available to the Customer (and install, if specified in the Details) 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;
 - (iii) 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;
 - (iv) the Customer is under no obligation to accept an Update or New Release;

- (v) if the Customer decides not to use the Update or New Release:
 - (A) then the Customer acknowledges and agrees that subsequent Updates or New Releases may not operate with the Licensed Software; and
 - (B) 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;
- (i) **(ancillary services)** the Supplier must provide the ancillary services (if any) in connection with the Licensed Software as specified in the Details;
- (j) **(Machinery of Government)** the Customer may assign or otherwise transfer the licence granted in clause 5.3(a) in connection with a Machinery of Government Change in accordance with clause 22.4;
- (k) **(warranties)** 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 when used in accordance with the Documentation;
 - (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;

Without limiting this clause 5.3(k), the Supplier does not guarantee that the Licensed Software will be error-free or will operate without interruption;

- (l) **(Defects)** subject to clause 5.3(m), 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;
- (m) **(exceptions)** the Supplier is not required to remedy any Defect in the Licensed Software to the extent the Defect arises as a result of:
 - (i) any failure of the Customer to comply with its obligations under the Contract;
 - (ii) any failure of a Customer Input (if applicable) to comply with the requirements specified in the Details;
 - (iii) 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; or
 - (iv) damage caused by use of the Licensed Software other than in accordance with the Documentation and the Contract.

Where the Supplier, acting reasonably, determines that the Defect arises as a result of circumstances set out in this clause 5.3(m), 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 Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier's then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that Defect; and

- (n) **(no transfer of ownership)** the Customer acknowledges that it has no right, title or interest in the Licensed Software except as set out in clause 5.3(a). 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.

5.4 Software Support Services

The following terms and conditions apply to the supply of any Software Support Services under the Contract:

- (a) **(support period)** the Supplier must provide the Software Support Services for the period specified in the Details;
- (b) **(general support)** the Supplier must provide the general support specified in the Details during the hours of support specified in the Details;
- (c) **(Defects)** 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; and
 - (ii) take all reasonable measures (including by providing a Workaround) to enable the Customer to continue to productively use the Supported Software while remedying Defects;
- (d) **(Updates and New Releases)** unless otherwise specified in the Details, the Software Support Services will include the provision and installation of Updates and New Releases to the Customer, at the option of the Customer and at no additional cost to the Customer, and:
 - (i) 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 features of the Update or New Release and the nature of the improvements and/or corrections contained in the Update or New Release;
 - (ii) the Customer is under no obligation to accept an Update or New Release, and a refusal by the Customer will not affect its entitlement to ongoing Software Support Services under the Contract except that if the Customer decides not to use the Update or New Release then the Customer acknowledges and agrees that:
 - (A) subsequent Updates or New Releases may not operate with the Supported Software; and
 - (B) the Supplier may cease to provide Software Support Services for that release of the Supported Software from the date that is 18 months from the date of the general release of the New Release, and thereafter the Supplier is not responsible for any Defect in the Supported Software, nor any incident, outage or failure to meet a Service Level, which would not have occurred had the latest version of the Supported Software been used, provided that nothing in this clause 5.4(d) reduces the Supplier's obligations under clause 5.4(e);
- (e) **(warranties)** the Supplier warrants that the Software Support Services will be performed:
 - (i) by appropriately qualified and trained Personnel; and

- (ii) 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;
- (f) **(Service Levels)** the Supplier must measure its performance against the Service Levels and provide a report to the Customer at the frequency specified in the Details;
- (g) **(Service Credits)** subject to clause 5.4(h), 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 Details. If the Contract has terminated or expired, the Supplier must promptly pay the amount of the Service Credits to the Customer; and
- (h) **(exceptions)** 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) any failure of a Customer Input (if applicable) to comply with the requirements specified in the Details;
 - (iii) 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; or
 - (iv) damage caused by use of the Supported Software other than in accordance with the Documentation and the Contract.

Where the Supplier, acting reasonably, determines that the Defect or failure arises as a result of circumstances set out in this clause 5.4(h), then if the Customer requests the Supplier to remedy the Defect or failure, the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier’s then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that Defect or failure.

5.5 Developed Software

The following terms and conditions apply to the supply of any Developed Software under the Contract:

- (a) **(Design Specification)** if specified in the Details, the Supplier must prepare a detailed specification which provides a technical explanation of how the functions in the Requirements for the Developed Software will be met (**Design Specification**) and submit it to the Customer for approval by the Delivery Date specified in the Details;
- (b) **(approval of Design Specification)** the Customer will notify the Supplier promptly of any comments on the Design Specification or any alterations it reasonably requires. The Supplier must not unreasonably refuse to amend the Design Specification to take account of the Customer’s reasonable requirements.

The process under this clause 5.5(b) will be repeated until the Customer has no comments on the Design Specification and approves the Design Specification by written notice to the Supplier.

The Design Specification will, when approved by the Customer under clause 5.5(b), 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;

- (c) **(delivery and installation)** the Supplier must:
- (i) 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
 - (ii) if specified in the Details, install the Developed Software on the Designated Environment,

in accordance with the requirements set out in the Details;

- (d) **(Intellectual Property Rights in Developed Software)** 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.

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 5.3 will apply to the Developed Software; and
- (ii) clause 15 will not apply to the Developed Software.

Where the Details specify that the Customer will own the Intellectual Property Rights in the New Material in the Developed Software, clause 15 applies;

- (e) **(ancillary services)** the Supplier must provide the ancillary services (if any) in connection with the Developed Software as specified in the Details;
- (f) **(warranties)** 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 will be conducted under clause 6, when the Customer notifies acceptance of the Developed Software under clause 6(d), 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 Documentation;
 - (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;

Without limiting this clause 5.5(f), the Supplier does not guarantee that the Developed Software will be error-free or will operate without interruption;

- (g) **(Defects)** subject to clause 5.5(h), 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; and
- (h) **(exceptions)** the Supplier is not responsible for any breach of warranty set out in clause 5.5(f) and is not required to remedy any Defect in the Developed Software to the extent the Defect arises as a result of:
- (i) any failure of the Customer to comply with its obligations under the Contract;

- (ii) any failure of a Customer Input (if applicable) to comply with the requirements specified in the Details;
- (iii) modifications to the Developed Software that were effected or attempted by a person other than the Supplier or its Personnel, a person authorised by the Supplier; or
- (iv) damage caused by use of the Developed Software other than in accordance with the Documentation and the Contract.

Where the Defect is determined by the Supplier, acting reasonably, as arising as a result of circumstances set out in this clause 5.5(h), 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 Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier’s then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that Defect.

5.6 As a Service

The following terms and conditions apply to the supply of any As a Service under the Contract:

- (a) **(Subscription Period)** the Supplier must provide the As a Service to the Customer during the Subscription Period.
At the end of each Subscription Period, the As a Service will be automatically renewed for a further Subscription Period, unless either party has:
 - (i) exercised a right to terminate the As a Service; or
 - (ii) notified the other party that it does not wish to renew the As a Service by providing the minimum notice specified in the Details;
- (b) **(supply of As a Service)** the Supplier must perform and provide the As a Service using the Infrastructure and to a standard as specified in the Details;
- (c) **(minimum system requirements)** the Customer must:
 - (i) ensure that the Customer’s IT System and Network used by the Customer to access the As a Service complies with the Minimum System Requirements; and
 - (ii) use the As a Service in accordance with any usage restrictions or guidelines,
as specified in the Details;
- (d) **(As a Service Location)** if the Supplier will process, store or host any Customer Data as part of the provision of the As a Service and if specified in the Details, the Supplier must allow the Customer to specify the As a Service Location, including that it be in Australia. If the Customer specifies a jurisdiction outside of Australia, this will constitute the Customer’s consent for the purpose of clause 18(c)(iii)(A) for the transfer of any Personal Information included in the Customer Data outside of Australia;
- (e) **(Customer Data)** if the Supplier will process, store or host any Customer Data as part of the provision of the As a Service, the Supplier must:
 - (i) comply with the procedures and requirements set out in the Details (if any) regarding storage and back-up of the Customer Data;
 - (ii) provide or make available to the Customer at no additional cost, tools and mechanisms on a self-service basis to enable the Customer to access and monitor the Customer Data, as specified in the Details;

(iii) without limiting clause 17(f), on expiry (and non-renewal) or termination of the Subscription Period, either:

(A) return the Customer Data to the Customer; or

(B) allow the Customer to extract the Customer Data,

in accordance with the procedures and requirements set out in the Details. In respect of Customer Data that is Metadata, the Supplier's obligations under clause 5.6(e)(iii) apply to the extent it is reasonable and practicable for the Supplier to do so;

- (f) (**security**) if the Supplier will process, store or host any Customer Data in performing the As a Service, the Supplier must establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards to protect the Customer Data from destruction, loss and unauthorised access or alteration which are industry standard for products and services similar to the As a Service and as otherwise specified in the Details;
- (g) (**general support**) the Supplier must provide the general support specified in the Details during the hours of support specified in the Details;
- (h) (**warranties**) the Supplier warrants that the As a Service will be performed so as to meet or exceed the Service Levels (or if no service levels are agreed, within a reasonable time and manner);
- (i) (**Defects**) after being notified of a Defect or possible Defect in the As a Service by the Customer, the Supplier must take all reasonable measures (including providing a Workaround) to enable the Customer to continue to productively use the As a Service in accordance with the Service Levels (if any) or, if no Service Levels apply, in a reasonable time and manner;
- (j) (**Service Levels**) the Supplier must:
- (i) measure its performance against the Service Levels and provide a report to the Customer at the frequency specified in the Details; or
 - (ii) provide or make available to the Customer at no additional cost, tools and mechanisms on a self-service basis to enable the Customer to monitor the Supplier's performance against the Service Levels, as specified in the Details;
- (k) (**Service Credits**) subject to clause 5.6(l), 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 Details. If the Contract has terminated or expired, the Supplier must promptly pay the amount of the Service Credits to the Customer;
- (l) (**exceptions**) the Supplier is not in breach of its obligations to provide the As a Service, and is not responsible for any failure to meet the Service Levels to the extent that the breach 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) any failure of a Customer Input (if applicable) to comply with the requirements specified in the Details;
 - (iii) a failure of the Customer to ensure that the Customer's IT System and Network complies with the Minimum System Requirements;
 - (iv) damage or unavailability caused by use of the As a Service by the Customer other than in accordance with the Documentation and the Contract;

- (v) any event or circumstance outside the reasonable control of the Supplier which could not have been prevented or avoided by the Supplier by reasonable diligence or reasonable precautions; or
- (vi) such other circumstances specified in the Details.

Where the Supplier, acting reasonably, determines that the breach or failure arises as a result of circumstances set out in this clause 5.6(l), then if the Customer requests the Supplier to remedy the breach or failure, the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier’s then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that breach or failure; and

- (m) **(changes to As a Service)** the Supplier may:
 - (i) implement changes, additions or deletions to the functions, features, performance, or other characteristics of the As a Service (including Service Levels); and

- (ii) correct errors or provide upgrades to the As a Service, provided that the functionality, features or Service Levels of the As a Service used by the Customer do not materially decrease during the Subscription Period. Subject to this clause 5.6(m), such changes update and become part of the Requirements on and from the date the change is made to the As a Service;

If the Customer (acting reasonably) considers that any change to the As a Service is a material reduction of any functionality, feature or Service Level of the As a Service, the Customer may, without liability (including payment of early termination fees or fees under clause 21.3), cancel the As a Service by providing the Supplier 30 days’ written notice.

5.7 ICT Professional Services

The following terms and conditions apply to the supply of any ICT Professional Services under the Contract:

- (a) **(service period)** the Supplier must provide the ICT Professional Services for the period specified in the Details;
- (b) **(supply of ICT Professional Services)** the Supplier must supply the ICT Professional Services:
 - (i) with due care and skill;
 - (ii) by the Delivery Date (if applicable) or otherwise in a timely manner;
 - (iii) in accordance with the professional standards applicable to the ICT Professional Services as specified in the Details; and
 - (iv) in accordance with the Requirements and Details;
- (c) **(Business Hours)** the Supplier must supply the ICT Professional Services during Business Hours and as otherwise specified in the Details;
- (d) **(warranties)** the Supplier warrants that:
 - (i) the ICT Professional Services will be performed:
 - (A) with due care and skill and in a timely manner;
 - (B) by appropriately qualified and trained Personnel;
 - (ii) at all times during the Warranty Period, the Deliverables provided under this clause 5.7 will comply with the Requirements;

- (e) **(Defects)** subject to clause 5.7(f), the Supplier must, at no cost to the Customer:
- (i) where the supply of the ICT Professional Services involves the supply of Deliverables, during the Warranty Period:
 - (A) remedy any Defects in the Deliverables;
 - (B) take all reasonable measures (including providing a Workaround) to enable the Customer to continue to productively use the Deliverables while remedying Defects; or
 - (ii) where the supply of the ICT Professional Services does not involve the supply of specific Deliverables and such ICT Professional Services do not meet the requirements specified in the Details, take all necessary steps to ensure that the ICT Professional Services comply with the requirements specified in the Details, provided that the Customer notifies the Supplier of any failure of the ICT Professional Services to meet those requirements within 30 days of delivery or such other period specified in the Details;
- (f) **(exceptions)** the Supplier is not required to remedy any Defects in the Deliverables 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 Deliverables that were effected or attempted by a person other than the Supplier, its Personnel or a person authorised by the Supplier; or
 - (iii) damage caused by the operation or use of the Deliverable other than in accordance with the Documentation and the Contract.

Where the Supplier, acting reasonably, determines that the Defect arises as a result of circumstances set out in this clause 5.7(f), 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 Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier’s then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that Defect.

6 Acceptance Testing

- (a) **(pre-installation testing)** The Supplier must inspect and test all Deliverables to ensure that they meet the Requirements and have no apparent Defects, before delivery or installation (as applicable).
- (b) **(Conduct of testing)** If and as specified in the Details, the parties will conduct testing of the Deliverables (**Tested Items**) to determine whether the Tested Items meet the Requirements. If the Details specify that testing is not required, this clause 6 (other than clause 6(e)) does not apply.
- (c) **(failure to meet acceptance tests)** If, after testing under clause 6(b), the testing demonstrates that the Tested Item fails to meet the Requirements, then the Customer must notify the Supplier of the failure of the Tested Item to meet the Requirements and the Customer may, at its discretion, do one or more of the following:
- (i) require the Supplier to modify the Tested Item, or supply a replacement Tested Item, so that it meets the Requirements, in which case the Customer may further review or conduct further testing under this clause 6;
 - (ii) withhold payment of the Price payable in respect of the relevant Tested Item under the Contract until the Tested Item meets the Requirements;
 - (iii) accept the Tested Item subject to a reduction in the Price as reasonably determined by the Customer to reflect the Defects in the Tested Item, provided

that if the Supplier does not agree with the determination then it may dispute the determination in accordance with clause 20; or

- (iv) where a Tested Item has failed the review or testing more than twice, without limiting any other remedy, reject the Tested Item in which case the Supplier must refund any of the Price and other amounts paid by the Customer in respect of the rejected Tested Item.
- (d) **(notification of acceptance)** Where the testing demonstrates that a Tested Item meets the Requirements, the Customer will promptly notify the Supplier.
- (e) **(deemed acceptance)** Unless otherwise agreed by the parties, a Deliverable is deemed accepted:
 - (i) where the Details state that the Deliverable is required to undergo testing, if the Customer fails to notify the Supplier under clause 6(d) within 10 Business Days of being satisfied after reviewing or testing a Tested Item that it meets the Requirements;
 - (ii) where the Details state that testing is not required for a Deliverable, 3 Business Days (or such other period agreed by the parties in writing) following delivery of the Deliverable unless the Customer notifies the Supplier of any Defect or other issue promptly following delivery of the Deliverable; or
 - (iii) if the Customer uses the Deliverables in a production environment (if applicable), other than for testing, without the prior written consent of the Supplier.

Any review, testing or notification by the Customer does not constitute any waiver of rights, or give rise to any estoppel, if the Tested Item is later found not to comply with the Requirements.

7 Additional Products and/or Services

- (a) If the Customer wishes to purchase any additional Products and/or Services from the Supplier during the Term:
 - (i) it will notify the Supplier of its requirements for the supply of the additional Products and/or Services; and
 - (ii) the Supplier must submit its proposal to the Customer promptly (and within a time agreed) after receipt of the Customer's request.
- (b) The cost of any additional Products and/or Services must be calculated using the applicable rates set out in Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier's then current commercial rates.
- (c) If the proposal is accepted by the Customer (including any negotiated modifications), both parties must sign a statement of work (or other document acceptable to the Customer) for the additional Products and/or Services, and the additional Products and/or Services will be provided as set out in the statement of work.
- (d) Each statement of work forms part of and is subject to the terms and conditions of the General Contract Conditions.

8 Subcontracting and Personnel

8.1 Subcontracting

The Supplier may only subcontract any part of its obligations under the Contract to Subcontractors identified in the Details or with the Customer's prior written consent. The Customer will not unreasonably withhold consent, but may give consent subject to reasonable conditions.

8.2 Personnel

- (a) **(responsibility)** The Supplier must ensure that its Personnel comply with all the obligations of the Supplier under the Contract, and the Supplier is liable to the Customer for all acts and omissions of its Personnel, as fully as if they were acts or omissions of the Supplier.
- (b) **(not Customer employees)** The Supplier is not, and its Personnel are not, employees of the Customer.
- (c) **(removal)** If the Customer reasonably requests, the Supplier must promptly remove from the Customer's premises and/or the performance of the Contract, any individual who is a member of the Supplier's Personnel used in performance of the Contract, and in consultation with the Customer replace them with another individual who is a member of the Supplier's Personnel acceptable to the Customer (acting reasonably), at no additional cost to the Customer.
- (d) **(background checks)** If specified in the Details or if the Customer reasonably requests at any time during the Term, prior to permitting any Personnel to be involved in the supply of any Deliverables under the Contract the Supplier must either:
 - (i) conduct, and provide to the Customer an original or certified copy of the results of, a criminal background check or any other checks required by the Customer for such Personnel; or
 - (ii) procure the consent of such Personnel for the Customer to conduct a criminal background check or any other checks required by the Customer.
- (e) The Supplier must notify the Customer promptly if it becomes aware during the Term that any of its Personnel involved in the supply of the Products and/or Services have been convicted of any criminal offence or any conduct which involves dishonesty.

8.3 Key Personnel

In providing the Services, the Supplier must:

- (a) subject to this clause 8.3, ensure that the Key Personnel perform the roles allocated to them in the Details;
- (b) promptly notify the Customer if any Key Personnel is unavailable to perform his or her allocated role for any reason;
- (c) not remove or replace any Key Personnel without the Customer's prior written consent, except for serious illness, incapacity or death, or the termination of such Key Personnel's employment or engagement with the Supplier; and
- (d) ensure that any replacement Key Personnel have at least equivalent, qualifications and experience, and promptly provide information reasonably requested about any proposed replacement Key Personnel, including the curriculum vitae for each relevant individual.

The Customer may reject any proposed replacement Key Personnel on reasonable grounds, in which case the Supplier must promptly propose an alternative.

8.4 Non-solicitation

- (a) Neither party may, without the prior written consent of the other party, during and for 6 months after the expiry or termination of the Contract, directly or indirectly engage, employ, solicit or otherwise retain any person who is an employee of or engaged by the other party and who is or was engaged in the performance of the Contract.

- (b) Clause 8.4(a) does not prevent either party from employing or engaging a person who responds to a genuine advertisement placed by or on behalf of that party in good faith.
- (c) The parties agree that the restrictions in this clause 8.4 are necessary to protect the legitimate interests of each party.

9 Price

9.1 Pricing all inclusive

Unless otherwise stated in Schedule 1 – Price and Payment Terms, the Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST. If the Contract requires the Supplier to do or provide anything, and there is no separate Price specified for performing that obligation and no express right of the Supplier to charge the Customer an additional cost for performing that obligation, the Supplier must comply with the obligation at no additional cost. The Supplier must not invoice the Customer, and the Customer is not required to pay, any amount except for the Price or any amount for which the Supplier has an express right to charge the Customer under the Contract.

9.2 Expenses

The Customer will not reimburse any travel, accommodation or other expenses except where:

- (a) the expenses are stated in Schedule 1 – Price and Payment Terms or the Customer has approved the expenses in writing before they are incurred;
- (b) the Supplier provides satisfactory evidence of payment of the expenses;
- (c) in the case of travel or accommodation expenses:
 - (i) the Customer requests that the Supplier travel away from the agreed service location; and
 - (ii) the Supplier complies with the Customer's travel policy (a copy of which will be provided on request).

9.3 Price review

The Supplier may change the Prices in accordance with any Price review mechanism specified in Schedule 1 – Price and Payment Terms. No other Price change or new Price will be effective unless the Customer agrees in writing.

10 Invoices and time for payment

The Supplier may invoice the Customer at the times and, where applicable, in the amounts set out in Schedule 1 – Price and Payment Terms. The Supplier must ensure that each invoice includes adequate information for the Customer to verify that the invoice is accurate, and will provide supporting documentation reasonably requested by the Customer.

Unless expressly stated otherwise in Schedule 1 – Price and Payment Terms, the Supplier may not:

- (a) invoice the Customer (and the Customer is not required to pay) for Deliverables until the relevant Deliverables have been provided, and the Deliverables meet the Requirements; or
- (b) charge or pass through any fees, costs or charges associated with a payment method.

Unless expressly stated otherwise in Schedule 1 – Price and Payment Terms, the Customer will pay each correctly rendered tax invoice that complies with this clause 10 within 30 days of receipt.

The Customer may, on prior written notice to the Supplier, set off any amounts payable by the Supplier to the Customer against any amounts payable to the Supplier by the Customer under the Contract.

The Customer may withhold payment of any amount which it disputes in good faith, until the dispute is resolved and it is determined that the amount is payable.

11 GST

- (a) **(construction)** In this clause 11, words and expressions which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) **(GST exclusive)** Unless expressly stated, all moneys or other sums payable or consideration to be provided under the Contract are exclusive of GST.
- (c) **(payment of GST)** If GST is payable on any supply made under the Contract, the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time that the consideration for the supply is to be provided under the Contract.
- (d) **(tax invoice)** The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 11(c). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.
- (e) **(adjustment event)** If an adjustment event arises in respect of a taxable supply made by a supplier under the Contract, the amount payable by the recipient under clause 11(c) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (f) **(reimbursements)** Where a party is required under the Contract to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

12 Liability

- (a) **(contribution)** Neither party will be liable to the other whether in contract, tort (including negligence) or otherwise in connection with the Contract, for loss or damage to the extent that the other party (or the other party's Personnel) contributed to the loss or damage.
- (b) **(Consequential Loss)** Subject to clause 12(e), to the extent permitted by Law, neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party whether in contract, tort (including negligence) or otherwise in connection with the Contract.
- (c) **(Supplier cap on liability)** Subject to clause 12(e) and 13, to the extent permitted by Law, the maximum liability of the Supplier to the Customer, whether in contract, tort (including negligence) or otherwise in connection with the Contract and the SOA (including under an indemnity), is limited to the amount specified in the Details. If no

limitation of liability is specified for the Supplier in the Details, the Supplier's liability is not limited by the Contract.

- (d) **(Customer cap on liability)** Subject to clause 12(e), to the extent permitted by Law, the maximum liability of the Customer to the Supplier, whether in contract, tort (including negligence) or otherwise in connection with the Contract and the SOA, is limited to the amount specified in the Details. If no limitation of liability is specified for the Customer in the Details, the Customer's liability is not limited by the Contract.
- (e) **(no limitation)** The exclusions and limitations of liability in clauses 12(b), 12(c) and 12(d) do not apply to liability in relation to:
- (i) personal injury, including sickness and death;
 - (ii) loss of, or damage to, tangible property; or
 - (iii) an infringement of Intellectual Property Rights or Moral Rights;
 - (iv) any fraudulent act or omission of the Supplier or its Personnel; or
 - (v) any breach by the Supplier or its Personnel of any obligation under clause 17 or 18.
- (f) **(relationship)** The parties acknowledge that if the same event or set of circumstances gives rise to a claim by a Customer against the Supplier under both the SOA and the Contract, the Customer may bring the claim under the SOA or the Contract, but not both and subject in each case to the limitation of liability in clause 12(c).
- (g) **(mitigation)** A party who suffers loss or damage must use reasonable steps to mitigate its loss. The other party will not be responsible for any loss, damage or expenses to the extent that the injured party could have avoided or reduced the amount of the loss, damage or expense, by taking reasonable steps to mitigate its loss.
- (h) **(Australian Consumer Law)** To the extent that there is a failure by the Supplier to comply with any applicable guarantee under sections 54 to 62 of the Australian Consumer Law in respect of goods or services that are not of a kind that are ordinarily acquired for personal, domestic or household use or consumption then, to the extent permitted by Law, the Supplier's liability for failure to comply with any such guarantee is limited to one or more of the following, at the election of the Supplier:
- (vi) where the Supplier has supplied goods:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - (vii) where the Supplier has supplied services:
 - (A) supplying the services again; or
 - (B) payment of the cost of having the services supplied again.

For clarity, the limitations of the Supplier's liability under this clause 12(h) do not apply to limit any other liability of the Supplier under the Contract.

13 Limitation of liability for Customer Data

- (a) Subject to clause 13(c), to the extent permitted by Law, the maximum liability of the Supplier to the Customer, whether in contract, tort (including negligence) or otherwise for loss of or damage to Customer Data in the Supplier's provision of the As a Service (if applicable), is limited to the amount specified in the Details. If no limitation of liability is specified for loss of or damage to Customer Data in the Details, the Supplier's liability for loss of or damage to Customer Data is not limited by the Contract.
- (b) Subject to clause 13(c), the limitation of liability in clause 13(a):
- (i) applies to the Supplier's liability under the indemnity in clause 14.1(a)(i) for loss of or damage to Customer Data where such loss or damage was caused by or in connection with the Supplier's breach of the Information Privacy Act or the Privacy Act;
 - (ii) applies to the Supplier's liability under the indemnity in clause 14.1(a)(iv) for loss of or damage to Customer Data where such loss or damage was caused by or in connection with the Supplier's breach of clause 17 or 18; and
 - (iii) does not apply to the Supplier's liability under the indemnity in clause 14.1(a)(i) or 14.1(a)(iv) for any other loss, damage, liability, cost or expense (including legal expenses) suffered or incurred by the Customer or its Personnel, whether in contract, tort (including negligence), or otherwise in connection with any breach by the Supplier or its Personnel of any obligations under the Information Privacy Act or the Privacy Act or clause 17 or 18.
- (c) The limitation of liability in clause 13(a) does not apply to the Supplier's liability for any loss of or damage to Customer Data to the extent that such loss or damage was caused or contributed to by any fraudulent act or omission of the Supplier or its Personnel.
- (d) For the purposes of clause 12(b), the Supplier is not liable to the Customer for any Consequential Loss specified in paragraphs (a) and (b) of the definition of Consequential Loss suffered or incurred by Customer whether in contract, tort (including negligence) or otherwise in connection with loss of or damage to Customer Data, except that the Supplier remains liable for, and the limitation of liability in clause 13(a) applies to, any loss of or damage to data that is Customer Data arising out of any obligation of the Supplier under the Contract with respect to:
- (i) the hosting, storage, migration, conversion, cleansing or back-up of data for the Customer in providing Products or Services; or
 - (ii) Harmful Code.

14 Indemnity

14.1 Supplier indemnity

- (a) The Supplier releases, discharges and indemnifies the Customer and its Personnel from and against any loss, damage, liability, cost or expense (including legal expenses) suffered or incurred by any of them, whether in contract, tort (including negligence), or otherwise in connection with any:
- (i) failure by the Supplier or its Personnel to comply with applicable Laws;
 - (ii) fraudulent or wilfully wrong act or omission of the Supplier or its Personnel;

- (iii) Claim by a third party that any Deliverable or use of any Deliverable in accordance with the Contract infringes the Intellectual Property Rights or Moral Rights of that third party (**IP Claim**);
 - (iv) breach by the Supplier or its Personnel of any obligation under clause 17 or 18; or
 - (v) Claim by a third party arising out of any negligent act or omission of the Supplier or its Personnel in the performance of the Supplier's obligations under the Contract.
- (b) The Supplier is not required to indemnify the Customer or its Personnel in respect of an IP Claim to the extent the IP Claim is caused by:
- (i) the combination, operation or use of the Deliverable with any other product, equipment business method, software or data except as expressly stated in the Details, any schedule to the Details or any document which the Details states will form part of the Contract or is otherwise incorporated by reference in the Contract;
 - (ii) any Intellectual Property Rights including Moral Rights, material or thing provided by any person other than the Supplier or its Personnel, including any Customer Input;
 - (iii) the Supplier following any design, instruction or specification in respect of the Deliverable provided to the Supplier by or on behalf of the Customer under the Contract;
 - (iv) any modification of the Deliverable by any person other than the Supplier, its Personnel or a person authorised by the Supplier; or
 - (v) the continued use of the Deliverable after the Supplier has provided the Customer a new software version, patch or correction, or replacement part or other correction that would have overcome the infringement.

14.2 Conduct of IP Claims

- (a) **(Customer responsibilities)** If an IP Claim is made against the Customer or its Personnel, the Customer must:
- (i) give written notice of the IP Claim to the Supplier as soon as practicable;
 - (ii) subject to the Supplier agreeing to comply at all times with clause 14.2(b), permit the Supplier, at the Supplier's expense, to handle all negotiations for settlement and, as permitted by applicable Law and Queensland Government policy, to control and direct any settlement negotiations or litigation that may follow the IP Claim;
 - (iii) where the Supplier is permitted to handle settlement negotiations or conduct litigation on behalf of the Customer under clause 14.2(a)(ii), provide all reasonable assistance to the Supplier in the Supplier's handling of any settlement negotiations and litigation.
- (b) **(Supplier conduct of IP Claim)** If the Customer notifies the Supplier of an IP Claim and the Supplier is permitted to handle settlement negotiations or conduct litigation in respect of that IP Claim under clause 14.2(a), the Supplier must:
- (i) keep the Customer informed of all developments relating to the conduct of the defence or settlement of the IP Claim including providing copies of all relevant documents;
 - (ii) comply with Queensland Government policy and obligations relevant to the conduct of the litigation and any settlement negotiations, and provide the

Customer with such information and documents as may be requested by the Customer to enable the Customer to verify whether the conduct of the litigation or settlement negotiations by the Supplier is being conducted in accordance with such policy and obligations;

- (iii) notify the Customer in writing and consult with the Customer prior to making or accepting any offer of settlement in respect of the IP Claim; and
 - (iv) satisfy any settlement or judgment awarded.
- (c) **(Customer conduct of IP Claim)** If the Supplier is not permitted to handle settlement negotiations or conduct litigation in respect of an IP Claim under clause 14.2(a):
- (i) the Customer must:
 - (A) keep the Supplier informed of developments relating to the conduct of the defence or settlement of the IP Claim including providing copies of all relevant documents;
 - (B) notify the Supplier in writing prior to making or accepting any offer of settlement in respect of the IP Claim; and
 - (C) not make or accept any offer of settlement without the Supplier's prior written consent (not to be unreasonably withheld or delayed); and
 - (ii) the Supplier must satisfy any settlement or judgment awarded.

14.3 Additional obligations regarding IP Claims

- (a) If there is an IP Claim, without prejudice to the Customer's rights under clause 14.1(a)(iii), the Supplier must, with the consent of the Customer (not to be unreasonably withheld or delayed) and at the Supplier's cost, either:
- (i) obtain for the Customer the right to the continued use of the Deliverable(s) in accordance with the Contract; or
 - (ii) replace or modify the affected Deliverable(s) so that the alleged infringement ceases ensuring that the replaced or modified Deliverable(s) provides the Customer with substantially similar functionality and performance as required in the Requirements.
- (b) If the Supplier is unable to comply with its obligations in clause 14.3(a), then without prejudice to any other right or action which the Customer has:
- (iii) the Supplier must reimburse the Customer for the total Price paid for the Deliverable(s) and take all necessary action to ensure that the alleged infringement ceases; and
 - (iv) clause 21.1(f) applies.

15 Intellectual Property Rights

15.1 Pre-Existing Material

- (a) All Intellectual Property Rights in:
- (i) any Pre-Existing Material remain vested in the party that owns the Intellectual Property Rights (**Owner**);
 - (ii) any adaptation, translation or derivative of that Pre-Existing Material vests in, or is transferred or assigned to, the Owner immediately on creation.
- (b) The Supplier grants the Customer an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide and transferable licence to exercise all such Intellectual Property Rights in any Pre-Existing Material of the Supplier which is

incorporated into a Deliverable for the purposes of using, supporting and/or modifying that Deliverable, in the course of the Customer's functions or activities, and for such other purposes specified in the Details.

- (c) The licence to Pre-Existing Material in clause 15.1(b):
- (i) does not permit the Customer to manufacture, sell or otherwise commercially exploit any Pre-Existing Material of the Supplier unless otherwise specified in the Details; and
 - (ii) permits the Customer to sublicense any of the rights in clause 15.1(b) to any:
 - (A) Department;
 - (B) Public Service Office;
 - (C) Hospital and Health Service established under the *Hospital and Health Boards Act 2011* (Qld);
 - (D) contractor that is providing services to the Customer that includes the use of the Pre-Existing Material, provided that such sublicense automatically terminates at the end of the period of the service arrangement between the Customer and contractor; and
 - (E) other entity specified in the Details,at no additional cost, unless the additional cost is specified in the Details.

15.2 Customer owned New Material

- (a) This clause 15.2 applies where the Details specify the Customer will own the Intellectual Property Rights in some or all of the New Material.
- (b) On creation of the relevant Deliverable that incorporates the New Material:
- (i) all Intellectual Property Rights in the relevant New Material vests in or is assigned to the Customer; and
 - (ii) the Customer grants the Supplier an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, sublicensable, non-transferable licence to exercise all such Intellectual Property Rights in the relevant New Material, for any purpose of the Supplier, subject to the Supplier removing any of the Customer's Confidential Information and Personal Information incorporated or otherwise contained in the New Material prior to exercising its rights under this clause 15.2(b)(ii), and the Supplier will confirm to the Customer when this has been done.

15.3 Supplier owned New Material

- (a) This clause 15.3 applies where the Details specify the Supplier will own the Intellectual Property Rights in some or all of the New Material.
- (b) On creation of the relevant Deliverable that incorporates the New Material:
- (i) all Intellectual Property Rights in the relevant New Material vests in or is assigned to the Supplier; and
 - (ii) the Supplier grants the Customer an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide and transferable licence to exercise all such Intellectual Property Rights in the New Material, for the purposes of using, supporting and/or modifying the Deliverable incorporating the New Material, in the course of the Customer's functions or activities and for such other purposes specified in the Details.

- (c) The licence to New Material in clause 15.3(b):
- (i) does not permit the Customer to manufacture, sell, or otherwise commercially exploit any New Material unless otherwise specified in the Details; and
 - (ii) permits the Customer to sublicense any of the rights in clause 15.3(b) to any:
 - (A) Department;
 - (B) Public Service Office;
 - (C) Hospital and Health Service established under the *Hospital and Health Boards Act 2011* (Qld);
 - (D) contractor that is providing services to the Customer that includes the use of the New Material, provided that such sublicense automatically terminates at the end of the period of the service arrangement between the Customer and contractor; or
 - (E) other entity specified in the Details,at no additional cost, unless the additional cost is specified in the Details.

15.4 Third Party Material

- (a) If a Deliverable incorporates any Third Party Material, the Supplier must grant (or procure the grant by the applicable third party) to the Customer of a non-exclusive licence to exercise all Intellectual Property Rights in such Third Party Material for the purposes of using, supporting and/or modifying the Deliverable incorporating the Third Party Material, in the course of the Customer's functions or activities and for such other purposes specified in the Details, and subject to any terms and conditions (including licence terms and conditions) specified in the Details.
- (b) Clause 15.4(a) does not apply to any Licensed Software or As a Service (where applicable) supplied under the Contract.

15.5 Warranty of authorisation

The Supplier warrants that:

- (a) it is authorised to grant the rights in this clause 15; and
- (b) to the best of its knowledge and belief having made all reasonable enquiries, the Deliverables and the use of the Deliverables as permitted by the Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

16 Customer Data

- (a) As between the Customer and the Supplier, the Customer owns all Customer Data, including any Intellectual Property Rights in Customer Data, on and from creation. The Supplier has no right, title or interest in Customer Data except as specified in this clause 16. The Supplier must not access, use or modify, or permit third parties to access, use or modify, Customer Data except:
- (i) to the extent required to perform the Contract;
 - (ii) in accordance with all applicable Laws; and
 - (iii) in the case of Customer Data that is Metadata, to the extent expressly permitted by the rights granted to the Supplier under clause 16(c).
- (b) The Supplier must promptly notify the Customer upon becoming aware of any loss, destruction or damage to any Customer Data.

- (c) For Customer Data that is Metadata, and which is not Personal Information:
- (i) the Customer grants to the Supplier a perpetual, non-exclusive right to use such Metadata solely for the internal business purposes of the Supplier as specified in the Details (if any); and
 - (ii) notwithstanding clauses 17(f), 17(g) or 17(h), the Supplier may retain a copy of such Metadata to enable the Supplier to exercise the right granted under clause 16(c)(i) and otherwise to the extent required by applicable Law.

17 Confidentiality

- (a) Each party as Recipient must:
- (i) keep confidential all Confidential Information of the Discloser;
 - (ii) not use the Confidential Information except for the purposes of the Contract; and
 - (iii) not disclose the Confidential Information except:
 - (A) to its Personnel on a need to know basis for the purpose of performing its obligations under the Contract;
 - (B) with the Discloser's consent;
 - (C) to the extent required by Law;
 - (D) to its professional advisors;
 - (E) in the case of the Customer:
 - (1) to a Minister, their advisors or Parliament; or
 - (2) as required under the Right to Information Act or the Information Privacy Act; or
 - (F) in the case of the Customer, it may disclose information about the Contract, including the terms of the Contract, to any Queensland Government Body.
- (b) The Customer may publish information about the Contract on the Queensland Government's contract directory, where required or recommended by Queensland Government policy, excluding any such Queensland Government Body that is a direct competitor of the Supplier. Nothing in the Contract prevents the Customer from disclosing information about the Contract as necessary to comply with the Procurement Guidelines: Contract Disclosure.
- (c) Where the Recipient discloses the Confidential Information to a third party as permitted under the Contract (other than disclosure by the Customer as permitted under clause 17(a)(iii)(E)), the Recipient must inform the third party of the confidential nature of the Confidential Information, and will be responsible for all use and disclosure of the Confidential Information by the Recipient's Personnel and professional advisors.
- (d) If specified in the Details or if the Customer otherwise requests, the Supplier must obtain from its Personnel (including Subcontractors) a signed confidentiality and privacy deed in a form reasonably acceptable to the Customer.
- (e) The Supplier must not make any public announcement or advertisement relating to the Contract except where the Customer has approved the proposed public announcement or advertisement in writing.
- (f) If requested by the Customer, on termination or expiry of the Contract, the Supplier must promptly return or destroy (at the Customer's option) all Customer Data, Confidential

Information and Personal Information of the Customer and will confirm to the Customer when this has been done.

- (g) The Supplier may retain a copy of any Confidential Information of the Customer to the extent required by Law, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.
- (h) Nothing in this clause 17 limits any obligations of the Supplier with respect to the return, destruction or retention of Customer Data, Confidential Information and Personal Information of the Customer under clause 5.6.
- (i) Nothing in this clause 17 prevents the Customer from disclosing information about the Supplier's compliance with the Ethical Supplier Threshold to other Queensland Government entities for inclusion in a register.

18 Privacy

- (a) This clause 18 applies if the Supplier collects or has access to Personal Information in order to perform its obligations under the Contract.
- (b) When performing the Contract the Supplier must:
 - (i) if the Customer is an 'agency' for the Information Privacy Act, other than for chapter 3 of the Information Privacy Act – comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to the Customer, as if the Supplier were the Customer; or
 - (ii) otherwise – comply with the Australian Privacy Principles in the Privacy Act.
- (c) The Supplier must:
 - (i) not use Personal Information collected or accessed in connection with the Contract other than for the purpose of performing its obligations under the Contract;
 - (ii) not disclose Personal Information without the prior written consent of the Customer, unless required or authorised by Law;
 - (iii) not transfer any Personal Information collected or accessed in connection with the Contract, outside of Australia, except:
 - (A) with the prior written consent of the Customer; or
 - (B) where the Personal Information is about the Customer's ordering officer or other personnel which is provided in connection with account management purposes or service delivery management under the Contract;
 - (iv) fully cooperate with the Customer to enable the Customer to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints; and
 - (v) comply with such other privacy measures as the Customer reasonably advises the Supplier in writing from time to time.
- (d) The Supplier must immediately notify the Customer upon becoming aware of:
 - (i) any breach of this clause 18; or
 - (ii) any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with the Contract.
- (e) Nothing in this clause 18 is intended to limit any obligation of the Supplier under the Information Privacy Act or Privacy Act (as applicable), that the Supplier may have as an organisation with respect to Personal Information.

19 Anti-competitive conduct, conflict of interest and criminal organisations

19.1 Anti-competitive conduct

The Supplier warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in breach of any Law in connection with the Contract (including any related procurement process) or any actual or potential contract with any entity for products and services similar to the Products and/or Services.

19.2 Conflict of Interest

- (a) The Supplier warrants that it and its Personnel:
- (i) do not hold any office or possess any property;
 - (ii) are not engaged in any business or activity; or
 - (iii) do not have any obligations,
- where a Conflict of Interest is created, or might appear to be created, in conflict with the Supplier's obligations under the Contract, except as disclosed in the Details.
- (b) If, during the Term, a Conflict of Interest arises, or appears likely to arise, the Supplier must notify the Customer promptly and take such steps to resolve or otherwise deal with the Conflict of Interest to the reasonable satisfaction of the Customer.
- (c) If the Customer requests, the Supplier must obtain from its Personnel a signed conflict of interest declaration in a form acceptable to the Customer.

19.3 Criminal organisation

The Supplier warrants that neither the Supplier and, to the best of its knowledge and belief having made all reasonable enquiries, its Personnel, have not been convicted of an offence under the Criminal Code where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of the Criminal Code.

19.4 Warranties are ongoing

The warranties in this clause 19 are provided as at the date of the Contract and on an ongoing basis. The Supplier warrants that it will immediately notify the Customer if it becomes aware that any warranty made in this clause 19 was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way.

20 Disputes

- (a) Neither party will commence court proceedings or action against the other party under or in connection with the Contract (other than where urgent interlocutory relief is required) unless it has first attempted to resolve the dispute under this clause 20.
- (b) Either party may give the other a notice in writing (**dispute notice**) setting out the details of the dispute. Within 5 Business Days after the date on which a party gives the other party a dispute notice (**dispute notice date**), representatives of the parties must meet and use reasonable endeavours to resolve the dispute.
- (c) If the dispute is not resolved under clause 20(b), senior management representatives of the parties must, within 10 Business Days after the dispute notice date, meet and use reasonable endeavours to resolve the dispute.

- (d) If the dispute is not resolved under clause 20(c) within 30 Business Days after the dispute notice date (or such other time as agreed between the parties), the dispute must be referred to mediation according to clause 20(e).
- (e) Where the dispute is referred to mediation, the parties:
- (i) will conduct the mediation in Brisbane in accordance with the Resolution Institute's Mediation Rules operating at the time the dispute is referred to the Resolution Institute, and the terms of those rules are incorporated in the Contract;
 - (ii) will jointly appoint the mediator, or if the parties cannot agree on the mediator within 5 Business Days of referral to mediation, the Chairperson of the Queensland Chapter of the Resolution Institute will determine the mediator;
 - (iii) may be legally represented at the mediation;
 - (iv) will each bear their own costs concerning the mediation, and will bear the costs of the mediation venue and the mediator equally; and
 - (v) will continue to perform their obligations under the Contract to the extent practicable having regard to the nature of the dispute notwithstanding the existence of a dispute, unless the parties agree otherwise in writing.

If the mediation does not resolve the dispute, either party may commence any other form of action to resolve the dispute, including court proceedings.

21 Termination

21.1 For cause – by Customer

- (a) The Customer may terminate the Contract in whole or part immediately on written notice if:
- (i) the Supplier breaches the Contract and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within 30 days (or such longer period stated in the notice in writing) of the Customer issuing a notice of the breach to the Supplier;
 - (ii) a Conflict of Interest arises and has not been, or in the Customer's view cannot be appropriately managed, to the Customer's satisfaction;
 - (iii) the Supplier ceases business or indicates that it is unable or unwilling to complete the Contract;
 - (iv) the Supplier is or becomes Insolvent;
 - (v) the Customer believes the Supplier has breached any warranty in clause 19.1, 19.3 or 19.4;
 - (vi) the Supplier is unable to comply with its obligations in clause 14.3(a); or
 - (vii) having issued a show cause notice in accordance with clause 4(z), the Customer believes that the Supplier does not comply with the Ethical Supplier Threshold.
- (b) Without limiting any other rights or remedies the Customer may have, if the Customer terminates under this clause 21.1, the Customer may obtain from any other source a reasonably similar alternative to the Deliverables in which case the Supplier is liable to the Customer for any reasonable losses, damages or expenses incurred (including any price difference between the Deliverable and the similar alternative) or suffered by the Customer.

- (c) Without limiting the Customer's rights under clause 21.1(a), the Customer may immediately terminate the Contract where the State of Queensland terminates the SOA for cause without liability to the Supplier.

21.2 For cause – by Supplier

The Supplier may terminate the Contract immediately on written notice only if the Customer has:

- (a) not paid any amount which is undisputed and properly payable, and:
- (i) the Supplier has notified the Customer of the outstanding amount stating that it will terminate the Contract if the Customer does not pay such amount within 30 days (or such longer period stated in the notice in writing); and
 - (ii) the period specified in the notice given under clause 21.2(a)(i) expires without the Customer disputing the amount or making payment;
- (b) breached its obligations under:
- (i) clause 15 or clauses 5.3, 5.5 or 5.6 regarding the Supplier's Intellectual Property Rights; or
 - (ii) clause 17,
- and the Customer has not rectified that breach within 30 days (or such longer period as stated in the notice in writing) of receipt of a notice in writing from the Supplier specifying the details of the breach.

21.3 For convenience

- (a) The Customer may terminate the Contract in whole or part at its absolute discretion by giving at least 30 days' written notice. The Supplier must comply with any directions given by the Customer in the notice in connection with the termination.
- (b) If the Customer terminates the Contract under this clause 21.3, the Customer will pay:
- (i) the Supplier for the work performed and Deliverables supplied in accordance with the Contract but not yet invoiced, substantiated to the reasonable satisfaction of the Customer; and
 - (ii) either:
 - (A) the Supplier's reasonable and documented expenses incurred directly relating to the termination; or
 - (B) any amount specified in the Details.
- (c) The Customer will have no other liability to the Supplier relating to the termination. In no case will the compensation payable as a consequence of termination by the Customer under this clause 21.3 exceed the Price that would have been payable if the Contract had not been terminated.
- (d) The Supplier must take reasonable steps to minimise its expenses relating to the termination.

21.4 Suspension

- (a) In addition to the Customer's termination rights under this clause 21, the Customer may suspend the Contract in whole or part immediately on written notice to the Supplier for the period specified in the notice:
- (i) at its absolute discretion; or

- (ii) in any circumstances described in clause 21.1, provided that if the Customer seeks to suspend the Contract in the circumstances described in clause 21.1(a):
 - (A) the Customer has issued a notice of the breach to the Supplier; and
 - (B) if the breach described in clause 21.1(a) was capable of being remedied, the Supplier has not remedied the breach within 30 days (or such longer period stated in the notice in writing).
- (b) The Customer may end the suspension on written notice.
- (c) The Supplier must re-commence performance as soon as reasonably practicable after receiving the Customer's notice ending the suspension.
- (d) If the Customer suspends the Contract under clause 21.4(a)(i):
 - (i) the Customer will pay the Supplier's reasonable and documented expenses directly resulting from the suspension; and
 - (ii) where the suspension continues for 30 days or more, the Supplier may remove or replace any Key Personnel, provided that where the Customer ends the suspension under clause 21.4(b) the Supplier must provide replacement Key Personnel approved by the Customer with at least equivalent skills, qualifications and experience. The Customer may reject any proposed replacement Key Personnel on reasonable grounds, in which case the Supplier must promptly propose an alternative.
- (e) The Customer will have no other liability to the Supplier relating to the suspension. The Supplier must take reasonable steps to minimise its expenses relating to the suspension.

21.5 Consequences

- (a) Termination or suspension of the Contract will not affect the accrued rights and remedies of the parties prior to termination or suspension.
- (b) If the Contract is terminated, the SOA will not, unless the SOA requires it, be affected in any way whatsoever.

22 Assignment

22.1 By Supplier

The Supplier may not assign, transfer or novate any of its rights or obligations under the Contract without the Customer's prior written consent.

22.2 By Customer

The Customer may assign, transfer or novate any of its rights or obligations under the Contract:

- (a) with the Supplier's prior written consent; or
- (b) on written notice to the Supplier, in connection with a Machinery of Government Change.

For clarity, transfer of the Customer's rights and obligations within the same legal entity is not an assignment or novation.

The Contract is for the benefit of, and will bind the parties and their successors and permitted assigns.

22.3 Acting reasonably

Both parties will act reasonably in considering a request by the other party to assign, transfer or novate the Contract.

22.4 Transferability and portability of Products and/or Services

- (a) Notwithstanding any other provision of the Contract, the Supplier agrees that the Customer is entitled to transfer any Product and/or Service to other Queensland Government Bodies, on the same terms and conditions, but only as a consequence of a Machinery of Government Change.
- (b) If Products and/or Services are transferred in accordance with clause 22.4(a), the Supplier:
 - (i) must immediately notify the Customer of any proposed reduction in costs which may occur; and
 - (ii) may notify the Customer of any proposed additional fees for any additional:
 - (A) usage arising from the Machinery of Government Change, to the extent that such usage is greater than any limits on usage specified in the Details (including, in the case of Licensed Software, any limit on usage specified in the Class of Licence); and
 - (B) costs directly incurred as a result of the provision of additional overall Services.
- (c) The Supplier agrees to negotiate with the Customer in good faith to vary or consolidate the Contract to:
 - (i) adjust the Price as a result of notice of the matters raised in subclause 22.4(b); and/or
 - (ii) comply with any specific requirements of the Queensland Government Body to which the Contract is transferred following the Machinery of Government Change.

23 General

The parties agree that:

- (a) (**act reasonably**) they will act reasonably in exercising all of its rights under the Contract;
- (b) (**Representatives**) each party may nominate one or more employee(s) as its nominated representative(s) in the Details (**Authorised Representative**). Any direction, consent or approval given by any person other than a party's Authorised Representative will not bind the party unless the direction is confirmed in writing by that party's Authorised Representative. A party may notify the other party of any replacement of its Authorised Representative from time-to-time (subject to clause 8.3 where the Supplier's Authorised Representative is Key Personnel);
- (c) (**communication**) they will direct all enquiries relating to the Contract to the other party's Authorised Representative, or to another person if the other party directs;
- (d) (**notices**) they will send all notices relating to the Contract to the other party's Authorised Representative(or as updated under clause 23(b));
- (e) (**variation**) the Details, any Additional Provisions, any statement of work or any document which the Details state will form part of the Contract or is otherwise expressly

incorporated by reference may only be varied by written agreement between the parties signed by Authorised Representatives of the parties;

- (f) (**entire agreement**) the Contract sets out all the parties rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in the Contract;
- (g) (**waiver**) clauses and rights in the Contract can only be waived in writing signed by the waiving party. Failure or delay of a party in exercising a right under the Contract does not waive the party's rights. A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights, or the same rights in other circumstances;
- (h) (**relationship**) their relationship is of principal and contractor. The Contract does not create any partnership, joint venture or employment relationship. The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of the Customer;
- (i) (**exclude implied terms**) that the *Sale of Goods (Vienna Convention) Act 1986* (Qld) does not apply, to the extent that the parties are permitted by Law to exclude it;
- (j) (**survival**) clauses 1.2, 1.3, 4(p), 4(q), 4(s), 5.2(g), 5.4(g), 5.6(k), 8.4, 12, 13, 15, 16, 17, 18, 20, 21.5, 22.3, 23(e), (f), (g), (h), (i) (j), (k) and (l) any other clause in the Contract which is expressed to survive or by its nature survives, will survive termination or expiry of the Contract for any reason;
- (k) (**costs**) each party will bear its own costs in relation to the preparation, negotiation and execution of the Contract and any variations;
- (l) (**governing law**) the Contract is governed by and is to be construed in accordance with the laws applicable in Queensland. Each party submits to the jurisdiction of the courts of Queensland.

24 Definitions and Interpretation

24.1 Definitions

Actual Acceptance Date or **AAD** means the date the Deliverable is accepted under clause 6(d) or is deemed accepted under clause 6(e).

Additional Provisions means any terms and conditions agreed between the Customer and the Supplier in accordance with clause 1.4 and which may be specified in the Details or any other document which makes up the Contract.

As a Service means the IaaS, PaaS, SaaS or other (as applicable) as specified in the Details.

As a Service Location means the physical location, as specified in the Details, at which the Customer Data will be stored, hosted and processed as part of the As a Service.

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Authorised Representative has the meaning given in clause 23(b).

Business Day means any day other than a Saturday, Sunday or public holiday at the Customer's address.

Business Hours means between 9.00am and 5.00pm on Business Days unless otherwise specified in the Details.

Claim means any claim, action, proceeding, demand or investigation of any kind, and includes the allegation of a claim.

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

Confidential Information means all information disclosed by or on behalf of the Customer or the Supplier (**Discloser**) to the other party (**Recipient**) in connection with the Contract or created using that information, which is confidential in nature and designated as confidential, or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information. Confidential Information does not include any information which:

- (a) is or becomes public, except through breach of a confidentiality obligation;
- (b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient; or
- (c) the Recipient receives from another person on a non-confidential basis, except through breach of a confidentiality obligation.

Conflict of Interest includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.

Consequential Loss means:

- (a) indirect or consequential loss not arising as a natural consequence of a breach or other event giving rise to liability of a party;
- (b) any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity; or
- (c) loss of data, other than loss of data arising out of any obligation of the Supplier under the Contract with respect to:
 - (i) the hosting, storage, migration, conversion cleansing or back-up of data for the Customer in providing Products or Services; or
 - (ii) Harmful Code.

Contract means the agreement between the Customer and the Supplier, made up of documents specified in clause 1.3.

Corporations Act means the *Corporations Act 2001* (Cth).

Criminal Code means the Criminal Code set out in Schedule 1 of the *Criminal Code Act 1899* (Qld).

Customer means the entity specified in the Details.

Customer Data means any information, material, data, dataset or database:

- (a) provided by or on behalf of the Customer to the Supplier for use, processing, storing or hosting by the Supplier in the provision of the Products or Services; and
- (b) created, produced or derived from the use, processing, storing or hosting of that information, material, data, dataset or database in the Supplier's provision or the Customer's use of the Products or Services,

and includes Metadata but does not include any Pre-Existing Material or New Material owned by the Supplier.

Customer Inputs means the Customer's equipment, premises, documents, access and any other resources that the Customer will provide or make available to the Supplier, which the Supplier will use to provide the Deliverables, set out in the Details.

Customer's IT System means the Customer's physical and computing environment that is operated, maintained or provided by or on behalf of the Customer relevant to the Deliverables under this Contract and includes the Designated Environment.

Defect means a failure of a Deliverable to comply with the Requirements.

Deliverables means the Products, Services and documentation to be provided to the Customer including as described in the Details and the Requirements.

Delivery Date means any date and time for delivery of a Deliverable as stated in the Details.

Department means any entity declared to be a department of government by the Governor in Council by gazette notice.

Design Specification has the meaning given to it in clause 5.5(a).

Designated Environment means the physical and computing environment specified in the Details with which the Deliverables must operate.

Details means the document titled 'SOA General Contract Details – ICT Products and/or Services' that contains information about a specific contract between the Customer and Supplier, which may be in a similar format to that issued with these General Contract Conditions.

Developed Software means any new software or software application that is to be developed and which comprises New Material, as further specified in the Details. 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.

Discloser has the meaning given in the definition of Confidential Information.

Document includes:

- (a) any paper or other material on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device; and/or
- (d) a piece of text or text and graphics stored electronically as a file for manipulation by document processing software.

Documentation means any training manuals, user manuals, operating manuals, technical manuals or other documentations specified in the Details.

Ethical Supplier Threshold means the Ethical Supplier Threshold described in paragraph 2.3 of the Queensland Procurement Policy.

GST has the meaning given in the GST Law and includes an amount payable under or in accordance with section 5 of the *GST and Related Matters Act 2000* (Qld) or equivalent legislation.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hardware means the hardware specified in the Details.

Hardware Maintenance Services means the hardware maintenance services specified in the Details.

Harmful Code means any computer program or virus or other code that is harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised access to or disclosure, destruction or corruption of information or data.

ICT Professional Services means the information, communications or technology related services described in the Details. For clarity, ICT Professional Services do not include services provided under the direction, control and supervision of the Customer, or any other service the Supplier will provide to the Customer under clause 5.7 of the Contract.

Information Privacy Act means the *Information Privacy Act 2009* (Qld).

Infrastructure means the hardware, software, communications services and other resources, services and facilities (whether of the Supplier or a third party provider to the Supplier) for the Supplier's provision of the As a Service.

Infrastructure as a Service (IaaS) means the service provided by the Supplier to the Customer to provision processing storage, networks and other physical or virtual machines, hardware or other data centre components and which allows the Customer to control the operating systems, Customer Data and applications stored on the IaaS, as specified in the Details.

A person or entity is **Insolvent** if:

- (d) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act 2001 (Cth));
- (e) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property;
- (f) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (g) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (h) it is taken (under section 459F(1) of the Corporations Act 2001 (Cth)) to have failed to comply with a statutory demand;
- (i) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001 (Cth) (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
- (j) it is otherwise unable to pay its debts when they fall due, or

something having a substantially similar effect to (a) to (g) happens in connection with that person or entity under the Laws of any jurisdiction.

Intellectual Property Rights includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Contract, but excludes Moral Rights.

IP Claim has the meaning given in clause 14.1(a)(iii).

Key Personnel means the people identified in the Details as 'key personnel'.

Laws means all:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations in force from time to time in Queensland and any other relevant jurisdiction;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables; and

- (c) the requirements of any authority with jurisdiction in respect of the Deliverables and/or the Site, as applicable.

Licensed Software means the software specified in the Details, 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) any Developed Software where the Details specify the Supplier will own the Intellectual Property Rights in that Developed Software.

Machinery of Government Change means a transfer of responsibility, function or operations, in whole or in part, from a Queensland Government department or agency or Queensland Government Body to another Queensland Government department or agency or Queensland Government Body.

Mandatory Engineering Changes means any changes and upgrades to the Supported Hardware which are authorised by the manufacturer as mandatory and which are designed to improve the safety, performance or reliability of the Supported Hardware.

Material means any Document or other item in which Intellectual Property Rights subsist.

Metadata means any system-generated data that is created or generated in connection with the Customer's use of the Products or Services, including in the use, processing, storing or hosting of any information, material, data, dataset or database in the provision of the Products or Services and includes any descriptive, structural and administrative metadata.

Minimum System Requirements means the minimum requirements for the Customer's IT System and Networks to access and use the As a Service in accordance with the applicable Requirements and Service Levels, as specified in the Details.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world, whether existing before or after the date of Contract.

Network means any network that connects to computers to facilitate electronic exchange of information and includes the Internet, virtual private networks and telecommunications services.

New Material means all Material that is created, written, developed or otherwise brought into existence by or on behalf of the Supplier for the Customer in the course of the Supplier performing its obligations under the Contract, and includes the Material specified in the Details as New Material. New Material does not include Pre-Existing Material, Third Party Material, Licensed Software or As a Service.

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.

Part A of the SOA Details means that part as set out in the SOA.

Part C of the SOA Details means that part as set out in the SOA.

Personal Information has the meaning given:

- (a) for the purpose of the Information Privacy Act – in that Act; or
- (b) for the purposes of the Privacy Act – in that Act.

Personnel means officers, directors, employees and agents and, in the case of the Supplier, includes any Subcontractor and the Subcontractor's officers, directors, employees and agents.

Platform as a Service (PaaS) means the hosted environment provided by the Supplier to the Customer to configure, deploy and run applications using programming languages and tools supported by the Supplier and which allows the Customer to control the deployed applications on the PaaS as specified in the Details.

Pre-Existing Material means all Material, which existed at the Contract start date or which is developed independently of the Contract, and includes the Material specified in the Details as Pre-Existing Material. Pre-Existing Material includes any adaptation, translation or derivative of the Pre-Existing Material, but does not include Licensed Software, As a Service or any Third Party Material.

Price means the price or prices described in the Details or Schedule 1 – Price and Payment Terms or calculated using a calculation method in the Details or Schedule 1 – Price and Payment Terms.

Privacy Act means the *Privacy Act 1988* (Cth).

Procurement Guidelines: Contract Disclosure means the Procurement Guidelines: Contract Disclosure issued by the Director-General, Department of Housing and Public Works.

Products means products the Supplier will provide, described in the Details.

Public Service Office has the meaning given in the *Public Service Act 2008* (Qld).

Queensland Government Body means any of:

- (c) a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local authority);
- (d) a body established by the State of Queensland through the Governor or a Minister; or
- (e) an incorporated or unincorporated body over which the State of Queensland exercises control.

Queensland Procurement Policy means the Queensland Procurement Policy as published by the Department of Housing and Public Works.

Recipient has the meaning given in the definition of Confidential Information.

Related Body Corporate has the meaning given in the Corporations Act.

Requirements means the standards, Specifications and other requirements for the Deliverables and the performance of the Supplier's other obligations under the Contract, which are set out in the Contract.

Right to Information Act means the *Right to Information Act 2009* (Qld).

Services means the services the Supplier will perform, described in the Details.

Service Credits means the service credits in respect of Deliverables described in the Details.

Service Levels means the service levels in respect of Deliverables described in the Details.

Site means each of the site or premises at which the Deliverables are to be provided as specified in the Details.

SOA means the document entered into between the State of Queensland and the Supplier to create a standing offer arrangement under which contracts may be established using these General Contract Conditions as further specified on the front page of the Details.

SOA General Contract Conditions or **General Contract Conditions** means this document titled 'SOA General Contract Conditions – ICT Products and/or Services'.

Software as a Service (SaaS) means the provision of software or an application which is delivered as an online service by the Supplier as specified in the Details.

Software Support Services means the support services set out in the Details.

Specifications:

- (a) in respect of Products, Services and Deliverables, mean the requirements set out or referred to in the Details, including all agreed requirements as to quality, functionality, performance, interoperability, testing and other matters;
- (b) in respect of the Licensed Software, Hardware and As a Service, includes any published specifications of the Supplier or a third party manufacturer or supplier relating to the Licensed Software, Hardware and As a Service (as applicable).

Subcontractor means a third party to whom the Supplier subcontracts the performance or supply of any Deliverables in accordance with clause 8.1.

Subscription Period each period during which the Supplier will provide the As a Service to the Customer as specified in the Details.

Supplier means the entity specified in the Details.

Supported Hardware means the hardware in respect of which the Supplier will supply the Hardware Maintenance Services as specified in the Details.

Supported Software means the software which is supported in accordance with clause 5.4 and as specified in the Details.

Term has the meaning given in clause 3.

Tested Item has the meaning given in clause 6(b).

Third Party Material means all Material in which the Intellectual Property Rights are owned by a party other than the Supplier or the Customer, and includes the Material specified in the Details as Third Party Material.

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

Warranty Period means the warranty period as specified in the Details, commencing on the AAD of that Deliverable unless otherwise specified in the Details.

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

24.2 Interpretation

Unless it is expressly stated that a different rule of interpretation will apply:

- (a) **(agreement)** a reference to an agreement includes any variation or replacement of the agreement;
- (b) **(Business Day)** if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- (c) **(currency)** all currency amounts are in Australian dollars;
- (d) **(headings)** headings are provided for convenience and do not affect the interpretation of the documents making up the Contract;
- (e) **(includes)** "include", "includes" and "including" must be read as if followed by the words "without limitation";

- (f) **(corresponding meaning)** if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (g) **(joint and several)** agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (h) **(law)** a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;
- (i) **(person)** a person includes the person's executors, administrators and permitted novatees and assignees;
- (j) **(construction)** no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it;
- (k) **(severability)** if any part of the Contract is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract will not apply but the other parts of the Contract will not be affected.

24.3 Notices

- (a) A notice will be deemed to be given:
 - (i) if posted:
 - (A) within Australia to an Australian postal address, – 5 Business Days after the date of posting; or
 - (B) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after posting;
 - (ii) if delivered by hand during a Business Day – on the date of delivery;
 - (iii) if emailed – subject to clause (b) below, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,
except that a delivery by hand or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.
- (b) A notice under clause 20 or 21 which is sent via email must also be sent by post, hand delivery or in any other way permitted by Law.