

SOA Module 6 – Managed Services

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SOA Module 6 – Managed Services

1 Application of SOA Module

- (a) The SOA Comprehensive Contract Conditions - ICT Products and/or Services (**SOA Comprehensive Contract Conditions**) apply to this SOA Module.
- (b) The terms and conditions included in this SOA Module form part of the Contract when the parties state in the Details that SOA Module 6 forms part of the Contract.

2 Interpretation

- (a) The definitions for this SOA Module are set out in clause 20.
- (b) Other definitions and rules of interpretation applicable to this SOA Module are set out in the SOA Comprehensive Contract Conditions.

3 Service Period

- (a) During the Service Period, the Supplier must:
 - (i) provide the Transition-In Services for the Transition-In Period (if applicable); and
 - (ii) provide the Managed Services from the Service Commencement Date for the Service Period.
- (b) The Customer may extend the Service Period on the same terms and conditions, for the extension period specified in the SOA Module Order Form by giving the Supplier written notice by at least the period as specified in the SOA Module Order Form before expiry of the then current Service Period.

4 Supply of Managed Services

The Supplier must perform and provide the Managed Services:

- (a) in accordance with the Contract including the Requirements and the Service Levels; and
- (b) using infrastructure, personnel, methodologies and other resources (as applicable) to a standard as specified in the SOA Module Order Form.

5 Additional Provisions for Managed Services

The parties may agree Additional Provisions for the supply of the Managed Services in accordance with clause 1.4 of the SOA Comprehensive Contract Conditions.

6 Transition-In Services and handover

- (a) If specified in the SOA Module Order Form that Transition-In Services are required, the Supplier must provide the Transition-In Services to transition the Customer to the Managed Services in accordance with the Transition-In Plan.
- (b) The Customer must perform all services, functions and tasks assigned to the Customer in the Transition-In Plan.

- (c) The Supplier must use its best endeavours to complete the Transition-In Services by the date specified in the SOA Module Order Form, and must promptly notify the Customer of anything it becomes aware of that is likely to delay the Supplier in completing the Transition-In Services by that date.
- (d) If specified in the Details, Acceptance Tests must be conducted for the Transition-In Services in accordance with clause 9 of the SOA Comprehensive Contract Conditions. If Acceptance Tests are conducted for the Transition-In Services, the Service Commencement Date will be the AAD of the Transition-In Services unless otherwise specified in the SOA Module Order Form.
- (e) If specified in the Details that Acceptance Tests are not required for the Transition-In Services, once the Supplier has completed Transition-In Services, the Supplier must notify the Customer in writing that the Transition-In Services are complete and notify the Customer in writing of the Service Commencement Date. The Service Commencement Date will be the date specified in the notice provided by the Supplier under this clause 6(e).

7 Data Migration Services and Data Cleansing Services

- (a) If the SOA Module Order Form states that Data Migration Services or Data Cleansing Services are to be performed by the Supplier, the Supplier must perform the Data Migration Services or Data Cleansing Services (as applicable) as specified in the SOA Module Order Form and by the date specified in the SOA Module Order Form.
- (b) The Customer will provide the assistance related to the Data Migration Services or Data Cleansing Services (as applicable) as specified in the SOA Module Order Form including extraction of Customer Data to the Supplier for data migration and conversion or data cleansing (as applicable).
- (c) If the Data Migration Services include the Supplier providing to the Customer any software tools, object libraries, methodologies or other devices owned by the Supplier or any other party (**Data Tools**), the Data Tools will be provided to the Customer as Licensed Software in accordance with SOA Module 2 – Software or as Software as a Service in accordance with SOA Module 3 – As a Service (as applicable).

8 Procedures Manual

- (a) If specified in the SOA Module Order Form that a Procedures Manual is required, the Supplier must prepare a detailed procedures manual which addresses the Requirements (as applicable) and document the operations and procedures to be followed in the provision of the Managed Services as specified in the SOA Module Order Form, which may include:
 - (i) key aspects of how the Managed Services will be provided to the Customer;
 - (ii) how compliance with the Service Levels and other performance factors will be measured and met;
 - (iii) procedures to identify and rectify failures in the quality of the Managed Services;
 - (iv) governance arrangements between the Customer and the Supplier;
 - (v) governance arrangements dealing with the Supplier and any third parties;
 - (vi) how changes to the Managed Services or method of delivery will be identified and met;
 - (vii) protocols for identifying and managing risks;
 - (viii) proposed audit requirements; and

- (ix) staffing, reporting, planning and supervision activities normally undertaken in respect of similar services in similar circumstances,
(Procedures Manual) and submit it to the Customer for approval by the date specified in the SOA Module Order Form. The Supplier must promptly make all changes to the draft Procedures Manual reasonably requested by the Customer which are consistent with the Requirements, and resubmit the draft Procedures Manual for further review by the Customer.
- (b) The Procedures Manual will, when approved by the Customer under clause 8(a), update and become part of the Requirements, and the parties must perform their obligations in respect of the Managed Services in accordance with the Procedures Manual.
- (c) If there is any inconsistency between the Requirements (excluding the Procedures Manual) and the Procedures Manual, the Procedures Manual will prevail to the extent of any inconsistency.
- (d) The Supplier must update the Procedures Manual as often as necessary to incorporate all changes in the operations or procedures in respect of the Managed Services approved by the Customer.

9 Customer Data

- (a) This clause 9 applies if the Supplier will process, store or host any Customer Data as part of the provision of the Managed Services.
- (b) The Supplier must:
 - (i) comply with the procedures and requirements set out in the SOA Module Order Form (if any) regarding storage and back-up of the Customer Data;
 - (ii) not access, use, disclose or modify the Customer Data for marketing, tracking, monitoring or profiling purposes; and
 - (iii) ensure that the Customer has and is granted access to the Customer Data and the System as and when required by the Customer.
- (c) Without limiting clause 14.4 of the SOA Comprehensive Contract Conditions, on expiry or termination of the Service Period the Supplier must:
 - (i) 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 SOA Module Order Form;
 - (ii) unless otherwise specified in the SOA Module Order Form or directed by the Customer, after returning or allowing the Customer to extract the Customer Data, destroy or securely erase all Customer Data, and confirm to the Customer when this has been done.
- (d) The Supplier must not refuse to return, or refuse to allow the Customer to extract, Customer Data or delay doing so for any reason.
- (e) In respect of Customer Data that is Metadata, the Supplier's obligations under clause 9(c) apply to the extent it is reasonable and practicable for the Supplier to do so.

10 Security

The Supplier must:

- (a) take all reasonable steps to ensure that no unauthorised party is allowed physical or electronic access to the System; and
- (b) if the Supplier will have access to and will manage Customer Data in providing the Managed Services:
 - (i) take all reasonable steps to ensure that no unauthorised party is allowed physical or electronic access to the Customer Data;
 - (ii) 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 as specified in the SOA Module Order Form;
 - (iii) maintain the accessibility, usability and security of the Customer Data during the Service Period;
 - (iv) remove all Customer Data from any media taken out of service, and destroy or securely erase such media in accordance with the Supplier's standard security policy; and
 - (v) if specified in the SOA Module Order Form, log access to and modification of Customer Data and provide or make available copies of the logs when reasonably requested by the Customer.

11 Electronic Incidents

Upon receipt of a notification by the Supplier of an Electronic Incident under clause 22.6 of the SOA Comprehensive Contract Conditions, in consultation with the Supplier, the Customer may, at its reasonable discretion, require that:

- (a) the Supplier's ability to access, process, or store Customer Data be suspended;
- (b) connectivity with the Supplier be terminated; or
- (c) other appropriate action be taken pending such resolution,

provided that upon any such action by the Customer or required of the Supplier by the Customer, the Supplier will be relieved of its obligations under the Contract to the extent it is unable to perform under such circumstances and so notifies the Customer.

12 Managed Third Party Contracts

- (a) This clause 12 only applies where the Customer appoints the Supplier to manage and perform the Managed Third Party Contracts as specified in the SOA Module Order Form.
- (b) The Customer will be responsible for obtaining the novation of those Managed Third Party Contracts specified in the SOA Module Order Form, from the Customer to the Supplier, effective from the Service Commencement Date or such earlier date agreed by the parties.
- (c) If a Managed Third Party Contract cannot be novated by the Service Commencement Date or such earlier date agreed by the parties, or is not to be novated under clause 12(b) as specified in the SOA Module Order Form:
 - (i) the Supplier must use its best efforts to procure the right to assume management responsibility on behalf of the Customer in respect of the Customer's rights and obligations under the relevant Managed Third Party Contract and the Customer must

provide all reasonable assistance to the Supplier in that regard including promptly and fully enforcing its rights under the Managed Third Party Contract; and

- (ii) if the Supplier cannot procure management rights, the parties will consult and co-operate in order to implement workarounds or other alternative solutions to enable the Supplier to provide the Managed Services as they relate to that Managed Third Party Contract.
- (d) All costs associated with the novation of a Managed Third Party Contract, the procurement of management rights for the Supplier or the performing of the obligations under clauses 12(b) and 12(c) in respect of the Managed Third Party Contracts, will be borne by the Customer, unless agreed otherwise in the SOA Module Order Form.
- (e) The Supplier must in relation to each Managed Third Party Contract perform the services, functions and tasks with respect to each Managed Third Party Contract as described in the SOA Module Order Form.
- (f) The Supplier has no authority to, and must not, in relation to each Managed Third Party Contract not novated to the Supplier:
- (i) vary any Managed Third Party Contract, waive any rights of the Customer against a counter-party to the Managed Third Party Contract or grant a consent or approval under the Managed Third Party Contract;
 - (ii) rescind, repudiate, terminate, extend, surrender rights under, exercise any option under or renew the Managed Third Party Contract;
 - (iii) make any claim under, commence proceedings under or issue any notices under, or allege any breach of, the Managed Third Party Contract;
 - (iv) exercise any rights of the Customer under the Managed Third Party Contract or purport to act on the Customer's behalf or bind the Customer in contract,
- without first obtaining the Customer's express prior written approval.
- (g) The Supplier must:
- (i) without limiting clause 22.2 of the SOA Comprehensive Contract Conditions, maintain complete records of its compliance with this clause 12 and provide those records to the Customer on request;
 - (ii) without limiting clause 22.1 of the SOA Comprehensive Contract Conditions, prepare and provide to the Customer such reports or information as the Customer may require from time to time in relation to its performance of this clause 12;
 - (iii) perform its obligations under this clause 12 in accordance with any directions from the Customer from time to time; and
 - (iv) act in the Customer's best interests at all times when performing its obligations relating to the Managed Third Party Contracts.
- (h) Each party must notify the other party immediately of any actual, suspected, threatened or alleged breach of a Managed Third Party Contract. Where any such breach is caused (whether by breach or act or omission) by the Supplier, the Supplier must immediately remedy the breach at its own cost.
- (i) The Supplier must notify the Customer immediately of any dispute or claim in relation to a Managed Third Party Contract. The Supplier must if required by the Customer manage or provide all support required by the Customer in relation to the dispute resolution process, but has no authority to settle any such dispute or claim without the Customer's approval.

13 Changes to level of Managed Services

- (a) Where the Managed Services are supplied to the Customer on a Unit basis, the Customer may:
 - (i) use additional Units of the Managed Services; or
 - (ii) reduce the number of Units of the Managed Services,
in which case the number of Units for the Managed Services will be adjusted as required by the Customer for the Managed Services, at the frequency specified in the SOA Module Order Form.
- (b) If the number of Units of the Managed Services actually used by the Customer in a month exceeds the number of Units purchased, the Customer will promptly pay the Supplier for the actual number of Units consumed (calculated using the rates set out in the applicable Pricing Schedule, or if none are stated, at the Supplier's then current commercial rates subject to clause 10.4 of the SOA Comprehensive Contract Conditions (if applicable)).

14 Service Levels and Service Credits

- (a) During the Consolidation Period, the Supplier will use its best efforts (but will not be liable for any failure) to meet or exceed the Service Levels.
- (b) The Supplier must measure its performance against the Service Levels and provide a report to the Customer at the frequency specified in the SOA Module Order Form.
- (c) After the Consolidation Period, if the Supplier fails to meet any of the Service Levels, then the Supplier must promptly and at no additional cost to the Customer:
 - (i) correct the failure as soon as possible;
 - (ii) investigate the underlying cause of the failure; and
 - (iii) where the failure is material, or if otherwise requested by the Customer, provide the Customer with a written report identifying the underlying cause of the failure, the impact of the failure and the Supplier's procedures for correcting the failure to minimise any risk of the failure being repeated.
- (d) Subject to clause 16, if the Supplier fails to meet any of the Service Levels after the Consolidation Period the Supplier must apply the Service Credits against the next invoice issued after the relevant Service Credits accrue, or in accordance with the process set out in the SOA Module Order Form. If the Contract has terminated or expired, the Supplier must promptly pay the amount of the Service Credits to the Customer.
- (e) The Supplier must keep the Customer informed as to proposed alterations to the System which may materially affect compliance with the Service Levels for the Managed Services.

15 Warranties

The Supplier warrants that the Managed Services 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) and the Contract.

16 Exclusions from Managed Services

- (a) The Supplier is not in breach of its obligations to provide the Managed Services, and is not responsible for any failure to meet the Service Levels, to the extent that the breach or failure arises as a result of:

- (i) any failure of the Customer to comply with its obligations under the Contract;
 - (ii) any failure of any Customer Input (if applicable) to comply with the requirements specified in the Details;
 - (iii) any failure of a third party service provided to the Customer that does not form part of the Managed Services;
 - (iv) modifications to any Deliverables that were effected or attempted by a person other than the Supplier, its Personnel or a person authorised by the Supplier;
 - (v) any Harmful Code that adversely affects the provision of the Managed Services, except to the extent that:
 - (A) the Harmful Code was introduced by the Supplier or its Personnel; or
 - (B) the Requirements include a requirement to protect against Harmful Code, and the breach or failure to meet the Service Levels is caused by a failure to meet the Requirements;
 - (vi) an Unexpected Event; or
 - (vii) such other circumstances specified in the SOA Module Order Form.
- (b) Where the Supplier, acting reasonably, determines that the breach or failure arises as a result of circumstances set out in 16(a), 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 the applicable Pricing Schedule, or if none are stated, at the Supplier's then current commercial rates subject to clause 10.4 of the SOA Comprehensive Contract Conditions (if applicable)) that arise out, of or in connection with identifying and attempting to remedy that breach or failure.

17 Disaster recovery

- (a) If specified in the SOA Module Order Form, the Supplier must implement, maintain and comply with disaster recovery procedures, including back-up procedures and facilities, to ensure the Supplier's provision of the Managed Services continues with minimal interruption if a Disaster occurs or affects the System or the Supplier as specified in the SOA Module Order Form (**Disaster Recovery Procedures**).
- (b) If a Disaster occurs and affects the System or the provision of all or any part of the Managed Services, the Supplier must:
- (i) immediately notify the Customer;
 - (ii) comply with the Disaster Recovery Procedures (if applicable);
 - (iii) use its best endeavours to reinstate operation of the System and all affected Managed Services within the minimum possible time and in any event within any time periods specified in the Disaster Recovery Procedures (if applicable); and
 - (iv) continue to provide those Managed Services not affected by the Disaster in accordance with the Contract.
- (c) If specified in the SOA Module Order Form that the Supplier is required to implement and maintain Disaster Recovery Procedures, the Supplier must, on request by the Customer from time to time:
- (i) provide the Customer with a summary of the Disaster Recovery Procedures; and
 - (ii) conduct annual testing of the Disaster Recovery Procedures and provide the results of those tests to the Customer on request.

18 Audit

- (a) If specified in the SOA Module Order Form, the Supplier must appoint an independent auditor to audit the Supplier's compliance with the security, privacy and Customer Data requirements of the Contract at least annually.
- (b) The Supplier must provide a copy of the audit report prepared by the independent auditor under clause 18(a) to the Customer upon request.
- (c) The parties agree that the Customer and/or its representative who may not be a competitor of the Supplier may conduct an audit, up to one time per year, at the Customer's cost unless the Customer's audit reveals material non-compliance by the Supplier with the Supplier's obligations under the Contract in which case the Supplier is liable to the Customer for the costs incurred by the Customer in relation to the Customer's audit. The audit will involve access to Customer Data, all relevant documentation and evidence to verify the Supplier's processes and controls. Such documentation and evidence may include the Supplier's data and logs, architecture, systems and procedures, independent certifications or interviews directly related to the Supplier's compliance with the security, privacy and Customer Data requirements of the Contract.
- (d) The Supplier must implement audit recommendations and comply with audit findings under this clause 18 to the extent necessary to ensure that the Managed Services continue to be delivered in accordance with the Contract.

19 Transition-Out Services

- (a) If specified in the SOA Module Order Form, the Supplier must provide the Transition-Out Services.
 - (b) If Transition-Out Services are required, the Supplier must:
 - (i) prepare and submit to the Customer for the Customer's review and approval a comprehensive transition-out plan by the due date specified in the SOA Module Order Form which sets out:
 - (A) the period during which the Transition-Out Services will be provided and the extent to which any Managed Services will continue to be provided during that period;
 - (B) all activities and Deliverables to be provided by the Supplier (including due dates for performance) which may include:
 - (1) selling, transferring, assigning or relocating assets that are exclusively used in the provision of the Managed Services and the amount payable to the Supplier for such items; and
 - (2) if applicable, providing reasonable assistance in procuring novations or assignments of the Managed Third Party Contracts or the transfer of management responsibility in respect of such agreements, to Customer's replacement service provider or to the Customer;
 - (C) all Customer Inputs relevant to transition-out, including all inputs to be provided by the Customer's replacement service provider (if applicable);
 - (D) the Price payable for the Transition-Out Services; and
 - (E) such other matters required by the Customer,
- (Transition-Out Plan);**

- (ii) promptly make all changes to the draft Transition-Out Plan reasonably requested by the Customer and resubmit the draft Transition-Out Plan for further review and approval by the Customer;
 - (iii) annually (or at such other frequency agreed by the parties) review the Transition-Out Plan, amend the Transition-Out Plan as necessary, and submit the amended Transition-Out Plan for review and approval by the Customer;
 - (iv) on request, on expiry or termination of the Service Period, carry out the Transition-Out Services, to facilitate an orderly, prompt and efficient transition-out of the Managed Services;
 - (v) continue to provide the Managed Services to the extent and during the period specified in the Transition-Out Plan (and otherwise on the terms and conditions of the Contract) until the Managed Services are transitioned to the Customer or a replacement service provider;
 - (vi) reasonably co-operate with the Customer and any replacement service provider as reasonably required for the proper performance of the replacement service provider's obligations and provide copies of all work in progress relevant to the Managed Services; and
 - (vii) provide other termination or expiration assistance reasonably requested by the Customer.
- (c) The Transition-Out Plan will, when approved by the Customer under clause 19(b) (as amended under 19(b)(ii)), become part of the Requirements, and the Supplier must carry out its obligations as specified in the Transition-Out Plan within the timeframes specified in the Transition-Out Plan.
- (d) If the Contract is terminated under clause 24.1 of the SOA Comprehensive Contract Conditions, the Supplier will bear its own costs of providing the Transition-Out Services. Otherwise, the Customer will pay the Supplier the Price for the Transition-Out Services specified in the Transition-Out Plan in accordance with clause 10 of the SOA Comprehensive Contract Conditions.

20 Definitions

Consolidation Period means the initial period of the Managed Services, commencing on the Service Commencement Date of the Managed Services, as stated on the SOA Module Order Form.

Data Cleansing Services means the data cleansing services to be performed in respect of the Customer Data as specified in the SOA Module Order Form.

Data Migration Services means the data conversion and migration services to be performed in respect of the Customer Data as specified in the SOA Module Order Form.

Disaster means an Unexpected Event or other event which has the potential to cause the Customer to be unable to use the whole or a substantial part of the System or which could prevent the Customer from receiving a substantial part of the benefit of the Managed Services or which has the potential to substantially interfere with the usual operations of the Customer.

Disaster Recovery Procedures has the meaning given in clause 17(a).

Managed Services means the managed services as specified in the SOA Module Order Form.

Managed Third Party Contract means a contract between the Customer and a third party provider of products or services which is identified in the SOA Module Order Form.

Procedures Manual means the procedures manual prepared by the Supplier in accordance with clause 8.

Service Credits means the service credits in respect of the Managed Services described in the SOA Module Order Form.

Service Levels means the service levels in respect of the Managed Services described in the SOA Module Order Form.

Service Period means the period specified in the SOA Module Order Form.

Service Commencement Date means:

- (a) where Transition-In Services are required:
 - (i) if Acceptance Tests are conducted for the Transition-In Services, the AAD of the Transition-In Services unless otherwise specified in the SOA Module Order Form;
 - (ii) if Acceptance Tests are not conducted for the Transition-In Services, the date specified in the notice provided by the Supplier under clause 6(e); or
- (b) where Transition-In Services are not required, the date specified in the SOA Module Order Form.

System means (as applicable):

- (a) the Supplier's information technology facilities, which is dedicated to the provision of the Managed Services to the Customer; and/or
- (b) the Customer's environment which is in-scope for the provision of the Managed Services, as described in the SOA Module Order Form.

Transition-In Period means the period commencing on the date specified in the SOA Module Order Form for the performance of the Transition-In Services which will conclude on the Service Commencement Date.

Transition-In Plan means the plan set out in or attached to the SOA Module Order Form.

Transition-In Services means the transition-in services set out in the Transition-In Plan.

Transition-Out Plan means the plan prepared by the Supplier in accordance with clause 19(b).

Transition-Out Services means the assistance reasonably requested by the Customer to:

- (a) transition the provision of the Managed Services to the Customer or its nominee; and
- (b) migrate the Customer Data to the Customer or any system, equipment or software specified by the Customer,

as may be further specified in the Transition-Out Plan.

Unit means, where applicable, each unit of the Managed Services ordered or used by the Customer, as specified in the SOA Module Order Form.