



# Part 2: Customer Outsourcing Agreement

Dated

23rd Mar' 2022

Department of Enterprise, Investment and Trade  
(DEIT) (ABN 51 766 912 245) (**Customer**)

Infosys Technologies Limited (a foreign company  
incorporated in India as Infosys Limited)  
(ABN 52 090 591 209) (**Supplier**)

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# Details

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**Parties****Customer and Supplier**

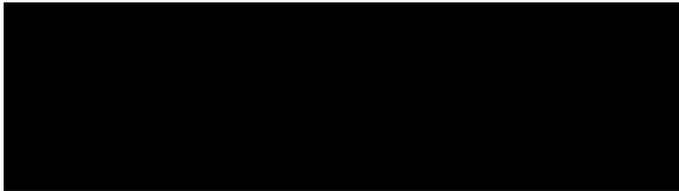
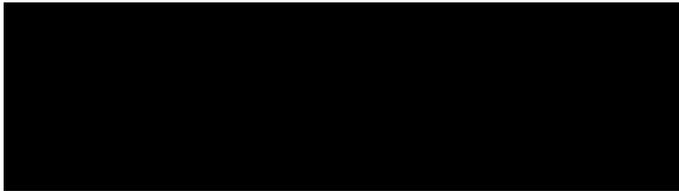
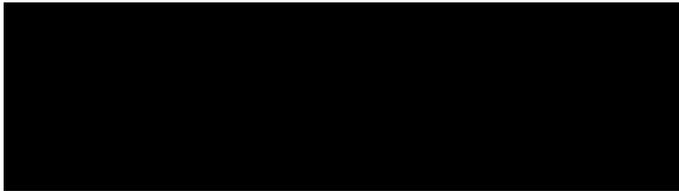
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**Customer**

Name Department of Enterprise, Investment and Trade

ABN 51 766 912 245

Address 52 Martin Place, Sydney NSW 2000

Postal Address Telephone Facsimile 

Contract

Representative

Email

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**Supplier**Name **Infosys Technologies Limited (a foreign company incorporated in India as Infosys Limited)**

ABN 52 090 591 209

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Commencement Date **[1<sup>st</sup> April' 2022]**

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Governing Law New South Wales

# General Terms

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## PART A – OBJECTIVES, TERM AND BENEFIT

### 1. About this Customer Outsourcing Agreement and objectives

#### 1.1 Structure of Customer Outsourcing Agreement

This Customer Outsourcing Agreement consists of all of the following:

- (a) Details;
- (b) General Terms;
- (c) Operational Service Orders (except that SOWs executed as separate agreements pursuant to clause 5.5(c) will be treated as separate agreements in accordance with clause 5.5(c));
- (d) Schedule 1 - Dictionary;
- (e) Schedule 1.A - Schedules Dictionary;
- (f) other Schedules; and
- (g) Attachments.

If there is an inconsistency between a provision in any of the parts listed in paragraphs (a) to (g) above, then the provision in the part higher in the list prevails to the extent of the inconsistency.

#### 1.2 Customer Objectives

The Customer's objectives in relation to this Customer Outsourcing Agreement are the Outsourcing Program Objectives (**Customer Objectives**).

#### 1.3 Application of Customer Objectives

- (a) The Supplier must supply the Services and Deliverables to assist the Customer Cluster to meet the Customer Objectives.
- (b) The Customer Objectives are not intended to take precedence over any other express terms of this Customer Outsourcing Agreement or to expand or reduce the scope of the parties' obligations under this Customer Outsourcing Agreement.
- (c) To the extent that any terms of this Customer Outsourcing Agreement require the parties to discuss, negotiate or agree on a particular matter, each party must act to give the fullest consideration to the Customer Objectives.
- (d) The parties agree that if the provisions of this Customer Outsourcing Agreement do not address a particular circumstance or are unclear or ambiguous, those provisions will be interpreted to give the fullest possible effect to the Customer Objectives provided that nothing in this clause 1.3(d) is intended to alter the plain and natural meaning of the provisions of the Outsourcing Program Agreements.

#### 1.4 Capability to provide the Services and Deliverables

- (a) The Supplier acknowledges and agrees that the Customer Cluster does not have the resources or capability to perform the Services or provide the Deliverables itself and the Customer Cluster will be reliant on the Supplier.
- (b) The Supplier represents that:
  - (i) it has all facilities and resources necessary to provide the Services and Deliverables at all Customer Cluster Premises;

- (ii) except for the Relevant Due Diligence Factors in respect of the Foundation Customers:
    - (A) it has had the opportunity to conduct appropriate and necessary due diligence (including in relation to Third Party Agreements, the Services, Deliverables and any rights it requires to perform the Services and provide the Deliverables); and
    - (B) it does not require any further information or documents from the Outsourcing Program Entities to enable Supplier to determine that Supplier is able to perform its obligations under this Customer Outsourcing Agreement, including without infringing any third party's rights;
  - (iii) it has taken such advice and undertaken such reviews and analysis of the Request for Proposal and the terms of this Customer Outsourcing Agreement (including without limitation the scope and nature of the Services and Deliverables) and all other information available to it;
  - (iv) it has undertaken such further information gathering activities, and made such enquiries of the Customer Cluster;
  - (v) it has entered into necessary arrangements with third parties for ongoing support and advice in connection with the performance of its obligations under this Customer Outsourcing Agreement; and
  - (vi) it has made its own assessment as to the nature and quality of the facilities and resources it requires in order to comply with and perform its obligations under this Customer Outsourcing Agreement,
- sufficiently in each case:
- (vii) to satisfy itself that it has a complete understanding of the Customer Objectives and the terms of this Customer Outsourcing Agreement;
  - (viii) to verify to its own satisfaction that all materials provided by the Outsourcing Program Entities are accurate and complete;
  - (ix) to satisfy Supplier's own requirements for ongoing support and advice from third parties;
  - (x) to satisfy itself that it has sufficient and appropriate facilities and resources to perform the Services and provide the Deliverables; and
  - (xi) to enable Supplier to supply the Services and Deliverables in accordance with the terms of this Customer Outsourcing Agreement for the Customer Charges.
- (c) Supplier will not be relieved of any of its obligations under this Customer Outsourcing Agreement and waives and releases each of the Customer Cluster members from any Claim it may have against it as a result of:
    - (i) its failure to review the Due Diligence Materials or request additional materials from the Customer Cluster; or
    - (ii) any error, omission or inaccuracy in the Due Diligence Materials.
  - (d) Supplier acknowledges that the Outsourcing Program Entities do not makes any warranty or representation in relation to the Due Diligence Materials.

## 2. Term

### 2.1 Initial Term

This Customer Outsourcing Agreement commences on the Commencement Date and continues until the expiry of the Establishment and Transition Agreement (**Initial Term**) unless otherwise terminated earlier in accordance with this Customer Outsourcing Agreement.

## 2.2 Approved Operational Service Orders

If on expiry of the Initial Term there remains any Operational Service Orders with a fixed term that has not yet expired, the term of that Operational Service Order will automatically expire at the same time as the Customer Outsourcing Agreement.

## 2.3 Co-expiry with Establishment and Transition Agreement

Notwithstanding any other term of this Customer Outsourcing Agreement, if the Establishment and Transition Agreement expires, and the Term of this Customer Outsourcing Agreement has not then expired, the parties agree that this Customer Outsourcing Agreement will expire at the same time as the Establishment and Transition Agreement.

# 3. Customer Cluster

## 3.1 Access by Beneficiary Entities

The Supplier agrees that a Beneficiary Entity may make use of the Services and Deliverables pursuant to this Customer Outsourcing Agreement, without having to enter into a separate agreement for Services and Deliverables (as applicable) from the Supplier.

## 3.2 Claims by Crown Beneficiary Entities

- (a) The Supplier acknowledges that:
  - (i) the Customer and each Crown Beneficiary Entity are part of the Crown and any loss, damage or expense suffered or incurred by the Customer or a Crown Beneficiary Entity in connection with this Customer Outsourcing Agreement is a loss, damage or expense suffered by the Crown (**Crown Loss**); and
  - (ii) the Customer may, on behalf of the Crown, bring a Claim against the Supplier for any Crown Loss which the Supplier is liable at law to the Crown but the Supplier will have the benefit of:
    - (A) the limitations and exclusions of liability set out in clause 33 (Liability); and
    - (B) any claim, defence, counter-claim or right of set-off which is available to the Supplier at law.
- (b) The Customer must ensure that all Claims for Crown Loss against the Supplier are brought by the Customer and not a Crown Beneficiary Entity.

## 3.3 Claims by Corporate Beneficiary Entities

- (a) Subject to clause 3.3(b), the Supplier indemnifies each Corporate Beneficiary Entity against all losses, damages, liabilities, claims and expenses (including legal costs) incurred by a Corporate Beneficiary Entity, arising out of or in connection with a breach of this Customer Outsourcing Agreement or negligence by the Supplier or Supplier Personnel, whenever or however such losses, damages, liabilities, claims and expenses (including legal costs) arise (including where they do so as a result of breaches or negligence of the Supplier occurring prior to that person becoming a Corporate Beneficiary Entity) (**Corporate Beneficiary Entity Loss**).
- (b) All limitations and exclusions of liability in this Customer Outsourcing Agreement that limit or exclude the liability of the Supplier to Customer will also apply to the Supplier's liability to Corporate Beneficiary Entities under the indemnity in clause 3.3(a) such that the Supplier will have no greater liability to the Corporate Beneficiary Entities in respect of the Corporate Beneficiary Entity Loss than the Supplier would have had if the Customer had suffered or incurred the Corporate Beneficiary Entity Loss itself and brought a Claim for such loss under this Customer Outsourcing Agreement.
- (c) The indemnity given in clause 3.3(a) in favour of a Corporate Beneficiary Entity is intended to be, and is, directly enforceable by each of those persons.
- (d) Customer represents, and Supplier acknowledges, that the Customer has been, or may be, appointed to act as agent of the Corporate Beneficiary Entities for the purpose of

enforcing (whether through court proceedings or otherwise) the indemnity given in clause 3.3(a) and that the Customer may bring proceedings on behalf of a Corporate Beneficiary Entity against Supplier, and that Customer may be expressly authorised by Corporate Beneficiary Entity to bring such proceedings in the name of Customer itself and not in the name of the Corporate Beneficiary Entity.

- (e) This clause 3.3 operates as a deed poll in favour of each person who is a Corporate Beneficiary Entity from time to time.

### **3.4 Claims by Supplier**

- (a) The Customer acknowledges that:
  - (i) any breach of this Customer Outsourcing Agreement or negligence by a Beneficiary Entity in connection with this Customer Outsourcing Agreement will be deemed a breach or negligence by the Customer (**Beneficiary Entity Default**); and
  - (ii) the Supplier may bring a Claim against the Customer for any loss, damage or expense suffered by the Supplier in connection with the Beneficiary Entity Default which the Customer would have been liable at law to the Supplier had the breach or negligence been that of the Customer (**Supplier Loss**) but the Customer will have the benefit of:
    - (A) the limitations and exclusions of liability set out in clause 33 (Liability); and
    - (B) any claim, defence, counter-claim or right of set-off which is available to the Customer at law had the Customer breached the Customer Outsourcing Agreement or was negligent.
- (b) The Supplier must ensure that all Claims for Supplier Loss are brought by the Supplier against the Customer and not a Beneficiary Entity.

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## **PART B – SERVICES TO BE PROVIDED UNDER CUSTOMER OUTSOURCING AGREEMENT**

### **4. Transition-In and Transformation**

#### **4.1 Transition-In and Transformation Plan for Foundation Customers**

If the Customer is a Foundation Customer, Schedule 6 - Foundation Customer T&T Plan of the ETA sets out the Transition-In and Transformation Plan for the Customer.

#### **4.2 Transition-In and Transformation Plan for Customers other than Foundation Customers**

If the Customer is not a Foundation Customer, within 44 Business Days of the Commencement Date the Supplier must have delivered to the Contract Authority a complete and detailed draft of the Transition-In and Transformation Plan for Approval by the Contract Authority under clause 6.5 (Transition-In and Transformation Plan for Customers other than Foundation Customers) of the ETA (**Draft Transition-In and Transformation Plan**).

#### **4.3 Termination**

If the Customer is not a Foundation Customer, the Customer may terminate this Customer Outsourcing Agreement if:

- (a) the Supplier fails to deliver the complete and detailed Draft Transition-In and Transformation Plan in accordance with clause 4.2 (Transition-In and Transformation Plan for Customers other than Foundation Customers) and despite the Customer notifying the Supplier of the breach, the Supplier fails to provide such Draft Transition-In and Transformation Plan within a further 5 Business Days of such notice; or

- (b) the Draft Transition-In and Transformation Plan for the Customer is not Approved by the Contract Authority within 60 Business Days of the Commencement Date of this Customer Outsourcing Agreement.

#### 4.4 Supplier's role during Transition-In and Transformation

The Supplier must perform its Transition-In and Transformation obligations:

- (a) as set out in the Transition-In and Transformation Plan, including meeting the timetable set out in the Transition-In and Transformation Plan; and
- (b) as reasonably directed by an Outsourcing Program Entity provided that such direction is not inconsistent with the Transition-In and Transformation Plan.

#### 4.5 Delay caused by Outsourcing Program Entities

Any delay by an Outsourcing Program Entity to perform the Required Inputs allocated to them in the Transition-In and Transformation Plan will be handled in accordance with clause 23 (Delay). In relation to Transition-In and Transformation, a notice issued to the Contract Authority under clause 11 (Delay) of the Establishment and Transition Agreement will be deemed to be a notice issued to the Customer under clause 23 (Delay).

## 5. Operational Services

### 5.1 Issuing orders for Operational Services

On and from the Foundation Customer Transition-In Completion Date, the Customer may issue orders for:

- (a) Standard Items for which a quote is not required (**Standard Order**);
- (b) Standard Items for which a quote is required (**Request for Quote**); or
- (c) Tailored Items, or a combination of Tailored Items and Standard Items (**Request for SOW**).

### 5.2 Response to orders

- (a) Each time the Supplier receives a Standard Order it must provide to the Customer, within 2 Business Days after receiving the Standard Order, a notice confirming that it has received the Standard Order and will supply the relevant Standard Items.
- (b) Each time the Supplier receives a Request for Quote, it must provide to the Customer within 5 Business Days after receiving the Request for Quote, a quote for the supply of the Standard Items identified in the Request for Quote which must be no higher than the amount calculated by adding the individual Service Catalogue Prices for those Standard Items that are set out in the applicable Service Catalogue.
- (c) Each time the Supplier receives Request for SOW, it must provide to the Customer within 10 Business Days (or such other timeframe as agreed by the parties) after receiving the Request for SOW (and associated information) a high level proposal (**SOW Outline**) to supply the services and deliverables required in the Request for SOW that sets out:
  - (i) any additional information that the Supplier would reasonably require before being able to submit a draft Statement of Work;
  - (ii) the timeframe for submitting a draft Statement of Work addressing the requirements of the Request for SOW and using the template Statement of Work set out in the Schedule 6 - Template Statement of Work (**Draft SOW**);
  - (iii) the fees and Customer Charges for performing the services required under the Request for SOW (which must be consistent with any prices or pricing methodology set out in the Service Catalogue or this Customer Outsourcing Agreement); and
  - (iv) any other information that it reasonably considers the Customer would require in order to make a decision whether or not to proceed with the Request for SOW.

- (d) Following receipt of a SOW Outline, the Customer will:
  - (i) advise the Supplier that it does not wish the Supplier to submit a Draft SOW;
  - (ii) advise the Supplier that it does wish the Supplier to submit a Draft SOW, in which case the Supplier must submit to the Customer a fully detailed Draft SOW for the supply of the services and deliverables required in the Request for SOW within the timeframe specified in the SOW Outline; or
  - (iii) discuss the SOW Outline with the Supplier, following which it may take either of the actions in clauses 5.2(d)(i) and 5.2(d)(ii).

### **5.3 Response to Standard Order**

On issue by the Customer of a Standard Order:

- (a) that Standard Order; and
- (b) parts of the Service Catalogue and Service Catalogue Price (as at the date of issue of the Standard Order) applicable to the Standard Items ordered under that Standard Order,

will be incorporated into this Customer Outsourcing Agreement and the Supplier must supply the relevant Standard Items in accordance with the terms of that Standard Order, the incorporated parts of the Service Catalogue and the Service Catalogue Price and this Customer Outsourcing Agreement.

### **5.4 Response to Request for Quote**

Within 3 Business Days after receiving a quote in response to a Request for Quote, the Customer may notify Supplier that it:

- (a) accepts the quote, in which case the relevant quote will be incorporated into this Customer Outsourcing Agreement and Supplier must supply the relevant Standard Items in accordance with the terms of that quote and this Customer Outsourcing Agreement;
- (b) rejects the quote, in which case that Request for Quote and quote has no effect; or
- (c) wishes to negotiate the quote, in which case:
  - (i) Supplier must negotiate in good faith with the Customer to agree a revised quote; and
  - (ii) if a revised quote is agreed and accepted by the Customer, the relevant quote will be incorporated into this Customer Outsourcing Agreement and Supplier must supply the relevant Standard Items in accordance with the terms of the relevant quote and this Customer Outsourcing Agreement.

### **5.5 Response to Draft SOW**

- (a) Following receipt and evaluation by the Customer of a Draft SOW, the Customer and the Supplier must negotiate in good faith to agree a final form of the Draft SOW which can be executed.
- (b) The Customer may terminate those negotiations at any time without liability until a Statement of Work is executed by both parties.
- (c) The parties agree that a SOW under this Customer Outsourcing Agreement (or an amendment or variation thereto) may be executed by their authorised representatives under this Customer Outsourcing Agreement. Upon such execution, the SOW becomes binding on the parties to this Customer Outsourcing Agreement. Each Statement of Work executed by the parties pursuant to this clause constitutes a separate agreement between the parties which incorporates all the terms of this Customer Outsourcing Agreement, together with the terms of the SOW itself. If the parties execute a Statement of Work, the Supplier must supply the relevant Items in accordance with its terms.

## 5.6 Modifications to Service Catalogue

- (a) If the Service Catalogue Price for a Standard Item currently being provided under an Operational Service Order is changed, the Customer Charge for that Standard Item will be amended to match the changed Service Catalogue Price.
- (b) If a Standard Item currently being provided under an Operational Service Order is modified or replaced in the Service Catalogue, the Supplier must offer the modified or replaced Standard Item to the Customer. If the Customer accepts the offer, the Standard Item in the Operational Service Order will be replaced by the modified or replaced Standard Item. If the Customer rejects the offer, the Standard Item in the Operational Service Order will continue to apply for the remaining term of the Operational Service Order.

## 6. Services

### 6.1 Scope of Services

The Supplier must provide:

- (a) all services, functions, processes, deliverables and responsibilities described in this Customer Outsourcing Agreement;
  - (b) except for the Retained Services or as otherwise set out in the Transition-In and Transformation Plan, all services that were received by the Customer Cluster from ServiceFirst in respect of the subject matter of the Service Towers in the 12 months before the Commencement Date from ServiceFirst and were notified to the Supplier or which the Supplier otherwise became aware, or should have become aware of, had it undertaken reasonable due diligence;
  - (c) all incidental services, functions, processes or responsibilities not specifically described in this Customer Outsourcing Agreement but which are necessary for the proper performance and provision of the services referred to in this clause 6.1(a) to 6.1(b); and
  - (d) all services, functions, processes, deliverables and responsibilities identified as a BPO Provider Dependency in the Operating Level Agreement,
- (together, the **Services**).

If there is an inconsistency between paragraphs (a) to (c) above, then the paragraph in the part higher in the list prevails to the extent of the inconsistency.

### 6.2 No exclusivity

The Supplier acknowledges that:

- (a) it is not the exclusive supplier of Services or Deliverables to the Customer Cluster, and the members of the Customer Cluster may at any time during the Term perform for itself or obtain from a third party any services or deliverables the same as or similar to any Services or Deliverables or parts thereof;
- (b) there is no obligation on the Customer to issue any orders for Services or Deliverables or to acquire any minimum volume of Services or Deliverables; and
- (c) any reduction in volume of Services or removal of Services under an Operational Service Order will not be a termination for convenience by the Customer.

### 6.3 No Minimum Spend

Nothing in this Customer Outsourcing Agreement requires the Customer to purchase, or offer to purchase, from the Supplier under this Customer Outsourcing Agreement any minimum volume of Services or Deliverables or to use or exploit goods or services supplied by the Supplier, and the Customer does not guarantee a minimum spend in any period during the Term.

### 6.4 Facilities

The Supplier must:

- (a) maintain and enforce at Facilities safety and physical security procedures that are at least equal to the higher of the following standards, policies and procedures:
  - (i) Customer Policies and procedures applicable to Customer Cluster Premises; and
  - (ii) any higher standard otherwise agreed by the Customer and the Supplier, except in relation to those Facilities for whom the Customer has given written exemption from this requirement;
- (b) comply, and ensure that all the Supplier Personnel who have access to any Customer Cluster Premises or any of the Customer's information technology systems are aware of, and comply with, all Customer Policies; and
- (c) comply with any other requirements relating to Facilities as specified in this Customer Outsourcing Agreement.

## **6.5 Compliance with Customer Policies and Customer directions**

The Supplier must comply with, and ensure that all Supplier Personnel comply with:

- (a) all Customer Policies to the extent that they are relevant or applicable to the provision of the Services and Deliverables or otherwise relevant or applicable to the performance of the Supplier's obligations under this Customer Outsourcing Agreement; and
- (b) Customer's directions in relation to this Customer Outsourcing Agreement, provided that any such directions are consistent with the requirements of this Customer Outsourcing Agreement.

## **6.6 Compliance with Laws**

The Supplier must at all times:

- (a) comply with all Laws to the extent that they are relevant or applicable to the provision of the Services and Deliverables or otherwise relevant or applicable to the performance of the Supplier's obligations under this Customer Outsourcing Agreement (including those Laws set out in Schedule 7 - Customer Policies and Laws); and
- (b) at the Customer's request, promptly provide the Customer with a written statement that the Supplier is fully compliant with the Laws that the Supplier is required to comply with under clause 6.6(a) and that are referred to in the Customer's request.

## **6.7 Manuals**

The Supplier must:

- (a) develop and keep updated at all times:
  - (i) those manuals specified in the Transition-In and Transformation Plan; and
  - (ii) any other manual required to be produced by the Supplier under this Customer Outsourcing Agreement;
- (b) provide revisions and updates to the manuals to the Customer immediately following any change for the Customer's Approval; and
- (c) comply with all manuals referred to in clause 6.7(a).

## **6.8 Interoperability**

The Supplier must:

- (a) ensure that all services, equipment, networks, software, enhancements, upgrades, modifications and other resources recommended by the Supplier for use in connection with the Services and Deliverables are compatible with and otherwise capable of being successfully integrated and interfaced with each other and with other resources then being used by the Customer without any adverse effect (including where applicable as to functionality, speed, service levels, interconnectivity, reliability, availability, performance, response times, or similar measures); and

- (b) at its own cost, develop or modify any interfaces necessary to fulfil its obligations under clause 6.8(a).

## 6.9 Review Events

- (a) If a Review Event occurs or is likely to occur the Supplier may provide the Customer with a notice of that fact, including full details of the effect of the Review Event on the performance of the Supplier's obligations under this Customer Outsourcing Agreement. The Supplier must use all reasonable endeavours to mitigate the adverse consequences of the Review Event.
- (b) The parties must meet to discuss the Review Event, and the Supplier must provide a written draft Contract Variation in respect of that Review Event for the Customer to consider.
- (c) If the parties agree to the Contract Variation within 20 Business Days of the meeting, the parties will execute the Contract Variation and this Customer Outsourcing Agreement will be amended in accordance with the Contract Variation.
- (d) If the parties do not agree to the Contract Variation within 20 Business Days of the meeting, then:
  - (i) if the Review Event can be addressed by monetary compensation to the Supplier, either party may refer the matter for expert determination under clause 6.10 (Review Event expert determination) to determine the monetary compensation applicable in respect of the Contract Variation; or
  - (ii) if the Review Event cannot be addressed by monetary compensation to the Supplier, the matter will be referred to the Dispute Resolution Process set out in this Customer Outsourcing Agreement. If the Dispute Resolution Process cannot resolve the matter, either party may terminate the affected Services or Deliverables by written notice.

## 6.10 Review Event expert determination

- (a) Within 7 Business Days after referral to expert determination under clause 6.9(d)(i) the parties must exchange written lists of 3 persons from whom the expert is to be chosen in order of preference.
- (b) The parties agree that the monetary compensation for a Contract Variation will be determined by an independent expert being any person that appears on both parties' lists under clause 6.10(a) and if more than one person appears on both lists, the person given the highest order of priority by the party that gave the notice under clause 6.10(a).
- (c) If no person appears on the list of both parties, the party which gave the notice under clause 6.10(a) must procure the National President (or acting National President for the time being) of the Institute of Arbitrators and Mediators, Australia to nominate a person to act as the expert.
- (d) The expert determination process is to be administered in accordance with clause 6.11 (Rules of expert determination).
- (e) It is the intention of the parties that the expert appointed to determine the appropriate monetary compensation will be a person with appropriate skills having regard to the nature of the matters in dispute.
- (f) The Supplier and the Customer will not be entitled to challenge the appointment of an expert under this clause 6.10 on the basis that the expert does not satisfy the requirements of clause 6.10(e).
- (g) Any agreement for expert determination under this Customer Outsourcing Agreement will not constitute an Arbitration Agreement for the purposes of the *Commercial Arbitration Act 2010* (NSW).

## 6.11 Rules of expert determination

- (a) The expert will:

- (i) act as an expert and not as an arbitrator;
  - (ii) proceed in any manner he or she thinks appropriate without being bound to observe the rules of natural justice or the rules of evidence;
  - (iii) take into consideration all documents, information and other material which the parties give the expert including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute;
  - (iv) not be expected or required to obtain or refer to any other documents, information or material, but may do so if he or she thinks it is appropriate;
  - (v) use his or her own expertise in forming his or her conclusions; and
  - (vi) make his or her determination of the appropriate monetary compensation within 30 days from the acceptance by the expert of the appointment, or such extended period as the parties may agree.
- (b) The expert may, if he or she thinks appropriate, arrange to meet or otherwise have discussions with the parties, together but not separately, and in connection with any such meeting or discussions:
- (i) a party may be accompanied by legal or other advisers; and
  - (ii) the parties agree to be bound by such procedural directions as may be given by the expert, both in preparation for and during the course of the meeting or discussions.
- (c) Without restricting the generality of clause 6.11(b)(ii), the Supplier and the Contract Authority agree and undertake to produce such information and documents as the expert may from time to time direct at such place and at such time as the expert may direct.
- (d) The expert may commission his or her own advisers or consultants, including lawyers, accountants, bankers, engineers, surveyors or other technical consultants, to provide information to assist the expert in his or her determination.
- (e) The Supplier and the Customer must indemnify the expert for the reasonable cost of retaining those advisers or consultants.
- (f) The expert will disclose to the parties any relationship or interest with the parties or their respective officers, employees, contractors, consultants or agents who are involved in expert determination and any interest the expert has in the matters in dispute.
- (g) If the expert becomes aware of any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially, the expert will immediately inform the Supplier and the Contract Authority.
- (h) After the parties have had the opportunity to consider the expert's disclosure under clause 6.11(g) then either party may require that the Dispute be referred to another expert for resolution in accordance with clauses 6.10 (Review Event expert determination) to 6.14 (Costs) (inclusive) by giving notice to the other party within 5 Business Days of the date on which it was informed of the circumstance.

## **6.12 Expert finding**

- (a) The determination of the expert must be in writing and will be final and binding on the Supplier and the Customer.
- (b) Upon submission by either party, the expert may amend the determination to correct:
  - (i) a clerical mistake;
  - (ii) an error from an accidental slip or omission;
  - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or manner; or
  - (iv) a defect in form.

### 6.13 Release and indemnity

The expert will not be liable in respect of the expert determination, except in the case of fraud on the part of the expert. Supplier and the Customer agree to release and each separately indemnify the expert from and against 50% of the value of all claims, except in the case of fraud on the part of the expert, which may be made against him or her by any person in respect of the expert's appointment to determine the appropriate monetary compensation.

### 6.14 Costs

Supplier and the Customer must bear their own costs in connection with the expert determination proceedings and must pay an equal portion of the cost of the expert.

### 6.15 Working from home conditions

- (a) Notwithstanding clause 18.1, the Customer consents to the Supplier and Supplier Personnel performing part of the Services from residential premises that are not office facilities approved by the Customer or other appropriate Supplier premises (**WFH Consent**), provided that:
- (i) it is safe and lawful to do so;
  - (ii) such premises (and the facilities to be used to perform Services at those premises) are appropriate for the performance of the relevant Services and comply with WHS Legislation;
  - (iii) the Supplier and Supplier Personnel only use for the performance of the Services appropriate and secure internet connections, such as Citrix or Virtual Private Network connection;
  - (iv) all Supplier Personnel use only Assets and Supplier email accounts provided by the Supplier for the performance of the Services;
  - (v) the Customer's Confidential Information, Customer Data and Personal Information remain protected in accordance with clauses 6.17 (Accuracy and timeliness) and 6.18 (Access) and are not disclosed to or accessible or viewable by non-Supplier Personnel whether directly or indirectly;
  - (vi) such performance of the Services does not cause the standard of performance of the Services to fall, or have a negative impact on the Supplier's performance against or ability to meet the associated Service Levels;
  - (vii) such performance of the Services does not cause the Customer to incur additional cost; and
  - (viii) any cost savings associated with such performance of the Services are disclosed to the Customer, with 50% of such savings credited to the Customer by way of discount from the Customer Charges,
- (**WFH Conditions**).
- (b) In the event that any of the WFH Conditions is not fully met at any time, then the Customer may give notice to the Supplier to revoke the WFH Consent, upon which the Supplier and the Supplier Personnel must perform the Services from office premises approved by the Customer in accordance with clause 18.1.

### 6.16 Fitness for purpose

The Supplier must provide Services and Deliverables which are fit for the purpose for which they are required by the Customer as detailed in, or reasonably ascertainable from, this Customer Outsourcing Agreement, Operational Service Order(s) or any Standard Operating Procedures agreed under the foregoing.

### 6.17 Accuracy and timeliness

In respect of any Services under this Customer Outsourcing Agreement which involve the Supplier processing payment instructions (**Relevant Services**), all payment instructions processed by the Supplier or the Supplier Personnel in connection with the Relevant Services must:

- (a) be for the correct amount;
- (b) identify the correct recipient and, if required by the Customer, the recipient's correct account and other payment details (such as the correct reference number); and
- (c) be processed by the Supplier so that they are received by the Customer's nominated accounts payable team on or before the time required by this Customer Outsourcing Agreement, or any earlier time required by (or to enable payment by the Customer by the time required by):
  - (i) applicable Law or tax rulings; or
  - (ii) the Customer's relevant arrangements with taxation authorities or other third parties that have been notified to the Supplier or of which the Supplier is otherwise aware.

To the extent that any inaccuracy is caused by the provision of inaccurate information to the Supplier by the Customer (and the fact that such information was inaccurate was not reasonably capable of being identified by the Supplier), that inaccuracy will not be considered a breach of this clause 6.17 (Accuracy and timeliness), provided that Supplier promptly corrects that inaccuracy once it is identified.

## 6.18 Access

The parties acknowledge and agree that:

- (a) as at the Amendment and Restatement Date of the ETA, as a result of the COVID-19 pandemic, remote working and/or social distancing measures are required and/or strongly recommended by Australian and NSW government authorities;
- (b) as at the Amendment and Restatement Date of the ETA, there are no Services currently being performed by the Supplier for which access to the Customer's site(s) needs to be granted to the Supplier or Supplier Personnel in order for the Supplier to provide the Services;
- (c) if, as a result of a Contract Variation, the Supplier or Supplier Personnel does require access to the Customer's (site(s) in order to provide certain Services (**On-Site Services**), and the Supplier cannot lawfully access the relevant Customer's site(s), or if the Customer, acting reasonably and in light of the most recent Australian and NSW government guidance in relation to COVID-19 at the relevant time, considers it desirable not to permit such access, then the Customer will provide the Supplier notice in writing of the change in access to the Customer site(s). The parties will discuss in good faith alternative arrangements which may be implemented to deliver the On-Site Services, and such alternative arrangement will take effect if so agreed in a Change Request. If no such alternative arrangement is agreed, then the relevant On-Site Services (and the payment of any fees or charges to the extent related to such delayed On-Site Services) will be delayed until such time as an alternative arrangement is agreed;
- (d) some or all of such delayed On-Site Services can be resumed by the Supplier if the Customer provides a subsequent notice in writing stating that the provision of the relevant On-Site Services can be resumed by the Supplier; and
- (e) if the Customer cannot lawfully access any of the Supplier site(s) due to applicable Australian or NSW government regulations in relation to COVID-19 at the relevant time, then the Customer will not be able to physically access such Supplier site(s), that may otherwise be permitted or required under this Customer Outsourcing Agreement, (for example, for the purposes of exercising an audit right under this Customer Outsourcing Agreement) until such time as those regulations change such that the Customer is able to access Supplier site(s) for the relevant purposes.

## 7. Flexibility for Machinery of Government Changes

### 7.1 Machinery of Government Changes

The Supplier acknowledges that the Customer Cluster may from time to time be subject to Machinery of Government Changes. If a Machinery of Government Change occurs, the Supplier will use all reasonable efforts to assist the Customer Cluster to implement the Machinery of Government Change as it relates to this Customer Outsourcing Agreement whilst minimising the impact on the Services and Deliverables.

### 7.2 Adjustment of Services and Deliverables

Without limiting clause 7.1 (Machinery of Government Changes), if there is a Machinery of Government Change, the Supplier agrees:

- (a) that the Customer may by notice terminate any existing Services or Deliverables under this Customer Outsourcing Agreement without imposition of any early termination or other similar charges, to the extent that the whole or part of the Customer's or Beneficiary Entities' role, function or responsibility has been removed, transferred or amalgamated as part of the Machinery of Government Change;
- (b) on request of the Customer, to vary this Customer Outsourcing Agreement in accordance with clause 20 (Contract Variation) (or enter into additional Operational Service Orders) to add additional Services or Deliverables required by the Customer to perform any role, function or responsibility that has been transferred to, or amalgamated with the existing functions or responsibilities of, the Customer or Beneficiary Entity as part of the Machinery of Government Change; and
- (c) without limiting clause 42.2 (Assignment or novation by Customer), that the Customer may assign any of its rights under this Customer Outsourcing Agreement, or novate its rights and obligations under this Customer Outsourcing Agreement, to any other entity to whom the Customer's or Beneficiary Entity's role, function or responsibility has been wholly or partially transferred as part of the Machinery of Government Change.

### 7.3 Further effect

The Supplier agrees to execute all documents and do all other things necessary to give effect to clauses 7.1 (Machinery of Government Changes) and 7.2 (Adjustment of Services and Deliverables).

### 7.4 Additional cost

To the extent that assistance required under clause 7.1 (Machinery of Government Changes) or the implementation of a Machinery of Government Change under clause 7.2 (Adjustment of Services and Deliverables) requires the Supplier to undertake material additional work or expenses, not then within the scope of the Customer Outsourcing Agreement, the parties will agree a SOW applicable to such assistance or implementation.

## 8. Service continuity management

### 8.1 Supplier Disaster Recovery Plan and Business Continuity Plan

Within 30 days of the Commencement Date the Supplier must deliver to the Customer the:

- (a) Supplier Disaster Recovery Plan; and
- (b) Supplier Business Continuity Plan,

containing at a minimum the Common DR and BCP Requirements and those details set out in Schedule 8 - Disaster Recovery and Business Continuity Requirements. Each plan will be subject to the Customer's Approval and the Supplier must promptly incorporate any reasonable comments provided by Customer in respect of each plan.

### 8.2 Responsibility for the plans

The Supplier must:

- (a) update, test and do all other things required in respect of the Supplier Disaster Recovery Plan as set out in Schedule 8 - Disaster Recovery and Business Continuity Requirements; and
- (b) update, test and do all other things required in respect of the Supplier's Business Continuity Plan as set out in Schedule 8 - Disaster Recovery and Business Continuity Requirements.

Each updated plan is subject to the Customer's Approval and the Supplier must promptly incorporate any reasonable comments provided by the Customer in respect of each plan.

### **8.3 Implementation of plans**

- (a) The Supplier must implement the Supplier Disaster Recovery Plan if the Customer makes a Disaster Declaration.
- (b) The Supplier must implement the Supplier's Business Continuity Plan if a circumstance in which the plan is applicable arises.

### **8.4 Termination**

If:

- (a) Customer makes a Disaster Declaration and the Supplier fails to implement the Supplier Disaster Recovery Plan at such time as set out in the Supplier Disaster Recovery Plan or fails to adhere to the requirements of the Supplier Disaster Recovery Plan; or
- (b) a circumstance in which the Supplier's Business Continuity Plan is applicable arises and the Supplier fails to implement the Supplier's Business Continuity Plan immediately or fails to adhere to the requirements of the Supplier's Business Continuity Plan,

then, in addition to any rights which the Customer may have at law or under this Customer Outsourcing Agreement, the Customer may exercise its right to terminate all or any part of this Customer Outsourcing Agreement by written notice to the Supplier.

### **8.5 Customer Data deposit**

Each Quarter, the Supplier must provide to the Customer a copy of the Customer Data in an industry standard format as reasonably directed by the Contract Authority or another format agreed by the Customer and Supplier.

## **9. Service Levels**

### **9.1 Service Levels**

In delivering the Operational Services, the Supplier must:

- (a) meet or exceed the Service Levels;
- (b) in relation to any Operational Services that do not have a corresponding Service Level, achieve levels of performance that:
  - (i) were being received by the Customer or Beneficiary Entity (as applicable) in the 12 months prior to the Commencement Date as provided by the Customer; and
  - (ii) at a minimum, are consistent with those performed by service providers who provide services similar to the Services.

### **9.2 Service Level failure**

If the Supplier fails to provide the Operational Services in accordance with the applicable Service Levels, the Supplier must at no additional cost to the Customer promptly:

- (a) pay to the Customer the Service Credits in accordance with Schedule 2 - Service Levels and Service Credits;
- (b) if requested by the Customer (and if feasible), re-perform those Operational Services which gave rise to the failure to meet the Service Level;

- (c) pay, on behalf of the Customer, any fine, penalty or interest imposed on the Customer as a result of the Supplier failing to meet any of the Critical Service Levels;
- (d) use all reasonable endeavours to correct the fault which caused the failure to meet the Service Level (including conducting a root-cause analysis); and
- (e) arrange all additional resources reasonably necessary to perform the Operational Services in accordance with the Service Level as soon as practicable.

The above remedies are without prejudice to any other right or remedy available to the Customer.

### **9.3 Not a penalty**

The parties agree that the payment of Service Credits is not a penalty but a genuine pre-estimate of loss likely to be suffered by the Customer or Beneficiary Entity where the Supplier fails to meet any Service Level.

### **9.4 Discretion to waive Service Credits due to material volume increases**

If a Service Level Default is solely caused by the Aggregate Actual Annual Volume for a Standard Item for a year exceeding the Aggregate Baseline Annual Volume for that Standard Item for that year by more than 10%, then the Customer may, on a case-by-case basis and in its sole discretion, by giving notice to the Supplier, elect to waive (in whole or in part) its right to receive any Service Credits owing to it as a result of that particular Service Level Default. The parties acknowledge and agree that the Customer is under no obligation to exercise the discretion outlined in this clause 9.4.

### **9.5 Monitoring and Service Level tools**

The Supplier must implement and maintain all measurement, monitoring and reporting tools and procedures:

- (a) required to measure, monitor, report and audit its performance against Service Levels;
- (b) permit reporting at a level of detail sufficient to determine compliance with the Service Levels,

including measuring, monitoring and reporting tools and procedures that:

- (c) a professional services provider providing services similar to the Services would use; or
- (d) are specified in Schedule 2 - Service Levels and Service Credits.

### **9.6 Monitoring and Service Level tools approval**

The Supplier must ensure that before a reporting tool or procedure under clause 9.5 (Monitoring and Service Level tools) is used they are Approved by the Customer.

### **9.7 Audit**

The Supplier agrees that the Customer (or its nominee) may audit all Service Level measurement, monitoring and reporting tools and processes and will give the Customer (or its nominee) all reasonable assistance in undertaking such audit.

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## **PART C – TECHNOLOGY**

### **10. Software Refresh**

For each item of Software, the Supplier must:

- (a) provide training to relevant the Customer Cluster users in the use of the new releases and upgrades to the Software, or IT trainers where the Customer specifies a train the trainer approach;

- (b) unless otherwise agreed with the Contract Authority, ensure that all functionality in each new release or upgrade as applicable (including any new functionality) is made available; and
- (c) maintain the release of such software, as defined in paragraphs (b) and (c) of the definition of Software, to a minimum of N-2.

## 11. Virus

### 11.1 Prevention

The Supplier must use reasonable endeavours and comply with best industry practice to prevent Viruses from being introduced into or remaining within the Supplier systems or the Customer Cluster systems and environment.

### 11.2 Remediation action

- (a) If a Virus is found to have been introduced into the Customer Cluster systems and environment the Supplier must:
  - (i) immediately notify the Customer in writing of the introduction;
  - (ii) ensure that it takes all steps necessary (and as otherwise directed by the Customer) to remove the effects of the Virus on the Customer Cluster systems and environment; and
  - (iii) if the Virus causes an interruption of the Services, outage or a loss of operational efficiency of the Customer Cluster's systems or environment or loss of data, take all steps necessary (and as otherwise directed by the Customer) to mitigate and restore the Service and loss of data.
- (b) Where the introduction of the Virus is caused by an act or omission of the Supplier or Supplier Personnel or a breach of this Customer Outsourcing Agreement by the Supplier, the Supplier will comply with the obligations under clauses 11.2(a)(ii) and 11.2(a)(iii) at no additional charge to the Customer Cluster.
- (c) Where the introduction of the Virus is not caused by an act or omission of the Supplier or Supplier Personnel or a breach of this Customer Outsourcing Agreement by the Supplier:
  - (i) if the Supplier's time and materials costs of complying with clauses 11.2(a)(ii) and 11.2(a)(iii) will be equal to or less than \$30,000, the Supplier must undertake the activities contemplated in those clauses immediately, and those costs will be paid by the Customer; or
  - (ii) if the Supplier's time and materials costs of complying with clauses 11.2(a)(ii) and 11.2(a)(iii) will exceed \$30,000, the Supplier must notify the Customer and obtain the Customer's Approval of those costs before undertaking the activities contemplated in those clauses. If the Customer approves the costs, the Supplier can commence undertaking those activities and those costs will be paid by the Customer. If the Customer rejects those costs, the Supplier will not be required to comply with clauses 11.2(a)(ii) and 11.2(a)(iii).

### 11.3 Disabling code

- (a) Subject to clause 11.3(b), the Supplier must ensure that any Software made available to the Customer Cluster in respect of the provision of the Services does not have any code that would have the effect of disabling or limiting the operation of the Software or otherwise shutting down all or any portion of the Services or Customer Cluster's systems or environment, unless such code is entirely within the control of the Contract Authority or the Customer.
- (b) The Supplier may implement a code to disable or limit the operation of the Software or otherwise shut down all or any portion of the Services if:
  - (i) there is an Emergency Shutdown Event; and

- (ii) the process set out in the Operations Manual is complied with.

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## PART D – OPERATIONAL

### 12. Acceptance Testing

#### 12.1 Preparation of Draft Acceptance Test Plan

Unless otherwise agreed in writing, the Supplier must prepare plans for the conduct of Acceptance Tests for:

- (a) Services for which Acceptance Tests are expressed to be required under the Transition-In and Transformation Plan; commissioning of or transition to Operational Services; Services which are varied or are potentially impacted by a change or Refresh in Software, Equipment or processes after the Commencement Date, and any other Services agreed by the parties to be subject to Acceptance Tests, to enable the Customer to test whether those Services are being performed correctly and achieving the required outputs; and
- (b) Deliverables which are the subject of a Statement of Work (or are otherwise agreed by the parties as requiring testing) to test whether the Deliverables have been achieved or supplied (as applicable) in accordance with applicable specifications,

(each a **Draft Acceptance Test Plan**).

#### 12.2 Contents of Draft Acceptance Test Plan

Each Draft Acceptance Test Plan must specify:

- (a) the components of the Services and Deliverables in respect of which Acceptance Tests will be conducted (**Items to be Tested**);
- (b) the tests that will be conducted by each of the Supplier and the Customer;
- (c) the timetable for conducting the tests and the times within which Customer must conduct its testing and report back to the Supplier as to whether a tested item has passed or failed the Acceptance Tests; and
- (d) the Acceptance Criteria for the Items to be Tested.

#### 12.3 Customer's Approval of Acceptance Test Plan

Within 5 Business Days after receiving the Draft Acceptance Test Plan in accordance with clause 12.1 (Preparation of Draft Acceptance Test Plan), the Customer must:

- (a) give the Supplier notice that it Approves the Draft Acceptance Test Plan (in which case the approved plan will be an Acceptance Test Plan); or
- (b) comment on the Draft Acceptance Test Plan, in which case:
  - (i) the parties must meet to discuss the Customer's comments; and
  - (ii) within 5 Business Days after the meeting, the Supplier must prepare a revised Draft Acceptance Test Plan addressing the Customer's comments and submit it to the Customer for its Approval.

This clause 12.3 applies to any resubmitted Draft Acceptance Test Plan until the Draft Acceptance Test Plan is Approved by the Customer.

#### 12.4 Transition-In

In respect of Transition-In and Transformation, for the purposes of this clause 12 the Acceptance Test Plan is the Transition-In and Transformation Plan.

## 12.5 Amendment of an Approved Acceptance Test Plan

Any Acceptance Test Plan Approved by Customer may only be amended by the written agreement of Customer and Supplier.

## 12.6 Notice of testing

Supplier must:

- (a) give the Customer 5 Business Days' notice of the date on which the Acceptance Tests will be performed; and
- (b) allow any person nominated by the Customer to witness those Acceptance Tests.

## 12.7 Acceptance Test environment

Where specified in an Acceptance Test Plan, the Supplier must establish, maintain and manage an environment that will allow for the performance of the Acceptance Tests in a controlled, repeatable and verifiable manner, which environment must be Approved in writing by the Customer before the Acceptance Tests commence, acting reasonably.

## 12.8 Deliverables to be production ready

- (a) Prior to the commencement of any Acceptance Tests for Deliverables which are Equipment or Software, Supplier must:
  - (i) perform such internal testing on all such Deliverables (including, where applicable, component, integration, interfacing, regression and end-to-end testing) so as to satisfy itself that each Deliverable is ready for use in the Customer's or the Beneficiary Entity's environment (as appropriate) (**Readiness Testing**); and
  - (ii) certify in writing to the Customer that the Supplier has successfully completed all necessary Readiness Testing.
- (b) The Supplier must, promptly after a request by the Customer, deliver to the Customer copies of all documentation and materials relating to Readiness Testing (including, without limitation, test plans, test scripts, traceability and coverage matrices and test results).

## 12.9 Acceptance Test phase

The Supplier and the Customer must perform the Acceptance Tests in accordance with the Acceptance Test Plan. The Supplier must promptly provide the results of the Acceptance Tests to the Customer.

## 12.10 Customer's Approval

Within 10 Business Days (or any other period agreed in the applicable Acceptance Test Plan) after receiving the results of any Acceptance Tests in accordance with clause 12.9 (Acceptance Test phase), the Customer must give the Supplier notice that the Services or Deliverable(s) (as applicable):

- (a) has passed the Acceptance Tests - if the Service or Deliverable meets the relevant Acceptance Criteria (**Acceptance Notice**); or
- (b) has failed the Acceptance Tests - if the Service or Deliverable does not meet the relevant Acceptance Criteria or if the Customer is unable to complete the Acceptance Tests within the Acceptance Test Period due to the fault of the Supplier or problems relating to the Service or Deliverable (**Failure Notice**).

The Customer must ensure that the Failure Notice contains a clear description of the failure and specify in detail as to how the submitted Services and/or Deliverable(s) (as applicable) fail to conform to the Acceptance Criteria, and a further date on which the Supplier must resubmit the corrected Services or Deliverable for a repeat of the Acceptance Tests.

## 12.11 Correction and restart of Acceptance Tests

On receipt of a Failure Notice, the Supplier must correct, at its own cost, all defects and other issues identified with the relevant Service or Deliverable. The Supplier must resubmit the

corrected Service or Deliverable to the Customer for a repeat of the Acceptance Tests by the date set out in the Failure Notice.

### 12.12 Further failure of Acceptance Tests

If a Service or Deliverable fails the Acceptance Tests carried out under clause 12.11 (Correction and restart of Acceptance Tests) the Customer may at its option do any of the following:

- (a) issue a Failure Notice under clause 12.10(b) in which case clauses 12.11 (Correction and restart of Acceptance Tests) and this clause 12.12 will apply to a further round of correction and testing;
- (b) accept the Service or Deliverable or parts of the Service or Deliverable by notice to the Supplier, notwithstanding the failure, for a reduction of the relevant Customer Charges agreed by the parties;
- (c) accept the Service or Deliverable 'as is' by notice to the Supplier, subject to the Supplier completing, at its own cost, a set of procedures (eg work-around) agreed by the Customer and the Supplier to rectify the Service or Deliverable or their impact; or
- (d) if the Acceptance Tests have failed more than twice, reject the Service or Deliverable and immediately terminate this Customer Outsourcing Agreement or relevant Operational Service Order (at the Customer's discretion) for breach by the Supplier under clause 35.2 (Termination for cause).

If a Service or Deliverable is Accepted under clause 12.12(c) and the Supplier fails to complete the set of procedures as required by the Acceptance Notice, the Customer may notify the Supplier that its Acceptance of that Service or Deliverable is withdrawn, in which case the Customer may exercise its rights under clause 12.12(a), (b) or (c).

### 12.13 Dependent Items to be Tested

- (a) Notwithstanding any other term of this clause 12, an Item to be Tested or a number of Items to be Tested that make up a larger solution (as identified in the relevant Acceptance Test Plan) (**Solution**) will not be finally Accepted until Acceptance Testing for each Item to be Tested is completed, and the Customer issues an acceptance certificate for the whole Solution signed by an authorised representative (**Solution Acceptance Certificate**).
- (b) The Customer may reject all Items to be Tested that make up a Solution if one or more of the Items to be Tested that make up the Solution fail to meet the relevant Acceptance Criteria more than twice, even if Customer has previously Accepted some or all of the Items to be Tested.
- (c) If all the Items to be Tested that make up a Solution meet the Acceptance Criteria, the Customer must issue a Solution Acceptance Certificate.

### 12.14 Assistance

Each party must provide all assistance reasonably requested by the other in connection with Acceptance Tests.

### 12.15 No deemed acceptance

Subject to clause 12.16 (Failure to respond), for the avoidance of doubt:

- (a) no act or omission on the part of the Customer or a Beneficiary Entity in connection with this clause 12 or this Customer Outsourcing Agreement constitutes deemed acceptance of a Service or a Deliverable; and
- (b) acceptance of a Service or a Deliverable does not occur until such time as the Customer issues an Acceptance Notice (and where applicable a Solution Acceptance Certificate).

### 12.16 Failure to respond

If the Customer does not issue a notice under clause 12.10 (Customer's Approval), then the Supplier may serve a written notice on the Customer that:

- (a) the Customer has 10 Business Days from receipt of the notice given under this clause 12.16 to give Supplier notice that the Service(s) or Deliverable(s) (as applicable):

- (i) have passed the Acceptance Tests in the form of an Acceptance Notice; or
  - (ii) have failed the Acceptance Tests in the form of a Failure Notice; and
- (b) if the Customer does not respond to the notice issued under clause 12.16(a) within 10 Business Days from receipt of the notice, then the relevant Service(s) or Deliverable(s) (as applicable) will be deemed Accepted.

### **12.17 Acceptance of documentary Deliverables**

- (a) This clause 12.17 applies to the Acceptance of documentary Deliverables.
- (b) The Supplier must submit each documentary Deliverable to the Customer for Approval on or before the applicable due date.
- (c) Before submitting any documentary Deliverable, the Supplier must ensure that the documentary Deliverable meets all applicable requirements specified in this Customer Outsourcing Agreement or otherwise applicable to that documentary Deliverable.
- (d) Once submitted, the Customer will, within 20 Business Days (or any other time frame set out in this Customer Outsourcing Agreement, another document which has been Approved by the Customer or otherwise agreed between the parties) review the documentary Deliverable and either:
  - (i) Approve the documentary Deliverable; or
  - (ii) require amendments to the documentary Deliverable on the basis that it does not meet all applicable requirements for that documentary Deliverable or is otherwise not reasonably acceptable to the Customer.
- (e) The Supplier must, within 5 Business Days (or any alternative timeframe applicable to or agreed for that documentary Deliverable), prepare a revised documentary Deliverable which meets all applicable requirements and addresses any comments and requirements reasonably issued by the Customer under clause 12.17(d)(ii).
- (f) The parties must repeat the process in this clause 12.17 until the documentary Deliverable meets all applicable requirements specified in this Customer Outsourcing Agreement and is otherwise reasonably acceptable to the Customer.
- (g) If the Customer does not give notice Approving or requiring amendments to the documentary Deliverable in accordance with clause 12.17(d), then the Supplier may serve a written notice on Customer that:
  - (i) it has 10 Business Days from receipt of the notice to give Supplier notice that:
    - (A) it Approves the documentary Deliverable; or
    - (B) it requires amendments to the documentary Deliverable on the basis that it does not meet all applicable requirements for that documentary Deliverable or is otherwise not reasonably acceptable to the Customer; and
  - (ii) if the Customer does not respond to the notice issued under this clause 12.17(g) within 10 Business Days from receipt of the notice, then the relevant documentary Deliverable will be deemed Approved.

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## **PART E – FINANCIAL PROVISIONS**

### **13. Customer Charges and Taxes**

#### **13.1 Customer Charges**

The Customer Charges are the full amount payable by the Customer for:

- (a) the supply of the Services and Deliverables by the Supplier to the Customer Cluster; and

- (b) the Supplier otherwise performing its obligations under this Customer Outsourcing Agreement.

### **13.2 Variation of Customer Charges**

Customer Charges must not be varied except in accordance with clause 5.6 (Modifications to Service Catalogue) or clause 20 (Contract Variation).

### **13.3 Customer Charges inclusive of Taxes**

Unless otherwise stated in this Customer Outsourcing Agreement, all Customer Charges include Taxes, whether increased, new or additional amounts and all freight, insurance, delivery and other expenses which may be incurred. If a Customer Cluster is required by Law to pay any Tax relating to this Customer Outsourcing Agreement (other than withholding taxes paid under clause 13.5 (Withholding tax) which the Customer is not required to gross-up to the Supplier in accordance with that clause), the Supplier must reimburse the Customer for that amount.

### **13.4 GST**

- (a) Despite the definition of consideration in the GST law, and unless otherwise expressly stated in this Customer Outsourcing Agreement, Customer Charges or other sums payable or consideration to be provided under or in accordance with this Customer Outsourcing Agreement are exclusive of GST.
- (b) If a party makes a taxable supply under or in connection with this Customer Outsourcing Agreement, the other party must pay to the supplier at the same time as, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that supply. This clause 13.4(b) does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.
- (c) The supplier must, as a precondition to the payment of GST under clause 13.4(b), give the other party a Tax Invoice.
- (d) If an adjustment event arises in connection with a supply made under this Customer Outsourcing Agreement, the supplier must give the other party an adjustment note in accordance with the GST law.
- (e) If this Customer Outsourcing Agreement requires one party to pay for, reimburse, indemnify or contribute to any expense, loss or outgoing suffered or incurred by the other party, the amount required to be paid, reimbursed, indemnified or contributed by the first party will be reduced by the amount of Input Tax Credits (if any) to which the other party (or the representative member of a GST group of which the other party is a member) is entitled in respect of the amount.

### **13.5 Withholding tax**

If a Law requires Customer to deduct an amount in respect of Taxes from a payment under this Customer Outsourcing Agreement, then:

- (a) the Customer agrees to deduct the amount for the Taxes; and
- (b) the Customer agrees to pay an amount equal to the amount deducted to the relevant government agency in accordance with applicable law and give the original receipts to the Supplier.

The Supplier acknowledges that Customer is not required to pay an additional amount to the Supplier so that, after the deduction is made, the Supplier would receive a net sum equal to the sum that it would have received if the deduction had not been made.

### **13.6 Invoicing location and GST**

Customer confirms to separately state the invoicing location and beneficiary location for any services provided under any Statement of Work or any other document issued pursuant to the terms of this Customer Outsourcing Agreement. Until notified otherwise by the Customer, the invoicing location and beneficiary location will be Australia. If the Supplier has not charged GST for a taxable supply under or in connection with this Customer Outsourcing Agreement, and it is

subsequently found that GST is chargeable and the Supplier should have charged GST, the Customer shall pay GST as required by clause 13.4 (GST).

### **13.7 Tax penalties**

Subject to clause 9.2(c), unless otherwise agreed in this clause 13, the party that is liable for payment of any Tax upon which interest and penalties are imposed shall bear such interest and penalties.

### **13.8 No additional charge**

If this Customer Outsourcing Agreement requires the Supplier to provide a benefit or do an act, and no additional charge is stated, then this is to be performed as part of the Customer Charges.

### **13.9 No other amounts payable**

Other than payment of the relevant amounts under this clause 13, there are no other amounts payable by Customer under this Customer Outsourcing Agreement.

## **14. Invoicing and payment**

### **14.1 Payment of Customer Charges**

The Supplier may only invoice the Customer Charges in accordance with this clause 14.

### **14.2 Payment terms**

- (a) Subject to clause 14.2(c), the Customer will pay each correctly rendered invoice within 30 days of the end of the date on which it receives that invoice.
- (b) If the Customer considers that an invoice is not correctly rendered, then the Customer will notify the Supplier in writing within 20 Business Days setting out the reasons why the Customer considers that the invoice is not correctly rendered and identifying any amounts which are in dispute.
- (c) Without limiting any other rights of the Customer, if the Supplier fails to perform an obligation to provide a Service or a Deliverable in accordance with this Customer Outsourcing Agreement, the Customer may withhold the payment associated with that failure until the Supplier performs the relevant obligation in accordance with this Customer Outsourcing Agreement unless this Customer Outsourcing Agreement entitled the Customer to some alternative specific financial remedy for such failure, for example liquidated damages or service credits, but not a general right to damages.

### **14.3 Invoice**

For the purposes of this Customer Outsourcing Agreement, an invoice is not correctly rendered unless:

- (a) the invoice is a Tax Invoice and is in the form set out in Schedule 13 - Invoice Form;
- (b) the invoice is in Australian dollars, or such other currency as may be agreed with or requested by the Customer in advance;
- (c) the amount claimed in the invoice is due for payment;
- (d) where appropriate, the invoice contains the purchase order reference number(s) applicable to the amounts claimed;
- (e) the amount specified in the invoice is correctly calculated in accordance with this Customer Outsourcing Agreement;
- (f) the invoice includes a unique invoice number and is set out in a manner that identifies the Services and Deliverables which the invoice covers and itemises each amount claimed to a level of detail satisfactory to Customer acting reasonably to verify the invoice;

- (g) the invoice is accompanied by documents that adequately demonstrate to the Customer the Services and Deliverables that were provided and the basis on which the amounts are claimed;
- (h) the invoice is addressed to the Customer in the manner set out in this Customer Outsourcing Agreement and identifies this Customer Outsourcing Agreement; and
- (i) it is accompanied by a report setting out the disaggregated volumes by Standard Item for the Customer and each Beneficiary Entity.

#### **14.4 Disputed invoice**

- (a) If the Customer genuinely disputes the amount of the invoice submitted by the Supplier, then the Supplier must:
  - (i) cancel that invoice; and
  - (ii) issue to the Customer a new invoice for the undisputed portion of that invoice.
- (b) Supplier agrees that the Customer is not obliged to pay the disputed portion of any disputed invoice until the dispute is resolved and a new invoice is issued for the agreed amount, but the Customer must pay all other non-disputed amounts for which the Supplier has issued a separate invoice under clause 14.4(a)(ii).
- (c) The Supplier may not suspend, cancel or withdraw the provision of the Services, Deliverables or performance of any other obligations under this Customer Outsourcing Agreement in whole or in part as a result of a disputed invoice.

#### **14.5 Amounts due to Customer**

Each amount payable by the Supplier to the Customer under an indemnity, warranty, reimbursement, rebate or refund obligation, or default event under this Customer Outsourcing Agreement is a debt due and payable to the Customer on demand. Any demand must attach any relevant verifying documentation and, if the amount payable is consideration for a taxable supply, must be a Tax Invoice. The Supplier must pay or credit the amount to the Customer, at the Customer's option, within 30 days of issue of the demand or the time otherwise set out in this Customer Outsourcing Agreement.

#### **14.6 Contractor liabilities**

If the Supplier employs any personnel to carry out the Services in NSW, the Supplier must provide the Customer with a completed Subcontractor Statement for each calendar Quarter of the Term. The Subcontractor Statement is to be provided at the end of each calendar Quarter during the Term or as otherwise agreed.

#### **14.7 No back billing**

The Supplier must not invoice the Customer (and the Customer does not have to pay) for any Customer Charges that are not correctly invoiced within 6 months from the end of the month in which the Services to which those Customer Charges correspond were performed or the expense incurred.

#### **14.8 Overpayment**

If at any time the Supplier becomes aware that it has charged the Customer more than is payable under this Customer Outsourcing Agreement, the Supplier must notify the Customer as soon as practicable of the amount of the overcharge and:

- (a) if the overcharge is contained in an invoice yet to be paid by Customer, the Supplier must:
  - (i) if the invoice is not the final invoice under this Customer Outsourcing Agreement, make the necessary adjustment in the next invoice to the Customer by way of a credit note; or
  - (ii) if the invoice is the final invoice under this Customer Outsourcing Agreement, pay the Customer the overcharged amount; or
- (b) if the overcharge is contained in an invoice already paid by the Customer, the Supplier must:

- (i) if the invoice is not the final invoice under this Customer Outsourcing Agreement, make the necessary adjustment in the next invoice to the Customer by way of a credit note; or
- (ii) if the invoice is the final invoice under this Customer Outsourcing Agreement, pay the Customer the overcharged amount.

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## PART F – SERVICE AND RELATIONSHIP MANAGEMENT

### 15. Governance

#### 15.1 Governance Structure

Each party will perform their respective roles, tasks and requirements set out in the Outsourcing Governance Structure, including ensuring suitably qualified and experienced personnel and other resources (as reasonably required) are made available to ensure the Outsourcing Governance Structure operates effectively and efficiently.

#### 15.2 Reports

The Supplier will provide the Customer with:

- (a) the reports required to be provided to the Customer in the Outsourcing Governance Structure; and
- (b) any additional reports reasonably required by the Customer to manage the relationship between the Customer and the Supplier.

#### 15.3 Meetings

The parties agree to the meeting schedule defined in the Outsourcing Governance Structure or as otherwise agreed by the parties.

#### 15.4 Management costs

The Supplier's costs of managing and implementing this Customer Outsourcing Agreement, including the relationship aspects of this Customer Outsourcing Agreement (such as the preparation for and attendance at meetings), are for the Supplier's account and the Supplier will not charge for any such costs, unless the parties agree otherwise in relation to specific costs.

#### 15.5 Compliance with Laws

The Supplier must promptly notify the Customer through the governance process set out in the Outsourcing Governance Structure if a regulatory event that may affect the Supplier's ability to perform its obligations under this Customer Outsourcing Agreement occurs.

### 16. Contract Representatives

#### 16.1 Nominated Contract Representatives

The parties' Contract Representatives are identified in the Details. The Supplier may not change its Contract Representative without the prior Approval of the Customer or unless the Contract Representative is incapacitated or unable to perform their role for any legitimate reason or leaves the Supplier's employment. The Customer will notify the Supplier if it proposes to change its Contract Representative.

#### 16.2 Responsibilities of Contract Representatives

The parties' Contract Representatives will be responsible for operational co-ordination and management between the parties in the delivery of the Services and Deliverables and the performance of this Customer Outsourcing Agreement, including approval of Contract Variation

proposals, and the performance by the parties of their respective roles and responsibilities under the Outsourcing Governance Structure.

### 16.3 Authority of Contract Representatives

Each Contract Representative may delegate part of their operational responsibilities to other representatives in order to operate more efficiently and effectively. Any delegation must be notified to the other party in writing.

### 16.4 No reliance

Each party acknowledges and agrees that:

- (a) it will not rely on any communication or correspondence from a Representative of the other party in relation to any matters in connection with this Customer Outsourcing Agreement other than from that party's Contract Representative; and
- (b) neither party will be liable for any loss, expense or damage suffered by the other party, to the extent that the other party relies on or acts or refrains from acting on the basis of any communication or correspondence from a Representative of that first party other than that first party's Authorised Representatives.

## 17. Personnel

### 17.1 Supplier Personnel

The Supplier must use suitably qualified, experienced and competent Supplier Personnel in the provision of the Services and Deliverables and the performance of this Customer Outsourcing Agreement.

### 17.2 Screening of Supplier Personnel

- (a) The Supplier must screen each of its Supplier Personnel that it proposes to use to perform the Services prior to permitting such person to perform the Services by conducting an investigation (**Due Diligence Screening**) consisting of:
  - (i) an identification and right to work check to confirm whether the person is who they profess to be and has the right to work in the relevant jurisdiction in which that person will perform the Services;
  - (ii) an employment history check of the person, including reference checks of such person;
  - (iii) criminal background checks; and
  - (iv) any other checks reasonably specified by the Customer from time to time for particular roles.
- (b) If requested by Customer, the Supplier must provide to the Customer:
  - (i) accurate information about the identity, qualifications, job history and character of each of the Supplier Personnel; and
  - (ii) a list of any of the Supplier Personnel with actual or proposed access to Customer Data.
- (c) At the Customer's request, the Supplier will conduct another Due Diligence Screening (or the part of it requested by the Customer, including if required as a result of a change in roles) of the person specified by the Customer if the Customer has a concern about that person.
- (d) The Supplier must not use, and must cease to use, any person to perform a Service (or any part of it) if the Due Diligence Screening reveals or indicates that such person:
  - (i) has been convicted of an offence which is or could be a Relevant Offence;
  - (ii) is the subject of a trial which could result in a conviction of that person for an offence which is or could be a Relevant Offence;

- (iii) has provided false information in respect of that Due Diligence Screening; or
- (iv) has failed to meet a requirement specified in the Due Diligence Screening.

### **17.3 Key Supplier Personnel**

The Supplier will use the Key Supplier Personnel to perform the roles described in this Customer Outsourcing Agreement, in the delivery of the Services.

### **17.4 Removal, departure and replacement of Key Supplier Personnel**

The Supplier must not change any Key Supplier Personnel's involvement in the provision of the Services and performance of this Customer Outsourcing Agreement unless:

- (a) they are incapacitated or unable to perform their role for any legitimate reason, or leave the Supplier's employment;
- (b) the Services which they were performing are complete; or
- (c) Customer gives prior written consent to the change.

### **17.5 Compliance by Supplier Personnel**

The Supplier must ensure that each Supplier Personnel complies with this Customer Outsourcing Agreement.

### **17.6 No employment relationship**

The Supplier acknowledges and agrees that none of the Supplier Personnel are or will become an employee of the Customer or a Beneficiary Entity under this Customer Outsourcing Agreement. The Supplier will ensure that all of its employees involved in the performance of the Services are paid remuneration and provided with any right or entitlement (including any right or entitlement related to hours of work, superannuation, pension or retirement benefits, leave, notice of termination, severance or redundancy, and any other employment-related right or entitlement) due to them in connection with their employment by the Supplier.

### **17.7 Hiring costs**

The Supplier is responsible for all necessary recruiting and hiring costs associated with employing or engaging Supplier Personnel.

### **17.8 Authority of Supplier Contract Representative**

The Supplier is bound by any authorisation, representation or statement made in writing and made by its Contract Representative.

## **18. Location of Services and Customer Cluster Premises**

### **18.1 Location of Services**

Subject to and except as permitted in clause 6.15, the Supplier must not, and must ensure that its Supplier Personnel do not, provide Services outside of the Facilities specified by the Customer without the prior Approval of the Customer.

### **18.2 Offshoring**

- (a) The Supplier must not, and must ensure that its Supplier Personnel do not, provide any part of the Services outside Australia except as authorised by the Contract Authority under an Offshoring Proposal.
- (b) In the event that the Customer gives notice to:
  - (i) terminate this Customer Outsourcing Agreement in part as it relates to a Service Tower or a SOW pursuant to clause 35.1 or 35.2; or
  - (ii) reduce the scope or volume of the Services to be provided under this Customer Outsourcing Agreement in respect of a Service Tower pursuant to clause 35.1(a)(ii),

and such termination or reduction would result, in respect of the remaining Service Towers or Services, in the Supplier being unable to meet the ratio of on-shore and off-shore Supplier Personnel, as set out in a current Offshoring Proposal Approved by the Contract Authority, then:

- (iii) the Supplier must, within 30 days after receiving notice of such termination or reduction from the Customer, notify the Customer of the impact on such ratio;
- (iv) the Customer may, within 30 days after receiving the Supplier's notice under paragraph (iii), in its discretion (but without obligation) withdraw the notice for such termination or reduction (such that all Service Towers or Services will continue to be provided as if the notice for termination or reduction had not been issued); and
- (v) if the Customer does not withdraw the notice for such termination or reduction pursuant to and within the time frame stated in paragraph (iv), then the on-shore/off-shore Supplier Personnel ratio resulting from such termination or reduction will be deemed to be the new ratio under the relevant Offshoring Proposal (and, to avoid doubt, the Supplier will not be in breach of this Customer Outsourcing Agreement in relation to the previous Offshoring Proposal as a result of such change to the ratio).

### **18.3 Customer Cluster Premises**

- (a) Any Customer Cluster Premises, which are required to be made available to the Supplier under this Customer Outsourcing Agreement will be provided on an 'as is, where is' basis.
- (b) The Supplier will use the Customer Cluster Premises for the sole purpose of providing the Services and Deliverables and will use the Customer Cluster Premises in an efficient manner.
- (c) The Supplier will permit the Customer and its agents and representatives to enter into those portions of the Customer Cluster Premises occupied by the Supplier Personnel, Subcontractors, or invitees at any time.
- (d) The Supplier will be responsible for damage to, the Customer Cluster Premises, caused by Supplier, Supplier Personnel, Subcontractors, or invitees.
- (e) The Supplier may only make improvements to Customer Cluster Premises at its own expense, with the Customer's prior Approval. Any improvements to the Customer Cluster Premises, whether owned or leased, will become the property of Customer or its lessors.
- (f) When the Customer Cluster Premises are no longer required for performance of the Services, the Supplier will return the Customer Cluster Premises to the Customer in substantially the same condition as when the Supplier began use of the Customer Cluster Premises, subject to reasonable wear and tear and Approved improvements.
- (g) If the Supplier proposes to migrate the provision of any Services from any Customer Cluster Premises to other Customer Cluster Premises, or to relocate the Supplier Personnel currently providing Services, the Supplier will describe:
  - (i) such Services, as well as when, where, and how it proposes to perform such migration, and
  - (ii) the means by which equivalent or better service will continue to be provided after the relocation.

All costs of such relocation (including those incurred by the Customer) will be borne by the Supplier. A detailed migration plan will be provided by the Supplier to the Customer, and it will be subject to Approval by the Customer.

- (h) At the Customer's expense, the Customer may direct the Supplier to migrate the provision of any Services from a Customer Cluster Premise to another Customer Cluster Premise or to relocate the Supplier Personnel currently providing Services. If so, there will not be any increase to the Customer Charges for the Services if the other Customer Cluster Premise is located in New South Wales and the other Customer Cluster Premise has the infrastructure required to provide the Services that the Customer was responsible for under the old Customer Cluster Premise.

## 19. Subcontractors

### 19.1 Approval

- (a) Subject to clauses 19.1(b) and 19.1(c), the Supplier must not subcontract any of its obligations under this Customer Outsourcing Agreement without the prior Approval of the Customer which may be given on conditions. A list of Subcontractors which have been pre-approved by the Customer, and services in respect of which Approval has been given, as at the Commencement Date, are set out in Schedule 10 - Approved Subcontractors.
- (b) Subject to clause 19.1(d), the Customer's Approval will not be required under clause 19.1(a) in respect of a proposed Subcontractor if:
  - (i) the annualised value of the Subcontract with that Subcontractor is less than \$100,000 (including GST);
  - (ii) that Subcontractor will not be in possession of, or be able to access, any Customer Data, Customer Confidential Information or Personal Information; and
  - (iii) that Subcontractor will not be accessing, whether physically or remotely, any Customer Cluster Premises or Customer systems.
- (c) The Customer acknowledges that any commercial software or hardware vendors, resellers or distributors will not be a Subcontractor for the purpose of this clause 19 provided that their function is limited to the supply of the software and hardware.
- (d) Clause 19.1(b) does not apply in respect of specific Services (or parts thereof) for which specialist qualifications, certifications, registrations, licences or other accreditations are required to be held and, to avoid doubt, the Customer's Approval under clause 19.1(a) is required for any subcontracting of such Services (or parts thereof).

### 19.2 Withdrawal of Approval

- (a) Where Approval is required under clause 19.1 (Approval) the Customer may at any time on reasonable grounds and without liability withdraw, limit or suspend its Approval of a Subcontractor and require removal of that Subcontractor from performing the subcontracted obligations by notifying the Supplier and giving reasons. If required by the Customer, the Supplier must propose another Subcontractor for Approval within a reasonable time of receiving the notice. The Supplier must ensure that the removal or replacement of a Subcontractor under this clause is made without inconvenience or cost to the Customer and without impact on the delivery of the Services.
- (b) For the purpose of clause 19.2(a), the Supplier acknowledges that 'reasonable grounds' includes the following circumstances:
  - (i) the Subcontractor has caused or contributed to a breach of this Customer Outsourcing Agreement;
  - (ii) the Supplier is in breach of clause 19.3 (Responsibility for Subcontractors) or 19.5 (Subcontract terms); or
  - (iii) the Subcontractor or its personnel engages in fraud or other serious criminal behaviour or has caused or contributed to a Probity Event.

### 19.3 Responsibility for Subcontractors

- (a) The Supplier must ensure that each Subcontractor:
  - (i) has the skills, resources and experience to carry out the work subcontracted to it; and
  - (ii) complies with this Customer Outsourcing Agreement.
- (b) The Supplier is responsible for all acts and omissions of its Subcontractors as if they were those of the Supplier.

### 19.4 Payment of Subcontractors

The Supplier is responsible for making any and all payments to Subcontractors.

## 19.5 Subcontract terms

The Supplier must:

- (a) enter into a written sub-contract with each Subcontractor;
- (b) ensure that the terms and conditions of each Subcontract are consistent with, and no less onerous than, the terms and conditions of this Customer Outsourcing Agreement;
- (c) ensure that the Subcontractor maintains reasonable levels of insurance having regard to the Services that Subcontractor is providing; and
- (d) without limiting clause 19.5(b) above, ensure that each Subcontract entered into after the Commencement Date must contain terms that the Subcontractor must not further subcontract its obligations under its Subcontract.

## 20. Contract Variation

### 20.1 Contract Variation proposals

Either party may propose a change to this Customer Outsourcing Agreement (**Contract Variation**) by submitting a notice to the other party describing the proposed change in enough detail to enable initial consideration of the proposed Contract Variation. The parties acknowledge that any change to Protected Clauses will be of no effect, unless Approval has been obtained from the Contract Authority.

### 20.2 Form of proposal

- (a) If the Customer proposes a Contract Variation, or notifies the Supplier that it wishes to pursue a Contract Variation proposed by the Supplier, then the Supplier will provide a Contract Variation proposal to the Customer detailing:
  - (i) full details of the proposed Contract Variation including any specifications, special conditions and any other variations to this Customer Outsourcing Agreement required (including reasons for the variations);
  - (ii) any change to the Customer Charges;
  - (iii) a timetable for the implementation of the Contract Variation including, to avoid doubt, the date on which such implementation will be completed (**Implementation Timetable**), together with any proposals for Acceptance Testing of Services or Deliverables under the Contract Variation;
  - (iv) details of the impact, if any, of the Contract Variation on any existing Services, Deliverables, Service Levels and Service Credits; and
  - (v) any Customer Cluster or Supplier resources required for the implementation of the Contract Variation.
- (b) The Supplier's written proposal must comply with any additional requirements specified by the Customer acting reasonably.
- (c) The Supplier must submit its written proposal under this clause 20.2 within 10 Business Days of receipt of the Customer's proposal or notification, unless otherwise set out in this Customer Outsourcing Agreement or unless otherwise agreed to by the Customer.

### 20.3 Status of Contract Variation proposal

Any proposal submitted by the Supplier under clause 20.2 (Form of proposal) constitutes an offer by the Supplier and cannot be withdrawn for a period of 30 days after receipt.

### 20.4 Starting work

- (a) The Supplier must not commence work unless the Contract Variation proposal is agreed to by the parties in writing. The Customer is not obliged to pay any Customer Charges for work in connection with a proposed Contract Variation until this is done.

- (b) Once executed by or on behalf of the parties, the Contract Variation comes into force, and the Supplier must implement the Contract Variation in accordance with the Implementation Timetable, or, if the Contract Variation proposal does not specify an Implementation Timetable, as soon as reasonably practicable after the date of the Contract Variation.

## **20.5 Agreement not to be withheld**

The Supplier agrees that it will not unreasonably withhold its agreement to a Contract Variation proposal, which:

- (a) facilitates the achievement of the Customer Objectives; or
- (b) is necessary for the Customer or a Beneficiary Entity to comply with a Change in Law.

## **21. Cooperation with Third Parties**

### **21.1 Cooperation**

- (a) The Customer may retain Third Parties from time to time to provide it with goods and services, including goods and services related to the Services and Deliverables. The Supplier must, in accordance with the Customer's reasonable directions:
  - (i) cooperate with any such Third Parties and provide such Third Parties access to and use of the Deliverables and Services; and
  - (ii) comply with all other reasonable directions of the Customer with respect to such Third Parties.
- (b) The Supplier must, and must ensure that Supplier Personnel:
  - (i) do not interfere with, disrupt or delay the Customer, its Representatives and other persons engaged by the Customer or prevent them from carrying out their work or cause them to incur additional cost; and
  - (ii) reasonably cooperate with Customer, its Representatives and other persons engaged by the Customer.

### **21.2 Particular assistance**

Without qualifying the generality of clause 21.1 (Cooperation), the Supplier must:

- (a) cooperate with Third Parties and the Customer by providing access to information about the Deliverables and Services and, where relevant, the design characteristics of Software and Equipment and related data necessary to create required interfaces and ensure interoperability; and
- (b) if requested by the Customer, provide necessary resources to enable the Equipment and Software to interface with Third Party systems or Customer systems as identified by the Customer.

### **21.3 Rights to use**

- (a) The Supplier will grant the Customer or a Third Party service provider nominated by the Customer access to facilities, systems or architecture configurations which Supplier uses to provide the Services and Deliverables to the extent:
  - (i) necessary for the Customer to undertake, or the Third Party to provide services and which do not compromise the security of the data of Supplier's other customers;
  - (ii) necessary for the establishment, maintenance and enhancement of interfaces with systems hosted by Supplier;
  - (iii) a manufacturer or licensor of hardware or software requires access to the facilities or systems for the purposes of installing, upgrading, modifying or otherwise dealing with the relevant hardware or software; or
  - (iv) as otherwise agreed by Supplier.

- (b) The Customer agrees to and must ensure that any Third Party obtaining access under clause 21.3(a) agrees to comply with the Supplier's generally applicable policies on access to the Supplier's facilities, systems or architecture configurations provided that such policies do not prevent or unduly interfere with the Third Party's ability to perform the activities specified under clause 21.3(a).

## 22. Auditing

### 22.1 Record keeping

Supplier must keep (and ensure Subcontractors keep) complete and up to date records relating to the Services, Service Levels, Service Credits, and its performance under this Customer Outsourcing Agreement including all Customer Charges paid or payable by Customer and all documentation justifying those Customer Charges (**Records**). The Records must be kept in accordance with relevant Australian accounting standards.

### 22.2 Audit

Customer may, by giving the Supplier at least 10 Business Days' notice, conduct an audit of the Supplier or the Services for any reason including if:

- (a) an audit is required by:
  - (i) Laws applicable to the Customer; or
  - (ii) Audit Office of New South Wales;
- (b) Customer has a specific right to audit under another part of this Customer Outsourcing Agreement;
- (c) there is a request for information or other intervention by the Audit Office of New South Wales;
- (d) there is a material failure in the Supplier's delivery of the Services, Deliverables or performance of this Customer Outsourcing Agreement; or
- (e) the Customer has reasonable grounds to believe that there has occurred or there is an actual risk of occurring:
  - (i) any type of fraudulent activity;
  - (ii) a breach of privacy; or
  - (iii) a breach of confidentiality,in any way related to this Customer Outsourcing Agreement.

### 22.3 Notice for audits

On receipt of a notice of audit under clause 22.2 (Audit), the Supplier must promptly, and procure that its Subcontractors and Related Bodies Corporate promptly:

- (a) make Records available for inspection by the Customer;
- (b) cooperate with any audit by the Customer; and
- (c) give the Customer and any auditor referred to in clause 22.6 (Auditors), during normal business hours, access to premises, the Supplier Personnel, systems, facilities, data, accounts and other financial material, Equipment and Software used by the Supplier and its Subcontractors to provide the Services to the extent reasonably necessary to enable the Customer to undertake audits as contemplated under this clause 22. The Customer and its auditors may not have access to:
  - (i) the Supplier's locations that are not used by the Supplier to provide or deliver the Services or Deliverables (unless such locations contain Records);
  - (ii) the Supplier's proprietary data that is not relevant to the Supplier's performance under this Customer Outsourcing Agreement;

- (iii) confidential information about other Supplier customers;
- (iv) information that is subject to legal professional privilege (including information prepared at the direction of counsel);
- (v) information prepared for an audit of the Supplier by an external or internal auditor;  
or
- (vi) information about the Supplier's costs (other than costs that are required to verify the accuracy of any Customer Charges).

#### **22.4 Conduct of audits**

The Customer will conduct an audit under this clause 22:

- (a) in such a manner so as to minimise interference with the Supplier's ability to perform the Services in accordance with the terms of this Customer Outsourcing Agreement; and
- (b) expeditiously, efficiently and during normal business hours.

#### **22.5 Scope of audit**

The scope of an audit may include verifying that:

- (a) the Customer Charges are accurate;
- (b) the Services are being provided in accordance with the Service Levels and this Customer Outsourcing Agreement;
- (c) the Supplier is otherwise complying with the requirements and obligations set out in this Customer Outsourcing Agreement; and
- (d) the Customer and Supplier are in compliance with the Laws applicable to its business and other regulatory requirements.

#### **22.6 Auditors**

Without limiting the Customer's rights under clause 22.3(c), an audit will be performed by:

- (a) the Customer's nominated auditor (or its subcontractor); or
- (b) an auditor appointed by the Audit Office of New South Wales,  
excluding a Supplier Competitor.

#### **22.7 Copies and extracts of Records**

Copies and extracts of Records may be made by or for the Customer and the Customer's nominated auditor for the purposes of the audit. In the case of data, information, documents or records stored on a medium other than in writing, the Supplier must make available on request at no additional cost to the Customer such reasonable facilities as may be necessary to enable a legible reproduction to be created. The Supplier may exclude from Records details of its margins on any of its Customer Charges (except where the Customer Charges are to be determined by reference to an agreed margin), Subcontractor pricing paid by the Supplier, pricing models, internal meeting minutes, information subject to legal professional privilege, and details or information relating to any other customers of the Supplier.

#### **22.8 Assistance with audits**

The Supplier must participate, and must ensure that Subcontractors and Related Bodies Corporate participate promptly and cooperatively in, and must give all reasonable assistance to any person conducting, any audit or inspection under this clause 22.

#### **22.9 Temporary workspace**

If requested by the Customer, the Supplier must make available at its facilities, temporary workspace for a reasonable number of Customer Personnel to undertake audits and inspections in accordance with this clause 22.

## **22.10 Remediating non-compliance**

If an audit shows that the Supplier is not complying with this Customer Outsourcing Agreement, the Supplier must, at its cost, take such action as necessary to remedy the non-compliance promptly on being given written notice by the Customer.

## **22.11 Costs**

- (a) The Customer must bear the costs of engaging the auditor, provided that if an audit reveals that the Supplier has:
  - (i) overcharged the Customer by 5% on any one invoice; or
  - (ii) is in breach of this Customer Outsourcing Agreement and such a breach is not trivial or insignificant,the Supplier must reimburse the Customer's costs of engaging that auditor.
- (b) Subject to clause 22.11(a), each party will bear its own costs associated with the audits under this clause 22.

## **22.12 Subcontractor terms**

The Supplier will ensure that any Subcontract contains a clause granting Supplier and the Customer rights similar to the rights specified in clauses 22.1 (Record keeping).

## **22.13 No relief**

Subject to clause 22.4 (Conduct of audits), the requirement for, and participation in, any inspection or audit under this clause does not in any way reduce the Supplier's responsibility to perform its obligations in accordance with this Customer Outsourcing Agreement.

## **22.14 Audit follow-up**

The Supplier and the Customer will meet to review each audit report promptly and to mutually agree upon an appropriate and effective manner in which to respond to the deficiencies identified and changes suggested by the audit report. If an audit:

- (a) reveals an overcharge, the Supplier must promptly refund such overcharge;
- (b) indicates that the Supplier, Supplier Personnel or its Subcontractors are not in compliance with any Law, audit, or other requirement applicable to the Supplier under this Customer Outsourcing Agreement, the Supplier must take, and cause Supplier Personnel and Subcontractors to take, prompt actions to comply with such requirements; and
- (c) indicates that the Customer Cluster or their Personnel (excluding the Supplier) are not in compliance with any Law, audit, or other requirement applicable to the Customer under this Customer Outsourcing Agreement, the Supplier must assist the Customer Cluster to comply with such requirement and any changes to this Customer Outsourcing Agreement will be agreed in accordance with clause 20 (Contract Variation).

## **22.15 Response**

The Supplier must bear any cost and expense to implement any response under clause 22.14 (Audit follow-up) that is:

- (a) required by any Law or audit requirement relating to the Supplier's business; or
- (b) necessary due to the Supplier's non-compliance with any Law, audit, or other requirement applicable to the Supplier pursuant to this Customer Outsourcing Agreement.

## **22.16 Audit results**

If Customer requests, then the Supplier will:

- (a) promptly provide the Customer with a summary of the relevant sections of any reviews or audits conducted by the Supplier, its Related Bodies Corporate, or their subcontractors, agents or representatives (including internal and external auditors), relating to breaches of security or unauthorised disclosure of Confidential Information or Personal Information in relation to this Customer Outsourcing Agreement; and

- (b) provide reasonable assistance and co-operate reasonably with the Customer to address any questions or issues raised by the Audit Office of New South Wales.

### **22.17 Survival of audit rights**

This clause 22 will survive termination or expiry of this Customer Outsourcing Agreement:

- (a) in respect of audits conducted pursuant to clauses 22.2(a) or 22.2(c), in perpetuity; and
- (b) in respect of all other audits, cease to apply 12 months after termination or expiry of this Customer Outsourcing Agreement in whole.

## **23. Delay**

### **23.1 Compliance and notification of delay**

- (a) Subject to this clause 23 the Supplier must comply with the dates and times set out in this Customer Outsourcing Agreement or the Operating Level Agreement.
- (b) The Supplier must:
  - (i) take all reasonable and necessary steps to prevent or minimise the risk of the occurrence of any delay or likely delay; and
  - (ii) to the extent possible, minimise the duration and consequence of any delay or likely delay.

### **23.2 Notice of delay**

As soon as it becomes apparent to the Supplier that a date or time under this Customer Outsourcing Agreement may not be met, the Supplier must notify Customer in writing of the details of the possible delay, the cause and the period of any requested extension.

### **23.3 Supplier delays**

- (a) If the Supplier notifies the Customer under clause 23.2 (Notice of delay), the Customer may, but except as required under clause 23.4 (Extension for Customer's delay or event outside Supplier control), is not obliged to, extend the time for meeting the affected obligation.
- (b) If the Customer refuses to grant an extension, then the date or time remains unchanged and the Supplier must do, at no additional cost to the Customer, all things reasonably necessary to overcome the actual or possible delay.
- (c) Any extension is without prejudice to any of the Customer's rights and remedies under this Customer Outsourcing Agreement or arising at law.

### **23.4 Extension for Customer's delay or event outside Supplier control**

The Supplier will be entitled to claim, and the Customer is required to grant, a reasonable extension of time if:

- (a) the Supplier notifies the Customer of a possible or actual delay under clause 23.2 (Notice of delay) as soon as practicable but no later than 7 days after becoming aware of the relevant event and gives the Customer all details reasonably necessary to enable the Customer to determine the cause and extent of the delay; and
- (b) the delay is caused by:
  - (i) a failure by an Outsourcing Program Entity to carry out any tasks or requirements assigned to it under this Customer Outsourcing Agreement by the date or time set out in this Customer Outsourcing Agreement or a breach of this Customer Outsourcing Agreement by the Customer (but not including any such failures or breaches which result from a prior failure of the Supplier to meet its obligations under the Outsourcing Program Agreements) (an **Excused Delay**); or
  - (ii) a Force Majeure Event; and

- (c) the Supplier has taken all steps required under clause 23.1(b).

### **23.5 Delay partly caused by the Supplier**

Where a delay results partly from one or more events referred to in clause 23.4(b) and partly from a failure by the Supplier, the Customer is only obliged to give an extension which is reasonable having regard to the extent to which the event or events referred to in clause 23.4(b) have or are likely to increase the delay.

### **23.6 Unrequested extensions of time and suspension of Services**

The Customer may:

- (a) extend any date or time under this Customer Outsourcing Agreement; or
- (b) suspend any of the Supplier's obligations to perform Services or provide Deliverables, for any reason at any time on notice to the Supplier, whether or not the Supplier is entitled to or has requested an extension of time or suspension. If the Customer exercises its right to extend or suspend under this clause:
  - (c) the Customer must give details of the proposed length of extension or suspension which may not exceed 6 months;
  - (d) any suspended Services will not be subject to Service Levels for the duration of the suspension; and
  - (e) the Supplier will be entitled to Suspension Costs arising from the extension or suspension if:
    - (i) the extension or suspension has not been requested by the Supplier; and
    - (ii) the Supplier has taken reasonable steps to mitigate the amount of the Suspension Costs, including (but not limited to) reasonable reallocation of resources or reassignment of Supplier Personnel.

### **23.7 Prolongation Costs**

Subject to clause 23.9 (Failure to notify), the Supplier will be entitled to claim Prolongation Costs in respect of:

- (a) the Transition-in and Transformation Plan up to the Prolongation Cost Cap; or
- (b) a SOW up to the maximum amount set out in the relevant SOW (if any), provided that:
  - (i) the Supplier is entitled to an extension under clause 23.4 (Extension for Customer's delay or event outside Supplier control) and the delay is caused by an Excused Delay; and
  - (ii) the Supplier has taken reasonable steps to mitigate the amount of the Prolongation Costs, including (but not limited to) reasonable reallocation of resources or reassignment of Supplier Personnel.

### **23.8 Prolongation Cost Cap**

If at any time the Prolongation Cost Cap is exceeded and the Supplier notifies the Customer in writing that the Prolongation Cost Cap has been exceeded, the Customer must, within a reasonable period of such notice, do one of the following:

- (a) suspend under clause 23.6(b) any Services for which Excused Delays are continuing and Prolongation Costs are still being incurred by the Supplier;
- (b) propose a Contract Variation in respect of any Services for which Excused Delays are continuing and Prolongation Costs are still being incurred by the Supplier; or
- (c) terminate this Customer Outsourcing Agreement in whole, as it relates to a Service Tower or a Statement of Work under clause 35.1 (Termination for convenience).

### 23.9 Failure to notify

If the Supplier does not notify the Customer of a potential delay as required by clause 23.2 (Notice of delay), then

- (a) no extension of time will be made (unless by the Customer under clause 23.6 (Unrequested extensions of time and suspension of Services));
- (b) no Prolongation Costs will be payable under clause 23.7 (Prolongation Costs);
- (c) the Supplier must perform its obligations according to the dates and times required under this Customer Outsourcing Agreement;
- (d) the Customer will have no liability for costs, liabilities, expenses or damages resulting from the delay; and
- (e) any principle of law or equity (including the prevention principle) which might otherwise render the required date immeasurable and agreed compensation unenforceable, does not apply.

### 23.10 Compensation for delay

Without limiting any other rights or remedies of the Customer (including a right to claim damages as a result of breach of this Customer Outsourcing Agreement), if the Supplier does not meet any obligation by the date or time required under:

- (a) a Transition-In and Transformation Plan then the Supplier must pay the Customer the Customer Delay Costs up to the State Delay Cost Cap; or
- (b) a SOW, then the Supplier must pay the Customer the Customer Delay Costs up to the maximum amount set out in the relevant SOW (if any),

provided that the Customer has taken reasonable steps to mitigate the Customer Delay Costs, including (but not limited to) reasonable reallocation of resources or reassignment of its employees.

## 24. Operational Review

### 24.1 Operational Review

If the Customer, acting reasonably, considers that an Operational Review Trigger Event has occurred, the Customer may request that the Supplier undertake a review (an **Operational Review**) of the Supplier's operational processes, controls and resources associated with the Operational Review Trigger Event with a view to identifying the cause of, and preventing the reoccurrence of, the Operational Review Trigger Event.

### 24.2 Operational Review Plan

- (a) The Supplier must, within 10 Business Days of receiving a request to conduct an Operational Review, develop a written plan outlining the:
  - (i) objectives, scope of, timeframes for and the relevant Supplier resources that will carry out the Operational Review; and
  - (ii) details of any cooperation or assistance required from the Customer, (**Operational Review Plan**).
- (b) The Supplier will provide a draft of the Operational Review Plan to the Customer for review and Approval, and the Supplier will incorporate any changes that Customer reasonably requests to the Operational Review Plan.
- (c) Once the Operational Review Plan submitted by the Supplier is Approved by the Customer, the Supplier will immediately commence implementing the Operational Review Plan in accordance with its terms and report the status of the Operational Review Plan activities to Customer on a weekly basis.
- (d) The Customer must provide the Supplier with the co-operation or assistance required from Customer under the Approved Operational Review Plan.

### 24.3 Action plans and observers

If the Customer, acting reasonably, considers that an Action Plan Trigger Event has occurred, the Customer may by written notice:

- (a) request the Supplier to develop and deliver to the Customer and implement, at the Supplier's cost, an action plan to remediate the cause and rectify the consequence of the event and prevent the reoccurrence of that event (to the extent the event was caused by the Supplier or a Subcontractor) in a form and substance acceptable to Customer (an **Action Plan**) and which at a minimum must set out in detail the steps being or to be taken by the Supplier to rectify the Action Plan Trigger Event, including deadlines for and the resources to be dedicated to the completion of each step and details of any cooperation or assistance required from the Customer and the Supplier must:
  - (i) develop, deliver and agree the Action Plan with the Customer (including by incorporating any amendments to the draft Action Plan reasonably requested by Customer) within 10 Business Days of the request being made by Customer (or such longer period as the parties may agree);
  - (ii) commence implementing the Action Plan immediately upon agreement of the Action Plan with Customer; and
  - (iii) complete implementing the Action Plan within the time frame specified in the Action Plan,  
(the **Required Time Frames**); and
- (b) appoint a Third Party observer (with a reasonable number of representatives) nominated by the Customer, but not a Supplier Competitor, to investigate the root cause of the Action Plan Trigger Event, the appropriateness of the Action Plan and its implementation by observing the Supplier's business and activities relating to the Action Plan Trigger Event and Action Plan and to carry out the functions in the manner specified in clause 24.4 (Observer) (each an **Observer**).

### 24.4 Observer

If the Customer appoints an Observer under clause 24.3(b) the Observer will have the right at times that are reasonable in the circumstances to:

- (a) attend the Supplier's premises or any other premises from which the Services the subject matter of the Action Plan are being provided;
- (b) request the production of, have access to, examine and, if desired, copy any documents or information relating to the Customer, the Services, Deliverables and the Supplier's activities relating to the Observer's authority as described in clause 24.3(b), held at those premises (referred to in clause 24.4(a)) or anywhere else;
- (c) attend all operational and other meetings, workshops and other attendances as if the Observer were a permanent member of the Supplier team working for or on behalf of the Supplier (whether as an officer, employee, Subcontractor, supplier or otherwise) in respect of the Observer's authority as described in clause 24.3(b);
- (d) be provided with adequate office facilities by the Supplier to perform their intended functions; and
- (e) provide inputs and suggestions to the Supplier and to have the Supplier reasonably consider any such inputs and suggestions,

and the Supplier must:

- (f) ensure that the Observer is given any explanation or assistance reasonably requested; and
- (g) make Supplier Personnel available to meet with the Observer as requested.

The Customer must ensure that the Observer agrees to comply with all reasonable Supplier policies generally applicable to access to Supplier premises.

## 24.5 Failure

If Customer has requested an Action Plan and the Supplier fails to:

- (a) comply with its obligations under clause 24.4 (Observer) or otherwise hinders the Observer exercising the rights set out in clause 24.4 (Observer);
- (b) develop or deliver to, or agree with, Customer the Action Plan within the Required Time Frames;
- (c) commence implementing the Action Plan within the Required Time Frames; or
- (d) complete implementing the Action Plan and rectify the Action Plan Trigger Event in accordance with the Required Time Frames and terms of the Action Plan,

then, subject to clause 24.6 (Extension) the Customer may terminate this Customer Outsourcing Agreement in whole or as it relates to a Service Tower or as it relates to a SOW, or reduce the scope or volume of the Services to be provided under this Customer Outsourcing Agreement in respect of a Service Tower, immediately by giving notice to the Supplier. If there is any outstanding part (**Outstanding Part**) of an Action Plan that does not relate solely to Services that have been so terminated or de-scoped, the Customer may give notice to the Supplier to (i) require the Supplier to perform that Outstanding Part and (ii) designate in the Customer's reasonable discretion the subsequent Required Time Frames for the Supplier to commence and complete implementing that Outstanding Part. In the event that the Supplier fails to implement that Outstanding Part within the Required Time Frames so designated, this clause 24.5 (including its paragraphs (c) and/or (d), as applicable) will apply to that Outstanding Part of the Action Plan.

## 24.6 Extension

The Supplier will be entitled to claim, and the Customer is required to grant, a reasonable extension of a Required Time Frame if:

- (a) immediately upon becoming aware of any circumstance which may lead to the need for any such extension, the Supplier:
  - (i) notifies the Customer of this (such notice to include all details reasonably necessary to enable Customer to determine the cause of the delay and the likely effect on the Required Time Frames); and
  - (ii) requests an extension;
- (b) the delay cannot be made up so that the Required Time Frame is still met without varying or increasing resources used by the Supplier; and
- (c) the delay is caused by a failure by an Outsourcing Program Entity to carry out any tasks assigned to them in an Outsourcing Program Agreement in relation to an Action Plan Trigger Event and on which the Supplier is dependent to enable it to meet the Required Time Frame (but not including any such failures which result from a prior failure of the Supplier to meet its obligations).

## 24.7 Not Limit

The exercise (or non-exercise) by the Customer of its rights under clause 24.5 (Failure) will not limit any other right of the Customer under this Customer Outsourcing Agreement, or otherwise.

# 25. Assets to be Transferred and Customer Supplied Items

## 25.1 Assets to be Transferred

- (a) The Customer must transfer, or procure the transfer, to the Supplier, free from all Encumbrances, all of the Customer's right, title and interest in and to the Assets to be Transferred in accordance with the project timetable set out in the Transition-In and Transformation Plan (as applicable).
- (b) Risk in the Assets to be Transferred transferred under clause 25.1(a) will pass to Supplier on the Supplier taking possession or control of the Assets to be Transferred.

- (c) The Supplier acknowledges that it has had the opportunity to inspect the Assets to be Transferred, and the Customer transfers the Assets to be Transferred 'as is'. To the maximum extent permitted by law, the Customer excludes all representations, warranties and other conditions in relation to the Assets to be Transferred.

## **25.2 Customer Supplied Items**

The Supplier:

- (a) may only use the Customer Supplied Items to the extent necessary to perform its obligations under this Customer Outsourcing Agreement;
- (b) must not part with or deal with the Customer Supplied Items in a manner that is not permitted by this Customer Outsourcing Agreement;
- (c) must perform any obligations in relation to management, support and maintenance of the Customer Supplied Items as specified in Schedule 9 - Assets to be Transferred, Customer Supplied Items, Third Party Agreements to be Novated and Managed Third Party Agreements (for example, maintaining at its own cost Third Party support for the Customer Supplied Items);
- (d) acknowledges that its use of the Customer Supplied Items to perform its obligations under this Customer Outsourcing Agreement does not affect the warranties or other obligations of Supplier under this Customer Outsourcing Agreement;
- (e) must keep each of the Customer Supplied Items in the same condition as it was provided and take all steps necessary to protect the Customer Supplied Items from loss or damage (other than fair wear and tear);
- (f) must not permit an Encumbrance to be granted or asserted over the Customer Supplied Items or perform any other act that is inconsistent with Customer's ownership or other interest in the Customer Supplied Items;
- (g) must promptly inform the Customer of any loss, destruction or damage (other than fair wear and tear) to the Customer Supplied Items and must promptly remedy that loss, destruction or damage to the Customer Supplied Items to the Customer's satisfaction;
- (h) must not modify the Customer Supplied Items without the Customer's prior Approval; and
- (i) must comply with any reasonable instruction given by the Customer in respect of the Customer Supplied Items.

## **25.3 Risk and title**

- (a) The Supplier acknowledges that it does not have title or any other interest in the Customer Supplied Items.
- (b) Risk of loss or damage to the Customer Supplied Items passes to Supplier when Supplier takes possession or control of the Customer Supplied Items, and remains with the Supplier until the Customer Supplied Items are returned to the possession and control of the Customer or another entity directed by the Customer, whereupon such risk is passed to the Customer or that entity. Customer acknowledges that upon return of the Customer Supplied Items, the Supplier is no longer responsible for any prospective risk or liability for the Customer Supplied Items but will remain liable for any accrued claims or accrued liability relating to the Customer Supplied Items from the date of the return.

## **25.4 No warranties**

Customer provides the Customer Supplied Items 'as is' and gives no warranties about any Customer Supplied Items.

## 26. Third Party Agreements to be Novated and Managed Third Party Agreements

### 26.1 Treatment as at the Transition-In Completion Date

- (a) The Customer will use reasonable efforts to novate, or procure the novation of, each Third Party Agreement to be Novated on or prior to the Transition-In Completion Date, and the Supplier will provide all reasonable assistance requested by the Customer to effect the novation including attending meetings with the relevant Third Party and executing relevant documents.
- (b) If a Third Party Agreement to be Novated under clause 26.1(a) cannot be novated on or prior to the Transition-In Completion Date, the Contract Authority may require that it be treated as a Managed Third Party Agreement in accordance with clause 26.3 (Scope of Management).
- (c) The Supplier will:
  - (i) assume financial and operational responsibility for all Third Party Agreements to be Novated that have been novated from the effective date of such novation; and
  - (ii) on and from the Transition-In Completion Date, assume operational responsibility for all Managed Third Party Agreements.
- (d) For each Third Party Agreement to be Novated that is novated to the Supplier, the Supplier must pay the Contract Authority for all charges that have been prepaid to the relevant Third Party attributable to periods on and after the effective date of novation.

### 26.2 Appointment of Supplier as agent

The Customer will appoint or procure the appointment of the Supplier as its agent to exercise some or all of a Customer's (or another NSW Government Body) rights and/or perform some or all of the Customer's (or another NSW Government Body's) obligations under a Managed Third Party Agreement but only to the extent necessary for the Supplier to perform its obligations under clause 26.3 (Scope of Management).

### 26.3 Scope of Management

- (a) In relation to each Managed Third Party Agreement the Customer may specify the rights the Supplier may exercise and the obligations the Supplier must perform under that Managed Third Party Agreement. This may include:
  - (i) monitoring the performance of the Managed Contractor;
  - (ii) using reasonable endeavours to ensure (through management and monitoring) that the Managed Contractor performs its obligations under the Managed Third Party Agreement in accordance with the Managed Contractor's obligations;
  - (iii) confirming the invoice in relation to the Managed Third Party Agreement is correct for payment in a timely manner sufficient for the Customer (or other NSW Government Body) to pay the invoice on time and then, once confirmed, notify Customer (or other NSW Government Body) who will pay the invoice for the Managed Third Party Agreement;
  - (iv) providing the Customer with a monthly report on the status of the Managed Third Party Agreements identifying any difficulties or adverse issues within 7 Business Days at the end of each month;
  - (v) placing orders under the Managed Third Party Agreements on behalf of the Customer (or other NSW Government Body); and
  - (vi) liaising with the relevant Third Party in relation to incident resolution or other support and maintenance issues.
- (b) The Supplier must:
  - (i) obtain the Customer's prior Approval before exercising or deciding not to exercise any right or deciding not to perform any obligation under or in relation to the

- Managed Third Party Agreement if that act or omission may adversely affect the Customer (or other NSW Government Body);
- (ii) give the Customer sufficient notice in advance of the time for performing an obligation or exercising a right to allow Customer to appropriately consider its requirements and direct the Supplier accordingly so that all obligations are performed and rights are exercised in a timely manner;
  - (iii) not do (or refrain from doing) anything which causes or is likely to cause the Customer (or other NSW Government Body) to be in breach of the Managed Third Party Agreement;
  - (iv) notify the Customer at least 180 days in advance of any expiry date of a Managed Third Party Agreement and ensure that it has entered into its own arrangements necessary to continue providing the Services and Deliverables beyond the expiry of the Managed Third Party Agreement;
  - (v) not vary or terminate the Managed Third Party Agreement; and
  - (vi) always act in the Customer's (or other NSW Government Body's) best interests.
- (c) To the extent that the Supplier requires knowledge of the terms and conditions of a Managed Third Party Agreement in order to perform an obligation under clauses 26.3(a) or 26.3(b), the Supplier will only be obliged to perform that obligation to the extent that the Customer has informed the Supplier of the details, or disclosed the relevant parts, of the Managed Third Party Agreement necessary for the Supplier to perform that obligation.

## **26.4 Cooperation**

- (a) The Customer will use reasonable endeavours to require that each Managed Contractor provide all necessary cooperation with Supplier to enable Supplier to perform its obligations under clause 26.3 (Scope of Management).
- (b) If the Customer is unable to obtain the Managed Contractor's cooperation under clause 26.4(a), the Supplier must, to the extent it is possible, propose an alternative approach to provide the Services and Deliverables without such cooperation, including identifying any additional costs to the Customer associated with that alternative approach. If the Customer Approves that alternative approach, the Supplier must implement it.

## **26.5 Compliance with terms of use**

If the Customer provides the Supplier with access to or use of, or the Supplier is required to manage on behalf of the Customer:

- (a) software licensed by an Outsourcing Program Entity (or another NSW Government Body) from a Third Party;
- (b) equipment or hardware that is leased by an Outsourcing Program Entity (or another NSW Government Body) from a Third Party; or
- (c) services obtained by an Outsourcing Program Entity (or another NSW Government Body) from a Third Party,

then the Supplier must comply with any terms, conditions or restriction in respect of the management, access or use of such software, equipment, hardware or services notified to Supplier by the Customer or of which Supplier is otherwise aware.

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# **PART G – FRAMEWORK PROVISIONS**

## **27. Representation and warranties**

### **27.1 Supplier's general warranties**

Supplier represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Customer Outsourcing Agreement;
- (b) this Customer Outsourcing Agreement is executed by a duly authorised representative;
- (c) once duly signed, this Customer Outsourcing Agreement will constitute legal, valid and binding obligations of the Supplier in accordance with its terms;
- (d) there are no actions, suits or proceedings pending or, to Supplier's knowledge, threatened against or affecting the Supplier before any court or administrative body or arbitral tribunal that might affect the ability of Supplier to meet and carry out its obligations under this Customer Outsourcing Agreement;
- (e) execution, delivery, and performance of this Customer Outsourcing Agreement does not violate any judgment, order, or decree and would not constitute a material default under any of its existing contracts;
- (f) it has locally available and empowered management in accordance with Outsourcing Governance Structure, authorised and capable of making decisions concerning every aspect of this Customer Outsourcing Agreement (including any legal issues and pricing issues);
- (g) prior to entering into this Customer Outsourcing Agreement, it has evaluated all aspects of the RFP, and has the expertise and capacity to provide the Services and Deliverables contemplated under the RFP (as modified by written submissions and representations provided to the Customer as part of the RFP process) for the Term;
- (h) all representations, materials or information given to the Customer (as modified by written submissions and representations provided to the Contract Authority as part of the RFP process) in connection with this Customer Outsourcing Agreement prior to entering into this Customer Outsourcing Agreement:
  - (i) are true and correct;
  - (ii) are not misleading or deceptive; and
  - (iii) do not contain any misrepresentations which may affect Supplier's ability to comply with its obligations under this Customer Outsourcing Agreement;
- (i) as at the Commencement Date, the Customer is not required by Law to deduct an amount in respect of Taxes from a payment under this Customer Outsourcing Agreement; and
- (j) it has disclosed in writing to the Customer prior to entering into this Customer Outsourcing Agreement any matters it was aware of prior to entering into this Customer Outsourcing Agreement relating to the commercial, technical or financial capacity of the Supplier that might materially affect the Supplier's ability to perform any of its obligations under this Customer Outsourcing Agreement.

## **27.2 Supplier's performance warranties**

The Supplier represents and warrants that:

- (a) it will perform the Services promptly, efficiently, diligently, with due care and skill and at least in accordance with accepted industry practices and professional standards;
- (b) all Documentation related to the Customer Cluster's use of the Services and Deliverables will be complete and accurate;
- (c) it will make available, and use, adequate numbers of Supplier Personnel with suitable training, education, experience, qualifications, competency, skill and authority to perform the Services;
- (d) the Services and each Deliverable meet the functional and performance criteria specified in this Customer Outsourcing Agreement;
- (e) all Equipment provided by the Supplier under this Customer Outsourcing Agreement will:
  - (i) be new and not previously used by any other person unless agreed by the Customer; and

- (ii) be supplied with all associated goods or equipment ordinarily provided with the Equipment;
- (f) the facilities and any hardware, software, systems and materials recommended or otherwise specified by the Supplier in writing for use by the Customer or Beneficiary Entity in conjunction with the Services or the Deliverables will be compatible with and interoperate with the Services and Deliverables; and
- (g) to the extent that in order to be able to provide specific Services, Supplier Personnel are required to have or hold certain qualifications, certifications, registrations or other accreditations (collectively, **Necessary Qualifications**), the Supplier must ensure that all such Supplier Personnel have at all times the Necessary Qualifications.

### 27.3 Non-infringement warranties

The Supplier represents and warrants that:

- (a) the provision of the Services by it will comply with all Laws, standards and industry codes of conduct;
- (b) it has, and will continue to have, all approvals, consents, exemptions, filings, licences, notarisations, permits, registrations, clearance or waiver necessary to perform its obligations under this Customer Outsourcing Agreement;
- (c) it has not violated any Laws, or any Customer Policies regarding the offering of unlawful inducements in connection with this Customer Outsourcing Agreement; and
- (d) it is able to lawfully grant the licences and assignments in this Customer Outsourcing Agreement.

### 27.4 Notification of non-compliance

As soon as practicable after becoming aware of any matter which is likely to impact upon its ability to comply with a warranty or representation in this clause 27, the Supplier must give written notice to Customer detailing that matter and its likely impact on the Supplier's ability to comply with this clause 27.

### 27.5 Customer's representations and warranties

Customer represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform its obligations under this Customer Outsourcing Agreement;
- (b) this Customer Outsourcing Agreement is executed by its duly authorised representatives;
- (c) once duly signed, this Customer Outsourcing Agreement will constitute legal, valid and binding obligations of the Customer in accordance with its terms;
- (d) in relation to Customer Owned Material it has the right to grant the licence to that Customer Owned Material in accordance with clause 30.3(a);
- (e) in relation to Licensed Customer Material the terms of its licence to such Licensed Customer Materials permit Customer to grant the licence to that Licensed Customer Material in accordance with clause 30.3(b); and
- (f) it has obtained all necessary consents to disclose the Customer Data (including any personal information under the *Privacy and Personal Information Protection Act 1998* (NSW)) to the Supplier.

## 28. Confidentiality

### 28.1 Treatment of Confidential Information

Each party acknowledges that the Confidential Information of the other party is valuable to the other party. Each party undertakes to keep the Confidential Information of the other party secret and to protect and preserve the confidential nature and secrecy of the Confidential Information of the other party.

## 28.2 Use of Confidential Information

A Recipient may only use the Confidential Information of the Discloser for the purposes of performing the Recipient's obligations or exercising the Recipient's rights under this Customer Outsourcing Agreement.

## 28.3 Disclosure of Confidential Information

A Recipient may not disclose Confidential Information of the Discloser to any person except:

- (a) Representatives of the Recipient who require it for the purposes of the Recipient performing its obligations or exercising its rights under this Customer Outsourcing Agreement, to obtain professional advice in relation to this Customer Outsourcing Agreement or as part of any internal review processes and then only on a need to know basis;
- (b) with the prior written consent of the Discloser;
- (c) if the Recipient is required to do so by Law or by the Audit Office of NSW (except that this paragraph does not permit the Supplier to disclose any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies) and in such event the Recipient must promptly notify the Discloser of such requirement (except if prohibited by Law or the Audit Office of NSW) with a view to providing the Discloser with the opportunity to contest such disclosure or otherwise to agree the timing and content of such disclosure;
- (d) if the Recipient is required to do so in connection with legal proceedings relating to this Customer Outsourcing Agreement; or
- (e) where the Customer is the Recipient to:
  - (i) ServiceFirst, Beneficiary Entity, Contract Authority or an Eligible Customer; or
  - (ii) a Service Provider for the purpose of that Service Provider providing services or deliverables to the Customer or Beneficiary Entity.

## 28.4 Disclosure by Recipient

If a Recipient discloses information under clause 28.3(a) or clause 28.3(b) then:

- (a) it must ensure that persons receiving Confidential Information from it are aware it is the other party's Confidential Information and do not disclose the information except in the circumstances permitted in clause 28.3 (Disclosure of Confidential Information);
- (b) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the non-disclosure of the Confidential Information and the Recipient must arrange for all such undertakings to be given promptly; and
- (c) the Recipient must reserve the right to demand immediate delivery or destruction (with the exception of those documents and materials that are required to be kept in accordance with the *State Records Act 1998* (NSW) or other relevant Laws) of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.

## 28.5 Return of Confidential Information

Subject to clause 28.6 (Exceptions), on the Discloser's request, the Recipient must immediately deliver to the Discloser or destroy (at the Discloser's sole discretion) all documents or other materials containing or referring to the Discloser's Confidential Information which are:

- (a) in the Recipient's possession, power or control; or
- (b) in the possession, power or control of persons who have received Confidential Information from the Recipient under clause 28.3(a) or clause 28.3(b),

except to the extent that the Confidential Information is required to be retained by the Recipient under its backup or archiving policies or Law.

## **28.6 Exceptions**

The obligation in clause 28.5 (Return of Confidential Information) does not apply to Confidential Information of the Discloser that the Recipient requires in order to perform its obligations under this Customer Outsourcing Agreement or is otherwise entitled to retain.

## **28.7 Equitable remedies**

The parties acknowledge that damages may not be a sufficient remedy for any breach of this clause 28 and either party is entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for breach or threatened breach by the other party, in addition to any other remedies available at law or in equity.

## **28.8 No restriction on rights**

Nothing in this clause 28 prevents the Customer from fully exercising and enjoying all the rights granted to it under this Customer Outsourcing Agreement in respect of New Material, Supplier Material, Third Party Material, the Services and Deliverables notwithstanding that such Material may contain Supplier Confidential Information.

## **28.9 Disclosure of details of Customer contracts with the private sector**

The Supplier acknowledges that the Customer may be required to publish certain information concerning this Customer Outsourcing Agreement in accordance with ss 27 - 35 of GIPA. If the Supplier reasonably believes that any part of this Customer Outsourcing Agreement contains information which is commercial-in- confidence (as defined in GIPA) or could reasonably be expected to affect public safety or security, then the Supplier should immediately advise the Customer in writing, identifying the provisions and providing reasons so that the Customer may consider seeking to exempt those provisions from publication.

## **28.10 Provide information**

At the Customer's request, the Supplier will promptly provide all information in its possession or control to enable the Customer to comply with its obligations under this Customer Outsourcing Agreement and at Law, including providing details of any person (for example, a Related Body Corporate or any other private sector entity in which the Supplier has an interest) that:

- (a) will be involved in performing any of the Supplier's obligations under this Customer Outsourcing Agreement; or
- (b) will receive a benefit under this Customer Outsourcing Agreement.

This clause survives the termination of this Customer Outsourcing Agreement for any reason whatsoever.

## **28.11 GIPA access to information**

It is an essential term of this Customer Outsourcing Agreement that, if under this Customer Outsourcing Agreement the Supplier is required to provide goods or services to the public on behalf of the Customer or a Beneficiary Entity then within 3 days of receiving a written request by the Customer the Supplier must provide the Customer with immediate access to information referred to in s.121(1) of GIPA (but excluding information referred to in s.121(2)) contained in records held by the Supplier and in such medium as Customer may reasonably require. The Customer will consult with the Supplier before releasing any information obtained from the Supplier as required by s.54 of GIPA. To the extent that the request by the Customer will require the Supplier to incur material additional costs, the Customer agrees to pay the Supplier's reasonable, direct substantiated costs for compliance with such a request.

# **29. Customer Data and privacy**

## **29.1 Customer Data**

Supplier agrees and acknowledges that Customer owns the Customer Data and all Intellectual Property Rights in the Customer Data.

## 29.2 Use of Customer Data

The Supplier must not (and must ensure that Supplier Personnel do not):

- (a) use Customer Data other than for the purpose of performing its obligations under this Customer Outsourcing Agreement;
- (b) sell, lease, dispose of or otherwise deal with or commercially exploit any Customer Data;
- (c) disclose any Customer Data to any Third Party (other than a Subcontractor) without the Customer's prior Approval provided that if the Customer Data is Customer Confidential Information, Supplier may disclose it in accordance with clause 28 (Confidentiality);
- (d) alter the Customer Data except as required to perform its obligations under this Customer Outsourcing Agreement; or
- (e) deal with the Customer Data in a manner which would breach the *State Records Act 1998* (NSW).

## 29.3 No security interest

The Supplier acknowledges and agrees that at no time whilst it is holding the Customer Data does it have an Encumbrance over the Customer Data, and must deliver, and not keep any copy of, all Customer Data to Customer immediately on demand except as otherwise required to be retained by Law or to perform its obligations under an Outsourcing Program Agreement.

## 29.4 Privacy

The Supplier must in respect of any personal information:

- (a) comply with the Customer's privacy policy (and each specific privacy policy of the Customer in relation to the collection and/or handling of personal or private information relating to third parties including the obtaining of any necessary consents to its use by the Customer or by third parties) as notified in writing to Supplier from time to time as if it were bound by that policy;
- (b) comply with the Privacy Laws, as if it were regulated by all of the Privacy Laws;
- (c) not do any act or engage in any practice that would breach an IPP, or which if done or engaged in by the Customer, would be a breach of an IPP;
- (d) comply with, carry out and discharge the obligations contained in the IPPs as if it were the Customer carrying out and discharging those obligations; and
- (e) comply with all directions by the Customer relating to the means by which the Customer complies with the Privacy and Personal Information Protection Act 1998 (NSW), *Health Records and Information Privacy Act 2002* (NSW), Customer's privacy policy, and all other applicable Laws, codes and privacy policies;
- (f) co-operate with the Customer in the resolution of any complaint alleging a breach of such Laws, codes or privacy policy;
- (g) without limiting clause 29.5(d), not transfer Personal Information outside of New South Wales, Australia or access it, or allow it to be accessed, from outside of New South Wales, Australia unless expressly permitted in this Customer Outsourcing Agreement or Operational Service Order and subject to the Supplier's and Supplier Personnel's compliance with the Data Location Conditions; and
- (h) act in accordance with, and otherwise comply with the requirements of, Schedule 21 - Privacy Compliance: Governance and Operation Framework of the ETA in relation to the parties' current processes and procedures regarding privacy compliance and remediation of privacy issues or breaches.

## 29.5 Security

The Supplier must:

- (a) ensure that all Customer Data and all Personal Information subject to clause 29.4 (Privacy) is protected against misuse and loss, and from unauthorised access, modification and disclosure as reasonably required by the Customer;

- (b) no less than once per calendar year provide appropriate training to Supplier Personnel with respect to the correct handling of Personal Information and Customer Data so as to minimise the risk of accidental or malicious security breaches;
- (c) ensure that its physical and IT security systems only permit properly authorised Supplier Personnel to access the Customer Data and Personal Information;
- (d) not store, send, or permit access from, outside Australia any Customer Data or Personal Information except with the Customer's prior Approval or in accordance with any Approved Offshoring Proposal; and
- (e) in the event of any breach of this clause 29.5 or any unauthorised access to, or Security Incident involving, Customer Data or Personal Information that the Supplier becomes aware of:
  - (i) immediately notify the Customer of such breach, unauthorised access or Security Incident;
  - (ii) provide all assistance requested by and comply with any reasonable direction from the Customer in connection with such breach, unauthorised access or Security Incident (which may include, for example, notifying any affected individuals of the breach of privacy) in the timeframe required by the Customer; and
  - (iii) take all reasonable steps to prevent such breach, unauthorised access or Security Incident from recurring.

## **29.6 Access to Customer Data**

- (a) The Customer may, from time to time, provide the Supplier with a written request to provide copies of certain Customer Data within a stipulated time (**Data Request**).
- (b) On receipt of a Data Request, the Supplier must provide such Customer Data as soon as possible (but in any case, within the time stipulated by the Customer in the Data Request).
- (c) To the extent compliance with the Data Request will require the Supplier to incur material additional costs, the Customer agrees to pay the Supplier's reasonable, direct, substantiated additional costs for compliance with the Data Request.

## **29.7 Provision of information to Supplier**

The Customer and the Supplier acknowledge that Services licensed or sold under this Customer Outsourcing Agreement may include technology and software and are subject to export control Laws and regulations, including the U.S. or Australian governments or any other applicable national government. Both parties agree to comply with all applicable export Laws, regulations and orders. The Customer further represents that any software for which Intellectual Property Rights are owned by the Customer and which is provided by the Customer and used as part of the Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license.

## **29.8 Security Incident notification**

The (new) clause 29.8 of the ETA is deemed incorporated into this Customer Outsourcing Agreement as if set out here in this (new) clause 29.8 in full, save that:

- (a) references to 'Contract Authority Data' in clause 29.8 of the ETA shall be deemed as not incorporated into this clause 29.8; and
- (b) references to 'the Contract Authority' in clause 29.8 of the ETA shall be deemed incorporated into this clause 29.8 as references to 'the Customer'.

# **30. Intellectual Property Rights**

## **30.1 Ownership of Existing Intellectual Property Rights**

The parties agree that other than as provided in this clause 30, nothing in this Customer Outsourcing Agreement transfers ownership in, or otherwise grants any rights in, any Existing Intellectual Property Rights of a party.

### 30.2 Ownership of New Material

- (a) Subject to clause 30.2(b) and 29.1 (Customer Data), the Supplier will retain all Intellectual Property Rights in the New Material.
- (b) The Supplier:
  - (i) assigns, and must procure that all Supplier Personnel assign, to the Customer (or a Third Party licensor of the Customer as directed by the Customer), on the later of the date of execution of this Customer Outsourcing Agreement and creation, all of the Intellectual Property Rights throughout the world in the Identified Material and any modifications to the Customer Material; and
  - (ii) will do all things necessary to effect the assignment of all Intellectual Property Rights in the Identified Material and any modifications to the Customer Material to the Customer (or a Third Party licensor of the Customer as directed by the Customer) including executing and delivering documents.

### 30.3 Licence to Customer Material

- (a) The Customer grants or will procure the grant to the Supplier a non-transferable, non-exclusive, royalty-free licence to use, reproduce, modify and adapt the Customer Owned Material (and any modifications to it in which Intellectual Property Rights are assigned to the Customer under clause 30.2(b)):
  - (i) for the Term and any Transition-Out Period; and
  - (ii) solely for the purpose of, and to the extent necessary for, the Supplier meeting its obligations to the Customer under this Customer Outsourcing Agreement.
- (b) Subject to the Customer obtaining any required Third Party licensor consents, the Customer grants to the Supplier a non-transferable, non-exclusive, royalty-free licence to use the Licensed Customer Material (and any modifications to it in which Intellectual Property Rights are assigned to the Third Party licensor under clause 30.2(b)):
  - (i) for the Term and any Transition-Out Period;
  - (ii) solely for the purpose of, and to the extent necessary for, the Supplier meeting its obligations to Customer under this Customer Outsourcing Agreement; and
  - (iii) subject to any terms and licence restrictions supplied with the Licensed Customer Materials or made known to the Supplier, in relation to the Licensed Customer Material.
- (c) The Supplier must comply, and ensure that all Supplier Personnel comply, with all terms and licence restrictions provided or notified by the Customer under clause 30.3(b)(iii).
- (d) The Supplier acknowledges and agrees that:
  - (i) the Customer makes no warranty or representation in relation to the Customer Materials (other than the warranties in clause 27.5(d), 27.5(e) and 27.5(f));
  - (ii) it has conducted appropriate and necessary due diligence on the Licensed Customer Materials and confirmed that the terms and licence restrictions under clause 30.3(b)(iii) do not prevent or restrict the Supplier from performing its obligations under this Customer Outsourcing Agreement; and
  - (iii) the Supplier will not be relieved of any of its obligations under this Customer Outsourcing Agreement and waives and releases the Customer from any Claim it may have against them, as a result of the Supplier not having the necessary rights to any Licensed Customer Material.

### 30.4 Licence to Products and Supplier Material

- (a) For Products other than Designated Core Software, Identified Materials, Customer Materials and any modifications to the Customer Materials, the Supplier grants to each Outsourcing Program Entity a perpetual, non-exclusive, world-wide, irrevocable, royalty-free licence to:
  - (i) use, reproduce, modify, adapt and communicate to the public, that Product;

- (ii) permit any person to assist each Outsourcing Program Entity (as applicable) do any of the things referred to in clause 30.4(a)(i) above; and
- (iii) sublicense any of the rights described in clause 30.4(a)(i) or 30.4(a)(ii) to any person,

to use or exploit (other than by way of commercialisation) that Product in connection with the function and role of each Outsourcing Program Entity (including implementation of the Outsourcing Program Entities' disaster recovery and business continuity plans). For the avoidance of doubt this licence does not permit the Customer to reverse engineer any Existing Intellectual Property Rights of the Supplier or commercialise that Existing Intellectual Property Right on a stand-alone basis apart from the Product.

- (b) For Supplier Material other than Designated Core Software and those embedded within a Product, the Supplier grants to each Outsourcing Program Entity a non-exclusive, world-wide, irrevocable, royalty-free licence for the Term and any Transition-Out Period to:
  - (i) use, reproduce, modify and adapt that Supplier Material;
  - (ii) permit any person to assist the Outsourcing Program Entity (as applicable) do any of the things referred to in clause 30.4(b)(i) above; and
  - (iii) sublicense any of the rights described in clause 30.4(b)(i) or 30.4(b)(ii) to any person,

but only to the extent required for the Outsourcing Program Entity to use and fully receive the benefit of the Services.

- (c) In respect of Designated Core Software, the Supplier:
  - (i) grants to the Outsourcing Program Entities for the Term and any Transition-Out Period a royalty-free licence to use any Supplier Material not embedded within a Product that is Designated Core Software on the terms of the Designated Core Software End- User Terms;
  - (ii) grants to the Outsourcing Program Entities a perpetual royalty- free licence to use any Designated Core Software that is embedded in a Product on the terms of the Designated Core Software End-User Terms; and
  - (iii) represents and warrants to the Customer that the Designated Core Software End-User Terms do not contain any Critical Departures except as otherwise set out in Schedule 11 - Designated Core Software of the ETA.

### **30.5 Embedded Third Party Materials**

The Supplier must not, without the Customer's prior Approval, incorporate any Third Party Materials into any New Material or a Deliverable unless it has:

- (a) secured for the Outsourcing Program Entities rights in respect of the Third Party Materials that are no less extensive than the rights granted to the Outsourcing Program Entities under this Customer Outsourcing Agreement for Supplier Materials or Deliverables respectively; and
- (b) verified that the Customer has the right to purchase ongoing maintenance and support for such Third Party Materials which is Equipment or Software on reasonable terms.

### **30.6 Compliance with licence terms**

The Supplier must not do, or omit to do, anything that would cause Outsourcing Program Entities to breach any licence terms for Third Party Materials provided, used or accessed by the Outsourcing Program Entities.

### **30.7 Protection of Customer rights**

Each party must not knowingly do, cause or authorise the doing of anything contrary to this Customer Outsourcing Agreement which may adversely affect or jeopardise the other party's:

- (a) Intellectual Property Rights;

- (b) right, title or interest in any Materials owned by the other party or a Related Body Corporate of that party; or
- (c) rights under this clause 30.

### **30.8 Know-how and methodologies**

Subject to the Supplier's obligations of confidentiality under clause 28 (Confidentiality) and clause 29 (Customer Data and privacy), nothing else in this Customer Outsourcing Agreement affects the ownership of, or restricts the Supplier's ability to re-use, any know-how, skills or methodologies which the Supplier owns as at the Commencement Date or develops in performing its obligations under this Customer Outsourcing Agreement.

### **30.9 Open Source**

- (a) The Supplier must not incorporate any Open Source Software into any Product without the prior Approval of the Customer.
- (b) Where the Supplier procures Open Source Software, the Supplier must:
  - (i) procure a licence to Customer of that Open Source Software under the appropriate Open Source Licence;
  - (ii) provide a copy of the Open Source Licence terms for that Open Source Software to Customer; and
  - (iii) deliver a copy of the source code to that Open Source Software to the Customer.
- (c) The Supplier must ensure that each item of Open Source Software incorporated into, or provided with, a Product is identical to the most recent version of that software made available by the maintainer of that piece of software at the time it is incorporated into, or provided with, that Deliverable, unless otherwise agreed by the Customer.
- (d) The Supplier warrants that the Supplier's use or supply of any Open Source Software will not cause Intellectual Property Rights owned by the Customer or licensed to the Customer by a Third Party to become subject to any Open Source Licence unless otherwise agreed by the Customer.
- (e) The Supplier must not use or contribute any Customer Confidential Information in the course of making modifications to any software the subject of an Open Source Licence or make or purport to make any Customer Confidential Information the subject of an Open Source Licence without prior Approval from the Customer.
- (f) Supplier will not retain any rights over the Deliverables created for the Customer using Open Source Software.
- (g) Without limiting any other rights or remedies the Supplier must defend at the Supplier's cost any Claim brought by the owner of the Intellectual Property Rights in the Open Source Software against the Outsourcing Program Entities, to the extent such Claim arises out of Supplier's use of the Open Source Software in breach of the relevant Open Source Licence.

## **31. Insurance and risk of loss**

### **31.1 Policies**

- (a) The Supplier must maintain at the Supplier's own cost, comprehensive insurance policies in relation to any liability arising out of this Customer Outsourcing Agreement and ensure that its Subcontractors have sufficient insurance for the services they will perform in relation to this Customer Outsourcing Agreement including:
  - (i) workers compensation insurance;
  - (ii) professional indemnity insurance for no less than AUD\$20,000,000 for each occurrence and in the aggregate;

- (iii) product liability insurance for no less than AUD\$10,000,000 for each occurrence and in the aggregate;
  - (iv) public liability insurance for no less than AUD\$20,000,000 for each occurrence and in the aggregate.
- (b) If a policy is a 'claims made' or 'claims made and notified' policy, the Supplier must keep it or a 'tail out' policy satisfactory to the Customer in place for 3 years after the termination or expiration of this Customer Outsourcing Agreement.
- (c) The Customer may request the Supplier to produce written evidence of such insurances at any time (including certificates of currency of insurance from the insurer or insurance broker).

### **31.2 Minimum requirements**

An insurance policy under clause 31.1 (Policies):

- (a) must be with an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority to conduct general insurance business in Australia or otherwise with an overseas insurer which has a rating of A- or better by AM Best or an equivalent rating organisation at the date when cover is commenced; and
- (b) must be on terms (including risks covered and exclusions) reasonably expected for insurance of the type referred to in clause 31.1 (Policies).

### **31.3 Evidence of currency**

On request by the Customer, the Supplier must provide certificates of currency proving that the policies of insurance required under this Customer Outsourcing Agreement have been effected and are current. A certificate of currency provided under this clause must be issued by the insurance company providing insurance and must contain all details reasonably expected of certificate of currency issued for the relevant insurance.

### **31.4 Supplier notification**

The Supplier must notify the Customer within 5 Business Days of any event which affects or may affect the Supplier's compliance with this clause 31, including any cancellation of a policy or reduction of limit of coverage below that required by this Customer Outsourcing Agreement.

### **31.5 Failure to provide evidence of insurance**

If the Supplier does not comply with clause 31.1 (Policies) or 31.3 (Evidence of currency), the Customer may notify the Supplier of the breach. If the breach is not remedied within 5 Business Days of the notice by the Customer, the Customer may, but is not obliged to, effect the relevant insurances and may:

- (a) recover the cost of doing so as a debt due from the Supplier; or
- (b) deduct the premiums payable for the relevant insurances from amounts payable to the Supplier.

### **31.6 Risk of loss**

The Supplier is responsible for the risk of loss of, and damage to, any Equipment, Software, Facilities, and other Materials in its possession or under its control except to the extent that such loss or damage is caused by the Customer.

## **32. Indemnity and defence**

### **32.1 Indemnity by Supplier**

The Supplier indemnifies the Customer and each Beneficiary Entity and its Representatives, against all losses, damages, liabilities, claims and expenses (including legal costs) incurred by the Customer, Beneficiary Entity and its Representatives, arising out of or in connection with:

- (a) any act or omission of the Supplier or Supplier Personnel resulting in or contributing to:

- (i) any death or injury to persons; or
- (ii) any loss or damage to real or tangible property;
- (b) subject to clause 32.6 (Exceptions), an Infringement Claim by a Third Party;
- (c) breach of clause 28 (Confidentiality) or clause 29 (Customer Data and privacy) by the Supplier or Supplier Personnel, except to the extent that a breach of clause 29 (Customer Data and privacy) is a result of the Customer breaching its warranty under clause 27.5(f);
- (d) any fraudulent or unlawful act or omission by Supplier or Supplier Personnel;
- (e) a Claim arising out of the employment or engagement or the termination of employment or engagement of any person by Supplier or a Subcontractor in connection with the provision of the Services;
- (f) a failure by the Supplier to fulfil its obligations after the Commencement Date under a Third Party Agreement novated or assigned to or managed by the Supplier under this Customer Outsourcing Agreement;
- (g) a Claim by a Subcontractor arising from any act or omission of the Supplier or any Supplier Personnel; or
- (h) the Supplier's breach of clause 26.5 (Compliance with terms of use).

### **32.2 Conduct of defence**

If there is a Claim by a Third Party against the Customer, Beneficiary Entity or their Representatives (**Indemnified Party**) in connection with any of act, omission or circumstance giving rise to an indemnity in favour of the Customer or Beneficiary Entity under clause 32.1 (Indemnity by Supplier):

- (a) the Customer must promptly notify the Supplier of the Claim; and
- (b) the Supplier must, at no cost to the Indemnified Party, defend such a Claim.

### **32.3 Other obligations**

If the Supplier is required to defend a Claim under or any related settlement of a Claim notified under clause 32.2 (Conduct of defence), the Supplier must:

- (a) consult with the Customer on any decision to defend the Claim and the conduct of the defence;
- (b) keep the Customer informed of all developments relating to the Claim;
- (c) comply with the Model Litigant Policy and Customer's reasonable directions relating in any way to the defence or to negotiations for settlement of the Claim, including refraining from making admissions of liability on behalf of the Outsourcing Program Entities;
- (d) notify the Customer in writing prior to making or accepting any offer of settlement in respect of a Claim;
- (e) not make or accept any offer of settlement that imposes obligations on any of the Outsourcing Program Entities without the Customer's prior Approval; and
- (f) satisfy any settlement or judgment awarded.

### **32.4 Contribution**

Any amount claimed by the Customer or Beneficiary Entity pursuant to the indemnity in clause 32.1 (Indemnity by Supplier) will be reduced proportionally to the extent the loss, damage, liability, claim or expense is directly caused by the breach of this Customer Outsourcing Agreement or the negligence of the Customer Cluster.

### **32.5 Other remedies for Infringement Claims**

Without limiting any other rights the Customer may have, if, as a result of any Infringement Claim, any of the Outsourcing Program Entities is prevented from using the Supplier Material, Services, Deliverables, or parts thereof, in accordance with this Customer Outsourcing Agreement, the Supplier must, at the Supplier's option and at the Supplier's cost:

- (a) promptly procure for the Outsourcing Program Entities the right to use the Supplier Material, Services, Deliverables or parts thereof (as applicable) on reasonable commercial terms as contemplated under this Customer Outsourcing Agreement;
  - (b) promptly procure for the Outsourcing Program Entities replacement material, services, deliverables (as applicable); or
  - (c) modify the Supplier Material, Services, Deliverables or parts thereof (as applicable),
- so that the Supplier Material, Services, Deliverables, or parts thereof, are free of any claim or liability for breach, infringement or misuse (as applicable) while still complying with the specifications and requirements under this Customer Outsourcing Agreement.

## 32.6 Exceptions

The Supplier will not be liable under the indemnity in clause 32.1(b) to the extent that the relevant infringement, breach or misuse has arisen as a result of:

- (a) development of Deliverables in accordance with specifications provided by the Customer where such specifications cannot be met without infringing another person's Intellectual Property Rights or Moral Rights;
- (b) the Customer's use of the Services or Deliverables in combination with goods or services not provided by the Supplier (excluding those goods or services which are specified in this Customer Outsourcing Agreement to be used with the Services or Deliverables or which the Service or Deliverable would ordinarily be expected to be used with);
- (c) the Customer's use of the Services or Deliverables for a purpose or in a manner for which the Services or Deliverables were not designed for;
- (d) continued use of a prior version of Software in circumstances where:
  - (i) the Supplier has notified the Customer that the continued use of the prior version of the Software will result in an infringement, breach or misuse;
  - (ii) the Supplier has made available to the Customer an update or new release of the Software that would have avoided the infringement, breach or misuse;
  - (iii) the update or new release of the Software and its installation is offered by the Supplier at no additional charge to the Customer; and
  - (iv) the installation of the update or new release of the Software would not have resulted in reduced functionality or performance of the Software, Services or Deliverables; or
- (e) any modifications to the Services or Deliverables other than modifications made by or on behalf of the Supplier or otherwise authorised by the Supplier.

## 33. Liability

### 33.1 Liability

Subject to clause 33.2 (No limitation):

- (a) the aggregate liability of the Outsourcing Program Entities to Supplier under or in respect of the Outsourcing Program Agreements whether in contract, tort (including negligence), statute or any other cause of action is limited to \$100,000;
- (b) the aggregate liability of Supplier to the Outsourcing Program Entities under or in respect of the Outsourcing Program Agreements, whether in contract, tort (including negligence), statute or any other cause of action is limited to:
  - (i) for all causes of action first accruing on or before the Foundation Customer Transition-In Completion Date - \$14,737,788;
  - (ii) for all causes of action first accruing after the Foundation Customer Transition-In Completion Date but on or before the Foundation Customer Transformation Completion Date, \$29,602,828; and

- (iii) for all causes of action first accruing after the Transition-In and Transformation Completion Date:
  - (A) in the Contract Year in which the Foundation Customer Transformation Completion Date occurs, \$2,009,968 multiplied by the number of months (and any part months) remaining in that Contract Year;
  - (B) in the following Contract Year, 1.5 times the monthly average Customer Charges paid or payable under all Customer Outsourcing Agreements (and all respective SOWs entered into pursuant to them or the Establishment and Transition Agreement (as applicable)) between the Foundation Customer Transformation Completion Date and the end of the previous Contract Year, multiplied by 12; and
  - (C) in each subsequent Contract Year, 1.5 times the total of all Customer Charges paid or payable under all Customer Outsourcing Agreements (and all respective SOWs entered into pursuant to them or the Establishment and Transition Agreement (as applicable)) in respect of the preceding Contract Year;
- (c) neither party will be liable to the other party under or in respect of the Outsourcing Program Agreements whether in contract, tort (including negligence), statute or any other cause of action for any Consequential Loss;
- (d) for the purpose of clause 33.1(c), **Consequential Loss** means any loss or damage which although in the contemplation of the parties at the Commencement Date or the commencement of any relevant Operational Service Order (as applicable), is not a loss or damage which may fairly and reasonably be considered to arise naturally (that is, in the usual course of things) from the breach or other act or omission, including loss of profits, revenue, anticipated savings, opportunity, goodwill, reputation, and loss of data (other than Covered Data Loss). Consequential Loss of the Outsourcing Program Entities does not include:
  - (i) additional internal administrative and management costs and expenses;
  - (ii) expenditure of fees rendered unnecessary;
  - (iii) cost of procuring replacement Services or Deliverables;
  - (iv) legal fees on a full indemnity basis; or
  - (v) Covered Data Loss.

### 33.2 No limitation

Subject to clause 33.4 (6 year limitation), nothing in this Customer Outsourcing Agreement operates to limit or exclude:

- (a) Customer's liability to pay Customer Charges which are due in accordance with this Customer Outsourcing Agreement;
- (b) liability that cannot be limited or excluded by law;
- (c) the Customer's liability under clause 35.1 (Termination for convenience);
- (d) the Customer's liability for breach of clause 28 (Confidentiality);
- (e) the Contract Authority's liability for breaches of clauses 27.5(d) or 27.5(e); or
- (f) the Supplier's liability under any of the indemnities in clause 32.1 (Indemnity by Supplier).

### 33.3 Proportionate liability

The parties agree that, to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) and legislation having a similar effect in other states and territories of Australia, in respect of the Supplier, the Supplier's Subcontractors and the Supplier's Related Bodies Corporate, is excluded in relation to all and any rights, obligations or liabilities sought to be enforced as a breach of contract or a claim in tort or otherwise.

### 33.4 6 year limitation

The parties acknowledge that although this Customer Outsourcing Agreement is a deed, it is the intention of the parties that the each party's respective rights and remedies under this Customer Outsourcing Agreement be subject to the limitation period equivalent to that under section 14.1(a) of the *Limitation Act 1969* (NSW). Accordingly, the parties agree that an action founded on contract (including quasi contract) in respect of this Customer Outsourcing Agreement is not maintainable if brought after the expiration of a limitation period of six years running from the date on which the cause of action first accrues to the plaintiff or to a person through whom the plaintiff claims.

## 34. Dispute Resolution

### 34.1 Dispute Notice

- (a) Any Dispute, other than for urgent interlocutory relief, must be dealt with in accordance with this clause 34.
- (b) Either party may give written notice of a Dispute to the other party (**Dispute Notice**). A party giving a Dispute Notice must provide details of the history and circumstances of the Dispute and give reasons for why the party is disputing the issue.
- (c) This clause does not affect either party's rights to terminate this Customer Outsourcing Agreement under clause 35 (Termination) or pursuant to any other rights of termination contained in this Customer Outsourcing Agreement.

### 34.2 Process

Following the issue of a Dispute Notice:

- (a) the Dispute will be referred initially to the parties' respective Contract Representatives. The Contract Representatives will attempt to settle the Dispute within 5 Business Days of the referral;
- (b) if the parties' Contract Representatives are unable to resolve the Dispute within those 5 Business Days, or other such period as is agreed, the Dispute will be referred to the parties' respective senior management at a level deemed appropriate by each party given the nature of the Dispute; and
- (c) if the Dispute remains unresolved after a further 5 Business Days, or other such period as is agreed, either party may issue a notice to the other party requiring that the Dispute be resolved by arbitration in accordance with clause 34.3 (Arbitration).

### 34.3 Arbitration

If a Dispute is referred to arbitration in accordance with clause 34.2 (Process) the parties agree to resolve the Dispute by arbitration as follows:

- (a) the arbitration will be in accordance with the ACICA Arbitration Rules;
- (b) the seat of arbitration will be Sydney, Australia;
- (c) the language of the arbitration will be English; and
- (d) the number of arbitrators will be one. The parties will seek to agree the arbitrator. If the parties cannot agree the arbitrator within 30 days of the submission of the notice of arbitration, ACICA will appoint the arbitrator.

### 34.4 Obligation to continue to perform

Notwithstanding the existence of a Dispute, each party will continue to perform its obligations under this Customer Outsourcing Agreement.

## 35. Termination

### 35.1 Termination for convenience

- (a) The Customer may:
  - (i) terminate this Customer Outsourcing Agreement:
    - (A) in whole;
    - (B) as it relates to a Service Tower; or
    - (C) as it relates to a Statement of Work; or
  - (ii) reduce the scope or volume of the Services to be provided under this Customer Outsourcing Agreement in respect of a Service Tower,  
  
without cause by giving 60 Business Days' notice in writing to the Supplier. Without limiting the foregoing, the Customer may terminate this Customer Outsourcing Agreement as it relates to TMAS without cause by giving 30 days' notice in writing to the Supplier (or such longer period of notice in writing as the Customer specifies).
- (b) On termination of a Statement of Work under clause 35.1(a)(i)(C), the Customer must pay the Supplier the Termination for Convenience Payments as set out in the Statement of Work.
- (c) If after reducing the scope or volume of the Services provided under this Customer Outsourcing Agreement in respect of a Service Tower under clause 35.1(a)(i)(B), the Customer wants to increase such scope or volume, then the parties shall agree in good faith on a lead time to enable the Supplier to meet such increase including any onboarding requirements (such as assigning and training of Personnel).

### 35.2 Termination for cause

Customer may terminate this Customer Outsourcing Agreement in whole or as it relates to a Service Tower immediately by giving notice in writing to the Supplier if:

- (a) the Supplier commits a Material Breach of this Customer Outsourcing Agreement and the breach is incapable of remedy;
- (b) the Supplier commits a Material Breach of this Customer Outsourcing Agreement that is capable of remedy and does not remedy that breach within 30 days of the Customer issuing a notice of the breach to the Supplier (or such other period as agreed with Customer);
- (c) the Supplier or a Related Body Corporate of the Supplier, including a person that is an officer or director of a member of a Related Body Corporate of the Supplier, or any other Supplier Personnel, is guilty of misconduct, or commits any act of fraud or dishonesty or other criminal behaviour in relation to the operations of the Customer;
- (d) the Supplier commits a significant number of breaches which are not remedied and collectively constitute a Material Breach and:
  - (i) the Material Breach is incapable of remedy; or
  - (ii) the Material Breach is capable of remedy, and the Supplier does not remedy that Material Breach within 30 days of the Customer issuing a notice of the breach to the Supplier (or such other period as agreed with the Customer);
- (e) the Supplier fails to maintain any required accreditations, registrations, certifications or qualifications specified in this Customer Outsourcing Agreement or any Operational Service Order, or that are otherwise reasonably required by the Customer for the Supplier to perform the Services;
- (f) the Termination Trigger Threshold for a Critical Service Level is reached under Schedule 2.A - Service Level Management of the ETA;
- (g) the Supplier is Insolvent;

- (h) a Change in Control occurs in the Supplier without the prior written consent of the Customer excluding any Authorised Change in Control and Non-default Change in Control;
- (i) where the Customer has an express right to do so under any provision of this Customer Outsourcing Agreement; or
- (j) in connection with any Probity Event the Supplier fails to comply with any of its obligations under clause 39 of this Customer Outsourcing Agreement, including (without limitation) the obligations to implement any remedial action and to comply with any notice given by the Customer to the Supplier setting out the action the Supplier must take to address the adverse effect of the Probity Event in accordance with clause 39.5 (Remedial action) and clause 39.6 (Customer may direct remedial action).

### **35.3 Termination of the Establishment and Transition Agreement**

If the Establishment and Transition Agreement is terminated in whole or as it relates to a Service Tower for any reason then this Customer Outsourcing Agreement will terminate immediately in whole or as it relates to the Service Tower terminated under the Establishment and Transition Agreement.

### **35.4 Wrongful termination**

If the Customer issues a termination notice for, or otherwise purports to terminate, this Customer Outsourcing Agreement other than under clause 35.1 (Termination for convenience) and a court or arbitrator determines that it did not have a right to do so or that the purported termination is otherwise wrongful or that the Customer would, but for this clause, have repudiated this Customer Outsourcing Agreement, the Customer's termination notice is deemed to be a notice of termination for convenience validly given under clause 35.1 (Termination for convenience).

### **35.5 Supplier's rights to terminate**

- (a) If:
  - (i) Customer has not paid a correctly rendered invoice in respect of a Charge within 20 Business Days after the due date for payment and has not by that time notified the Supplier that it disputes that invoice in accordance with clause 14.2(b); and
  - (ii) the amount not paid exceeds \$50,000 in the aggregate,
 the Supplier may issue a notice to the Customer advising that:
  - (iii) payment is overdue; and
  - (iv) the Supplier will terminate the applicable Service if payment is not made within 20 Business Days of the Customer receiving that notice.
- (b) If having received a notice under clause 35.5(a), the Customer fails to pay or dispute the invoice within 20 Business Days after receipt of that notice, the Supplier may terminate the Services to which the non-payment relates.

### **35.6 Transition-Out**

The parties agree that notwithstanding termination or expiry of this Customer Outsourcing Agreement, or the reduction of the scope or volume of the Services pursuant to clause 35.1(a)(ii), this Customer Outsourcing Agreement or part thereof (as applicable) will survive to the extent necessary, and for such time as required, to complete Transition-Out of the relevant Services.

### **35.7 No other right of Supplier to terminate**

Apart from clause 35.5 (Supplier's right to terminate), the Supplier:

- (a) acknowledges that it has no other right to terminate this Customer Outsourcing Agreement or otherwise withhold the Services or Deliverables; and
- (b) waives any right or power it may have (whether in contract, in tort or under common law or statute) to terminate this Customer Outsourcing Agreement for any reason whatsoever (including due to Customer's breach or repudiation of the Customer Outsourcing Agreement).

## 36. Consequences of termination

### 36.1 Payments and obligations on expiry or termination

- (a) Within 20 Business Days (or within such other time frame agreed between the parties) after the:
- (i) termination or expiry in whole or in part of this Customer Outsourcing Agreement for any reason; or
  - (ii) reduction of the scope or volume of the Services pursuant to clause 35.1(a)(ii), in respect of all Customer Data (in the case of termination or expiry in whole), and otherwise that Customer Data which relates to the Services that have been so terminated or de-scoped, and which is in the possession or control of the Supplier at the time of such termination or de-scoping, the Supplier must at its own cost securely deliver a copy of all such Customer Data to the Customer, together with any other data or Material which the Customer owns or is licensed to continue using under this Customer Outsourcing Agreement (including Identified Material) (**Other Items**).
- (b) Within 10 Business Days (or within such other time frame agreed between the parties) after the completion of all Transition-Out Services in accordance with the Transition-Out Plan for the Services that have been terminated or de-scoped under clause 36.1(a), the Supplier must at its own cost:
- (i) immediately stop using any copies of all Customer Item(s) and/or any other property of the Customer identifiable or designated as Customer property (including the final updated set of Customer Data and other documents, data, records, registers, files, security packets, stationery, cheques and agreements) and any Other Items which:
    - (A) relate to the Services that have been so terminated or de-scoped;
    - (B) are in the possession or control of the Supplier at the time; and
    - (C) are not required to perform the obligations remaining under the Customer Outsourcing Agreement,("Transition-Out Items"), except that the Supplier is not required to cease using Other Items that are not owned by the Customer or the Contract Authority;
  - (ii) subject to paragraph (iii), securely deliver to the Customer all Transition-Out Items, including all records, copies and backups of the same (subject to any legal requirement in relation to the retention of records) (and the Customer may also by notice in writing require such delivery during the Transition-Out Period), and
  - (iii) the Customer may give reasonable prior notice to the Supplier to require the Supplier to securely and permanently destroy all records, copies and backups of all or part of the Transition-Out Items (instead of delivering the same to the Customer under paragraph (ii)) and to supply the Customer's Representative with a certificate of destruction that confirms that this has occurred (except that the Supplier is not required to destroy Other Items that are not owned by the Customer or the Contract Authority).
- (c) All Customer Data to be delivered by the Supplier pursuant to clauses 36.1(a) and (b) above will be delivered in a format specified under a Transition-Out Plan or, if not specified in a Transition-Out Plan, the format in which the Customer Data is ordinarily held by the Supplier in the relevant database or other electronic repository. To the extent that the Customer requires any Customer Data to be delivered to it in any other format, and this will involve the Supplier performing additional work to be able to deliver the data in that format, the Customer acknowledges that this work will be chargeable in accordance with the Supplier's rate card in Schedule 18 - Rate Card of the ETA. In either case, the Supplier must provide the data in a format that enables the Customer to review the Customer Data and (in the case of Customer Data which is tax-related) historical tax filings and lodgements and all related calculations.

### 36.2 Preservation of rights

- (a) Termination of this Customer Outsourcing Agreement in whole or in part for any reason, or the reduction of the scope or volume of the Services pursuant to clause 35.1(a)(ii), does not extinguish or otherwise affect any rights or remedies of either party which arose prior to the time of such termination or reduction.
- (b) Any term of this Customer Outsourcing Agreement that by its nature survives the expiry or termination of this Customer Outsourcing Agreement will survive the termination (for any reason) or expiry of this Customer Outsourcing Agreement. Without qualifying or limiting the foregoing the following clauses survive the termination or expiry of this Customer Outsourcing Agreement: 13 (Customer Charges and Taxes); 14 (Invoicing and payment); 19.3 (Responsibility for Subcontractors); 27 (Representation and warranties); 28 (Confidentiality); 29 (Customer Data and privacy); 30 (Intellectual Property Rights); 31.1(b) (Policies); 32 (Indemnity and defence); 33 (Liability); 34 (Dispute Resolution); 36 (Consequences of termination); 37 (Transition-Out) and 42 (Miscellaneous).

### 36.3 Licences not affected by termination

Termination or expiration of this Customer Outsourcing Agreement, or the reduction of the scope or volume of the Services pursuant to clause 35.1(a)(ii), does not terminate any perpetual licence granted under this Customer Outsourcing Agreement.

### 36.4 Further assistance

- (a) If requested by the Customer, (subject to clause 36.4(b) below) the Supplier must:
  - (i) assist and cooperate with the Customer in any tender process conducted for the provision of all or part of the Services by a person other than the Supplier (**New Tender**); and
  - (ii) provide all information reasonably requested by Customer to assist it with the preparation and conduct of the New Tender (including performance histories, staffing levels and profiles, inventories of the Software, Equipment, and any other assets (including real estate), information concerning the Services, Deliverables and Transition-Out Services and compliance with the Service Levels and projects including all Service Level metrics and associated data and reports showing historical and forecast resource utilisation).
- (b) Nothing in clause 36.4(a) above requires the Supplier to provide:
  - (i) the Supplier's proprietary data that is not relevant to the Supplier's performance under this Customer Outsourcing Agreement;
  - (ii) Confidential Information about other customers of the Supplier;
  - (iii) information that is subject to legal professional privilege (including information prepared at the direction of counsel);
  - (iv) information prepared for an audit by the Supplier by an external or internal auditor; or
  - (v) information about the Supplier's costs.
- (c) The Supplier must not interfere or otherwise engage in any action in respect of a New Tender that would detrimentally impact on the Customer or its conduct of the New Tender.

### 36.5 Transfer of Dedicated Assets and novation of Dedicated Supplier Third Party Agreements

- (a) Upon termination or expiry of this Customer Outsourcing Agreement if requested by the Customer, the Supplier must:
  - (i) transfer to the Customer or Beneficiary Entity (at the Customer's option) title to Dedicated Assets which are Equipment and selected by the Customer; and
  - (ii) novate to the Customer or Beneficiary Entity (at Customer's option) Dedicated Supplier Third Party Agreements (including any licence and maintenance

agreements for Dedicated Assets which are Software) selected by the Customer in respect of which the Supplier has been able to obtain a right to novate,

in accordance with the Transition-Out Plan.

- (b) If this Customer Outsourcing Agreement is only terminated in part, this clause 36.5 will apply in respect of those Dedicated Assets or Dedicated Supplier Third Party Agreements which are solely used in relation to that terminated part.
- (c) For each Equipment transferred under clause 36.5(a)(i), the Supplier:
  - (i) warrants and represents that such Equipment:
    - (A) is free from any Encumbrance; and
    - (B) is provided on an as is basis; and
  - (ii) assigns to the Customer the benefit of any third party warranties that the Supplier has in relation to such Equipment.
- (d) The Customer agrees to pay Supplier the Transfer Value for the Equipment whose title is transferred to the Customer under clause 36.5(a)(i) provided that the Supplier is not in breach of clause 36.5(c).
- (e) All risk of loss or damage to the Dedicated Assets including Equipment passes to the Customer when Customer takes possession or control of the Dedicated Assets including the Equipment. The Supplier is not responsible for any risk or liability for the Dedicated Assets, including the Equipment, from the date of the transfer but will remain liable for any accrued claims or accrued liability relating to the Dedicated Assets including the Equipment prior to the date of the transfer.

## **36.6 Secondment**

- (a) The Customer or a Beneficiary Entity may, with the mutual agreement of the Supplier, at any time during the Transition-Out Period, request that the Supplier second, or procure that a Subcontractor seconds, to the Customer or Beneficiary Entity any Supplier Personnel:
  - (i) located in Australia;
  - (ii) involved in performing the Services for the majority of their working time during the 18 month period before the start of the Transition-Out Period; and
  - (iii) nominated by the Customer or Beneficiary Entity.
- (b) If the Customer or a Beneficiary Entity makes a request under clause 36.6(a) and the nominated secondee is an employee of the Supplier, the Supplier must procure the secondment of the nominated secondee in accordance with the Customer's or Beneficiary Entity's (as applicable) request on terms and conditions mutually agreeable to the Supplier.
- (c) Each secondment will be for a period nominated by the Customer or a Beneficiary Entity (as applicable), not exceeding 6 months, unless otherwise agreed by the parties.
- (d) The Customer or a Beneficiary Entity will reimburse the Supplier or Subcontractor (as applicable) for each secondee as mutually agreed for each secondee's remuneration and on-costs for the term of the secondment.
- (e) The Supplier agrees not to (and will use its best endeavours to procure that the Subcontractor will not) unreasonably increase any secondee's remuneration during the period of the secondment. For clarity, where a secondee is entitled to a pay rise for a financial year period as a result of the normal course of business or as a result of a promotion, such an increase in the secondee's remuneration will not be unreasonable.

## 37. Transition-Out

### 37.1 Transition-Out Plan

By the date set out in the Transition-In and Transformation Plan, the Supplier must have delivered to the Contract Authority a complete and detailed draft of the Transition-Out Plan for Approval by the Contract Authority under clause 37.2 (Contract Authority Approval) of the Establishment and Transition Agreement which takes into account the Transition-Out Requirements.

### 37.2 Updated Transition-Out Plan

The Supplier must provide to the Contract Authority within 20 days after the Amendment and Restatement Date of the ETA an updated version of the Transition-Out Plan previously approved by the Contract Authority pursuant to clause 37.2 (Contract Authority Approval) of the ETA which contains the details required under clause 37.1(b) of the ETA and which reflects the current scope of the Services as at the Amendment and Restatement Date. Upon the provision of such updated Transition-Out Plan to the Contract Authority, it will be reviewed and approved in accordance with the process set out in clause 37.2 (Contract Authority Approval) of the ETA.

### 37.3 Ongoing Updates to the Transition-Out Plan

The Supplier must ensure that the Transition-Out Plan is kept up-to-date throughout the Term of this Customer Outsourcing Agreement as necessary to properly effect Transition-Out, including to reflect the changes to the Services, or any reduction of the scope or volume of the Services pursuant to clause 35.1(a)(ii). In particular, the Supplier must also update the Transition-Out Plan within 10 Business Days (or within such other period agreed between the parties) after a notice of termination is received or before expiry of the Term of this Customer Outsourcing Agreement. Each updated Transition-Out Plan is subject to the Contract Authority's Approval under clause 37.2 (Contract Authority Approval) of the Establishment and Transition Agreement.

### 37.4 Transition-Out Services

- (a) Upon termination or expiry in whole or in part of this Customer Outsourcing Agreement for any reason, the Supplier must provide to the Customer Cluster or to its designee (the **Successor**), all necessary assistance to allow the Services to continue without interruption or adverse effect and to facilitate Transition-Out in accordance with this clause 37, including the assistance described in the Transition-Out Plan (**Transition-Out Services**).
- (b) The Supplier must provide the Transition-Out Services regardless of the reason for termination or expiration.

### 37.5 Transition-Out Period

The Transition-Out Services commence:

- (a) at any time before expiry of the Term, on request by the Customer; or
- (b) on receiving or issuing a notice of termination under this Customer Outsourcing Agreement, and

conclude when the Customer has issued a notice that Transition-Out has been completed (the **Transition-Out Period**).

### 37.6 Customer Charges for Transition-Out

- (a) The Customer is not liable to pay any additional Customer Charges for the Transition-Out Services to the extent that the Transition-Out Services can be provided by the Supplier using existing Supplier Personnel who are dedicated to the provision of Services and for whom the Customer is still paying as part of the existing Customer Charges.
- (b) Subject to clause 37.6(a), the Customer will be obliged to pay for any additional resources required by the Supplier in order to provide the Transition-Out Services (that is, in addition to those resources already in use for the provision of Services) at the time and materials rates set out in Schedule 18 - Rate Card of the ETA.

### **37.7 No degradation of the Services**

The Supplier must:

- (a) ensure that the quality of the Services provided by the Supplier, the Service Levels, and the Supplier's performance otherwise, are not degraded during the Transition-Out Period, subject to any agreed disruptions or outages specified in the Transition-Out Plan;
- (b) not, at any time during Transition-Out, remove or redeploy from the provision of the Services, any Supplier Personnel, except to the extent those Supplier Personnel are no longer required to provide the Services (including the Transition-Out Services) and the reduction in cost for those Supplier Personnel is reflected in the Customer Charges payable by the Customer or Beneficiary Entity; and
- (c) not make any material modifications to number, function or designation of Supplier Personnel assigned to perform the Transition-Out Services or other related functions for the Customer under this Customer Outsourcing Agreement, except in accordance with the Transition-Out Plan.

### **37.8 Provision of information and other assistance**

The Supplier must, at no additional cost to the Customer and as part of the Transition-Out Services:

- (a) provide such information as the Customer may reasonably request, for the purposes of effecting Transition-Out, relating to:
  - (i) the number and function of each of the Supplier Personnel who are employed or contracted by the Supplier to perform its obligations under this Customer Outsourcing Agreement;
  - (ii) the Assets used to perform its obligations under this Customer Outsourcing Agreement;
  - (iii) details of Subcontractors or third party goods or services used to perform its obligations under this Customer Outsourcing Agreement; and
  - (iv) the premises used by the Supplier in providing the Services, including any Customer Cluster Premises, any Third Party premises and any additional premises that the Supplier considers will be necessary for the ongoing provision of the terminated Services;
- (b) provide a copy of and otherwise make the information referred to in clause 37.8(a)(i) above available to potential Successors (who may be a competitor of the Supplier) as designated by the Customer; and
- (c) facilitate knowledge transfer to the Customer and any Beneficiary Entity, including by providing training, in accordance with the Transition-Out Plan.

### **37.9 Return of Customer Items and other property**

Upon the conclusion of the Transition-Out Period, the Supplier must return to the Customer all Customer Items and other property referred to in clause 36.1(a) which had been retained by the Supplier for the purposes of providing the Transition-Out Services.

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## **PART H – GENERAL**

### **38. Force Majeure**

#### **38.1 Force Majeure Events**

Neither party will be liable to the other for any delay or non-performance of its obligations under this Customer Outsourcing Agreement to the extent to which such delay or non-performance

arises from any Force Majeure Event. The Supplier will not have the right to any additional payments from the Customer as a result of a Force Majeure Event.

### **38.2 Mitigation**

The Supplier must take all reasonable precautions, and implement reasonable alternative measures in accordance with recognised industry practice to avoid or mitigate the effects of any Force Majeure Event including implementing the Supplier Disaster Recovery Plan or Supplier Business Continuity Plan (as applicable) and associated procedures.

### **38.3 Procedure**

- (a) A party affected by a Force Majeure Event must promptly notify the other party in writing of the Force Majeure Event and the cause and the likely duration (if known) of any consequential delay or non-performance of its obligations.
- (b) Any Force Majeure Event causing delay must be notified and to the extent possible reasonably managed by the Supplier in accordance with clause 23 (Delay).

### **38.4 Termination**

If a Force Majeure Event continues or is reasonably likely to continue for more than 30 days and has a material adverse effect on any of the Services, the Customer may immediately on written notice to the Supplier terminate the Services affected by the Force Majeure Event. For the avoidance of doubt, a termination under this clause is not a termination for cause under clause 35.2 (Termination for cause) or a termination for convenience under clause 35.1 (Termination for convenience).

## **39. Probity Events**

### **39.1 Probity Event Notice by Supplier**

The Supplier must give notice to the Customer as soon as it becomes aware that a Probity Event has occurred or is likely to occur.

### **39.2 Probity Event Notice by Customer**

Customer may give notice to the Supplier if the Customer becomes aware that a Probity Event has occurred or is likely to occur.

### **39.3 Content of Notice**

The Probity Event Notice must describe the nature of the Probity Event and the circumstances giving rise to it or likely to give rise to it.

### **39.4 Probity Investigations**

Following the issue of a Probity Event Notice, the Supplier must promptly comply with any reasonable request from the Customer for access to the Supplier Personnel for the purpose of undertaking any investigations that the Customer may wish to carry out in relation to the actual or likely occurrence of the Probity Event. The Supplier must use reasonable endeavours to ensure that the Supplier Personnel (and where relevant any Subcontractor, Related Body Corporate and their personnel) co-operate with the Customer and comply with any reasonable requests for information that the Customer may make in the course of its investigations.

### **39.5 Remedial action**

Upon the issue of a Probity Event Notice the parties must meet at a time nominated or agreed by the Customer to discuss the occurrence of the actual or likely Probity Event. During any such meeting, the parties must use reasonable endeavours to agree on the actions to be taken by the Supplier to ensure that the Probity Event does not occur or its impact is minimised.

### **39.6 Customer may direct remedial action**

If the parties are unable to agree on appropriate actions within 5 Business Days of such meeting (or any longer period Customer may agree) or Supplier fails to implement any actions agreed

under clause 39.5 (Remedial action) the Customer may give notice to the Supplier setting out the action it must take to address the adverse effect of the Probity Event, and the Supplier must comply with any such notice as soon as possible and in any event within 5 Business Days of receiving the notice.

## 40. Compliance with the NSW Government: Small and Medium Enterprise Policy Framework

To the extent that the NSW Government Procurement: Small and Medium Enterprise Policy Framework applies to the provision of goods or services under this Customer Outsourcing Agreement, the Supplier must comply with the requirements of that framework. The Supplier acknowledges that it has read clause 40 (Compliance with the NSW Government: Small and Medium Enterprise Policy Framework) of the Establishment and Transition Agreement which sets out the requirements of the Supplier imposed by the framework and agrees to comply with those requirements in respect of the competitive quote.

## 41. Notices and other communications

### 41.1 Form - all communications

Unless expressly stated otherwise in this Customer Outsourcing Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Customer Outsourcing Agreement must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) signed by the Contract Representative of the sender; and
- (d) marked for the attention of the Contract Representative of the recipient or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### 41.2 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details;
- (d) sent by email to the address set out or referred to in the Details; or
- (e) given in any other way permitted by Law.

However, if the intended recipient has notified a changed address, email, or fax number, then communications must be to that address, email, or fax number.

### 41.3 When effective

Communications take effect from the time they are received or taken to be received under clause 41.4 (When taken to be received) (whichever happens first) unless a later time is specified.

### 41.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 3 days after posting (or 7 days after posting if sent from one country to another);
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or

- (c) if an email, the earlier of when the email is opened by the recipient and the next Business Day after the time at which it enters the recipient's system (provided that the sender does not receive a delivery failure or out of office message).

#### **41.5 Receipt outside business hours**

Despite clauses 41.3 (When effective) and 41.4 (When taken to be received), if communications are received or taken to be received under clause 41.4 (When taken to be received) after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

## **42. Miscellaneous**

### **42.1 No assignment without consent**

Subject to clause 42.2 (Assignment or novation by Customer) and clause 7 (Flexibility for Machinery of Government Changes), a party must not assign, transfer, novate, encumber or otherwise deal with all or part of its rights or obligations under this Customer Outsourcing Agreement without the other party's prior written consent.

### **42.2 Assignment or novation by Customer**

Customer may assign any of its rights under this Customer Outsourcing Agreement or may novate its rights and obligations under this Customer Outsourcing Agreement:

- (a) without the consent of the Supplier to any NSW Government Body; or
- (b) with the consent of the Supplier, which must not be unreasonably withheld or delayed, to any other person.

The Supplier must execute all documents necessary to give effect to any novation or assignment permitted under this clause 42.2.

### **42.3 Breach**

Any purported assignment, transfer, novation or other dealing with the rights under this Customer Outsourcing Agreement that does not comply with clause 42.1 (No assignment without consent) is void and has no effect and is a Material Breach of this Customer Outsourcing Agreement.

### **42.4 Relationship**

Except where this Customer Outsourcing Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency, joint venture or partnership between the parties.

### **42.5 Counterparts**

This Customer Outsourcing Agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

### **42.6 Waiver**

The exercise or waiver, in whole or in part, of any right, remedy, or duty provided for in this Customer Outsourcing Agreement will not constitute the waiver of any prior, concurrent or subsequent right, remedy, or duty within this Customer Outsourcing Agreement.

### **42.7 Set Off**

The Customer may set off against any amount due for payment by the Customer to the Supplier, any amount owed by the Supplier to the Customer. If the Supplier owes the Customer any amount during the Term, such amounts will be set-off by way of a credit note raised by the Supplier for set off against amounts due for payment by the Customer. If the Supplier owes the Customer any amount after the Term, the Supplier will pay the Customer the amount owed by the Supplier to the Customer.

## **42.8 Variation**

The provisions of this Customer Outsourcing Agreement may not be varied either in law or in equity except in writing signed by both parties.

## **42.9 Survival of indemnities**

Each indemnity in this Customer Outsourcing Agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination or expiry of this Customer Outsourcing Agreement.

## **42.10 Enforcement of rights**

It is not necessary for a party to incur expense or make payment before enforcing any right conferred by this Customer Outsourcing Agreement under clauses 6.11(e), 6.13 (Release and indemnity) and 32 (Indemnity and defence).

## **42.11 Exercise of rights**

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

## **42.12 Remedies cumulative**

Unless otherwise specified in this Customer Outsourcing Agreement, the rights, powers and remedies provided in this Customer Outsourcing Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Customer Outsourcing Agreement.

## **42.13 Further assurances**

Each party will promptly do and perform all further acts and executions and deliver all further documents (in form and content reasonably satisfactory to that party) required by law, or reasonably requested by the other party to give effect to this Customer Outsourcing Agreement.

## **42.14 Promotions or publicity**

(a) Subject to clause 42.14(d), the Supplier is granted no right to use, and will not use, the terms of this Customer Outsourcing Agreement, the names, images, logos, trade marks, service marks or any other Intellectual Property Rights of the Customer or its Representatives:

- (i) in any advertising, marketing, promotional material, publicity, press release, external presentation or proposal; or
- (ii) to express or to imply any endorsement of the Supplier or its services by the Customer.

(b) If the Supplier requests that the Customer acts as a reference site for the Supplier:

- (i) the Customer may give or withhold its consent;
- (ii) if written consent is given, the Supplier will provide details to the Customer of the specific person to whom the reference is to be provided; and
- (iii) the reference must only be provided by way of Customer contacting the specific person.

Nothing in this clause 42.14 entitles the Supplier to advise any person that a reference will be provided by the Customer or to include the Customer in any list of references sites.

(c) Without limiting clauses 42.14(a) or 42.14(b) but subject to clause 42.14(d), the Supplier must not disclose to any Third Party that the Customer is its customer or make press or other announcements or releases about this Customer Outsourcing Agreement and the transactions related to it:

- (i) without the Approval of the Customer; or

- (ii) except as required to be made by Law or the rules of a stock exchange provided that the Supplier gives the Customer as much prior notice as is reasonably practicable and the opportunity to review and comment on the form and text of the disclosure before the disclosure is made.
- (d) If the Supplier wishes to:
  - (i) disclose to a Third Party that the Customer is its customer; or
  - (ii) apply the Customer logo on any Supplier website or Supplier marketing material, then the Supplier must:
    - (iii) provide a copy of the proposed disclosure or application of the Customer logo to the Customer for the Customer's review and prior Approval; and
    - (iv) make the disclosure that the Customer is its customer or apply the Customer logo only in accordance with the Customer's Approval (including any directions or conditions given by the Customer in its Approval) and any Customer guidelines on application of the Customer logo.
- (e) The Customer may at any time withdraw its Approval under clause 42.14(d) by notice to the Supplier, in which case the Supplier must cease disclosing that the Customer is its customer and remove all applications of the Customer logo(s) for which the Customer has withdrawn its Approval.
- (f) Until otherwise directed by the Customer, the Supplier may use a Customer's name and logo for its internal documents and materials provided that:
  - (i) the use of the name and logo complies with any guidelines on use provided by the Customer to the Supplier from time to time;
  - (ii) the name and logo may only be used in connection with the Outsourcing Program Agreements and for no other purpose; and
  - (iii) the internal documents and materials are not made available to any third party.

#### **42.15 Governing Law**

This Customer Outsourcing Agreement is governed by the Law in force in the place specified in the Details.

#### **42.16 Severability**

If any part or provision of this Customer Outsourcing Agreement is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of this Customer Outsourcing Agreement will continue to operate.

#### **42.17 Entire agreement**

This Customer Outsourcing Agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous understandings or agreements on that subject matter.

#### **42.18 Non-solicitation**

The (new) clause 42.18 of the ETA is deemed incorporated into this Customer Outsourcing Agreement as if set out here in this (new) clause 42.18 in full, save that references to 'the Contract Authority' and 'this Establishment and Transition Agreement' in clause 42.18 of the ETA shall be deemed incorporated into this clause 42.18 as references to 'the Customer' and 'this Customer Outsourcing Agreement' respectively.

**SIGNED, SEALED AND DELIVERED** as a deed and, by the Supplier in respect of the matters set out in clause 3.3 (Claims by Corporate Beneficiary Entities), as a deed poll in favour of Corporate Beneficiary Entities.

# Schedule 1 – Dictionary

## 1. Dictionary

### 1.1 Definitions

**Accept** means to accept a Service or Deliverable in accordance with the procedures for Acceptance Testing set out in clause 12 (Acceptance Testing). **Accepting, Accepted and Acceptance** have corresponding meanings.

**Acceptance Criteria** means the requirements specified in the Acceptance Test Plan or in a Schedule (or otherwise agreed by the parties in writing) which a Service or Deliverable must meet in order to be Accepted by the Customer.

**Acceptance Notice** has the meaning given to that term in clause 12.10(a).

**Acceptance Test** means such tests as agreed by the parties to determine if a Service or Deliverable meets the Acceptance Criteria. **Acceptance Testing** has corresponding meaning.

**Acceptance Test Period** means the period specified in the applicable Acceptance Test Plan for conduct of Acceptance Tests.

**Acceptance Test Plan** means an acceptance test plan Approved by the Customer under clause 12.3 (Customer's Approval of Acceptance Test Plan).

**Action Plan** has the meaning given to that term in clause 24.3(a).

**Action Plan Trigger Event** means:

- (a) two or more subsequent failures by the Supplier to achieve the relevant Service Levels within a period of 6 months from the date of the Operational Review Trigger Event where that failure is due to the same or substantially similar root cause for which the Operational Review was undertaken;
- (b) a subsequent failure by the Supplier to achieve the relevant Critical Service Level within a period of 6 months following the completion of the Operational Review where that failure is due to the same or substantially similar root cause for which the Operational Review was undertaken; or
- (c) Material Breach of this Customer Outsourcing Agreement by the Supplier.

**Aggregate Actual Annual Volume** has the meaning given to that term in clause 3.2 of Schedule 4 - Contract Authority Charges, Customer Charges and Charge Adjustment.

**Aggregate Baseline Annual Volume** has the meaning given to that term in clause 3.2 of Schedule 4 - Contract Authority Charges, Customer Charges and Charge Adjustment.

**Amendment and Restatement Date** has the meaning given to that term in the ETA.

**Applicable Policies** means the Applicable Policies under the Establishment and Transition Agreement.

**Approval or Approve** means written approval by an authorised representative of the Customer or Contract Authority (as applicable).

**Assets** means Equipment, Software and other assets used by the Supplier in connection with performing its obligations under this Customer Outsourcing Agreement.

**Assets to be Transferred** means those assets identified as Assets to be Transferred in Schedule 9 - Assets to be Transferred, Customer Supplied Items, Third Party Agreements To be Novated and Managed Third Party Agreements.

**Attachments** mean the Attachments to this Customer Outsourcing Agreement.

**Authorised Change in Control** means a Change in Control of the Supplier that:

- (a) is part of an internal restructure or amalgamation of the corporate group constituting the Supplier and its Related Bodies Corporate;

- (b) does not result in the Supplier having materially less financial assets;
- (c) does not result in an adverse impact on the performance of its obligations under the Outsourcing Program Agreements; and
- (d) does not create an adverse reputational impact on the Customer.

**Authorised Representatives** has the meaning given to that term in the Establishment and Transition Agreement.

**Beneficiary Entities** means those entities set out as Beneficiary Entities in Schedule 12 - Beneficiary Entities.

**Beneficiary Entity Default** has the meaning given to that term in clause 3.4(a)(i).

**Business Day** means a day other than a Saturday, Sunday or public holiday in Sydney.

**Change in Applicable Policy** means an amendment or removal of an Applicable Policy or the introduction of a new Applicable Policy.

**Change in Control** means, in respect of the Supplier:

- (a) the persons who previously had Control of the Supplier cease to have Control of the Supplier; or
- (b) one or more persons acquire Control of the Supplier.

**Change in Law** means an amendment, repeal or change in Law, the enactment of a new Law, or a change in the interpretation or application of the Law.

**Change Threshold** means \$50,000 per annum.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whatsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Commencement Date** means the Commencement Date set out in the Details.

**Common DR and BCP Requirements** means the common disaster recovery and business continuity requirements set out in Schedule 12 - Common DR and BCP Requirements of the ETA.

**Confidential Information** in relation to the Customer means Customer Confidential Information and in relation to the Supplier, means Supplier Confidential Information.

**Consequential Loss** has the meaning given to that term in clause 33.1(d).

**Contract Authority** means the Crown in right of the State of New South Wales acting through Department of Customer Service acting in its capacity as the Contract Authority under the Establishment and Transition Agreement.

**Contract Representatives** of a party means the person named as such in the Details, or any replacement person nominated or approved by the Customer under clause 16.1 (Nominated Contract Representatives) from time to time.

**Contract Variation** has the meaning given to that term in clause 20.1 (Contract Variation proposals).

**Contract Year** means the 12 month period commencing on the Commencement Date, and each anniversary of the Commencement Date.

**Control** of an entity means any of the following:

- (a) the right to control the membership of the board of directors of that entity;
- (b) the right to cast or control the casting of 50% of more of the maximum number of votes of a general meeting of shareholders in that entity;
- (c) the right to at least 50% of the dividends or income of that entity; or
- (d) the ability to dispose or exercise control over the disposal of 50% or more of the shares or other form of equity in that entity,

whether or not the power or right has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements,

arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.

**Controller** has the meaning given to that term in the Corporations Act.

**Corporate Beneficiary Entity** means a Beneficiary Entity that is not part of the Crown.

**Corporate Beneficiary Entity Loss** has the meaning given to that term in clause 3.3(a).

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

**Covered Data Loss** means a loss or damage suffered by an Outsourcing Program Entity in connection with a data loss where such data loss was caused by:

- (a) the Supplier's negligence; or
- (b) breach of the Supplier's obligations under the Outsourcing Program Agreements in relation to that data.

**Critical Departures** means any Designated Core Software End-User Terms that:

- (a) impose additional obligations on an Outsourcing Program Entity beyond that set out in the Outsourcing Program Agreements;
- (b) limit, or are inconsistent with, the rights of an Outsourcing Program Entity under the Outsourcing Program Agreements; or
- (c) limit the liability of the Supplier under the Outsourcing Program Agreements, which the Supplier would have had to an Outsourcing Program Entity but for the Designated Core Software End-User Term.

**Critical Service Levels** or **Critical SLAs** means those Service Levels identified as Critical Service Levels in the Service Catalogue.

**Crown** means the Crown in the right of the State of NSW.

**Crown Beneficiary Entity** means a Beneficiary Entity that is part of the Crown.

**Crown Loss** has the meaning given to that term in clause 3.2(a)(i).

**Customer Charges** means the charges:

- (a) specified to be payable by the Customer under the Transition-In and Transformation Plan;
- (b) the Service Catalogue Price payable for supply of an Operational Service;
- (c) payable under clause 37.6 (Customer Charges for Transition-Out); or
- (d) payable under any respective SOW(s) entered into pursuant to this Customer Outsourcing Agreement.

**Customer Cluster** means the Customer and each Beneficiary Entity.

**Customer Cluster Premises** means those sites, premises, buildings or facilities identified in an Operational Service Order in respect of which the Services or Deliverables are to be provided.

**Customer Confidential Information** means all Information disclosed (including inadvertently) by the Customer, Beneficiary Entity or any of their Representatives in connection with this Customer Outsourcing Agreement, all Information disclosed by a third party which the Customer or Beneficiary Entity is required to keep confidential and all Information created by the Supplier in the course of providing the Services or in respect of Intellectual Property Rights owned by the Customer or Beneficiary Entity including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Customer, Beneficiary Entity or a third party to whom the Customer or Beneficiary Entity owes an obligation of confidentiality;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary, computer modelling; and
- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

**Customer Data** means all data, information, text, drawing or other material, in whatever form that information may exist which:

- (a) are accessed, collected, stored, processed, retrieved, used or generated by the Supplier in the course of performing this Customer Outsourcing Agreement;
- (b) are supplied by the Customer or a Beneficiary Entity to Supplier under on in connection with this Customer Outsourcing Agreement; or
- (c) relate to the Customer's or a Beneficiary Entity's functions, facilities, customers, personnel, assets, programs or the Services.

**Customer Delay Costs** means the reasonable, direct and substantiated net incremental costs properly, reasonably and necessarily incurred or which will be incurred by the Customer including any unavoidable third party costs imposed on the Customer, as a consequence of the Supplier failing to meet a date or time required under a Transition-In and Transformation Plan or SOW.

**Customer Items** mean the Customer Materials, New Materials assigned under clause 30.2(b) Customer Confidential Information, and Customer Data.

**Customer Material** means:

- (a) Customer Owned Material; and
- (b) Licensed Customer Material,

provided to or accessed by the Supplier in connection with its performance of this Customer Outsourcing Agreement.

**Customer Objectives** has the meaning given to that term in clause 1.2 (Customer Objectives).

**Customer Outsourcing Agreement** means the documents listed in clause 1.1 (Structure of Customer Outsourcing Agreement).

**Customer Owned Material** means Material in which Intellectual Property Rights are owned by the Customer or Beneficiary Entity.

**Customer Personnel** means the Customer's officers, employees, agents, consultants and contractors but excludes the Supplier and Supplier Personnel.

**Customer Policies** means the:

- (a) Applicable Policies; and
- (b) the policies as set out in Schedule 7 - Customer Policies and Laws, as updated from time to time by written notice to the Supplier by the Customer.

**Customer Supplied Items** means those items set out as Customer Supplied Items in Schedule 9 - Assets to be Transferred, Customer Supplied Items, Third Party Agreements to be Novated and Managed Third Party Agreements, or a Statement of Work.

**Customer Third Party Agreement** means a Third Party Agreement between the Customer or a Beneficiary Entity and a Third Party.

**Data Location Conditions** has the meaning as defined in the ETA as if that definition is set out here in full, save that:

- (a) references to 'Contract Authority Data' in that definition shall be deemed as not incorporated into this Customer Outsourcing Agreement; and
- (b) references to 'this Agreement' in that definition shall be deemed incorporated into this Customer Outsourcing Agreement as references to 'this Customer Outsourcing Agreement'.

**Data Request** has the meaning given to that term in clause 29.6 (Access to Customer Data).

**Dedicated Assets** means Assets which are solely or predominantly used by the Supplier and located in Australia to perform its obligations under this Customer Outsourcing Agreement.

**Dedicated Supplier Third Party Agreement** means any Third Party Agreement between the Supplier and a Third Party under which the Third Party provides services or supplies goods which

are solely or predominantly used by the Supplier to perform its obligations under this Customer Outsourcing Agreement.

**Deliverable** means:

- (a) outputs or outcomes required to be achieved by the Supplier or Subcontractors under this Customer Outsourcing Agreement; or
- (b) a Product.

**Denial of Service Attack** has the meaning as defined in the ETA, save that references in that definition to 'the Contract Authority' and 'this Agreement' shall be deemed incorporated into this Customer Outsourcing Agreement as references to 'the Customer' and 'this Customer Outsourcing Agreement' respectively.

**Designated Core Software** has the meaning given to that term in the ETA.

**Designated Core Software End-User Terms** has the meaning given to that term in the ETA.

**Details** means the section of this Customer Outsourcing Agreement with that heading.

**Determination Date** has the meaning given to that term in clause 3.2 of Schedule 4 - Contract Authority Charges, Customer Charges and Charge Adjustment.

**Disaster** has the meaning given to that term in the Supplier Disaster Recovery Plan.

**Disaster Declaration** means a declaration of a Disaster by the Customer.

**Discloser** means the party disclosing Confidential Information.

**Dispute** includes any dispute, controversy, difference or claim arising out of or in connection with this Customer Outsourcing Agreement or the subject matter of this Customer Outsourcing Agreement, including any question concerning its formation, validity, interpretation, performance, breach and termination.

**Dispute Notice** has the meaning given to that term in clause 34.1(b).

**Dispute Resolution Process** means the process set out in clause 34 (Dispute Resolution).

**Documentation** means any documentation which the Customer might reasonably need to use the Services or Deliverables including user manuals, operating manuals and technical manuals, flow charts, logic diagrams and listings, whether in electronic form or otherwise.

**Draft Acceptance Test Plan** has the meaning given to that term in clause 12.1 (Preparation of Draft Acceptance Test Plan).

**Draft SOW** has the meaning given to that term in clause 5.2(c)(ii).

**Draft Transition-In and Transformation Plan** means the draft Transition-In and Transformation Plan submitted under clause 4.2 (Transition-In and Transformation Plan for Customers other than Foundation Customers).

**Due Diligence Materials** means the materials made available or disclosed to the Supplier:

- (a) by the Outsourcing Program Entities under the RFP or as part of the RFP process; or
- (b) by the Outsourcing Program Entities during negotiations with the Supplier in to relation the Outsourcing Program Agreements.

**Due Diligence Screening** has the meaning given to that term in clause 17.2(a).

**Emergency Shutdown Event** has the meaning given to that term in the ETA.

**Encumbrance** means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, title retention or flawed deposit arrangement and any 'security interest' as defined in sections 12(1) or (2) of the PPSA.

**Equipment** means any equipment or other physical assets including computers, telecommunications, hardware, servers, and peripherals:

- (a) used by the Supplier or a Subcontractor in performing its obligations under this Customer Outsourcing Agreement;

- (b) provided to the Customer or Beneficiary Entity by the Supplier or a Subcontractor in connection with this Customer Outsourcing Agreement; or
- (c) otherwise required by the Customer or Beneficiary Entity to receive the benefit of the Services or exercise its rights under this Customer Outsourcing Agreement, excluding the Customer Supplied Items.

**Establishment and Transition Agreement** or **ETA** means the amended and restated establishment and transition agreement between the Supplier and the Contract Authority.

**Excluded Information** means Information which:

- (a) is in or becomes part of the public domain other than through breach of this Customer Outsourcing Agreement or an obligation of confidence owed to the Discloser;
- (b) the Recipient can prove by contemporaneous written documentation was:
  - (i) already known to it at the time of disclosure by the Discloser (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
  - (ii) independently developed by the Recipient without reference to the Confidential Information of the Discloser; or
- (c) the Recipient acquires from a source other than the Discloser or any of its representatives where such source is entitled to disclose it on a non-confidential basis.

**Excused Delay** has the meaning given to that term in clause 23.4(b)(i).

**Existing Intellectual Property Rights** means Intellectual Property Rights of a party:

- (a) that was owned by or licensed to that party before the Commencement Date; or
- (b) created by or on behalf of that party, or licensed to that party, on or after the Commencement Date but not specifically in connection with, or in contemplation of, this Customer Outsourcing Agreement.

**Facilities** means the space, furnishings, and fixtures at and from or in respect of which the Supplier or a Subcontractor provides the Services and Deliverables.

**Failure Notice** has the meaning given to that term in clause 12.10(b).

**Force Majeure Event** means any of the following causes provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (d) an urgent need for Supplier Personnel to work from premises other than office premises approved by the Customer under this Customer Outsourcing Agreement; or
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority.

**Foundation Customer** has the meaning given to that term in the ETA.

**Foundation Customer Outsourcing Agreements** mean the Customer Outsourcing Agreements between the Supplier and each of the Foundation Customers to be executed on or about the date of the Establishment and Transition Agreement.

**Foundation Customer T&T Plan** has the meaning given to that term in the ETA.

**Foundation Customer Transformation Completion Date** has the meaning given to that term in the ETA.

**Foundation Customer Transition-In Completion Date** has the meaning given to that term in the ETA.

**General Terms** means the General Terms (Parts A to H inclusive) of this Customer Outsourcing Agreement.

**GIPA** means *Government Information (Public Access) Act 2009* (NSW).

**GST** has the meaning given to that term in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST law** has the meaning given to that term in the GST Act or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition of administration of goods and services tax in Australia and any regulations made under that Act.

**Identified Material** means those Material which are identified in an Operational Service Order (or otherwise agreed by the parties) as Material in which the Intellectual Property Rights are to be assigned to the Customer.

**Implementation Timetable** has the meaning given to that term in clause 20.2(a).

**Indemnified Party** has the meaning given to that term in clause 32.2 (Conduct of defence).

**Information** means all information relating to or developed in connection with:

- (a) the business, technology or other affairs of the Discloser;
- (b) the Deliverables, the Services or this Customer Outsourcing Agreement; and
- (c) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property owned or used by, or licensed to, the Discloser.

**Infringement Claim** means a Claim that:

- (a) the use or exploitation of the New Materials in any manner infringes any person's rights (including Intellectual Property Rights and Moral Rights);
- (b) the provision of the Services or Deliverables, or otherwise by the performance of this Customer Outsourcing Agreement infringes the Intellectual Property Rights or Moral Rights of any person;
- (c) a Service or Deliverable, or their use by the Customer or their Personnel:
  - (i) results in a breach of any Law;
  - (ii) infringes any person's rights (including Intellectual Property Rights and Moral Rights);
  - (iii) constitutes a misuse of any person's confidential information; or
  - (iv) results in the Supplier breaching any obligation it owes to any person.

**Initial Term** has the meaning given to that term in clause 2.1 (Initial Term).

**Input Tax Credit** has the meaning given to that term in the GST Act.

**Insolvent** means, in relation to a person, if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) 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 Customer Outsourcing Agreement); or

- (d) 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; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this Customer Outsourcing Agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the *World Intellectual Property Organisation 1967*.

**IPP** means the Information Protection Principles contained in sections 8 to 19 of the *Privacy and Personal Information Protection Act 1998 (NSW)*.

**Item** means either a Standard Item or Tailored Item or both as the context dictates.

**Item to be Tested** has the meaning given to that term in clause 12.2(a).

**Key Supplier Personnel** means Supplier Personnel identified as Key Supplier Personnel in the Service Catalogue, a Statement of Work, a Transition-In and Transformation Plan or a Transition-Out Plan.

**Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia and any other relevant jurisdictions.

**Licensed Customer Material** means Material in which the Intellectual Property Rights are licensed to the Customer or Beneficiary Entity by a Third Party and which is identified in Schedule 9 - Assets to be Transferred, Customer Supplied Items, Third Party Agreements to be Novated and Managed Third Party Agreements as Customer Supplied Items which are Licensed Customer Material.

**Machinery of Government Change or MOG Change** means a machinery of government change for the NSW Government and includes:

- (a) abolition, creation or amalgamation of NSW Government Bodies;
- (b) movement of functions or responsibilities between NSW Government Bodies; and
- (c) movements of NSW Government Bodies between NSW Government clusters.

**Managed Contractor** means a Third Party who is the Customer's or Beneficiary Entity's (or another NSW Government Body's) counterparty to a Managed Third Party Agreement.

**Managed Third Party Agreement** means a Third Party Agreement between a Customer (or another NSW Government Body) and a Third Party that is to be managed by the Supplier and which is:

- (a) set out in Schedule 9 - Assets to be Transferred, Customer Supplied Items, Third Party Agreements to be Novated and Managed Third Party Agreements as a Managed Third Party Agreement ; or
- (b) required by the Customer to be treated as a Managed Third Party Agreement under clause 26.1(b).

**Material** means material in any form, including documents (written or electronic), reports, data and software.

**Material Breach** means a breach or breaches of this Customer Outsourcing Agreement by the Supplier which has caused:

- (a) a serious and adverse impact on the supply, performance, or use of the Services or Deliverables;
- (b) an Outsourcing Program Entity to suffer serious reputational damage; or
- (c) an Outsourcing Program Entity to be subject to significant liability, cost, expense or risk.

**Milestone** means a particular stage or event identified in the SOW.

**Model Litigant Policy** means the Model Litigant Policy for Civil Litigation issued and updated from time to time by the State.

**Moral Rights** means any moral rights including the rights described in Article 6b of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being 'droit moral' or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth) or any other Law of the Commonwealth of Australia), that exist or that may come to exist, anywhere in the world.

**N-2** has the meaning given to that term in the Establishment and Transition Agreement.

**Necessary Qualifications** has the meaning given to that term in clause 27.2(g).

**New Materials** means all Material created by or on behalf of the Supplier or its Subcontractors in the performance of this Customer Outsourcing Agreement, or specifically in connection with, or in contemplation of, this Customer Outsourcing Agreement.

**New Tender** has the meaning given to that term in clause 36.4(a)(i).

**Non-default Change in Control** has the meaning given to that term in the Establishment and Transition Agreement.

**NSW Government Body** means:

- (a) Public Service agencies as defined in the *Government Sector Employment Act 2013* (NSW);
- (b) State owned corporations;
- (c) Ministers of the Crown; and
- (d) any other body of office created by or under a statute or ministerial direction of the State of New South Wales.

**Observer** has the meaning given to that term in clause 24.3(b).

**Offshoring Proposal** has the meaning given to that term in the Establishment and Transition Agreement.

**On-Site Services** has the meaning given to that term in clause 6.18(c).

**Open Source Licence** means a licence which meets the requirements of the Open Source Definition propagated by the Open Source Institute ([www.opensource.org](http://www.opensource.org)).

**Open Source Software** means Software which is licensed under the terms of an Open Source Licence.

**Operational Review** has the meaning given to that term in clause 24.1 (Operational Review).

**Operational Review Plan** has the meaning given to that term in clause 24.2(a).

**Operational Review Trigger Event** means:

- (a) failure by the Supplier to meet a Critical Service Level; or
- (b) any other breach of this Customer Outsourcing Agreement which the Customer considers requires an Operational Review.

**Operational Services** means those Services and Deliverables referred to or described in an Operational Service Order.

**Operational Service Order** means:

- (a) a Standard Order that is incorporated into this Customer Outsourcing Agreement pursuant to clause 5.3 (Response to Standard Order);

- (b) an agreed quote that is incorporated into this Customer Outsourcing Agreement pursuant to clause 5.4 (Response to Request for Quote); and
- (c) in respect of any SOW that is executed by the parties pursuant to clause 5.5 (Response to Draft SOW), the terms of the final form of the Draft SOW that was used for executing the SOW.

**Operations Manual** has the meaning given to that term in the ETA.

**Outsourcing Governance Structure** means the Outsourcing Governance Structure in the Establishment and Transition Agreement.

**Outsourcing Program Agreements** has the meaning given to that term in the Establishment and Transition Agreement.

**Outsourcing Program Entities** means the Contract Authority, ServiceFirst, Customers and Beneficiary Entities and **Outsourcing Program Entity** means each of them.

**Outsourcing Program Objectives** has the meaning given to that term in the Establishment and Transition Agreement.

**Outstanding Part** has the meaning given to that term in clause 24.5.

**Personal Information** has the meaning given to that term in the Establishment and Transition Agreement.

**Personnel** means either the Customer Personnel or Supplier Personnel, as the case may be.

**Policies, Codes and Standards** means the codes, standards and guidelines specified in this Customer Outsourcing Agreement and/or Operational Service Orders, and/or any government codes, standards and guidelines, including any amendments to the aforementioned, relating to the provision of the Supplier's obligations as reasonably notified by Customer and/or the Contract Authority to the Supplier from time to time.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Privacy Laws** has the meaning given to that term in the ETA.

**Probity Event** means an event, matter, situation or thing that in the Customer's reasonable opinion:

- (a) has a material adverse effect upon the character, honesty or integrity of the Supplier, a Related Body Corporate, or any of the Supplier Personnel;
- (b) relates to the Supplier, a Related Body Corporate or the Supplier Personnel and has a material adverse effect upon the public interest (having regard to the policy objectives of the Customer) or the reputation of or public confidence in the Customer or the New South Wales Government; or
- (c) involves a material failure by the Supplier to achieve or maintain:
  - (i) reasonable standards of ethical behaviour; or
  - (ii) the avoidance of conflicts of interest that may have (or may give the public the appearance of having) a material adverse effect on the ability of the Supplier to impartially perform and observe its obligations under this Customer Outsourcing Agreement; or
  - (iii) standards of behaviour expected of a party engaged on a government agency project.

**Probity Event Notice** means a notice under clause 39.1 (Probity event Notice by Supplier) or 39.2 (Probity Event Notice by Customer).

**Product** means deliverables, products or materials (including New Material) provided or required to be created or provided by the Supplier or its Subcontractors under this Customer Outsourcing Agreement.

**Prolongation Costs** means the reasonable, direct and substantiated net incremental costs properly, reasonably and necessarily incurred or which will be incurred by the Supplier, as a consequence of an Excused Delay.

**Prolongation Cost Cap** means a maximum of \$500,000 in aggregate under all Outsourcing Program Agreements.

**Protected Clauses** means the General Terms of this Customer Outsourcing Agreement.

**Quarter** means each 3 month period beginning on 1 January, 1 April, 1 July and 1 October.

**Readiness Testing** has the meaning given to that term in clause 12.8(a)(i).

**Recipient** means the party receiving Confidential Information.

**Records** has the meaning given to that term in clause 22.1 (Record keeping).

**Refresh** means the upgrading and/or replacing of Equipment and Software during the Term.

**Related Body Corporate** is defined in the Corporations Act.

**Relevant Due Diligence Factors** has the meaning given to that term in the ETA.

**Relevant Offence** means any offence which:

- (a) involves an element of dishonesty or violence;
- (b) involves behaviour which is, in the reasonable opinion of the Customer, inconsistent with the inherent requirements of the roles which the relevant person will be required to perform; or
- (c) the Customer reasonably considers is of a nature that if a person who has been convicted of it were to perform services under this Customer Outsourcing Agreement would reflect adversely on the reputation of the Customer or expose the Customer to adverse public comment.

**Relevant Services** has the meaning given to that term in clause 6.17 (Accuracy and timeliness).

**Representative** means an employee, agent, officer, director, auditor, advisor, partner, consultant, contractor or sub-contractor of that party, but in the case of Customer does not include the Supplier or the Subcontractors.

**Request for Proposal** or **RFP** means the Request for Proposal for Outsourcing of Shared Services dated 23 May 2014.

**Request for Quote** has the meaning given to that term in clause 5.1(b).

**Request for SOW** has the meaning given to that term in clause 5.1(c).

**Required Inputs** means the tasks or responsibilities required to be performed or provided by an Outsourcing Program Entity.

**Required Time Frames** has the meaning given that term in clause 24.3(a).

**Retained Services** means the services described in the Foundation Customer T&T Plan.

**Review Event** means a Change in Law or a Change in Applicable Policy that:

- (a) requires the Supplier to change the Services and Deliverables, and such change requires the Supplier to incur additional capital or operational expenditure in excess of the Change Threshold;
- (b) introduces new or amends existing Australian Taxes that are directly imposed on the supply of the Services or Deliverables (excluding GST) which results in the Supplier being liable for additional Australian Taxes by an amount more than the Change Threshold; or
- (c) materially affects or impedes the ability of the Supplier to provide the Services or Deliverables which cannot be overcome by an investment of moneys or by the Supplier using reasonable endeavours to undertake a corporate restructure.

**Schedules** means the Schedules to this Customer Outsourcing Agreement.

**Security Incident** has the meaning as defined in the ETA as if that definition is set out here in full, save that:

- (a) references to 'Contract Authority Data' in that definition shall be deemed as not incorporated into this Customer Outsourcing Agreement; and
- (b) the reference to 'this Establishment and Transition Agreement' in that definition shall be deemed incorporated into this Customer Outsourcing Agreement as a reference to 'this Customer Outsourcing Agreement'.

**Services** has the meaning given to that term in clause 6.1 (Scope of Services).

**ServiceFirst** means the ServiceFirst business unit of the Office of Finance and Services.

**Service Catalogue** means the Service Catalogue under the Establishment and Transition Agreement.

**Service Catalogue Price** means the price for Standard Items set out in the Service Catalogue.

**Service Credits** has the meaning given to that term in the ETA.

**Service Level Default** has the meaning given to that term in Schedule 1.A - Schedules Dictionary.

**Service Levels** means the minimum performance levels for Operational Services as set out in Schedule 2 - Service Levels and Service Credits.

**Service Offering** means a subset of the Standard Items within the Service Catalogue.

**Service Provider** means a Third Party who has been engaged by the Customer or a Beneficiary Entity to provide goods or services to the Customer or a Beneficiary Entity. For the avoidance of doubt, a Service Provider does not include the Supplier or its Subcontractors.

**Service Tower** or **Service Group** has the meaning given to that term in the Establishment and Transition Agreement.

**Shared Environment** means Supplier Assets or Facilities that is shared with the Supplier's other customers.

**Software** means any computer program or programming in source or object code format (including shrink-wrap software, collaborative applications, microcode, shareware, firmware and Open Source Software) and associated documentation:

- (a) used by the Supplier or a Subcontractor in performing its obligations under this Customer Outsourcing Agreement;
- (b) provided to the Customer or Beneficiary Entity by the Supplier or a Subcontractor in connection with this Customer Outsourcing Agreement; or
- (c) otherwise required by the Customer or Beneficiary Entity to receive the benefit of the Services or exercise its rights under this Customer Outsourcing Agreement,

excluding the Customer Supplied Items.

**Solution** has the meaning given to that term in clause 12.13(a).

**Solution Acceptance Certificate** has the meaning given to that term in clause 12.13(a).

**SOW Outline** has the meaning given to that term in clause 5.2(c).

**Standard Item** means a standard good or service that is set out in the Service Catalogue.

**Standard Order** has the meaning given to that term in clause 5.1(a).

**State Delay Cost Cap** means a maximum of \$500,000 in aggregate for all Outsourcing Program Entities under all Outsourcing Program Agreements.

**Statement of Work** or **SOW** means a statement of work executed by the parties pursuant to clause 5.5 (Response to Draft SOW).

**Subcontract** means any agreement between the Supplier and any third party where that party agrees to provide the Services or any part of them, or facilities or services used in the provision of the Services or any part of them. A Subcontract does not include an agreement with a provider of contractors for the purpose of staff augmentation or commercial software or hardware vendors, resellers or distributors.

**Subcontractor** means:

- (a) a subcontractor of Supplier engaged by the Supplier under a Subcontract; and
- (b) a Related Body Corporate of the Supplier engaged in providing the Services.

**Subcontractor Statement** means a 'written statement' meeting the requirements of section 1758(2) of the *Workers Compensation Act 1996* (NSW), section 18 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) and section 127(2) of the *Industrial Relations Act 1996* (NSW) in substantially similar form to that set out in Schedule 5 - Subcontractor Statement.

**Successor** has the meaning given to that term in clause 37.4 (Transition-Out Services).

**Supplier Business Continuity Plan** means the Supplier Business Continuity Plan referred to in clause 8 (Service continuity management).

**Supplier Competitor** means:

- (a) Accenture;
- (b) CapGemini;
- (c) Cognizant;
- (d) CSC;
- (e) Genpact;
- (f) HCL;
- (g) HP;
- (h) IBM;
- (i) Sapient;
- (j) Satyam;
- (k) Datacom;
- (l) DimensionData/NTT;
- (m) Fujitsu;
- (n) Xerox;
- (o) SMS;
- (p) Lockheed Martin
- (q) TCS; or
- (r) WIPRO.

**Supplier Confidential Information** means all Information, other than Customer Confidential Information, disclosed to the Customer or a Beneficiary Entity by the Supplier or any Representative of the Supplier for or in connection with this Customer Outsourcing Agreement including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Supplier;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary, computer modelling; and
- (c) trade secrets and information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

**Supplier Disaster Recovery Plan** means the Supplier Disaster Recovery Plan referred to in clause 8 (Service continuity management).

**Supplier Loss** has the meaning given to that term in clause 3.4(a)(ii).

**Supplier Material** means any Material in which Intellectual Property Rights are owned by the Supplier or its Subcontractors or licensed to the Supplier or its Subcontractors by a Third Party and:

- (a) provided to or accessed by the Customer or Beneficiary Entity in connection with this Customer Outsourcing Agreement;
- (b) incorporated within a Deliverable; or
- (c) used by the Supplier or its Subcontractors to provide the Services or Deliverables or perform its obligations under this Customer Outsourcing Agreement.

**Supplier Personnel** means all officers, employees, agents, consultants and contractors of the Supplier or of any Subcontractor.

**Suspension Costs** means the reasonable, direct and substantiated net incremental costs properly, reasonably and necessarily incurred or which will be incurred by the Supplier, as a consequence of an extension or suspension by the Customer under clause 23.6 (Unrequested extensions of time and suspension of Services).

**Tailored Item** means a good or service that is not a Standard Item.

**Taxes** mean all forms of taxes, imposts, Customer Charges, withholdings, rates, levies, duties (including, stamp and transaction duties) or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with any related interest, penalties, fines and expenses in connection with them (excluding GST).

**Tax Invoice** has the meaning given to that term in the GST Act.

**Technology Plan** means the Technology Plan Approved by the Contract Authority under the Establishment and Transition Agreement.

**Term** means the term of this Customer Outsourcing Agreement as set out in clause 2 (Term).

**Termination for Convenience Payment** means the amount the Contract Authority is obligated to pay the Supplier as compensation for exercising its rights under clause 35.1 (Termination for convenience) as set out in Schedule 13 - Termination for Convenience Payments of the ETA or under an SOW.

**Termination Trigger Threshold** has the meaning given to it in Schedule 2.A - Service Level Management of the ETA.

**Third Party** means any person other than the Supplier, the Customer, Beneficiary Entities and their respective directors, officers and employees. In the case of the Supplier, it does not include Subcontractors of the Supplier.

**Third Party Agreement** means an agreement that relates to the Services or Deliverables, between:

- (a) the Customer or a Beneficiary Entity and a Third Party; or
- (b) the Supplier and a Third Party,

including any licences, leases and service contracts.

**Third Party Agreement to be Novated** means a Third Party Agreement between a Customer (or another NSW Government Body) and a Third Party that is to be novated by the Supplier and which is set out in Schedule 9 - Assets to be Transferred, Customer Supplied Items, Third Party Agreements to be Novated and Managed Third Party Agreements as a Third Party Agreement to be Novated.

**Third Party Material** means Materials in which Intellectual Property Rights are owned by a Third Party.

**TMAS** has the meaning given to that term in the ETA.

**Transfer Value** means the market value of the relevant Asset at the time of the transfer.

**Transformation** has the meaning given to that term in the ETA.

**Transition-In** has the meaning given to that term in the ETA.

**Transition-In Completion Date** has the meaning given to that term in the ETA.

**Transition-In Period** has the meaning given to that term in the ETA.

**Transition-In and Transformation Plan** has the meaning given to that term in the ETA.

**Transition-In and Transformation Requirements** means the requirements for Transition-In and Transformation set out in Schedule 3 - Transition-In and Transformation Requirements.

**Transition-Out** means the orderly transfer of the Services from the Supplier to a Successor.

**Transition-Out Period** means the period set out in clause 37.5 (Transition-Out Period).

**Transition-Out Plan** has the meaning given to that term in the Establishment and Transition Agreement.

**Transition-Out Requirements** has the meaning given to that term in the Establishment and Transition Agreement.

**Transition-Out Services** has the meaning given to that term in clause 37.4 (Transition-Out Services).

**Virus** means any 'virus', 'worm', 'Trojan Horse', 'trapdoor', 'software switch', 'time bomb', 'slicing routine', 'corruptive code', 'logic bomb', 'disabling code', 'disabling routines' or 'expiration dates' as these words are generally understood from time to time within the technology industry and any equivalent or similar corruptive mechanisms contained in Software.

**WHS Legislation** means legislation relating to health and safety, including the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).

**WFH Conditions** has the meaning given to that term in clause 6.15(a).

**WFH Consent** has the meaning given to that term in clause 6.15(a).

## 1.2 References to certain general terms

Unless the contrary intention appears, a reference in this Customer Outsourcing Agreement to:

- (a) **(variation or replacement)** a document (including this Customer Outsourcing Agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, Schedule, Annexure, Attachment or Exhibit is a reference to a clause in, or a Schedule, Annexure, Attachment or Exhibit to, this Customer Outsourcing Agreement;
- (c) **(references to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(Law)** law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word 'person' includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors and substitutes (including, persons taking by novation) and assigns;
- (h) **(reference to a group of persons)** a group of persons or things is a reference to any 2 or more of them jointly and to each of them individually;
- (i) **(dollars)** an amount of money is a reference to the lawful currency of Australia;
- (j) **(calculation of time)** a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;

- (k) (**reference to a day**) a day is to a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) (**meaning not limited**) the words 'include', 'including', 'for example' or 'such as' are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind;
- (m) (**next day**) if an act under this Customer Outsourcing Agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day; and
- (n) (**time of day**) time is a reference to Sydney time.

### 1.3 Headings

Headings are included for convenience only and are not to affect the interpretation of this Customer Outsourcing Agreement.

# Schedule 1.A – Schedules Dictionary

Refer to Schedule 1.A - Schedules Dictionary of the Establishment and Transition Agreement which is incorporated into this Schedule 1.A of the Customer Outsourcing Agreement.

# Schedule 2 – Service Levels and Service Credits

Refer to Schedule 2.A - Service Level Management of the Establishment and Transition Agreement which is incorporated into this Schedule 2 of the Customer Outsourcing Agreement.

# Schedule 3 – Transition-In and Transformation Requirements

For Foundation Customers - Not Applicable.

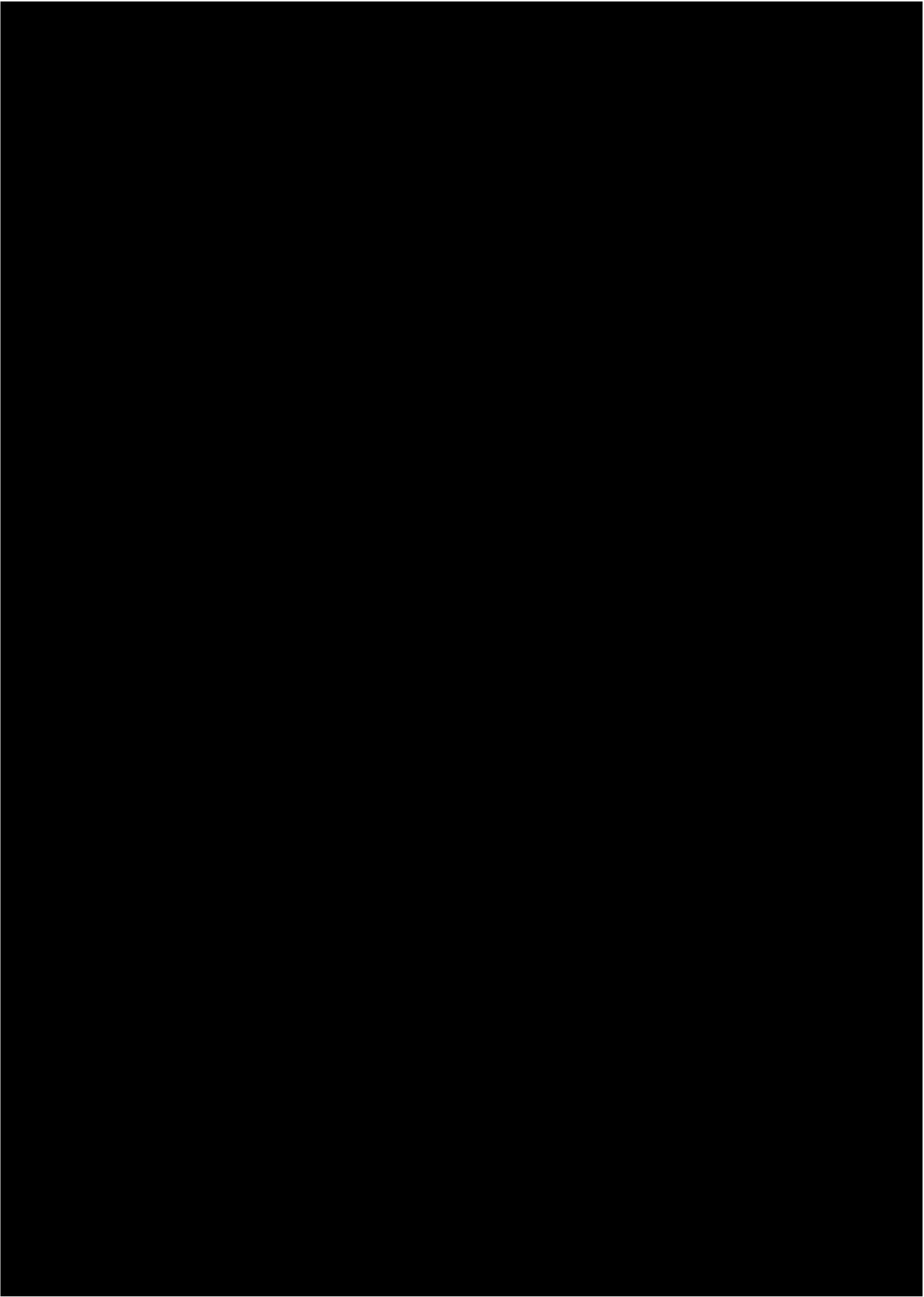
For Customers other than Foundation Customers the Transition-In and Transformation Requirements are set out below:

**[NONE]**

# Schedule 4 – Governance Structure

The Governance Structure as set out in the Establishment and Transition Agreement will apply to this Customer Outsourcing Agreement.

# Schedule 5 – Subcontractor Statement





# Schedule 6 – Template Statement of Work

STATEMENT OF WORK NO. \_\_\_\_\_

DATE: \_\_\_\_\_

This **Statement of Work (Statement of Work)** No. \_\_\_\_\_ is entered into by **[insert]** and **Infosys Technologies Limited** (a foreign company incorporated in India as Infosys Limited) (ABN 52 090 591 209) (**Supplier**) in accordance with the customer outsourcing agreement dated **[insert]** between **[insert]** and Supplier (**CoA**).

All the terms of the CoA are deemed incorporated into this Statement Work in accordance with clause 5.5(c) of the CoA.

This Statement of Work describes specific Services Supplier will perform and deliver under the specific provisions associated with such Services provided for under this Statement of Work.

## 1. INTRODUCTION

### 1.1 Description of Project including Term

*[Include general description of the project which is the subject of this Statement of Work. Specifically describe the term of this Statement of Work]*

### 1.2 Supplier Contract Representative

*[Identify Supplier management structure associated with performance of project]*

### 1.3 Customer Contract Representative

*[Identify NSW management structure associated with project]*

### 1.4 Eligible Recipient

*[Identify Beneficiary Entities that will receive the benefit of the Tailored Item]*

## 2. SERVICES

### 2.1 General description

*[Include detailed description of Services to be provided under Statement of Work; Note - attach Work Plan or other document detailing Services, as appropriate]*

## 3. KEY DATES

Key Date	Description	Critical Milestones
[dd/mm/yy]	PWO Commencement Date	[Y/N]
[dd/mm/yy]	Completion Date [or Statement of Work Term]	[Y/N]
[dd/mm/yy]	[Description of Critical Milestones]	[Y/N]

## 4. DELIVERABLES

The following specific deliverables shall be provided by Supplier under this Statement of Work:

*[Identify all specific deliverables to be provided under Statement of Work; Note - as appropriate, these can be identified in an attached Work Plan or other document detailing Services, as appropriate; note these should be tied to Critical Milestones, as applicable, see below]*

*[Specify Acceptance Testing, Acceptance Criteria and Acceptance Test Plan for Deliverables]*

**5. SERVICE LEVELS AND CRITICAL MILESTONES**

The following Service Levels, Service Credits, Service Level Descriptions, Critical Milestones, and related matters shall apply with respect to the Services to be provided pursuant to this Statement of Work:

*[Include as applicable.]*

**6. CHARGES**

Pursuant to Schedule 18 - Rate Card to the ETA, the following are the Charges for the Services to be provided under this Statement of Work:

*[Provide all Charges for the Services to be provided under this Statement of Work as well as any payment terms or provisions that differ from the provisions in COA*

*Invoicing location and beneficiary location is New South Wales]*

**7. SUPPLIER FACILITIES**

The following identifies the Supplier Facilities from which such Services shall be performed:

*[Include as applicable]*

**8. [INSERT] FACILITIES**

The following [insert] Facilities will be made available by [insert] for use by Supplier Personnel in the performance of the Services under this Statement of Work:

*[Include as applicable]*

**9. SUBCONTRACTORS**

The following Subcontractors shall be utilized by Supplier in the performance of the Services to be provided under this Statement of Work:

Subcontractor	Location of Subcontractor

*[Include as applicable, or indicate inapplicable]*

**10. TERMINATION FOR CONVENIENCE**

[insert details]

**11. CUSTOMER SUPPLIED ITEMS**

[insert details]

**12. IDENTIFIED MATERIAL**

[insert any material for which IP is to be transferred to the Customer]

**[insert details for signature page]**

# Schedule 7 – Customer Policies and Laws

Refer to Schedule 10 - Applicable Policies and Laws of the Establishment and Transition Agreement which is incorporated into this Schedule 7 of the Customer Outsourcing Agreement.

The following further policies and Laws will apply in respect of this Customer Outsourcing Agreement:

Customer Policies
None

Laws
None

# Schedule 8 – Disaster Recovery and Business Continuity Requirements

Refer to Schedule 12 - Common DR and BCP Requirements of the Establishment and Transition Agreement which is incorporated into this Schedule 8 of the Customer Outsourcing Agreement.

The following further Disaster Recovery and Business Continuity requirements will apply in respect of this Customer Outsourcing Agreement:

None

# Schedule 9 – Assets to be Transferred, Customer Supplied Items, Third Party Agreements to be Novated and Managed Third Party Agreements

The parties acknowledge that for Foundation Customers - not applicable.

For Customers other than Foundation Customers, the Assets to be Transferred, Customer Supplied Items, Third Party Agreements to be Novated and Managed Third Party Agreements are set out below.

**A. Assets to be Transferred**

Assets to be Transferred	Details of Asset

**B. Customer Supplied Items**

**B1. Customer Supplied Items which are Licensed Customer Material**

Customer Supplied Item	Service Tower for which the CSI is required	Period for which the CSI is required	Supplier management, support and maintenance obligations (clause 26.2)

**B2. Customer Supplied Items which are not Licensed Customer Material**

Customer Supplied Item	Service Tower for which the CSI is required	Period for which the CSI is required	Supplier management, support and maintenance obligations (clause 26.2)

**C. Third Party Agreements to be Novated**

Third Party Agreement	Details of Third Party Agreement

**D. Managed Third Party Agreements**

Third Party Agreement	Service Tower for which the agreement is required	Period for which management is required	Scope of Management Obligations (clause 27.3)

# Schedule 10 – Approved Subcontractors

Refer to Schedule 7 - Approved Subcontractors of the Establishment and Transition Agreement which is incorporated into this Schedule 10 of the Customer Outsourcing Agreement.

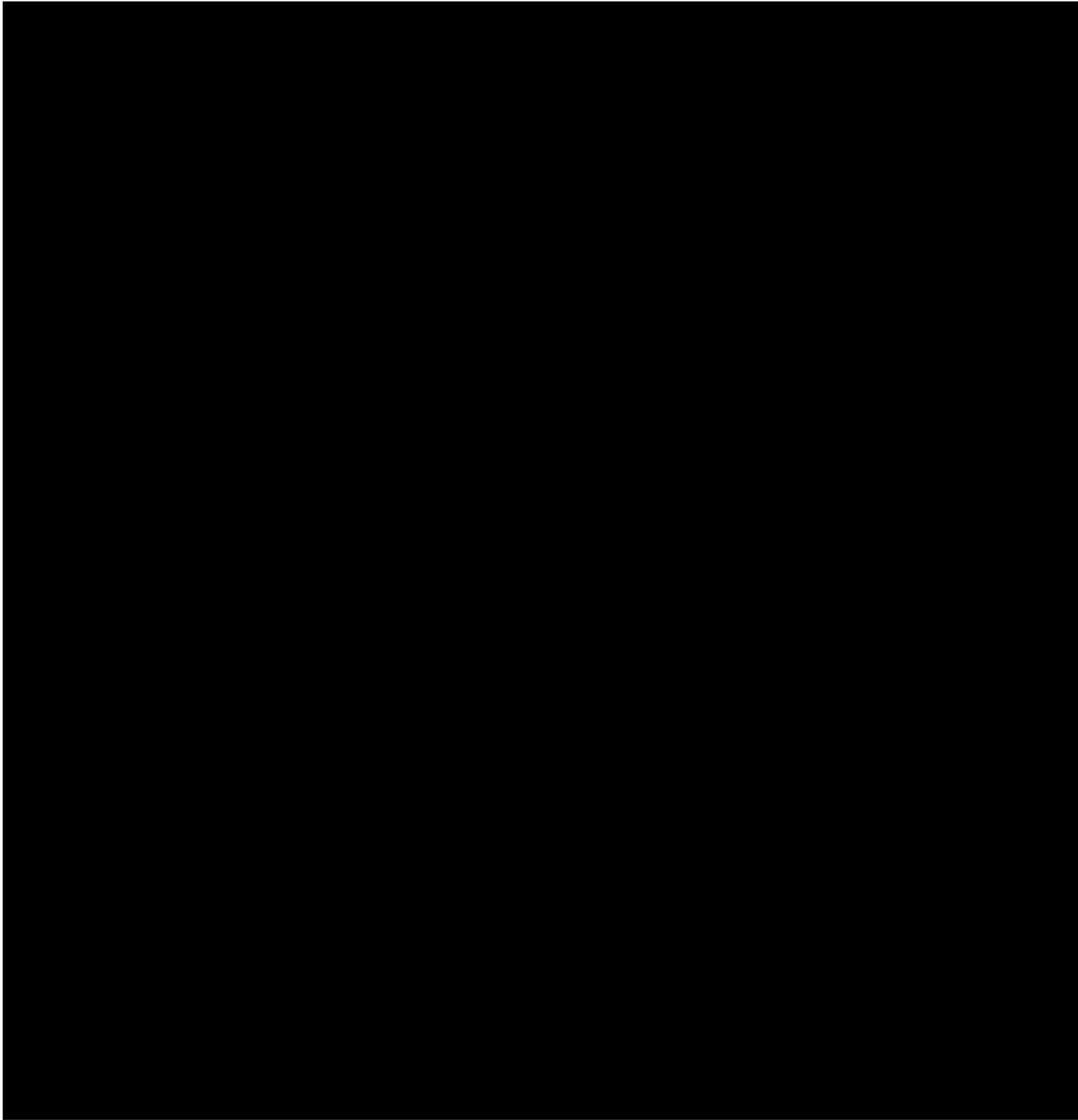
The following further subcontractors are also Approved in respect of this Customer Outsourcing Agreement:

None

# Schedule 11 – Customer Specific Transition-Out Requirements

The following Transition-Out requirements are specific to this Customer Outsourcing Agreement (refer to definition of Transition-Out Requirements in the ETA):

None



# Schedule 13 – Invoice Form

Refer to Schedule 19 - Invoice Form of the Establishment and Transition Agreement which is incorporated into this Schedule 13 of the Customer Outsourcing Agreement.

# Signing page

