



Australian Government

# SourceIT

## Licence and Support Contract – Commercial off-the-shelf Software

**Release version 2.4**

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*[Insert name of Customer]* (**Customer**)

*[Insert name of Contractor]* (**Contractor**)

# Licence and Support Contract – Commercial off-the-shelf Software

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# Contract Information

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Date *[insert date]*

## Parties

Name *[insert name of Customer]*  
Short form name **Customer**

Name *[insert name of Contractor]*  
Short form name **Contractor**

## Background

- A The Customer requires the provision of certain software and related services.
- B The Contractor has fully informed itself on all aspects of the work required to be performed and has represented that it has the requisite skills and experience to perform that work.
- C The Customer has agreed to engage the Contractor to provide the software and related services on the terms and conditions contained in this Contract.

# Agreed Terms

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## Part 1 - Software supply and support

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Contract, except where the contrary intention is expressed, the following definitions are used:

<b>Accepted</b>	accepted by the Customer in accordance with the procedures set out in clause 16.
<b>Acceptance Criteria</b>	the requirements set out in the Specifications and any other requirements set out in the Statement of Work, for Acceptance.
<b>Accounting Standards</b>	the standards of that name maintained by the Australian Accounting Standards Board (created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
<b>Administrative Arrangements Order</b>	A ministerial order that administrative functions be allocated or reallocated between various Agencies as specified in the order.
<b>Advisers</b>	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
<b>Agency</b>	(a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation (including a local authority); (b) a body established by the Governor-General or by a Minister of State of the Commonwealth including departments; or (c) an incorporated company over which the Commonwealth exercises control.
<b>Agency Order Form</b>	the form set out in Schedule 7.
<b>Agreed Terms</b>	clauses 1 to 37 of the Contract which set out terms and conditions agreed by the parties.

<b>Auxiliary Material</b>	any Material, other than Contract Material, which is made available by a party for the purpose of this Contract, on or following the Commencement Date, and includes: <ul style="list-style-type: none"> <li>(a) Third Party Material;</li> <li>(b) error corrections or translations to that Material; or</li> <li>(c) derivatives of that Material where such derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material.</li> </ul>
<b>Business Day</b>	<ul style="list-style-type: none"> <li>(a) for receiving a notice under clause 36, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and</li> <li>(b) for all other purposes, any day that is not a Saturday or Sunday or a national public holiday, and a ‘national public holiday’ is a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.</li> </ul>
<b>Business Hours</b>	from 8.00am to 6.00pm on a Business Day at the place where the Services are to be provided, unless specified otherwise in item 5 of the Contract Details.
<b>CERT Australia</b>	the National Computer Emergency Response Team established by the Commonwealth Attorney-Generals Department, details of which are available at <a href="https://www.cert.gov.au/about">https://www.cert.gov.au/about</a> .
<b>Change Order</b>	the form set out in Schedule 6.
<b>Commencement Date</b>	the date on which this Contract commences, as specified in item 6 of the Contract Details.
<b>Commonwealth or Cth</b>	the Commonwealth of Australia.
<b>Confidential Information</b>	<p>information that is by its nature confidential; and:</p> <ul style="list-style-type: none"> <li>(a) is designated by a party as confidential and is described in Schedule 4 of this Contract; or</li> <li>(b) a party knows or ought to know is confidential,</li> </ul> <p>but does not include:</p> <ul style="list-style-type: none"> <li>(c) information which is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation.</li> </ul>
<b>Contract</b>	this agreement between the Customer and the Contractor, as amended from time to time in accordance with clause 37.2, and includes its schedules and any attachments.
<b>Contract Details</b>	the details set out in Schedule 1.
<b>Contract Material</b>	any Material created by the Contractor on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Contract.

<b>Contract Period</b>	the Initial Contract Period plus any extension in accordance with clause 3.2.
<b>Contractor</b>	the party specified in item 2 of the Contract Details and includes its subcontractors and Personnel.
<b>Contractor Representative</b>	the person identified in item 4 of the Contract Details.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Customer</b>	the party specified in item 1 of the Contract Details.
<b>Customer Data</b>	all data and information relating to the Customer, and its operations, facilities, customers, Personnel, assets and programs (including personal information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Customer.
<b>Customer Material</b>	any Auxiliary Material provided to the Contractor by the Customer, including the Material (if any) specified in item 27 of the Contract Details.
<b>Customer Representative</b>	the person identified in item 3 of the Contract Details.
<b>Customer's Existing System</b>	the Customer's existing hardware and software configurations, specified in the Statement of Work and as modified from time to time, with which the Software must operate.
<b>Deliverable</b>	any Software, Contract Material or other item to be supplied by the Contractor under this Contract.
<b>Documentation</b>	the documentation to be provided by the Contractor under clause 12.
<b>Fair Work Principles</b>	the Australian Government Fair Work Principles released by the Minister for Employment and Workplace Relations on 31 July 2009 and available at <a href="http://www.deewr.gov.au/fairworkprinciples">www.deewr.gov.au/fairworkprinciples</a> .
<b>Fair Work Principles User Guide</b>	the Fair Work Principles User Guide released by the Department of Education, Employment and Workplace Relations (available at <a href="http://www.deewr.gov.au/fairworkprinciples">www.deewr.gov.au/fairworkprinciples</a> ).
<b>Harmful Code</b>	any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of the Software.
<b>Initial Contract Period</b>	the period of time for which this Contract is intended to continue, as specified in item 7 of the Contract Details.
<b>Intellectual Property Rights</b>	<p>all intellectual property rights, including but not limited to, the following rights:</p> <p>(a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names and any right to have confidential information kept confidential;</p>

- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
  - (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,
- whether or not such rights are registered or capable of being registered.

<b>Law</b>	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
<b>LEADR</b>	the dispute resolution association with that name and the Australian Business Number 69 008 651 232.
<b>Legal Services Directions</b>	the Commonwealth Attorney General's Legal Services Directions issued under section 55ZF of the <i>Judiciary Act 1903</i> (Cth).
<b>Licence</b>	the licence of the Software granted by the Contractor to the Customer under clause 6.1.
<b>Licence Fees</b>	the fees payable to the Contractor relating to the Licence, as specified in Schedule 3.
<b>Losses</b>	liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party).
<b>Material</b>	any software, firmware, documented methodology or process, tools, object libraries, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any Intellectual Property Rights.
<b>Milestone</b>	any fixed date to be met by the Contractor in performing any of its obligations under this Contract, as specified in the Statement of Work.
<b>Moral Rights</b>	each and every 'moral right', as defined in the <i>Copyright Act 1968</i> (Cth).
<b>New Release</b>	software produced primarily to extend, alter or improve the Software by providing additional functionality or performance enhancement (whether or not defects in the Software are also corrected) while still retaining its original designated purpose.
<b>Nominated Agency</b>	any Agency, including those listed in item 10 of the Contract Details, which may require the provision of Services under this Contract.
<b>Notice</b>	a notice, demand, consent, approval or communication issued under this Contract.



<b>Open Source Licence</b>	the open source licence agreement set out in Schedule 8.
<b>Personnel</b>	in relation to a party, any natural person who is an employee, officer, agent or professional adviser of that party and, in the case of the Contractor, of a subcontractor.
<b>Problem</b>	a fault, failure or difficulty with the Software.
<b>Production Date</b>	the date on which the Support Period commences and will be: <ul style="list-style-type: none"> <li>(a) the date on which the relevant Software has been Accepted, rolled out for production and is ready for use by the Customer; or</li> <li>(b) where the Contractor is not providing implementation and ancillary services under this Contract, the date on which the relevant Software is supplied to the Customer.</li> </ul>
<b>Protective Security Policy Framework or PSPF</b>	<p>the Australian Government's protective security requirements for the protection of its people, information and assets (which replaced the <i>Commonwealth Protective Security Manual 2005</i>), as amended or replaced from time to time.</p> <p><b>PSPF</b> <i>Australian Government protective security policy framework – glossary of security terms</i>, as amended or replaced from time to time, and available at <a href="http://www.protectivesecurity.gov.au/pspf/Pages/PSPF-Glossary-of-terms.aspx">http://www.protectivesecurity.gov.au/pspf/Pages/PSPF-Glossary-of-terms.aspx</a>.</p> <p><b>PSPF</b> <i>Protective security governance guidelines – Security of outsourced services and functions</i>, as amended or replaced from time to time, and available at <a href="http://www.protectivesecurity.gov.au/governance/contracting/Pages/Supporting-guidelines-for-contracting.aspx">http://www.protectivesecurity.gov.au/governance/contracting/Pages/Supporting-guidelines-for-contracting.aspx</a>.</p>
<b>Resolution Time</b>	the time specified in the Statement of Work within which the Contractor must resolve a Problem.
<b>Response Time</b>	the time specified in the Statement of Work within which the Contractor must respond to a notice provided by the Customer of a Problem.
<b>Service Charges</b>	the Licence Fees, the Support Service Charges and any other fees or charges that may be payable to the Contractor in accordance with Schedule 3.
<b>Service Levels</b>	the standards of service which the Contractor must achieve in providing the Services to the Customer as set out in the Statement of Work, including the Response Times and Resolution Times.
<b>Service Rebates</b>	an amount calculated in accordance with Schedule 3 which is payable by the Contractor to the Customer under clause 17.2.
<b>Services</b>	the services to be provided by the Contractor as specified in the Statement of Work, and includes the supply of the Deliverables and the Support Services.

<b>Software</b>	the software provided by the Contractor under this Contract, as specified in the Statement of Work and includes any Updates and New Releases adopted by the Customer.
<b>Source Materials</b>	the source code of, and all relevant documentation, notes and other materials required to support the Software.
<b>Specifications</b>	in order of priority: <ul style="list-style-type: none"> <li>(a) the Customer's functional and technical requirements for the Software as described in the Statement of Work, as amended from time to time; and</li> <li>(b) all applicable manufacturers' specifications and applicable standards.</li> </ul>
<b>Specified Personnel</b>	the Contractor's subcontractors and Personnel specified in item 24 of the Contract Details.
<b>Statement of Work</b>	the details of the Services to be performed under this Contract, as set out in Schedule 2.
<b>Support Hours</b>	Business Hours, unless otherwise specified in the Statement of Work.
<b>Support Period</b>	the period during which the Customer is to acquire Support Services in accordance with this Contract, as set out in clause 10.1.
<b>Support Service Charges</b>	the charges specified in Schedule 3 which are payable to the Contractor for the provision of Support Services subsequent to the Warranty Period.
<b>Support Services</b>	the support Services to be provided by the Contractor under this Contract, as specified in the Statement of Work.
<b>Third Party Material</b>	Auxiliary Material in which a third party holds Intellectual Property Rights.
<b>Update</b>	software which has been produced primarily to overcome defects in, or to improve the operation of, the Software without significantly altering the Software Specifications whether or not the Software has also been extended, altered or improved by providing additional functionality or performance enhancement.
<b>Warranted Materials</b>	the Auxiliary Material provided by the Contractor, the Deliverables and Contract Material.
<b>Warranty Period</b>	90 days from the date of Acceptance, unless otherwise specified in item 16 of the Contract Details.
<b>WHS Law</b>	the Work Health and Safety Act 2011 (Cth) (WHS Act) and any 'corresponding work health and safety law' as defined in section 4 of the WHS Act

## 1.2 Interpretation

In this Contract, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule, attachment or annexure is to a clause or paragraph of, or schedule or attachment or annexure to, this Contract, and a reference to this Contract includes any schedule or attachment or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to the time in the place where the obligation is to be performed;
- (g) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to 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;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) headings are for ease of reference only and do not affect interpretation.

### 1.3 Trustee Contractor

If the Contractor acts as trustee of a trust, in relation to this Contract:

- (a) it is liable both personally, and in its capacity as trustee of that trust;
- (b) it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but retain and apply such indemnity only towards meeting its obligations under this Contract;

- (c) it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and
- (d) it represents and warrants that:
  - (i) such trust has been duly established and currently exists;
  - (ii) it is the duly appointed, current and only trustee of that trust;
  - (iii) as such trustee it has the power to enter into and perform its obligations under this Contract;
  - (iv) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
  - (v) conflict of interest and duty affecting it as such trustee (and/or its directors, if any) does not arise, OR otherwise is overcome by the terms of the relevant trust deed; and
  - (vi) no breach of the relevant trust deed exists or would arise.

## 1.4 Completion of Schedules

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, that item will be taken to be 'not applicable' for the purpose of this Contract.

## 2. Priority of Contract documents

If there is inconsistency between any of the documents forming part of this Contract, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Open Source Licence;
- (b) Agreed Terms;
- (c) Schedules (other than the Open Source Licence);
- (d) Any attachments to the Schedules; and
- (e) Documents incorporated by reference in this Contract.

## 3. Duration of Contract

### 3.1 Initial Contract Period

This Contract begins on the Commencement Date and continues for the duration of the Initial Contract Period unless terminated in accordance with clause 32.3 or 34.

### 3.2 Option to extend Contract Period

- (a) The Initial Contract Period may be extended by the Customer for further period(s), specified in item 8 of the Contract Details (each an **Option Period**), on the terms and conditions then in effect, by giving written notice to the Contractor. Such notice must:
  - (i) be at least 30 days; or
  - (ii) such other period as specified in item 9 of the Contract Details (**Option Notice Period**),before the end of the current Contract Period.

- (b) Any extension exercised in accordance with this clause 3.2 takes effect from the end of the then current Contract Period.

## 4. Services to other Agencies

### 4.1 Obligation to provide Services

The Contractor offers to provide the Services to any Nominated Agency in accordance with the requirements set out in this clause 4.

### 4.2 Request

A Nominated Agency may request the supply of Services in accordance with clause 4.1, by giving the Contractor a completed Agency Order Form.

### 4.3 Separate contracts

Each completed Agency Order Form in accordance with this Contract if and when agreed to by the Contractor, will create a separate contract between the Contractor and:

- (a) the Commonwealth represented by the Nominated Agency (where that agency is subject to the *Financial Management and Accountability Act 1997* (Cth)); or
- (b) the Nominated Agency, as the case requires, for the supply by the Contractor of the requested Services to the Nominated Agency. For the sake of clarity, the terms and conditions governing each such separate contract will be the same as the provisions of this Contract subject to the agreed Agency Order Form.

## 5. General obligations of the parties

The parties will, at all times:

- (a) act reasonably in performing their obligations and exercising their rights under this Contract;
- (b) diligently perform their respective obligations under this Contract; and
- (c) work together in a collaborative manner.

## 6. Software licence

### 6.1 Grant of Licence

Unless otherwise specified in item 11 of the Contract Details, and subject to clause 7, the Contractor:

- (a) grants to the Commonwealth a perpetual, irrevocable, world-wide, non-exclusive, royalty-free licence to:
  - (i) at the Commonwealth's discretion, install the Software without affecting the Customer's entitlement to Support Services under clause 10.1(b);
  - (ii) adapt and modify the Software to the extent necessary to enable it to be used on the Customer's Existing System;
  - (iii) use and communicate each part of the Software, and the Documentation, in either hardcopy or softcopy (including online); and
  - (iv) make necessary copies of the Software, and the Documentation, for backup and security purposes;

- (b) authorises the Customer to assign the rights in clause 6.1(a) to other Agencies where those Agencies require the Software as a result of an Administrative Arrangements Order; and
- (c) authorises the Commonwealth to sublicense and/or assign to third parties the rights referred to in clause 6.1(a) solely for the benefit of the Commonwealth, provided that the Commonwealth secures an undertaking from the relevant third party that it will use that Software and Documentation solely for that purpose.

## **6.2 Source Materials to be held in escrow**

- (a) Unless otherwise specified in item 12 of the Contract Details, the Source Materials are to be held in escrow. The Contractor must either:
  - (i) following Acceptance of the relevant Software, promptly deposit those Source Materials with an escrow agent approved by Customer on terms approved by the Customer; or
  - (ii) if the Contractor has entered into a master escrow agreement in relation to the Software, add the Commonwealth as a party to that master escrow agreement promptly following Acceptance of that Software.
- (b) The Contractor must regularly update the Source Materials held in escrow so that they reflect the Software used by the Customer from time to time, on an ongoing basis.
- (c) The Contractor grants to the Commonwealth a licence to make full use of the Source Materials to enable it to derive the full benefits it is entitled to receive under the terms of this Contract (including the right to modify, adapt and support the Software), with effect from the date of the event that triggered release of the Source Materials to the Customer in accordance with the relevant escrow agreement.

## **6.3 Outsource supplier**

- (a) Where the Customer outsources from time to time some or all of its information technology services, the Customer may:
  - (i) if the Software is licensed to the Customer under clause 6.1, sublicense to any outsource supplier the right to use the Software in accordance with clause 6.1(c); or
  - (ii) assign the Licence to any outsource supplier during the term of its appointment, without the Contractor's consent and without any financial consequence for the Customer or the outsource supplier. The Customer must advise the Contractor of any sub-licence granted, or assignment of the Licence under this clause 6.3.
- (b) Unless specified otherwise in Schedule 3, where the Customer outsources some or all of its information technology services or where any outsourcing arrangement ends, the Contractor must, at no additional cost to the Customer, provide such assistance to the Customer or any outsource supplier as is reasonably required by the Customer.

## **6.4 Restrictions on use**

- (a) The Customer agrees, except to the extent permitted by the Licence or applicable Law:
  - (i) not to decompile, disassemble, reverse engineer or otherwise attempt to derive the Software source code from object code;
  - (ii) not to sell, rent, lease, license, sublicense, display, time share or otherwise transfer the Software to, or permit the use of the Software by, any third party;
  - (iii) not to remove any copyright or proprietary notice from the Software; and

- (iv) to use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software,  
and to require its subcontractors and Personnel to whom the Software is made available by the Customer to also comply with the requirements of this clause.
- (b) The Customer agrees to maintain a log of the number and location of all originals and copies of the Software.

## **6.5 Audit of use**

- (a) The Contractor may annually, or at such other times as agreed between the parties, audit the Customer's use of the Software, as it relates to this clause 6, by giving the Customer at least 28 days notice.
- (b) An audit under clause 6.5(a) must only be conducted while a representative of the Customer is present, unless agreed otherwise between the parties in writing.
- (c) Each party must bear its own costs of any audit under clause 6.5(a).

# **7. Open Source Software**

## **7.1 Grant of Licence**

To the extent that the Software, or any part of the Software, is licensed under an open source software arrangement:

- (a) the terms of the Open Source Licence will apply to that Software; and
- (b) the provisions of the Open Source Licence will prevail over the Agreed Terms in the event and to the extent of any inconsistency.

# **8. Delivery and installation of Software**

## **8.1 Obligations of Contractor**

Unless otherwise specified in item 13 of the Contract Details, the Contractor must:

- (a) deliver, install and implement the Software in accordance with any relevant Milestone dates and otherwise in accordance with the Statement of Work; and
- (b) ensure that the Software, when installed and implemented, and for so long as it is maintained under this Contract, provides the functions and meets the performance and other requirements of the relevant Specifications and Documentation.

# **9. Provision of Services**

## **9.1 Service obligations**

The Contractor must supply the Services:

- (a) with due skill and care and to the best of the Contractor's knowledge and expertise;
- (b) in accordance with the Service Levels;
- (c) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines, including any specified in item 14 of the Contract Details;
- (d) using the Specified Personnel (if any);
- (e) in accordance with all applicable Laws;

- (f) in accordance with Commonwealth policies and specific requirements set out in Schedule 5;
- (g) in accordance with any reasonable directions in relation to the Services given by the Customer from time to time;
- (h) so as to meet the Milestones and other project plan requirements, and where no Milestones or project plan requirements are specified, promptly and without delay; and
- (i) otherwise in accordance with the provisions of this Contract.

## **9.2 Contractor warranties**

The Contractor represents and warrants that:

- (a) it has the right to enter into this Contract;
- (b) it has all rights, title, licences, interests and property necessary to lawfully perform the Services;
- (c) it and its subcontractors and Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge and competence to perform the Services;
- (d) the Software will comply with the Specifications and Documentation;
- (e) the Services and Software will be fit for the purpose as set out in the Statement of Work;
- (f) the Software and Documentation will be complete, accurate and free from material faults in design;
- (g) the media on which the Software is furnished will be, under normal use, free from defects in materials, design and workmanship and Harmful Code;
- (h) it will not, nor will it suffer or permit any third party under its direction or control to negligently introduce into the Customer's systems or any Deliverables any Harmful Code; and
- (i) if any Harmful Code is introduced, it will use all reasonable efforts promptly to report that introduction to the Customer and, where that Harmful Code is introduced as a result of a breach of clause 9.2(g) or clause 9.2(h), it will:
  - (i) take all necessary action to eliminate the Harmful Code; and
  - (ii) promptly, at its own cost, repair any harm or destruction caused by that Harmful Code.

## **9.3 Customer obligations**

The Customer must regularly backup its data and use appropriate and up-to-date malicious code and virus detection software for preventing and detecting Harmful Code.

## **9.4 Access to Customer's premises**

The Customer must cooperate with the Contractor by providing access to its premises and facilities as reasonably necessary to enable the Contractor to provide the Services.

## **9.5 Conduct at Customer's premises**

The Contractor must, if using or accessing the Customer's premises or facilities, comply with all reasonable directions and procedures relating to work health and safety and security in operation at those premises or facilities whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.



## 9.6 Subcontracting

The Contractor must:

- (a) not subcontract (including any use of a third party to perform) any aspect of the provision of the Services other than to those entities set out in item 15 of the Contract Details, without the prior written approval of the Customer, which will not be unreasonably withheld;
- (b) not, in any event, enter into a subcontract under this Contract with a subcontractor named by the Director of the Workplace Gender Equality Agency in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Workplace Gender Equality Act 2012* (Cth); and
- (c) ensure that any subcontractor approved under this Contract complies with:
  - (i) Clause 26 (Confidentiality and privacy);
  - (ii) Clause 27 (Protection of personal information);
  - (iii) Clause 28 (Conflict of interest);
  - (iv) Clause 29 (Security);
  - (v) Clause 31 (Audit and access); and
  - (vi) Clause 35 (Knowledge transfer).

## 9.7 Fair Work Principles

- (a) The Contractor must comply, and as far as practicable must ensure its subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide, including by:
  - (i) complying with all applicable workplace relations law, WHS Law, and workers' compensation laws;
  - (ii) informing the Customer of any adverse court or tribunal decision for a breach of workplace relations law, WHS Law, or workers' compensation laws made against it during the term of the Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
  - (iii) providing the Customer any information the Customer reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles; and
  - (iv) participate in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.
- (b) Compliance with the Fair Work Principles shall not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.
- (c) If the Contractor does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Commonwealth, the Commonwealth shall be entitled to publish details of the Contractor's failure to comply (including the Contractor's name) and to otherwise provide those details to Agencies.
- (d) As far as practicable, the Contractor must:

- (i) not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and
- (ii) ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations under the sub-clauses contained in clause 9.7.

## 9.8 Work Health and Safety

- (a) In relation to this Contract the Contractor must:
  - (i) comply, ensure that the Services and work conducted by or on its behalf comply, and ensure so far as is reasonably practicable that its Personnel comply, with the WHS Law and with all applicable Laws, standards and policies and requirements of this Contract that relate to the health and safety of the Contractor, Personnel and third parties. The other provisions of clause 9.8 do not limit this clause;
  - (ii) ensure so far as is reasonably practicable, that the health and safety of other persons (including Customer Personnel) is not put at risk;
  - (iii) consult, cooperate and coordinate with the Customer in relation to the Contractor's work health and safety duties;
  - (iv) promptly notify the Customer of any event or circumstance that has, or is likely to have, any adverse effect on the health or safety of persons to whom the Customer has a duty under WHS Law;
  - (v) if a 'notifiable incident' (as defined by WHS Law)(Notifiable Incident) occurs:
    - (A) immediately report to the Customer including all relevant details known to the Contractor; and
    - (B) as soon as possible investigate the Notifiable Incident to determine (as far as can reasonably be done) its cause and any adverse effects on the Contract including risks to health and safety, and take all reasonable steps to remedy any effects on health and safety and to ensure the event or circumstances that led to the Notifiable Incident do not recur.
  - (vi) comply, and ensure that its Personnel comply, with any direction given by the Customer in connection with its work under this Contract, that the Customer considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons (including a Notifiable Incident);
  - (vii) promptly provide to the Customer, upon request, information documentation or evidence relevant to its obligations under this clause 9.8, or to assist the Customer and its Personnel to comply with their duties under WHS Law, including a written report on the investigation and response to an event or circumstance notified under paragraphs 9.8(a)(iv) or (v); and
  - (viii) co-operate fully with any investigation by any government agency (including the Commonwealth), parliamentary inquiry, board of inquiry or coronial inquiry with respect to a Notifiable Incident.
- (b) If the Contractor uses a subcontractor in relation to this Contract, it must ensure that the subcontract imposes obligations on the subcontractor equivalent to the obligations under clauses 9.5 and 9.8(a).
- (c) The Contractor acknowledges that it will meet its obligations under this clause 9.8 solely at its own cost and expense, and without charge to or reimbursement from the Customer (or the Commonwealth).

## 9.9 Australian Government ICT Sustainability Plan

- (a) The Contractor agrees to comply with the Australian Government ICT Sustainability Plan 2010-2015 (ICT Sustainability Plan), where relevant to the provision of the Services.
- (b) In particular, the Contractor must:
  - (i) comply with ISO 14024 or ISO 14021 at the level of Electronic Product Environmental Assessment Tool (EPEAT) "Silver" rating or equivalent as a minimum standard for relevant Hardware being supplied under this Contract;
  - (ii) comply with the current version of ENERGY STAR® for any relevant Hardware supplied under this Contract – refer <http://www.energyrating.gov.au/programs/e3-program/high-energy-performance-standards/energy-star-australia/>;
  - (iii) where no other disposal arrangements are specified for equipment supplied under this Contract:
    - (A) for ICT equipment covered by the National Television and Computer Recycling Scheme, take back the supplied equipment at end-of-use for re-use or resource recovery; and
    - (B) for mobile devices/toner cartridges, either take back the devices/cartridges at end-of-use for re-use or resource recovery, or dispose of through a suitable recycling program (for example the official recycling program of the Australian Mobile Telecommunications Association, or a multi vendor imaging consumables collection and recycling service);
  - (iv) be a signatory to the Australian Packaging Covenant or comply with the requirements of the National Environment Protection (Used Packaging Materials) Measure (unless exempt by legislation); and
  - (v) have an Environmental Management System aligned to the ISO 14001 standard or alternatively, implement business processes that are aligned to the ISO 14001 standard within six months after the commencement of this Contract.
- (c) Terms used in this clause that are not defined in this Contract, have the meaning attributed to them in the ICT Sustainability Plan.

## 10. Support Services

### 10.1 Support Period

Unless otherwise specified in item 17 of the Contract Details:

- (a) the Support Period will commence on the Production Date and will continue until the end of the Contract Period; and
- (b) the Support Services must be provided to the Customer at no charge during the Warranty Period.

### 10.2 Obligation to provide Support Services

During the Support Period the Contractor must provide to the Customer the Support Services during the Support Hours. Unless otherwise specifically stated in Statement of Work the Support Services include as a minimum:

- (a) supply of telephone or other electronic support to the Customer in order to support users in the use of the Software, and to enable the Customer to locate and correct Problems;

- (b) maintaining an electronic mail communication facility that will enable Software and Documentation to be downloaded from the Contractor to the Customer in softcopy (or, in respect of Documentation, to be forwarded by facsimile);
- (c) correcting any Problem in accordance with the relevant Service Level;
- (d) promptly correcting any failure of the Documentation to provide adequate and correct instruction for the proper use and operation (by an appropriately qualified person) of any function or any performance or other requirement set out in the relevant Specifications or Documentation, and delivering to the Customer appropriate amendments to the Documentation;
- (e) supplying any Updates as required to:
  - (i) rectify Problems;
  - (ii) comply with statutory or regulatory changes relating to the Software; and
  - (iii) operate the Software under new releases of the operating system and other system software and any other Customer hardware and software configurations (including the Customer's Existing Systems) with which the Software is designed to operate;
- (f) supplying all New Releases, enhancements and other changes (and appropriate Documentation for those New Releases, enhancements and other changes) that the Contractor, at its sole discretion, makes or adds to the Software and which the Contractor generally furnishes, without charge, to other licensees of the Software for whom the Contractor provides support services;
- (g) replacing the Software at no charge if the media becomes destroyed or damaged so that the Software becomes unusable or defective;
- (h) provide any training set out in the Statement of Work; and
- (i) provide any additional services set out in the Statement of Work.

### 10.3 Exclusions

Unless reasonably incidental to the Support Services, the Contractor is not required to provide services involving:

- (a) correction of Problems caused by operation of the Software in a manner other than that expressly or by implication authorised by the Contractor;
- (b) rectification of Problems caused by misuse or incorrect use of the Software by the Customer;
- (c) assistance for user difficulty or user inexperience, unless specified otherwise in item 18 of the Contract Details; or
- (d) equipment maintenance.

### 10.4 Remote access to Customer systems

In providing the Services, the Contractor must (having due regard for the security concerns inherent in remote access and control of the Software) take appropriate action and maintain appropriate protocols to satisfy its obligations for the protection and security of the Customer, its Personnel, Customer Data and the Customer's clients. Without limitation the Contractor must ensure that:

- (a) in accordance with clause 29.1 no security requirement is breached and in accordance with clause 29.3 no Customer Data is taken outside of Australia through the remote access or control of any server or other hardware or software;
- (b) no unauthorised attempt whatsoever is made to access or use in any way the Customer's software systems;

- (c) direct or indirect access to the Customer's Existing System, and Customer hardware or software is absolutely restricted to those Contractor employees who have been approved by the Customer and who have a need for such access and that access is limited to the minimum access necessary to enable the Contractor to comply with its obligations under this Contract;
- (d) no Customer Data is changed without the express prior written approval of the Customer;
- (e) any access by the Contractor to the Customer hardware or software is only with the clear identification and recording of the individual gaining such access; and
- (f) any access by the Contractor to the Customer hardware or software complies with any other requirements relating to remote access set out in the Statement of Work.

## 11. Information regarding Updates and New Releases

### 11.1 Provision of Updates and New Releases

If specified in item 19 of the Contract Details, during the Support Period the Contractor must promptly provide the Customer with the following information for any Update or New Release it may make or has made available to the Customer or any other customers from time to time:

- (a) the nature of the improvements and/or corrections contained in the Update or New Release;
- (b) any adverse effects that the Update or New Release may be expected to have on the Customer's system/s, including any expected degradation in reliability, performance or functionality; and
- (c) sufficient information to enable the Customer to determine whether the Update or New Release will suit the Customer's requirements and comply with the Specifications.

### 11.2 No obligation to take Updates or New Releases

Unless specified otherwise in item 20 of the Contract Details, a refusal by the Customer to install an Update or New Release does not affect its entitlement to ongoing Support Services under this Contract.

### 11.3 Destruction of superseded versions

Unless otherwise agreed in writing, the Customer must promptly after installation of a New Release destroy the superseded version of the Software where that version is no longer required by the Customer.

## 12. Documentation

### 12.1 Provision of Documentation

The Contractor must provide the Customer with up to date technical and operator Documentation containing sufficient information to enable the Customer to make full use of the Software at all times. The Documentation must be provided in accordance with the Statement of Work.

### 12.2 Documentation requirements

The Documentation must at the time of delivery:

- (a) be current and accurate and consistent with the Specifications;
- (b) adequately explain key terms and symbols; and
- (c) unless specified otherwise in item 21 of the Contract Details, be in English.

### 12.3 Updating Documentation

- (a) Support Services include providing all necessary amendments, revisions and updates of the Documentation.
- (b) The Contractor must amend or substitute the Documentation periodically in order to address and adequately explain the implications of any Update or New Release.
- (c) The Contractor must provide or make available Documentation updated in accordance with this clause 12 to the Customer within five Business Days of delivery of the Update or New Release to which the updated Documentation relates.

## **13. Varying the Services**

### **13.1 Variations proposed by Customer**

If the Customer wants to vary the Services:

- (a) the Customer must request the Contractor in writing setting out the proposed variations;
- (b) within 14 days after receiving the Customer's request or within another period agreed by the parties, the Contractor must respond in writing to the Customer specifying what impact those variations will have on:
  - (i) the Service Charges (see clause 13.3);
  - (ii) the Services or Deliverables, including any particular Deliverable;
  - (iii) the Contractor's ability to perform its obligations under this Contract (including its ability to meet Service Levels or Milestones); and
  - (iv) this Contract; and
- (c) within 14 days after receiving the Contractor's response, or within another period agreed by the parties, the Customer must give the Contractor a written notice accepting or rejecting the response.

### **13.2 Variations proposed by Contractor**

If the Contractor wants to vary the Services:

- (a) the Contractor must request the Customer in writing setting out the proposed variations and specifying what impact those variations will have on:
  - (i) the Service Charges (see clause 13.3);
  - (ii) the Services or Deliverables, including any particular Deliverable;
  - (iii) the Contractor's ability to perform its obligations under this Contract (including its ability to meet Service Levels or Milestones); and
  - (iv) this Contract; and
- (b) within 14 days after receiving the request or within another period agreed by the parties, the Customer must give the Contractor a written notice accepting or rejecting the Contractor's request.

### **13.3 Changes to Service Charges**

Changes to Service Charges associated with a variation in the Services must:

- (a) not exceed any reasonable additional cost; and
- (b) take fully into account any reduction in cost.

### **13.4 Effective date of variation**

Any variation in the Services takes effect from the date on which the parties execute a Change Order. This Contract will be amended to give effect to the Change Order.

## 14. Co-operation with Personnel and contractors

The Contractor must in the performance of the Services under the Contract:

- (a) fully co-operate with the Customer's Personnel and other contractors; and
- (b) use its best efforts to coordinate its activities so as to support and facilitate, in the Customer's best interests, the timely and efficient completion of all work and other activities to be performed for the Customer by any person.

## 15. Monitoring progress

### 15.1 Progress meetings

The parties will meet at the times set out in the Statement of Work (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services. The Contractor must ensure that the Contractor Representative and the Customer must ensure the Customer Representative is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

### 15.2 Reporting

The Contractor must provide the Customer with reports in accordance with the Statement of Work.

## 16. Acceptance testing

### 16.1 Acceptance

- (a) Each element of the Software and Services is subject to Acceptance by the Customer.
- (b) Unless specified otherwise in item 22 of the Contract Details, the Software will be deemed Accepted on the date the Contractor delivers the Software (if it meets the Acceptance Criteria).
- (c) Where:
  - (i) Acceptance of Software is to occur on delivery under clause 16.1(b), clauses 16.2 to 16.6 of this Contract do not apply to the extent that they relate to Acceptance of the Software; and
  - (ii) item 22 of the Contract Details specifies that testing of the Software for Acceptance is required, clauses 16.2 to 16.7 apply to that process.

### 16.2 Preparation for Acceptance testing

The Contractor must:

- (a) promptly notify the Customer when the Software or Services are ready for testing for Acceptance; and
- (b) prepare all relevant facilities specified in the Statement of Work as to be provided by the Contractor for the purposes of performing the tests for Acceptance,

in accordance with any relevant timeframes specified in the Statement of Work.

### 16.3 Conduct of Acceptance testing

Unless otherwise specified in the Statement of Work, the Contractor must:

- (a) perform the tests for Acceptance in order to demonstrate that the Software or Services meet the Acceptance Criteria; and
- (b) at its own cost provide all assistance reasonably requested by the Customer for the purposes of performing the tests for Acceptance,

in accordance with any relevant timeframes specified in the Statement of Work.

## **16.4 Timeframe for notice**

The Customer must, within 5 Business Days of the completion of testing for Acceptance (or such other period as specified in item 23 of the Contract Details) either Accept or reject the Software or Services. If the Customer rejects the Software or Services it must provide a list of defects or deficiencies to the Contractor at the time of rejection.

## **16.5 Rectification of non-compliant Services**

If the Customer notifies the Contractor that all or part of the Software or Services do not meet the Acceptance Criteria, the Contractor must:

- (a) take all necessary steps to ensure that the Software or Services are promptly corrected;
- (b) give notice to the Customer when the Software or Services have been corrected; and
- (c) allow the Customer to repeat the tests for Acceptance for all or part of the Software or Services,

within five Business Days after the date of the notice or such other time as agreed between the parties in writing.

## **16.6 Use in production environment**

Unless otherwise agreed in writing by the parties, the Customer must not use the Software in a production environment until it is Accepted.

## **16.7 Right to terminate**

If any part of the Software or Services fail the tests for Acceptance on two or more occasions, the Customer may (in addition to its other remedies) terminate the Contract immediately under clause 34.2 by giving the Contractor written notice.

# **17. Measuring performance**

## **17.1 Measurement and monitoring tools**

The Contractor must:

- (a) implement and maintain during the Contract Period, measuring and monitoring tools capable of measuring its performance against the Service Levels, as set out in the Statement of Work;
- (b) provide the Customer with access to the data and information gathered by those tools;
- (c) if requested by the Customer demonstrate to the Customer the operation and accuracy of those tools; and
- (d) investigate any failure to provide the Services in accordance with the Service Levels and report its findings to the Customer.

## **17.2 Service Rebates**

If specified in Schedule 3, and to the extent that the Contractor is responsible for any failure to achieve a Service Level, the Contractor:

- (a) must pay to the Customer Service Rebates, the amount of which will be determined in accordance with Schedule 3. The parties agree that the amount of Service Rebates payable by the Contractor under this Contract will not exceed the total amount of the Service Charges payable to the Contractor under this Contract;



- (b) acknowledges that any Service Rebates calculated in accordance with Schedule 3 are a genuine pre-estimate of the loss and damage the Customer will suffer as a result of a failure to achieve a Service Level;
- (c) acknowledges that payment of Service Rebates under this Contract will be without prejudice to any other rights or remedies that the Customer may have against the Contractor under, or arising from, this Contract as a result of the Contractor's failure to achieve a Service Level; and
- (d) will not be liable to pay any Service Rebates arising from the Contractor's failure to achieve a Service Level to the extent that failure arose as a result of:
  - (i) the Customer's failure to fulfil its obligations under this Contract; or
  - (ii) an event arising under clause 32.1.

## 18. Personnel

### 18.1 Use of Specified Personnel

The Contractor must:

- (a) provide the Services or any part of the Services to which their particular expertise relates, with the active involvement of, and using the expertise of the Specified Personnel; and
- (b) ensure that each of the Specified Personnel is aware of and complies with the Contractor's obligations in providing the Services.

### 18.2 If the Specified Personnel are not available

Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in providing the Services, the Contractor must notify the Customer immediately. The Contractor must:

- (a) if requested by the Customer, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and
- (b) obtain the Customer's written consent prior to appointing any such replacement person. The Customer's consent will not be unreasonably withheld.

### 18.3 Customer may request replacement of Personnel

The Customer may at any time request the Contractor to remove from work in respect of this Contract any of the Specified Personnel or the Contractor's subcontractors or Personnel. The Contractor must promptly arrange for the removal of such subcontractors or Personnel and their replacement in accordance with the process outlined in clause 18.2.

## 19. Intellectual Property Rights

### 19.1 Auxiliary Material

This clause 19 does not affect the ownership of the Intellectual Property Rights in any Auxiliary Material.

### 19.2 Third Party Material

The Contractor must obtain all necessary copyright and other Intellectual Property Right permissions before making any Third Party Material available as Auxiliary Material for the purpose of this Contract.

### 19.3 Selecting an ownership model for Intellectual Property Rights in Contract Material

#### **NOTE TO USERS:**

**Two models for ownership of Intellectual Property Rights in Contract Material are set out below.**

**Under the first model, the Contractor owns the Intellectual Property Rights in the Contract Material and provides a licence to the Customer to use the Contract Material. Under the second model, the Customer owns the Intellectual Property Rights in the Contract Material and provides a licence to the Contractor to use the Contract Material.**

**Users are to select a model through item 25 of the Contract Details. If no model is selected, the first model will apply. The first model is not, however, intended to represent a default position. The Customer should, therefore, not rely on the position set out in the first model without considering the appropriateness of both ownership models and whether other ownership and licensing models would be more suitable. Please refer to the User Notes for further guidance.**

**This note should be deleted prior to execution of the Contract.**

- (a) The ownership model for Intellectual Property Rights in Contract Material is that contained in either, but only one of, clauses 19.4 or 19.5 as set out in item 25 of the Contract Details.
- (b) If no ownership model is selected in item 25 of the Contract Details, clause 19.4 applies, and clause 19.5 in its entirety does not apply, to this Contract.
- (c) Each party must, at its own cost, do all things and execute all documents necessary or convenient to give effect to the ownership model.

#### **19.4 Contractor ownership of Intellectual Property Rights in Contract Material**

- (a) All Intellectual Property Rights in the Contract Material vest in the Contractor.
- (b) Unless otherwise specified in item 26 of the Contract Details, to the extent that:
  - (i) the Customer needs to use any of the:
    - (A) Auxiliary Material provided by the Contractor; or
    - (B) Contract Material,to receive the full benefit of the Services, the Contractor grants to, or must obtain for, the Commonwealth a perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Material; or
  - (ii) the Contractor needs to use any of the Customer Material for the purpose of performing its obligations under this Contract, the Customer grants to the Contractor for the Contract Period, subject to any conditions or restrictions specified in item 27 of the Contract Details and any direction by the Customer, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate such Material solely for the purpose of providing the Services.
- (c) The licence granted to the Commonwealth under clause 19.4(b)(i) does not include a right to exploit the Auxiliary Material or the Contract Material for the Commonwealth's commercial purposes.

#### **19.5 Customer ownership of Intellectual Property Rights in Contract Material**

- (a) All Intellectual Property rights in the Contract Material vest in the Customer.
- (b) Unless otherwise specified in item 28 of the Contract Details, to the extent that:

- (i) the Customer needs to use any of the Auxiliary Material provided by the Contractor to receive the full benefit of the Services (including the Contract Material), the Contractor grants to, or must obtain for, the Commonwealth, a perpetual world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Auxiliary Material;
- (ii) the Contractor needs to use any of the:
  - (A) Customer Material; or
  - (B) Contract Material,
 for the purpose of performing its obligations under this Contract, the Customer grants to the Contractor for the Contract Period, subject to any conditions or restrictions specified in item 27 of the Contract Details and any direction by the Customer, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate such Material solely for the purpose of providing the Services.
- (c) The licence granted to the Commonwealth under clause 19.5(b)(i) does not include a right to exploit the Auxiliary Material for the Commonwealth's commercial purposes.

## 19.6 Warranty

The Contractor warrants that:

- (a) the Warranted Materials and the Customer's use of those Warranted Materials, will not infringe the Intellectual Property Rights or Moral Rights of any person; and
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided in clause 6 and this clause 19.

## 19.7 Remedy for breach of warranty

If someone claims, or the Customer reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights or Moral Rights the Contractor must, in addition to the indemnity under clause 23 and to any other rights that the Customer may have against it, promptly, at the Contractor's expense:

- (a) use its best efforts to secure the rights for the Customer to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights or Moral Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

# 20. Moral Rights

## 20.1 Obtaining consents

To the extent permitted by applicable Laws and for the benefit of the Customer, the Contractor must:

- (a) give, where the Contractor is an individual; and
- (b) use its best endeavours to ensure that each of the Contractor's Personnel used in the production or creation of the Contract Material gives,

genuine consent in writing, in a form acceptable to the Customer, to the Specified Acts, even if such an act would otherwise be an infringement of the Moral Rights of the consenting individual.

## 20.2 Specified Acts

In this clause, unless otherwise specified in item 29 of the Contract Details, Specified Acts means:

- (a) falsely attributing the authorship of any Contract Material, or any content in the Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the Copyright Act 1968 (Cth));
- (b) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material or infringing copies (within the meaning of the Copyright Act 1968 (Cth));
- (c) reproducing, communicating, adapting, publishing or exhibiting any Contract Material, including dealing with infringing copies, within the meaning of the Copyright Act 1968 (Cth), without attributing the authorship; and
- (d) adding any additional content or information to the Contract Material.

## Part 2 – General requirements

### 21. Payment

#### 21.1 Obligation to pay charges

Subject to this clause and Acceptance of the Services, the Customer must pay to the Contractor the Service Charges as set out in Schedule 3.

#### 21.2 Contractor to provide invoice

The Contractor must provide a correctly rendered invoice to the Customer:

- (a) for the Service Charges; and
- (b) for the Support Service Charges, after the expiry of the Warranty Period,

in accordance with the requirements specified in Schedule 3.

#### 21.3 Due date for payment

Unless otherwise specified in Schedule 3, the Customer must make payment of a correctly rendered invoice within 30 days after receiving the invoice.

##### 21.3.1 Payment of simple interest

- (a) This clause 21.3.1 only applies where:
  - (i) the Contractor is a Small Business;
  - (ii) the value of this Contract is not more than \$1 million (GST inclusive); and/or
  - (iii) the amount of the interest payable exceeds \$10.00.
- (b) The Customer must pay interest on late payments to the Contractor as follows:
  - (i) for payments made by the Customer 30 days and up to 60 days after the amount became due and payable, only where the Contractor issues a correctly rendered invoice for the interest; or
  - (ii) for payments made by the Customer more than 60 days after the amount became due and payable, the Customer will pay the interest accrued together with the payment.
- (c) interest payable under this clause 21.3.1 will be simple interest on the unpaid amount at the General Interest Charge Rate, calculated in respect of each day from the day after the

amount was due and payable, up to and including the day that the Customer effects payment as represented by the following formula:

SI = UA x GIC x D, where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge daily rate; and

D = the number of days from the day after payment was due up to and including the day that payment is made.

(d) In this clause 21.3.1:

- (i) 'General Interest Charge Rate' means the general interest charge rate determined under section 8AAD of the Taxation Administration Act 1953 on the day payment is due, expressed as a decimal rate per day.
- (ii) 'The day that payment is made' is the day when the Customer's system generates a payment request into the banking system for payment to the Contractor.
- (iii) 'Small Business' means an enterprise that employs less than the full time equivalent of 20 persons on the day that this Contract is entered into. If the enterprise is an 'associated entity' as defined in section 50AAA of the Corporations Act, this test is applied to the group of associated entities as a whole.

(e) For the purposes of clauses 21.3 and 21.3.1, an invoice is correctly rendered if:

- (i) it is correctly addressed and calculated in accordance with this Contract;
- (ii) it relates only to Services that have been delivered to the Customer in accordance with this Contract; and
- (iii) it is a valid tax invoice in accordance with A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## **21.4 Incorrect invoices, under/over payment**

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Customer to the Contractor under this Contract.

## **21.5 Expenses**

Unless specified otherwise in Schedule 3, the Contractor must not charge the Customer for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Service Charges. The Customer is under no obligation to pay any amount in excess of the Service Charges.

# **22. GST**

## **22.1 Interpretation**

In this clause 22, a word or expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the meaning given to it in that Act.

## **22.2 GST gross up**

If a party (Supplier) makes a supply under or in connection with this Contract in respect of which GST is payable, the recipient of the supply (Recipient) must pay to the Supplier, an additional amount equal to the GST payable on the supply (GST Amount).

### **22.3 Reimbursements**

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 22.2.

### **22.4 Exclusion of GST from calculations**

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

### **22.5 Adjustments**

- (a) If the GST payable by a Supplier on any supply made under or in connection with this Contract varies from the GST Amount paid or payable by the Recipient under clause 22.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 22.2.
- (c) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.

### **22.6 Tax invoice**

A party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.

## **23. Indemnity**

### **23.1 Indemnity by the Contractor**

The Contractor indemnifies the Customer and its subcontractors and Personnel against Losses reasonably sustained or incurred by the Customer as a result of a claim made or threatened by a third party arising out of or in connection with:

- (a) any negligent, unlawful or wilfully wrong act or omission of the Contractor or its subcontractors or Personnel; or
- (b) an allegation that any Services or Warranted Materials (including the use of any Services or Warranted Materials by the Customer or its subcontractors or Personnel) infringes the Intellectual Property Rights or Moral Rights of the third party. For the purposes of this clause 23.1(b), an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth), section 96 of the Designs Act 2003 (Cth), section 183 of the Copyright Act 1968 (Cth) and section 25 of the Circuit Layouts Act 1989 (Cth), constitute an infringement.

### **23.2 Customer's obligations**

Where the Customer wishes to enforce an indemnity under clause 23.1 it must:

- (a) give written notice to the Contractor as soon as practical;

- (b) make reasonable efforts to mitigate the relevant Loss;
- (c) subject to the Contractor agreeing to comply at all times with clause 23.3, permit the Contractor, at the Contractor's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and
- (d) in the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer, under clause 23.2(c), provide all reasonable assistance to the Contractor in the handling of any negotiations and litigation.

### **23.3 Contractor's obligations**

In the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer under clause 23.2, the Contractor must:

- (a) comply with government policy and obligations, as if the Contractor were the Customer, relevant to the conduct of the litigation and any settlement negotiation (including but not limited to the Legal Services Directions) and any direction issued by the Attorney General to the Commonwealth or delegate;
- (b) keep the Customer informed of any significant developments relating to the conduct of the defence or settlement of any claim; and
- (c) provide to the Customer such information and documentation as are reasonably requested by the Customer, to enable the Customer to ascertain whether the defence or settlement by the Contractor of any claim is being conducted in accordance with the requirements of the Legal Services Directions, including any requirements relating to legal professional privilege and confidentiality.

## **24. Liability**

### **24.1 Relevant Law**

The liability of a party for breach of this Contract, or in tort, or for any other common law or statutory cause of action arising out of the operation of this Contract, will be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

### **24.2 Limitation**

- (a) The liability of each party arising out of or in connection with this Contract (including under any indemnity) is, subject to clause 24.2(b), limited to the amount specified in item 30 of the Contract Details.
- (b) Unless specified otherwise in item 31 of the Contract Details, any limit on the liability of each party under clause 24.2(a) does not apply in relation to liability relating to:
  - (i) personal injury (including sickness and death);
  - (ii) loss of, or damage to, tangible property;
  - (iii) an infringement of Intellectual Property Rights;
  - (iv) a breach of any obligation of confidentiality, security requirement or privacy; or
  - (v) any breach of any statute or any wilfully wrong act or omission including, in the case of the Contractor, any act or omission that constitutes repudiation of the Contract.
- (c) Unless specified otherwise in item 32 of the Contract Details, the limitation of liability specified in clause 24.2(a) applies in respect of each single occurrence or a series of related occurrences arising from a single cause.

### **24.3 Review of limitation**

- (a) The parties acknowledge that the limitation of liability specified in item 30 of the Contract Details will be subject to review in the event that the Contract is varied or extended.
- (b) For the avoidance of doubt, a party may require a review of the limitation of liability specified in clause 24.2 as a condition of its acceptance to a variation request under clause 13, but only for the purpose of achieving a proportionate adjustment to reflect any alteration to that party's risk exposure arising out of that variation.

## **24.4 Contribution**

The liability of a party (**Party A**) for any Losses incurred by another party (**Party B**) will be reduced proportionately to the extent that:

- (a) any negligent act or omission of Party B (or of its subcontractors or Personnel); or
- (b) any failure by Party B to comply with its obligations and responsibilities under this Contract,

contributed to those losses, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract.

## **24.5 Application to Service Rebates**

- (a) If Service Rebates become payable under clause 17.2, the Customer may, at its discretion:
  - (i) elect to set-off the amount the Contractor must pay against any subsequent liability for Service Charges; or
  - (ii) issue a notice requiring payment of the Service Rebates within no less than 10 Business Days of receipt of the notice.
- (b) The set-off or payment of Service Rebates by the Contractor (unless stipulated to the contrary in item 33 of the Contract Details) will not be taken into account for the purposes of quantifying any Losses which are subject to any limitation of liability under clause 24.2.

# **25. Insurance**

## **25.1 Obligation to maintain insurance**

In connection with the provision of the Services, the Contractor must have and maintain:

- (a) for the Contract Period, valid and enforceable insurance policies for:
  - (i) public liability;
  - (ii) either professional indemnity or errors and omissions;
  - (iii) product liability;
  - (iv) workers' compensation as required by law; and
  - (v) any additional types specified in item 34 of the Contract Details; and
- (b) for seven years following the expiry or termination of the Contract, valid and enforceable insurance policies for either professional indemnity or errors and omissions, in the amounts specified in item 35 of the Contract Details.

## **25.2 Certificates of currency**

The Contractor must, on request by the Customer, provide current relevant confirmation of insurance documentation from its insurance brokers certifying that it has insurance as required by this clause 25.



## 26. Confidentiality and privacy

### 26.1 Confidential Information not to be disclosed

- (a) Subject to clause 26.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

### 26.2 Written undertakings

- (a) A party (First Party) may at any time require the other party to arrange for:
  - (i) the other party's Advisers; or
  - (ii) any other third party, other than a Customer's employee, to whom information may be disclosed pursuant to clause 26.3(a) or (e),to give a written undertaking in the form set out in Schedule 9 or, where Schedule 9 does not include a form of undertaking, in the form of a deed reasonably acceptable to the First Party and relating to the use and non-disclosure of the First Party's Confidential Information.
- (b) If the other party receives a request under clause 26.2(a), it must promptly arrange for all such undertakings to be given.

### 26.3 Exceptions to obligations

The obligations on the parties under this clause 26 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Contract related activities;
- (c) is disclosed by the Customer to the responsible Minister;
- (d) is disclosed by the Customer, in response to a request by a House or a Committee of the Parliament of the Commonwealth;
- (e) is shared by the Customer within the Customer's organisation, or with another Agency, where this serves the Commonwealth's legitimate interests;
- (f) is authorised or required by law, including under this Contract, under a licence or otherwise, to be disclosed; or
- (g) is in the public domain otherwise than due to a breach of this clause 26.

### 26.4 Obligations on disclosure

Where a party discloses Confidential Information to another person:

- (a) pursuant to clauses 26.3(a), (b) or (e), the disclosing party must:
  - (i) notify the receiving person that the information is Confidential Information; and
  - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
- (b) pursuant to clauses 26.3(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information.

### 26.5 Additional confidential information

- (a) The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.
- (b) Where the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of the Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both parties have signed this documentation.

## **26.6 Period of confidentiality**

The obligations under this clause 26 continue, notwithstanding the expiry or termination of this Contract:

- (a) in relation to an item of information described in Schedule 4, for the period set out in that Schedule in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the parties in writing in respect of that information.

## **26.7 No reduction in privacy and security obligations**

Nothing in this clause 26 derogates from any obligation which either party may have either under the Law, or under this Contract, in relation to the protection of personal information and security.

# **27. Protection of personal information**

## **27.1 Application of the clause**

This clause applies only where the Contractor deals with personal information when, and for the purpose of, providing Services under this Contract, but does not derogate from any obligation the Contractor may have under the Law or under this Contract in relation to the protection of security.

## **27.2 Definitions**

In this clause 27, the terms ‘agency’, ‘approved privacy code’ (APC), ‘Information Privacy Principles’ (IPPs), and ‘National Privacy Principles’ (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, means:

‘information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion’.

## **27.3 Obligations**

The Contractor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the Privacy Act 1988 (Cth) (**the Privacy Act**), and agrees in respect of the provision of Services under this Contract:

- (a) to use or disclose personal information obtained during the course of providing Services under this Contract, only for the purposes of this Contract;
- (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;

- (d) to notify individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Contractor, unless:
  - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Contract; or
  - (ii) in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the NPP or APC;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;
- (g) to immediately notify the Customer if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 27, whether by the Contractor or any subcontractor;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 27; and
- (i) to ensure that any employee of the Contractor who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause 27.

## **27.4 Subcontracts**

The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause, including the requirement in relation to subcontracts.

## **27.5 Indemnity**

The Contractor agrees to indemnify the Customer in respect of any Loss suffered or incurred by the Customer which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 27, or a subcontractor under the subcontract provisions referred to in clause 27.3.

# **28. Conflict of interest**

## **28.1 Warranty that there is no conflict of interest**

The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

## **28.2 Notification of a conflict of interest**

If, during the performance of the Services a conflict of interest arises, or appears likely to arise, the Contractor must:

- (a) notify the Customer immediately in writing;

- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the Customer reasonably requires to resolve or otherwise deal with the conflict.

## **29. Security**

### **29.1 Compliance with PSPF**

The Contractor must, and must ensure that its Personnel, comply with:

- (a) all relevant requirements of the PSPF and its Protective Security Protocols (Personnel security, Information security and Physical security), including the PSPF Protective security governance guidelines – Security of outsourced services and functions;
- (b) the requirements of the Customer's protective security policies and procedures under the PSPF, including as specified in item 36 of the Contract Details;
- (c) any additional security requirements specified in item 36 of the Contract Details; and
- (d) any other security requirements that are Notified by the Customer to the Contractor from time to time, including any changes to the requirements referred to in clauses 29.1(a), (b) and/or (c). Such other security requirements must be complied with from the date specified in the Notice, or if none is specified, within 5 Business Days of receipt of the Notice.

### **29.2 Security classified information**

The Contractor acknowledges and agrees that:

- (a) it must not, and must not permit any of its Personnel or subcontractors, to access security classified information unless the individual concerned has a security clearance to the appropriate level and the need-to-know, and will prevent access by any such individual whose security clearance has lapsed or been revoked or who no longer requires such access;
- (b) it must Notify the Customer immediately upon becoming aware of any unauthorised access to security classified information and the extent and nature of that access (whether incidental or accidental access, or by any of its Personnel or subcontractors), and must comply with any reasonable directions of the Customer in order to rectify the security incident; and
- (c) it must, and must ensure that its Personnel and subcontractors, store and handle security classified information and resources in premises and facilities that meet the minimum standards set by the Commonwealth for storage and handling of such information and/or resources, as applicable, of the relevant security classification level.

### **29.3 Official Information**

The Contractor acknowledges and agrees that:

- (a) if and when requested by the Customer, it, its Personnel and subcontractors, must promptly execute a declaration of interest and deed of non-disclosure, in a form reasonably required by the Customer, relating to the use and non-disclosure of official information in connection with this Contract;
- (b) it must promptly Notify and disclose to the Customer any conflict of interest affecting it, its Personnel or subcontractors, that may impact on security in the performance of the Contractor's obligations with respect to official information under this Contract;
- (c) it must promptly inform, and keep informed, its Personnel and subcontractors in respect of all the Customer's security requirements, and the security obligations of the Contractor

under this Contract, including that the obligation to maintain confidentiality of official information is ongoing (notwithstanding termination or expiry of this Contract or their involvement with it);

- (d) it must, and must ensure that its Personnel and subcontractors, have and use systems, that meet the designated information security standards under the Australian Government Information Security Manual, for the electronic processing, storage, transmission and disposal of official information;
- (e) it must, and must ensure that its Personnel and subcontractors, Notify the Customer immediately of any actual or suspected security incident, security infringement, security violation or security breach in connection with this Contract, including where it may impact upon the provision of the Services, or official information held by or in the control of the Contractor; and
- (f) on termination or expiry of this Contract it must, and must ensure that its Personnel and subcontractors;
  - (i) delete all official information from their respective ICT systems, and
  - (ii) return all Customer resources and assets to the Customer, except to the extent that the Law requires it to be retained by them, in which event the retained information, resource or asset continues to be subject to all security requirements applying under this Contract.

#### **29.4 Security clearance**

The Contractor acknowledges and agrees that:

- (a) upon reasonable Notice from the Customer, it must ensure that each of its Personnel and subcontractors hold and maintain a security clearance at the level and for the period as Notified by the Customer to the Contractor, from time to time; and
- (b) unless otherwise specified in item 37 of the Contract Details, it is responsible for all costs associated with obtaining and maintaining security clearances for its Personnel and subcontractors.

#### **29.5 Customer Data and Customer Material**

The Contractor must, and must ensure that its subcontractors and Personnel:

- (a) comply with all security requirements applying to Customer Data and/or Customer Material in respect of access to and use of Customer Data and/or Customer Material, as specified in this Contract, in addition to any obligation under Law;
- (b) Notify the Customer immediately and comply with all directions of the Customer if any of them become aware of any contravention of the Customer's security requirements in relation to Customer Data and/or Customer Material;
- (c) not remove Customer Data or allow Customer Data to be removed from the Customer's premises without the prior written consent of the Customer;
- (d) not take Customer Data and/or Customer Material or allow Customer Data and/or Customer Material to be taken outside of Australia, without the prior written consent of the Customer; and
- (e) report to CERT Australia, and the Customer, any breaches of ICT system security that do not involve official information.

#### **29.6 Interpretation**

In this clause 29:

- (a) regardless of whether or not the first letter of any word is capitalised, 'asset', 'Australian Government Information Security Manual', 'confidentiality', 'conflict of interest', 'ICT system', 'information security', 'need-to-know', 'official information', 'personnel security', 'physical security', 'protective security', 'resources', 'security classified information', 'security breach', 'security clearance' and 'security incident', have the meaning given to them in the PSPF Australian Government protective security policy framework – glossary of security terms; and
- (b) an obligation of the Contractor under any of clauses 29.1, 29.2, 29.3, 29.4 or 29.5 is additional to and does not affect nor derogate from the obligations of the Contractor under:
  - (i) one or more of the other of those clauses; and/or
  - (ii) any other provision of this Contract.

## **30. Books and records**

### **30.1 Contractor to keep books and records**

The Contractor must:

- (a) keep and require its subcontractors to keep adequate books and records, in accordance with Australian Accounting Standards, in sufficient detail to enable the amounts payable by the Customer under this Contract to be determined; and
- (b) retain and require its subcontractors to retain for a period of seven years after termination or expiration of this Contract all books and records relating to the Services.

### **30.2 Costs**

The Contractor must bear its own costs of complying with this clause.

### **30.3 Survival**

This clause applies for the Contract Period and for a period of seven years from the termination or expiry of this Contract.

## **31. Audit and access**

### **31.1 Right to conduct audits**

The Customer or a representative may conduct audits relevant to the performance of the Contractor's obligations under this Contract. Audits may be conducted of:

- (a) the Contractor's operational practices and procedures as they relate to this Contract, including security procedures, protocols and guidelines;
- (b) the accuracy of the Contractor's invoices and reports in relation to the provision of the Services under this Contract;
- (c) the Contractor's compliance with its confidentiality, privacy and security requirements and obligations under this Contract;
- (d) material (including books and records) in the possession of the Contractor relevant to the Services or Contract; and
- (e) any other matters determined by the Customer to be relevant to the Services or Contract.

### **31.2 Access by the Customer**

- (a) The Customer may, at reasonable times and on giving reasonable notice to the Contractor:

- (i) access the premises of the Contractor to the extent relevant to the performance of this Contract, including for the purposes of clause 31.1;
  - (ii) require the provision by the Contractor, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Customer by use of the Customer's existing computer hardware and software;
  - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Contractor, its employees, agents or subcontractors; and
  - (iv) require assistance in respect of any inquiry into or concerning the Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Customer, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Contractor must provide access to its computer hardware and software and equipment to the extent necessary for the Customer to exercise its rights under this clause, and provide the Customer with any reasonable assistance requested by the Customer to use that hardware and software.

### **31.3 Conduct of audit and access**

The Customer must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 31.1; and
- (b) the exercise of the general rights granted by clause 31.2 by the Customer, do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under the Contract.

### **31.4 Costs**

- (a) Except as set out in clause 31.4(b), each party must bear its own costs of any reviews and/or audits.
- (b) If the Contractor is able to substantiate that it has incurred direct expenses in the Customer's exercise of the rights granted under clause 31.1 or clause 31.2 which, having regard to the value of this Contract, are substantial, the Customer and the Contractor will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

### **31.5 Auditor-General and Privacy Commissioner**

The rights of the Customer under clause 31.2(a)(i) to 31.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.

### **31.6 Contractor to comply with Auditor-General's requirements**

The Contractor must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Privacy Commissioner's or his or her delegate's requirements, notified under clause 31.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.

### **31.7 No reduction in responsibility**

The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with the Contract.

### **31.8 Subcontractor requirements**

The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause.

### **31.9 No restriction**

Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Customer under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

### **31.10 Survival**

This clause applies for the Contract Period and for a period of seven years from the termination or expiry of this Contract.

## **32. Unforeseen events**

### **32.1 Occurrence of unforeseen event**

A party (**Affected Party**) is excused from performing its obligations under this Contract to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of the Contractor only), including but not limited to acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation.

### **32.2 Notice of unforeseen event**

When the circumstances described in clause 32.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.

### **32.3 Termination**

If non-performance or diminished performance by the Affected Party due to the circumstances under clause 32.1 continues for a period of more than 14 consecutive days or other period as specified in item 38 of the Contract Details, the other party may terminate the Contract immediately by giving the Affected Party written notice.

### **32.4 Consequences of termination**

If this Contract is terminated under clause 32.3:

- (a) each party will bear its own costs and neither party will incur further liability to the other; and
- (b) where the Contractor is the Affected Party, it will be entitled to payment for Services Accepted or work performed prior to the date of intervention of the circumstances described in clause 32.1.

## **33. Dispute resolution**

### **33.1 No arbitration or court proceedings**



If a dispute arises in relation to the conduct of this Contract (**Dispute**), a party must comply with this clause 33 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 33.

### **33.2 Notification**

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

### **33.3 Parties to resolve Dispute**

During the 14 days after a notice is given under clause 33.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

### **33.4 Appointment of mediator**

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 33.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

### **33.5 Role of mediator and obligations of parties**

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 33.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

### **33.6 Confidentiality**

Any information or documents disclosed by a party under this clause 33:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

### **33.7 Costs**

Each party to a Dispute must pay its own costs of complying with this clause 33. The parties to the Dispute must equally pay the costs of any mediator.

### **33.8 Termination of process**

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 33.1 to 33.5. Clauses 33.6 and 33.7 survive termination of the dispute resolution process.

### **33.9 Breach of this clause**

If a party to a Dispute breaches clauses 33.1 to 33.8, the other party does not have to comply with those clauses in relation to the Dispute.

## **34. Termination**

### **34.1 Termination and reduction for convenience**

- (a) The Customer may, at any time, by notice, terminate this Contract or reduce the scope of the Services, including for a machinery of government change.
- (b) On receipt of a notice of termination or reduction the Contractor must:

- (i) stop work as specified in the notice;
- (ii) take all available steps to minimise loss resulting from that termination and to protect Customer Material and Contract Material; and
- (iii) continue work on any part of the Services not affected by the notice.
- (c) If this Contract is terminated under clause 34.1, the Customer is liable only for:
  - (i) payments under clause 21 for Services rendered before the effective date of termination; and
  - (ii) reasonable costs incurred by the Contractor and directly attributable to the termination.
- (d) If the scope of the Services is reduced, the Customer's liability to pay the Service Charges or to provide Customer Material abates in accordance with the reduction in the Services.
- (e) The Customer is not liable to pay compensation under clause 34.1(c)(ii) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, exceed the total Service Charges payable under this Contract.
- (f) The Contractor is not entitled to compensation for loss of prospective profits.

## **34.2 Termination by the Customer for default**

- (a) Without limiting any other rights or remedies the Customer may have against the Contractor arising out of or in connection with this Contract, the Customer may terminate this Contract effective immediately by giving notice to the Contractor if:
  - (i) the Contractor breaches a material provision of this Contract where that breach is not capable of remedy;
  - (ii) the Contractor breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or
  - (iii) an event specified in clause 34.2(c)(i)-(vii) happens to the Contractor.
- (b) Without limitation, for the purposes of clause 34.2(a), each of the following constitutes a breach of a material provision:
  - (i) a breach of warranty under clauses 9.2(a), (b), (d), (e) and (f) (Contractor warranties);
  - (ii) a failure to comply with clause 9.7 (Fair Work Principles);
  - (iii) a failure to comply with clause 9.8 (Work Health and Safety);
  - (iv) a failure to comply with clause 18 (Personnel);
  - (v) a failure to comply with clause 19 (Intellectual Property Rights);
  - (vi) a failure to comply with clause 25 (Insurance);
  - (vii) a failure to comply with clause 26 (Confidentiality and privacy);
  - (viii) a failure to comply with clause 27 (Protection of personal information);
  - (ix) a failure to notify the Customer of a conflict of interest under clause 28 (Conflict of interest); or
  - (x) a failure to comply with clause 29.1, 29.2, 29.3(a) to (e), 29.4, or 29.5(a) to (d) (Security).
- (c) The Contractor must notify the Customer immediately if:
  - (i) the Contractor being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Contractor;
  - (ii) the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;

- (iii) the Contractor ceases to carry on business;
- (iv) the Contractor ceases to be able to pay its debts as they become due;
- (v) the Contractor being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
- (vi) the Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
- (vii) where the Contractor is a partnership, any step is taken to dissolve that partnership.

In this clause, **controller**, **managing controller** and **administrator** have the same meanings as in the Corporations Act.

### 34.3 Termination by the Contractor for default

Without limiting any other rights or remedies the Contractor may have against the Customer arising out of or in connection with this Contract, the Contractor may terminate this Contract by giving at least 5 Business Days notice to the Customer if the Customer:

- (a) has not paid a correctly rendered invoice or has not notified the Contractor that it disputes the charges specified under an invoice within 60 days of receipt of that invoice; and
- (b) the Contractor has given the Customer:
  - (i) a first notice 30 days after the due date of the invoice, specifying the failure to pay and giving the Customer at least 30 days to pay the invoice; and
  - (ii) a second notice 15 days after the first notice, referring to the first notice and giving the Customer at least 15 days to pay the invoice.

### 34.4 After termination

On termination or expiry of this Contract the Contractor must:

- (a) stop work on the Services;
- (b) deal with Customer Material as reasonably directed by the Customer; and
- (c) return all the Customer's Confidential Information to the Customer.

### 34.5 Survival

The following clauses survive the termination and expiry of this Contract:

- (a) Clause 6 (Software licence);
- (b) Clause 9.8 (Work Health and Safety);
- (c) Clause 9.9 (Australian Government ICT Sustainability Plan);
- (d) Clause 19 (Intellectual Property);
- (e) Clause 20 (Moral Rights);
- (f) Clause 23 (Indemnity);
- (g) Clause 24 (Liability);
- (h) Clause 25 (Insurance);
- (i) Clause 26 (Confidentiality and privacy);
- (j) Clause 27 (Protection of personal information);
- (k) Clause 29 (Security);
- (l) Clause 30 (Books and records);
- (m) Clause 31 (Audit and access);
- (n) Clauses 34.4, 34.5 & 34.6 (After termination); and
- (o) Clause 35 (Knowledge transfer).

## **34.6 Termination does not affect accrued rights**

Termination of this Contract does not affect any accrued rights or remedies of a party.

## **35. Knowledge transfer**

Subject to any qualification or provision to the contrary in the Statement of Work, the Contractor must provide the following assistance to the Customer on termination or expiration of this Contract:

- (a) transferring or providing access to the Customer to all information stored by whatever means held by the Contractor or under the control of the Contractor in connection with this Contract; and
- (b) making Specified Personnel and Contractor Personnel available for discussions with the Customer as may be required. The time, length and subject of these discussions will be at the sole discretion of the Customer, provided that any matter discussed is not considered to reveal any 'Commercial-in-Confidence' information of the Contractor.

## **36. Notices and other communications**

### **36.1 Service of notices**

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in item 39 of the Contract Details, as varied by any Notice given by the recipient to the sender.

### **36.2 Effective on receipt**

A Notice given in accordance with clause 36.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice, but if the delivery, receipt or transmission is not on a Business Day or is after 6.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## **37. Miscellaneous**

### **37.1 Ownership of Contract**

All copyright and other Intellectual Property Rights contained in this Contract remain the property of the Customer.

### **37.2 Varying the Contract**

This Contract may be varied only in writing signed by each party.

### **37.3 Approvals and consents**

Except where this Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.

### **37.4 Assignment and novation**

A party may only assign its rights or novate its rights and obligations under this Contract with the prior written consent of the other party.

### **37.5 Costs**

Each party must pay its own costs of negotiating, preparing and executing this Contract.

### **37.6 Counterparts**

This Contract may be executed in counterparts. All executed counterparts constitute one document.

### **37.7 No merger**

The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

### **37.8 Entire agreement**

This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

### **37.9 Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.

### **37.10 Severability**

A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of this Contract continue in force.

### **37.11 Waiver**

Waiver of any provision of or right under this Contract:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

### **37.12 Relationship**

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Contract does not create a relationship of employment, agency or partnership between the parties.

### **37.13 Announcements**

- (a) The Contractor must, before making a public announcement in connection with this Contract or any transaction contemplated by it, obtain the Customer's agreement to the announcement, except if required by law or a regulatory body (including a relevant stock exchange).

- (b) If the Contractor is required by law or a regulatory body to make a public announcement in connection with this Contract or any transaction contemplated by this Contract the Contractor must, to the extent practicable, first consult with and take into account the reasonable requirements of the Customer.
- (c) Where reasonably practicable, the Customer must, on or before making a public announcement in connection with this Contract or any transaction contemplated by it, provide notice to the Contractor of the general nature of the announcement. For the avoidance of doubt, the Customer does not require the consent of the Contractor to the making of the announcement.

#### **37.14 Governing law and jurisdiction**

Unless otherwise specified in item 40 of the Contract Details, this Contract is governed by, and is to be construed in accordance with, the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

# Schedule 1 – Contract Details

Item number	Description	Clause Reference	Details
1.	<b>Customer details</b>	<b>1.1</b>	<i>[insert name of Customer] [insert street address] [insert ABN]</i>
2.	<b>Contractor details</b>	<b>1.1</b>	<i>[insert name of Contractor] [insert street address] [insert ABN]</i>
3.	<b>Customer Representative</b>	<b>1.1 and 15.1</b>	<i>[insert position and/or name of the Customer's representative]</i>
4.	<b>Contractor Representative</b>	<b>1.1 and 15.1</b>	<i>[insert position and/or name of Contractor's representative]</i>
5.	<b>Business Hours</b>	<b>1.1</b>	<i>[if Business Hours differ from those specified in the definition, specify alternative hours here. Otherwise insert 'not applicable']</i>
6.	<b>Commencement Date</b>	<b>1.1 and 3.1</b>	<i>[insert date Contract is to commence eg, dd/mm/yy]</i>
7.	<b>Initial Contract Period</b>	<b>1.1 and 3.1</b>	<i>[insert the initial period of time for which the Contract will continue, eg 2 years]</i>
8.	<b>Option Period</b>	<b>3.2</b>	<i>[insert Option Period eg, 2 periods each being 1 year in duration. Otherwise insert 'not applicable']</i>
9.	<b>Option Notice Period</b>	<b>3.2</b>	<i>[if Option Notice Period is to be other than 30 days, insert alternative Option Notice Period (eg, 45 days). Otherwise insert 'not applicable']</i>
10.	<b>Nominated Agency</b>	<b>1.1 and 4</b>	<i>[insert name(s) of any Nominated Agencies.]</i>
11.	<b>Software Licence</b>	<b>6.1</b>	<i>[if the position as to the licensing of the Software is to differ from that provided in clause 6.1 state the position here. Otherwise insert 'not applicable']</i>
12.	<b>Escrow</b>	<b>6.2</b>	<i>[if the Contractor will <b>not</b> be required to place the Source Material in escrow that should be specified here. Otherwise insert 'default position to apply']</i>

Item number	Description	Clause Reference	Details
13.	<b>Delivery, installation and implementation</b>	<b>8.1</b>	<i>[if the requirements in relation to the delivery, installation and implementation differs from that provided in clause 8.1 (including where delivery, installation and implementation is not required under the Contract) state the position here. Otherwise insert 'not applicable']</i>
14.	<b>Relevant Industry Standards</b>	<b>9.1(c)</b>	<i>[insert relevant Industry Standards, best practice and guidelines (if any). Otherwise insert 'not applicable']</i>
15.	<b>Subcontractors</b>	<b>9.6</b>	<i>[insert names and ABNs of any subcontractors. Otherwise insert 'not applicable']</i>
16.	<b>Warranty Period</b>	<b>1.1 and 10.1</b>	<i>[if Warranty Period is to differ from that set out in clause 1.1, state alternative period here. Otherwise insert 'not applicable']</i>
17.	<b>Support Period and Warranty Period</b>	<b>10.1</b>	<i>[if the requirements in relation to the Support Period differ from that provided in clause 10.1 (including where there will be no Support Period or the Support Services will not extend beyond the Warranty Period) state the position here. Otherwise insert 'not applicable']</i>
18.	<b>User difficulty or inexperience</b>	<b>10.3</b>	<i>[if the Contractor is to provide support for user difficulty or inexperience, state that here. Otherwise insert 'not applicable']</i>
19.	<b>Updates and New Releases</b>	<b>11.1</b>	<i>[tick one or both of the following boxes as applicable]</i>  The Contractor is required to provide: <input type="checkbox"/> Updates <input type="checkbox"/> New Releases under clause 11.1
20.	<b>Ongoing Support Services</b>	<b>11.2</b>	<i>[if Support Services are only to be provided for a specified period following refusal of an Update or New Release, insert that period here. Otherwise insert 'not applicable']</i>



Item number	Description	Clause Reference	Details
21.	<b>Language of Documentation</b>	<b>12.2</b>	<i>[if the Documentation is to be in a language other than English, specify the required language here. Otherwise insert 'not applicable']</i>
22.	<b>Acceptance testing of Software</b>	<b>16.1</b>	<i>[if Acceptance of Software is not to occur on delivery, insert when Acceptance is to occur. Otherwise insert 'not applicable']</i>
23.	<b>Period for Acceptance</b>	<b>16.4</b>	<i>[if the period for Acceptance is to be a period other than 5 Business Days from completion of Acceptance testing, specify the relevant timeframe here. Otherwise insert 'not applicable']</i>
24.	<b>Specified Personnel</b>	<b>1.1 and 18</b>	<i>[insert names and positions of Specified Personnel. Otherwise insert 'not applicable']</i>
25.	<b>Intellectual Property Rights – Ownership of Contract Material</b>	<b>19.3</b>	<p><i>[parties are to select <b>one</b> of the following. Refer to the note to users at clause 19.3 for further information]</i></p> <p><input type="checkbox"/> clause 19.4 (Contractor Ownership of and licence to Intellectual Property Rights in Contract Material) is to apply</p> <p><input type="checkbox"/> clause 19.5 (Customer Ownership of and licence to Intellectual Property Rights in Contract Material) is to apply</p>
26.	<b>Intellectual Property Rights - licences</b>	<b>19.4(b)</b>	<p>Where clause 19.4 (Contractor Ownership of and licence to Intellectual Property Rights in Contract Material) is to apply:</p> <p>1. <i>[If the terms of the licence are to differ from that provided in clause 19.4(b) state the position here. Otherwise insert 'not applicable']</i></p>
27.	<b>Customer Material</b>	<b>1.1, 19.4(b) and 19.5(b)</b>	<i>[insert specific Material to be provided to the Contractor by the Customer (if any) and any restrictions on the use of the Material. Otherwise insert 'not applicable']</i>

Item number	Description	Clause Reference	Details
28.	<b>Intellectual Property Rights – licences</b>	<b>19.5(b)</b>	Where clause 19.5 (Customer ownership of and licence to Intellectual Property Rights in Contract Material) is to apply:  1. <i>[If the terms of the licence are to differ from that provided in clause 19.5(b), state the position here. Otherwise insert ‘not applicable’]</i>
29.	<b>Moral Rights – Specified Acts</b>	<b>20.2</b>	<i>[if the Customer wants to perform additional acts with the Contract Material other than those listed in clause 20.2, these should be set out here. Otherwise insert ‘not applicable’]</i>
30.	<b>Limitation of liability – cap</b>	<b>24.2(a)</b>	<i>[specify the amount to which liability is to be limited]</i>
31.	<b>Limitation of liability – limitation on types of liability</b>	<b>24.2(b)</b>	<i>[if the parties are to have limited liability for any of the types of liability described in clause 24.2(b), those types of liability should be specified here]</i>
32.	<b>Limitation of liability – aggregate or per occurrence</b>	<b>24.2(c)</b>	<i>[if the limitation of liability is not to apply in respect of each single occurrence or a series of related occurrences arising from a single cause then specify the basis on which it is to apply e.g., in aggregate over the Contract Period]</i>
33.	<b>Limitation of liability – Service Rebates included in limitation of liability</b>	<b>24.5(b)</b>	<i>[select if the default position in clause 24.5(b) does not apply]</i>  <input type="checkbox"/> the set-off or payment of Service Rebates under clause 24.5(a) <u>will</u> be taken into account for the purposes of quantifying any Losses which are subject to any limitation of liability
34.	<b>Additional insurance</b>	<b>25.1(a)</b>	<i>[insert any additional types of insurance the Contractor is required to maintain. Otherwise insert ‘not applicable’]</i>
35.	<b>Insurance quantum</b>	<b>25.1</b>	Public liability insurance for an insured amount of [\$ insert amount] per occurrence and not less than [\$ insert amount] in aggregate  Either professional indemnity or errors and omissions insurance for an insured amount of [\$ insert amount] per

Item number	Description	Clause Reference	Details
			<p>occurrence and not less than [\$ <i>insert amount</i>] in aggregate.</p> <p>Product liability for an insured amount of [\$ <i>insert amount</i>] per occurrence and not less than [\$ <i>insert amount</i>] in aggregate.</p> <p>Workers compensation as required by law  <i>[insert amount required of any other type of insurance specified at item 34 above]</i></p>
36.	<b>Security</b>	<b>29.1</b>	<p>Customer's Agency protective security policies and procedures:</p> <p><i>[Insert Customer's relevant website address for their PSPF requirements of contractors OR insert 'refer to attached schedule of the Customer's PSPF requirements of contractors'.]</i></p> <p>Additional security requirements;  <i>[insert any security requirements additional to those specified in clause 29.1, Otherwise insert 'not applicable']</i></p>
37.	<b>Costs of security clearances</b>	<b>29.2</b>	<p><i>[if the position as to payment for security clearances is to differ from that provided in clause 29.2, state the position here. Otherwise insert 'not applicable']</i></p>
38.	<b>Unforeseen events - termination period</b>	<b>32.3</b>	<p><i>[if a termination period other than 14 days will apply in the event of an 'unforeseen event,' specify it here. Otherwise insert 'not applicable']</i></p>
39.	<b>Address for Notices</b>	<b>36.1</b>	<p><b>Customer:</b></p> <p><i>[insert name and/or position of person to receive notices]</i></p> <p><i>[insert postal address]</i></p> <p><i>[insert physical address]</i></p> <p><i>[insert facsimile number]</i></p> <p><b>Contractor:</b></p> <p><i>[insert name and/or position of person to receive Notices]</i></p> <p><i>[insert postal address]</i></p>

Item number	Description	Clause Reference	Details
			<i>[insert physical address]</i> <i>[insert facsimile number]</i>
40.	<b>Governing Law</b>	<b>37.14</b>	<i>[insert the law which is to govern the Contract if not that of the Australian Capital Territory]</i>

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# Schedule 2 – Statement of Work

*Note: Insert particulars of the Services and Deliverables to be provided under this Contract in this Schedule. The format of this Schedule is provided as an example only and may be amended to address particular Customer requirements.*

## 1. Purpose (clause 9.2(e))

*Note: Insert a brief summary of the:*

- (a) business requirements of the Customer relevant to provision of the Services; and
- (b) purpose of procuring the Services.

## 2. Software (clauses 1.1 and 6)

*Note: Insert details of the Software provided under this Contract, including any Third Party software.*

	Software	Version No.	No. of Copies	Format
1.				
2.				
3.				

## 3. Software Specifications (clauses 1.1, 8.1, 9.2 and 12.1)

*Note: Insert Specifications for the Software (attach additional pages if required).*

## 4. Delivery and Installation (clause 8)

	Item	Details (attach additional pages if required)	Milestone
1.			
2.			
3.			
4.			

## 5. Customer's Existing System (clauses 1.1, 6.1 and 10.2)

*Note: Insert details of the equipment or platform on which the Software is to be installed and/or used.*

	Equipment/platform	Location
1.		
2.		
3.		

## 6. Support Services (clauses 1.1 and 10)

*Note: Insert details of Support Services here. Refer to the User Notes for examples of severity and priority levels. Attach additional pages if required.*

Description of Services				
Severity level	Priority level	Response time	Resolution time	Disruption minimisation measures

## 7. Training (clause 10)

*Note: Insert details of any training requirement.*

Requirement	Milestone

## 8. Deliverables (clauses 1.1 , 6.1 and 19.6)

*Note: Insert details of Deliverables here, including Milestones.*

	Deliverables	Milestone
1.		
2.		
3.		

## 9. Documentation (clause 12)

*Note: Insert details of Documentation here, including required format and Milestone.*

	Documentation	Format	Milestone
1.			
2.			

	Documentation	Format	Milestone
3.			

## 10. Progress meetings (clause 15.1)

*Note: Insert details of attendees, frequency (eg. weekly, monthly) and place of meetings.*

Meeting	Attendees	Frequency	Place

## 11. Reporting (clause 15.2)

*Note: Insert details of required reports, including content, frequency (eg. weekly, monthly) and dates due.*

Report type and content	Frequency	Milestone

## 12. Acceptance testing (clauses 16)

*Note: Insert details of testing for Acceptance requirements, including Acceptance Criteria against which the Services and Deliverables will be assessed, the date of testing and any facilities provided by the Contractor.*

	Service/Deliverable	Facilities	Acceptance Criteria	Acceptance Testing Date
1.				
2.				
3.				

## 13. Knowledge Transfer (clause 35)

*Note: If requirements for Knowledge Transfer are different to those specified in clause 35, specify the requirements here.*

Requirement	Milestone

Requirement	Milestone

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## Schedule 3 – Payment

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*Note: Insert details of all relevant charges, costs or fees for the performance of the Services and provision of Deliverables and when each item is payable. All Service Charges are GST exclusive. The format of this Schedule is provided as an example only and may be amended to address particular Customer requirements.*

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# Schedule 4– Designated Confidential Information

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*Note: This Schedule should include each party's Confidential Information (). The period of confidentiality should be specified for each item. If the parties agree that different items of information are to be confidential for different periods of time, the different periods should be recorded next to each item. An assessment will need to be made by the parties on a case-by-case basis about what is to be included in the Schedule.*

## 1. Confidential information of the Customer (clause 1.1 and 26)

### 1.1 Contract provisions / Schedules

Item	Period of Confidentiality
[insert relevant items]	

### 1.2 Contract-related Material

Item	Period of Confidentiality
[insert relevant items]	

## 2. Confidential information of the Contractor (clause 1.1 and 26)

### 2.1 Contract provisions / Schedules

Item	Period of Confidentiality
[insert relevant items]	

### 2.2 Contract-related Material

Item	Period of Confidentiality
[insert relevant items]	

## Schedule 5 – Customer Requirements

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*Note: Customer to address particular requirements with which the Contractor must comply, for example, Customer specific legislative requirements (including in relation to secrecy and confidentiality), specific Customer policies and/or procedures and specific Commonwealth government policies.*

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# Schedule 6 – Change Order

*Note: If the proposed changes will vary the Specifications, or the Services, the following form must be completed.*

**This Change Order (including its attachments, if any) serves to vary the Contract in accordance with the terms set out below. Unless specifically stated in this Change Order, all terms and conditions of the Contract continue unaffected.**

1.	<b>Change Order number</b>	
2.	<b>Raised by</b>	
3.	<b>Details of change (use attachments if required)</b>	
4.	<b>Implementation date of Change Order</b>	
5.	<b>Effect on Services</b>	
6.	<b>Plan for implementing the change</b>	
7.	<b>Effect on Service Charges</b>	
8.	<b>Effect on Service Level Requirements</b>	
9.	<b>Effect on Documentation</b>	
10.	<b>Impact on end users</b>	
11.	<b>Other relevant matters (eg transitional impacts)</b>	

**Customer**

**Name (print)**

**Position**

**Signature**

**Date**

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**Contractor**

**Name (print)**

**Position**

**Signature**

**Date**

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# Schedule 7 – Agency Order Form

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The Contractor has offered under clause 4 of the Contract specified at item 1 below to provide the Services to Nominated Agencies. The Nominated Agency specified in item 3 below requests certain Services which the Contractor agrees to provide on the terms and conditions set out in the Contract and in this Agency Order Form. If there is an inconsistency between this Agency Order Form and any other provisions of the Contract, the terms and conditions in this Agency Order Form will prevail to the extent of any inconsistency.

1.	<b>Contract No. and description</b>	
2.	<b>Names of Parties to the Contract</b>	
3.	<b>Customer</b>	<i>[Insert Nominated Agency name]</i>  A reference to <i>[insert name of the contracting Agency]</i> or the Customer in the Contract will be taken as a reference to <i>[the Nominated Agency]</i>
4.	<b>Commencement Date</b>	
5.	<b>Customer Representative</b>	Title: Name: Postal Address: Fax number: Email:
6.	<b>Customer's details for Notices</b>	Postal address: Physical address: Facsimile number:
7.	<b>Contractor Specified Personnel</b>	<i>[insert names]</i>
8.	<b>Services required (including any changes to the Statement of Requirements)</b>	<i>[attach additional pages if required]</i>

**Signed** for and on behalf of the **[insert for FMA agency – ‘Commonwealth of Australia represented by (name of agency), otherwise – (name of Customer)]** by its duly authorised delegate in the presence of

\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Signature of delegate



\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of delegate (print)

\_\_\_\_\_  
Position of delegate (print)

*[Select one of the following execution clauses. Where the Contractor is a company with multiple directors, select the first execution block below, otherwise, select the second option.]*

**Executed by [insert name of company]** in accordance with Section 127 of the Corporations Act 2001 in the presence of

\_\_\_\_\_  
Signature of director



\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)



\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

**Signed by [insert contracting party name]** in the presence of

\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Signature of Contractor



\_\_\_\_\_  
Name of witness (print)

## Schedule 8 – Open Source Licence

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*Note: Insert here the provisions of the Open Source Licence which will govern the use of the Open Source software provided under this Contract (if any). Note that the terms set out in this schedule will prevail over the Agreed Terms to the extent of any inconsistency.*

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## Schedule 9 – Confidentiality and privacy undertaking

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*Note: Insert here the terms of the confidentiality and privacy undertaking (if any) which a party may be required, under clause 26.2, to arrange for its Advisers or other third parties to give a written undertaking to the use and non-disclosure of the First Party's Confidential Information.*

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# Signing page

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**EXECUTED** as an agreement.

**Signed** for and on behalf of the *[insert for FMA agency – ‘Commonwealth of Australia represented by (name of agency), otherwise – (name of Customer)]* by its duly authorised delegate in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

← \_\_\_\_\_  
Signature of delegate

\_\_\_\_\_  
Name of delegate (print)

\_\_\_\_\_  
Position of delegate (print)

*[Select one of the following execution clauses. Where the Contractor is a company with multiple directors, select the first execution block below, otherwise, select the second option.]*

**Executed by** *[insert name of company]* in accordance with Section 127 of the Corporations Act 2001 in the presence of

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director (print)

← \_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director/company secretary (print)

**Signed by** *[insert contracting party name]* in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

← \_\_\_\_\_  
Signature of Contractor