



Digital Wallet and Verifiable Credentials Agreement

State of Western Australia, acting through the Department of Premier and Cabinet

and

[Insert Contractor name]

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DIGITAL WALLET AND VERIFIABLE CREDENTIALS AGREEMENT

This Agreement is made on

between

The State of Western Australia, acting through the Department of Premier and Cabinet, Dumas House, 2 Havelock Street, WEST PERTH WA 6005 (**Customer**)

and

[Insert Contractor name, ACN or ABN and registered address] (**Contractor**)

and the parties agree as follows:

Background

- A. The Customer issued a Request Number [insert] on [insert date] in respect of the provision of an end-to-end digital wallet and verifiable credentials solution, including the supply, configuration and operational implementation of the Solution, with ongoing support and maintenance.
- B. The Contractor was selected as the preferred respondent to perform the Services and deliver the Solution.
- C. The Contractor has represented that it has the necessary Resources, experience, expertise and capacity to perform the Services and deliver the Solution.
- D. In reliance on the Contractor's representation and offer, the Customer has agreed to engage the Contractor to perform the Services and deliver the Solution, and perform all other obligations of the Contractor set out in this Agreement, in accordance with this Agreement.
- E. This Agreement sets out the terms on which the Customer agrees to engage the Contractor to provide, and the Contractor agrees to provide, the Solution, to develop, configure, implement and maintain that Solution, and to provide associated deliverables and services.

Operative Provisions

1 DEFINITIONS, INTERPRETATION AND RELATED MATTERS

1.1 Definitions

In this Agreement, defined terms have the meaning given to them in Schedule 14 (Definitions).

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) **(headings)** headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) **(singular)** the singular includes the plural and vice versa;
- (c) **(gender)** words that are gender neutral or gender specific include each gender;
- (d) **(other grammatical forms)** where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (e) **(party)** a reference to a party is to a party to this Agreement;
- (f) **(persons)** references to a person (including a party) include a natural person, firm, company, partnership, joint venture (whether incorporated or unincorporated), association, corporation or other body corporate and any Authority;
- (g) **(persons)** references to a person (including a party) include the person's successors and permitted substitutes and assigns, including any person taking part by way of novation;
- (h) **(body)** a reference to a body, other than a party (including an institute, association or authority), whether statutory or not, which ceases to exist, or whose powers or

functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

- (i) **(legislation)** 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) **(Agreement)** a reference to this Agreement includes (in addition to the documents specified in clause 1.4(a)) all schedules, attachments and documents incorporated by reference into any part of this Agreement;
- (k) **(clauses)** a reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment of or to this Agreement;
- (l) **(documents)** a reference to this Agreement or to any other deed, agreement, document or instrument includes a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (m) **(form)** a reference to writing includes communication by email (but not by other electronic means unless otherwise expressly set out in this Agreement or the parties otherwise agree in writing) and a reference to document includes an electronic record;
- (n) **(conduct)** a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (o) **(rights)** a reference to a right includes any benefit, remedy, discretion, authority or power;
- (p) **(remedy)** the use of the word 'remedy' or any form of it in this Agreement means that the event to be remedied must be cured or its effects overcome;
- (q) **(includes)** the words 'including', 'includes' and 'include' will be read as if followed by the words 'without limitation';
- (r) **(may)** the term 'may', when used in the context of a right exercisable by the Customer, means that the Customer can exercise that right in its absolute and unfettered discretion and the Customer has no obligation to the Contractor to do so;
- (s) **(skilled contractor)** the term 'skilled contractor' refers to a reputable and prudent person experienced in providing services similar to the Contractor's obligations under this Agreement;
- (t) **(user)** the term 'user', when used in reference to the Solution, the Customer ICT Environment or a Participating System, includes the Customer's Personnel, the Credential Providers' Personnel, the Credential Consumers' Personnel and End Users outside of the Customer, Credential Providers and Credential Consumers (including organisations and individuals);
- (u) **(no double counting)** if this Agreement requires calculation of an amount payable to a person there must be no double counting in calculating that amount;
- (v) **(\$)** a reference to '\$' or dollar is to Australian currency;
- (w) **(time)** a reference to time is a reference to the time in Perth, Western Australia; and
- (x) **(construction)** no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part of it.

1.3 Related matters

- (a) Any provision of this Agreement which seeks either expressly or by implication to limit or exclude any Liability of a party is to be construed as doing so only to the extent permitted by Law.
- (b) Unless this Agreement expressly provides otherwise, each party must perform its obligations under this Agreement at its own cost.
- (c) In complying with or accepting any obligation or risk under this Agreement, the Contractor must procure that, to the extent applicable, each of the Contractor's Personnel is also required to comply with or accept the relevant obligation or risk and not cause the Contractor to breach its obligations under this Agreement.

- (d) The Customer may appoint nominees to exercise any of its audit or inspection rights under this Agreement (including under clauses 37.4 and 38.4), provided that, in respect of an audit or inspection, any nominee agrees to keep the Contractor's Confidential Information confidential in accordance with terms that are no less onerous than those set out in clause 42.1.
- (e) If the Contractor is required to provide information or assistance to the Customer, and this Agreement does not specify a timeframe for such provision, the Contractor must provide the information or assistance within 5 Business Days of the Customer's request.
- (f) If the day on or by which any thing is to be done in accordance with this Agreement is not a Business Day, that thing must be done on the next Business Day.

1.4 Agreement composition and order of precedence

- (a) This Agreement comprises:
 - (i) clauses 1 to 62;
 - (ii) Schedule 1 (Contract Details) to Schedule 14 (Definitions);
 - (iii) any properly executed Variation Order; and
 - (iv) any properly executed Statement of Work between the Customer and the Contractor.
- (b) The following order of precedence applies in the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this Agreement:
 - (i) clauses 1 to 62 and Schedule 14 (Definitions);
 - (ii) Schedule 2 (Statement of Requirements);
 - (iii) Schedule 4 (Specifications) and Schedule 5 (Ongoing Services Schedule);
 - (iv) the other schedules to this Agreement; and
 - (v) any other document that, pursuant to clause 1.4(a), comprises this Agreement.

except to the extent that any part of the various documents listed above imposes on the Contractor a greater or higher requirement, standard, quality, level of service, quantum or scope than any other part of the documents listed above, in which case (unless it is readily apparent from the documents that the parties intended otherwise), that greater or higher requirement, standard, quality, level of service, quantum or scope prevails.

- (c) No Statement of Work may include terms which have the effect of varying in any way any term of this Agreement (except a term that is to apply only to the performance of the Additional Services the subject of that Statement of Work), and to the extent any such terms are included in any Statement of Work, those terms are void and will not be effective.
- (d) If the Contractor identifies an inconsistency, ambiguity or discrepancy within or between any of the documents forming part of this Agreement, the Contractor must:
 - (i) promptly (and in any case no later than 5 Business Days after becoming aware of it) notify the Customer of the inconsistency, ambiguity or discrepancy; and
 - (ii) not take any other action in connection with the inconsistency, ambiguity or discrepancy until the earlier of the issue by the Customer of a direction under clause 1.4(e) and the expiry of 5 Business Days.
- (e) To the extent that clause 1.4(b) does not apply to an inconsistency, ambiguity or discrepancy within or between any of the documents forming part of this Agreement, the Customer may, acting reasonably, direct the Contractor as to how to resolve the inconsistency, ambiguity or discrepancy and the Contractor must comply with any such direction (but the Contractor may refer any such direction for resolution as a Dispute).

2 TERM OF THIS AGREEMENT

2.1 Term

This Agreement starts on the Commencement Date and continues until the later of:

- (a) the expiry of the Initial Term;
 - (b) the expiry of any Extended Term;
 - (c) the expiry of any Transition-Out Period; and
 - (d) the date of termination under clause 2.3,
- unless terminated earlier in accordance with this Agreement.

2.2 Term extensions

- (a) The Customer may, in its sole discretion and in the manner described in clause 2.2(b), extend the Term in the manner set out in the Contract Details.
- (b) Subject to clause 2.2(a), the Customer may notify the Contractor, prior to expiry of the then current Initial Term or Extended Term (as applicable), that it wishes to extend this Agreement, upon which the Term will be so extended by the Extended Term.

2.3 Informal continuation

- (a) Despite anything contained in this Agreement, if the Contractor continues to perform the Services and the Customer continues to accept the Services after the expiry of the last Extended Term (or, if there is no Extended Term, after expiry of the Initial Term) and any Transition-Out Period:
 - (i) the Term is deemed to be extended on a monthly basis; and
 - (ii) the terms and conditions of this Agreement apply.
- (b) Either party may terminate the arrangement in clause 2.3(a) by giving 20 Business Days' notice to the other party.

3 OBJECTIVES

3.1 Commitment to achieving Objectives

The Contractor acknowledges and agrees that, in performing its obligations under this Agreement, the Contractor must use its best endeavours to ensure that the objectives of this Agreement are achieved.

3.2 List of Objectives

The objectives of this Agreement (**Objectives**) are to:

- (a) (**secure digital identity**) provide a secure, accurate, verifiable, end-to-end digital wallet and verifiable credentials solution as a service;
- (b) (**quality**) provide high quality Deliverables and Services for the Customer through implementing, in accordance with Good Industry Practice, proper project management, regular performance monitoring and continuous improvement;
- (c) (**responsibility for Solution**) ensure the Contractor takes responsibility for the delivery, operational implementation and maintenance of, and Ongoing Services in respect of, the Solution for the Customer in a manner that meets the requirements set out in this Agreement;
- (d) (**interoperation**) ensure the Solution:
 - (i) is able, through the use of Software Development Kits provided by the Contractor, to interoperate on a continuing basis with the ServiceWA App, and with the Customer's and Credential Providers' other systems (including Software applications), as contemplated by this Agreement; and

- (ii) is able, through continued compliance with relevant Standards, to interoperate on a continuing basis with the systems of Credential Consumers;
- (e) **(security)** ensure continued security and integrity of the Solution and the Customer Data in accordance with Good Industry Practice;
- (f) **(successful implementation)** have a timely and successful operational implementation of the Solution, while minimising implementation and reputational risks to the Customer; and
- (g) **(relationship)** develop long term, collaborative and strategic relationships between the Customer and the Contractor, and (where necessary or appropriate) Credential Providers, State Credential Consumers and Other Contractors.

3.3 Achievement of the Objectives

- (a) Each party will use all reasonable endeavours to facilitate achievement of the Objectives during the Term.
- (b) Without limiting clause 3.3(a), in order to help facilitate the achievement of the Objectives, the Contractor agrees to consistently implement the following behaviours:
 - (i) **(shared values and goals)** maintain the shared goal of achieving the Objectives, prioritising the overall success of the Project and seeking to implement improvements and solutions of benefit to the Customer;
 - (ii) **(collaborative relationship)** maintain a collaborative relationship, and work co-operatively, with the Customer, and with Credential Providers, Credential Consumers and (where necessary or appropriate) Other Contractors;
 - (iii) **(responsibility)** take responsibility for achieving agreed Project outcomes, for rectifying failures to achieve agreed Project outcomes, and for resolving issues that arise in the delivery of the Services (in collaboration with Credential Providers, State Credential Consumers and Other Contractors, where necessary);
 - (iv) **(communication)** communicate frequently and in a responsive and timely manner with the Customer, and with Credential Providers, State Credential Consumers and (where necessary or appropriate) Other Contractors at all relevant management levels;
 - (v) **(responsiveness)** maintain good communication in relation to the matters contemplated by this Agreement, and respond promptly to communications from the Customer;
 - (vi) **(integrity)** be reasonable and act with honesty and integrity;
 - (vii) **(long term)** work in a manner that is conducive to maintaining a long term relationship;
 - (viii) **(advice)** provide timely, clear and independent advice to the Customer on how to better facilitate achievement of the Objectives; and
 - (ix) **(innovation)** foster a culture of continuous improvement in delivery of the Project, including by identifying options to innovate, opportunities for better interoperation and means to reduce costs (including the Charges).
- (c) If, at any time during the Term, the Customer reasonably believes that the Contractor has failed to:
 - (i) use all reasonable endeavours to facilitate achievement of the Objectives; or
 - (ii) consistently implement or display any desired supplier behaviour,
 then:
 - (iii) the Customer may request a meeting with the Contractor to discuss how to remedy the failure and the Contractor must promptly comply with such a request;

- (iv) at any meeting which is held in accordance with clause 3.3(c)(iii), the parties will work together to formulate a plan to address the failure; and
- (v) following any meeting held pursuant to clause 3.3(c)(iii), the Contractor must promptly (and in any event within 20 Business Days) implement:
 - (A) any measures that are designated by the Customer (acting reasonably) to address the failure; and
 - (B) any other measures which are agreed by the parties to better achieve the Objectives, whether in the form of the plan prepared under clause 3.3(c)(iv) or otherwise.

3.4 Use of the Objectives in interpretation

If the terms of this Agreement do not address a particular circumstance, are unclear or ambiguous, or require the parties to discuss, negotiate or agree on a particular matter, then those terms must be construed in accordance with, and each party must act to give the fullest possible effect to, the Objectives.

4 SERVICES AND DELIVERABLES

4.1 General performance

The Contractor must perform its obligations under this Agreement:

- (a) in accordance with:
 - (i) the Statement of Requirements and the Project Documents; and
 - (ii) all applicable Laws and Customer Policies;
- (b) in a proper, professional and competent manner, and in accordance with Good Industry Practice;
- (c) using only suitably skilled, qualified and experienced Personnel;
- (d) in a timely and efficient manner and in accordance with any agreed timeframes;
- (e) in accordance with any other standards, practices, methods and procedures generally followed or approved by contractors performing obligations similar to the Contractor's obligations under this Agreement;
- (f) so that the Contractor meets or exceeds the Service Levels at all times;
- (g) in cooperation and acting in good faith with the Customer, Credential Providers and any Other Contractors to ensure the timely and successful delivery of the Services and to support the achievement of the Objectives;
- (h) in such a manner so that it can properly control, co-ordinate, supervise, direct and provide all activities necessary to perform the Services; and
- (i) ethically and in accordance with good corporate governance.

4.2 Quality

The Contractor must ensure that:

- (a) the Solution and each Deliverable meets the requirements set out in the Statement of Requirements, the Specifications, the rest of this Agreement, and the Project Documents;
- (b) the Solution and each Deliverable matches the relevant description set out in this Agreement and the Project Documents;
- (c) if the Contractor gave the Customer demonstrations (including any proof of operation, proof of concept, or similar) of the Solution or any Deliverables before the Customer entered into this Agreement, the Solution and each Deliverable corresponds in nature and quality with the demonstrations;

- (d) the Solution interoperates, to the extent agreed by the parties and using the Software Development Kits provided by the Contractor, with the ServiceWA App, the Customer ICT Environment, and the Participating Systems;
- (e) the Solution complies, throughout the Term, with the Standards that are relevant to, and enable, interoperability with the systems of Credential Consumers; and
- (f) the Deliverables are fit for:
 - (i) the purposes of storing, transmitting and verifying Credentials in respect of individuals in the manner contemplated by this Agreement; and
 - (ii) any other purposes for which they are required by the Customer, as set out in or inferred from this Agreement, and meet the Objectives.

4.3 Authorisations, Standards and compliance

- (a) The Contractor must comply with all Laws generally applicable to the Contractor's business and the performance of this Agreement.
- (b) The Contractor must:
 - (i) obtain and maintain, at its own cost, all Authorisations necessary to perform its obligations under this Agreement including:
 - (A) all Authorisations required in respect of Contractor Software and Third Party Software provided by the Contractor in order for the Contractor to lawfully carry out the Services;
 - (B) all Authorisations required to create any Developed Software or Customised Software; and
 - (C) all Authorisations required in respect of Contractor's Personnel in connection with this Agreement; and
 - (ii) comply with all such Authorisations (including in respect of the payment of all fees and charges in connection with those Authorisations).
- (c) The Contractor must perform its obligations under this Agreement in accordance with all Standards that are relevant to those obligations.
- (d) The Contractor must:
 - (i) keep itself informed as to applicable Customer Policies (including in respect of any amendments from time to time);
 - (ii) comply with those Customer Policies, and with any directions, instructions, guidelines and procedures specified by the Customer.
- (e) The Contractor must not do or omit to do anything that is likely to cause the Customer or its Personnel to contravene any Laws.
- (f) The Contractor must immediately notify the Customer Contract Manager if complying:
 - (i) with any directions of the Customer;
 - (ii) with any instructions, guidelines or procedures specified by the Customer;
 - (iii) with any Customer Policies;
 - (iv) with any relevant Standards; or
 - (v) with the conditions of any Authorisation,
 is not consistent with compliance by the Contractor of any of its other obligations under this Agreement.

4.4 Directions

- (a) The Contractor must perform its obligations under this Agreement in compliance with any directions of the Customer, and any instructions, guidelines or procedures specified by the Customer:
 - (i) with regard to occupational health and safety, confidentiality and security; and
 - (ii) with regard to other matters, so long as those directions, instructions, guidelines or procedures are consistent with the scope of this Agreement.
- (b) If the Contractor, acting reasonably, considers that any direction given by the Customer, or any change request by the Customer, is not technically feasible or would result in the Solution not meeting the Customer's stated requirements:
 - (i) the Contractor must, within 5 Business Days following the direction, and before implementing the direction, give notice to the Customer of its opinion, and the reasons for that opinion; and
 - (ii) upon receipt of a notice from the Contractor, the parties must meet to discuss and agree on the manner of implementing the direction.

4.5 Resources and risk

- (a) Except as expressly set out otherwise in the Statement of Requirements, the Contractor must provide, at its cost, all Resources necessary to perform its obligations under this Agreement.
- (b) The Contractor acknowledges that it has made, and relies on, its own independent assessment of the requirements of this Agreement for the purpose of performing the Contractor's obligations under this Agreement.
- (c) Except as otherwise expressly provided in this Agreement, the Contractor accepts all risks in connection with supplying and implementing the Solution and the Deliverables, and with operating and maintaining the Solution.

4.6 No exclusivity or commitment

Nothing in this Agreement limits or restricts the Customer from purchasing services (including services of the same or a similar kind to any part of the Services) at any time from any third party or performing such services itself.

5 PROCESS FOR PERFORMING THE IMPLEMENTATION SERVICES

5.1 Phases

- (a) The parties acknowledge and agree that the performance of the Services under this Agreement is separated into the Phases set out in the Implementation Plan.
- (b) Each Phase includes:
 - (i) the Services and Deliverables allocated to that Phase in the Statement of Requirements and the Implementation Plan; and
 - (ii) any Services and Deliverables which are reasonably necessary or incidental to, or customarily and inherently included in the provision of such Services or the delivery of such Deliverables (as applicable).

5.2 Pilot Phase

- (a) The Contractor must commence providing the Services and Deliverables that form part of the Pilot Phase on the Phase Start Date for the Pilot Phase (or, if the Customer notifies a different date, then on the date notified by the Customer).
- (b) The parties:
 - (i) acknowledge that:

- (A) the Statement of Requirements;
 - (B) the Implementation Plan; and
 - (C) other details relating to the Project Services and the Project, including as contemplated in the Statement of Requirements,

may need to be developed or updated as part of the Pilot Phase;
- (ii) agree:
 - (A) to work collaboratively together to update the documents and requirements described in clause 5.2(b)(i) as required to meet the Objectives; and
 - (B) if any change to the Charges is expected from those changes, to vary the Charges using the process set out in clause 17; and
- (iii) acknowledge that (except as the Customer may determine otherwise) the Pilot Phase is not complete until (among other things) the documents and requirements described in clause 5.2(b)(i) have been updated by the parties by agreement and to the Customer's satisfaction (acting reasonably).

5.3 Commencement of Subsequent Phases

- (a) Each **subsequent Phase** (being a Phase other than the Pilot Phase) will proceed only if (and when) the Customer approves that Phase in writing.
- (b) Without limiting clause 5.3(a), the Customer is not required to approve a subsequent Phase in writing if:
 - (i) the Customer, acting reasonably, considers that, despite all reasonable endeavours by the Customer:
 - (A) the requirements for previous Phases have not been fulfilled in accordance with the requirements of this Agreement;
 - (B) based on the previous Phases and the other aspects of the Project, the applicable Phase is not technically or commercially feasible or likely to deliver the Objectives; or
 - (C) the Solution is not likely to be properly interoperable (as the case may be) with the ServiceWA App, the Customer's ICT Environment or any Participating System in the manner contemplated by this Agreement;
 - (ii) funding is not available for the Phase;
 - (iii) a Gateway review determines that the Project has not been completed in a manner that is appropriate for Deployment;
 - (iv) a Minister having responsibility in respect of the Customer's operations directs that the Phase is not to commence; or
 - (v) the Customer, acting reasonably, considers that the Phase should not proceed due to a circumstance outside the Customer's reasonable control.
- (c) The Customer may (in its sole discretion) issue an Approval Notice before a previous Phase has been completed (and, consequently, it is possible that multiple phases may proceed concurrently).
- (d) Except to the extent otherwise expressly set out in the Statement of Requirements:
 - (i) the Contractor must not commence providing the Services and Deliverables forming part of a subsequent Phase until the Contractor has received an Approval Notice from the Customer for that Phase;
 - (ii) to the extent that the Customer requires any user-based or consumption-based licences (or an increase in the number or capacity of such licences) only following commencement of a Phase, the Customer is not liable to pay for those licences (or additional licences) until the Contractor has received an Approval Notice from the Customer for that Phase; and

- (iii) if the Contractor provides any Services or Deliverables forming part of a subsequent Phase before receiving an Approval Notice from the Customer for that Phase, the Customer is not liable to pay for those Services or Deliverables unless provision of such Services or Deliverables is subsequently approved by the Customer.
- (e) After receiving an Approval Notice from the Customer in respect of a subsequent Phase, the Contractor must commence providing the Services and Deliverables for that Phase:
 - (i) if the Approval Notice is received on or before the Phase Start Date, on the Phase Start Date; or
 - (ii) if the Approval Notice is received after the Phase Start Date, within 15 Business Days after the date the Contractor receives the Approval Notice.
- (f) The Contractor acknowledges that the Customer's rights in respect of the use and modification of Services and Deliverables provided during a Phase are not affected by the commencement (or non-commencement) of any other Phase.

5.4 Completion of a Phase

- (a) A Phase will be deemed to be completed only when the Customer sends the Contractor a written approval under clause 6 or an Acceptance Certificate in accordance with clause 10 in respect of all of the Deliverables and Services (including as a whole) which relate to that Phase.
- (b) The acceptance of any Deliverables by the Customer in accordance with clause 5.4(a) does not limit or waive the Customer's right to conduct a final Acceptance Test process in accordance with clause 10 in respect of the Deliverables and Services (as a whole) which relate to a Phase or to the Project.
- (c) The Customer may extend the duration of a Phase by notice in writing to the Contractor, and the Contractor must continue, during the extended period of the Phase, to provide the Services and Deliverables that relate to that Phase.
- (d) Any notice by the Customer in respect of the completion of a Phase is not (unless the notice expressly states otherwise) to be considered a notice pursuant to clause 5.3(a) regarding commencement of the next Phase.

5.5 Updating Deliverables

- (a) The parties agree that:
 - (i) if the Contractor is of the view that, in order for the Solution and the Services to satisfy the Specifications and the relevant Acceptance Criteria, a Deliverable that has been accepted under clause 10 requires any amendment or refinement following acceptance, the Contractor must promptly provide written notice to the Customer setting out full details of the required amendment or refinement;
 - (ii) the Customer may require the Contractor to amend or refine a Deliverable from time to time after acceptance under clause 10, in order for the Solution and the Services to satisfy the Specifications and relevant Acceptance Criteria, whether following a notice under clause 5.5(a)(i) or otherwise, by issuing a written notice to the Contractor; and
 - (iii) upon receiving a notice from the Customer under clause 5.5(a)(ii), the Contractor must promptly amend or refine the Deliverable as required by the notice.
- (b) The Contractor must ensure that any amendment or refinement of a Deliverable under this clause 5.5 is made in accordance with the requirements in clause 4 and is submitted for Acceptance Testing in accordance with clause 10.
- (c) The parties acknowledge and agree that any amendment or refinement to a Deliverable in accordance with this clause 5.5 may constitute a Variation that entitles the Contractor to receive additional Charges in accordance with the rates set out in the Pricing and Payment Schedule to the extent that additional work is required to be

carried out (provided that this does not apply where the required amendment or refinement has arisen as a result of a failure by the Contractor to comply with this Agreement).

5.6 Delay or Non-Commencement of a Phase

- (a) The Customer has no Liability to the Contractor (or any other person) for:
 - (i) a subsequent Phase being delayed due to the Customer taking time to approve the Phase; or
 - (ii) a subsequent Phase not proceeding due to the Customer declining to approve the Phase,if the Customer's decision to delay, or to decline to proceed arose out of a Contractor Fault.
- (b) Subject to clause 5.6(a), the Contractor's sole remedy in respect of a subsequent Phase not proceeding at all due to the Customer declining to approve the subsequent Phase – is the payment by the Customer to the Contractor of the payments upon termination due pursuant to clause 57a delay in a subsequent Phase proceeding due to the Customer declining to approve the subsequent Phase – is the payment by the Customer of Delay Costs (if applicable).

5.7 Termination of this Agreement

- (a) If the Pilot Phase is not completed to the Customer's satisfaction within 20 Business Days following the scheduled date for such completion, or the Customer (following the Pilot Phase) considers that it is not commercially feasible to continue with the Project, the Customer may, by giving notice to the Contractor, and without prejudice to its other rights and remedies under this Agreement or any Law, terminate, this Agreement in whole or in part and without liability to the Contractor.
- (b) If, despite all reasonable endeavours by the Customer:
 - (i) a Phase does not commence within 3 months after the scheduled date of commencement for that Phase as set out in this Agreement or the Implementation Plan (excluding any period of delay that is due to a Customer Fault or Excusable Event); or
 - (ii) the Customer, acting reasonably, considers that a Phase cannot be approved for commencement in a timely manner,then the Customer may do the following:
 - (iii) (at the Customer's discretion) engage in a procurement process for a replacement solution; and
 - (iv) terminate this Agreement, in whole or in part, by notice in writing to the Contractor (and, unless such termination arose out of a Contractor Fault, such termination will be considered a termination for convenience pursuant to clause 57.2).

6 PROJECT DOCUMENTS

6.1 Preparation and approval

- (a) The Contractor must, in consultation with the Customer and by the dates set out in the Implementation Plan or in this Agreement, prepare (in accordance with Good Industry Practice and to a standard that will facilitate approval by the Customer) and deliver to the Customer draft versions of each Project Document, in the format reasonably requested by the Customer from time to time.
- (b) If the Contractor submits a Project Document (draft or otherwise) to the Customer, then except where this Agreement otherwise expressly provides, the Customer is not required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with this Agreement.

- (c) The Contractor must promptly provide all information requested by the Customer for the purposes of reviewing a Project Document for approval.
- (d) For each draft Project Document submitted (or resubmitted) by the Contractor, the Customer may (acting reasonably):
 - (i) approve;
 - (ii) require amendments to; or
 - (iii) reject,
 that draft Project Document. The Customer will communicate to the Contractor its approval or rejection of, or required amendments to, each draft Project Document. The Contractor acknowledges that the Customer's approval process for a Project Document may include approval from other Government Agencies.
- (e) If the Customer rejects or communicates required amendments to a draft Project Document, the Contractor must promptly (and in any event within 10 Business Days after the Customer communicates feedback to the Contractor) amend and resubmit the draft Project Document to the Customer for further review in accordance with this clause 6.1, and must continue this process until the Customer communicates its approval (such approval not to be unreasonably withheld).
- (f) The Contractor must ensure that the Customer's approval of each Project Document is obtained in accordance with the Governance Schedule and within 5 Business Days of the due date for each Project Document.
- (g) Any approval of a Project Document by the Customer is not valid unless it has been communicated in writing by the Customer in accordance with clause 28.2(c).
- (h) Once the Customer has approved a version of a draft Project Document, that version is automatically deemed to be the Project Document applicable to this Agreement.
- (i) Approval of a Project Document or of any other documents prepared by the Contractor does not waive or limit any right the Customer has under this Agreement or at Law (including in relation to the remediation of Defects). The Contractor remains responsible for the performance of the Services in accordance with the requirements of this Agreement.

6.2 Provision and corrections

- (a) The Contractor must promptly provide to the Customer the current version of any Project Documents requested by the Customer.
- (b) The Contractor must promptly correct any inaccuracies or omissions in the Project Documents, including any inaccuracies or omissions of which the Customer informs the Contractor.

6.3 Updating

- (a) The Contractor must update the Project Documents as required in order to keep the Project Documents complete, up-to-date, accurate and suitable for the Solution and the Services, including promptly as required following:
 - (i) a non-trivial change to the Solution;
 - (ii) a Variation or any other change to this Agreement (including the addition or removal of any Services); and
 - (iii) any change to a Deliverable arising out of the Ongoing Services.
- (b) The Contractor must provide the Customer with each such updated version of the Project Document for the Customer's approval (such approval not to be unreasonably withheld).
- (c) Once an updated version of a Project Document has been approved by the Customer, that updated version is automatically deemed to be the Project Document applicable to this Agreement. The Contractor must continue to comply with an existing Project Document until an update is approved by the Customer.

6.4 Electronic Document Management System

- (a) Subject to clause 6.4(b), the Contractor must use the Customer's electronic document management system to create and coordinate all Project Documents. Clause 32.1 (and other relevant obligations under this Agreement) apply to the use of the Contractor's use of the Customer's electronic document management system.
- (b) If the Customer requires or permits the Contractor to prepare any Project Documents on its own document management system, the Contractor must ensure that system:
 - (i) is an electronic system which is appropriately backed-up;
 - (ii) includes a document control process to track current and obsolete versions of Project Documents;
 - (iii) provides the ability to export document data and statistics in an open data format for report generation purposes;
 - (iv) is safe and secure and compatible with the State's document management systems as advised by the Customer;
 - (v) enables the Customer to quickly and easily retrieve, review and utilise the Project Documents; and
 - (vi) comply with any other requirements notified by the Customer,and the Contractor must provide access to the electronic document management system referred to in this clause 6.4(b) to the Customer, the Customer Contract Manager and any person nominated in writing by the Customer.

6.5 Compliance and interpretation

- (a) The Contractor must comply with the Project Documents (the version most recently approved by the Customer).
- (b) To the extent of any inconsistency, ambiguity or discrepancy between a Project Document and any of the various documents comprising this Agreement, the provisions of this Agreement take precedence.

6.6 Other matters relating to approvals and Documentation

- (a) The Contractor must ensure that all documentation supplied in connection with this Agreement (including the Project Documents):
 - (i) is reasonably acceptable to the Customer in terms of its presentation, accuracy and scope;
 - (ii) includes the most current and up to date version of documentation available;
 - (iii) is in English and clearly expressed;
 - (iv) includes adequate definitions of all key terms, words and symbols; and
 - (v) is kept up to date.
- (b) The Contractor acknowledges and agrees that any:
 - (i) approval or endorsement by the Customer of a Project Document or any other documents prepared by the Contractor, or failure by the Customer to approve or endorse a Project Document;
 - (ii) inspection or test conducted by the Customer or its nominated third parties;
 - (iii) review, comment or election, or failure to review, comment or elect on the Customer's part; or
 - (iv) delay or disruption arising out of or in connection with the approval process, will not:
 - (v) limit, or relieve the Contractor of, any obligations or liability under this Agreement;

- (vi) limit any right of the Customer under this Agreement;
- (vii) constitute acceptance by the Customer of the performance of the Contractor's obligations under this Agreement; or
- (viii) give rise to any Claim on the part of the Contractor.

7 IMPLEMENTATION PLAN

- (a) The Contractor must comply with the Implementation Plan and perform its obligations under this Agreement in a manner that is consistent with the Implementation Plan.
- (b) The Contractor must update the Implementation Plan as required to reflect, among other things:
 - (i) any agreed changes to the Specifications, the Deliverables or the Solution;
 - (ii) any agreed Variation; and
 - (iii) any agreed Additional Services and any Removed Services.
- (c) The Contractor must submit the updated Implementation Plan to the Customer for approval pursuant to clause 6, which will apply to the updated Implementation Plan in the same manner as it applies to Project Documents.
- (d) Unless otherwise required by this Agreement or agreed by the parties in writing, any updates or changes to the Implementation Plan must:
 - (i) be consistent with the Objectives and the Customer's requirements for the Solution; and
 - (ii) not cause any disruption or delay to any part of the Project, whether or not any such part is specified in the Implementation Plan as being dependent upon the proposed update or change.

8 SUPPLY AND IMPLEMENTATION OF THE SOLUTION

8.1 Design, configuration and implementation process

Subject to clause 5.3, the Contractor must, consistently with the Statement of Requirements, the relevant Project Documents and the other requirements of this Agreement, and by the applicable dates in the Implementation Plan and the Statement of Requirements:

- (a) complete the detailed design for configuration and implementation of the Solution, the Software Development Kits and any required interfaces;
- (b) provide to the Customer the Contractor Software, arrange for provision to the Customer of the Third Party Software, create (to the extent set out in the Statement of Requirements, Variation Order or a Statement of Work) the Developed Software and the Customised Software, and do all other things required to prepare the Solution;
- (c) configure all of the Software comprising the Solution so that the Solution meets the requirements of this Agreement;
- (d) provide the Software Development Kits to the Customer and applicable Credential Providers:
 - (i) in the manner directed by the Customer (including by implementation into the Customer ICT Environment or a Participating System); and
 - (ii) so that, if the Software Development Kit is implemented in accordance with the Contractor's written instructions, the Solution interoperates with the ServiceWA App and relevant Participating Systems in the manner contemplated by this Agreement; and
- (e) make the Solution available to the Customer for use by End Users.

8.2 Software development considerations

In developing any Developed Software or Customised Software, the Contractor must:

- (a) ensure that the Developed Software and the customisations for the Customised Software are developed and documented in accordance with Good Industry Practice and in a way that would enable future modification without further reference to the Contractor;
- (b) ensure that all code for the Developed Software and the Customised Software is developed and modified in a storage repository accessible to the Customer;
- (c) comply with, and implement a system for recording, managing and complying with, open source licences in respect of any open source code, tools, images, data or modules used during the development process; and
- (d) not use (without the Customer's prior written consent) any Software licensed under an open source licence (or any other licence) that would conflict with the Customer's ownership of Intellectual Property pursuant to this Agreement.

8.3 Artificial Intelligence, automated decision-making and biometrics

- (a) To the extent the Solution, from time to time, includes any:
 - (i) predictive or generative artificial intelligence technologies;
 - (ii) automated decision-making technologies, available for use by the Customer, involving the use of personal information to make decisions about individuals; or
 - (iii) biometric technologies, including facial verification or facial recognition,
 then the Contractor must:
 - (iv) notify the Customer of those technologies, and their function in the Solution;
 - (v) ensure that the data used to train those technologies is:
 - (A) diverse enough to minimise bias and inaccuracy in the output of those technologies; and
 - (B) used for that training with the permission of the Intellectual Property rights holders in that data;
 - (vi) in the case of artificial intelligence technologies, include appropriate safeguards against the hallucination of information by those artificial intelligence technologies;
 - (vii) in the case of biometric technologies, take all reasonable steps to prevent (and, where it has failed to prevent, to subsequently identify, alleviate and mitigate against further) algorithmic biases, including on the basis of age, gender, race, ethnicity or disability; and
 - (viii) promptly provide the Customer with any information requested by the Customer regarding the operation of those technologies, including in respect of inputs, processing and outcomes of any generative, predictive or decision-making processes, and any steps taken to minimise the risk of harm, bias and discrimination arising from use of those technologies.
- (b) The Contractor must:
 - (i) take all reasonable steps to prevent the use of:
 - (A) the Solution; and
 - (B) any Customer Data collected, generated, processed, provided or stored by or on behalf of the Contractor,
 in connection with the generation of data that is a misleading or fictitious depiction of a person or credential; and

8.4 Legislative considerations

- (a) The Contractor must ensure that the Solution, on delivery, at the Acceptance Date, and on Deployment, complies with, and enables compliance by the Customer with,

any legislative or other government compliance requirements specified in the Statement of Requirements (or elsewhere in this Agreement).

- (b) If a Change in Law necessitates a change to the Solution in order for the Contractor to comply with clause 8.4(a), the Contractor may request the Customer to initiate the Variation Request process pursuant to clause 17, and the parties must promptly meet and attempt in good faith to reach agreement on the Variation Request as soon as possible.

8.5 Business process considerations

The Contractor must work with the Customer to ensure that the Solution and its operation align with the Customer's and the Credential Providers' business processes as advised to the Contractor by the Customer from time to time (including in the RFP).

8.6 Data migration considerations

- (a) To the extent that the Contractor is, pursuant to this Agreement, responsible for any cleansing, conversion or migration of data as part of (or in connection with) the Services, the Contractor must:
 - (i) cleanse, convert or migrate all of that data consistently with the Statement of Requirements, without:
 - (A) adversely affecting the operation of the Customer ICT Environment or any Participating System; or
 - (B) interrupting the day-to-day operation of the Customer;
 - (ii) without limiting the Contractor's obligations under clause 8.6(a)(i), cleanse, convert or migrate the data without data loss, data corruption or any reduction in the accessibility, usability, integrity or security of the data; and
 - (iii) ensure that the cleansed, converted or migrated data accurately reflects (in all material respects) the data that existed prior to cleansing, conversion or migration.
- (b) To the extent that the Customer is responsible for cleansing, conversion or migration of data, the Contractor must provide detailed instructions (including data mapping) and assistance in such a manner as to ensure that, if the Customer carries out its data cleansing, conversion or migration responsibilities in accordance with the Contractor's instructions and Good Industry Practice, the data will be cleansed, converted or migrated:
 - (i) without data loss, data corruption or any reduction in the accessibility, usability, integrity or security of the data; and
 - (ii) in such a manner that the cleansed, converted and migrated data accurately reflects (in all material respects) the data that existed prior to cleansing, conversion and migration.

8.7 Integration and quality assurance

Subject to clause 5.3, the Contractor must, consistently with the Statement of Requirements, the relevant Project Documents and the other requirements of this Agreement:

- (a) ensure that the Solution complies with the Specifications;
- (b) ensure that the Software Development Kits, when implemented by the Customer and applicable Credential Providers in the manner instructed by the Contractor in writing, will result in the Solution being interoperable, in the manner contemplated by this Agreement, with the ServiceWA App, the Customer ICT Environment and applicable Participating Systems;
- (c) deliver each Software Development Kit, by the date specified in the Implementation Plan and in the manner specified in this Agreement and the Project Documents and as otherwise agreed by the parties in writing;

- (d) ensure that the Solution when operating together with the applicable Software Development Kits, and when operating in the ServiceWA App, and together with the Customer ICT Environment and applicable Participating Systems in the manner contemplated by this Agreement, complies with the Specifications;
- (e) ensure that:
 - (i) each Acceptance Test Item is ready for the Acceptance Tests; and
 - (ii) the Solution as a whole is ready for the Acceptance Tests, to be carried out by the dates specified in the Implementation Plan; and
- (f) ensure that:
 - (i) each Acceptance Test Item meets the Acceptance Tests by the relevant Date for Acceptance; and
 - (ii) the Solution as a whole meets the Acceptance Tests by the Date for Solution Acceptance.

8.8 Optional Modules

- (a) The Optional Modules do not form part of the Solution or the Services unless and until the Customer (in its sole discretion) issues a Variation Order pursuant to clause 17 in respect of those Optional Modules.
- (b) If the Customer issues a Variation Order in respect of an Optional Module:
 - (i) that Optional Module will form part of the Solution, and the services required to include that Optional Module as part of the Solution will form part of the Solution (including services in respect of design, development, testing, deployment and support);
 - (ii) the Contractor is not entitled to any moneys in respect of the Optional Module other than the amount specified for the Optional Module in the Pricing and Payments Schedule (or, if no amount is specified in the Pricing and Payments Schedule, then the amount determined pursuant to clause 17); and
 - (iii) the Charges will be adjusted to reflect the applicable amount in the Pricing and Payments Schedule (or, if no amount is specified in the Pricing and Payments Schedule, then the amount determined pursuant to clause 17).

9 EQUIPMENT

9.1 Application of this clause

This clause 9 applies only to the extent that the parties agree in writing that the Contractor will supply Equipment to the Customer in connection with this Agreement.

9.2 Delivery and installation

- (a) The Contractor must deliver and install each item of Equipment at the site specified by the Customer by the date specified in the Implementation Plan, and otherwise consistently with, the Specifications, the Statement of Requirements and relevant Project Documents.
- (b) The Contractor must ensure that each item of Equipment:
 - (i) is new and has not been previously installed other than for the purpose of testing; and
 - (ii) complies with all applicable Specifications and any applicable Standards.

9.3 Title and risk

- (a) The Contractor must ensure that, until title passes to the Customer under clause 9.3(b), the Contractor has good, clear and marketable title to all Equipment.

- (b) Title in an item of Equipment passes to the Customer on the earlier of:
 - (i) payment to the Contractor of that part of the Charges that relate to that item of Equipment; and
 - (ii) delivery of the item of Equipment.
- (c) Risk in Equipment passes to the Customer on delivery.
- (d) Clauses 9.3(a) and 9.3(c) do not limit:
 - (i) the application of the Acceptance Tests or any Hypercare Period; or
 - (ii) the Contractor's liability under this Agreement in respect of any faults in an item of Equipment which existed on delivery.

9.4 Manufacturer's warranties

- (a) The Contractor must:
 - (i) ensure that the Customer has the full benefit of any manufacturer's warranties that may be applicable to the Equipment and other Deliverables; and
 - (ii) if the Customer requests, promptly pursue any of the manufacturer's warranties referred to in clause 9.4(a)(i) on the Customer's behalf.
- (b) If:
 - (i) the warranty provided by the manufacturer is for a period of less than 12 months; or
 - (ii) the Contractor is the manufacturer of the Equipment,
 then the Contractor warrants that, for a period of not less than 12 months following delivery, the Equipment will comply with, and function in accordance with, the requirements of this Agreement.

10 ACCEPTANCE TESTING

10.1 Testing by Contractor

The Contractor must, by the dates set out in the Implementation Plan (or if the timing is not specified, then by the dates required by the Customer, acting reasonably) conduct such testing as is required to satisfy itself, acting in accordance with Good Industry Practice, that the Deliverables, the Solution and the Services comply with the Specifications, function in accordance with the Statement of Requirements, relevant Project Documents, interface and interoperate as required with the ServiceWA App, the Customer ICT Environment and applicable Participating Systems, are free from Defects, and otherwise comply with the requirements of this Agreement.

10.2 Testing by Customer

- (a) Subject to clause 5.3(a), the Contractor must, in accordance with the Statement of Requirements, the relevant Project Documents and the Implementation Plan (including as to timing or, if the timing is not specified, then by the dates required by the Customer, acting reasonably), prepare and deliver to the Customer, pursuant to clause 6, in respect of each Acceptance Test Item, an Acceptance Test Plan that includes:
 - (i) tests, including relevant acceptance criteria, which are sufficient to determine and demonstrate that:
 - (A) the Deliverables, both individually and as part of the Solution;
 - (B) the Portions, both individually and as part of the Solution; and
 - (C) the Solution as a whole,
 comply with the Specifications, function in accordance with the Statement of Requirements and relevant Project Documents, integrate, interface or

interoperate (as the case may be) as required with the rest of the Solution, the ServiceWA App, the Customer ICT Environment and applicable Participating Systems as agreed by the parties, are free from Defects and otherwise comply with the requirements of this Agreement; and

- (ii) plans for conducting those tests, including dates by which tests must be conducted and dates by which tests must be passed,

and which are consistent with the Test Strategy.

- (b) The Contractor must, in reviewing any of the Customer's test scripts for acceptance testing, recommend such changes as are necessary to ensure that those test scripts, when implemented together with the Contractor's Acceptance Test Plans, are sufficient to determine and demonstrate that the Portions (individually and as part of the Solution), and the Solution as a whole comply with the Specifications, function in accordance with the Statement of Requirements and relevant Project Documents, interface and interoperate as required with the rest of the Solution, the ServiceWA App, the Customer ICT Environment and applicable Participating Systems, are free from Defects and otherwise comply with the requirements of this Agreement.
- (c) The Contractor must ensure that each Acceptance Test Item passes the relevant Acceptance Tests by the dates specified in the Project Plan, including by making allowances for any modifications which may need to be made to the Portion or the Solution (as applicable) and any repeated tests which may be required pursuant to clause 10.8.

10.3 Other testing

The Customer may direct that any Deliverables or Services, any part of the Solution, or the Solution as a whole be tested at any time during the Term, regardless of whether they are subject to Acceptance Tests pursuant to clause 10.2. The Customer may conduct its own tests, engage a third party to conduct the tests, or direct the Contractor to conduct the tests in the presence of the Customer's nominated representatives.

10.4 Conducting Acceptance Tests

- (a) The Contractor must:
 - (i) perform its obligations under this Agreement in such a manner that the Acceptance Test Item can pass the relevant Acceptance Tests by the relevant dates specified in the Project Plan;
 - (ii) promptly notify the Customer when any Acceptance Test Item is ready for Acceptance Tests;
 - (iii) make available to the Customer (or its third party nominee) the Acceptance Test Item, and all Documentation and other information necessary to conduct the Acceptance Tests for that Acceptance Test Item; and
 - (iv) provide all reasonable assistance required by the Customer (or its third party nominee) in relation to the conduct of any Acceptance Tests.
- (b) Upon the Contractor issuing a notice under clause 10.4(a), the parties must conduct the relevant Acceptance Tests in accordance with the relevant Acceptance Test Plan, relevant test scripts and the Test Strategy.

10.5 Test procedures

- (a) Before conducting an Acceptance Test to be witnessed by the Customer (or its third party nominee), the Contractor must give 5 Business Days' notice of the time, date and place of the test, together with full details of the tests. Subject to clause 10.5(b), the Acceptance Test may proceed even if a representative from the Customer (or its third party nominee) is not present.
- (b) If the Customer (or its third party nominee) wishes to attend the Acceptance Test but is unable to attend on the date in the Test Notice, the Contractor must, at the Customer's (or its third party nominee's) request, postpone the Acceptance Test to a

time suitable to both parties, acting reasonably, and a date no later than 10 Business Days after the date noted in the Contractor's test notice.

- (c) The Contractor must provide all reasonable assistance required by the Customer (or its third party nominee) in relation to the conduct of any Acceptance Tests.
- (d) Upon completion of any Acceptance Test conducted by the Contractor, the Contractor must provide the Customer (or its third party nominee) with a summary report of the Acceptance Test results.
- (e) Each party must make available to the other party the detailed results of the Acceptance Tests, including calculations and test data, if required by the other party.

10.6 Assessing Acceptance Tests

An Acceptance Test Item will not be considered to have passed the Acceptance Tests unless that Acceptance Test Item:

- (a) meets the Acceptance Criteria and the applicable requirements in the Test Strategy;
- (b) complies with the Specifications and the Service Levels;
- (c) is free from Defects;
- (d) integrates with, and does not adversely affect, the rest of the Solution;
- (e) (where relevant) integrates or interfaces with, and does not adversely affect, the Customer ICT Environment;
- (f) (where relevant) interfaces as required with, and does not adversely affect, the Participating Systems; and
- (g) otherwise complies with the requirements of this Agreement.

10.7 Results of Acceptance Tests

- (a) If the Customer is satisfied, acting reasonably, that:
 - (i) an Acceptance Test Item has passed the relevant Acceptance Tests (including after any repeated tests under clause 10.8), including the matters set out in clause 10.6; and
 - (ii) all relevant Documentation relating to that Acceptance Test Item is adequate and complete and has been delivered by the Contractor to the Customer (or its third party nominee),the Customer must send the Contractor an Acceptance Certificate in respect of that Acceptance Test Item.
- (b) If the Customer is not satisfied, acting reasonably, of the matters set out in clause 10.7(a), it may, without prejudice to its other rights and remedies under this Agreement or any Law:
 - (i) require the Contractor to comply with clause 10.8 by issuing a notice that describes the reason why the Acceptance Test Item has not passed the Acceptance Tests;
 - (ii) require the Contractor, by notice in writing, to prepare and submit, in accordance with clause 24, a Performance Remediation Plan in respect of the failed Acceptance Test, and when the Contractor has completed implementation of the approved Performance Remediation Plan, the Contractor must (unless the Customer notifies the Contractor otherwise) comply with clause 10.8; or
 - (iii) not require the Contractor to either comply with clause 10.8 or submit a Performance Remediation Plan, in which case:
 - (A) the Contractor may proceed with the next Acceptance Test Phase (if applicable); and

- (B) the Contractor must promptly remedy any Defects in the Acceptance Test Item that were identified in the notice given pursuant to clause 10.7(b)(i).
- (c) The Contractor is not entitled to rely upon any Acceptance Tests (or any inspections or other tests) carried out by the Customer (or its third party nominee).
- (d) The Customer will not be deemed to have issued an Acceptance Certificate in respect of (or otherwise accepted) any Acceptance Test Item in any circumstances (including a failure by the Customer to notify the Contractor pursuant to clause 10.7(a) or 10.7(b)).
- (e) If any or all of the Acceptance Test Items or Portions have passed the Acceptance Tests, this does not:
 - (i) mean that the Solution as a whole has passed the Acceptance Tests; or
 - (ii) relieve the Contractor of the obligation to ensure that the Solution as a whole meets the Acceptance Tests by the Date for Solution Acceptance.

10.8 Repeating Acceptance Tests

If the Contractor receives a notice under clause 10.7(b)(i) for any Acceptance Tests, the Contractor must, within 10 Business Days after the receipt of the notice or such other period agreed by the parties in writing:

- (a) modify the relevant Acceptance Test Item so that it will meet the Acceptance Criteria for the relevant Acceptance Tests (and the other requirements of the Test Strategy and this Agreement);
- (b) consult with the Customer (or its third party nominee) to confirm the relevant Acceptance Test Item is ready for the Customer to repeat the Acceptance Tests;
- (c) give notice to the Customer (or its third party nominee) once the relevant Acceptance Test Item is ready for the Customer to repeat the Acceptance Tests;
- (d) re-perform, and allow the Customer (or its third party nominee) to re-perform the relevant Acceptance Tests in accordance with clauses 10.2, 10.4 and 10.5;
- (e) re-perform its responsibilities under the relevant Acceptance Test Plan (if any); and
- (f) provide all reasonable assistance required by the Customer (or its third party nominee) in relation to the repeated Acceptance Tests,

and clause 10.7 will apply again in respect of the results of those repeated Acceptance Tests.

10.9 Repeated failure of Acceptance Tests

If any Acceptance Test Item fails to pass repeated Acceptance Tests on 2 or more occasions, then the Customer may, without prejudice to its other rights and remedies under this Agreement or at Law do one or more of the following:

- (a) issue a further notice under clause 10.7(b)(i), triggering clause 10.8 again;
- (b) accept the Acceptance Test Item subject to such reasonable reduction in the Charges as agreed by the parties to reflect the reduced functionality of the Acceptance Test Item or the Solution; or
- (c) terminate this Agreement, in whole or in part, by notice to the Contractor.

11 TRAINING

- (a) The Contractor must provide full and adequate training to the Customer's Personnel prior to the operational implementation of the Solution, and then throughout the Term (at the dates, times and locations specified by the Customer) to enable the Customer and any relevant third party to, in respect of the Solution:
 - (i) monitor, inspect and audit the Solution;
 - (ii) fully understand the Solution to a level of detail adequate to efficiently operate and administer the Solution;

- (iii) instruct a third party experienced in providing similar solutions; and
 - (iv) train other Personnel of the Customer to do any of the above.
- (b) In accordance with and without limiting clause 11(a), the Contractor must, in respect of the Solution:
 - (i) perform formal and informal training sessions in accordance with the Statement of Requirements, any relevant Project Documents and the Customer's reasonable requests;
 - (ii) introduce the Customer to any third parties relevant to the performance of the Services (including the Approved Subcontractors) in accordance with the Customer's reasonable requests;
 - (iii) provide regular guidance to the Customer's Personnel in relation to the Services, including responding promptly to any queries from the Customer's Personnel in relation to the functions and operations of the Solution;
 - (iv) consult with the Customer's Personnel in relation to the user requirements for the Solution; and
 - (v) incorporate those requirements into the Solution provided they are consistent with the Specifications.

12 HANDOVER

- (a) To the extent that the Contractor develops or modifies any code in connection with the Solution, the Contractor must, at the following times:
 - (i) upon submitting the code for an Acceptance Test (or, if there is no Acceptance Test conducted on that code, then upon implementation of such code);
 - (ii) if this Agreement is terminated or expires prior to an Acceptance Test being conducted or implementation of that code, then promptly upon termination or expiry of this Agreement; and
 - (iii) at any other time expressly agreed in this Agreement, or agreed by the parties in writing,

deliver (or otherwise make available) to the Customer, in the manner reasonably directed by the Customer (including by way of a general storage repository or a Customer-owned account):

 - (iv) the Source Code for each such development or modification (and for interfacing or interoperation of the development or modification with the Customer ICT Environment), in a form that would enable future modification without further reference to the Contractor; and
 - (v) all other documentation, passwords, information and training necessary for the Customer to properly take and maintain full control (including full operation and modification) of the Source Code.
- (b) Unless otherwise agreed, the Contractor must deliver to the Customer together with submission of the Solution as a whole for acceptance testing, (or, if this Agreement is terminated before then, as soon as practicable following the termination);
 - (i) all Documentation (including training materials, operational manuals and configuration workbooks), passwords or other information or access necessary for the Customer to take and maintain full control of the Solution (including full operation, maintenance and support of the Solution and training staff in use of the Solution); and
 - (ii) in respect of any Developed Software or Customised Software, the Source Code for the Developed Software or customisation (as applicable) in a form that would enable future modification without further reference to the Contractor, and all other documentation, passwords, information and training necessary for the Customer to properly take and maintain full control (including full operation and modification) of the Developed Software or Customised Software (as applicable).

- (c) The Contractor must carry out the requirements under this clause 12 in an orderly manner and must follow all reasonable directions of the Customer, including directions as to format, media or other form in which material is to be provided.

13 DEPLOYMENT

- (a) The Contractor must, subject to clause 5.3 and in accordance with the Statement of Requirements, the Implementation Plan and relevant Project Documents:
 - (i) arrange for each Portion, to be ready for Deployment promptly following the Acceptance Date for that Portion; and
 - (ii) arrange for the Solution as a whole to be ready for each Deployment following the Solution Acceptance Date.
- (b) Once a Portion or the Solution (as applicable) is ready for Deployment in accordance with clause 13(a), and can be used in accordance with the Specifications (as applicable), the Contractor must promptly:
 - (i) notify the Customer that the Portion or the Solution is ready for Deployment; and
 - (ii) make available to the Customer that Portion (or Solution) and all Documentation and other information necessary for that Portion or the Solution to be Deployed.
- (c) Upon receiving a notice under clause 13(b)(i), the Customer must, provided that it is comfortable that the Portion or the Solution (as the case may be) is ready to Deploy, arrange for that Portion or the Solution to be Deployed.
- (d) The Contractor must:
 - (i) provide all information, support and assistance that the Customer reasonably requests in respect of Deployment; and
 - (ii) carry out its responsibilities in respect of each Deployment (including in respect of assisting the Customer) as set out in the Statement of Requirements and each relevant Project Document.
- (e) The process set out in this clause 13 must continue until all Portions, and the Solution as a whole, have been Deployed.
- (f) The Customer may, in its sole discretion, direct the Contractor to stop or pause (or not commence) the Deployment process (including due to Defects or other issues with the Solution). If the Customer gives such a direction, the Contractor must comply with the direction, and resume Deployment when directed to do so by the Customer.
- (g) For clarity, if any or all of the Portions have been Deployed, this does not:
 - (i) mean that the Solution as a whole has been Deployed or that the Deployment process has been completed; or
 - (ii) relieve the Contractor of the obligation to ensure that the Deployment process is completed in accordance with the Statement of Requirements and relevant Project Documents.

14 DEFECTS

14.1 Hypercare Period

- (a) During each Hypercare Period, the Contractor must ensure that the Deliverables, Services and the Solution (as applicable) are free of Defects and otherwise comply with the Agreement.
- (b) A Deliverable or Service may be subject to more than one Hypercare Period. The ending of one Hypercare Period does not affect the duration of another Hypercare Period.

14.2 Correcting Defects

- (a) The Customer may, at any time on or before the last day of the applicable Hypercare Period, give the Contractor notice in writing of a Defect in any Deliverable, Service or in the Solution and, in the Customer's sole discretion require the Contractor to, within the reasonable time period stated in the notice, do one or more of the following:
 - (i) provide a Fix for the Defect;
 - (ii) re-perform any Services connected with the Defect; and
 - (iii) re-deliver any Deliverables with a Defect,and the Contractor must (without limiting its obligations in relation to the Ongoing Services) comply with the notice free of charge.
- (b) During each Hypercare Period, the Contractor must provide sufficient support and assistance to the Customer, including (where necessary to provide sufficient support) attendance at the Customer Premises to ensure and demonstrate that the Solution (and any part of it) meets its full functional and performance requirements, and functions in accordance with the requirements of the operations and maintenance manuals and this Agreement.
- (c) The Contractor must carry out all rectification work in respect of Defects at times and in a manner that causes as little inconvenience as possible to the Customer, any Credential Providers, any Credential Consumers, the occupants of any Customer Premises, and the users of the Customer ICT Environment and Participating Systems.
- (d) If a Defect is caused by a Customer Fault or an Excusable Event, the Contractor is entitled to be paid, at the applicable rates set out in this Agreement, for the work undertaken by the Contractor to comply with clause 14.2(a). Such work is to be undertaken as a Variation pursuant to clause 17 (and the Contractor must not commence such work unless it has received approval from the Customer to do so).
- (e) Following the expiry of each Hypercare Period, the Contractor remains responsible for correcting Defects in the Deliverables and the Services during the Ongoing Services Term in accordance with clause 21 and:
 - (i) in accordance with any applicable procedures and timeframes set out in the Ongoing Services Schedule; or
 - (ii) if there are no applicable procedures or timeframes in the Ongoing Services Schedule, then in accordance with Good Industry Practice.

14.3 If Defect not corrected

If:

- (a) multiple Minor Defects (which are not, separately or together, trivial or insignificant) occur during the course of any Hypercare Period; or
- (b) the Contractor does not rectify Defects during the Hypercare Period in accordance with clause 14.2,

the Customer may require the Contractor, by notice in writing, to prepare and submit, in accordance with clause 24, a Performance Remediation Plan in respect of the Defects, and when the Contractor has completed implementation of the approved Performance Remediation Plan, the Contractor must (unless the Customer notifies the Contractor otherwise) comply with clause 10.8.

14.4 Other matters relating to Defects

- (a) The Customer's rights under this clause 14 do not in any way affect:
 - (i) the Contractor's obligations, including in relation to Ongoing Services;
 - (ii) the Customer's right to claim for any damage or loss it may suffer because of the Contractor's failure to fulfil any of its obligations under this Agreement; or
 - (iii) any other remedies available to the Customer under this Agreement or at Law.

- (b) If the Customer decides to accept a Deliverable or Service with a Defect, or a Defect in the Solution, this decision does not bind the Customer to accept any other Deliverables or Services with a Defect, or other Defects in the Solution, and does not affect any of the Customer's other rights under this Agreement or at Law.

15 TIMING AND COMPLETION

15.1 Timing and completion of Services

- (a) The Contractor must comply with, and perform its obligations under this Agreement in a manner that is consistent (including as to timing) with, the Implementation Plan.
- (b) The Contractor must perform the Services with due expedition and so as to ensure that any relevant Milestone Dates are met.
- (c) Except as set out in clause 16.2, the Contractor accepts the risk of all increased costs resulting from delay or disruption to the performance of any Services, and the performance of its other obligations under this Agreement, and accepts that it will have no entitlement to make any Claim against the Customer arising out of or in any way connected with such delay or disruption (including for damages for breach of contract).

15.2 Changes to timing by Customer

- (a) The Customer may, acting reasonably, extend any Milestone Date at any time prior to completion of the relevant Services by giving notice to the Contractor nominating a new Milestone Date, regardless of whether:
 - (i) the Contractor has claimed or is entitled to an extension of time under this Agreement; or
 - (ii) the Customer has previously rejected any claim or failed to make a determination under clause 16.2(c).
- (b) The Implementation Plan may specify that the Customer may suspend, or delay commencement of, a particular Portion. If the Customer requires a suspension or delayed commencement for a Portion, the Customer will issue a notice to the Contractor specifying the work to be delayed or suspended, and setting out (acting reasonably) any extension to the Milestone Dates for that Portion. Nothing in this clause 15.2(b) is intended to result in the creation of a separate contract for any Portion.
- (c) The Contractor must comply with any notice issued by the Customer under clause 15.2(a) or 15.2(b). The Contractor is not entitled to any additional Charges or other amounts above that already agreed by the parties in respect of the Services in relation to an extension of time, delay or suspension under this clause 15.2.
- (d) If the Customer exercises its rights under clause 15.2(a) or 15.2(b), the parties must meet (if the Contractor requests) to discuss the effects (if any) of the extension of time on the delivery and commissioning of the Solution as a whole.

16 DELAYS

16.1 Mitigation of delays

If the achievement of any Milestone is delayed for any reason, the Contractor must:

- (a) notify the Customer, promptly following the commencement of the cause of the delay, of the delay and its cause, and provide an estimate of the length of the delay;
- (b) if requested by the Customer, meet with the Customer Contract Manager to discuss steps to mitigate the delay; and
- (c) take all reasonable steps, including any steps reasonably requested by the Customer (including, if the Customer requires it by notice in writing, preparing and submitting, in accordance with clause 24, a Performance Remediation Plan in respect of the delay), to mitigate the delay and the effect of the delay.

16.2 Extension of time for Delay Event

- (a) If a delay in achieving a Milestone is caused by a Delay Event, and the Contractor wishes to claim an extension of any relevant Milestone Date, it must, as soon as reasonably practicable (and in any event within 10 Business Days after the relevant cause of the delay first arises), submit a written claim to the Customer, providing details (to the Customer's reasonable satisfaction) of the delay, the cause (or causes) of the delay, its claim for an extension to the relevant Milestone Date and the mitigation steps taken.
- (b) If:
 - (i) the cause of the delay is a Delay Event;
 - (ii) clause 16.2(c) does not apply; and
 - (iii) the Contractor complies with clauses 16.1 and 16.2(a) (which are conditions precedent to any entitlement for delay),the Customer will, as the Contractor's sole remedy in respect of the delay, grant the Contractor a reasonable extension of the relevant Milestone Dates, any extension being limited to the actual delay which was caused by the Delay Event.
- (c) If more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a Delay Event, then to the extent the delays are concurrent, the Contractor will not be entitled to an extension of time.
- (d) The Milestone Date for a Major Milestone may be amended only:
 - (i) pursuant to this clause 16.2;
 - (ii) pursuant to clause 15.2;
 - (iii) pursuant to a Variation Order; or
 - (iv) otherwise with the express consent of the Customer in writing in respect of that specific Major Milestone.

16.3 Payment of Delay Costs by Contractor

- (a) If a Contractor Fault results in a delay the Contractor will, without affecting its other obligations in respect of the delay, pay the Customer an amount equal to the reasonable and substantiated Delay Costs incurred by the Customer, with the Contractor's liability to pay Delay Costs in any one Financial Year being capped at the Delay Costs Cap.
- (b) The Contractor acknowledges and agrees that, without limiting in any way what may be considered as Delay Costs, the payment of Delay Costs under clause 16.3(a) may include:
 - (i) costs payable by the Customer, arising out of the delay; and
 - (ii) licensing costs and the Customer's internal costs.
- (c) The Contractor acknowledges and agrees that the payment of Delay Costs under clause 16.3(a) does not relieve the Contractor of its obligations to perform any of its other obligations under this Agreement.

16.4 Right to terminate for Delay

- (a) If, in respect of any Major Milestone:
 - (i) the Major Milestone has not been achieved within 3 months after the Milestone Date (or such other date as this Agreement specifies or the parties otherwise agree in writing), and such delay is not due to a Customer Fault; or
 - (ii) the Contractor's obligation to pay Delay Costs under clause 16.3 reaches the relevant Delay Costs Cap,

the Customer may, by giving notice to the Contractor, and without prejudice to its other rights and remedies under this Agreement or any Law, terminate this Agreement in whole or in part.

- (b) If the Customer terminates this Agreement in whole or in part, under clause 16.4(a), the Contractor must, in addition to any other actions required under this Agreement in respect of that termination, promptly refund any amounts prepaid by the Customer to the Contractor in respect of any Deliverables or Milestones that are relevant to the Agreement (as a whole or the terminated part, as applicable) that:
 - (i) were not successfully completed (including in circumstances where the Deliverable has not passed applicable Acceptance Tests) prior to; or
 - (ii) are only partially completed as at,the effective date of termination.

17 VARIATION

17.1 Customer may direct a Variation

The Customer may direct the Contractor to carry out a Variation that is consistent with the scope of the Services by issuing a Variation Order to the Contractor. Clause 4.4(b) will apply to any such direction.

17.2 Variation Requests

- (a) The Customer may request the Contractor to prepare a Variation Request.
- (b) If the Customer requests the Contractor to submit a Variation Request:
 - (i) the Customer must promptly provide any information which is reasonably requested by the Contractor in relation to the preparation of the Variation Request; and
 - (ii) the Contractor must as soon as practicable and, in any event, within 15 Business Days (or such other period as agreed by the parties in writing) following the request from the Customer, prepare and provide the Customer with the Variation Request.
- (c) The Contractor may request the Customer to initiate the Variation Request process pursuant to clause 17.2(b) if there has been a Change in Law or a change in the Customer Policies that:
 - (i) the Contractor is required, pursuant to this Agreement or pursuant to any Law, to comply with;
 - (ii) necessitates a change in the manner of performing the Services; and
 - (iii) directly results in an increase or a decrease in the Contractor's cost of carrying out those changes.
- (d) The Contractor may request the Customer to initiate, pursuant to clause 17.2(b), the Variation Request process:
 - (i) as contemplated in clauses 5.5(c), 8.4(b) and 17.2(c); or
 - (ii) in relation to amounts that the Contractor is entitled to be reimbursed under clauses 14.2(d), 45.5(a)(ii), 45.7(c) and 50.3(a);
 - (iii) to give effect to any other express entitlement of the Contractor to be reimbursed under this Agreement; or
 - (iv) to give effect to an agreement reached by the parties in respect of a change in the scope of the Services.

The Customer must act reasonably and in good faith in considering a request from the Contractor under this clause 17.2(d):

- (e) Unless requested to do so by the Customer, the Contractor must not submit a Variation Request to the Customer in respect of any additional costs in respect of complying with the Contractor's obligations under this Agreement.
- (f) The Contractor must ensure that each Variation Request issued by the Contractor:
 - (i) is prepared in accordance with the template Variation form set out in Schedule 8 and signed by the Contractor;
 - (ii) is prepared in accordance with Good Industry Practice and in a manner that is consistent with this Agreement;
 - (iii) specifies:
 - (A) the nature of the proposed Variation;
 - (B) any effect of the proposed Variation on the performance of this Agreement, the achievement of any Milestones, the compliance by the Contractor or the Solution with the requirements of this Agreement, the quality of any Services or any Service Levels;
 - (C) the Personnel and other Resource implications of the proposed Variation (including any change to the number of Personnel required if the Variation is implemented);
 - (D) any effect of the proposed Variation on the Charges payable by the Customer, calculated in the manner set out in clause 17.5, and including a detailed price breakdown that is consistent with the Pricing and Payment Schedule; and
 - (E) any amendments required to the Agreement, with a detailed explanation as to why the amendments are necessary;
 - (iv) includes (if applicable) an Acceptance Test Plan in accordance with clause 10.2; and
 - (v) contains any other information reasonably required by the Customer.
- (g) The proposed change to the Charges set out in a Variation Request must:
 - (i) be reasonable having regard to the proposed Variation;
 - (ii) be commensurate with the increased or decreased Personnel and other Resources required to carry out the Variation;
 - (iii) be calculated by reference to applicable rates and pricing set out in the Pricing and Payment Schedule;
 - (iv) unless it is unreasonable to be calculated in such a way, be calculated in the same manner the Charges were originally calculated;
 - (v) be consistent with clause 17.5; and
 - (vi) explicitly exclude any cost items already included in the Charges or provided for under clause 16.2.
- (h) The Contractor must demonstrate to the Customer's reasonable satisfaction that any change to the Charges has been calculated in accordance with clause 17.2(g), and must explain the basis for the change in Charges if required. Unless implementing the Variation Request will result in increased costs to the Contractor, the Variation Request must not set out any increase to the Charges. If implementing the Variation Request will result in decreased costs to the Contractor, the Variation Request must set out a commensurate reduction to the Charges.
- (i) Without limiting clause 17.3(a), a Variation Request submitted by the Contractor remains valid for acceptance by the Customer for a period of 20 Business Days.

17.3 Customer's response to Variation Request

- (a) The Customer is not obliged to accept a Variation Request.
- (b) If requested by the Customer, the parties must promptly meet and attempt to reach agreement on the Variation Request as soon as possible.
- (c) If the Customer elects to proceed with a Variation, and the value of the Variation would result in a decrease to the Charges, the Charges will be decreased to the value of the approved Variation, calculated in accordance with clause 17.5.
- (d) If the parties reach agreement on amendments to the Variation Request, the Contractor must, as soon as practicable and, in any event, within 5 Business Days after the parties reach agreement, finalise the Variation Request in accordance with the parties' agreement and issue a signed version of the updated Variation Request to the Customer for signing by the Customer.
- (e) The Customer may accept a Variation Request by providing a notice of acceptance to the Contractor, together with a signed version of the Variation Request.
- (f) The signed version of a Variation Request becomes, upon being signed by the Contractor and accepted by the Customer in accordance with this clause 17.3, a Variation Order.

17.4 Implementation of a Variation Order

Upon the issue of a Variation Order by the Customer, with effect from the date set out in the Variation Order:

- (a) the Contractor must implement the Variation as set out in the Variation Order;
- (b) the Services will be changed as set out in the Variation Order (including in respect of any changes to the Solution or any other Deliverable);
- (c) the Specifications and the Statement of Requirements will be deemed to be amended to reflect the changes set out in and contemplated by the Variation Order;
- (d) references to the Solution and Services in this Agreement will be deemed to be amended to reflect changes set out in and contemplated by the Variation Order;
- (e) the Charges will be adjusted in the manner set out in clause 17.5; and
- (f) if the Variation Order sets out a variation to any other terms of this Agreement (including any change to Service Levels), and if the Customer has obtained all required approvals to those changes in accordance with Schedule 8, those terms are varied as set out in the Variation Order.

17.5 Adjustment of the Charges

- (a) Subject to clause 17.5(c), the Charges will be adjusted to the value of the Variation set out in the Variation Order, which will be (in order of precedence):
 - (i) if this Agreement sets out an agreed amount in respect of the Services to be provided pursuant to the Variation Order, the amount set out in this Agreement;
 - (ii) if accepted in writing by the Customer, the amount set out in the Variation Request;
 - (iii) the amount calculated by reference to the applicable rates and pricing set out in the Pricing and Payment Schedule;
 - (iv) the value otherwise agreed in writing by the parties; or
 - (v) as determined by the Customer Contract Manager, acting reasonably and in a manner consistent with this Agreement.
- (b) If the Contractor disagrees with the value of a Variation determined by the Customer Contract Manager, the Parties will implement the Variation Order as set out in clause 17.4, but the Contractor may refer the disputed value of the Variation for resolution under clause 54.

- (c) The Charges will not:
 - (i) be increased unless implementing the Variation Order will result in increased costs to the Contractor;
 - (ii) be adjusted if performance of the Variation has no effect on the calculation of the Charges (for example, if all cost items relevant to that performance are already included in the Charges).
- (d) If a Variation Request or Variation Order arises due to changes to the Solution that are required in order for the Solution to meet (or continue to meet) the requirements of this Agreement, there is no increase to the Charges unless those required changes (and the increased Charges) are due to:
 - (i) the Contractor having reasonably relied on incorrect material information provided to the Contractor by or on behalf of the Customer;
 - (ii) material information coming to the Contractor's attention after the date of the most recent Variation Request (or, if there has been no Variation Request, then after the Commencement Date) that could not reasonably have been known to the Contractor (having made all reasonable inquiries and conducting itself in accordance with Good Industry Practice) before that date;
 - (iii) the Customer providing notice of a material change in its requirements;
 - (iv) a Change in Law, or a change in the Customer Policies of the kind contemplated in clause 17.2(c); or
 - (v) a Customer Fault.
- (e) There is no increase to the Charges in respect of the Contractor's compliance with the Contractor's obligations under this Agreement, other than in respect of:
 - (i) Changes in Laws, or in the Customer's business requirements or the Customer Policies, of the kind contemplated in clause 17.2(c);
 - (ii) complying with directions that are determined to be Variations pursuant to clause 17.6; or
 - (iii) if this Agreement otherwise expressly states that the Customer must pay additional Charges or reimburse the Contractor.

17.6 Directions that may be Variations

- (a) **(Directions that may be Variations)** If the Contractor considers (subject to clause 17.6(b)) that any direction given by the Customer is or would constitute a Variation:
 - (i) the Contractor must, within 5 Business Days following the direction, and before implementing the direction, give notice to the Customer of the reasons why the Contractor considers the direction is or would constitute a Variation; and
 - (ii) upon receipt of a notice from the Contractor under clause 17.6(b), the Customer may:
 - (A) retract the direction;
 - (B) confirm the direction as a proposed Variation, in which case the Contractor must prepare a Variation Request pursuant to clause 17.2 (as if the direction was a request for a Variation Request); or
 - (C) reject that the direction is a Variation, in which case the Contractor may refer the Dispute for resolution under clause 54.
- (b) **(Directions that are not variations)** Without limiting what else may or may not be considered a Variation, the parties acknowledge that the following directions will not be considered Variations (and that the Contractor is not entitled to any payment for carrying them out):
 - (i) a direction to prepare or update any quote or proposal;
 - (ii) a direction to provide any information;

- (iii) a direction to communicate or provide information in a particular format;
- (iv) a direction to attend a meeting in connection with the Services;
- (v) a direction as to the resolution of an ambiguity in this Agreement or any Project Documents;
- (vi) a direction to comply with the Contractor's existing obligations under the Agreement that is consistent with this Agreement;
- (vii) a direction to rectify any failure to comply with this Agreement;
- (viii) a direction to prepare or implement a Performance Remediation Plan to rectify any failure to comply with this Agreement; and
- (ix) a direction that is issued by the Customer (acting reasonably) in order to resolve issues arising from a failure of the Contractor to comply with this Agreement or arising from negligence of the Contractor or its Personnel.

17.7 Other matters

- (a) No Variation Order will invalidate this Agreement.
- (b) Without limiting any express right in respect of Variations conferred under this Agreement, the Contractor's rights in relation to Variations under this clause 17 are the Contractor's sole remedy in respect of any Variation.
- (c) All variations to this Agreement other than those arising from a Variation Order may only be made in accordance with clause 62.2.

18 ADDITIONAL SERVICES

18.1 Additional Services

- (a) The Customer may request the Contractor to perform Additional Services using the process set out in clause 17.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Customer makes no warranty about the volume of Additional Services which the Customer may procure under this Agreement; and
 - (ii) it enters into this Agreement on the basis that there is no guarantee that it will be requested to perform any Additional Services, or any minimum volume of Additional Services during the Term.
- (c) The Customer (and each Credential Provider and State Credential Consumer) is not prevented or restricted in any way from procuring any proposed Additional Services from a third party, including any proposed Additional Services that are the subject of a Variation Request (whether requested by the Customer or otherwise, and whether the subject of negotiations or otherwise).
- (d) The Contractor is not entitled to make any Claim against the Customer or any Credential Provider or State Credential Consumer arising out of or in connection with any proposed Additional Services or proposed Statement of Work, including in respect of any proposed Variation Request or Statement of Work that the Customer rejects, does not respond to, or elects not to pursue following negotiations.

18.2 Statements of Work

- (a) The Customer may issue a Statement of Work following the process set out in clause 17, but:
 - (i) using the template statement of work form set out in Schedule 9 rather than the template variation form set out in Schedule 8;
 - (ii) with a reference in clause 17 to:
 - (A) a Variation being instead a reference to the content of the Statement of Work;

- (B) a Variation Quote being instead a reference to a draft Statement of Work; and
- (C) a Variation Order being instead a reference to a Statement of Work; and
- (iii) the executed Statement of Work will have the same effect as a Variation Order.

18.3 Additional Credentials and Software Development Kits

- (a) The Additional Services may be for the Customer, for Credential Providers, or for State Credential Consumers.
- (b) If the Additional Services are in respect of an additional Credential, or in respect of a Software Development Kit (SDK) for a Credential Provider (or for a State Credential Consumer), then the Variation Order or Statement of Work (as applicable) does not come into effect until it has also been signed by the applicable Credential Provider or State Credential Consumer.

18.4 Additional Services to comply with legal requirements

- (a) Without in any way limiting clause 18.1, the Customer may, by issuing a Variation Order or Statement of Work to the Contractor (whether with the Contractor's agreement or not), direct the Contractor to carry out Additional Services that are required in order for the Customer to comply with any Law (including any changes in Law), or any direction from a Government Agency, or any instructions from the Treasurer.
- (b) The Charges for the Additional Services under a Variation Order or Statement of Work issued under clause 18.4(a) will be adjusted to the value of the Additional Services set out in the Statement of Work, which will be (in order of precedence):
 - (i) if accepted in writing by the Customer, the amount set out in an applicable Variation Request or draft Statement of Work;
 - (ii) the value set out in this Agreement or otherwise agreed in writing by the parties;
 - (iii) the amount calculated by reference to applicable rates and pricing set out in the Pricing and Payment Schedule – Schedule 3; or
 - (iv) as determined by the Customer Contract Manager, acting reasonably and in a manner consistent with this Agreement.
- (c) If the Contractor disagrees with the value of the Additional Services determined by the Customer Contract Manager pursuant to clause 18.4(b), the parties will implement the applicable Variation Order or Statement of Work, but the Contractor may refer the disputed value of the Additional Services for resolution under clause 54.
- (d) Amounts will only be payable to the Contractor pursuant to clause 18.4(b), if the Contractor:
 - (i) has used all reasonable endeavours to reduce any adverse impact on it of the applicable Law (or change in Law), direction or instruction; and
 - (ii) notified the Customer of the relevant Law (or change in Law), direction or instruction, and its effects, as soon as possible after the Contractor becomes aware (or should have reasonably been aware) of the change or its effects.

19 REMOVAL OF SERVICES

- (a) The Customer may at any time and in its absolute discretion give notice to the Contractor pursuant to clause 17.1 that a portion of the Services is no longer required (**Removed Services**). For clarity, and without limitation, the Removed Services may include:
 - (i) all of the Services and Deliverables in respect of a Portion, a Phase or a Deployment; or

- (ii) any other Services that were to be performed, or Deliverables that were to be supplied, under this Agreement.
- (b) From the date nominated by the Customer in the Removed Services notice (or, if no date is nominated in the notice, from the date of the Removed Services notice):
 - (i) the Removed Services will no longer form part of the Services;
 - (ii) the Contractor must cease providing the Removed Services;
 - (iii) the Customer will not be obliged to pay any Charges in respect of the Removed Services (including in respect of any Deliverables to be provided as part of the Removed Services); and
 - (iv) References to 'Services' in this Agreement will be deemed to exclude the Removed Services.
- (c) For the purposes of clause 19(b)(iii), the reduction in Charges in respect of Removed Services will be determined as follows:
 - (i) if this Agreement sets out an agreed amount in respect of the Removed Services, the amount set out in this Agreement;
 - (ii) if clause 19(c)(i) does not apply, the amount calculated in accordance with the applicable rates and pricing in the Pricing and Payment Schedule (adjusted to take into account any bundled pricing);
 - (iii) if neither clause 19(c)(i) nor clause 19(c)(ii) applies, the amount agreed between the parties; or
 - (iv) if no agreement is reached pursuant to clause 19(c)(iii), the amount determined by the Customer Contract Manager, acting reasonably and in a manner consistent with this Agreement.
- (d) If, as a result of a Removed Services notice, there are any partially prepared Deliverables or Working Papers, then clause 57.5 will apply to those Deliverables and Working Papers as if a reference to the termination of this Agreement in clause 57.5 was instead a reference to the removal of the Removed Services.

20 ONGOING SERVICES

20.1 Ongoing Services performed by Contractor

- (a) During the Ongoing Services Term, the Contractor must perform:
 - (i) the Ongoing Services in accordance with this clause 20, the Ongoing Services Schedule, and this Agreement; and
 - (ii) all services, functions, tasks and responsibilities not specifically described as Ongoing Services but which are:
 - (A) reasonably required to ensure that the Solution remains in conformity with the Specifications and the requirements of this Agreement (including continuing compliance with relevant Standards to enable interoperability on a continuing basis with the systems of Credential Consumers); or
 - (B) otherwise necessary or incidental to, or customarily and inherently included in, the provision of the Ongoing Services.
- (b) The Ongoing Services to be provided at any particular time during the Term will be:
 - (i) prior to the First Deployment Date, in respect of so much of the Solution as is specified in a written notice from the Customer to the Contractor, provided that notice is given at least 10 Business Days prior to taking effect; and
 - (ii) following the First Deployment Date, in respect of so much of the Solution as is at that time, Deployed (as more of the Solution is Deployed, the scope of the Ongoing Services will expand to include the newly Deployed portions of the Solution).

20.2 Ongoing provision of Solution

- (a) The Contractor must make the Solution available to the Customer and End Users during the Ongoing Services Term, in accordance with the relevant Project Documents and the other requirements of this Agreement.
- (b) The Contractor must ensure that at all times during the Ongoing Services Term, the Solution operates in accordance with the requirements of this Agreement.
- (c) The Contractor must use only Cloud Service Providers approved by the Customer for:
 - (i) any hosting of the Customer Data; and
 - (ii) any Cloud Services used in connection with the Solution or the Customer Data,such approval not to be unreasonably withheld for a reputable Cloud Service Provider located in Australia who will store the Customer Data only in Australia.

20.3 Service delivery reviews

- (a) The Customer may, not more than once during each 12 month period following the Ongoing Services Commencement Date, review:
 - (i) the Service Levels;
 - (ii) the methodologies for measuring the Service Levels and the measuring, monitoring and management tools and procedures contemplated in clause 23.1(b) and in the Ongoing Services Schedule; and
 - (iii) any other procedures or processes set out in the Statement of Requirements and the Performance Assessment Regime.
- (b) At the conclusion of each review conducted under clause 20.3(a), the parties must promptly meet to discuss the potential to:
 - (i) add to, modify or delete Service Levels;
 - (ii) modify the methodologies for measuring the Service Levels; and
 - (iii) otherwise modify the Statement of Requirements and the Performance Assessment Regime,to the extent required to better achieve the Objectives with the intention that any reasonable requested amendments (including any amendments required because any Service Levels are no longer an effective measure of the Contractor's performance) should be agreed by the Contractor and implemented as a Variation Order in accordance with clause 17.

20.4 Continuous improvement

Without prejudice to the Service Levels, the Contractor must use reasonable endeavours to improve and enhance the delivery of the Services through the identification and application of proven techniques, tools, procedures and other improvements including those used within other Contractor operations that would benefit the Customer, either operationally or financially (or both), so that the Services are performed at least in accordance with the applicable Service Levels with the objective that Service Levels performance is improved over the Term.

21 SUPPORT SERVICES

21.1 Service Desk and Technical Support Management System

- (a) During the Ongoing Services Term, the Contractor must make the Service Desk and the TSM System available to the Customer during the Support Hours to enable the Customer's nominated staff to:
 - (i) report Faults to the Contractor; and
 - (ii) seek answers to technical questions relating to the Solution and the Services.

- (b) During the Ongoing Services Term, the Customer may report to the Contractor, by contacting the TSM System, any Fault (or any other issues relating to the Services) of which the Customer becomes aware. The Customer must, when reporting a Fault or other issue to the Contractor, provide any information relating to the Fault or other issue that is reasonably requested by the Contractor.

21.2 Correction of Faults

- (a) If the Customer reports to the Contractor, a Fault (whether an actual Fault or a suspected Fault), the Contractor must:
 - (i) respond to the Fault, and provide a Work Around (if available) for, and Fix, the Fault in accordance with the Ongoing Services Schedule;
 - (ii) keep the Customer regularly updated in relation to the status of the Fault; and
 - (iii) provide any assistance reasonably required by the Customer to rectify any data corruption and recover any data loss caused by the Fault (or other issue).
- (b) The Contractor must notify the Customer when it believes a reported Fault is resolved and, within a reasonable timeframe by reference to the Priority Level of the reported Fault, the Customer must:
 - (i) confirm the resolution of the reported Fault, in which case the Contractor may record the reported Fault as closed; or
 - (ii) advise that the reported Fault is not resolved, in which case the Contractor must re-open, and continue to work to resolve, the reported Fault.
- (c) The Contractor may respond to, provide a Work Around for, and Fix, Faults by remote electronic access, but if it is necessary for the Contractor to attend the premises where the Fault is, or the Solution is used by the Customer to respond to, provide a Work Around for and Fix, a Fault, the Contractor must do so at no additional cost to the Customer.
- (d) If the Charges for the Ongoing Services are calculated on a monthly basis, the Contractor's obligation to provide Work Arounds for, and Fix, Faults is to be at no additional Charge to the Customer (other than the monthly ongoing Charges in respect of the Ongoing Services).

21.3 Documentation updates

If:

- (a) the resolution of Faults, Defects or other issues during the Ongoing Services Term necessitates an amendment to the Documentation; or
- (b) the Documentation is found to be inaccurate or insufficient for any reason (whether as a result of any changes or updates to the Solution, changes to the Specifications or otherwise) and the Customer requests that the Contractor amend the Documentation,

the Contractor must promptly, and in any event within 10 Business Days or other timeframe set out in the Operations Documentation, amend the Documentation (including the Operations Documentation) and supply the number of copies of the amended Documentation necessary to update the Customer's existing Documentation.

21.4 New Releases, Fixes and Work Arounds

Unless the Customer otherwise agrees in writing, the Contractor must ensure that:

- (a) any resolution of a reported Fault; and
 - (b) any New Release, Fix or Work Around which is supplied by the Contractor,
- does not materially degrade the functionality or performance of the Solution.

22.1 Development and offer of New Releases

During the Term, the Contractor must:

- (a) keep the Customer fully informed of the New Releases that the Contractor intends to develop in respect of the Solution; and
- (b) keep the Customer informed (providing as much notice as is reasonably possible having regard to the notice provided by the vendor) of any New Releases which are due to be released by the suppliers of the Contractor Software or Third Party Software.
- (c) provide the Customer with at least 10 Business Days' notice before implementing a New Release (other than an Emergency Release);
- (d) provide the Customer with as much notice as practicable before implementing an Emergency Release (and, if it is not practicable to provide notice prior to implementation, then notify the Customer no more than 24 hours after implementing the Emergency Release); and
- (e) provide any information (including documentation and demonstrations) relating to the New Release or Emergency Release reasonably requested by the Customer; and
- (f) provide any reasonable assistance requested by the Customer to enable the Customer to evaluate the New Release.

22.2 Use of New Releases by the Customer

- (a) If the Customer wishes to use a New Release during the Ongoing Services Term, then the Customer must notify the Contractor accordingly. If the Customer issues such a notice, then a reference in this Agreement to the Software Deliverables is deemed to include the New Release to which the notice relates.
- (b) Within 20 Business Days after receipt of a notice from the Customer pursuant to clause 22.2(a), the Contractor must:
 - (i) if the New Release is offered by the Contractor or its Related Companies, provide the New Release to the Customer (and in each other case, provide all reasonable assistance requested by the Customer in making the New Release available to the Customer);
 - (ii) provide to the Customer any amendments to the Documentation that are necessary to enable the Customer to make full and proper use of the New Release (in each case, in the quantities and formats requested by the Customer);
 - (iii) if required by the Customer, implement the New Release into the Solution; and
 - (iv) comply with clauses 8, 10, 11, 12, 13 and 14 with respect to the New Release.
- (c) Any New Release which is installed will be deemed to be part of the Solution, including for the purposes of the licences under clause 41.

22.3 Customer may decline to use New Releases

- (a) If the Customer does not wish to use a New Release that is offered by the Contractor during the Ongoing Services Term, then the Customer may notify the Contractor accordingly.
- (b) The Contractor acknowledges and agrees that if the Customer declines to use a New Release, this does not:
 - (i) relieve the Contractor of any of its obligations under this Agreement, including in respect of the Ongoing Services; or

- (ii) entitle the Contractor to any additional payment in connection with this Agreement.

23 SERVICE FAILURES

23.1 Service Levels

- (a) The Contractor must perform the Services so as to meet or exceed the Service Levels at all times during the Term.
- (b) The Contractor must implement and operate all monitoring and reporting tools and procedures necessary, desirable or reasonably requested by the Customer to:
 - (i) detect and prevent any potential failure to meet the Service Levels or other potential Underperformance;
 - (ii) detect, minimise and promptly remedy any failure to meet the Service Levels or other Underperformance; and
 - (iii) effectively monitor the Contractor's performance against the Service Levels, and comply with its reporting obligations under clause 30.

23.2 Remediation of failures

- (a) In addition to the Customer's other rights and remedies under this Agreement or any Law, if an Underperformance occurs, and the Customer notifies the Contractor of that Underperformance, the Contractor must:
 - (i) promptly respond to such notification, and treat the Underperformance as a priority;
 - (ii) remedy the Underperformance, including by providing all reasonable assistance to the Customer or modifying or re-performing the Services;
 - (iii) take all other steps necessary to remedy the failure, and any consequences of such Underperformance, as soon as possible; and
 - (iv) take all commercially reasonable action to prevent any recurrence of such Underperformance.
- (b) If the Contractor fails to comply with clause 23.2(a), or with the requirements of the Ongoing Services Schedule in relation to Underperformances, the Customer may do any one or more of the following:
 - (i) issue a written notice requiring the Contractor to submit a Performance Remediation Plan in accordance with clause 24 in respect of the relevant failure; and
 - (ii) immediately require the Contractor to engage additional Personnel or Subcontractors (as appropriate) to remedy the Underperformance and any consequences of such Underperformance.
- (c) Where any Underperformance is as a result of any Software licensed to the Customer, the Customer acknowledges that the Contractor's obligation is to use all reasonable endeavours, in accordance with Good Industry Practice, to procure remediation of any such Underperformance and to restore performance to meet the Service Levels.

23.3 Service Credits

- (a) The Customer is entitled to the payment or rebate of a Service Credit in respect of a failure to meet or exceed the Service Levels in the circumstances contemplated by the Performance Assessment Regime.
- (b) Any amounts payable by the Contractor to the Customer as a Service Credit must, at the Customer's election:
 - (i) be credited against the following month's invoice from the Contractor;
 - (ii) be paid by the Contractor to the Customer within 20 Business Days after the date of the Customer's election; or

- (iii) be set off or applied towards any amount payable by the Customer to the Contractor in accordance with clause 62.16.
- (c) If at any stage it is discovered that the Contractor has incorrectly credited the amount of Service Credits, the Contractor must remedy the discrepancy on the next invoice submitted under this Agreement (and if no invoice is submitted, then the Contractor must promptly refund to the Customer the amount represented by any under-credited Service Credits).
- (d) The parties acknowledge and agree that:
 - (i) the Service Credits are a price adjustment to reflect the diminution in value to the Customer of the Services as a result of the Services not being performed to meet the Service Levels, and are not an estimate of the Loss that may be suffered or incurred by the Customer as a result of the Contractor's failure to meet any Service Level; and
 - (ii) the Customer's rights in this clause 23.3 are in addition to, and do not limit or affect, any other rights or remedies it may have under this Agreement or any Law in relation to any failure to provide Services or meet Service Levels.

23.4 Customer Faults and Excusable Events

- (a) The Contractor will not be liable for a failure to meet a Service Level, and the Customer will not be entitled to the corresponding Service Credit in respect of that failure to the extent that the Contractor establishes (by way of documentary evidence provided to the Customer at the Contractor's cost) that the sole and direct cause of that failure is a Customer Fault or Excusable Event, provided that the Contractor complies with clauses 23.4(b) and 27.3.
- (b) The Contractor must give written notice to the Customer as soon as practicable of an actual or impending Customer Fault or Excusable Event that may affect the achievement of a Service Level, specifying:
 - (i) the nature of the Customer Fault or Excusable Event;
 - (ii) the Services and Service Levels that will be affected; and
 - (iii) the manner in which the Customer Fault or Excusable Event will affect the Contractor's ability to meet the Service Levels.
- (c) The Contractor must use its best endeavours to mitigate and minimise any adverse effect of any Customer Fault and any Excusable Event on the delivery and performance of the Services.

24 PERFORMANCE REMEDIATION PLAN

- (a) The Customer may, from time to time, require the Contractor to submit a Performance Remediation Plan, including where there has been a non-trivial delay, an Acceptance Test failure, a series of Minor Defects, or an Underperformance by the Contractor.
- (b) Within 20 Business Days after receiving a written notice from the Customer requiring the Contractor to submit a Performance Remediation Plan, the Contractor must prepare and submit a Performance Remediation Plan to the Customer. The Performance Remediation Plan must set out, among other things (and as applicable):
 - (i) the nature and cause of the relevant delay, Defect, Acceptance Test failure or Underperformance (and where applicable the reasons for failing to remedy the Underperformance);
 - (ii) the steps the Contractor will take to remedy the relevant delay, Defect, Acceptance Test failure or Underperformance;
 - (iii) the actions that are required (and that the Contractor will take) to avoid the recurrence of the event or events that led to the relevant delay, Defect, Acceptance Test failure or Underperformance;
 - (iv) if applicable, an Acceptance Test Plan pursuant to clause 10.2; and
 - (v) any other matters reasonably requested to be included by the Customer.

- (c) If the Contractor submits a Performance Remediation Plan in accordance with clause 24(b), the Customer may (acting reasonably):
 - (i) approve the Performance Remediation Plan by giving written notice to the Contractor;
 - (ii) give a written notice to the Contractor specifying the amendments that it requires to the Performance Remediation Plan, in which case the Contractor must amend the Performance Remediation Plan (to the Customer's reasonable satisfaction) to incorporate these amendments and resubmit it to the Customer for further review within 5 Business Days (in which case this clause 24(c) will apply again); or
 - (iii) reject the Performance Remediation Plan.
- (d) If the Customer approves a Performance Remediation Plan pursuant to clause 24(c):
 - (i) the Contractor must comply with the Performance Remediation Plan; and
 - (ii) that approval does not affect any rights or remedies that the Customer may have under this Agreement or any Law arising out of any past or future delay, Defect, Fault, Underperformance or Service Level Failure or failure to meet the relevant performance requirement.
- (e) If the Customer rejects a Performance Remediation Plan pursuant to clause 24(c)(iii), then the Customer may exercise its right to appoint a Performance Manager under clause 25.

25 PERFORMANCE MANAGER

25.1 Appointment of Performance Manager

If:

- (a) the Contractor fails to provide a draft Performance Remediation Plan in accordance with clause 24, or fails to comply with, a Performance Remediation Plan approved by the Customer;
- (b) the Customer, acting reasonably, rejects a Performance Remediation Plan under clause 24;
- (c) the Customer, acting reasonably, rejects a Project Document that has been re-submitted under clause 6.1;
- (d) the Customer, acting reasonably, rejects a report that has been re-submitted under clause 30.3;
- (e) any Acceptance Test Item fails to pass repeated Acceptance Tests on 2 or more occasions;
- (f) a Major Milestone has not been achieved within 3 months after the Milestone Date (or such other date as this Agreement specifies or the parties otherwise agree in writing) due to the Contractor's failure to comply with this Agreement;
- (g) the Contractor's obligation to pay Delay Costs under clause 16.3 reaches the relevant Delay Costs Cap;
- (h) the Customer reasonably forms the opinion that, unless the Customer exercises some or all of its rights under this clause 25, there is or is likely to be a risk:
 - (i) to the health or safety of any person;
 - (ii) of a material data security breach occurring or continuing, or to any Customer Data generally;
 - (iii) of a material interruption to or degradation in the performance of the ServiceWA App or other parts of the Customer ICT Environment; or
 - (iv) of material damage to the brand or reputation of the Customer, a Credential Provider or the ServiceWA App;
- (i) circumstances arise in connection with this Agreement that, in the Customer's reasonable opinion, are required to be notified under Work Health and Safety Laws; or

- (j) the Customer has the right to terminate this Agreement under clause 57.1, then, in addition to any other rights or remedies of the Customer under this Agreement or any Law, the Customer may appoint a Performance Manager by giving a notice to the Contractor.

25.2 Role of Performance Manager

- (a) The role of a Performance Manager is to help to manage the Contractor in its efforts to:
- (i) remedy the circumstances giving rise to the appointment of the Performance Manager; and
 - (ii) mitigate any consequences of the circumstances referred to in clause 25.2(a)(i).
- (b) A Performance Manager may take all action as the Customer (acting reasonably) considers necessary or desirable to achieve the Performance Manager's role as set out in clause 25.2(a), including by:
- (i) performing a root cause analysis of the circumstances giving rise to the appointment of the Performance Manager;
 - (ii) calling meetings with any of the Contractor's Personnel (including any Subcontractor); and
 - (iii) directing the Contractor in relation to the performance of its obligations under this Agreement.

25.3 Contractor to assist Performance Manager

The Contractor must use reasonable endeavours to assist any Performance Manager as far as reasonably possible to ensure that the Performance Manager is able to perform the Performance Manager's role as set out in clause 25.2, including by:

- (a) providing the Performance Manager with access to any Records, Resources, Contractor Premises and the Contractor's Personnel as requested by the Performance Manager;
- (b) attending, and ensuring that the required Contractor's Personnel attend, any meetings as required by the Performance Manager; and
- (c) complying with any reasonable direction of the Performance Manager in relation to the performance of its obligations under this Agreement.

25.4 Removal of Performance Manager

- (a) The Customer may remove a Performance Manager at any time.
- (b) The Customer must remove the Performance Manager as soon as the Customer is satisfied (including, if required by the Customer, the satisfactory passing of Acceptance Tests directed under clause 10.3) that the circumstances giving rise to the appointment of the Performance Manager have been properly remedied.

25.5 Contractor's acknowledgements

The Contractor acknowledges and agrees that:

- (a) the Customer will not have any Liability to the Contractor, and the Contractor will not be entitled to make any Claim, arising out of or in connection with the Customer's exercise of its rights under this clause 25; and
- (b) the exercise of the Customer's rights under this clause 25 does not limit any other right of the Customer under this Agreement, including any rights arising under clause 57.1, or under any Law.

25.6 Costs

- (a) The Contractor must reimburse the Customer for the reasonable cost of providing Personnel to perform the role of Performance Manager in accordance with this clause 25, except if the Customer's appointment of the Performance Manager:
 - (i) was pursuant to clause 25.1(h) or 25.1(i); and
 - (ii) did not arise out of a Contractor Fault:
- (b) Except as set out in clause 25.6(a), the parties must bear their own costs in relation to the exercise of their rights or performance of their obligations under this clause 25.

26 STEP-IN

26.1 Step-in right

- (a) Without limiting the Customer's rights under clause 25, 55 and 57, if any of the circumstances described in clause 25.1 applies, then the Step-in Party may, after consultation with the Contractor and giving the Contractor a Step-in Notice, step in and perform the Step-in Services.
- (b) If the Step-in Party exercises its step-in rights pursuant to clause 26.1(a), the Contractor must:
 - (i) take all steps necessary to transfer the performance of the Step-in Services to the Step-in Party, including making available to the Step-in Party all of the Contractor's Resources (other than Personnel) required in the performance of the Step-in Services;
 - (ii) upon transfer of the actual performance of the Step-in Services to the Step-in Party, suspend the performance of the Step-in Services; and
 - (iii) provide to the Step-in Party other assistance as is reasonably required by the Step-in Party.

26.2 Step-out

- (a) Subject to clause 26.2(b), if the Step-in Party has exercised its step-in rights pursuant to clause 26.1(a), once the circumstances which gave rise to the Step-in Party exercising its step-in rights have been remedied, and the Customer is satisfied of the Contractor's ability and willingness to render performance in accordance with this Agreement, the Step-in Party must step out by issuing a step-out notice to the Contractor giving the Contractor reasonable notice of the Step-in Party's intention to step out and the effective date of that step-out.
- (b) Notwithstanding clause 26.2(a), the Step-in Party may step out at any time by issuing a step-out notice to the Contractor, stating the Step-in Party's intention to step out and the effective date of that step-out.
- (c) If the Step-in Party issues a step-out notice to the Contractor under this clause 26.2:
 - (i) the Contractor must resume the performance of the Step-in Services on the date specified in the step-out notice; and
 - (ii) the Customer must procure that the Step-in Party relinquishes to the Contractor the control and possession of any of the Contractor's Resources used for the performance of the Step-in Services pursuant to this clause 26.

26.3 Contractor's other step-in obligations

- (a) The Contractor is not entitled to any Charges in respect of any Services that are Step-in Services:
 - (i) from the date that the Step-in Party exercises its right, in respect of those Services, to step-in (or the date the Step-in Party would have exercised its right to step in if the Contractor had complied with its obligations under this Agreement, whichever is earlier);

- (ii) until the time that the Contractor resumes performance of those Step-in Services in accordance with this Agreement.
- (b) The Contractor must reimburse the Customer for any costs associated with the exercise by the Step-in Party of its rights under this clause 26.
- (c) The Contractor must obtain all third party agreements, consents and approvals that are necessary to enable the Customer to exercise its rights under this clause 26, and provide the Customer with written evidence of such agreements, consents and approvals upon the Customer's request.

27 PROJECT MANAGEMENT

27.1 General obligations

The Contractor must perform comprehensive project management services in respect of the Project, the Ongoing Services and this Agreement generally, including by:

- (a) liaising with the Customer and third parties (including Credential Providers, Credential Consumers and Other Contractors), as reasonably necessary while performing its obligations under this Agreement;
- (b) managing the Services in accordance with a recognised quality control management system (including as specified in the Statement of Requirements);
- (c) identifying, and maintaining a register of, risks to the timely and successful performance of the Services and the achievement of the Objectives, and formulating and implementing measures which remove or minimise those risks;
- (d) identifying potential areas that may increase the cost to the Customer of the Services, or cause the Services to fail to comply with this Agreement or the Project Documents, and advising the Customer of possible corrective action;
- (e) co-ordinating the Services so that they cause the least possible disruption to the normal operations of the Customer;
- (f) establishing, managing and participating in any project review committees reasonably required by the Customer in respect of the Services;
- (g) providing, maintaining and managing sufficient Resources to enable timely and successful completion of its obligations under this Agreement; and
- (h) complying with any other project management requirements set out in this Agreement.

27.2 Customer's administrative requirements

The Contractor must comply with the Customer's project management and administrative requirements in relation to the Services as advised by the Customer from time to time.

27.3 Customer Faults and Excusable Events

- (a) The Contractor must give written notice to the Customer as soon as practicable of an actual or impending Customer Fault or Excusable Event, specifying:
 - (i) the nature of the Customer Fault or Excusable Event; and
 - (ii) the manner in which the Customer Fault or Excusable Event will affect the Solution, the Customer Data or the Contractor's ability to perform the Services.
- (b) The Contractor must use its best endeavours to mitigate and minimise any adverse effect of any Customer Fault or Excusable Event on the Solution and the performance of the Services.

27.4 Provision of Information and Assistance

- (a) The Contractor must provide, at no charge to the Customer, access to all Resources reasonably required by the Customer to verify the information and Solution

performance parameters in all reports and invoices provided by the Contractor to the Customer.

- (b) The Contractor must promptly comply with any request from the Customer from time to time seeking any additional information that the Customer requires in connection with the Solution, or in connection with any other Deliverables or Services, or otherwise relating to the performance of the Contractor's obligations under this Agreement.

28 CONTRACT MANAGERS, COMMUNICATION AND MEETINGS

28.1 Contractor Contract Manager

- (a) The Contractor must ensure that at all times there is a Contractor Contract Manager who has been approved in writing by the Customer (acting reasonably) who:
 - (i) possesses the appropriate skill, expertise, authority and qualifications to exercise their roles and responsibilities;
 - (ii) acts in good faith in the exercise of the role and responsibilities of the Contractor Contract Manager under this Agreement; and
 - (iii) is permanently located (or reasonably available) in Perth, Western Australia.
- (b) The Contractor Contract Manager is to be the Contractor's primary point of contact with the Customer in relation to this Agreement.
- (c) The Contractor acknowledges and agrees that:
 - (i) the Contractor Contract Manager has the authority to represent the Contractor for the purposes of administering this Agreement; and
 - (ii) a direction, notice or document is given to the Contractor if it is given to the Contractor Contract Manager.
- (d) The Contractor may only replace the Contractor Contract Manager if any such replacement has the prior approval of the Customer (such approval not to be unreasonably withheld or delayed).
- (e) Except as otherwise set out in the Governance Schedule, the Contractor Contract Manager may, with the Customer's approval and by notice in writing to the Customer, delegate the performance of some of the Contractor Contract Manager's responsibilities to the nominated delegate of the Contractor.
- (f) The Contractor must ensure that the Contractor Contract Manager performs the role and responsibilities of the Contractor Contract Manager set out in the Governance Schedule.
- (g) The Contractor must ensure that the Contractor Contract Manager attends all meetings required under this Agreement or reasonably requested by the Customer.

28.2 Customer Contract Manager

- (a) The Customer must ensure that at all times there is a Customer Contract Manager. The Customer may change the Customer Contract Manager from time to time by the Customer Contract Manager (or a delegate in accordance with clause 28.2(d)) providing notice to the Contractor Contract Manager of such change.
- (b) The Customer may exercise any of its rights or perform any of its obligations under this Agreement through the Customer Contract Manager, other than a variation to this Agreement pursuant to clause 62.2.
- (c) Without limiting clause 28.2(b), only the Customer Contract Manager (or a delegate in accordance with clauses 28.2(d)) may:
 - (i) give directions and notices to be given by the Customer;
 - (ii) receive all notices and documents to be received by the Customer;
 - (iii) grant approvals in writing as contemplated by this Agreement; and

- (iv) provide agreement in writing on behalf of the Customer for matters that may, as expressly provided for in this Agreement, be agreed in writing by the Customer and the Contractor.
- (d) The Customer Contract Manager may at any time delegate the exercise of any power or authority of the Customer Contract Manager in accordance with this Agreement to another person, and may terminate or vary that delegation. A delegation under this clause 28.2(d) may only be made in accordance with the Governance Schedule. A reference in this Agreement to a delegate of the Customer Contract Manager means a delegate in accordance with this clause 28.2(d).
- (e) The Contractor must not accept or act upon directions, notices, approvals or agreements in writing from an employee or agent of the Customer other than the Customer Contract Manager (or a delegate in accordance with clause 28.2(d)).
- (f) All directions given by the Customer must be in writing, except if, in the Customer's opinion, the direction is urgent, in which case the Customer may give that direction verbally (and must then confirm it in writing as soon as reasonably practicable).

28.3 Contract Managers

- (a) The primary functions of the Contract Managers are to provide leadership, to facilitate the effective management of this Agreement and to assist in the resolution of Disputes, as set out in clause 54. The decisions of the Contract Managers are not binding on the parties, except as otherwise set out in this Agreement.
- (b) The Contract Managers (or their delegates appointed in accordance with clauses 28.1 and 28.2) will:
 - (i) discuss issues, risks, the reports issued under clause 30 and other matters relevant to the Services (including performance issues) and propose solutions for consideration and possible adoption by the Contractor in performing the Contractor's obligations under this Agreement;
 - (ii) monitor the performance of the Contractor's obligations under this Agreement; and
 - (iii) provide operational management in respect of the Agreement and the Services.

28.4 Communication and meetings

- (a) The parties must cooperate with each other, and each party must promptly provide any input reasonably requested by the other party.
- (b) The Contractor must (and must ensure that the Approved Subcontractors):
 - (i) attend the meetings set out in the Statement of Requirements and the Governance Schedule;
 - (ii) attend any other meetings with the Customer upon a reasonable request by the Customer;
 - (iii) communicate with the Customer as frequently as required by the Customer or this Agreement to support the Objectives; and
 - (iv) communicate with the Customer in a timely manner and as required under the Governance Schedule.

29 CO-OPERATION WITH THIRD PARTIES

29.1 General obligations

- (a) The Contractor acknowledges that (and agrees to co-operate with the Customer, Credential Providers, Credential Consumers and Other Contractors on the basis that):
 - (i) co-operation and co-ordination is essential to achieving the Objectives; and

- (ii) the successful and timely deployment of Software Development Kits is a material and significant part of this Agreement in respect of the Solution; .
- (b) The Contractor must co-operate in good faith with, and provide such assistance and information as is reasonably necessary to, the Customer and any third parties (including Credential Providers, Credential Consumers and Other Contractors) to enable the Customer or such third parties to:
 - (i) achieve the Objectives;
 - (ii) ensure that the Solution interfaces and interoperates with the ServiceWA App, the Customer ICT Environment and applicable Participating Systems (including in the manner contemplated in the Statement of Requirements and the Project Documents);
 - (iii) successfully deploy a Software Development Kit for the ServiceWA App, the Customer ICT Environment and each Participating System; and
 - (iv) resolve any issues arising with:
 - (A) the integration of components or sub systems of the Solution;
 - (B) the interfacing or interoperability of the Solution or the Software Development Kits with the ServiceWA App or the Customer ICT Environment; and
 - (C) the interfacing or interoperability of the Solution or the Software Development Kits with the Participating Systems.
- (c) The Contractor must:
 - (i) collaborate as necessary with Credential Providers, State Credential Consumers and Other Contractors, including in respect of the design, development and deployment of Software Development Kits;
 - (ii) participate fully and cooperatively in any workshops and meetings with Credential Providers in respect of the design, development and deployment of Software Development Kits;
 - (iii) implement any processes the Customer considers reasonably necessary or desirable between itself and the Credential Providers, State Credential Consumers and any Other Contractors; and
 - (iv) comply with its obligations under clauses 29.1(c)(i) and 29.1(c)(ii) without derogating from its obligations in respect of the performance of the Services,

to ensure delivery to the Customer of the following outcomes:

 - (v) the Contractor's Interfacing Services are performed to meet or exceed the requirements under this Agreement;
 - (vi) the Contractor uses reasonable endeavours to support the implementation by each Credential Provider of the applicable Software Development Kits, as required by the Customer; and
 - (vii) the Customer's involvement in resolving service problems or managing the relationship between the Contractor and Credential Providers, State Credential Consumers and any Other Contractors is minimised.
- (d) The Contractor must:
 - (i) provide such access to the Contractor's Resources and services being performed, managed or operated by the Contractor to the extent necessary for the performance of the Services; and
 - (ii) without in any way limiting the Contractor's obligations under clause 29.2, participate in any training and other familiarisation processes to permit the Contractor to obtain the knowledge necessary to receive or operate goods or services provided by the Customer or third parties.

29.2 Project management reviews

- (a) On a monthly basis, the parties must review the progress and performance of the Project during the previous month to ensure that:
 - (i) the Services have been performed in accordance with the Statement of Requirements and the Ongoing Services Schedule (as applicable);
 - (ii) the Services have been performed in accordance with the Objectives;
 - (iii) the Project and the Project are otherwise on track; and
 - (iv) following the First Deployment Date and during the Ongoing Services Term, the Solution is operating efficiently and in accordance with the Specifications.
- (b) If the Services have not been performed in the manner described in clause 29.2(a), or if the Project is not progressing in the manner contemplated by this Agreement, and if required by the Customer, the parties must discuss whether any variation to this Agreement is required in order to ensure that the Objectives and other goals and objectives referred to in clause 29.2(a) can be achieved (with the intention that any amendments agreed by the parties acting reasonably may be implemented as a Variation Order in accordance with clause 17).

30 REPORTING

30.1 Reports

- (a) The Contractor must prepare, and submit to the Customer:
 - (i) the reports set out in this Agreement and any Project Document, with the information set out in, and in accordance with the timeframes set out in, this Agreement and those Project Documents;
 - (ii) the reports set out in any Variation Order or Statement of Work, with the information set out in, and in accordance with the timeframes set out in, the Variation Order or Statement of Work; and
 - (iii) promptly, any other reports or information in relation to this Agreement or the Services which the Customer reasonably requests from time to time.
- (b) The Contractor must ensure that all of the information contained in each report submitted under this clause 30 is consistent and integrated, and is clear, legible and easily interpretable by the Customer.
- (c) The Contractor must deliver each report under this clause 30 to the Customer in electronic format, unless otherwise directed by the Customer in writing.
- (d) The Customer may, from time to time and acting reasonably, direct alterations to the format of any or all parts of any report submitted under this clause 30.

30.2 Additional reporting obligations

During the Term, except to the extent prohibited by Law, the Contractor must:

- (a) promptly (and, in any event, within 3 Business Days) advise the Customer:
 - (i) of any breach of this Agreement by the Contractor (itself or through the acts or omissions of any of its Personnel) of which the Contractor is or becomes aware;
 - (ii) of any breach of any Authorisation by the Contractor or any Subcontractor of which the Contractor is or becomes aware;
 - (iii) if the Contractor is or becomes, or if one of its Subcontractors is or becomes (at any time during which they are involved in connection with the Services), a suspended supplier or a debarred supplier within the meaning of the *Procurement (Debarment of Suppliers) Regulations 2021*; and

- (iv) of any undertakings that the Contractor or any Subcontractor gives, or is legally required to give, to any Government Agency or regulator which relate to this Agreement; and
- (b) upon request by the Customer, promptly (and, in any event, within 3 Business Days) provide a written report on any such breach, suspension, debarment or undertaking referred to in clause 30.2(a), which report must contain full particulars of the circumstances in relation to the breach or undertaking and the proposed action and time for complying with the undertaking or remedying, making good or ameliorating the effect of the breach.

30.3 Non-compliance

If the Customer notifies the Contractor that a report (or a revised report) submitted under this clause 30 does not meet the requirements of this clause 30, then the Contractor must submit a revised report that does comply with this clause 30 promptly and, in any event, within 5 Business Days after receipt of the Customer's notice.

31 PERFORMANCE REVIEWS, INSPECTIONS AND AUDITS

31.1 Performance reviews

The Contractor must participate in the formal and informal reviews of the Contractor's performance, as set out in the Governance Schedule.

31.2 Inspection and performance measure checks

- (a) The Customer may, at any time, independently (itself or, subject to clause 1.3(d), through a nominated third party):
 - (i) inspect the operation of the Solution and the presentation and verification of Implemented Credentials;
 - (ii) review, inspect, witness tests of and otherwise examine any aspect of the Solution, the other Deliverables, the performance of the Services, and the performance of the Contractor's obligations under this Agreement; and
 - (iii) inspect and verify the Records held and maintained under this Agreement by the Contractor and its Personnel, including for the purposes of verifying the Contractor's compliance with this Agreement and verifying the accuracy of information and reports provided by, and claims for payment made by, the Contractor.
- (b) The Contractor must provide the Customer, promptly upon request by the Customer, progress reports setting out, in such detail as the Customer requests, the status of any of the Deliverables or the performance of any of the Services.
- (c) The Customer may, at any time, independently (itself or, subject to clause 1.3(d), through a nominated third party) measure the Contractor's performance against any or all of the Service Levels, and against the requirements for the Solution and the Services set out in the Agreement or a Contract Document.
- (d) In the event of any discrepancy between the Customer's measurement of performance and the Contractor's measurement of performance, the Contract Managers must meet to discuss and resolve such discrepancy and the underlying causes of any such discrepancy and determine the extent of any failure to comply with the Service Levels.

31.3 Independent financial assessment

At the times reasonably required by the Customer (but no more than once in each Financial Year), the Customer may, through its nominated independent financial assessor, conduct a financial assessment of the Contractor and its Related Companies.

31.4 Annual compliance checks

Within 10 Business Days following the start of each Financial Year during the Term, the Contractor must submit to the Customer:

- (a) a certificate of currency for each of the Insurance Policies;
- (b) the results of the Security Audit that the Contractor was required to undertake during the immediately preceding Financial Year; and
- (c) written confirmation that, during the immediately preceding Financial Year, the Contractor has obtained, and (where required under clause 35.3) provided copies to the Customer of, all required Police Clearances, register checks and other documentation in accordance with clause 35.3.

31.5 Customer audit

- (a) The Customer may require the Contractor to undergo an annual audit of the Contractor's performance of its obligations under this Agreement, provided that any person selected to conduct an audit must agree to keep the Contractor's Confidential Information confidential in accordance with terms that are no less onerous than those set out in clause 42.1.
- (b) Without limiting this clause 31.5, the audit may include any aspect of the Contractor's obligations under this Agreement, including any aspect of the Solution, the other Deliverables and the Services.
- (c) In addition to the annual audit under clause 31.5(a), the Customer may require the Contractor to undergo additional audits including the audits set out in the Performance Assessment Regime and elsewhere in this Agreement.
- (d) The Contractor may be subject to an audit by the Auditor General pursuant to clause 62.18, and the provisions of this clause 31 apply to any such audit.
- (e) Where any audit performed in accordance with this Agreement shows that the Contractor has breached this Agreement, then, without limiting the Customer's rights under this Agreement or any Law in respect of a breach, the Contractor must reimburse the Customer for the Customer's reasonable costs incurred in performing the audit.

31.6 Contractor must cooperate

- (a) The Contractor must provide the Customer and its nominated third parties who are assisting the Customer with conducting a performance review, performance measure check, inspection, independent assessment or audit under this Agreement with any assistance reasonably requested by the Customer or its nominated third party to enable those persons to perform any performance review, performance measure check, inspection or audit of the kind set out in this Agreement.
- (b) Without limiting clause 38, the Contractor must give (and ensure each Subcontractor gives) the Customer and its nominated third parties who are assisting the Customer with conducting a performance review, performance measure check, inspection, independent assessment or audit under this Agreement with:
 - (i) proper access to Personnel of the Contractor, its Related Companies and its Subcontractors, and the Contractor must:
 - (A) subject to the Customer giving at least 5 Business Days' notice, make those Personnel available for inquiry or interview by the Customer or its nominated third parties; and
 - (B) take all reasonable steps to ensure those Personnel cooperate with and provide to the Customer and its nominated third parties all information that the Customer may require for the inquiry or interview;
 - (ii) proper access to Records of the Contractor and its Subcontractors (and permit the Customer and its nominated third parties to audit, inspect and take copies of those Records);

- (iii) the Contractor's performance data (including in relation to Service Levels), and any measurement or reporting tools used by the Contractor to collate or present the Contractor's performance data;
- (iv) any information requested by the Customer or its nominated third parties relating to the Contractor's implementation of information security measures as required under clause 45; and
- (v) any other information and assistance reasonably requested by the Customer or its nominated third parties,

to enable the Customer to audit and verify all such data and information and produce its own reports, and to otherwise perform any performance review, inspection or audit of the kind set out in this Agreement, promptly after receiving such a request from the Customer.

- (c) The Contractor must provide the Customer and its nominated third party auditor with proper access to the Contractor Systems and the other facilities of the Contractor and its Subcontractors, and to any information and Records, for the purpose of conducting an audit in accordance with this Agreement.
- (d) The Contractor must:
 - (i) obtain the consent of each Relevant Individual to the disclosure by the Contractor, pursuant to clause 31.6(b), of the person's:
 - (A) work contact details;
 - (B) skills, qualification and experience relevant to the individual's role in connection with the Services; and
 - (C) police clearance (or lack thereof); and
 - (ii) if requested by the Customer or any of its nominees, use reasonable endeavours to obtain the consent of each Relevant Individual to the disclosure by the Contractor of other relevant Personal Information.
- (e) Nothing in this clause entitles the Customer or any nominated third party to access:
 - (i) information regarding the Contractor's other customers, its profit margins or costs; or
 - (ii) information that does not reasonably relate to the performance (or non-performance) of the Contractor's obligations under this Agreement.

31.7 Contractor must remediate

- (a) If a performance review, performance measure check, inspection or audit conducted in accordance with this Agreement finds that the Contractor has not complied with this Agreement then, without limiting the Customer's other rights and remedies arising from that non-compliance, the Contractor must:
 - (i) immediately rectify the non-compliance;
 - (ii) notify the Customer in writing that the non-compliance has been rectified; and
 - (iii) promptly provide the Customer with any evidence or assistance requested by the Customer in order for the Customer to verify that the non-compliance has been rectified.
- (b) Where any audit, inspection or quality assurance exercise performed in accordance with this Agreement shows that the Contractor has breached this Agreement, then, without limiting the Customer's rights under this Agreement or any Law in respect of a breach, any reasonable costs incurred by the Customer in performing such audit, inspection or assurance exercise (as applicable) will be a debt due from the Contractor to the Customer and will be payable on the Customer's demand.

32.1 Use of the Customer ICT Environment

- (a) The Contractor must not, and must ensure that its Personnel do not, access the Customer ICT Environment or a Participating System unless access is required to perform the Services or the access is otherwise approved in advance in writing by the Customer.
- (b) The Contractor must establish and maintain appropriate safeguards against the unauthorised access, use or damage of the Customer ICT Environment and applicable Participating Systems in accordance with Good Industry Practice, the Customer Policies and any directions of the Customer.
- (c) When accessing the Customer ICT Environment or a Participating System, the Contractor must, and must ensure that its Personnel:
 - (i) access the Customer ICT Environment or Participating System (as applicable) only, and as strictly necessary, for the purposes set out in this Agreement or otherwise approved in advance in writing by the Customer;
 - (ii) are aware of and comply at all times with the Contractor's obligations under clauses 42, 43, 44 and 45, as well as all other relevant obligations under this Agreement; and
 - (iii) comply with all Customer Policies and any reasonable direction given to them by the Customer in respect of the Customer ICT Environment or a Participating System.
- (d) The Contractor must promptly notify the Customer if it becomes aware of any deficiencies or errors in the Customer ICT Environment or a Participating System.
- (e) The Contractor is responsible for informing itself, and keeping itself informed, about all aspects of the existing and proposed Customer ICT Environment and Participating Systems which are relevant to the Contractor's obligations under this Agreement. The Customer must make available to the Contractor information about the existing and proposed Customer ICT Environment and Participating Systems as reasonably requested by the Contractor for the purpose of informing itself as required by this clause 32.1(e).
- (f) The Contractor must ensure that it does not by any act or omission, without the Customer's prior written approval:
 - (i) adversely affect or alter the operation, functionality, technical environment or resource efficiency of the Customer ICT Environment or any Participating System; or
 - (ii) make any change to the Customer ICT Environment or any Participating System that increases the Charges payable by the Customer or impacts on the way in which the Customer conducts its operations in a manner which the Customer considers to be adverse.

32.2 Use of the Contractor Systems

- (a) The Contractor must ensure that the Contractor Systems:
 - (i) comply with the minimum requirements set out in this Agreement; and
 - (ii) are, at all times during the Term, sufficient, suitable and appropriate for the performance of the Contractor's obligations under this Agreement.
- (b) Prior to using any Contractor Systems to provide the Services, the Contractor must:
 - (i) have verified by appropriate testing, that the Contractor System has been properly installed, is operating in accordance with its specifications, and is performing its intended functions in a reliable manner; and
 - (ii) ensure that the Contractor Systems interact, interface and are compatible with the Customer Systems to the extent necessary for the proper performance of the Services.

- (c) If requested by the Customer, the Contractor must provide the Customer with the results of the testing described in clause 32.2(b).
- (d) The Contractor must not:
 - (i) use any Contractor Systems to host Customer Data; or
 - (ii) implement any material change to any Contractor Systems used to host Customer Data,
 unless the Customer has issued an Acceptance Certificate in respect of those Contractor Systems (or amended Contractor Systems, as applicable) following the procedure set out in clause 10.

33 CUSTOMER'S PROPERTY AND RESOURCES

33.1 Interpretation

In this clause 33:

- (a) **Owner** means the Customer, Credential Providers, any State Credential Consumers, and any Other Contractors, and may refer to any one or all of them as the context requires; and
- (b) **Resources** excludes Personnel save for clause 33.5.

33.2 Use of Owner's Property

- (a) All Resources and documents provided by or on behalf of the Owner remain the property of the Owner at all times, and the Contractor must use those Resources and documents only for the purpose of performing this Agreement.
- (b) The Contractor must keep all Resources supplied by or on behalf of the Owner in good working order and condition, except for fair wear and tear.
- (c) The Contractor must compensate the Owner for any Loss or damage to Owner's premises or property (including Resources), or any other property in the possession or control of the Owner, which is caused by or contributed to by the Contractor or the Contractor's Personnel.
- (d) The Contractor must return to the Owner all Resources and documents provided by or on behalf of the Owner, in the manner (if any) requested by the Owner, within 10 Business Days of a written request by the Owner.

33.3 No dealing with Owner's property

In respect of any of the Owner's equipment or any other tangible property of the Owner, whether in the Contractor's possession, custody or control or otherwise, the Contractor must not, and must ensure that each Subcontract with an Approved Subcontractor provides that the Approved Subcontractor must not:

- (a) create any security interest or possess or assert any lien or other right against or to that property;
- (b) give possession of that property to another person other than the Owner or where the Owner expressly authorises it to do so;
- (c) permit any of that property to become an accession to or commingled with any asset that is not part of that property;
- (d) move any of that property outside Western Australia;
- (e) allow any other person to acquire control of any of that property at any time; or
- (f) otherwise sell, transfer, assign, allow use of, provide access to, dispose of, commercialise, lease, rent, convert, grant an option over, allot, declare a trust over or otherwise deal with that property,

except where:

- (g) specifically provided otherwise in this Agreement; or

- (h) the Owner gives its prior written approval to such dealing with that property.

33.4 Return of Owner's property

The Contractor must deliver to the Owner (free from any encumbrances created by the Contractor or its Personnel) all of the Owner's equipment and other tangible property in the possession, custody or control of the Contractor or its Personnel, at the earliest of:

- (a) within 10 Business Days of such property ceasing to be required by the Contractor for the performance of its obligations under this Agreement;
- (b) as soon as possible and, in any event, within 10 Business Days, after receiving a reasonable demand by the Owner; and
- (c) at least 3 Business Days prior to the End Date.

33.5 Efficient use of Resources

- (a) The Contractor must:
 - (i) use efficiently, taking into account the relevant circumstances, any Resources which are charged to the Customer on a usage basis or paid for directly by the Customer; and
 - (ii) perform the Services in the manner that is the most cost-effective for the Customer while maintaining the levels of quality and performance which are consistent with the levels of quality and performance otherwise required of the Contractor under this Agreement.
- (b) The Contractor must from time to time identify, and notify the Customer of, methods that the Customer can employ to use the Services and have access to the Solution more cost effectively.

34 PREMISES

34.1 Location of Services

- (a) Unless the Customer agrees otherwise in writing, the Services will be performed (whether by the Contractor or its Personnel) in Australia.
- (b) Where this Agreement requires the Contractor to perform certain Services at a particular location, the Contractor must perform the relevant Services only at that location, unless the Customer otherwise agrees in writing.
- (c) If (with the Customer's prior written approval) the Contractor or its Personnel performs any Services from outside Australia, the Contractor must ensure that it complies with all applicable Trade Control Laws, and with any applicable policy of the State in respect of trade restrictions (or in respect of other restrictions applying to particular countries).

34.2 Contractor Premises

- (a) The Contractor must ensure that the Contractor Premises:
 - (i) are of a quality which is sufficient for the Contractor to be able to perform the Services in accordance with this Agreement; and
 - (ii) without limiting clause 34.2(a)(i), include all equipment, telecommunications devices and any other infrastructure which are required as part of the Services.
- (b) Nothing in this Agreement requires the Contractor to provide the Customer with access to the premises of any Cloud Service Provider that is not a Related Company of the Contractor.

34.3 Customer Premises

- (a) The Customer must give or procure a third party to give the Contractor and the Contractor's Personnel access to the Customer Premises during normal business hours (and when otherwise reasonably required) to the extent required to enable the Contractor to perform its obligations in accordance with this Agreement.
- (b) The Contractor acknowledges that the Customer and each Credential Provider at all times retain overriding control of their respective Customer Premises and all Personnel within their respective Customer Premises.
- (c) The Contractor must:
 - (i) only access and use the Customer Premises for the sole purpose of performing the Services;
 - (ii) follow all Customer Policies in respect of access to the Customer Premises;
 - (iii) when using the Customer Premises, ensure that it keeps those premises and the surrounding areas secured, clean and tidy;
 - (iv) comply, and must ensure that the Contractor's Personnel comply, with all Customer Policies in relation to the Customer Premises and any direction of the Customer or the Credential Provider (as applicable) in relation to their respective Customer Policies;
 - (v) comply with any reasonable direction given by the Customer or the Credential Provider (as applicable) in relation to their respective Customer Premises;
 - (vi) do everything reasonably necessary to protect people and property on the Customer Premises;
 - (vii) avoid unnecessary interference with the passage of people and vehicles, and with the operations of the Customer or the Credential Provider (as applicable) and the owner or occupier of the Customer Premises and their Personnel;
 - (viii) prevent any nuisance or disturbance being caused at the Customer Premises in connection with the Contractor's Personnel or the supply of the Services; and
 - (ix) remove any of the Contractor's Personnel from the Customer Premises if the Customer or the Credential Provider (as applicable) or the owner or occupier of the Customer Premises directs the Contractor to remove those Personnel (which direction may be via any medium, including orally or by email). The Contractor must remove such Personnel promptly and, in any event, within any reasonable timeframe included in the Customer or the Credential Provider's direction.
- (d) The Customer or the Credential Provider (as applicable) may temporarily deny or suspend access to their respective Customer Premises at any time. If the Customer or the Credential Provider (as applicable) temporarily denies or suspends access to their respective Customer Premises this will be treated as a Customer Fault for the purposes of clause 16.2, unless the suspension arose out of:
 - (i) a failure by the Contractor to comply with this Agreement;
 - (ii) an investigation into the conduct of the Contractor or the Contractor's Personnel; or
 - (iii) circumstances not within the Customer or the Credential Provider's (as applicable) reasonable control.

The Customer will, following a temporary denial or suspension of access, permit a resumption of access as soon as practicable.

34.4 Use of Premises in compliance with Laws

Without limiting clause 4.1(a), the Contractor must comply with all Laws and other health, safety and security standards in accordance with Good Industry Practice in respect of its use of any

premises as part of the performance of the Services, whether those premises are Customer Premises or Contractor Premises.

35 PERSONNEL

35.1 Personnel

- (a) In performing the Contractor's obligations under this Agreement, the Contractor must:
 - (i) only use suitably qualified and competent Personnel who are experienced and thoroughly trained in all aspects of the Services which they will be performing;
 - (ii) ensure that its Personnel at all times hold all necessary Authorisations (including visas) required to perform the tasks allocated to, or undertaken by, them in connection with this Agreement; and
 - (iii) ensure that its Personnel act in good faith, in a diligent and competent manner, in compliance with all Laws, with all due skill and care and comply with any reasonable directions of the Customer.
- (b) The Contractor must ensure that the remuneration and terms of employment of all of the Contractor's Personnel who are involved in the performance of the Services will, for the duration of this Agreement, be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.

35.2 Key Personnel

- (a) In providing the Services, the Contractor must:
 - (i) subject to this clause 35.2(a), ensure that the Key Personnel perform the roles allocated to them in this Agreement, and in the Project Documents (and as otherwise agreed by the parties in writing from time to time), and devote sufficient time to the role they are retained to perform so that their role is performed efficiently, skilfully and in accordance with this Agreement;
 - (ii) promptly notify the Customer if any Key Personnel is or will be unavailable to perform his or her allocated role for any reason and, if requested by the Customer, replace the relevant Key Personnel;
 - (iii) promptly notify the Customer if any Key Personnel has changed following a change in Control of the Contractor; and
 - (iv) not remove or replace any Key Personnel without the Customer's prior written consent, except for serious illness, incapacity or death, pursuant to clause 35.3 or 35.4, or the resignation from or termination of such Key Personnel's engagement with the Contractor.
- (b) Before replacing any Key Personnel pursuant to clause 35.2(a), the Contractor must:
 - (i) provide the Customer with details of the proposed replacement Key Personnel's skills, qualifications and experience and any other information reasonably requested by the Customer; and
 - (ii) obtain the Customer's written approval to the proposed replacement Key Personnel.

35.3 Police Clearances and Integrity Checks

- (a) The Contractor must ensure that each Relevant Individual provides to the Contractor:
 - (i) an Australia-wide Police Clearance in accordance with the Customer's police clearance requirements:
 - (A) prior to commencing or re-commencing the performance of any part of the Services;

- (B) promptly after such Police Clearance (or the then-current Police Clearance) lapses or ceases to be current;
 - (C) promptly after Change in Control of the Contractor (other than in respect of a Relevant Individual who has already provided a current Police Clearance); and
 - (D) at any other time reasonably requested by the Customer;
 - (ii) in respect of any Relevant Individual that has been living outside of Australia for a total of 2 or more years in the last 5 years:
 - (A) a citizenship certificate or evidence of a valid Australian visa;
 - (B) a copy of the passport bio data page;
 - (C) a copy of the birth certificate; and
 - (D) a copy of the overseas police records check or certification (through Fit2Work, or such other method as the Customer requires) for each country the Relevant Individual has lived in for more than 6 months other than Australia,

at equivalent times to those set out in clause 35.3(a)(i); and
 - (iii) such other clearances or register checks as required by the Customer from time to time, including integrity checks.
- (b) For the purposes of clause 35.3(a)(i)(B), a Relevant Individual's Police Clearance will lapse:
- (i) after the expiry of 3 years from the date of the Police Clearance; or
 - (ii) if the Relevant Individual ceases to be employed or engaged by the Contractor.
- (c) The Contractor must notify the Customer in writing, prior to the commencement (or recommencement) of the performance of any part of the Services by each Relevant Individual, that:
- (i) it has obtained all of the Integrity Checks required under clause 35.3(a) in respect of the Relevant Individual; and
 - (ii) the Integrity Checks do not indicate any convictions for the Relevant Individual, or any other reason why the Relevant Individual is not suitable for involvement in the Services.
- (d) If a Relevant Individual's Integrity Checks indicate any convictions, or any other reason why the Relevant Individual is not suitable for involvement in the Services, the Contractor must promptly (and, in any event, within 3 Business Days of receipt) provide to the Customer a copy of each document comprising the Relevant Individual's Integrity Checks.
- (e) The Contractor must provide the Customer copies of the Integrity Checks promptly (and, in any event, within 7 Business Days) after receiving a request from the Customer.
- (f) The Contractor consents to, and must obtain the consent of each Relevant Individual to, the Customer and its authorised agents making, or causing to be made, whatever enquiries are considered necessary or appropriate by the Customer concerning:
- (i) the suitability of the Contractor and of Personnel for performing the Services;
 - (ii) the character or reputation and any known or suspected criminal activity, associates, antecedents or circumstances of the Contractor and its Personnel either from state, interstate or overseas authorities.
- (g) Without limiting clause 35.4, if:
- (i) the Contractor fails to provide notice in respect of a Relevant Individual pursuant to clause 34.3(c);
 - (ii) the Contractor fails to provide copies of the Integrity Checks for a Relevant Individual as required under clauses 35.3(d) and 35.3(e);

- (iii) any Police Clearance evidences that any Relevant Individual has committed a criminal offence punishable by imprisonment or detention, or
- (iv) any Relevant Individual is charged or convicted of any offence during the Term,

then the Contractor must promptly inform the Customer of that fact and the Customer may, without prejudice to its other rights under this Agreement, direct the Contractor to:

- (v) remove that Relevant Individual from any involvement in the performance of the Services; and
- (vi) subject to clause 35.3(a), if the Relevant Individual has commenced the performance of any Services, replace them with another person with similar experience, skills and knowledge,

(which direction may be via any medium, including orally or by email) and the Contractor must comply with such a request promptly (being, in respect of the removal of the Relevant Individual, within 2 hours of the request) and, in any event, within any reasonable timeframe included in the Customer's direction, and provide a suitable replacement for the Relevant Individual. The Customer is not obligated to provide any reasons or justification to support any direction under this clause 35.3(g).

- (h) The Customer may, in its absolute discretion and subject to any conditions, exempt any Contractor's Personnel engaged for a period of less than 21 Business Days over any 12-month period from obtaining a Police Clearance or other Integrity Check. Any such exemption is valid only if it is in writing by the Customer.
- (i) The Contractor must ensure that the Customer is notified if any event occurs (or circumstances exist) in relation to a Relevant Individual which causes, or has the potential to cause, that Relevant Individual to pose a danger to the health or well-being of any person, including where a Relevant Individual has been charged or convicted of a criminal offence which was not brought to the Customer's attention in a Police Clearance.

35.4 Removal of Personnel

- (a) The Customer may, acting reasonably, direct the Contractor to remove from any activity connected with the Services any individual employed or engaged in connection with the Services (which direction may be via any medium, including orally or by email).
- (b) On receipt of a direction under clause 35.4(a), the Contractor must promptly take steps to remove the individual from the activity connected with the Services and appoint an alternative individual with similar experience, skills and knowledge who is acceptable to the Customer and avoid any interruption to the performance of the Services. The Contractor must remove the individual promptly and, in any event, within any reasonable timeframe included in the Customer's direction.
- (c) An individual removed under this clause 35.4 must not be employed or engaged in respect of activities connected with the Services without the prior written approval of the Customer.

35.5 Exit process for Personnel

Whenever any individual ceases being involved with the performance of the Services (whether following a direction under clause 34.3(c)(ix), clause 35.3(g)(v), clause 35.4(a) or otherwise), the Contractor must ensure that the individual complies with the Customer's formal staff exit processes (including in respect of returning all security passes for the Customer Premises and the revocation of the individual's access to the Customer Systems).

35.6 No employment relationship

- (a) The Contractor is solely responsible for the employment of the Contractor's Personnel required to perform the Services and all employment costs of the Contractor's Personnel.

- (b) The Contractor must ensure that all individuals comprising the Contractor's Personnel who are involved in the performance of the Services are paid any remuneration (including any bonus or incentive) and are provided with any employment-related legal right or entitlement due to them in connection with their employment or engagement by the Contractor or a Subcontractor, including any right or entitlement related to:
 - (i) hours of work;
 - (ii) superannuation, pension or retirement benefits;
 - (iii) leave;
 - (iv) notice of termination; and
 - (v) severance or redundancy.
- (c) If, at any time, the Customer is considered to be an employer of any of the Contractor's Personnel and is obliged to make payments in respect of the amounts paid or benefits provided to, or in relation to, any of the Contractor's Personnel, the Contractor:
 - (i) must make all such payments on behalf of the Customer; and
 - (ii) indemnifies the Customer against all Losses it suffers or incurs relating to the Contractor's Personnel, including:
 - (A) any additional tax, levy or other payment whatsoever, including any interest, penalty or late fee that may be payable in respect of the late or non-payment of such tax, levy or other payment; and
 - (B) remuneration (including any bonus or incentive), annual leave, personal leave, long service leave, compassionate leave or other leave, or any other payment or entitlement to be paid or provided to such persons.

35.7 Industrial Relations Matters and Industrial Action

- (a) The Contractor is responsible for all Losses, delay or disruption it suffers arising out of, or in connection with, any Industrial Relations Matter relating to, or Industrial Action of, the Contractor's Personnel.
- (b) The Contractor warrants that, before the date of this Agreement, it informed itself of all Industrial Relations Matters relevant to the performance of this Agreement.

35.8 Audit of Employment and Industrial Relations Practices

- (a) An agent or representative of the State may commission an audit of the Contractor's or any Subcontractor's employment or industrial relations practices (including terms of employment) in connection with this Agreement and Deliverables and Services performed or provided under or in connection with this Agreement, and, upon such commissioning, the following provisions apply.
- (b) The Contractor must, and must ensure that its Subcontractors, fully cooperate with the agent or representative of the State and any auditor appointed by them in any audit including to:
 - (i) allow an agent or representative of the State access to all employment related information in the Contractor's or Subcontractor's (as the case may be) ownership, possession or control, and allow an agent or representative of the State to conduct audits of all employment and payroll records in the Contractor's or Subcontractor's (as the case may be) ownership, possession or control;
 - (ii) allow auditors appointed by the agent or representative of the State to communicate directly with employees of the Contractor or Subcontractors (as the case may be), and to have access to sites and premises in the ownership, possession or control of the Contractor or relevant Subcontractor (as the case may be) for the purpose/s of the audit;

- (iii) ensure that all employment related information (including access to such Information), in the Contractor's or relevant Subcontractor's ownership, possession or control, is promptly provided to the auditor on request;
 - (iv) allow the agent or representative of the State to communicate with (including providing information to) the employees of the Contractor and relevant Subcontractors; and
 - (v) promptly rectify any problem or wrong identified by the auditor and notified to the Contractor or relevant Subcontractors (as the case may be).
- (c) The Contractor acknowledges and agrees, and must ensure that each of its Subcontractors acknowledges and agrees, that the agent or representative of the State may refer any problem or wrong identified by the auditor to any State or Commonwealth body or authority having an oversight role in respect to employment or industrial relations matters.
- (d) In this clause 35.8, **employment related information** means information (including facts, data, records and documentation) pertaining to employees or the terms and conditions of their employment, or payroll.

36 SUBCONTRACTING

36.1 Contractor may Subcontract

- (a) The Contractor may enter into a Subcontract for the performance of any part of the Services:
- (i) only with an Approved Subcontractor and only in relation to the particular Services for which the Customer has approved that Approved Subcontractor in writing (or as set out in Schedule 1); and
 - (ii) only in accordance with this clause 36.
- (b) Except as set out in clause 36.1(a), the Contractor must not subcontract any portion of the Services. Without limiting the generality of this clause 36.1(b), the Contractor must not subcontract to an Approved Subcontractor any part of the Services for which the Customer has not approved that Approved Subcontractor.
- (c) The Contractor must provide any information which is reasonably requested by the Customer in relation to a proposed Approved Subcontractor, which may include:
- (i) the Services proposed to be carried out by;
 - (ii) the experience and past performance of; and
 - (iii) financial information and details of the corporate structure of, the proposed Approved Subcontractor.

36.2 Subcontractor and Subcontract requirements

- (a) The Contractor must ensure that:
- (i) each Subcontractor is suitably qualified, competent, experienced and trained in all aspects of the obligations which they will be performing;
 - (ii) each Subcontractor and each of its Personnel has all required Authorisations, Police Clearances, security clearances and other integrity checks required of the Contractor's Personnel under this Agreement (including the Integrity Checks); and
 - (iii) each Subcontractor is not, at any time during which they are involved in connection with the Services, a suspended supplier or debarred supplier within the meaning of the *Procurement (Debarment of Suppliers) Regulations 2021*.
- (b) Unless the Customer agrees otherwise in writing, the Contractor must ensure that each Subcontract with an Approved Subcontractor also contains provisions to the effect that:

- (i) the Approved Subcontractor's Subcontract will not expire until the End Date under this Agreement;
- (ii) the Approved Subcontractor must, and must ensure that its Personnel, comply with any reasonable directions which are given by, and provide any reasonable assistance that is requested by, the Customer (or its third party nominee) in relation to the Services (including in relation to any Transition-Out);
- (iii) the Approved Subcontractor must comply with terms not less onerous than those set out in clauses 37, 38, 41, 42, 43, 44 and 45;
- (iv) Part 1F of the *Civil Liability Act 2002* (WA) (and equivalent provisions in other jurisdictions) is excluded in the terms set out in clause 62.13;
- (v) the Approved Subcontractor must effect and maintain the insurance policies required of Approved Subcontractors under clause 50.4;
- (vi) the Approved Subcontractor must not, without the Customer's prior written approval, terminate any part of the Approved Subcontractor's Subcontract; and
- (vii) the Approved Subcontractor must not, without the Customer's prior written approval, assign, novate or subcontract any part of the Subcontract.

36.3 Service Transfer Deeds

- (a) Prior to an Approved Subcontractor commencing the performance of any part of the Services, the Contractor must procure from the Approved Subcontractor a properly executed Service Transfer Deed, in the form set out in Appendix A to the Contract Details, in respect of all services to be provided by the Approved Subcontractor in connection with this Agreement.
- (b) The Contractor must:
 - (i) itself properly execute the Service Transfer Deed procured in accordance with clause 36.3(a); and
 - (ii) deliver to the Customer each deed procured in accordance with this clause 36.3,
 prior to the Approved Subcontractor commencing the performance of any part of the Services.
- (c) Without limiting any other right or remedy of the Customer under this Agreement or at Law, if the Contractor fails to comply with its obligations under clause 36.3(a) or 36.3(b), the Contractor must immediately remedy that failure (including by procuring and delivering any relevant Services Transfer Deeds to the Customer), including upon receiving a written request from the Customer (which request may be given at any time during the Term).

36.4 Removal of Subcontractors

If a Subcontractor has (in the Customer's reasonable opinion) caused or contributed to the Contractor committing a Material Breach, or an Insolvency Related Event occurs in respect of the Subcontractor, then, without limiting the Customer's rights in respect of that Material Breach or Insolvency Related Event:

- (a) the Customer may direct the Contractor in writing to terminate the engagement of the relevant Subcontractor (to the extent that it relates to the Services); and
- (b) the Contractor must comply with a direction given by the Customer in accordance with clause 36.4(a) within 5 Business Days after the direction being given.

36.5 Contractor remains liable for Subcontractors

- (a) The Contractor is not relieved from, and remains fully responsible for, the Contractor's obligations under this Agreement notwithstanding:

- (i) procurement of any Resources, including any licenses to Third Party Software;
 - (ii) any degradation in performance or defect in any Contractor Systems, Contractor Software, Customised Software, Developed Software, or Third Party Software, and including any issue or matter connected to or arising out of any act or omission of the supplier of Third Party Software;
 - (iii) the engagement or performance of any Subcontractor; or
 - (iv) the termination (for any reason) of any Subcontract.
- (b) The Contractor is responsible for:
- (i) all acts of its Subcontractors and each of their employees (including any work performed by its Subcontractors); and
 - (ii) all omissions of its Subcontractors, and each of their employees (including any failure by its Subcontractors to perform work),
- as if those acts and omissions were acts and omissions of the Contractor itself.
- (c) Subject to clause 36.5(d) the Contractor is liable for, and indemnifies the Customer against, all Loss suffered or incurred by the Customer arising out of any acts, omissions, defaults, negligence or termination of any Subcontractor.
- (d) The indemnity in clause 36.5(c) does not apply to the extent that the Loss is caused by the Customer's breach of this Agreement or any negligent acts or omissions of the Customer or the Customer's Personnel.

36.6 Licences to Third Party Software

The Contractor must:

- (a) ensure that each licence procured by the Contractor for any Third Party Software in order to perform its obligations under this Agreement (**Software Licence**):
 - (i) is consistent with this Agreement, including in relation to the requirements in clauses 41, 42, 44 and 45; and
 - (ii) includes a provision requiring the supplier of the Third Party Software to novate the Software Licence to be directly between the supplier and the Customer in the event that the supplier terminates the Software Licence with the Contractor for any reason;
- (b) procure that each supplier complies with the terms set out in the relevant Software Licence; and
- (c) not, without the prior written approval of the Customer, terminate, assign, novate or subcontract any Software Licence.

37 WORK HEALTH AND SAFETY

37.1 General

- (a) In performing the Services, the Contractor must identify and exercise all necessary precautions to eliminate, so far as is reasonably practicable, all risks to the health, safety and welfare of the Contractor's Personnel, the Customer's Personnel, the Personnel of applicable Credential Providers, other users of the Customer Systems and the general public, to the extent that those people may be affected by, or by the performance or purported performance of, the Services.
- (b) The Contractor must:
 - (i) comply with, and ensure that its Personnel comply with, all Work Health and Safety Laws applicable or relevant to the Services, including Work Health and Safety Laws relevant to access to or use of the Customer Premises or the Contractor Premises by the Contractor;

- (ii) ensure that its Personnel comply with all Laws (including public health orders and directions) and Customer Policies relating to COVID-19 vaccinations (including in respect of vaccinations and attendance);
 - (iii) ensure that, to the extent required by any Law or Customer Policy, none of its Personnel enters or remains at any Customer Premises if the relevant Personnel has not been fully vaccinated (as set out in the applicable Laws) against COVID-19;
 - (iv) upon reasonable request by or on behalf of the Customer, demonstrate compliance with the Work Health and Safety Laws, and with the Laws and Customer Policies relating to COVID-19 vaccinations, including providing evidence of measures taken to achieve compliance; and
 - (v) perform all relevant functions and fulfil all relevant duties of an employer, occupier and all other obligations as a duty holder under the Work Health and Safety Laws.
- (c) The Contractor must:
- (i) consult, cooperate and coordinate with the Customer, and any relevant third parties, as reasonably requested to enable the Customer to comply with its obligations under all relevant Work Health and Safety Laws;
 - (ii) give the Customer notice of any act, omission, fact or circumstance:
 - (A) which is associated with the activities of the Contractor or any other person; and
 - (B) which materially affects the ability of the Contractor to perform the Services in a manner that is safe and without risks to health,
 as soon as practicable and, in any event, within 24 hours after such act, omission, fact or circumstance occurring; and
 - (iii) supply or arrange to be supplied all Resources necessary to ensure the Services are performed in a manner that is safe and without risks to health.
- (d) The Contractor must ensure that:
- (i) all Resources (excluding Personnel) supplied or arranged to be supplied by or on behalf of the Contractor are maintained in a condition that is safe and without risks to any person; and
 - (ii) the Contractor Premises are secured and maintained in a condition that is safe and without risks to any person.
- (e) If the Customer (acting reasonably) considers there is a risk of injury to people or damage to property arising from the performance of the Services:
- (i) the Customer may direct the Contractor to change its manner of performing the Services or to cease performing the Services until the risk is removed; and
 - (ii) the Contractor must (at its cost where the direction arises from a Contractor Fault, and otherwise at the Customer's cost) comply with any direction by the Customer under clause 37.1(e)(i).
- (f) The Contractor must take all actions that are reasonably practicable to minimise risk to people, property and Environment from the storing, handling or transportation of 'dangerous goods' (as that term is defined in the Dangerous Goods Safety Act).

37.2 Notification

The Contractor must:

- (a) provide notification of incidents as required under all relevant Work Health and Safety Laws of an employer or otherwise applicable to the role of the Contractor under this Agreement;
- (b) notify the Customer of any accident, incident which is notifiable under Work Health and Safety Laws, injury or property damage which:

- (i) occurs during the performance of the Services; or
 - (ii) is associated with the Services,
- as soon as practicable and, in any event, within 24 hours of such accident, incident, injury or property damage; and
- (c) within 2 Business Days after any such accident, incident, injury or property damage provide a written report to the Customer giving complete details of the accident, incident, injury or property damage including the results of investigations into its cause, any further investigations to be carried out and the anticipated timeframe within which they will be completed and any recommendations or strategies for prevention of a recurrence including the implementation of suitable control measures and remedial action as required.

37.3 Contractor to provide information regarding goods

The Contractor is responsible for the reporting of any 'reportable situations' (as that term is defined in the Dangerous Goods Safety Act) and for complying with all other obligations under the Dangerous Goods Safety Act to the extent that it applies to the Services. The Contractor must give the Customer a copy of any notice that it gives under the Dangerous Goods Safety Act. The Customer is entitled to rely on the Contractor complying with this clause 37.3 in the event that a 'reportable situation' (as that term is defined in the Dangerous Goods Safety Act) occurs.

37.4 Audit

- (a) The Customer may, at any time and from time to time, perform an audit of the Contractor's Records and inspect the Contractor Premises to identify whether the Contractor has breached this clause 37.
- (b) Where any audit performed under clause 37.4(a) shows that the Contractor has breached this clause 37, then, without limiting the Customer's rights under this Agreement or any Law in respect of a breach, the Contractor must reimburse the Customer for any reasonable costs incurred by the Customer in performing such audit.
- (c) The provisions of clause 31 apply to an audit conducted under clause 37.4(a).

38 RECORDS AND AUDIT

38.1 Maintenance of Records

- (a) The Contractor must maintain, for the Relevant Period, all Records in whatever form, having regard to the nature of the Records, in accordance with good accounting practices, good record keeping practices, standards and procedures and Good Industry Practice. If the Contractor holds the original of any of the Records, it must keep the original Records for the Relevant Period.
- (b) The Contractor Records must be accurate, complete and current written Records including:
 - (i) any records as set out in the Statement of Requirements, the Performance Assessment Regime, or elsewhere in this Agreement or the Customer Policies;
 - (ii) the details of all Deliverables requiring Customer sign-off, as set out in the Statement of Requirements; and
 - (iii) any other records required by the Customer.
- (c) The Contractor must comply with the directions of the Customer in relation to the keeping of Records whether those directions relate to the period before or after the End Date.
- (d) Without limiting its obligations under clause 38.1(a), the Contractor must comply with the requirements of the State Records Act to the extent that it applies to any of the Records.

- (e) The Contractor must use all reasonable endeavours to obtain a waiver of any confidentiality obligations owed by it to third parties that may apply to any Records, to permit those Records to be disclosed as required by this Agreement.
- (f) The Contractor must ensure that its Subcontractors comply with the requirements of this clause 38.1.

38.2 Access

- (a) The Contractor must make the Records available to the Customer, and provide every assistance to the Customer in relation to the Records, promptly upon a reasonable request from the Customer for any reason at any time and from time to time.
- (b) The Contractor acknowledges and agrees that the Customer may:
 - (i) use or copy any of the Records;
 - (ii) disclose the Records or copies of the Records to any person or Government Agency for the purpose of complying with its obligations at Law; and
 - (iii) maintain, reproduce, destroy or transfer those Records in accordance with its obligations under the State Records Act.
- (c) The Contractor must ensure that it obtains an acknowledgment and release in the same terms as clause 38.2(b) in favour of the Customer from each Subcontractor.
- (d) If the Customer requests from time to time, the Contractor must (to the extent to which it is practical to do so) provide separate Records to the Customer in respect of each part of the Services.

38.3 Reconciliation

The Records maintained by the Contractor and its Subcontractors under clause 38.1 must provide sufficient detail to enable the Customer to reconcile those Records with the contents of the reports the Contractor issues to the Customer under clause 30.

38.4 Inspection and audit of Records

- (a) At any time and from time to time during the Relevant Period, the Customer has the right, acting reasonably, to regularly inspect and audit the Records held and maintained under this Agreement by the Contractor and its Subcontractors.
- (b) The Contractor must provide the Customer with proper access to its and its Subcontractors' Personnel and facilities to enable the Customer to perform any inspection and audit of the kind set out in this clause 38.4.

38.5 Physical storage

- (a) The Contractor must keep the following items at locations notified to the Customer and to which the Customer has access:
 - (i) executed versions of each Subcontract with an Approved Subcontractor;
 - (ii) originals of all Authorisations;
 - (iii) any other documents that are required for performing the Contractor's obligations under this Agreement; and
 - (iv) any other documents or information that the Customer may reasonably direct.
- (b) The Contractor must give the Customer access to the items listed in clause 38.5(a) on request from time to time, including to permit copies to be taken.

CHARGES AND PAYMENT**39.1 Charges**

- (a) In consideration of the Contractor performing its obligations under and in the manner required by this Agreement, the Customer must pay the Charges, or procure the payment of the Charges, to the Contractor.
- (b) The Contractor acknowledges that it has had the opportunity to conduct appropriate investigations to satisfy itself as to the scope of its obligations under this Agreement and the adequacy of its pricing.
- (c) Except as expressly provided under this Agreement:
 - (i) the Charges include all amounts payable by the Customer in respect of the Services, Deliverables and Solution; and
 - (ii) the Contractor is not entitled to charge the Customer for any fees, charges, costs or expenses in addition to the Charges, including in respect of:
 - (A) any Third Party Software;
 - (B) the Contractor's compliance with any of its obligations under this Agreement; or
 - (C) Intellectual Property, travel, lodging, document reproduction, transportation or any other additional costs.

39.2 Invoices

- (a) The Contractor must, at the times set out in the Pricing and Payment Schedule, submit an invoice to the Customer for the Charges payable for Services provided in the period to which the invoice relates.
- (b) The Contractor must ensure that for each invoice:
 - (i) it is in the form set out in, and contains the information specified in, the Pricing and Payment Schedule;
 - (ii) the specified Charges are correctly calculated and are due for payment;
 - (iii) it is in compliance with clause 40 and any other applicable taxation requirements; and
 - (iv) it is accompanied by verifying documentation in accordance with the Pricing and Payment Schedule (and otherwise as reasonably requested by the Customer).
- (c) Each invoice must include:
 - (i) a Charges report with a breakdown of Charges as set out in the Pricing and Payment Schedule;
 - (ii) a total of the Service Credits incurred in relation to that month; and
 - (iii) such other information as is reasonably required by the Customer from time to time.

39.3 Pre-conditions for payment

- (a) Notwithstanding anything else in this Agreement, and to the extent permitted by Law, the Customer is not required to make any payment to the Contractor unless:
 - (i) all performance guarantees required by this Agreement have been provided by the Contractor to the Customer in accordance with this Agreement;
 - (ii) all insurances that the Contractor is required to effect under this Agreement have been effected and are being maintained (and the Contractor has evidenced this to the Customer's reasonable satisfaction); and

- (iii) the Contractor has correctly invoiced the payment amount within 120 Business Days after the time for issuing the invoice as set out in the Pricing and Payment Schedule.

39.4 Payment

- (a) If:
 - (i) an invoice meets the requirements set out in clause 39.2;
 - (ii) the Customer does not dispute that invoice in accordance with clause 39.9;
 - (iii) the Contractor has met the pre-conditions for payment set out in clause 39.3; and
 - (iv) the Customer does not exercise its right to set off in accordance with clause 62.16,the Customer must pay the amount specified in that invoice:
 - (v) within the earlier of:
 - (A) 30 calendar days after the end of the month of receipt of the Contractor's properly rendered invoice; or
 - (B) in accordance with Treasurer's Instruction 323 Timely Payment of Accounts;
 - (vi) by electronic funds transfer to a bank account in Australia, as notified by the Contractor to the Customer.
- (b) The Contractor must not impose any surcharges on the Customer based on any payment method.

39.5 Payment on account only

Payment of an invoice is not:

- (a) evidence or an admission that the Contractor has complied with its obligations under this Agreement;
 - (b) acceptance or approval of the Contractor's performance; or
 - (c) a waiver or release of the Contractor's obligations under this Agreement,
- but must be taken only as payment on account.

39.6 Proration

All periodic Charges under this Agreement will be calculated on a monthly basis and will be prorated on a per diem basis for any partial month.

39.7 Payment of Subcontractors

- (a) The Contractor warrants with each invoice issued pursuant to this Agreement that any amounts which are due and payable by the Contractor to its Subcontractors have been duly paid by the Contractor to the relevant Subcontractors.
- (b) Where the Contractor informs the Customer, or the Customer becomes aware, that the Contractor has failed to pay an amount that is due and payable to a Subcontractor in relation to the Services and:
 - (i) an Insolvency Related Event has occurred in relation to the Contractor; or
 - (ii) the Customer otherwise determines (acting reasonably) that it is appropriate to do so,the Customer may make that payment directly to the Subcontractor, provided that the Customer has given sufficient notice to the Contractor of its intention to pay an amount to the Subcontractor to enable the Contractor to provide reasons (accompanied by relevant information) as to why the payment should not be made.

- (c) Where the Customer makes payment directly to a Subcontractor in accordance with clause 39.7(b), the Customer will be relieved of its obligation to pay the Contractor in respect of the work performed by the Subcontractor the subject of the payment made by the Customer.

39.8 Overpayments and underpayments

- (a) If it is discovered, whether on completion of any inspection or audit performed under this Agreement or otherwise (including after the End Date), that the payments made by the Customer to the Contractor were:
 - (i) greater than the Contractor's entitlement to payment under this Agreement, then at the Customer's option, the Customer may:
 - (A) deduct an amount equal to the excess from moneys due or becoming due to the Contractor whether under this Agreement or otherwise; or
 - (B) require the Contractor to reimburse the excess to the Customer, which the Contractor must do promptly; or
 - (ii) less than the Contractor's entitlement to payment under this Agreement, then, at the Contractor's option, the Contractor may require the Customer to pay any shortfall to the Contractor.
- (b) Where the Customer or the Contractor is required to make a payment under clause 39.8(a), the Customer or the Contractor (as applicable) must make that payment within 30 calendar days after receipt of a tax invoice from the other party in respect of the payment.

39.9 Payment Disputes

If there is a Dispute about whether a Charge, credit, rebate, fee, refund or other amount contemplated by this Agreement is payable or available:

- (a) the Customer must notify the Contractor of the details and nature of the Dispute;
- (b) on request by the Customer, the Contractor must immediately reissue:
 - (i) an invoice for the undisputed amount, which the Customer must pay in accordance with clause 39.4; and
 - (ii) an invoice for the Disputed amount, which the Customer will not be required to pay and may withhold until the Dispute is resolved;
- (c) the parties must continue to perform their obligations under this Agreement; and
- (d) either party may invoke the Dispute resolution procedure set out in clause 54 to attempt to resolve the Dispute.

40 GOODS AND SERVICES TAX

40.1 GST

- (a) Any reference in this clause 40 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly excluded, the consideration for any supply made under or in connection with this Agreement includes all GST in respect of the supply except as provided under this clause 40.
- (c) Any amount referred to in this Agreement which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST-inclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this Agreement, and the amount is expressed in this Agreement to exclude GST, the consideration to be provided under this Agreement for

that supply is increased by an amount equal to the GST payable in respect of the supply.

40.2 Payment and invoices

- (a) The recipient must pay the additional amount payable under clause 40.1(d) to the Supplier at the same time as the GST exclusive consideration for that supply is otherwise required to be provided.
- (b) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply or at such other time as the parties agree.
- (c) If an adjustment event occurs in relation to a taxable supply made under or in connection with this Agreement, then the consideration payable in respect of the supply must also be adjusted as follows:
 - (i) if the adjustment event gives rise to an increase in the GST payable by the Supplier in relation to the supply, a payment equal to that increase will be payable by the recipient to the Supplier; and
 - (ii) if the adjustment event gives rise to a decrease in the GST payable by the Supplier in relation to the supply, a payment equal to that decrease will be payable by the Supplier to the recipient.
- (d) If a payment is required under clause 40.2(c) then:
 - (i) the Contractor must ensure that the payment is reflected on the invoice next provided by the Contractor in respect of the Services to which the payment relates; or
 - (ii) if the Services to which the payment relates have ceased and no more invoices are due from the Contractor in respect of those Services, payment must be made within 20 Business Days after the issuing of an adjustment note or an amended tax invoice, as the case may be, by the Supplier. If the adjustment event gives rise to an adjustment, the Supplier must issue an adjustment note to the recipient as soon as it becomes aware of the adjustment event.

40.3 Reimbursements

If one of the parties to this Agreement is entitled to be reimbursed or indemnified for a Loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that Loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply and GST is not already included in that payment, it must be increased on account of GST under clause 40.1(d).

41 INTELLECTUAL PROPERTY

41.1 Background IP and Customer-Created IP

- (a) Each party acknowledges and agrees that each party retains the ownership of, or rights to, that party's Background IP (as applicable).
- (b) Any Intellectual Property created by the Customer (or on behalf of the Customer by Other Contractors) during the Term, including:
 - (i) by reason of the Customer's use, modification, adaptation, improvement or customisation of any existing Intellectual Property; and
 - (ii) customised content (including training plans) developed by the Customer in collaboration with the Contractor,will be owned by the Customer and will automatically vest in the Customer upon creation.

41.2 Project IP

- (a) Any Intellectual Property created by or on behalf of the Contractor (including by an Approved Subcontractor) during the Term (including by reason of the Contractor's use, modification, adaptation, improvement or customisation of existing Intellectual Property) as a result of the performance of its obligations under this Agreement will be owned by:
- (i) the Customer where:
 - (A) the Intellectual Property comprises a modification, adaptation, improvement, customisation or derivative of any existing Intellectual Property of the Customer;
 - (B) the Intellectual Property comprises Developed Software or Customised Software;
 - (C) the Intellectual Property was created specifically for the Customer in connection with this Agreement (including in respect of any Project Documents or Working Papers prepared specifically for the Customer);
 - (D) the Intellectual Property was created (in part or in full) using the Customer's Resources;
 - (E) the Intellectual Property was created by reason of the receipt, acquisition, creation or accumulation by the Contractor of any Customer Data or any other materials that the Customer makes available in connection with this Agreement; or
 - (F) the parties agree in writing that the Intellectual Property will vest in the Customer; and
 - (ii) the Contractor where:
 - (A) the Intellectual Property is Contractor Software, including Software Development Kits (excluding Developed Software, Customised Software and Customer Data);
 - (B) the parties agree in writing that the Intellectual Property will vest in the Contractor; or
 - (C) clause 41.2(a)(i) does not apply,
- and will automatically vest in the relevant party upon creation.
- (b) The Contractor:
- (i) assigns (and must procure its Personnel to assign) to the Customer title and all Intellectual Property in the items described in clause 41.2(a)(i), and must execute such documents and do all such other things which the Customer reasonably requests in order to perfect or record the assignments referred to in this clause 41.2(b); and
 - (ii) acknowledges that clause 41.2(b)(i) constitutes, to the extent applicable, assignment of copyright in any applicable data and any formatting of such data for the purposes of section 196 of the *Copyright Act 1968* (Cth). The Contractor warrants that the copyright in the formatting of the data is capable of valid assignment to the Customer.
- (c) Without limiting any other part of this Agreement or any right or remedy of the Customer at Law, the Customer may make available any Intellectual Property:
- (i) vested in the Customer in connection with this Agreement (whether as sole owner or otherwise); or
 - (ii) licensed to the Customer pursuant to clause 41.4(c),
- to any other department, agency, instrumentality (or other organ of government, excluding any political party) of the State of Western Australia or of any other jurisdiction in Australia (whether such department, agency, instrumentality or other

organ is a body corporate or otherwise) on any terms (including as to payment or non-payment) that the Customer sees fit.

41.3 Licence to Contractor

- (a) Subject to the Contractor's obligations under this Agreement, including clauses 42, 43, 44 and 45, the Customer grants to the Contractor a non-exclusive, non-assignable, royalty-free licence for the duration of the Term to use, modify and adapt:
- (i) any data supplied by the Customer; and
 - (ii) any Intellectual Property:
 - (A) owned or licensed by the Customer (including any Intellectual Property vested in or assigned to the Customer under clause 41.1); and
 - (B) provided by the Customer to the Contractor for use in relation to its obligations under this Agreement,
- solely for the purpose of enabling the Contractor to perform the Services for the benefit of the Customer (and not for the purpose of improving or developing the Contractor's systems or services that are made available to other customers). In respect of any Intellectual Property licensed to the Customer by third parties, such licence to the Contractor is only to the extent permissible under the applicable licences to the Customer.
- (b) The licence granted in clause 41.3(a) does not allow the Contractor to use, modify or adapt any of the data or Intellectual Property referred to in clause 41.3(a) for any purpose (including any commercial purpose) other than enabling the Contractor to perform its obligations under this Agreement.

41.4 Licences to the Customer and Credential Providers

- (a) The Contractor grants to the Customer and Credential Providers an irrevocable, perpetual, non-exclusive, royalty free licence to Use and permit third parties to Use:
- (i) the Contractor's Background IP, including the Contractor Software, to the extent that it is incorporated in or relates to the Solution or any other Deliverable; and
 - (ii) the Third Party Software,
- in connection with the business of the Customer and the applicable Credential Provider, including in relation to:
- (iii) the implementation, deployment, use, and support and maintenance of the Solution by the Customer and the Credential Provider;
 - (iv) provision and transmission of, and access to, Customer Data by the Customer, Credential Providers, Credential Consumers and State Agencies; and
 - (v) the use of the Solution and applicable Customer Data by End Users.
- (b) The licence under clause 41.4(a) may be assigned or otherwise transferred by the Customer in connection with a government restructure.
- (c) In respect of:
- (i) any Project IP vested in the Contractor pursuant to this Agreement (or as otherwise agreed by the parties in writing); and
 - (ii) any other Intellectual Property in any Deliverables or Working Papers (including partially completed Deliverables and Working Papers provided to the Customer),
- the Contractor grants to the Customer an irrevocable, perpetual, non-exclusive, transferable, royalty free licence to exercise any or all of the rights of an owner of Intellectual Property in the Project IP (or other Intellectual Property) during the

remainder of the duration of the Intellectual Property rights in that Project IP (or other Intellectual Property).

41.5 Failure to procure Third Party Licences

If the Contractor fails to procure, from its Personnel or third parties, the licence rights required under this Agreement (including such rights as would enable the Contractor to grant the licences set out in clause 41.4), the Customer may, in addition to any other right it has arising from the Contractor's failure, at the Contractor's cost, procure that Intellectual Property, or similar rights, which, in the Customer's reasonable opinion are acceptable, from the relevant third party or another person.

41.6 Intellectual Property Register

- (a) The Contractor must create and maintain, in the format reasonably required by the Customer, an Intellectual Property Register, setting out all Intellectual Property comprising the Deliverables, and including all Contractor Background IP, Project IP and third party Intellectual Property.
- (b) The Contractor must deliver to the Customer, at each monthly contract management meeting, a proposed update to the Intellectual Property Register, containing any proposed adds, moves and changes to the details set out in the Intellectual Property Register (including, if applicable, the details set out in the Governance Schedule – Schedule 10 and any other details reasonably requested by the Customer) and in the format reasonably specified by the Customer from time to time. For clarity, each proposed update document submitted by the Contractor pursuant to this clause 41.6(b) is a Contract Document for the purposes of this Agreement.

41.7 Intellectual Property Warranties

- (a) The Contractor warrants that:
 - (i) it owns, or has the rights to Use and Develop to the extent required under this Agreement, the Contractor's Background IP, Contractor Software and the Third Party Software;
 - (ii) it owns (except to the extent vested in the Customer pursuant to this Agreement) the Project IP developed by or on behalf of the Contractor and has the right to assign the Project IP to the Customer pursuant to clause 41.2(b);
 - (iii) it has disclosed to the Customer all third party Intellectual Property:
 - (A) comprised in any Deliverables or Services; or
 - (B) otherwise used or exploited in the performance of this Agreement;
 - (iv) the performance of the Contractor's obligations under this Agreement will not infringe any other person's Intellectual Property;
 - (v) it has the right to grant each of the licences granted under this Agreement (including under clause 41.4);
 - (vi) all Intellectual Property in Customer-owned Project IP is free from all legal and beneficial encumbrances and is owned by the Customer;
 - (vii) the use of:
 - (A) the Contractor's Background IP;
 - (B) the Contractor Software;
 - (C) the Project IP developed by the Contractor or its Personnel;
 - (D) the Third Party Software; and
 - (E) the Solution, the Deliverables and the Services,by the Customer in accordance with this Agreement will not infringe any rights of third parties, including any Intellectual Property;

- (viii) no other licences are required from third parties in relation to the Solution, the Deliverables or the Services; and
 - (ix) to the best of its knowledge, the Intellectual Property in any Project IP that vests (or will vest) in the Customer, and the Intellectual Property licensed by the Contractor and its Related Companies in connection with this Agreement, and the validity or subsistence of the Customer's, the Contractor's or the third party's (as the case may be) right, title and interest therein are not the subject of any current, pending or threatened challenge or Claim, including for opposition, cancellation, verification or rectification and there are no facts or matters which might give rise to any such challenge or Claim.
- (b) The Contractor warrants that except for the Moral Rights disclosed at clause 41.11, no person other than the Contractor and the Subcontractors has:
- (i) any interest in the Intellectual Property rights in the performance of the Contractor's obligations under this Agreement; or
 - (ii) any right or permission to:
 - (A) use, reproduce or exploit the performance of the Contractor's obligations under this Agreement; or
 - (B) exercise any rights in relation to the Intellectual Property rights in the performance of the Contractor's obligations under this Agreement.
- (c) The Contractor warrants that:
- (i) any Intellectual Property created in the performance of the Contractor's obligations under this Agreement are the original creations of the authors of that Intellectual Property; and
 - (ii) no third party's Intellectual Property has been exploited or incorporated in the performance of the Contractor's obligations under this Agreement, except as otherwise disclosed in this Agreement.
- (d) The Contractor warrants that it will provide all information, execute any documents, procure the execution of any document by any of its Personnel and do anything to preserve, protect, assign or further assign, register, record, exploit, defend or otherwise deal in the Intellectual Property in accordance with this Agreement.
- (e) Each of the warranties in this clause 41.7 are separate and independent and, save as expressly provided to the contrary, must not be limited to or inferred from any other warranty or term of this Agreement.
- (f) If it becomes apparent on or before the End Date that the Contractor is in breach of any of the warranties in this clause 41.7, or will be in breach of any of those warranties, the Customer may (without any Liability on its part) terminate this Agreement (in whole or in part) with immediate effect by giving notice to the Contractor.
- (g) The Contractor acknowledges that the Customer has entered into this Agreement in reliance upon the warranties as set out in this clause 41.7 and that the Customer has been induced by them to enter into this Agreement.

41.8 Intellectual Property indemnity

The Contractor must keep the Customer fully and effectively indemnified against all Loss arising out of or in connection with any and all of the following:

- (a) the use by the Customer or an applicable Credential Provider of the Contractor's Background IP or any other Intellectual Property licensed to the Customer pursuant to this Agreement infringing any third party rights;
- (b) the use by the Customer, any Credential Provider or any End User of the Deliverables, the Solution or the Services infringing any third party rights; or
- (c) any breach of the warranties given in clause 41.7.

For the purposes of this Agreement, an infringement of third party rights includes unauthorised acts which would, but for the operation of the *Patents Act 1990* (Cth) s.163, the *Designs Act 2003* (Cth) s.96, the *Copyright Act 1968* (Cth) s.183 and the *Circuits Layout Act 1989* (Cth) s.25, constitute an infringement.

41.9 Notice of infringement

The Contractor must notify the Customer as soon as reasonably practicable after becoming aware of:

- (a) any infringement or suspected or alleged infringement of any third party Intellectual Property in connection with any Deliverable, the Solution or the Services; or
- (b) any infringement or suspected or alleged infringement by any third party of the Intellectual Property in the Deliverables, Solution or Services.

41.10 Infringement of Third Party Intellectual Property Rights

If the use of any Deliverable or the Solution or any part by the Customer or any End User is found to be an infringement of a third party's Intellectual Property rights then the Contractor must, at its own expense (but at the election of the Customer):

- (a) modify the infringing part of the Deliverable or Solution (other than Third Party Software) so that it is non-infringing;
- (b) procure for the Customer and applicable End Users the right to continue to use the infringing part of the Deliverable or the Solution as contemplated by this Agreement (other than Third Party Software); or
- (c) replace the Deliverable or the Solution with suitable, non-infringing products, so that the Solution continues to provide the Customer and End Users with equivalent functionality and performance as required in the Specifications,

provided that, if none of the above can be achieved on reasonable commercial grounds within a reasonably expeditious timeframe, the Customer may terminate this Agreement, and such termination will be treated in the same manner as a termination for cause by the Customer pursuant to clause 57.1.

41.11 Moral Rights

- (a) The Contractor warrants that it has been given, or has the benefit of, a written consent from every individual who is involved in the performance of the Contractor's obligations under this Agreement and who has or may in the future have any Moral Rights relating to the performance of the Contractor's obligations under this Agreement or anything else provided by the Contractor in connection with the performance of the Contractor's obligations under this Agreement.
- (b) The Contractor warrants that each consent referred to in clause 41.11(a):
 - (i) is irrevocable and unconditional;
 - (ii) allows the Customer and applicable Credential Providers (and each of their Personnel and licensees) to do any act or omission (whether before or after the date of the consent) arising from, or connected with, the exercise by the Customer or applicable Credential Provider of its rights of ownership or use of anything provided by the Contractor in connection with this Agreement, which may (but for the consent) infringe the individual's Moral Rights; and
 - (iii) satisfies the requirements for consent set out in the *Copyright Act 1968* (Cth).
- (c) If requested by the Customer, the Contractor must provide to the Customer copies of the consents referred to in this clause 41.11 as soon as practicable and, in any event, within 10 Business Days after receipt of a request from the Customer.
- (d) The Contractor indemnifies the Customer, each Credential Provider, each State Credential Consumer, and each of their respective Personnel, from and against all Loss arising out of or in connection with any breach by the Contractor of any of its warranties or obligations under this clause 41.11.

42.1 Confidentiality obligation

Each party must:

- (a) keep the other party's Confidential Information confidential; and
- (b) not use or disclose to any person the other party's Confidential Information except:
 - (i) to the extent necessary for the purpose of performing its obligations or exercising its rights under this Agreement;
 - (ii) as authorised in writing by the other party;
 - (iii) as is required by a Law, or by any rules, guidance, notes or waivers of the Australian Securities Exchange, provided that the party only discloses the Confidential Information which is strictly required to be disclosed;
 - (iv) when required (and only to the extent required) to the party's insurers and professional advisers, provided that the party ensures that those insurers and professional advisers are bound by confidentiality obligations which are (at a minimum) comparable to those imposed on the party under this clause 42.1; or
 - (v) as otherwise set out in this Agreement.

42.2 Disclosure of Confidential Information by the Customer

- (a) In addition to the disclosure permitted under clause 42.1(b), the Customer may at any time disclose the Contractor's Confidential Information:
 - (i) to any Minister;
 - (ii) to satisfy the requirements of parliamentary accountability or any other reporting or recognised public obligations of the Customer;
 - (iii) to any Government Agency in relation to the performance of that Government Agency's functions, to complete any annual reports to any Government Agency, or to satisfy the requirements of any Government Agency, administrative or judicial body or tribunal;
 - (iv) to the Auditor General for the purpose of satisfying its statutory duties;
 - (v) to a third party nominee pursuant to clause 1.3(d);
 - (vi) to any advisor to the Customer in relation to purposes connected with this Agreement provided that the Customer ensures that its advisors are bound by confidentiality obligations which are (at a minimum) comparable to those imposed on the Customer under clause 42.1;
 - (vii) to comply with any Customer Policies; and
 - (viii) to the extent the Customer believes it is necessary to disclose the information in a value for money analysis connected with this Agreement.
- (b) Any Minister may at any time disclose the Contractor's Confidential Information in the performance of their functions or the discharge of their duties, including in responding to any questions, making a public statement or releasing information in relation to a matter of public interest.

42.3 Loss or unauthorised disclosure

Each party must notify the other party if it becomes aware of any loss or unauthorised use, access, copying or disclosure of the other party's Confidential Information as soon as practicable and, in any event, within 5 Business Days after becoming aware of such loss or unauthorised use, access, copying or disclosure. Without limiting its Liability for breaching this clause 42, each party must comply with the directions of the other party to recover the Confidential Information and to ensure that it is treated confidentially by the recipient.

42.4 Return of Confidential Information

- (a) Subject to clause 42.4(b), the Contractor must return (or erase or destroy, to the extent that they cannot be returned, or if required by the Customer) all Records in its possession, custody or control which comprise, contain, reproduce, are based on, utilise or relate to the Customer's Confidential Information, at the earliest of:
 - (i) as soon as such Records are no longer required by the Contractor for the performance of its obligations under this Agreement;
 - (ii) as soon as possible and, in any event, within 5 Business Days, after receiving a reasonable demand by the Customer; and
 - (iii) 2 Business Days after the End Date.
- (b) Notwithstanding clause 42.4(a):
 - (i) the Contractor may retain one copy of any Record which is referred to in clause 42.4(a) to the extent that it does so to comply with any Law. The Contractor must return (or erase or destroy, to the extent that they cannot be returned, or if required by the Customer) all Records retained in accordance with this clause 42.4(b) as soon as such Records are no longer required by the Contractor to comply with any Law; and
 - (ii) the Contractor must not (unless specifically permitted in writing by the Customer) destroy or delete any Customer Data unless the Contractor has first provided a copy of the Customer Data to the Customer in the format required by the Customer (and, if the Customer does not specify a format, then in an industry-standard format that will be easily accessible and readable by the Customer using industry standard Software and without further reference to the Contractor).
- (c) If requested to do so by the Customer, the Contractor must promptly provide evidence to the Customer's reasonable satisfaction that it has complied with its obligations under clause 42.4(a) or 42.4(b).

42.5 Public disclosure by the Customer

- (a) Notwithstanding any other part of this clause 42, the Customer may publicly disclose:
 - (i) the identity of the Contractor and the Approved Subcontractors;
 - (ii) the terms of this Agreement;
 - (iii) aggregated information in relation to the Services, including in relation to volumes and overall cost;
 - (iv) any reports provided by the Contractor under clause 30;
 - (v) any Records that the Customer has access to under clause 38.2; and
 - (vi) any other information which the Customer is strictly required to disclose to ensure the proper operation of this Agreement and to promote public confidence in the operation of the Solution.
- (b) The Contractor acknowledges that this Agreement and information held or compiled by the Customer in relation to this Agreement and the Contractor's obligations under this Agreement are subject to the Freedom of Information Act.

42.6 Disclosure under the PPSA

In relation to each of:

- (a) this Agreement; and
- (b) information held or compiled by the Customer in relation to this Agreement or Services performed under this Agreement,

the Contractor acknowledges and agrees that any or all of them may be disclosed by the Customer in response to a request made under section 275 of the PPSA, or otherwise as required by the PPSA.

42.7 Publicity

- (a) The Contractor must not, without the Customer's prior written approval:
 - (i) use this Agreement or the Customer's name or logo;
 - (ii) refer to the Contractor's association with the Customer in relation to this Agreement; or
 - (iii) make any statement concerning this Agreement,in any publication, advertisement, promotional materials or media release.
- (b) The Customer may use this Agreement and the Contractor's name and logo in connection with this Agreement as the Customer reasonably requires, provided that the Customer acknowledges the role of the Contractor to the extent that is reasonable in the circumstances.
- (c) The Contractor must ensure that the Customer may use the name and logo of each Approved Subcontractor in connection with this Agreement as the Customer reasonably requires, provided that the Customer acknowledges the role of the relevant Subcontractor to the extent that is reasonable in the circumstances.

43 CUSTOMER DATA

43.1 Customer's rights in Customer Data

- (a) As between the Customer and the Contractor, the Customer owns the Customer Data, and all Intellectual Property and other rights in the Customer Data vest in the Customer. Each Credential Provider retains all rights in the data it provides to the Customer or the Contractor.
- (b) The Contractor does not claim ownership of any Intellectual Property or other rights in the Customer Data (and must ensure that none of the Contractor's Personnel claim ownership of any Intellectual Property or other rights in the Customer Data)
- (c) The Customer grants to the Contractor a licence to access and use the Customer Data to the extent required for, and for the limited purposes of, fulfilling the Contractor's obligations under and in accordance with this Agreement (and not for the purpose of improving or developing the Contractor's systems or services that are made available to other customers). The Customer retains all other right, title and interest in the Customer Data.

43.2 Contractor's handling of Customer Data

The Contractor must:

- (a) hold the Customer Data in accordance with Good Industry Practice;
- (b) apply the multi-factor authentication and patching controls set out in ACSC Essential Eight (Maturity Level One), or a demonstrated equivalent, to the storage and modification of, and access to, the Customer Data;
- (c) not itself (nor permit its Personnel or any others to) access, use, modify or adapt Customer Data except as required for the performance of the Contractor's obligations under this Agreement, unless the Customer (and each relevant Credential Provider) provides its prior written approval;
- (d) without limiting the generality of clause 43.2(c), not itself (nor permit its Personnel or any others to) access, use, modify or adapt Customer Data to identify any person who is (or may be) the subject of a Credential other than as authorised by the Credentialed Individual;
- (e) not take any steps to re-personalise or re-identify any de-identified or aggregated Customer Data (or in any other way seek to associate any de-identified or aggregated Customer Data with a reasonably identifiable person),
- (f) not transfer, store, process or access any Customer Data outside Australia (including by way of a cloud storage arrangement which is hosted overseas) except where:

- (i) specifically provided otherwise in this Agreement; or
 - (ii) the Customer (and each relevant Credential Provider) gives its prior written approval to such transfer, storage or processing and to the specific countries where the Customer Data will be transferred, stored or processed,

and at all times the Customer Data continues to be dealt with in accordance with this Agreement;
- (g) not copy, modify or use any Customer Data for the purpose of product development, or for training, fine-tuning, retrieval, augmented generation or prompting, or otherwise in connection with, any artificial intelligence technologies;
- (h) to the extent applicable, at all times maintain and comply with proper (in accordance with Good Industry Practice) written processes for the backup, restoration and processing of Customer Data, including:
 - (i) storage of the Customer Data at multiple locations;
 - (ii) processes maintaining the Services during and after any Security Breach or other security incident, and during and after any disaster; and
 - (iii) processes for restoring service functionality promptly after any such event;
- (i) to the extent the Contractor is storing Customer Data (itself or through a service provider):
 - (i) ensure that all such Customer Data is encrypted, using industry standard or better, whether in transit or at rest with the Contractor or the Contractor's storage provider; and
 - (ii) not provide encryption keys to any person except:
 - (A) the Contractor's storage provider for the sole purpose of Customer Data storage; and
 - (B) the Customer in accordance with written instructions from the Customer Contract Manager;
- (j) ensure all Customer Data managed, stored or processed pursuant to this Agreement is segregated from other clients' data and is clearly identified as the Customer's data;
- (k) comply with the Customer's information management, data retention and destruction requirements as notified to the Contractor from time to time; and
- (l) delete or destroy any Customer Data it holds immediately upon the written instruction of the Customer in respect of any Customer Data specified by the Customer in the written instruction;
- (m) not delete, erase or destroy any Customer Data it holds other than in accordance with clause 43.2(l) or as otherwise permitted by this Agreement;
- (n) provide, within 1 Business Day of the Customer's request from time to time (at any time prior to the date that is one month after the date of termination of this Agreement):
 - (i) a copy of any of Customer Data stored by the Contractor, in the format reasonably requested by the Customer; and
 - (ii) encryption keys in respect of any Customer Data stored by the Contractor, except in respect of any Customer Data that the Contractor has already deleted or destroyed in response to a written request by the Customer; and
- (o) ensure that each of its Personnel and each Transferee:
 - (i) holds the Customer Data in accordance with the Privacy Laws, notwithstanding that the Privacy Laws may not have otherwise applied to the Personnel or Transferee; and
 - (ii) otherwise complies with the same obligations as are imposed on the Contractor under this clause 43.2 (and under the rest of this Agreement in respect of Customer Data, privacy, confidentiality or information security).

43.3 Integrity of Customer Data

- (a) If any Customer Data is corrupted, lost or degraded, the Contractor must:
 - (i) if the Customer requests, provide the Customer with all reasonable assistance requested by the Customer to restore the Customer Data; or
 - (ii) otherwise, carry out such remedial action as is necessary or desirable, in accordance with Good Industry Practice, to restore the Customer Data.
- (b) To the extent that any corruption, loss or degradation to Customer Data has been caused or contributed to by the Contractor, or would have been avoided or mitigated by the Contractor's compliance with this Agreement, the Contractor must reimburse the Customer for any costs and expenses that the Customer incurs in restoring Customer Data.
- (c) To the extent that clause 43.3(b) does not apply, the Contractor will be reimbursed for the work it carries out in performing its restoration obligations under this clause 43.3 at rates consistent with the pricing set out in the Pricing and Payment Schedule.

43.4 Customer's access to Customer Data

- (a) The Contractor must, to the extent that the Contractor is responsible for storing Customer Data:
 - (i) ensure that the Customer is able, at any time, to access, read, modify and use the Customer Data stored or managed by the Contractor;
 - (ii) not possess or assert any lien or other right against or to the Customer Data, or otherwise sell, transfer, assign, dispose of, commercialise, lease, rent, convert, grant an option over, allot, declare a trust over or otherwise deal with the Customer Data;
 - (iii) not, at any time during or after the Term, take (or permit the taking of) steps that prevent the Customer from accessing, reading, modifying, developing or using the Customer Data;
 - (iv) maintain at all times up-to-date backup copies of all Customer Data stored by the Contractor as set out this Agreement;
 - (v) at the Customer's request, provide all assistance required by the Customer to enable the Customer to extract and use Customer Data stored or managed by the Contractor or its Personnel, in the format reasonably required by the Customer; and
 - (vi) if and to the extent requested by the Customer, promptly:
 - (A) return Customer Data to the Customer in the format and on the media, paper or other form requested by the Customer;
 - (B) assist the Customer to extract the Customer Data; and
 - (C) delete, erase or destroy the Customer Data in the Contractor's possession or control.
- (b) The Contractor must ensure that the Customer has access at all times and in any manner to all Customer Data that is stored or managed by the Contractor, such access to be available to the Customer unconditionally, without prior notice and at no additional charge.

43.5 Other obligations

Nothing in this clause 43 limits the Contractor's obligations under this Agreement, including under clauses 41, 42, 44 and 45.

44.1 Application of the PRIS Act

For the purposes of this Agreement:

- (a) the Contractor is a 'contracted service provider' as defined in the PRIS Act; and
- (b) Part 2 of the PRIS Act (upon commencement), the information privacy principles, and any applicable approved privacy code of practice, apply in the manner provided for in Part 2 Division 11 of the PRIS Act in relation to the handling of information by the Contractor.

44.2 Obligations

The Contractor must, in relation to any Personal Information which it collects or has access to in the course of performing its obligations under this Agreement or otherwise in connection with this Agreement:

- (a) comply with the Privacy Laws (whether or not the Contractor is an organisation which is bound by the Privacy Laws);
- (b) collect, store, use, disclose or otherwise deal with the Personal Information in accordance with the Privacy Laws and as reasonably directed by the Customer;
- (c) not do anything which the Contractor knows (or ought to know) would cause the Customer to breach any Privacy Law (whether or not the Customer is an organisation which is bound by the Privacy Laws);
- (d) comply with any directions made by a privacy commissioner relevant to this Agreement;
- (e) not access, modify or disclose the Personal Information except with the Customer's prior written approval;
- (f) comply with any reasonable directions, policies and guidelines of the Customer relating to privacy;
- (g) access, use or disclose the Personal Information only for the purposes of performing its obligations under this Agreement;
- (h) not transfer, store, process or access outside of Australia any Personal Information obtained during the course of performing its obligations under this Agreement (including by way of a cloud storage arrangement which is hosted overseas);
- (i) take all reasonable steps to ensure the Personal Information is protected against loss and unauthorised access, use, modification or disclosure;
- (j) ensure that the Personal Information is returned to the Customer (or is permanently destroyed if the Customer so elects) when it is no longer required for the performance of the Contractor's obligations under this Agreement;
- (k) ensure that any of the Contractor's Personnel who are required to deal with Personal Information for the purposes of this Agreement are made aware of, and undertake in writing to observe, the obligations of the Contractor as set out in this clause 44.1;
- (l) not take any steps to identify or contact any person whose Personal Information it collects or has access to in connection with this Agreement;
- (m) not use any image or other information of a reasonably identifiable person for any purpose other than as necessary to perform its obligations under this Agreement;
- (n) where any breach of privacy occurs due to the Contractor's failure to comply with any obligation under this clause 44, do all things necessary to mitigate the consequences of that breach; and
- (o) co-operate fully with the Customer to resolve any complaint alleging a breach by any party of their respective privacy obligations.

44.3 Notification

The Contractor must immediately notify the Customer (providing full details) if it:

- (a) receives any complaints concerning its or the Customer's compliance with privacy obligations, including full details of how the Contractor intends to resolve the complaint;
- (b) becomes aware that a disclosure of Personal Information may be required by Law; or
- (c) is approached with respect to privacy by any Government Agency or by any individual to whom any Personal Information relates.

45 SECURITY

45.1 Importance of security

- (a) The Contractor acknowledges that the security and integrity of Customer Data, the Customer ICT Environment, the Participating Systems, and the Solution, is fundamental to the Customer's operations and that, without limitation, any Security Breach may directly affect the Customer's relationship with its stakeholders and Personnel, with Credential Providers, or with the public, and the Customer's compliance with its legal obligations.
- (b) The Contractor acknowledges the Customer's desire for it to conduct its operations in a manner which is cognisant of the concerns set out in clause 45.1(a).
- (c) If there is a conflict between any security requirements in this Agreement, the Contractor must comply with the obligation which imposes the highest standard.

45.2 Security practices and processes

The Contractor must:

- (a) **(unauthorised access)** implement, in respect of the Contractor Systems used in connection with the Services, appropriate security measures to, and take all other reasonable steps to, ensure that no unauthorised party obtains physical or electronic access to the Customer Data, the Customer ICT Environment or any Participating Systems, including:
 - (i) using reputable, commercially available, up-to-date anti-virus software, intrusion detection software and software to prevent unauthorised access;
 - (ii) maintaining and providing to the Customer upon request, appropriate logs of both authorised access and successful unauthorised access;
 - (iii) maintaining and enforcing robust physical security of locations where Customer Data is stored, accessed or otherwise processed by or on behalf of the Contractor; and
 - (iv) applying the multi-factor authentication and patching controls set out in the ACSC Essential Eight (Maturity Level One), or demonstrated equivalent, to the Contractor Systems;
- (b) **(performance)** take all reasonable steps to ensure that no unauthorised party prevents the Contractor from performing its obligations under this Agreement;
- (c) **(protect Customer Data)** implement appropriate security measures to, and take all other reasonable steps to, protect the Customer Data against:
 - (i) loss, corruption or degradation, whether intentional or accidental;
 - (ii) re-identification of de-identified data, other breach of privacy or unlawful practices; and
 - (iii) misuse or fraud;
- (d) **(restrict access)** ensure that access to the Customer ICT Environment, the Participating Systems and the Customer Data by the Contractor's Personnel is restricted on a strict need to know basis and complies with the human resource

security requirements of ISO27001 Annex A.7 (or equivalent), and that all Personnel who are granted access:

- (i) have completed appropriate information security training that is sufficient to ensure the Contractor's compliance with its obligations;
 - (ii) have successfully completed the security screening contemplated in ISO27001 Annex A.7 (or any other broadly comparable security screening reasonably requested by the Customer); and
 - (iii) have been specifically and individually approved by the Customer to have access to the Customer ICT Environment, the Participating Systems (if applicable) and the Customer Data;
- (e) **(audit log)** maintain an audit log of access to all Customer Data accessed by the Contractor, and provide that log to the Customer promptly upon request;
 - (f) **(monitor)** implement a systematic testing and monitoring program, in accordance with Good Industry Practice, to test the continued effectiveness of the security measures of the Contractor and its Personnel;
 - (g) **(other security measures)** implement all other security measures which are appropriate in the context of the Contractor's obligations under this Agreement, in accordance with Good Industry Practice; and
 - (h) **(other persons)** ensure that any person who is authorised by the Contractor or its Personnel to have access to the Customer Data, the Customer ICT Environment, any Participating Systems or the Solution complies with the Contractor's obligations under clauses 42, 43, 44 and 45.

45.3 Security Policies

- (a) The Contractor must perform its obligations under this Agreement in accordance with the Security Policies (and the security standards set out in the Statement of Requirements).
- (b) The Contractor must maintain and enforce procedures in accordance with the Security Policies.

45.4 Virus protection and unauthorised access

- (a) The Contractor must (and must ensure that its Personnel do):
 - (i) not at any time (including after the Agreement ends) insert or activate Malicious Code into;
 - (ii) not at any time (including after this Agreement ends) permit any third party to insert or activate, Malicious Code into; and
 - (iii) take all reasonably prudent steps (as appropriate given the nature of the Services) to check for and remove Malicious Code from, and prevent Malicious Code from affecting,

the Customer ICT Environment, any relevant Participating Systems, Customer Data, Solution, Software Development Kits, or any other data, software or system used in connection with or otherwise linked to the Customer ICT Environment, any relevant Participating Systems, the Customer Data or the Solution.
- (b) The Contractor is specifically relieved of its Liability under clause 45.4(a)(ii) to the extent that any Malicious Code was inserted into or activated in relation to the Customer ICT Environment, any relevant Participating System, or the Solution by a third party which is acting under the direction of the Customer (or under the direction of the relevant State Agency in respect of its Participating System).
- (c) If any Malicious Code affects (or it is reasonably possible that it will affect) any Customer Data, the Customer ICT Environment, any relevant Participating System, or the Solution, the Contractor must:
 - (i) immediately notify the Customer and provide all information reasonably requested by the Customer in relation to the Malicious Code, including in

relation to how it was introduced (or may be introduced) and the effect it has had or is likely to have; and

- (ii) take all necessary action to prevent or eliminate the Malicious Code (and remedy any consequences to the extent possible).

45.5 Security testing

- (a) The Contractor agrees that the Customer has the right, upon 10 Business Days' notice, to:
 - (i) carry out independent vulnerability testing, penetration testing and third-party audits of the Contractor's systems used in connection with the Services; or
 - (ii) require the Contractor to undertake such independent testing and audits, with the Customer to reimburse the Contractor's reasonable and substantiated costs of such testing and audits (approved by the Customer in writing prior to being incurred).
- (b) The Contractor must:
 - (i) arrange for any consents required from the Contractor's Personnel to permit the Customer and its nominated independent security tester to undertake; and
 - (ii) provide all assistance reasonably requested by the Customer and its nominated independent security tester for the purposes of, the testing described in clause 45.5(a).

45.6 Security certification

- (a) The Contractor must:
 - (i) undergo (and comply with all requirements for) an annual Security Certification; and
 - (ii) provide the results of the Security Certification, demonstrating compliance with the applicable requirements, to the Customer in writing as soon as reasonably practicable after completion of the Security Certification process.
- (b) If the Customer, acting reasonably, is not satisfied with the process or the results of the Security Certification, the Contractor must immediately make alternative arrangements, that are acceptable to the Customer (acting reasonably) for the storage of the Customer Data.

45.7 Security Breaches

- (a) If the Contractor becomes aware of a Security Breach, the Contractor must immediately notify the Customer (providing full details) at the contact details provided by the Customer, and must:
 - (i) immediately take all steps required to limit any further access to or compromise of the Solution, Customer ICT Environment, any Participating System or Customer Data or any further distribution of Customer Data;
 - (ii) do all things within its power to remedy the Security Breach and its consequences, including the restoration of lost or corrupted data;
 - (iii) exercise reasonable endeavours to ensure that any potential breach does not become an actual breach;
 - (iv) promptly disclose to the Customer all information and documents relevant to the Security Breach, including a written report detailing the cause of, and procedure for correcting, the Security Breach and its consequences;
 - (v) cooperate with the Customer and its nominated third parties in investigating the Security Breach, its causes, effects and surrounding circumstances;
 - (vi) give (and procure its Personnel to give) the Customer all access requested by the Customer to any premises, Personnel, processes and systems of the

- Contractor (and procure its Personnel to give the Customer such access) for the purpose of carrying out an investigation into the Security Breach;
 - (vii) assist in identifying compromised Customer Data;
 - (viii) use, and certify to the Customer that the Contractor has used, all reasonable endeavours, in accordance with Good Industry Practice, to prevent any recurrence of such breach or potential breach; and
 - (ix) provide all other assistance reasonably required by the Customer arising out of the Security Breach or the circumstances surrounding the Security Breach.
- (b) To the extent that the Security Breach has been caused or contributed to by the Contractor, or would have been avoided or mitigated by the Contractor's compliance with this Agreement, the Contractor must perform its obligations in respect of the Security Breach at its own cost and must reimburse the Customer any costs and expenses that the Customer incurs in dealing with the Security Breach.
 - (c) To the extent that clause 45.7(b) does not apply, then the Customer must reimburse the Contractor for the Contractor's reasonable Charges (calculated based on Time and Materials for work done) arising as a consequence of the Contractor complying with this clause 45.6 (as substantiated to the Customer to the satisfaction of the Customer, acting reasonably).
 - (d) To the extent lawful, the Contractor must not disclose to any third party, or make any public statement concerning, the existence of or circumstances surrounding any Security Breach without the Customer's prior written approval.
 - (e) The Contractor will be liable in respect of any Malicious Code that affects the Customer Data, the Customer ICT Environment, the Participating Systems, or the Solution, and for liability for any Security Breach, only to the extent that the Malicious Code or the Security Breach arose from the Contractor's failure to comply with its obligations under clauses 42, 43, 44 and 45.

46 FORCE MAJEURE EVENTS

46.1 Notification

- (a) If a party is of the view that its ability to perform its obligations under this Agreement in the manner contemplated by this Agreement, is prevented (in whole or in part) by a Force Majeure Event, then it must, immediately upon the first occurrence of the Force Majeure Event, send to the other party written notice containing full particulars of the Force Majeure Event, including:
 - (i) the nature of the Force Majeure Event;
 - (ii) the date of the first occurrence of the Force Majeure Event;
 - (iii) the effect of the Force Majeure Event on that party's ability to perform its obligations under this Agreement; and
 - (iv) the expected duration of the Force Majeure Event.
- (b) Without limiting the other requirements of this clause 46, strict compliance with clause 46.1(a) is an essential condition to obtaining any entitlements relating to a Force Majeure Event however arising, including under this clause 46.

46.2 Entitlement of the affected Party

- (a) If a party is prevented from performing its obligations under this Agreement in whole or part by a Force Majeure Event then, subject to that party complying with clauses 46.1(a) and 46.3, performance of those obligations will be suspended to the extent that performance is prevented by that Force Majeure Event.
- (b) The affected party must provide the other party with regular updates as to the affected party's circumstances and the impact of the Force Majeure Event during the time that it is prevented from performing its obligations under this Agreement (and in any event,

must provide the other party with an update within 5 Business Days of a request at any time by the other party).

- (c) The affected party must notify the other party in writing as soon as possible and, in any event, within 2 Business Days after the Force Majeure Event ceasing to prevent it from performing its obligations under this Agreement.

46.3 Effect of a Force Majeure Event

If a party's obligations are suspended under clause 46.2, then:

- (a) during that period of suspension, that party's non-performance, or delay in performance, of this Agreement to the extent resulting from the Force Majeure Event will not be deemed to be a breach of this Agreement;
- (b) within 5 Business Days after receipt of a notice referred to in clause 46.1, the Customer and the Contractor must meet to discuss the steps that the parties will take to minimise any effects of the Force Majeure Event;
- (c) irrespective of any other obligations under this clause 46, on and from the date a party is aware of a Force Majeure Event, that party must mitigate and minimise the effect of the Force Majeure Event; and
- (d) each party will bear its own costs in respect of the suspension and the Contractor is not entitled to any payment by the Customer, whether in respect of the Charges, any Losses or otherwise, in respect of that suspension (including those obligations that are suspended).

46.4 Termination

The Customer may terminate this Agreement (in whole or in part) with 40 Business Days' notice to the Contractor if the obligations of the Contractor are suspended under clause 46.2 and the suspension has continued for a period of longer than 20 consecutive Business Days.

47 BUSINESS CONTINUITY

47.1 Business Continuity

- (a) The Contractor acknowledges that business continuity is fundamental to the Customer's operations and that, without limitation, any business interruption may:
 - (i) directly affect the Customer's relationship with its stakeholders, its Personnel or the public; or
 - (ii) cause Loss or injury.
- (b) In performing its obligations under this Agreement, the Contractor must:
 - (i) act in a manner which is cognisant of the concerns set out in clause 47.1(a);
 - (ii) put in place all reasonable measures in respect of the Services and the Solution to ensure the continuity of, and minimise any disruptions to, the Customer's operations (as they are affected by the Services), including co-operating with any Credential Providers, Credential Consumers and Other Contractors (as necessary or appropriate); and
 - (iii) not, and must ensure that its Personnel do not, cause any material disruptions to the Customer's operations.

47.2 Disruptions

- (a) If the Contractor becomes aware of a disruption or potential disruption to the continuity of the Customer's operations, the Contractor must:
 - (i) immediately notify the Customer;
 - (ii) take all reasonable steps (as appropriate, given the nature of the Services) to mitigate the effect of the disruption (or potential disruption) on (or by) the Services and the Solution; and

- (iii) restore and resume the Services as soon as reasonably practicable at no cost to the Customer.
- (b) If that disruption is connected in any way to the Contractor Systems used in connection with the Services, then the Contractor must:
 - (i) identify the cause of such disruption or potential disruption;
 - (ii) do all things within its power to remedy any disruption and its consequences, including assisting with the resumption of the Customer's operations;
 - (iii) exercise reasonable endeavours to ensure that any potential disruption does not become an actual disruption;
 - (iv) provide the Customer with a written report detailing the cause of, and procedure for correcting, the disruption and its consequences or potential disruption;
 - (v) assist in identifying any consequences of the disruption;
 - (vi) use reasonable endeavours to prevent any recurrence of such disruption or potential disruption; and
 - (vii) certify to the Customer that the Contractor has used reasonable endeavours to prevent any recurrence of such disruption or potential disruption.

48 DISASTER RECOVERY

48.1 Disaster recovery

- (a) The Contractor acknowledges that the Services are fundamental to the Customer's operations and that, without limitation, any Disaster may:
 - (i) directly affect the Customer's relationship with its stakeholders, its Personnel or the public; or
 - (ii) cause Loss or injury.
- (b) In performing its obligations under this Agreement, the Contractor must:
 - (i) act in a manner which is cognisant of the concerns set out in clause 48.1(a);
 - (ii) put in place all reasonable measures to avoid the occurrence of, and minimise the effect of any Disasters, including by reasonably co-operating with any Credential Providers, Credential Consumers and Other Contractors (as necessary or appropriate); and
 - (iii) not, and must ensure that its Personnel do not, cause any Disaster.

48.2 Disasters

- (a) If the Contractor becomes aware of a Disaster or potential Disaster, the Contractor must:
 - (i) immediately notify the Customer;
 - (ii) take all reasonable steps (as appropriate, given the nature of the Services) to mitigate the effect of the Disaster (or potential Disaster) on the Services and the Solution; and
 - (iii) restore and resume the Services as soon as reasonably practicable at no cost to the Customer.
- (b) If the Disaster is connected in any way to the Contractor Systems used in connection with the Services, then the Contractor must:
 - (i) identify the cause of such Disaster or potential Disaster;
 - (ii) do all things within its power to remedy any Disaster and its consequences;
 - (iii) exercise reasonable endeavours to ensure that any potential Disaster does not become an actual Disaster;

- (iv) provide the Customer with a written report detailing the cause of, and procedure for correcting, the Disaster and its consequences or potential Disaster;
- (v) assist in identifying any consequences of the Disaster;
- (vi) use reasonable endeavours to prevent any recurrence of such Disaster or potential Disaster; and
- (vii) certify to the Customer that the Contractor has used reasonable endeavours to prevent any recurrence of such Disaster or potential Disaster.

48.3 Other requirements

The Contractor must:

- (a) maintain an accurate and up-to-date contact list of all key contacts and notification procedures in relation to Disaster recovery;
- (b) provide a single point of contact for all business disruption and Disaster related responsibilities; and
- (c) identify, for the Customer's approval, additional locations, facilities, equipment and other Resources for acquisition in the event of a Disaster.

49 WARRANTIES

49.1 Contractor's general warranties

The Contractor warrants the following to the Customer:

- (a) **(authority)** the Contractor has:
 - (i) full power and authority to enter into this Agreement and perform the Contractor's obligations under this Agreement in accordance with this Agreement; and
 - (ii) taken all steps to authorise the execution and performance of this Agreement in accordance with its terms;
- (b) **(no existing agreements)** the Contractor is not subject to any existing agreements, undertakings or arrangements which:
 - (i) prevent it from entering this Agreement;
 - (ii) may adversely affect its ability to perform its obligations under this Agreement; or
 - (iii) would be breached as a result of the Contractor entering into this Agreement;
- (c) **(not trustee)** the Contractor is not the trustee or 'responsible entity' (as that term is defined in the Corporations Act) of any trust, nor does it hold any property subject to or impressed by any trust;
- (d) **(valid and legally binding)** the Contractor's obligations under this Agreement are valid and binding and are enforceable against the Contractor;
- (e) **(satisfaction of risks)** by taking all possible steps, the Contractor has satisfied itself as to all of the risks, contingencies, circumstances and legislative and regulatory requirements associated with the performance of the Contractor's obligations under this Agreement;
- (f) **(own investigations)** the Contractor enters into this Agreement based on its own investigations, interpretations, deductions, information and determinations and:
 - (i) has reviewed all documentation provided by the Customer;
 - (ii) has obtained and reviewed all other necessary information and documentation and made all necessary enquiries; and
 - (iii) does not require any further information or documentation,

to form the decision to enter into this Agreement and to satisfy itself that it is able to perform its obligations under this Agreement in return for the Charges;

- (g) **(conflict)** the Contractor has no conflict of interest arising out of this Agreement;
- (h) **(litigation)** there is no litigation or arbitration, and there are no administrative proceedings taking place, pending or threatened against the Contractor which could have a materially adverse effect on the Contractor's ability to perform its obligations under this Agreement;
- (i) **(disclosure)** the Contractor has not withheld from the Customer any document, information or other fact material to the decision of the Customer to enter into this Agreement;
- (j) **(RFP Response)** the statements in the RFP Response are true and correct in all material particulars;
- (k) **(no secret commission)** the Contractor has not paid or received and will not pay or receive any secret commission in respect of this Agreement;
- (l) **(no unlawful arrangement)** the Contractor has not breached any Laws or otherwise entered into, and will not enter into, any unlawful arrangement with any other person in respect of this Agreement;
- (m) **(no improper influence)** the Contractor has not sought to improperly influence the Customer's decision to enter this Agreement;
- (n) **(independence)** the Contractor will not, during the Term, engage in any activity likely to compromise its ability to perform the Services fairly and independently;
- (o) **(lobbyist)** any person engaged in any 'lobbying activity' (as that term is defined in section 4 of the Lobbyist Act) that the Contractor has employed, engaged or otherwise involved, directly or indirectly, in connection with this Agreement, is duly registered as a 'lobbyist' (as that term is defined in the Lobbyist Act) and has fully complied with its obligations under the Lobbyist Act and Lobbyist Code; and
- (p) **(insurance)** the Contractor has complied, and will continue to comply, with all insurance requirements set out in this Agreement.

49.2 Contractor's additional warranties

The Contractor warrants the following to the Customer:

- (a) **(Authorisations)** the Contractor has and will continue to have all the necessary Authorisations to enter into and perform its obligations under this Agreement;
- (b) **(resourcing, experience and expertise)** the Contractor has the Resources, experience and expertise required to properly perform the Contractor's obligations under this Agreement;
- (c) **(capability)** the Contractor will, at all times during the Term, be ready, willing and able to perform the Services in accordance with this Agreement and will have appointed sufficient Personnel in order to assist it to do so;
- (d) **(performance)** the Contractor will perform the Contractor's obligations under this Agreement with due care and skill, and in accordance with Good Industry Practice and all applicable Laws and Authorisations;
- (e) **(Statement of Requirements)** the Contractor has reviewed the Statement of Requirements and can deliver the Solution in accordance with the requirements in such plan;
- (f) **(Services)** the performance of the Services will match the description of the Services in this Agreement and will be performed at a standard necessary to meet the requirements of this Agreement;
- (g) **(fit for purpose)** the Services, the Deliverables and the Solution will:
 - (i) be fit for the purposes for which those types of services are commonly bought, and for any purpose expressly set out in, or reasonably inferred from, this Agreement and the Project Documents; and

- (ii) match the description of the Services, Deliverables and Solution in this Agreement and will be performed at a standard necessary to meet the requirements of this Agreement;
- (h) **(Deliverables)** each Deliverable provided in connection with the Services will:
 - (i) conform to the specifications for that Deliverable and meet any other requirements for those Deliverables as set out in this Agreement;
 - (ii) be of merchantable quality and free from Defects or omissions in design, implementation and performance; and
 - (iii) not detrimentally affect the operation or performance of the Customer ICT Environment or any Participating System when used in accordance with the Documentation for that Deliverable;
- (i) **(Software)** at the Solution Acceptance Date, each Deployment Date and during each Hypercare Period, the Solution will:
 - (i) satisfy the Specifications (as applicable);
 - (ii) be free from Defects or omissions in design, material, performance, workmanship and installation;
 - (iii) have been certified by any relevant third party vendor; and
 - (iv) be of merchantable quality;
- (j) **(third party products and services)** if the Contractor, in the performance of any Services:
 - (i) has primary responsibility for design or selection of; or
 - (ii) provides recommendations in writing to the Customer as to the design or selection of,

any third party products or services, then those third party products or services (as applicable) will be suitable for any purpose that is expressly set out in, or that would be readily apparent to a skilled contractor from, the Statement of Requirements, the Specifications and the Project Documents (as applicable);
- (k) **(interoperability)** all parts of the Solution will on the Solution Acceptance Date, each Deployment Date and during each Hypercare Period be compatible and interoperable with each other;
- (l) **(interfaces)** the Solution will, when the Software Development Kits are properly implemented in accordance with the Contractor's written instructions, appropriately interface with the ServiceWA App, the Customer ICT Environment and applicable Participating Systems, in the manner contemplated by this Agreement, without adversely affecting the functionality and performance of the ServiceWA App, the Customer ICT Environment, the applicable Participating Systems, or the Customer's operations;
- (m) **(Equipment)** any Equipment supplied by the Contractor in conjunction with the Services will be of merchantable quality, and comply with all applicable Australian and international standards;
- (n) **(Documentation)** the Documentation will be sufficient to enable a competent information technology professional or engineer to operate and maintain the Solution and to enable the Customer's staff to make full and proper use of the Solution (including configuration and implementation information);
- (o) **(Fix)** the use of any Fix by the Contractor will not degrade the functionality or performance of the Solution in any way;
- (p) **(Personnel)** all of the Contractor's Personnel will be appropriately trained, qualified and experienced and will, prior to commencing any work in relation to this Agreement, have passed all criminal screening checks required by the Customer;
- (q) **(compliance with Laws)** the Contractor will, perform its obligations in such a way as to enable compliance by the Customer with all Laws;

- (r) **(third party warranties)** the Contractor will pass through to the Customer any warranties provided by third parties to the Contractor relating to the Services, Deliverables or the Solution;
- (s) **(information)** all Records and other information supplied by the Contractor to the Customer under this Agreement, to the best of the Contractor's knowledge and belief:
 - (i) are true, correct and accurate in all respects;
 - (ii) where relevant, accurately reflect the actual performance of the Contractor's obligations under this Agreement; and
 - (iii) may be relied upon by the Customer in all respects.

49.3 Contractor's representations during procurement

- (a) The Contractor:
 - (i) acknowledges that it has made other representations to the Customer in the course of the procurement process that led to this Agreement, including as a part of the RFP Response, presentations and negotiations; and
 - (ii) warrants that those representations are true and correct in all material particulars.
- (b) The Contractor must:
 - (i) perform the Services and provide the Deliverables and Solution in accordance with the RFP Response (including as to the manner of performing the Services); and
 - (ii) meet any commitments set out in the RFP Response (including as to the number, qualifications and experience of the Contractor's Personnel),

except to the extent that such compliance would be inconsistent with the performance of the Contractor's other obligations under this Agreement.

49.4 Warranties repeated

The warranties given by the Contractor under this Agreement are deemed to be repeated by the Contractor:

- (a) on the Commencement Date; and
 - (b) on each day during the Term,
- with reference to the facts and circumstances then subsisting.

49.5 Warranties and indemnities unaffected

The Contractor acknowledges and agrees that all warranties and indemnities given by the Contractor under this Agreement will remain unaffected notwithstanding:

- (a) any receipt or review of, or any comment by the Customer on, any document;
- (b) any direction by the Customer or the Customer's Personnel;
- (c) any Variation Order or Statement of Work, except as otherwise agreed by the Customer in writing; and
- (d) that the Contractor engages any Subcontractor in connection with any of the Contractor's obligations under this Agreement (whether with or without the approval of the Customer).

49.6 Customer's reliance on warranties

The Contractor acknowledges that the Customer has entered into this Agreement in reliance upon:

- (a) the warranties given and to be given by the Contractor in this Agreement;
- (b) the Contractor's representations as to its expertise, experience and capability; and

- (c) the Contractor's representations as to the suitability of the Solution, Deliverables and Services for the Customer's intended purposes.

49.7 Notice of Breach

The Contractor must notify the Customer as soon as reasonably practicable after becoming aware of any breach of a representation or warranty.

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INSURANCE

50.1 General insurance requirements

- (a) The Contractor must effect and maintain, or cause to be effected and maintained, each of the Insurance Policies:
 - (i) stated in Schedule 11;
 - (ii) set out in any Variation Order or Statement of Work; and
 - (iii) that a prudent contractor would, in accordance with Good Industry Practice, obtain and maintain in respect of the performance of services of a similar nature to the Services.
- (b) The Contractor must:
 - (i) **(Reputable Insurers)** ensure that all Insurance Policies are effected and maintained with Reputable Insurers;
 - (ii) **(deductibles)** pay all deductibles payable in connection with any of the Insurance Policies;
 - (iii) **(premiums)** punctually pay all premiums and other amounts payable in connection with the Insurance Policies effected by it;
 - (iv) **(no alteration)** other than in relation to renewal of Insurance Policies (in which case the Contractor must comply with clause 50.6), or endorsements not related to this Agreement, not alter, discontinue or cancel any of the Insurance Policies, or allow any of the Insurance Policies to lapse, without the prior written approval of the Customer;
 - (v) **(do not prejudice)** not do or permit, or omit to do, anything which prejudices any of the Insurance Policies;
 - (vi) **(remedy)** promptly remedy anything which might, if not remedied, prejudice any of the Insurance Policies;
 - (vii) **(fully disclose)** fully and promptly disclose all material information to all relevant insurers (and any persons acting on their behalf) relating to the Insurance Policies in all respects;
 - (viii) **(comply)** comply at all times with the terms of each of the Insurance Policies;
 - (ix) **(do everything to enable Customer recovery)** do everything reasonably required by the Customer to enable the Customer to claim and to collect or recover, money due in accordance with or in connection with any Insurance Policy;
 - (x) **(indemnities secondary)** ensure that the terms of the Insurance Policies do not require the Customer to exhaust any indemnities referred to in this Agreement as a condition precedent to the insurer considering or responding to any claim;
 - (xi) **(notify of changes)** promptly notify the Customer of any material reduction in limits or coverage affecting the Contractor's obligations under this Agreement or that are contrary to clause 50.2(c);
 - (xii) **(notify of other contracts)** promptly notify the Customer of any significant contracts (with other clients of the Contractor) that are covered by the Insurance Policies;

- (xiii) **(notify of any occurrence)** promptly notify the Customer of all occurrences (whether related to this Agreement or otherwise) that may give rise to a claim, or of any claim made, under any of the Insurance Policies;
- (xiv) **(exhausting coverage)** immediately notify the Customer if 80% of the annual aggregate limit under any Insurance Policy is exhausted; and
- (xv) **(reinstatement)** promptly reinstate any Insurance Policy if it lapses or if cover is exhausted.

50.2 Terms of Insurance Policies

The Contractor must ensure that each of the Insurance Policies it is responsible for effecting and maintaining, or causing to be effected and maintained, in accordance with this Agreement (other than compulsory third party motor vehicle and workers' compensation insurances) is on terms acceptable to the Customer (whose acceptance will not unreasonably be withheld) and contains terms, if relevant and to the extent permitted by Law, to the effect that:

- (a) the insurer will not impute to any insured party any knowledge or intention or a state of mind possessed or allegedly possessed by any other insured party;
- (b) in the case of Insurance Policies in accordance with which the Customer is also entitled to cover:
 - (i) any breach of the conditions of the Insurance Policies by an insured other than the Customer, must not in any way prejudice or diminish any rights which the Customer has under the Insurance Policies;
 - (ii) the relevant Insurance Policy is primary with respect to the interest of the Customer, and any other insurance or self-insurance arrangements maintained by the Customer are excess to, and not contributory with, that Insurance Policy; and
 - (iii) the insurer agrees that the interests of the Customer include the undertaking of the Contractor's obligations under this Agreement and waives any rights of subrogation which it may have against the Customer; and
- (c) the insurer agrees that no reduction in limits or coverage affecting the Contractor's obligations under this Agreement will be made during the period of insurance, except under the circumstances and to the extent permitted by the *Insurance Contracts Act 1984* (Cth) and with not less than 20 Business Days prior notification to the Customer.

50.3 Additional insurance

- (a) If the Customer at any time reasonably requires the Contractor to arrange insurance against a risk not specifically provided for or contemplated in accordance with Schedule 11, it may notify the Contractor and require that the Contractor give effect to its requirements. The Customer must reimburse the Contractor for the Contractor's reasonably incurred and substantiated costs of procuring any such additional insurances provided that the Customer has consented in writing to those costs prior to the costs being incurred.
- (b) Any addition to the Insurance Policies as a result of the Customer's requirements under clause 50.3(a) must be agreed by the parties in accordance with clause 62.2.
- (c) Nothing in this clause 50 restricts the Contractor from effecting and maintaining additional insurance policies, or insurance policies with a higher insured sum, than as required in Schedule 11.

50.4 Approved Subcontractor insurance

The Contractor must ensure that each Approved Subcontractor is insured:

- (a) as to amounts and types of insurance – in amounts and types that are commensurate with the nature of work or services to be performed by the Approved Subcontractor in connection with this Agreement (or as otherwise agreed by the Customer); and
- (b) otherwise – as required by this Agreement, as if the Approved Subcontractor was the Contractor.

50.5 Insurance Policies primary

- (a) The Insurance Policies are primary and not secondary to the indemnities referred to in this Agreement.
- (b) The Customer is not obliged to make a claim or institute proceedings against any insurer under the Insurance Policies before enforcing any of its rights or remedies under the indemnities referred to in this Agreement or generally.
- (c) The Contractor is not relieved from, and remains fully responsible for, its obligations in accordance with this Agreement regardless of whether the Insurance Policies respond or fail to respond to any claim and regardless of the reason why any of the Insurance Policies respond or fail to respond.

50.6 Evidence of Insurance Policies

- (a) The Contractor must give the Customer sufficient evidence, in the form of certificates of currency or similar documentation, and any additional information that the Customer requests, evidencing the Insurance Policies are effected and maintained, including those Insurance Policies required to be effected and maintained by Approved Subcontractors:
 - (i) as soon as it receives them from the insurer of the relevant Insurance Policies or, in the case of an Approved Subcontractor's Insurance Policies, from the Approved Subcontractor (which the Contractor must require the Approved Subcontractor to provide promptly after the relevant Insurance Policies are effected);
 - (ii) in accordance with clause 31.4(a); and
 - (iii) whenever reasonably requested by the Customer.
- (b) If the Contractor has not provided sufficient evidence and information to satisfy the Customer that the Insurance Policies have been effected and are maintained in accordance with this Agreement, the Customer reserves the right to request the Contractor to provide the Customer with a copy of each Insurance Policy.

50.7 Failure to produce evidence of Insurance Policies

- (a) If, after being requested in writing by the Customer to do so, the Contractor fails to produce evidence of compliance with its insurance obligations in accordance with clause 50.6 to the satisfaction and approval of the Customer, the Customer may:
 - (i) effect and maintain the Insurance Policies and pay the relevant premiums and the Contractor must promptly reimburse the Customer for any amounts paid in taking out and maintaining the Insurance Policies;
 - (ii) suspend the whole or part of the Agreement until evidence of the Insurance Policies is produced to the Customer, and the Contractor must bear any cost it incurs as a result of the suspension; or
 - (iii) refuse payment of any moneys due to the Contractor until evidence of the Insurance Policies required by clause 50.6 is produced to the Customer.
- (b) The costs reasonably incurred by the Customer in connection with taking any action in accordance with clause 50.7(a) will be recoverable from the Contractor as a debt due and payable on demand by the Contractor to the Customer.
- (c) The rights given to the Customer by this clause 50.7 are in addition to any other rights the Customer may have.

50.8 Insurance Claims

- (a) Subject to clause 50.8(c), if, and to the extent that:
 - (i) the Contractor incurs Liability to the Customer in connection with this Agreement; and
 - (ii) the Contractor may be insured against any Loss in respect of that Liability;

the Contractor must promptly make and pursue a claim against the relevant insurer in respect of that event, occurrence or circumstance, except in circumstances where the value of the claim would not exceed the deductible payable for making the claim.

- (b) If the Contractor makes a claim under an Insurance Policy, the Contractor must properly prepare the claim in the manner and time required by the relevant insurer and Insurance Policy.
- (c) This clause 50.8 does not apply in respect of any Liability incurred by the Contractor to the Customer in connection with this Agreement if:
 - (i) the Contractor elects to reimburse the Customer in respect of that Liability without claiming against the relevant insurer; and
 - (ii) reimbursing the Customer in respect of the Liability will not affect the Contractor's ability to complete the performance of its obligations under this Agreement in accordance with its terms.

51 PERFORMANCE GUARANTEES

51.1 Bank Guarantee

- (a) The Contractor must provide the Bank Guarantee to the Customer within 15 Business Days of the Commencement Date.
- (b) The Contractor provides each Bank Guarantee for the purpose of securing the due and proper performance of the Contractor's obligations under this Agreement.
- (c) Each Bank Guarantee must be issued by:
 - (i) an Australian trading bank registered under the *Banking Act 1959* (Cth); or
 - (ii) another financial institution, with a current Standard and Poor's (Australia) Pty Limited rating of not less than A- (or equivalent) and approved in writing by the Customer.
- (d) Each Bank Guarantee must not contain any provisions inconsistent with the Customer's rights under this Agreement.
- (e) The Contractor must ensure that, notwithstanding any payment made to the Customer under a Bank Guarantee, each Bank Guarantee is maintained in the amount set out in this Agreement and otherwise remains valid and enforceable until the end date set out in clause 51.4(a).
- (f) The Contractor is not entitled to submit any invoice:
 - (i) until it has delivered the Bank Guarantee; and
 - (ii) unless it has continued to maintain each Bank Guarantee, in accordance with this clause 51.

51.2 Maintaining the Bank Guarantee

- (a) If the Customer is paid all or part of the amount of a Bank Guarantee, the Contractor must, within 10 Business Days of any payment from the Bank Guarantee provide an additional Bank Guarantee or a replacement Bank Guarantee on the same terms as the Bank Guarantee originally provided by the Contractor, so that the total amount of the Bank Guarantees held by the Customer at any time is for the amount required by this clause 51.
- (b) If the rating of the financial institution which issues a Bank Guarantee falls below a Standard & Poor's (Australia) Pty Limited A- rating (or equivalent), the Contractor must provide to the Customer within 10 Business Days, a replacement Bank Guarantee meeting the requirements of this Agreement.
- (c) If a Bank Guarantee has an expiry date, and this Agreement requires the Bank Guarantee to remain in force beyond that expiry date, the Contractor must, at least 20 Business Days prior to the expiry of the Bank Guarantee, provide to the Customer a replacement Bank Guarantee meeting the requirements of this Agreement.

- (d) If the Contractor fails to provide a replacement Bank Guarantee in accordance with (and within the timeframe set out in) this clause 51.2, then the Customer may have recourse to the Bank Guarantee. Any such recourse will be treated as a cash deposit lodged by the Contractor.
- (e) A reference in this clause 51 to a Bank Guarantee includes any additional or replacement Bank Guarantees.

51.3 Recourse to security

- (a) The Customer may, from time to time, have full recourse to the whole or part of a Bank Guarantee if:
 - (i) the Customer makes a claim that it is owed any amount by the Contractor under or in connection with this Agreement and has not been paid that amount by the Contractor by its due date;
 - (ii) an Insolvency Related Event occurs in respect of the Contractor; or
 - (iii) the Contractor is in breach of this Agreement.
- (b) The Contractor must not take any steps to prevent the Customer from having recourse to a Bank Guarantee or using the money received under a Bank Guarantee.

51.4 Release of Bank Guarantee

- (a) The Customer's entitlement to the Bank Guarantee will cease on the later of 6 months after the date on which:
 - (i) all sums of money owed by the Contractor to the Customer under this Agreement have been paid in full; and
 - (ii) all of the Contractor's obligations under this Agreement have been completed.
- (b) Upon the Customer's entitlement to the Bank Guarantee ceasing, the Customer must release the Bank Guarantee (unless the Customer is enforcing its rights under the Bank Guarantee at that time or intends on doing so).

51.5 Parent Company Guarantee

Within 20 Business Days after the Commencement Date, the Contractor must provide to the Customer a parent company guarantee executed by the Guarantor in the form set out in Schedule 13 (Parent Company Guarantee).

52 INDEMNITY

52.1 References to Contractor

For the purposes of this clause 52, any act or omission caused by the Contractor or the Contractor's Personnel is deemed to be an act or omission of the Contractor.

52.2 Indemnity against Claims

The Contractor indemnifies the Customer against all Loss suffered or incurred by the Customer in connection with any of the following, or in connection with any Claim against the Customer arising out of or in connection with any of the following:

- (a) tortious acts or omissions by the Contractor or its Personnel;
- (b) personal injury, sickness or death caused or contributed by the Contractor or its Personnel;
- (c) loss of or damage to tangible property, the Customer Data, the Customer ICT Environment or any Participating Systems caused or contributed to by the Contractor or its Personnel;

- (d) statutory fine arising from any breach of Law or Authorisation by the Contractor or its Personnel;
- (e) unlawful acts or omissions of, fraudulent acts or omissions of, or fraudulent misrepresentation by the Contractor or its Personnel;
- (f) wilful default by the Contractor or its Personnel;
- (g) breach by the Contractor of clauses 41, 42, 43, 44 or 45 of this Agreement;
- (h) a Claim brought or threatened against the Customer or any other Government Agency by a third party that the use of a Deliverable or the Solution infringes the Intellectual Property Rights or other rights of that third party or of another person; and
- (i) breach of any equitable duty, including breach of confidentiality or breach of fiduciary duty, by the Contractor or its Personnel.

52.3 Exclusion

An indemnity given by a party under this Agreement (including the indemnities in clause 52.2) do not apply to any Loss to the extent that the Loss is caused by:

- (a) the other party's breach of this Agreement; or
- (b) the negligent acts or omissions of the other party or the other party's Personnel.

52.4 Conduct of Litigation

- (a) If a Claim is made against the Customer in the circumstances described in clause 52.2 (or in respect of any other circumstances for which the Contractor indemnifies the Customer under this Agreement), the Customer must as soon as possible:
 - (i) notify the Contractor in writing of the Claim; and
 - (ii) provide the Contractor with such details as are available to the Customer about the Claim,
 and the Contractor must:
 - (iii) refrain from making any admissions in relation to the Claim;
 - (iv) allow the Customer to conduct the defence of the Claim and any settlement negotiations, except as set out in clause 52.4(b); and
 - (v) provide reasonable assistance to the Customer in defending the Claim.
- (b) If the Contractor acknowledges in writing that it is liable to indemnify the Customer against the Claim under clause 52.2 (or in respect of any other circumstances for which the Contractor indemnifies the Customer under this Agreement), the Customer may at any time require, by notice to the Contractor, that the Contractor take over the defence of the Claim, in which case, the Contractor must:
 - (i) conduct the defence of any proceedings relating to the Claim diligently, using competent counsel, as a model litigant, in accordance with all applicable Laws and relevant State policies, and in such a way as not to bring the reputation of the Customer into disrepute;
 - (ii) keep the Customer informed of all material matters relating to the conduct of any defence or response in respect of the Claim;
 - (iii) consult with the Customer in respect of the manner of conducting the defence or response, and in respect of any matter relating to the defence or response that may bring the reputation of the Customer into disrepute;
 - (iv) obtain the Customer's prior written approval:
 - (A) before making any admission; and
 - (B) before any settlement is made,
 in respect of the Claim (such approval not to be unreasonably withheld, conditioned or delayed); and

- (v) comply at all times with any reasonable direction given by the Customer in respect of the Claim.
- (c) Nothing in this clause 52.4 requires the Customer to provide legal advice received in relation to a Claim to the Contractor.

52.5 Benefit of indemnities

- (a) In clauses 36.5(b), 41.8, 41.11(d) and 52.2 (and in any other provision of this Agreement under which the Contractor indemnifies the Customer), 'Customer' includes:
 - (i) the Customer;
 - (ii) the Crown in the right of the State of Western Australia;
 - (iii) any Parliament, department, agency or instrumentality of the State of Western Australia (whether body corporate or otherwise);
 - (iv) any Minister; and
 - (v) all of the Personnel of the entities listed in clauses 52.5(a)(i) to 52.5(a)(iv), being the **Indemnified Parties**.
- (b) The Customer declares that it holds the benefit of the indemnities given by the Contractor under clause 52.2 and elsewhere in this Agreement on trust for the Indemnified Parties.
- (c) The Contractor acknowledges the existence of the trusts referred to in clause 52.5(b) and approves:
 - (i) the Customer exercising rights in relation to, or otherwise enforcing, such indemnities on behalf of the Indemnified Parties; and
 - (ii) the Indemnified Parties exercising rights in relation to, or otherwise enforcing the indemnities.
- (d) The parties agree that the approval of the Indemnified Parties will not be required for any amendment to, or waiver of rights in accordance with, this Agreement.

52.6 Enforcement of indemnities

The Customer need not incur any cost or make any payment before enforcing any right of indemnity under this Agreement.

53 LIABILITY

53.1 Contractor's Liability to the Customer

Subject to clauses 53.2, 53.5 and 53.7, the aggregate Liability of the Contractor to the Customer in respect of all Loss, whether in contract, tort (including negligence and breach of statutory duty) or otherwise, arising out of or in connection with this Agreement is limited to the greater of:

- (a) \$10 million; and
- (b) 2.5 x the Charges paid under this Agreement.

53.2 Increase to Liability Cap

- (a) If the aggregate Liability of the Contractor to the Customer in respect of all Loss arising out of or in connection with this Agreement exhausts or is likely to exhaust the Liability Cap:
 - (i) the Customer may provide written notice to the Contractor requesting the Contractor to increase the Liability Cap (including the amount of the proposed increase); and
 - (ii) within 10 Business Days after receiving a notice from the Customer under clause 53.2(a)(i), the Contractor must agree or refuse to increase the

Liability Cap by the proposed amount (in its absolute discretion) by providing written notice to the Customer.

- (b) If the Contractor agrees to increase the Liability Cap in accordance with the Customer's request, the Liability Cap is increased by the proposed amount.
- (c) If the Contractor refuses to increase the Liability Cap in accordance with the Customer request, there will be no change to the Liability Cap and the Customer may immediately terminate this Agreement by giving notice to the Contractor.
- (d) If the Contractor fails to issue a notice under clause 53.2(a)(ii) within 10 Business Days after receiving a notice from the Customer under clause 53.2(a)(i), the Contractor is deemed to have agreed to the proposed increase and clause 53.2(b) applies.

53.3 Customer's Liability to the Contractor

Subject to clause 53.6, the aggregate Liability of the Customer to the Contractor in respect of all Loss, whether in contract, tort (including negligence and breach of statutory duty) or otherwise, arising out of or in connection with this Agreement is limited to the greater of:

- (a) \$325,000 ; and
- (b) 10% of the Charges payable under this Agreement for the Project Term.

53.4 Consequential Loss

- (a) Subject to clause 53.5, the Contractor has no Liability to the Customer, nor is the Customer entitled to make any Claim against the Contractor, in respect of any Indirect or Consequential Loss suffered, incurred or sustained by the Customer arising out of or in connection with this Agreement.
- (b) Subject to clause 53.6, the Customer has no Liability to the Contractor, nor is the Contractor entitled to make any Claim against the Customer, in respect of any Indirect or Consequential Loss suffered, incurred or sustained by the Contractor arising out of or in connection with this Agreement.

53.5 Exceptions to the Contractor's Limits of Liability

The limitations on, and exclusions of, the Contractor's Liability in clauses 53.1 and 53.4(a) do not apply to, limit, exclude or restrict in any way, the Contractor's Liability to the Customer for Loss suffered or incurred by the Customer:

- (a) arising out of Claims by third parties against the Customer;
- (b) arising out of personal injury, sickness or death;
- (c) arising out of loss of or damage to property (including Customer Data and the Customer's ICT Environment) caused or contributed to by the Contractor;
- (d) arising out of any statutory fine or penalty arising from any breach of Law or Authorisation by the Contractor or its Personnel;
- (e) arising out of unlawful acts or omissions of, fraudulent acts or omissions of, or fraudulent misrepresentation by the Contractor or its Personnel;
- (f) arising out of reckless acts or omissions carried out by the Contractor or its Personnel with a wilful disregard for the consequences;
- (g) arising out of wilful default by the Contractor or its Personnel;
- (h) arising out of a repudiatory breach by the Contractor;
- (i) arising out of the abandonment of the performance of any of the Contractor's obligations under this Agreement by the Contractor or its Personnel;
- (j) arising out of a breach of clauses 41, 42, 43, 44 or 45 of this Agreement;
- (k) arising out of any obligation to indemnify the Customer;
- (l) in relation to the re-performance of any of the Contractor's obligations under this Agreement;

- (m) in relation to any Delay Costs or Service Credits which are payable by the Contractor under this Agreement;
- (n) in relation to any special, exemplary or punitive damages; or
- (o) arising out of matters which, by Law, cannot be limited or excluded.

53.6 Exceptions to the Customer's Limits of Liability

The limitations on, and exclusions of, the Liability of the Customer in clauses 53.3 and 53.4(b), do not apply to, limit or restrict in any way, the Customer's Liability to the Contractor for Loss suffered or incurred by the Contractor:

- (a) arising out of Claims by third parties (other than Subcontractors) against the Contractor;
- (b) arising out of personal injury, sickness or death;
- (c) arising out of loss of or damage to property caused by the Customer;
- (d) arising out of unlawful acts or omissions of, fraudulent acts or omissions of, or fraudulent misrepresentation by the Customer;
- (e) arising out of wilful default by the Customer;
- (f) arising out of a breach of clauses 41 or 42 of this Agreement;
- (g) in relation to any special, exemplary or punitive damages; or
- (h) arising out of matters which, by Law, cannot be limited or excluded,

or to limit or restrict in any way the Customer's obligation under this Agreement to pay the Charges for work properly completed by the Contractor in accordance with this Agreement and for which the Contractor has obtained all required Customer approvals and Acceptance Certificates.

53.7 Amounts recovered under insurance

- (a) The limitation on the Contractor's Liability under clause 53.1 does not apply to limit the Contractor's Liability to the extent that:
 - (i) the Contractor recovers or is entitled to recover in respect of such Liability; or
 - (ii) such Liability would have been recoverable but for the Contractor's breach of this Agreement or any Insurance Policies,
 under an applicable Insurance Policy.
- (b) In the case of the Contractor's Liability falling under clause 53.7(a), unless clause 53.5 applies, the limit of the Contractor's Liability is the greater of the amount set out in clause 53.1 and the amount recovered, or entitled to be recovered, or which should have been recovered (but for the Contractor's breach of this Agreement or the Insurance Policy (as applicable)) under the Insurance Policies.
- (c) In determining the amount that has been recovered or would have been recoverable under clauses 53.7(a) and 53.7(b), no deduction may be made for a deductible paid or payable to the insurer by the Contractor.

53.8 Exceptions do not exhaust limitations of Liability

Any amounts recovered or recoverable by the Customer from the Contractor pursuant to clause 53.5 are not counted towards the limit on the Contractor's Liability under clause 53.1.

54 DISPUTE RESOLUTION

54.1 Disputes

If a Dispute arises between the Contractor and the Customer, then the Dispute may be dealt with under this clause 54.

54.2 Negotiation

- (a) If a Dispute arises then a party may, by sending a Dispute Notice to the other party, request that the Dispute be referred for resolution to the Contract Managers.
- (b) If a Dispute is referred to the Contract Managers, then the Contract Managers must promptly meet and use all reasonable endeavours to resolve the Dispute (including by holding further meetings and involving senior executives as required) within 20 Business Days after the date on which the Dispute Notice is received (or such later date as the parties may agree).
- (c) If a Dispute is not resolved under clause 54.2(b), the Dispute must be referred for resolution to:
 - (i) the Contractor's Chief Executive Officer; and
 - (ii) the Customer's General Manager, Location Services,(or their equivalent officer or nominee) for resolution.

54.3 Mediation

- (a) If, within 40 Business Days after the date on which the Dispute Notice is received (or such later date as the parties may agree), the Dispute is not resolved, then (unless the parties agree otherwise) the Dispute will be referred for mediation, to commence immediately.
- (b) The mediation must be conducted by an accredited mediator agreed by the parties, or failing agreement within five days, an accredited mediator nominated by the Chair of Resolution Institute (ACN 008 651 232) or the Chair's designated representative. Unless agreed otherwise by the parties, the mediator must be:
 - (i) a retired judge of the High Court of Australia or the Supreme Court of a State or Territory of Australia; or
 - (ii) a dispute resolution practitioner with legal qualifications and at least 15 years' experience in the legal profession.
- (c) In the absence of an agreement on terms, the terms of the appointment must be in accordance with the Resolution Institute Mediation Rules.
- (d) The parties must genuinely participate in the mediation process.
- (e) The parties will share equally the mediator's fees for any mediation.
- (f) If the Dispute is not resolved within 20 Business Days of the commencement of the reference to mediation, subject to clause 54.6, either party may then, but not earlier, commence court proceedings.

54.4 Rules applicable to negotiation and mediation

- (a) Other than the fact of occurrence, all aspects of negotiations under clause 54.2 and mediation under clause 54.3 will be privileged and confidential.
- (b) Unless agreed otherwise, subject to clause 54.4(c), the following rules apply to any negotiation under clause 54.2 and any mediation under clause 54.3:
 - (i) any settlement proposal whether made by a party or the mediator;
 - (ii) the willingness of a party to consider any such proposal;
 - (iii) any statement made by a party or the mediator during the mediation; and
 - (iv) any information prepared for the mediation,will not be disclosed, or be the subject of a subpoena to give evidence or to produce documents, in any proceedings concerning the Dispute.
- (c) Any party may enforce the terms of a signed settlement agreement reached through the negotiations or mediation by judicial proceedings. For the purposes of this clause 54.4(c), any party may call evidence of the settlement agreement including evidence from the mediator and any other person engaged in the mediation.

54.5 Arbitration

Note to respondents: If the respondent's place of incorporation is not Australia, then an arbitration clause will be inserted here, based on the arbitration clause currently contained in the Parent Company Guarantee.

54.6 No bar to litigation or injunctive or urgent relief

Nothing in this clause 54 prejudices either party's right to:

- (a) commence legal proceedings at any time to resolve any Dispute or any other matter arising out of this Agreement (in whole or part), including by seeking urgent injunctive or declaratory relief; or
- (b) exercise any of its rights under this Agreement (including a right of termination), including before the Dispute has been referred to the Contract Managers in accordance with clause 54.2(a), during the period referred to in clause 54.2(b) and during any mediation.

54.7 Continuity

Despite the existence of a Dispute, the parties must continue to perform their obligations under this Agreement.

55 SUSPENSION

55.1 Suspension by the Customer

- (a) If:
 - (i) the Customer reasonably forms the opinion that, unless the Customer exercises some or all of its rights under this clause 55.1, there is or is likely to be a risk:
 - (A) to the health or safety of any person;
 - (B) of material damage to the performance, availability or security of the Solution, the Customer Data, the Customer ICT Environment or any Participating System, or material disruption to the Customer's operations;
 - (C) of a material Security Breach occurring or continuing; or
 - (D) of material damage to the Customer's brand or reputation;
 - (ii) a Disaster occurs which significantly disrupts the Customer's ability to receive any of the Services;
 - (iii) circumstances arise in connection with this Agreement that, in the Customer's reasonable opinion, are required to be notified under Work Health and Safety Laws;
 - (iv) the Customer has the right to terminate this Agreement under clause 57.1; or
 - (v) this Agreement otherwise gives the Customer an express right to suspend it,the Customer may (subject to clause 55.1(c)), by written notice to the Contractor, suspend this Agreement (in whole or part) from the date of the notice (or such later date as set out in the notice) for such time as the Customer thinks fit.
- (b) The Contractor must promptly comply (including as to timeframes) with any notice which is issued by the Customer under clause 55.1(a).
- (c) Clause 55.1(a) does not apply to the extent that the right is stayed by operation of sections 415D, 434J or 451E of the Corporations Act.

55.2 Recommencement

- (a) As soon as it becomes aware that the reason for any suspension no longer exists, the Customer must notify the Contractor in writing.
- (b) Upon written notice from the Customer, the Contractor must recommence performance as soon as reasonably possible (and in any event, within the time period, if any, stated in the notice) of the whole or the relevant part of its obligations which were suspended.

55.3 Effect of Suspension

If the Customer suspends this Agreement in accordance with clause 55.1(a):

- (a) the parties must not incorporate any new Variation Orders or Statements of Work in this Agreement during the period of suspension;
- (b) other than in respect of:
 - (i) any payment due under this Agreement for Services performed prior to the commencement of a period of notified suspension; and
 - (ii) in the case of a partial suspension, any payment due under this Agreement for the parts of the Services which are not suspended,the Contractor is not entitled to any payment by the Customer, whether in respect of the Charges, any Losses or otherwise, in respect of that suspension (including those obligations that are suspended, and including in respect of any Services provided by the Contractor contrary to a notice of suspension);
- (c) the Contractor must reimburse the Customer for the Customer's costs of the suspension if the suspension arose out of a failure by the Contractor to comply with its obligations under this Agreement; and
- (d) except as set out in clause 55.3(a), and in the Customer's notice under clause 55.1(a), suspension of this Agreement does not affect the rights or obligations of the parties under this Agreement.

55.4 Termination following Suspension

If:

- (a) the Customer suspends this Agreement in accordance with clause 55.1;
- (b) the suspension continues for 60 Business Days or more after the date of suspension; and
- (c) the suspension was not due to a failure by the Contractor to comply with its obligations under this Agreement,

the Customer may terminate this Agreement (in whole or in part) by giving 20 Business Days' notice in writing to the Contractor.

56 MATERIAL BREACH

- (a) If the Contractor commits a breach of this Agreement, the Customer may issue a Breach Notice to the Contractor. The Contractor must remedy the breach within 10 Business Days of the date of the Breach Notice.
- (b) If the Contractor considers that 10 Business Days is not a reasonable time for the Contractor to remedy the breach, the Contractor must:
 - (i) within 2 Business Days of receiving the Breach Notice, notify the Customer of its intention to submit a plan to remedy the breach;
 - (ii) within 5 Business Days of receiving the Breach Notice, submit a Remedy Plan to the Customer Contract Manager;

- (iii) if required by the Customer, promptly (and in any event within 3 Business Days of the request from the Customer) amend the Remedy Plan and resubmit it to the Customer until it is acceptable to the Customer; and
 - (iv) upon receiving the Customer's written approval of the Remedy Plan, immediately implement and comply with the Remedy Plan.
- (c) If the breach is not capable of remedy, the Contractor must make other arrangements to the reasonable satisfaction of the Customer and within a reasonable time frame as agreed with the Customer.
- (d) If the Contractor fails to:
 - (i) remedy the breach within 10 Business Days of a Breach Notice;
 - (ii) submit a Remedy Plan that is acceptable to the Customer within 5 Business Days of a Breach Notice pursuant to clause 56(b)); or
 - (iii) comply with a Remedy Plan that is approved by the Customer in writing
 - (iv) make other arrangements under clause 56(c) to the Customer's reasonable satisfaction,
 a critical default occurs, and the Customer may terminate this Agreement, in whole or in part, pursuant to clause 57.1.
- (e) The parties agree that:
 - (i) for the purposes of clause 56(d)(ii), the Customer is not obliged to give the Contractor the opportunity to resubmit a Remedy Plan if the submitted Remedy Plan is not acceptable to the Customer;
 - (ii) the Customer's approval of a Remedy Plan, or of any other arrangements relating to a breach, does not amount to a waiver by the Customer of any right (including any termination right) arising from the relevant breach or any other breach of this Agreement; and
 - (iii) nothing in this clause 51 prejudices the right of the Customer to recover damages or exercise any other right or remedy.

57 TERMINATION OF THIS AGREEMENT

57.1 Termination by the Customer for cause

In addition to the Customer's other rights or remedies under this Agreement or any Law, the Customer may (except to the extent that the right is stayed by operation of sections 415D, 434J or 451E of the Corporations Act) terminate this Agreement, in whole or in part, with immediate effect by giving notice to the Contractor if:

- (a) the Contractor commits a Material Breach of this Agreement;
- (b) the Contractor commits a material breach of clause 41, 42, 43, 44 or 45;
- (c) the Contractor breaches clause 35.3, 60.2, 60.3 or 62.3;
- (d) the Contractor breaches any warranty given under this Agreement;
- (e) the Contractor fails to meet the Service Levels in two consecutive months;
- (f) the Contractor fails to provide (or comply in a material respect with) a Performance Remediation Plan in accordance with clause 24, and does not remedy that failure within 5 Business Days (or such other time as agreed by the parties in writing) of a notice from the Customer to the Contractor Contract Manager regarding the failure;
- (g) the total Service Credits levied by the Customer on the Contractor in accordance with clause 23.3 in a consecutive 12 month period exceeds an amount equal to twice the Aggregate At Risk Amount;
- (h) the aggregate amount of damages paid or payable in respect of all Claims by the Customer against the Contractor exceeds the Liability Cap;
- (i) a critical default occurs pursuant to clause 56(d);

- (j) the Customer exercises its right to suspend the Services due to a failure by the Contractor to comply with its obligations under this Agreement (other than a trivial or insignificant failure), and, following a period of at least 10 Business Days after exercising the suspension right, the Customer is not satisfied, acting reasonably, that the Contractor has demonstrated that it can resume full performance of the Services in accordance with this Agreement;
- (k) an Insolvency Related Event occurs in respect of the Contractor or the Guarantor;
- (l) there is a significant interruption to or degradation in the performance of the Services that is not caused by a Customer Fault or Excusable Event and that continues for 20 Business Days or more;
- (m) the Customer, acting reasonably, considers that the results of any security testing, conducted as contemplated by this Agreement, demonstrate that there is a material risk to the security or integrity of the Customer Data, and that material risk is not resolved to the Customer's satisfaction, acting reasonably, within 10 Business Days;
- (n) there is a material risk to the Customer's operations arising from the performance of the Services;
- (o) the Contractor or any of its Personnel engages in fraud, misconduct, misleading, deceptive or otherwise unlawful conduct, whether in connection with this Agreement or otherwise;
- (p) the Contractor or any of its Personnel does anything or omits to do anything, that places the Customer in breach of any Laws;
- (q) the Contractor (or any of its Related Companies) commits any act or does any thing which brings the Customer's reputation into disrepute and, as a consequence, the Customer believes that its continued association with the Contractor will be prejudicial or otherwise detrimental to the Customer's reputation;
- (r) the outcome of a Police Clearance check, security clearance check or other integrity check on the Contractor, a director (or other officer), majority shareholder or director (or other officer) of a majority shareholder of the Contractor is, in the Customer's sole opinion, not supported;
- (s) the Contractor is or becomes a debarred supplier within the meaning of the *Procurement (Debarment of Suppliers) Regulations 2021*; or
- (t) a Probity Event occurs,

and, for clarity, the Customer may terminate the Agreement by notice in writing to the Contractor if this Agreement otherwise expressly permits it to do so (including in the manner set out in clauses 5.6, 10.9(c), 16.4(a), 41.7(f), 46.4, 53.2(c) and 55.4).

57.2 Termination by the Customer for convenience

The Customer may (except to the extent that the right is stayed by operation of sections 415D, 434J or 451E of the Corporations Act) terminate this Agreement, in whole or in part, without any reason by giving 3 months' written notice to the Contractor. The Customer may, at its sole discretion, provide a longer period of notice.

57.3 Termination by the Contractor

If:

- (a) the Customer fails to make a payment due to the Contractor under clause 39 by the due date for payment;
- (b) the Contractor gives the Customer a notice requiring payment within 20 Business Days from the date of the notice and the Customer fails to make payment required by that notice;
- (c) the Contractor gives the Customer a second notice, addressed to the General Manager, Location Services and General Counsel (or, if that role no longer exists, the person then fulfilling the equivalent or replacement role), requiring payment within 10 Business Days from the date of the notice and advising that the Contractor may terminate this Agreement if the amount is not paid; and

- (d) the Customer does not pay the amount due within 20 Business Days from the date of the second notice under clause 57.3(c),

the Contractor may terminate this Agreement by giving the Customer not less than 30 days' written notice, and the Customer must pay to the Contractor, as the Contractor's sole remedy in respect of such termination, the Termination Payment.

57.4 Status of Deliverables

- (a) If this Agreement terminates for any reason:
 - (i) the licences granted to (or procured for) the Customer under this Agreement will survive that termination;
 - (ii) the Customer may retain any Deliverables and Working Papers already provided under this Agreement; and
 - (iii) at the Customer's request, the Contractor must provide to the Customer any Deliverables and Working Papers that have been prepared or partially prepared but not yet provided to the Customer.
- (b) The Customer must pay to the Contractor any unpaid portion of the Charges that relates to:
 - (i) completed Deliverables and Working Papers provided to the Customer prior to termination in accordance with this Agreement (and that were due under this Agreement prior to termination, and for which the Contractor had obtained all required Customer approvals and Acceptance Certificates); or
 - (ii) partially prepared Deliverables or Working Papers that the Customer elects to retain or have the Contractor provide under clause 57.4(a), with an appropriate discount, calculated by the Customer Contract Manager, acting reasonably, to take into account that the Deliverable or Working Paper has not been completed.
- (c) If this Agreement is terminated by the Customer under clause 57.1, or otherwise for cause, and the termination occurred prior to expiry of the last Hypercare Period:
 - (i) the Customer may reject any Deliverables already provided under this Agreement that have not passed all required Acceptance Tests; and
 - (ii) the Contractor must immediately, at its own cost and expense, remove those rejected Deliverables from the Customer ICT Environment or relevant Participating System and refund to the Customer all amounts paid under this Agreement relating to the rejected Deliverables.
- (d) If this Agreement expires or terminates for any reason, then unless the Customer directs otherwise the licences granted to (or procured for) the Customer under this Agreement will survive that termination, until such time as the Customer elects to terminate that licence.

57.5 Other effects of expiration or termination

- (a) The expiration or termination of this Agreement does not affect any rights, Liabilities or obligations of the parties as a result of anything occurring before the End Date.
- (b) If the Customer terminates this Agreement under clause 10.9(c), 16.4(a), 41.7(f), 53.2(c) or 57.1, then, in addition to any rights of the Customer specified in those clauses, the parties will have the same rights, remedies and Liabilities as if the Contractor repudiated this Agreement and the Customer elected to treat this Agreement to be at an end and recover damages.
- (c) If this Agreement is terminated under clause 2.3(b), 46.4, 55.4 or as described in clause 57.5(b) then without limiting the other rights or remedies of the Customer under this Agreement or at Law:
 - (i) neither the Customer nor any other person is liable to pay any amount to the Contractor or any of the Contractor's Personnel in respect of the termination;

- (ii) the Customer may apply any amounts due to the Contractor towards satisfaction of any damages, costs and expenses recoverable by the Customer from the Contractor in consequence of the termination; and
 - (iii) the Contractor waives any other rights it might have to pursue a Claim of any kind, including a Claim of unjust enrichment, as a result of termination of this Agreement.
- (d) Upon the ending of this Agreement (following the completion of any Transition-Out Services), the Contractor must, and must ensure that each of the Contractor's Personnel (except to the extent otherwise stated in a termination notice of the Customer or in any directions of the Customer, or required under an agreed termination program):
 - (i) immediately stop performing work under this Agreement, and not place any further orders, or purchase or enter into any commitments for the supply of materials or services, or enter into any further subcontracts;
 - (ii) take such action as the Customer directs, and as is otherwise necessary, for the transfer, protection and preservation of any Deliverables, Working Papers or any other property in the possession of the Contractor or its Personnel in which the Customer has or may acquire an interest;
 - (iii) if the Customer so directs, remove from the Customer's premises all of the Contractor's Resources;
 - (iv) use its best endeavours to mitigate any loss or damage that either party may suffer as a result of the ending of this Agreement;
 - (v) deliver to the Customer within 10 Business Days after the date this Agreement ends:
 - (A) all of the Customer's material in the format requested by the Customer;
 - (B) one hard copy and one electronic copy of the then current version of all of the Project Documents; and
 - (C) any other property or documents which the Customer owns or in which the Customer has an interest; and
 - (vi) refund to the Customer the unused portion of any prepaid Charges (including any prepaid licence fees or other prepaid ongoing fees) in respect of the period following termination.

57.6 Effects of partial termination

If the Customer terminates this Agreement in part, then once the Contractor has fulfilled its obligations (if any) to provide the Transition-Out Services in respect of the terminated part of this Agreement:

- (a) the Contractor will cease to be obliged to provide the Services comprising the terminated part of this Agreement;
- (b) the Customer will no longer be obliged to pay any Charges in respect of that terminated part; and
- (c) this Agreement will be construed, and its provisions will be enforceable by and against the parties, as if references to that terminated part, and the Charges payable in respect of that terminated part, were severed from this Agreement,

without in any way affecting the accrued rights of the parties up to and including the date of completion of Transition-Out Services.

58 TRANSITION-OUT

58.1 Transition-Out objectives

- (a) The parties acknowledge and agree that an effective disengagement regime will be critical to ensuring the timely and orderly winding up of the Contractor's performance

of the Ending Obligations and, where applicable, the transferring of responsibility for the performance of the Ending Obligations from the Contractor to the Customer or a third party.

- (b) In the context set out in clause 58.1(a), the objectives of the Transition-Out Services are:
 - (i) to enable the Customer to:
 - (A) assess options for;
 - (B) plan for and conduct tender, evaluation, re-negotiation or other selection processes in respect of; and
 - (C) plan for and execute,the transition of the performance of the relevant Ending Obligations from the Contractor to the Customer or a third party; and
 - (ii) to eliminate or minimise any disruption to or deterioration of the performance of the Ending Obligations during and as a result of the transition of the performance of the Ending Obligations to the Customer or a third party.

58.2 Transition-Out Plan

- (a) If requested by the Customer, the Contractor must prepare a Transition-Out Plan and submit it to the Customer for its approval pursuant to clause 6 within 6 months following the Commencement Date.
- (b) The Transition-Out Plan must, in addition to any requirements set out in the Statement of Requirements:
 - (i) set out in detail all the services, functions and tasks that are necessary, desirable or reasonably requested by the Customer to ensure that Transition-Out takes place in a timely and orderly manner and to achieve the objectives of Transition-Out, as set out in clause 58.1;
 - (ii) set out the timeframes during which the Contractor will perform the Transition-Out Services;
 - (iii) set out any roles and responsibilities of the Customer and any other relevant persons;
 - (iv) set out how continuity of staffing and service delivery will be maintained during the Transition-Out Period;
 - (v) set out the risks to the Customer during the Transition-Out Period, and how those risks will be managed or mitigated; and
 - (vi) include an up to date record of all Resources (including Personnel) and Subcontracts used to perform the Contractor's obligations under this Agreement.
- (c) The Contractor must amend the Transition-Out Plan as directed by the Customer from time to time (acting reasonably).
- (d) Without limiting clause 58.2(c), the Contractor must, promptly after each anniversary of the Commencement Date:
 - (i) update the Transition-Out Plan; and
 - (ii) submit the updated Transition-Out Plan to the Customer pursuant to clause 6.
- (e) If:
 - (i) upon the service of a termination notice under this Agreement; or
 - (ii) by the date that is 3 months prior to expiry of this Agreement,there is no Transition-Out Plan, the Contractor and the Customer must agree on a termination program under which all activities required under this Agreement continue to apply until the effective date of termination. The termination program is to:

- (iii) include any other changes required by the termination; and
 - (iv) apply until the effective date of termination.
- (f) If agreement on the termination program is not reached within 30 days of the date of a termination notice, or by the date that is 2 months prior to expiry of this Agreement, the Contractor must comply with any and all of the Customer's directions regarding the cessation of any work and regarding transition-out.

58.3 Charges payable for Transition-Out Services

- (a) The Charges for the Transition-Out Services are to be calculated as set out in the Transition-Out Plan or, where not specified, based on the rates used in calculating the Charges for the Ongoing Services.
- (b) The Contractor must use all reasonable endeavours to minimise the Charges for the Transition-Out Services, including by using Resources and performing the Transition-Out Services in the most efficient manner possible.

58.4 Performance of Transition-Out Services

- (a) The Customer may require the Contractor, by giving at least 1 months' notice in writing to the Contractor, to perform the Transition-Out Services pursuant to this clause 58, and the Contractor must comply with any such requirement.
- (b) If the Customer provides notice pursuant to clause 58.4(a), then:
 - (i) the Contractor must, during each Transition-Out Period perform the Transition-Out Services in accordance with the current Transition-Out Plan, and in accordance with the requirements of Schedule 6; and
 - (ii) the Customer must pay the Charges in respect of those Transition-Out Services.
- (c) If the Contractor is in breach of this clause 58 (including in respect of a breach of the Transition-Out Plan), the Customer may extend the relevant Transition-Out Period by such period as reasonably determined by the Customer and notified to the Contractor in writing prior to the end of the then current Transition-Out Period.
- (d) The Customer may terminate a Transition-Out Period at any time prior to the expiry of the Transition-Out Period and for any reason by providing written notice to the Contractor, in which case the Transition-Out Period ends at the time notified by the Customer to the Contractor.

58.5 Continued performance of Ending Obligations

During each Transition-Out Period, and notwithstanding anything to the contrary in the Transition-Out Plan:

- (a) the Contractor must continue to perform each part of the relevant Ending Obligations (including the relevant Services); and
 - (b) the Customer must continue to pay the Contractor the Charges that relate to each part of the relevant Ending Obligations (including the relevant Services),
- until:
- (c) responsibility for performing that part has been:
 - (i) transferred from the Contractor to the Customer or a third party (which must only occur with the Customer's prior written approval); or
 - (ii) removed from the Contractor's obligations under this Agreement by the Customer; and
 - (d) the Customer has given a separate written notice to the Contractor permitting the Contractor to cease performing its obligations in relation to that part.

58.6 Restrictions during Transition-Out Period

The Contractor must ensure that, during each Transition-Out Period, there is no:

- (a) degradation to or interruption in the performance of the Ending Obligations; or
- (b) material adverse effect on the Customer, including in respect of the ability of the Customer to effectively conduct its operations.

58.7 Third Party consents

To the extent that a third party's agreement, consent or approval is required to permit the Customer to exercise its rights under this clause 58 or the Transition-Out Plan, the Contractor must ensure that the agreement, consent or approval of that third party remains in force during the Term.

58.8 Agreement continues to apply

Notwithstanding any termination of the Agreement, or the expiry of the Ongoing Services Term, this Agreement continues to apply during the Transition-Out Period in respect of the provision of the Transition-Out Services (if any).

59 PERSONAL PROPERTY SECURITIES ACT

59.1 Further assurance

- (a) If the Customer determines that this Agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Customer asks and considers necessary for the purposes of:
 - (i) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the Customer to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that the Customer has the priority required by it; or
 - (iii) enabling the Customer to exercise rights in connection with the security interest.
- (b) The Contractor agrees to cause any financing statements required pursuant to clause 59.1(a)(ii) to be registered in accordance with the PPS Law and, in any event, at such times as may be directed by the Customer to maintain the priority required by the Customer.

59.2 No requirement for PPSA Notices

The Customer need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given and cannot be excluded.

59.3 Priority of Customer's interest

Nothing in this Agreement will be taken or construed as an agreement or consent by the Customer to:

- (a) subordinate the Customer's interest or applicable Credential Provider's interest in Customer Personal Property (or any part thereof) to any other encumbrance or interest affecting Customer Personal Property at any time; or
- (b) delay the time when a security interest created or provided for under this Agreement attaches to the relevant collateral.

59.4 Notices to be given to the Customer

The Contractor must notify the Customer in writing as soon as the Contractor becomes aware of any of the following:

- (a) if any personal property which does not form part of Customer Personal Property becomes an accession to Customer Personal Property and is subject to a security interest in favour of a third party that has attached at the time it becomes an accession;
- (b) if any Customer Personal Property is located or situated outside Australia; and
- (c) upon request by the Customer, of the present location or situation of any Customer Personal Property.

59.5 Negative undertakings

The Contractor must not, and must ensure that each Subcontract with an Approved Subcontractor provides that the Approved Subcontractor must not:

- (a) change its name without first notifying the Customer of the new name not less than 15 Business Days before the change takes effect; or
- (b) relocate its principal place of business outside Australia or change its place of registration or incorporation,

except where:

- (c) specifically provided otherwise in this Agreement; or
- (d) the Customer gives its prior written approval to such relocation or name change.

59.6 Assistance with registration

- (a) The Contractor must provide all necessary information and take all necessary action and execute all necessary documents (and procure each Subcontractor to execute all necessary documents) as reasonably requested by the Customer to enable the Customer to perfect, within the time limit specified in the PPSA, any security interest created or provided for by this Agreement in relation to any personal property including any security interest granted temporary perfection under the PPSA at any time.
- (b) The Contractor must promptly provide all necessary information and take all necessary action (including obtaining any consent or agreement or giving any notice) to enable the Customer to register fully valid and effective financing statements or financing change statements with respect to any security interest held or intended to be held by the Customer under this Agreement at any time.

59.7 Customer's interest remains unaffected

The Customer's interest and the applicable Credential Provider's interest in Customer Personal Property is not affected by anything which, but for this provision might have that effect, including any failure to perfect or to continuously perfect (within the meaning of the PPSA) the security interest in relation to any personal property forming part of Customer Personal Property at any time.

59.8 Costs and expenses relating to PPSA and registration

Each party agrees that it will pay its own costs in connection with anything that party is required to do under this clause 59.

59.9 Confidentiality for the purposes of the PPSA

- (a) Notwithstanding clause 59.1, neither the Customer nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA in response to a request under section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other person authorises, the disclosure of such information.

- (b) Clause 59.9(a) does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

60 INTEGRITY

60.1 Conflict of interest

If a conflict of interest arises in respect of the Contractor, the Contractor must:

- (a) promptly notify the Customer that the conflict has arisen and provide full details in relation to that conflict; and
- (b) take reasonable steps, in consultation with the Customer, to remove the conflict.

60.2 Anti-corruption

- (a) In performing its obligations under this Agreement, the Contractor must:
 - (i) comply with any applicable Laws relating to anti-corruption; and
 - (ii) not give or offer to give, receive, or agree to accept, any payment, gift or other advantage which violates an applicable anti-corruption law.
- (b) The Contractor undertakes that it has not and will not, and that its Personnel have not and will not, authorise, offer, promise or give anything of value to:
 - (i) any:
 - (A) individual who is employed by or acting on behalf of a Government Agency or the Customer; or
 - (B) any individual who holds himself or herself out to be the authorised intermediary of a person described in clause 60.2(b)(i)(A),
in order to influence any official action, or any action of any Government Agency or the Customer; or
 - (ii) any person in order to influence that person to act in breach of a duty of good faith, impartiality or trust in relation to the Customer.
- (c) The Contractor undertakes that it has not and will not, and that its Personnel have not and will not, receive or agree to accept any payment, gift or other advantage which:
 - (i) violates any applicable Laws relating to anti-corruption; or
 - (ii) is paid in order to influence the recipient or another person to act in breach of a duty of good faith, impartiality or trust.

60.3 Anti-competitive behaviour

- (a) The Customer reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by the Contractor or any of its Personnel to the appropriate regulatory authority and to provide that authority with any relevant information about the Contractor and its Personnel.
- (b) The Customer's obligation to keep information confidential will not be breached if the information is disclosed by the Customer to the appropriate regulatory authority because of suspected collusive or anti-competitive behaviour.
- (c) The Contractor must promptly notify the Customer if, at any time during the Term, the Contractor or any of its Personnel are, or have been, subject to proceedings related to anti-competitive conduct in Australia or overseas. The information must include:
 - (i) the names of the parties to the proceedings;
 - (ii) the case number;
 - (iii) the general nature of the proceedings; and
 - (iv) the outcome or current status of the proceedings.

60.4 Audit of employment and industrial relations practices

- (a) In this clause 60.4:
 - (i) **employment related Information** means Information pertaining to employees or the terms and conditions of their employment, or payroll; and
 - (ii) **Information** includes information, facts, data, records and documentation.
- (b) An agent or representative of the State may commission an audit of the employment or industrial relations practices (including terms of employment) of the Contractor or any of its Subcontractors (at any tier) in connection with this Agreement and the Services. Upon such commissioning, the provisions of clause 60.4 will apply:
- (c) The Contractor must, and must ensure that its Subcontractors, fully cooperate with the agent or representative of the State and any auditor appointed by them in any audit, including to:
 - (i) allow an agent or representative of the State:
 - (A) access to all employment related Information; and
 - (B) to conduct audits of all employment and payroll records, in the ownership, possession or control of the Contractor or the relevant Subcontractor (as the case may be);
 - (ii) allow auditors appointed by the agent or representative of the State to communicate directly with employees of the Contractor or the relevant Subcontractor (as the case may be), and to have access to sites and premises in the ownership, possession or control of the Contractor or relevant Subcontractor (as the case may be) for the purposes of the audit;
 - (iii) ensure that all employment related Information (including access to such information), in the Contractor's or relevant Subcontractor's ownership, possession or control, is promptly provided to the auditor on request;
 - (iv) allow the agent or representative of the State to communicate with (including providing Information to) the employees of the Contractor and relevant Subcontractors; and
 - (v) promptly rectify any problem or wrong identified by the auditor and notified to the Contractor or relevant Subcontractors (as the case may be).
- (d) The Contractor acknowledges and agrees, and must ensure that each of its Subcontractors acknowledge and agree, that the agent or representative of the State may refer any problem or wrong identified by the auditor to any State or Commonwealth body or authority having an oversight role in respect to employment or industrial relations matters.

60.5 Modern Slavery

- (a) The Contractor represents, warrants and undertakes that, as at the Commencement Date, neither the Contractor or any of its Related Companies, nor (to the best of its knowledge) any of the Contractor Personnel, has been convicted of a Modern Slavery offence under the Modern Slavery Laws.
- (b) The Contractor must:
 - (i) comply with the Modern Slavery Laws;
 - (ii) not do anything that would constitute Modern Slavery; and
 - (iii) not do anything that would put the Customer in breach of any Modern Slavery Laws that apply to Government Agencies.
- (c) Before any Subcontractor or supplier is engaged by the Contractor in the operations and supply chains used in the provision of the Deliverables or Services (or in the performance of this Agreement), the Contractor must carry out reasonable due diligence on the Subcontractor's or supplier's historical compliance, and ability to comply, with the Modern Slavery Laws.

- (d) The Contractor must implement and maintain throughout the Term appropriate procedures and processes to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Deliverables and the Services (or in the performance of this Agreement).
- (e) The Contractor must notify the Customer in writing as soon as possible after it becomes aware of any actual or potential breach of this clause 60.4. The notice must set out full details of the actual or potential breach.
- (f) The Contractor must provide the Customer with all information and assistance reasonably requested by the Customer in connection with:
 - (i) the Contractor's compliance with clause 60.5(b), 60.5(d), 60.5(e) and 60.5(f); or
 - (ii) any reporting obligations of the Customer under the Modern Slavery Laws, or associated regulatory requirements of the Commonwealth or the State, in relation to the Deliverables or the Services (or in the performance of this Agreement).
- (g) For the purposes of this clause 60.4:
 - (i) **Modern Slavery** has the meaning given to that term in the *Modern Slavery Act 2018* (Cth) and any analogous conduct prohibited by any other Law which applies to the Customer, the Contractor or a subcontractor; and
 - (ii) **Modern Slavery Laws** mean any of the following:
 - (A) *Modern Slavery Act 2018* (Cth);
 - (B) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth);
 - (C) any Law relating to Modern Slavery; and
 - (D) any other law relating to Modern Slavery which applies to the Customer, the Contractor or a subcontractor.

61 NOTICES

61.1 General Notices

- (a) **(Form of Notices)** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with, this Agreement (in this clause 60.4, **Notices**):
 - (i) must be in writing; and
 - (ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) **(Procedure for sending Notices)** Notwithstanding clause 61.3, all Notices must be:
 - (i) delivered or posted by registered mail to the address; or
 - (ii) sent by email in the form of a PDF file letter (or such other form agreed by the Customer) to the email address,

of the addressee as specified under 'Notice Details' in the Contract Details or as notified by that party to the other party from time to time.
- (c) **(Date of receipt)** Subject to clauses 61.1(d) and 61.1(f)(i), a Notice is taken to be received by the addressee:
 - (i) in the case of registered mail on the fifth Business Day after the date of posting to an address within Australia, and on the eighth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) in the case of email:
 - (A) upon actual delivery as evidenced by acknowledgement of receipt from the addressee's system (by any means);
 - (B) at the time the email is first opened or read by the addressee; or

- (C) provided the size of the email is 20MB or less, after 2 Business Days following the date the email is sent (as recorded on the device from which the sender sent the email), unless the sender receives, within that period, an automated message that the email has not been received,
- whichever is first in time; and
 - (iii) in the case of delivery by hand, on delivery.
- (d) **(Next Business Day)** If a Notice is taken to be received on a day which is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.
- (e) **(Notices sent by email)** In connection with Notices sent by email:
 - (i) only the letter in PDF format attached to the email, and any attachments to such letter which are referred to in the letter, will form part of the Notice in accordance with this clause 61.1. Any text in the body of the email or the subject line will not form part of the Notice; and
 - (ii) the Contractor must ensure that, in connection with any Notices in accordance with or in connection with this Agreement:
 - (A) its firewall or mail server (as applicable):
 - (1) allows messages of up to 20 MB to be received;
 - (2) does not trap any messages in the spam filter which have been sent from any Customer domain; and
 - (3) automatically sends a receipt notification to the sender upon receipt of a message; and
 - (B) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.
- (f) **(Acknowledgement of receipt)** The Contractor must acknowledge in writing receipt of each Notice promptly upon receipt of the Notice. For clarity:
 - (i) such acknowledgement may provide evidence that the Contractor received the Notice prior to the date on which the Contractor would otherwise be taken to be received by the Contractor under this clause 61.1;
 - (ii) except as set out in clause 61.1(f)(i), any such acknowledgement (or failure to acknowledge) does not affect when a Notice is taken to be received by the Contractor under this clause 61.1.

61.2 Notice of Claims

Except if this Agreement expressly sets out the timeframes for the delivery of Notices, the Customer will not be liable upon any Claim by the Contractor unless the Contractor gives the Customer:

- (a) a Notice in which the Contractor states that it intends to submit a Claim and the event on which the Claim will be based, and which must be given to the Customer no later than 15 Business Days after the earlier of when the Contractor:
 - (i) first became aware; or
 - (ii) ought reasonably to have become aware,
 of the events on which the Claim is based; and
- (b) a Claim within 20 Business Days after giving Notice in accordance with clause 61.2(a), which must include:
 - (i) detailed particulars concerning the events on which the Claim is based;

- (ii) the legal basis for the Claim whether based on a term of this Agreement or otherwise, and if based on a term of this Agreement, clearly identifying the specific term;
- (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
- (iv) details of the amount claimed and how it has been calculated.

61.3 Continuing events

If the events upon which any Claim given in accordance with clause 61.2(b) is based, or the consequences of the events on which the Claim is based are continuing, the Contractor must continue to give the information required by clause 61.2(b) every 20 Business Days after the Claim is given in accordance with clause 61.2(b), until 15 Business Days after the relevant events or consequences have ceased.

62 GENERAL

62.1 Entire Agreement

This Agreement constitutes the entire agreement and understanding between the parties and supersedes any prior agreement (whether in writing or not), negotiations, discussions, understandings and agreements between the parties in relation to the subject matter of this Agreement.

62.2 Variations and waivers

- (a) No variation, modification or waiver of any provision in this Agreement, nor approval of any departure by any party from any such provision, will be of any effect unless it is in writing and signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or approval will be effective only to the extent to or for which it may be made or given.
- (b) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy under any Law or under this Agreement by the Customer does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or this Agreement.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of any other breach of that term or of a breach of any other term of this Agreement.
- (d) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy under any Law or under this Agreement by the Customer does not preclude, or operate as an estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this Agreement.

62.3 No dealing

- (a) The Contractor must not, without the prior written approval of the Customer (which approval may be withheld in its absolute discretion or be given subject to any conditions) and except on such terms and conditions as are determined by the Customer:
 - (i) permit a change in Control of the Contractor; or
 - (ii) assign, transfer, mortgage, novate, charge or otherwise encumber this Agreement or any payment or other right, benefit, money or interest under or in respect of this Agreement.
- (b) The Customer may assign, mortgage, novate, charge or encumber this Agreement or any part of it or any right, benefit, money or interest under this Agreement without the Contractor's approval.

62.4 Rights cumulative

Unless otherwise expressly specified in this Agreement, all rights and remedies under this Agreement are to be construed independently and without limitation in respect of each other.

62.5 Approvals and consents

Except where this Agreement expressly states otherwise:

- (a) the Contractor may not unreasonably withhold or delay any approval or consent required from the Contractor under this Agreement;
- (b) any approval or consent in accordance with this Agreement from the Customer:
 - (i) must be in writing;
 - (ii) must be in accordance with clause 28.2; and
 - (iii) may (unless this Agreement expressly provides otherwise) be given or withheld, or may be given subject to such conditions (other than the payment of money), as the Customer thinks fit; and
- (c) the Customer is not required to provide any reason or reasons for giving or refusing its approval or consent.

62.6 Costs and expenses

Except as otherwise provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

62.7 Stamp Duty

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this Agreement or any transaction contemplated by this Agreement must be paid by the Contractor.

62.8 Counterparts

This Agreement may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

62.9 Further action

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to each party) required by Law or reasonably requested by the other party to give effect to this Agreement.

62.10 Severability

Any provision of this Agreement that is prohibited, illegal or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition, illegality or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

62.11 Relationship

- (a) No duty of good faith is implied on the Customer in connection with its relationship with the Contractor.
- (b) This Agreement is not intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.
- (c) The Contractor must not act as or represent itself to be:
 - (i) the servant of the Customer; or

- (ii) the agent of the Customer (except as otherwise directed in writing by the Customer).

62.12 Governing Law and jurisdiction

This Agreement is governed by and will be construed according to the Laws of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of that State and the courts competent to determine appeals from those courts.

62.13 Civil Liability Act

- (a) To the maximum extent permitted by law, the operation of:
 - (i) Part 1F of the *Civil Liability Act 2002* (WA); and
 - (ii) the equivalent statutory provision in any other state or territory,is excluded in relation to all rights of the Customer and all obligations or liabilities of the Contractor under or in connection with this Agreement, whether such rights, obligations or liabilities are sought to be enforced in contract, in tort, under statute or otherwise.
- (b) Without limiting the generality of clause 62.13(a), the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Agreement and not otherwise whether such rights, obligations and liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.
- (c) The Contractor must ensure that all insurances required to be effected and maintained by the Contractor in accordance with this Agreement which cover third party liability (other than compulsory third party motor vehicle and workers' compensation insurances):
 - (i) cover the Contractor for potential liability to the Customer assumed by reason of the exclusion of Part 1F of the *Civil Liability Act 2002* (WA); and
 - (ii) do not exclude cover for any potential liability the Contractor may have to the Customer in accordance with, or by reason of, this Agreement.

62.14 If Contractor more than one person

- (a) If the Contractor consists of more than one person, then each of those persons:
 - (i) is jointly and severally liable for the performance by the Contractor of the Contractor's obligations under this Agreement; and
 - (ii) must act jointly in relation to the exercise by the Contractor of its rights under this Agreement.
- (b) If the Contractor consists of more than one person, then:
 - (i) the Contractor Contract Manager (at the relevant time) will have authority to bind the Contractor, and each person comprising the Contractor, for all the purposes of this Agreement; and
 - (ii) a promise, agreement, representation or warranty by the Contractor in, or in connection with, this Agreement, binds each person comprising the Contractor jointly and severally.

62.15 Trusts

If the Contractor has entered into this Agreement in the capacity of trustee despite clause 49.1(c), whether or not the Customer has any notice of the trust, the Contractor:

- (a) is taken to enter into this Agreement both as trustee and in the Contractor's personal capacity and acknowledges and agrees that the Contractor is personally liable for the performance of the Contractor's obligations under this Agreement;

- (b) will take any action necessary to ensure the assets of the trust are available to satisfy any Claim by the Customer for any default by the Contractor; and
- (c) warrants that:
 - (i) the Contractor has a right to be fully indemnified out of the assets of the trust in respect of obligations incurred under this Agreement;
 - (ii) the assets of the trust are sufficient to satisfy the right of indemnity referred to in clause 62.15(c)(i) and all other obligations in respect of which the Contractor has a right to be indemnified out of those assets; and
 - (iii) the Contractor has the power and authority under the terms of the trust to enter into this Agreement.

62.16 Right of set off

- (a) Without limiting or affecting the Customer's rights in accordance with any other provision of this Agreement or at Law, the Customer may, acting reasonably, deduct from any monies due and payable to the Contractor in accordance with this Agreement:
 - (i) any amount due and payable by the Contractor to the Customer (whether in accordance with or relating to this Agreement or otherwise); or
 - (ii) any amount claimed by the Customer against the Contractor (acting reasonably) arising out of or in connection with, this Agreement.

Any exercise by the Customer of its rights under this clause 62.16(a) is without prejudice to either party's rights.
- (b) The Contractor must make all payments to the Customer free from any set off or counterclaim and without deduction or withholding for or on account of any present or future Tax, unless the Contractor is compelled by Law to make such a deduction or withholding.
- (c) If the Contractor is compelled by Law to make a deduction or withholding, it must:
 - (i) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
 - (ii) provide to the Customer all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.

62.17 Customer's rights, duties, powers and functions

- (a) **(Customer's own interests)** Unless this Agreement expressly provides otherwise, nothing in this Agreement gives rise to any duty on the part of the Customer to consider interests other than its own interests when exercising any of its rights or performing any of its obligations in accordance with this Agreement.
- (b) **(Customer's powers, functions or duties)** Notwithstanding anything contained or implied in this Agreement to the contrary, the parties expressly agree that the Customer is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any Government Agency, or to influence, over-ride or direct any Government Agency in the proper exercise and performance of its legal duties and functions.
- (c) **(no fettering)** Nothing contained in this Agreement or contemplated by this Agreement has the effect of constraining the Customer or placing any fetter on the Customer's discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.
- (d) **(no Claim)** Subject to clause 62.17(e), the Contractor will not be entitled to make any Claim against the Customer under this Agreement for any Liability relating to any exercise or failure of the Customer to exercise its statutory rights or duties.

- (e) **(Liability for breach)** clauses 62.17(a) to 62.17(d) do not limit any Liability of the Customer which the Customer would have had to the Contractor in accordance with this Agreement as a result of a breach by the Customer of a term of this Agreement but for clauses 62.17(a) to 62.17(d).

62.18 Auditor General

The parties acknowledge and agree that, notwithstanding any provision of this Agreement to the contrary:

- (a) the powers and responsibilities of the Auditor General under Law, including under the *Financial Management Act 2006* (WA) and the *Auditor General Act 2006* (WA) (or any substituted legislation), are not limited or affected by the terms of this Agreement and each party submits to those powers and responsibilities;
- (b) the Contractor may be the subject of an audit by the Auditor General pursuant to Law, including pursuant to the *Financial Management Act 2006* (WA) or the *Auditor General Act 2006* (WA); and
- (c) without limiting clause 62.18(a), the Contractor must cooperate and comply with any directions of the Auditor General given to the Customer or any other person in relation to any audit referred to in clause 62.18(b).

62.19 Western Australian Buy Local Policy

- (a) The Contractor must comply with:
 - (i) the commitments as to local procurement set out in the RFT Response;
 - (ii) the local procurement obligations specified in the WA Buy Local Policy 2022 and any other Customer Policies; and
 - (iii) the reporting requirements specified in the WA Buy Local Policy 2022 and any other Customer Policies in respect of those local procurement obligations.
- (b) The Customer may, during the Term and after the termination or expiry of this Agreement, use or disclose the reports provided under this clause 62.19 for the legitimate purposes of or relating to government or the business of government.

62.20 WAIPS – Participation Plan Reporting

- (a) The Contractor must submit a completed Standard Participation Plan report to the Customer:
 - (i) annually (**Annual Report**); and
 - (ii) upon the expiry of the Agreement (**Final Report**),in accordance with this clause.
- (b) Each report submitted under clause 62.20(a) must use the form of, and must address the matters outlined in, the Standard Participation Plan Reporting Template (**Standard Participation Plan Reporting Template**) which is available to download from the Industry Link portal at www.industrylink.wa.gov.au > Participation Plans > Reporting.
- (c) Subject to clause 62.20(d) below, the Contractor must submit:
 - (i) an Annual Report on the anniversary of the Commencement Date, or on such other date each year as is notified by the Customer to the Contractor; and
 - (ii) a Final Report no later than two months after the expiry of the Agreement.
- (d) Where the Agreement is 12 months or less, only one report from the Contractor is required, being the Final Report, which the Contractor must submit in accordance with clause 62.20(c)(ii).
- (e) The reports required by this clause must be endorsed and verified as being true and correct by the Contractor's Chief Executive Officer, Managing Director or equivalent.

- (f) The Customer may use or disclose the reports provided under this clause for the legitimate purposes of or relating to government or the business of government.
- (g) This clause survives the termination or expiration of the Agreement.

62.21 Disability Access and Inclusion Plan

If the Agreement involves the supply of Services to the public, then the Contractor will:

- (a) to the extent practicable, implement the Customer's "Disability Access and Inclusion Plan" prepared under the *Disability Services Act 1993* (WA); and
- (b) provide a report to the Customer by 31 January in each year of the Term reporting on the extent to which the Contractor has implemented the Customer's Disability Access and Inclusion Plan.

62.22 Reasonable endeavours

If there is any statement in this Agreement that the Customer will use 'reasonable endeavours' in relation to an outcome, it means that:

- (a) the Customer will take steps to bring about the relevant outcome so far as it is reasonably able to do so having regard to its Resources and other responsibilities;
- (b) the Customer cannot guarantee the relevant outcome; and
- (c) the Customer, by undertaking to exercise reasonable endeavours, is not required to:
 - (i) interfere with or influence the exercise of any statutory power or discretion by any body, including a Government Agency; or
 - (ii) act in any other way that the party regards as not in the public interest.

62.23 Indemnities

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination or expiration of this Agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.
- (c) A party must pay on demand any amount it must pay in accordance with an indemnity in this Agreement.

62.24 Electronic contract management

- (a) If the Customer establishes an electronic contract administration system for this Agreement, the Customer may direct the Contractor to submit all documentation created in accordance with this Agreement in accordance with such system.
- (b) The Contractor must comply with any direction given by the Customer in accordance with clause 62.24(a).

62.25 Survival

- (a) All provisions of this Agreement which expressly or by implication from their nature are intended to survive termination or expiration of this Agreement will survive such termination or expiration, including any provision which is in connection with:
 - (i) the interpretation of this Agreement;
 - (ii) the Customer's rights to set off and to recover money;
 - (iii) finalisation of payment to either party upon or after the End Date;
 - (iv) confidentiality, privacy or security;
 - (v) Intellectual Property;
 - (vi) any obligation to make any Records available to the Customer;

- (vii) any warranty given by the Contractor under this Agreement;
 - (viii) any indemnity or other financial security given in accordance with this Agreement;
 - (ix) the Liability of each party;
 - (x) dispute resolution; or
 - (xi) any right or obligation arising on termination of this Agreement.
- (b) Nothing in this clause 62.25 prevents any other provision of this Agreement, as a matter of interpretation, also surviving the termination of this Agreement.
- (c) No right or obligation of any party will merge on completion of any transaction in accordance with this Agreement. All rights and obligations in accordance with this Agreement survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this Agreement.

EXECUTION PAGE

Executed as an agreement

[insert Customer execution block]

Signature of representative

Signature of witness

Name of representative (print)

Name of witness

Date

Date

Executed by **[Contractor]** in accordance with
section 127 of the *Corporations Act 2001*
(Cth)

Signature of director

Signature of director/~~company secretary~~

Name of director (print)

Name of director/~~company secretary~~ (print)

Date

Date

Schedule 1 – Contract Details

1 SOLUTION AND CONTRACT DURATION

Solution	[insert]
Initial Term	The period of 1 year from the Commencement Date.
Extended Term	<p>An Extended Term is an extension of the Term for a period of:</p> <p>(a) 2 years from the end of the Initial Term (first extension); or</p> <p>(b) 2 years from the end of the first extension.</p> <p>(c) 2 years from the end of the second extension.</p> <p>The Customer has no further extension options unless otherwise agreed by the Contractor and the Customer in writing.</p>

2 NOTICE DETAILS

Customer	
Contractor	

3 CONTRACT MANAGERS

Customer Contract Manager	
Contractor Contract Manager	

4 KEY PERSONNEL

Delivery Lead	
Project Manager	

5 APPROVED SUBCONTRACTORS

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Note: The Contractor must procure a Service Transfer Deed from each Approved Subcontractor in accordance with clause 36.3 of this Agreement, in the form set out in Appendix A to this schedule.

6 SOFTWARE

Developed Software	
Customised Software	
Contractor Software	<p>The Contractor Software includes:</p> <ul style="list-style-type: none"> • The Digital Wallet Software Development Kits (SDK) • any Contractor Software included in a Variation Order.
Third Party Software	.

APPENDIX A – Services Transfer Deed

This Deed is made on *[insert date]*

between

[State of Western Australia, acting through the Department of Premier and Cabinet] (State)

and

[insert name of Contractor] (ACN *[insert Contractor ACN]*) (Contractor)

and

[insert name of Subcontractor] (*[insert Subcontractor ACN (or, if not an Australian-registered company, Subcontractor's ABN)]*) (Subcontractor)

and the parties agree as follows:

Recitals

- A. The Contractor and the State have entered into an agreement for the provision by the Contractor of an end-to-end digital wallet and verifiable credentials solution (**Head Agreement**).
- B. The Contractor has engaged the Subcontractor, pursuant to the Subcontract, to perform some of its obligations under the Head Agreement.
- C. The Subcontract is between the Contractor and the Subcontractor. In some circumstances, the State may require the Subcontractor to contract directly with the State (or a third party nominated by the State), rather than with the Contractor. The purpose of this Deed is to give effect to that requirement.
- D. The Head Agreement and the Subcontract require the Subcontractor to enter into this Deed.

Operative Provisions

1 INTERPRETATION

1.1 Definitions

In this Deed, unless the context indicates otherwise:

Term	Meaning
Authorisation	means any approval, agreement, certificate, authorisation, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver, compliance report or environmental consent by any Government Agency required under any Law, and includes any renewal of, or variation to, any of them, but does not include any act or omission by the State under this Deed.
Business Day	means between 8.30 am and 5.00 pm on any day other than: <ul style="list-style-type: none">(a) a Saturday or a Sunday; or(b) a gazetted holiday in Perth, Western Australia under the <i>Public and Bank Holidays Act 1972</i> (WA).
Claim	means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity), made: <ul style="list-style-type: none">(a) in connection with this Deed or the Subcontract;(b) at Law; or(c) for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.

Term	Meaning
Commencement Date	means the date of the Subcontract.
Deed	means this Services Transfer Deed.
Government Agency	means any organ of government, government entity, government authority, body politic (but excluding any political party) or government department.
Head Agreement	means the agreement entered into between the State and the Contractor for the provision by the Contractor of an end-to-end digital wallet and verifiable credentials solution (Program).
Laws	<p>means all applicable present and future laws including:</p> <ul style="list-style-type: none"> (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of any local government in Western Australia, or of the jurisdiction of Western Australia or the Commonwealth of Australia; (b) Authorisations; (c) principles of common law or equity; (d) standards, codes and guidelines; and (e) fees, rates, taxes, levies and charges payable in respect of those things referred to in paragraphs (a) to (d) of this definition, <p>whether or not existing on the Commencement Date.</p>
Liability	means any liability including any debt, obligation, Claim, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation, charge or other liability of any kind (including fines or penalties), actual, prospective or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at Law.
Loss	<p>means:</p> <ul style="list-style-type: none"> (a) any Liability of any kind whatsoever, including arising out of personal injury (including illness), death or damage; and (b) in relation to a Claim, includes amounts payable on the Claim and (whether or not the Claim is successful) reasonable legal costs and disbursements on a full indemnity basis, <p>whether based on contract (including under an indemnity), statute, warranty, tort (including negligence), indemnity or otherwise.</p>
Moral Rights	has the meaning given to that term in Part IX of the <i>Copyright Act 1968</i> (Cth).
Notice Date	has the meaning given to it in clause 2(a).
Services	means the services the subject of the Subcontract including, for clarity, any services that were added to the scope of the Head Agreement or Subcontract following the date of this Deed.

Term	Meaning
State Nominee	has the meaning given to it in clause 2(a)(ii).
Subcontract	means the agreement between the Contractor and the Subcontractor engaging the Subcontractor to perform some of the Contractor's obligations under the Head Agreement.
Term	means the term of the Subcontract.
Transfer Notice	means the notice issued by the State to the Contractor and the Subcontractor under clause 2(a).
Transferred Services	means those Services that are performed by the Subcontractor pursuant to the Subcontract: <ul style="list-style-type: none"> (a) where the whole Head Agreement is terminated, pursuant to the Head Agreement; (b) where part of the Head Agreement is terminated, pursuant to that part; or (c) such other portion of the Services described in paragraphs (a) and (b) of this definition as the State specifies in the Transfer Notice.
Transferred Services Contract	means the new contract between the State (or its nominee) and the Subcontractor coming into effect on the Notice Date and on the terms specified in clause 3.

1.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) **(persons)** references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a trust, a trustee or a partnership;
- (b) **(includes)** the words 'including', 'includes' and 'include' will be read as if followed by the words 'without limitation';
- (c) **(or)** the meaning of 'or' will be that of the inclusive 'or', that is meaning one, some or all of a number of possibilities;
- (d) **(party)** a reference to a party is to a party to this Deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (e) **(other persons)** a reference to any party or person includes each of their legal representatives, trustees, executors, administrators, successors and permitted substitutes and assigns, including any person taking part by way of novation;
- (f) **(this Deed)** a reference to this Deed or to any other deed, agreement, document, circular, policy or instrument includes a reference to this Deed or such other deed, agreement, document, circular, policy or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (g) **(document)** a reference to a document or instrument includes the document or instrument as novated, altered, supplemented, updated or replaced from time to time;
- (h) **(legislation)** 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;

- (i) **(rights)** a reference to a right includes any benefit, remedy, discretion, authority or power;
- (j) **(singular)** words in the singular include the plural (and vice versa);
- (k) **(gender)** words denoting any gender include all genders;
- (l) **(headings)** headings are for convenience only and do not affect the interpretation of this Deed;
- (m) **(schedules and attachments)** a reference to this Deed includes all schedules and attachments;
- (n) **(clauses)** a reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment of or to this Deed;
- (o) **(defined meaning)** where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (p) **(\$)** a reference to '\$' or dollar is to Australian currency;
- (q) **(time)** a reference to time is a reference to the time in Perth, Western Australia;
- (r) **(month)** a reference to a month means a calendar month unless the context requires otherwise;
- (s) **(form)** writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions and communication by email;
- (t) **(construction)** no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part of it;
- (u) **(information)** a reference to 'information' includes information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, data linkage keys, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (v) **(remedy)** the use of the word 'remedy' or any form of it in this Deed means that the event to be remedied must be cured or its effects overcome;
- (w) **(may)** the term 'may', when used in the context of a power or right exercisable by the State, means that the State can exercise that right or power in its absolute and unfettered discretion and the State has no obligation to the Contractor or the Subcontractor to do so;
- (x) **(no double counting)** if this Deed requires calculation of an amount payable to a party there must be no double counting in calculating that amount; and
- (y) **(writing)** references to a notice, request, Claim, consent, approval, record or report means that the notice, request, Claim, consent, approval, record or report must be in writing unless otherwise agreed by the parties or expressly stated in this Deed.

1.3 Related matters

- (a) **(provisions limiting or excluding liability)** Any provision of this Deed which seeks either expressly or by implication to limit or exclude any liability of a party is to be construed as doing so only to the extent permitted by Law.
- (b) **(cost of performing obligations)** Unless expressly provided in this Deed, each party must perform its obligations in accordance with this Deed at its own cost.
- (c) **(Subcontractor obligations)** In complying with or accepting any obligation or risk in accordance with this Deed, the Subcontractor must procure that, to the extent applicable, each subcontractor that the Subcontractor has subcontracted with is required to comply with or accept the relevant obligation or risk and not cause the Subcontractor to breach its obligations in accordance with this Deed.
- (d) **(Business Day)** If the day on or by which any thing is to be done in accordance with this Deed is not a Business Day, that thing must be done on the next Business Day.

- (e) **(discretion)** Any consent or approval in accordance with this Deed from the State may be given or withheld, or may be given subject to such conditions (other than the payment of money), as the State thinks fit, unless this Deed provides otherwise.
- (f) **(Deed composition)** This Deed comprises clauses 1 to 10.

1.4 This Deed prevails

To the extent of any inconsistency between this Deed, the Subcontract or any subcontract, this Deed prevails unless the parties expressly agree otherwise, in writing.

2 OPERATION

- (a) At any time after the termination or expiry of the whole or any part of the Head Agreement, the State may issue a notice to the Contractor and the Subcontractor specifying:
 - (i) the scope of the Transferred Services;
 - (ii) any nominee of the State who will take the place of the Contractor pursuant to clause 3 (**State Nominee**); and
 - (iii) that this Deed comes into full force and effect in respect of the Transferred Services on the date the notice is taken to be received in accordance with this Deed (**Notice Date**).
- (b) This Deed does not come into full force and effect until the Notice Date and, each time the events described in clause 2(a) occur, this Deed comes into full force and effect in respect of the Transferred Services specified in the Transfer Notice.

3 TRANSFER OF SERVICES

- (a) From the Notice Date, subject to clause 4, a new Transferred Services Contract will take effect as an agreement between the State (or the State Nominee, as applicable) and the Subcontractor on the same terms as the Subcontract, except that in the Transferred Services Contract:
 - (i) the scope of the services to be performed is limited to the Transferred Services;
 - (ii) the State (or the State Nominee, as applicable) takes the place of the Contractor in the Subcontract; and
 - (iii) each reference in the Subcontract to the Contractor is a reference to the State (or the State Nominee, as applicable).
- (b) On and from the Notice Date, to the extent the rights, obligations and liability under the Subcontract relate to the Transferred Services:
 - (i) the rights, obligations and liabilities of the Contractor under the Subcontract become the rights, obligations and liabilities of the State (or the State Nominee, as applicable) under the Transferred Services Contract;
 - (ii) the Subcontractor must comply with all of its obligations, as previously under the Subcontract, for the benefit of the State (or the State Nominee, as applicable) under the Transferred Services Contract; and
 - (iii) the Contractor is released from those obligations and liabilities under the Subcontract assumed by the State (or the State Nominee, as applicable) under the Transferred Services Contract.

4 OBLIGATIONS PRIOR TO EXECUTION DATE

- (a) Notwithstanding clause 3:
 - (i) the State and the State Nominee do not accept liability for any obligations that arose under the Subcontract before the Notice Date;
 - (ii) the Subcontractor will have no entitlement to make any Claim against the State (or the State Nominee, as applicable) for any loss (including consequential loss) incurred by the Subcontractor arising out of or in

connection with the performance of the Services or the Subcontract prior to the Notice Date;

- (iii) the State (or the State Nominee, as applicable) is entitled to all rights to which the Contractor was entitled in accordance with the Subcontract including all rights which arose prior to the Notice Date; and
 - (iv) the Contractor is entitled to rights which accrued prior to the Notice Date in connection with any liability of the Contractor in accordance with the Subcontract which is the subject of a dispute.
- (b) On and from the Notice Date, the Subcontractor:
- (i) will cease to be bound by the Subcontract in respect of the Transferred Services; and
 - (ii) will be bound by the Transferred Services Contract.

5 RELEASE

To the extent such obligations and liabilities relate to the Transferred Services:

- (a) the Subcontractor releases the Contractor from all of its obligations in accordance with the Subcontract and all liabilities that it may have against the Contractor in connection with the Subcontract other than those obligations or liabilities which arose or relate to events occurring before the Notice Date and which are not obligations or liabilities which are assumed by the Customer under this Deed; and
- (b) the Contractor releases the Subcontractor from all its obligations in accordance with the Subcontract and all liabilities that it may have against the Subcontractor in connection with the Subcontract other than those obligations or liabilities which arose or relate to events occurring before the Notice Date and which are not obligations or liabilities which are assumed by the Customer under this Deed.

6 ASSIGNMENT

Except as expressly contemplated by this Deed, or agreed in writing by the State, neither the Contractor nor the Subcontractor may assign or transfer any of its rights or obligations under this Deed.

7 FURTHER ASSURANCES

The Contractor and the Subcontractor undertake, upon request by the State, to execute all documents and do all things necessary vest in the Customer the Transferred Services Contract and otherwise to give effect to the terms of this Deed.

8 NOTICES

- (a) **(Form of notices)** Each communication (including each notice, consent, approval, request and demand) in accordance with or in connection with this Deed (in this clause 8, **Notices**):
 - (i) must be in writing; and
 - (ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) **(Procedure for sending notices)** All Notices must be:
 - (i) delivered or posted by prepaid post to the address; or
 - (ii) sent by email in the form of a .pdf file letter (or such other form agreed by the State) to the email address,of the addressee notified by that party to each other party from time to time.
- (c) **(Date of receipt)** Subject to clause 8(d), a Notice is taken to be received by the addressee:

- (i) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; and
 - (iii) in the case of delivery by hand, on delivery.
- (d) **(Next Business Day)** If the Notice is taken to be received on a day which is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.
- (e) **(Notices sent by email)** In connection with Notices sent by email:
- (i) only the letter in .pdf format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the Notice in accordance with this clause 8. Any text in the body of the email or the subject line will not form part of the Notice; and
 - (ii) the Contractor and the Subcontractor must ensure that, in connection with any Notices in accordance with or in connection with this Deed:
 - (A) their firewall and/or mail server (as applicable):
 - (1) allows messages of up to 20 MB to be received;
 - (2) does not trap any messages in the spam filter which have been sent from any State or State of Western Australia domain; and
 - (3) automatically sends a receipt notification to the sender upon receipt of a message; and
 - (B) their systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

9 ARBITRATION

9.1 Reference to arbitration

- (a) This clause 9 applies unless the Subcontractor's place of incorporation is or becomes a jurisdiction that is either:
 - (i) a jurisdiction to which Part 2 of the *Foreign Judgments Act 1991* (Cth) applies (as specified in the *Foreign Judgment Regulations 1992* (Cth)); or
 - (ii) a party to a treaty with Australia which enables the enforcement of judgments from Australian courts in the relevant jurisdiction.
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) (**Dispute**) must be referred to and finally resolved by arbitration in accordance with the current arbitration rules of the Australian Centre for International Commercial Arbitration.
- (c) The seat of the arbitration will be Perth.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.
- (f) Subject to clause 9.4 of this Deed, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages.

9.2 Consolidation

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

9.3 Joinder

The arbitral tribunal has the power, on the application of any party, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

9.4 Exclusion from determination or award

- (a) The powers conferred and restrictions imposed on a court by Part 1F of the *Civil Liability Act 2002* (WA) are not conferred on an arbitral tribunal appointed in accordance with clause 9.1.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a dispute by applying or considering the provisions of Part 1F of the *Civil Liability Act 2002* (WA) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the arbitral tribunal.

9.5 Award final and binding

Any award of the arbitral tribunal will be final and binding upon the parties.

10 GENERAL

10.1 Variations and waivers

No variation, modification or waiver of any provision in this Deed, nor consent to any departure by any party from any such provision, will be of any effect unless it is in writing and signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

10.2 Counterparts

This Deed may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.

10.3 Severability of provisions

Any provision of this Deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

10.4 Waiver and estoppel

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy under any Law or under this Deed by the State does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or this Deed.
- (b) A waiver given by the State under this Deed is only effective and binding on the State if it is given or confirmed in writing by the State.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of any other breach of that term or of a breach of any other term of this Deed.
- (d) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power, or remedy under any Law or under this Deed by the State does not preclude, or operate as an estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this Deed.

10.5 Costs and expenses

Except as otherwise provided in this Deed, each party must:

- (a) pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed; and
- (b) perform its obligations in accordance with this Deed at its own cost.

10.6 Relationship of the parties

- (a) Except to the extent expressly provided for in this Deed, no duty of good faith is implied on the State in connection with its relationship with the Subcontractor.
- (b) Neither this Deed nor the relationship created by it, is intended to create, and will not be construed as creating, any partnership or joint venture as between the parties.
- (c) The Subcontractor must not act as or represent itself to be the servant or agent of the State, except to the extent expressly permitted in writing by the State.

10.7 Governing law

This Deed is governed by and will be construed according to the Laws of Western Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of that state and the courts competent to determine appeals from those courts.

10.8 State's rights, duties, powers and functions

- (a) **(State's own interests)** Unless this Deed expressly provides otherwise, nothing in this Deed or the Subcontract gives rise to any duty on the part of the State to consider interests other than its own interests when exercising any of its rights or performing any of its obligations in accordance with this Deed or the Subcontract.
- (b) **(State's powers, functions or duties)** Notwithstanding anything contained or implied in this Deed or the Subcontract to the contrary, the Subcontractor expressly agrees that the State is not obliged to exercise a power, function or duty which is granted to or within the responsibility of any other government agency or department, or to influence, over-ride or direct any government agency or department in the proper exercise and performance of its legal duties and functions.
- (c) **(No fettering)** Nothing contained in this Deed or contemplated by this Deed has the effect of constraining the State or placing any fetter on the State's discretion to exercise or not to exercise any of its statutory rights, duties, powers or functions.
- (d) **(No Claim)** Subject to clause 10.8(e), the Subcontractor will not be entitled to make any Claim against the State for any liability relating to any exercise or failure of the State to exercise its statutory rights or duties.
- (e) **(Liability for breach)** Clauses 10.8(a) to 10.8(d) do not limit any liability of the State which the State would have had to the Subcontractor (but for clauses 10.8(a) to 10.8(d)) in accordance with this Deed as a result of a breach by the State of a term of this Deed.

10.9 Joint and several liability

- (a) If the Contractor consists of more than one person, then the rights and obligations of the Contractor in accordance with this Deed are joint and several as between those persons.
- (b) If the Subcontractor consists of more than one person, then the rights and obligations of the Subcontractor in accordance with this Deed are joint and several as between those persons.

10.10 Clauses to survive termination

- (a) All provisions of this Deed which expressly or by implication from their nature are intended to survive termination, completion or expiration of this Deed will survive such termination, completion or expiration.

- (b) Nothing in this clause 10.10 prevents any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.
- (c) No right or obligation of any party will merge on completion of any transaction in accordance with this Deed. All rights and obligations in accordance with this Deed survive the execution and delivery of any transfer or other agreement which implements any transaction in accordance with this Deed.

Schedule 2 – Statement of Requirements

Refer to the RFP: DPC2142 Attachment–2 - Schedule 2 Statement of Requirements

Schedule 3 – Specifications

Refer to the RFP: DPC2142 Attachment–3 - Schedule 3 – Specifications

Schedule 4 – Implementation Plan

The Contractor must provide a high-level Implementation Plan covering the phases of the Pilot Phase and Full Implementation as set out in DPC2142 Attachment 2 – Schedule 2 Statement of Requirements.

The plan will cover the implementation of the Pilot Phase – including operationalisation software development kits (SDK) and integration of the system, along with testing and commissioning.

The final agreed Implementation Plan will include but not be limited to:

- the Project Documents that are to be submitted by the Contractor (including dates for submission) – e.g. test plans, design and operational documentation, the initial disengagement plan etc
- the timelines for commissioning, testing and implementing each phase of the solution, as well as the plan for training and go-live
- milestone dates and milestone payments
- details of the various tasks that the Contractor will be required to undertake during the Pilot Phase and Full Production stages
- details of any acceptance tests to be carried out
- details of any tasks that the Department needs to complete, including dependencies
- details of any resources/materials to be provided by the Department
- Key personnel and their roles.

The Implementation Plan will be refined and finalised with the preferred Respondent.

Please refer to the RFP, **DPC2142 Attachment-4 – Schedule 7 Pricing and Payment**, for implementation outline and payment plan.

Schedule 5 – Ongoing Services Schedule

The Respondent should provide their Ongoing Service Schedule as an attachment to their Response.

The proposed Ongoing Service Schedule should include the Service Level Agreement (SLA).

The proposed Service Level Agreement (SLA) should address, but not be limited to, the following key areas:

Solution Availability

- Ongoing provision of the Solution with a minimum system uptime of 99.95%, measured per calendar month. Measured per calendar month based on system availability as per KPI 01.

Incident Management

- Clear definition of service levels, including response and resolution times based on a priority matrix.
- Incident reporting timelines
- Vulnerability remediation timelines for both SaaS and SDKs
- Description of how Priority Levels for reported faults will be determined and managed.
- Timeframes for conducting root cause analysis and issuing Post-Incident Reports (PIRs).

Change and Request Fulfilment

- Defined processes and typical lead times for implementing changes and fulfilling common service requests including a change approval matrix.

Integrations and Interfaces

- Ongoing maintenance and support for all integrations and interfaces associated with the Solution.

Help Desk Support

- Description of help desk services, including available channels (e.g. phone, email, web-based), hours of operation (e.g. 24 x 7), staffing levels, and expertise.

Release Management

- Approach to implementing new releases, including updates to any customisations or configurations.

System Performance

- Description of system capabilities and performance requirements, including any benchmarks or thresholds.

Service Credits

- A clearly defined Service Credits regime, outlining the amounts payable by the Contractor if critical service levels are not met.

Vulnerability Management

Outline the processes for identifying, assessing, and remediating security vulnerabilities, including:

- Frequency of vulnerability scans and penetration testing
- Timeframes for patching based on severity
- Notification procedures for discovered vulnerabilities

Secure Coding and Testing

Describe the secure development practices in place, including:

- Use of secure coding standards (e.g. OWASP)
- Static and dynamic code analysis.

- Secure Code reviews and Security testing during development and prior to release

Data Protection and Privacy

Detail how personal and sensitive data will be protected, including:

- Compliance with relevant data protection legislation and applicable International Standards (e.g. Australian Privacy Act, GDPR, ISO/IEC 29100/29101, ISO/IEC 23220)
- Data encryption (in transit and at rest)
- Access controls and audit logging.

Documentation

Specify the documentation to be provided and maintained, such as:

- System architecture and configuration
- User guides and technical manuals
- Change logs and release notes
- Security and compliance documentation
- Real-time alerting and monitoring
- Backup recovery and frequency.

Key Performance Indicators

The following KPIs are proposed, and the Respondents should provide any additional KPIs relevant to their service offering.

#	KEY PERFORMANCE INDICATOR	TARGET	DATA SOURCE	MEASURE (Timeframe)	REPORTING FREQUENCY	DETAILS
1	Service platform availability (uptime)	100%	Monthly Report	Monthly	Monthly	The service availability is the uptime of the services as listed in Schedule 3 - Specifications.
2	Service credits (number of service credits raised)	0	Monthly Report	Monthly	Monthly	When the Contractor fails to meet the service levels and raises a service credit with the Department they will provide this information in the monthly report. For clarity the earn back of service credits will not impact this KPI.
3	Submission of reporting requirements by the 5 Business Day at the end of the month.	100%	Consumption Report Incident Report Service Request Report Availability Report	Monthly	Monthly	Data must be submitted by the 10th business day each month, submission after the 10th day will constitute a failure of this KPI. Reports containing incorrect data will be considered as not meeting this KPI. Failure to meet this KPI will result in the issuing of service credit/s.
4	Security incidents	0	Incident Report	Within 24 hours	Within 24 hours	Report any cyber security incidents within 24 hours of detection as listed in Schedule 3 - Specifications.
5	Adherence to response and resolution times	100%	Incident Report	Monthly	Monthly	Number of times the response and resolution times exceed the agreed threshold which raises service credit/s.
6	Submission of insurance certificates of currency	100%	Certificates of Currency	10 Business Days	Annually	Contractor must provide insurance certificates of currency within 10 business days of the renewal date.

Schedule 6 – Performance Assessment Regime

The Performance Assessment Regime includes:

- the **Service Levels** the Contractor must meet or exceed, in respect of availability and other performance metrics of the Solution, responding to and resolving incidents, analysing and resolving problems, managing change requests and other key aspects of the Ongoing Services;
- a **Service Credits** regime setting out amounts that the Contractor must pay as Service Credits if Service Levels are not met, with weightings and amounts allocated to drive high performance in respect of key indicators; and
- other measurement, reporting, review meeting and behaviour requirements.

and is set out in the Ongoing Services Schedule.

Schedule 7 – Pricing and Payment

Refer to the RFP: DPC2142 Attachment-4 – Schedule 7 Pricing and Payment Schedule

Schedule 8 – Variation Form

Schedule 8 – Variation	
This Contract (DPC2142) is varied in accordance with Clause 17 of the Agreement and the terms set out in this Variation and its attachments.	
Contract Information	
Contract Number	
Contract Title	Provision of a Digital Wallet and Verifiable Credentials Solution
Variation Number	
Date of Variation	
Customer Information	
Name	
Title	
Telephone	
email	
Contract Variation Details	
1. Description of variation 2. Reason for variation 3. Affected clauses (if any)	
Authorisation of Variation	
Contractor	
Contractor Delegate	
Title	
Signature	
Date	
Customer	Department of the Premier and Cabinet
Accountable Authority	
Title	
Signature	
Date	

Schedule 9 – Statement of Work Form

Schedule 9 – Statement of Work	
This Contract (DPC2142) may request additional work pursuant to Clause 17 and Clause 18 of the Agreement, and in accordance with the terms specified in this Statement of Work and its attachments.	
Contract Information	
Statement of Work Number	
Statement of Work Title	
Commencement Date	
End Date	
Customer Information	
Name	
Title	
Telephone	
Email	
Statement of Work Details:	
4. Description of Services: 5. Deliverables: 6. Price and Payment Schedule: 7. Functional Requirements: 8. Testing Requirements: 9. Performance Assessment: 10. Reporting: 11. Price and Payment Schedule:	
Authorisation	
Contractor	
Contractor Delegate	
Title	
Signature	
Date	
Customer	Department of the Premier and Cabinet
Accountable Authority	
Title	
Signature	
Date	

Schedule 10 – Governance

1 STRATEGIC PARTNERSHIP

The Strategic Partnership, in accordance with clause 26 of the Agreement, comprises both Customer and Contractor roles to ensure the smooth running of the Agreement, Contractor performance and Customer/Contractor relationships. It is important for appointed staff to be accountable for their actions over the Term of the Agreement, and for the effect they have on the success of the Agreement.

2 CONTRACTOR CONTRACT MANAGER

2.1 Role

The Contractor may exercise any of its rights or perform any of its obligations under this Agreement through the Contractor Contract Manager. The Contractor Contract Manager is the Contractor's agent for the purposes of this Agreement.

The Contractor Contract Manager must:

- have overall responsibility for managing and co-ordinating the performance of the Contractor's obligations under this Agreement, including those performed by Subcontractors;
- maintain a culture of taking ownership of issues and working to resolve them as quickly as possible and in collaboration with Subcontractors and/or third parties where necessary;
- maintain within the Contractor a commitment to the shared goal of achieving the objectives and prioritising the overall success of the Customer's ICT requirements above all other concerns;
- provide leadership in the performance of the required services and the Subcontractors, to facilitate the effective management of this Agreement and to assist in the timely resolution of Disputes; and
- attend, and ensure that each of its required attendees, all meetings of the Customer as are reasonably required by the Customer.

2.2 Responsibilities

The responsibilities of the Contractor Contract Manager include:

- being a single point of contact and accountability for the Services under this Agreement;
- providing end-to-end performance management of performance of the Services under this Agreement;
- ensuring reports and other information required under this Agreement or by the Customer from time-to-time are provided in a timely manner;
- communicating frequently and responsively with the Customer and Other Contractors and third parties as coordinated by the Customer;
- initiating discussions and meetings through the Customer with Credential Providers, Credential Consumers, Other Contractors and third parties in order to proactively manage high quality performance of the Contractor's obligations under this Agreement;
- collaborating with the Customer to identify opportunities for improvements to the required services under this Agreement;
- initiating Variation proposals on behalf of the Contractor;
- providing the Contractor's responses in respect of Variation Requests, Statements of Work, Contractor reporting or other requests that arise in relation to the Services;
- liaising with the Customer as required to facilitate the performance of the Contractor's obligations under this Agreement;
- liaising with third parties and other matters as required under this Agreement from time to time; and

- when the Contractor is to attend a meeting, ensuring the provision of all necessary information and attendance of Personnel with the requisite expertise, involvement and authority in respect of the matters to be discussed.

3 CUSTOMER CONTRACT MANAGER

3.1 Role

The Customer may exercise any of its rights or perform any of its obligations under this Agreement through the Customer Contract Manager. The Customer Contract Manager is the Customer's agent for the purposes of this Agreement.

The Customer Contract Manager must:

- have overall responsibility for managing and co-ordinating the performance of the Customer's obligations under this Agreement;
- have overall responsibility for Contractor performance management, Customer reporting and administration of the Agreement, to facilitate the effective management of this Agreement and to assist in the timely resolution of Disputes; and
- attend, and ensure that each of its required attendees, all contract management meetings as are reasonably required by the Agreement.

3.2 Responsibilities

The responsibilities of the Customer Contract Manager include:

- being a single point of contact and accountability for the contract management under this Agreement;
- providing performance management of performance of the Services under this Agreement;
- ensuring information required under this Agreement from the Customer from time to time is provided in a timely manner;
- communicating frequently and responsively with the Contractor;
- liaising with the Contractor as required to facilitate the performance of the Customer's obligations under this Agreement; and,
- when the Customer is to attend a meeting, ensuring the provision of all necessary information and attendance of Personnel with the requisite expertise, involvement and authority in respect of the matters to be discussed.

4 CUSTOMER DELEGATIONS

All Customer approvals under this Agreement must be facilitated through the Customer Contract Manager to ensure the correct governance and process has been applied.

Budgetary approvals for Variations and projects under Project Services must be obtained from the Cost Centre Owner, where the funding is allocated.

Contractual changes, dependent on type and whether contract value is affected, must go through the approval process as set out in the Customer's Procurement Administration Schedule, which sets out the approved delegations of authority.

Any directions may only properly be issued by a person with approved delegation of authority (within their area of approved delegation) as set out in the table of authorised personnel, to be provided by the Customer Contractor Manager to the Contractor from time to time. If a direction is issued to the Contractor by a person other than the Customer Contract Manager (or a person properly authorised in the table of authorised personnel), the Contractor must, as soon as reasonably practicable, notify the Customer Contract Manager in writing that it has received that direction (but must not comply with the direction unless directed by Customer Contract Manager to do so).

5 REPORTING

The Contractor shall submit the following reports to the Customer's Representative in line with the following:

5.1 Pilot Phase

Report	Description	Frequency Required
Performance Measurement Report	Reporting against the performance measures noted in the key performance indicators except the insurance requirements.	Monthly
Consumption Report	<p>The report will track the platform usage metrics on a week by week basis during the three months of the Restricted Pilot, then monthly thereafter for the remainder of the contract :</p> <ul style="list-style-type: none">• Number of wallet downloads• Number of credentials issued for the month• Number of credentials total• Number of presentations• Number of challenges• Number of verifications• Number of active users• Drop off points in user journey• Defects or discrepancies• Issuance success failure rates• Verification success and failure rates• Revocation events• Credential expiry tracking	Weekly during Restricted Pilot and Monthly during Preview Pilot.
Consumption Report Data	<p>Consumption data must be provided in a structured format (e.g., CSV, JSON, or via API) to support user metrics analysis and inform dashboard reporting.</p> <p>This data will be used to monitor credential activity, user engagement, and system performance throughout the Pilot Phase.</p> <p>Pilot consumption data will directly inform the design and development of reporting mechanisms for the Support and Maintenance Phase, ensuring continuity, scalability, and alignment with service level expectations.</p>	Weekly during Restricted Pilot and Monthly during Preview Pilot.
Service Level Report	Delivery to Customer's Contract Manager within five Business Days of the end of every month.	Monthly
Service Level Report Quality	Delivery as per format specified in section 5.3	As needed for the duration of the Agreement.
Cyber Incident Report	A concise Incident Report detailing incident, understanding, scope, severity and response, to alert and inform decision-makers of incident. A standard form used to convey the information if agreed acceptable.	Within 24 hours of incident occurrence
Incident Root-Cause Analysis Report	A report is required for priority 1 and 2 incidents within two Business Days from the incident occurring.	As needed for the duration of the Pilot

Post Incident Report	A post incident report to be delivered within five Business Days from the resolution target time	Within five Business Days
Customer/User Satisfaction	> 80% satisfaction rating	To be carried out monthly during the Restricted Pilot phase and quarterly during the Preview Pilot phase.

5.2 Full Implementation Phase (First and Subsequent Contract Extensions)

Report	Description	Frequency Required
Performance Measurement Report	Reporting against the performance measures noted in the key performance indicators.	Monthly
Consumption Report	<p>The report will track the platform usage metrics on a month by month and total for an annual reporting period noting:</p> <ul style="list-style-type: none"> • Number of wallet downloads • Number of credentials issued. • Number of credentials by credential type. • Number of presentations per credential. • Number of presentations, total. • Number of challenges per credential. • Number of challenges, total. • Number of new credentials issued in the month by credential type. • Number of new credentials issued in the month in total. • Issuance success failure rates • Verification success and failure rates • Revocation events • Defects or discrepancies • Credential expiry tracking • Storage volume in total. • Storage increases for the month. <p>The report should provide a predictive outlook as to the anticipated metrics that would be recorded at the end of an annual licencing cycle.</p>	Monthly
Consumption Report Data	<p>Consumption data must be provided in a structured format (e.g., CSV, JSON, or via API) to support user metrics analysis and inform dashboard reporting.</p> <p>This data will be used to monitor credential activity, user engagement, and system performance throughout the pilot.</p> <p>Pilot consumption data will directly inform the design and development of reporting mechanisms for the Support and Maintenance Phase, ensuring continuity, scalability, and alignment with service level expectations.</p>	As soon as is reasonably practicable (in a timely manner based on risk)

Compliance Reporting	<p>The report will detail the Contractor's compliance with all relevant legal, regulatory, and contractual obligations, including but not limited to:</p> <p>Security Standards: ISO/IEC 27001, ISO/IEC 27002, ISO/IEC 19790, OWASP ASVS</p> <p>Privacy and data protection: Australian Privacy Principles (APPs), GDPR, IRAP</p> <p>Digital Trust Frameworks: eIDAS 2.0, TDIF 4.8, OpenID4VCI, OpenIDVP, W3C, ITIL 4.0</p> <p>Operational conformance: adherence to agreed uptime, credential lifecycle, user data handling, and revocation mechanisms</p> <p>Credential integrity: audit of selective disclosure, credential revocation and API security</p> <p>Data to include:</p> <ul style="list-style-type: none"> • Summary of audits conducted during the period • List of non-conformance, observations or exceptions • Remedial or mitigation actions taken • Upcoming certification or assessment activities • Attestation of continued compliance 	Quarterly
Service Level Report	Delivery to Customer's Contract Manager within five Business Days of the end of every month.	Monthly
Service Level Report Quality	Delivery as per format specified in section 5.3	As needed for the duration of the Agreement
Access Management Report	<ul style="list-style-type: none"> • Number of user accounts provisioned • Number of access requests processed • Audit log coverage – % of access events logged • Access anomalies detected – e.g., logins from unusual locations or times • Policy violations – unauthorized access attempts or role misuse • Audit log coverage – % of access events logged • Access anomalies detected – e.g., logins from unusual locations or times • Policy violations – unauthorized access attempts or role misuse 	Monthly
Cyber Incident Report	A concise Incident Report detailing incident, understanding, scope, severity and response, to alert and inform decision-makers of incident. A standard form used to convey the information if agreed acceptable.	Within 24 hours of incident occurrence
Incident Root-Cause Analysis Report	A report is required for priority 1 and 2 incidents within two Business Days from the incident occurring.	As needed for the duration of the agreement

Post Incident Report	A post incident report to be delivered within five Business Days from the resolution target time	Within five business days
Customer Satisfaction	> 80% satisfaction rating	Annual

5.3 Service Level Report

The table below describes the minimum required content of the service level report which must be ***delivered within 5 Business Days*** of the end of every month. The service level report will be a single consolidated report.

Section	Content
Service Level Performance	Service level targets vs. service level actuals
Incident Report	Data including: <ul style="list-style-type: none"> • Number of incidents raised in period • Number of incidents closed in period • Total open incidents • Total open incidents > 10 days old (including explanation) • Total open incidents > 1 months old (including explanation) • Total open incidents > 3 months old (including explanation) • Total open incidents > 12 months old (including explanation) • Average incident response time • Average incident resolution time • Incident severity breakdown (Critical, High, Medium, Low) • SLA compliance rate (% of incidents responded to/resolved within SLA targets) • Defects or discrepancies
Service Request Report	Data including: <ul style="list-style-type: none"> • Number of service requests raised in period • Number of service requests closed in period • Total open service requests • Total open service requests > 10 days old • Total open service requests > 1 months old • Total open service requests > 3 months old • Total open service requests > 12 months old • Average response and resolve times for each incident raised.
Availability Report	Data including: <ul style="list-style-type: none"> • Cumulative downtime for the reporting period • Cumulative downtime for the year • Downtime summary, including: <ul style="list-style-type: none"> ▪ Commencement date/time ▪ Duration ▪ Description • User impact summary (number of users affected, duration of impact) • Service Credits issued for the period • Trend analysis of monitored events
Change & Release Report	Data including: <ul style="list-style-type: none"> • Summary of planned changes, enhancements, maintenance work and emergency changes implemented.

	<ul style="list-style-type: none"> • Summary of future planned changes / enhancements, maintenance work or releases and estimated dates of implementation. • Summary including reasoning, of any identified (by the Customer, users or by the Contractor) changes that were not communicated and/or unauthorised.
Risks & Issues	<ul style="list-style-type: none"> • Summary of major risks & issues to service delivery.

The following reports form part of the Service Level Report although are to be provided in line with the reporting requirements at the time of the occurrence.

Section	Content
Security Incident Report	<p>The report is to include:</p> <ul style="list-style-type: none"> • The Contractor's nominated Contract Manager • Capture logs of evidence and event detection • Domain name system (DNS) logs and logs of any other type • The identified root cause of the security incident • The actions that led to the identification of the security incident • The actions and/or workarounds enacted to mitigate the security incident • Any known impacts of the security incident • The duration of the security incident • The actions either put in place or to be put in place to ensure that such issues do not reoccur; and • The timeframes for remedial and preventative actions.
Post Security Incident Report	<p>The final report must include:</p> <ol style="list-style-type: none"> a. A description of the security incident. b. Root cause analysis of the incident including: <ul style="list-style-type: none"> • The actions that led to the identification of the incident • The business impact (e.g. duration of incident, number of users affected) • The service recovery actions undertaken. • The actions and/or workarounds enacted to mitigate the incident from occurring again.

6

MEETINGS

Regular meetings will be held to facilitate the smooth running of the Agreement as per Schedule 6 (Performance Assessment Regime) to establish open and transparent communication between the Customer and Contractor for Contractor performance, issue resolution and other matters. Some ad hoc meetings may also be required, as necessary, and at the sole discretion of the Customer e.g. mitigation of risks and issues.

The Contractor shall be responsible for maintaining records of all meetings listed under this Agreement. Meeting minutes must include a summary of discussions, decisions made, key risks raised and clearly assigned action items with responsible parties and due dates.

Draft minutes shall be circulated to all participants within three (3) business days of the meeting. Final minutes, incorporating comments received, must be issued within five (5) business days. Where disagreement arises in recorded content or action items, the matter shall be escalated to the Contractor's Chief Executive Officer for resolution.

The Contractor must maintain an Action Register, which is to be reviewed and updated at each subsequent meeting. The Action Register must reflect the status (open, closed, deferred), risk/impact, and responsible party for each action. These records form part of the contract governance artefacts and may be subject to audit by the Customer at any time.

Corrective Action Plan and Escalation Pathways:

In the event of Contractor's non-performance, failure to meet contractual obligations or repeated deviation from agreed service levels or KPIs, the Department reserves the right to initiate a Corrective Action Plan (CAP) process.

The Contractor shall, within five (5) business days of notification of non-performance, submit a written Corrective Action Plan that includes:

- Root cause analysis of the issue/s
- Specific corrective actions and responsible parties
- Target dates for resolution – timeframes will be recorded in Action register and reviewed at each Contract Management Meeting.
- Interim mitigation strategies (if service is impacted)
- Reporting mechanisms to track progress and closure

The Department will review and approve the CAP, and reserves the right to:

- Require amendment to the CAP
- Escalate issues to the Contractor's Chief Executive Officer
- Suspend monthly payments (if linked to the performance) until the closure of the CAP
- Apply remedies under the Agreement, including service credits, if the Contractor fails to comply with the agreed CAP.

6.1 Pilot Phase

Title	Participants	Frequency	Objective
Contract Management Meeting	<ul style="list-style-type: none">• Customer's Contract Manager• Customer's Project Manager• Contractor's Contract Manager• Contractor's Project Manager• Any other parties as relevant to the meeting.	Monthly	Review of the Contractor's performance against the Implementation Plan, Project Plan, performance measures, financial management, relationship management and risk management.
		Quarterly if required	
Project Meetings	<ul style="list-style-type: none">• Customer's Project Director• Customer's Project Manager• Contractor's Contract Manager• Contractor's Project Manager• Any other parties as relevant to the meeting.	As defined in the Implementation Plan and any associated Project plans.	

6.2 Full Production Phase

Title	Participants	Frequency	Objective
Contract Management Meeting	<ul style="list-style-type: none">• Customer's Contract Manager• Customer's Project Manager• Contractor's Contract Manager• Contractor's Project Manager• Any other parties as relevant to the meeting.	Monthly	Review of the Contractor's performance against the Implementation Plan, Project Plan, performance measures, financial management, relationship management and risk management.
		Quarterly if required	
Project Meetings	<ul style="list-style-type: none">• Customer's Project Director• Customer's Project Manager• Contractor's Contract Manager• Contractor's Project Manager	As defined in the Implementation Plan and any associated Project plans. Review recently opened, in-flight and closed Variation Requests.	

	<ul style="list-style-type: none"> Any other parties as relevant to the meeting. 		
Contract Management Review Meeting	<ul style="list-style-type: none"> Customer's Contract Manager Contractor's Contract Manager <p>Any other parties as relevant to the meeting.</p>	Annually	<p>The contract management meeting that falls on the last month of the Agreement's year shall incorporate the following in addition, to the monthly contract management requirements:</p> <ul style="list-style-type: none"> Review the Transition-Out Plan Review the Disaster & Business Continuity Plan Review the Performance Assessment Regime <p>Review reporting requirements.</p>
Incident Meeting	<ul style="list-style-type: none"> Customer's Contract Manager Contractor's Contract Manager <p>Any other parties as relevant to the meeting.</p>	As required	<p>To discuss any incident which occurs that affects the Solution outcomes such as Customer System availability; security, Customer Data quality or availability.</p> <p>An Incident Meeting may be required if called out in an Incident Report as part of understanding and resolving the issue.</p>

7 APPROVALS FOR CHANGES

The Customer Contract Manager tracks the changes to scope through the facilitation of the Variation process, monitors budget, contract value and reviews the Contractor's performance of this Agreement.

Contractual changes are reviewed by the Customer Contract Manager and submitted to the Chief Technology Officer for approval; however this is dependent on the type of change e.g. any changes that affect the value of the Agreement must go through the approval process as set out in the Customer's delegations schedule, which sets out the approved delegations.

All changes must be presented in the correct format as Variation Requests and are facilitated through the Customer Contract Manager to ensure relevant governance process for validation, approvals and Record keeping compliance.

Schedule 11 – Insurances

1 INTRODUCTION

The Contractor must effect and maintain each of the Insurance Policies in accordance with the Agreement, whether as a separate policy or incorporated in other insurance policies covering the requirements set out in the items within this Schedule 11 and in this Agreement.

2 PROFESSIONAL INDEMNITY INSURANCE

Insurance Element	Minimum Requirement
Insured	<ul style="list-style-type: none">the Contractor and its officers, employees and agents; andall Subcontractors for their respective rights and interests.
Sum Insured	For an amount of not less than \$20 million for any one claim and \$20 million in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured in any one period of insurance, not exceeding 18 months.
Scope of Cover	Professional indemnity insurance covering any Liability resulting from any act or omission arising out of the breach of professional duties of the Insured in connection with the Contractor's obligations under this Agreement, including the performance of the Services.
Geographical Coverage	Anywhere in the Commonwealth of Australia.
Additional Requirements	Professional Indemnity insurance must be extended to include: <ul style="list-style-type: none">fraud, dishonesty, breach of confidentiality, infringement of Intellectual Property;criminal or malicious conduct;libel, slander and defamation;loss of, damage to or loss of integrity in documents, data; software and computer programs;breach of <i>Competition and Consumer Act 2010</i> (Cth), the <i>Fair Trading Act 2010</i> (WA) and any similar legislation in any other State or Territory in so far as they may relate to the Contractor's obligations under the Agreement; andthe vicarious liability of the Insured arising out of the breach of professional duties of all persons engaged by the Insured in connection with the obligations under the Agreement.
Period of Insurance	From the Commencement Date until the expiry of 6 years following the End Date.

3 PUBLIC AND PRODUCTS LIABILITY INSURANCE

Insurance Element	Minimum Requirement
Insured	<ul style="list-style-type: none"> the Contractor, and its officers, employees and agents; and all Subcontractors for their respective rights and interests.
Sum Insured	<ul style="list-style-type: none"> For an amount of not less than \$20 million for any one occurrence, unlimited in the number of occurrences happening in the period of insurance for public liability, and limited in the annual aggregate to \$20 million for products liability for all occurrences in any one period of insurance.
Scope of Cover	<p>Public and products liability insurance covering the legal liability of the Insured:</p> <ul style="list-style-type: none"> for loss or damage to and loss of use of any property and personal injury, death or illness to any person (other than liability required to be covered under worker's compensation law) arising out of or in connection with the Contractor's obligations under this Agreement, including the performance of the Services; or arising out of the Deliverables and/or Services, <p>(including such liability arising out of any act, negligence, made or done by or on behalf of the Insured and the Insured's employees).</p>
Geographical Coverage	Anywhere in the Commonwealth of Australia.
Additional Requirements	<p>The insurance policy is to include a cross liability clause, with respect to named insureds, severability and non-imputation for the benefit of the Contractor and the Subcontractors to ensure that each Insured is a separate legal entity for the purpose of this insurance policy.</p> <p>The insurance policy must be extended to indemnify the Customer as principal to the extent of the Customer's vicarious liability arising out of the negligent acts or omissions of the Contractor, its employees or agents in the performance or non-performance of work or services by them in connection with the Agreement.</p>
Period of Insurance	From the Commencement Date until the End Date.

4 TECHNOLOGY (CYBER) LIABILITY INSURANCE

Insurance Element	Minimum Requirement
Insured	<ul style="list-style-type: none"> the Contractor and its officers, employees and agents; and all Subcontractors for their respective rights and interests.
Sum Insured	For an amount of not less than \$20 million for any one claim and \$20 million in the annual aggregate, in any one period of insurance.
Scope of Cover	<p>Cyber insurance covering the financial loss and legal liability of the Contractor for costs, expenses, loss or claims arising from any:</p> <ul style="list-style-type: none"> breach or disclosure of personal or corporate information; ransomware or extortion; business interruption; lost, damaged or destroyed data/records including software and hardware and recovery of such data/records; computer virus and hacking including denial of service; media liability; regulatory fines and penalties act or omission by an unauthorised person or entity resulting in loss of, damage or destruction to the computer system (including hardware, software and data) owned or used by the Contractor, the Customer or the Customer's end users <p>in connection with the Contractor's obligations under this Agreement, including the performance of the Services.</p>
Geographical Coverage	Anywhere in the Commonwealth of Australia.
Additional Requirements	The insurance policy is to include an unlimited retroactive date.
Period of Insurance	From the Commencement Date until expiry of 6 years following the End Date.

5 WORKERS' COMPENSATION INSURANCE

Insurance Element	Minimum Requirement
Insured	Each of the following persons is required to procure its own workers' compensation insurance: <ul style="list-style-type: none">• the Contractor; and• each Subcontractor.
Sum Insured	Workers' compensation insurance in accordance with the provisions of the <i>Workers' Compensation and Injury Management Act 1981</i> (WA) (and under equivalent legislation in other applicable states and territories in Australia), including cover for common law liability for an amount of at least \$50 million for any one occurrence in respect of workers of the Insured.
Scope of Cover	As required by Law
Geographical Coverage	Anywhere in the Commonwealth of Australia.
Additional Requirements	The insurance policy must be extended to cover the Customer for any claims and liability that may arise with an indemnity under section 175(2) of the <i>Workers' Compensation and Injury Management Act 1981</i> (WA) (and under equivalent legislation in other states and territories in Australia).
Period of Insurance	From the Commencement Date until the End Date.

Schedule 12 – Approved Form of Bank Guarantee

To be completed within 15 Business Days of Contract Award

[insert date]

To: The State of Western Australia, acting through the Department of Premier and Cabinet, **[insert address]** **(Customer)**

The Customer entered into the **(Contract)** with **(Contractor)**.

At the request of the Contractor and in consideration of the Customer agreeing to accept the form of this guarantee:

[insert name and address of Issuer] **(Issuer)**,

Unconditionally and irrevocably covenants to pay to the Customer on first demand by the Customer any sum or sums which may from time to time be demanded by the Customer up to an aggregate maximum of **[\$500,000]**.

Payment or payments under this guarantee must be made by the Issuer to the Customer:

- (a) without reference to the Contractor or any agreement between the Customer and the Contractor;
- (b) notwithstanding any notice by the Contractor or any other person (aside from the Customer) to the Issuer not to pay the whole or any part of the sum;
- (c) notwithstanding anything which, but for this provision, might operate to release, prejudicially affect or discharge or in any way relieve the Issuer from any obligation including, without limitation:
 - () any variation or alteration to any contract between the Customer and the Contractor; or
 - (i) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person; and
- (d) to an Australian dollar account nominated by the Customer.

This guarantee expires on **[insert date of expiry]**.

The Issuer will have no liability in respect of any claim under this guarantee after that date.

This guarantee is covered by the laws of Western Australia.

Schedule 13 – Parent Company Guarantee

This Deed Poll of Guarantee and Indemnity

is made on 20[] by the following party:

[insert name of Guarantor]

ABN [insert ABN of Guarantor]

of [insert address of Guarantor]

(Guarantor)

Recitals

- (a) On or about [insert date of Agreement], the [State of Western Australia, acting through the Department of Premier and Cabinet, [insert address]] (**Customer**) entered into an agreement with [insert details of Contractor] (**Contractor**) for the provision of consolidated information and communications technology services by the Contractor (**Agreement**).
- (b) It is a requirement under clause 51.5 of the Agreement that, at the Customer's request, the Guarantor enter into, execute and deliver this deed poll.

This deed poll witnesses

that in consideration of the Customer accepting this deed poll in satisfaction of the Contractor's obligations under the Agreement, the Guarantor agrees as follow__

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed poll, unless the context otherwise requires, a word or phrase defined in the Agreement has the same meaning as in the Agreement.

1.2 Interpretation

In this deed poll, unless a contrary intention appears:

- (a) (**persons**) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a trust, a trustee or a partnership;
- (b) (**includes**) the words 'including', 'includes' and 'include' will be read as if followed by the words 'without limitation';
- (c) (**or**) the meaning of 'or' will be that of the inclusive 'or', that is meaning one, some or all of a number of possibilities;
- (d) (**documents**) a reference to this deed poll or to any other deed, agreement, document or instrument includes a reference to this deed poll or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (e) (**legislation**) 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;
- (f) (**singular**) words in the singular include the plural (and vice versa) and words denoting any gender include all genders; and
- (g) (**headings**) headings are for convenience only and do not affect the interpretation of this deed poll.

2 TERM

Subject to clause 8 of this deed poll, this deed poll commences on the date of this deed poll and ends on the date which is 12 months after the end of the Term.

3 **GUARANTEE**

The Guarantor unconditionally and irrevocably guarantees to the Customer the due and punctual performance of the Contractor's obligations under the Agreement, including:

- (a) **(obligations of performance)** the discharge of the obligations and liabilities of the Contractor under the Agreement; and
- (b) **(obligations of payment)** the payment of all debts and monetary liabilities of the Contractor to the Customer under the Agreement.

4 **GUARANTOR'S UNDERTAKINGS**

- (a) If, in the Customer's opinion (acting reasonably), the Contractor fails to perform any of the Contractor's obligations under the Agreement or discharge any of the Contractor's liabilities under the Agreement, the Guarantor must:
 - (i) upon receipt of a notice from the Customer requiring it to do so, perform those obligations or discharge those liabilities (as the case may be) and thereafter continue to perform those obligations and discharge those liabilities (as the case may be) until the expiry or termination of the Agreement; and
 - (ii) subject to clause 4(b) of this deed poll, upon demand, pay to the Customer all Losses suffered or incurred by the Customer arising from or connected with the Contractor's failure to perform any of the Contractor's obligations under the Agreement or to discharge any of the Contractor's liabilities under the Agreement.
- (b) The Guarantor is only required to perform its obligations under clause 4(a)(ii) if:
 - (i) the Customer has given a written notice to the Contractor demanding the payment of the relevant Losses which are claimed by the Customer; and
 - (ii) the Contractor has failed to pay the claimed amount specified in the notice pursuant to clause 4(b)(i) within 5 Business Days following the receipt of the notice.
- (c) The Guarantor may procure one or more of its Subsidiaries, if it receives the Customer's prior written approval of such Subsidiaries or the Customer unreasonably withholds or delays its prior written approval after receiving a written request from the Guarantor, to perform its obligations and discharge its liabilities under this deed poll.
- (d) In no circumstances will the Guarantor be required to issue any invoices to the Customer in respect of the performance of the Services or the Contractor's other obligations under the Agreement.

5 **INDEMNITY**

The Guarantor indemnifies the Customer against all Claims and Losses that the Customer may suffer or incur arising from or in connection with the Agreement by reason of:

- (a) any default under or breach of or failure to perform or observe any of the terms or conditions of the Agreement by the Contractor (whether or not amounting to a Material Breach); or
- (b) an Insolvency Related Event occurring in respect of the Contractor.

6 **PAYMENTS**

- (a) All payments which the Guarantor is required to make under this deed poll must be made without any set off, counterclaim, condition or deduction and must be made by the Guarantor on demand by the Customer.
- (b) The Guarantor is only required to perform its obligations under clause 4(a)(ii) if the Customer has used reasonable efforts to seek to recover the payment from the Contractor under the Agreement.

7 **REPRESENTATIONS AND WARRANTIES**

- (a) The Guarantor represents and warrants that:

- (i) it has full power and authority to enter into and perform its obligations under this deed poll;
 - (ii) it has taken all necessary action to authorise the execution, delivery and performance of this deed poll;
 - (iii) this deed poll constitutes legal, valid and binding obligations;
 - (iv) each of its representations and warranties contained in this deed poll is true, correct and not misleading when made or repeated or regarded as made or repeated; and
 - (v) all information provided to the Customer by or on behalf of the Guarantor is true and correct in all material respects and is not, whether by omission of information or otherwise, misleading.
- (b) The representations and warranties in this clause 7 of this deed poll survive the execution of this deed poll.

8 CONTINUING OBLIGATION

The guarantee and indemnity contained in this deed poll are continuing obligations of the Guarantor, despite any settlement of account or the occurrence of any other thing and remain in full force and effect until all of the Contractor's obligations under the Agreement have been performed.

9 LIABILITY

Notwithstanding any provision of this deed poll (other than clause 12), in no circumstances will the Liability of the Guarantor be greater than the Liability of the Contractor under the Agreement.

10 INDEPENDENT OBLIGATION

The guarantee and indemnity contained in this deed poll are separate and independent obligations of the Guarantor and neither limits the generality of the other.

11 NATURE OF GUARANTOR'S OBLIGATIONS

11.1 Principal Obligations

The obligations of the Guarantor under this deed poll in respect of the Agreement are principal obligations and are not released, discharged or otherwise affected by anything which, but for this provision, might have that effect, including:

- (a) the grant to any person of any time, concession, waiver, covenant not to sue or other indulgence or release;
- (b) any arrangement made between the Customer and the Contractor;
- (c) any alteration, amendment or variation of the Agreement, any schedule or attachment of the Agreement or any document incorporated by reference into the Agreement; or
- (d) any assignment, novation, assumption or transfer of, or other dealing with, any rights or obligations under the Agreement or any schedule or attachment of the Agreement.

11.2 Application

Clause 11.1 of this deed poll applies irrespective of the consent or knowledge, or lack of consent or knowledge, of the Customer, the Guarantor or any other person of any event described in clause 11.1 of this deed poll or of any Law to the contrary.

12 COSTS AND EXPENSES

Notwithstanding clause 9 of this deed poll, the Guarantor must pay all taxes, duties, fees and reasonable costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration and discharge of this deed poll and the enforcement or protection or attempted enforcement or protection of any rights or powers of the Customer under this deed poll, including any legal costs and expenses and any professional consultants' fees in respect of any of the above on a full indemnity basis.

13 NOTICES

13.1 How And Where Notices May Be Sent

A notice or other communication including a demand (**Notice**) in respect of this deed poll is only a valid notice for the purposes of this deed poll where the Notice is:

- (a) in writing;
- (b) delivered by hand or sent by pre-paid post to the Guarantor or the Customer at the address for that person specified in clause 13.4 of this deed poll or as otherwise specified by that person by Notice; and
- (c) if it is sent by a company, signed by a duly authorised officer or representative of the sender.

13.2 Email Not To Be Used

Email or similar electronic means of communication must not be used to give Notices under this deed poll.

13.3 When Notices Are Taken To Have Been Given And Received

- (a) A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.
- (b) A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

13.4 Contact Details

Guarantor

Address: **[insert details]**

Attention: **[insert details]**

Fax: **[insert details]**

Customer

Address: **[insert details]**

Attention: **[insert details]**

Fax: **[insert details]**

14 ARBITRATION

14.1 Reference to Arbitration

- (a) This clause 14 applies unless the Guarantor's place of incorporation is (or becomes) a jurisdiction that is:
 - (i) Australia;
 - (ii) a jurisdiction to which Part 2 of the *Foreign Judgments Act 1991* (Cth) applies (as specified in the *Foreign Judgment Regulations 1992* (Cth)); or
 - (iii) a party to a treaty with Australia which enables the enforcement of judgments from Australian courts in the relevant jurisdiction.
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this deed poll (including but not limited to any question relating to the existence, validity or termination of this deed poll) (**Dispute**) must be referred to and finally resolved by arbitration in accordance with the current arbitration rules of the Australian Centre for International Commercial Arbitration.
- (c) The seat of the arbitration will be Perth.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.

- (f) Subject to clause 14.4 of this deed poll, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages.

14.2 Consolidation

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

14.3 Joinder

The arbitral tribunal has the power, on the application of any party to this deed poll, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this deed poll hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

14.4 Exclusion from Determination or Award

- (a) The powers conferred and restrictions imposed on a court by Part 1F of the *Civil Liability Act 2002* (WA) are not conferred on an arbitral tribunal appointed in accordance with clause 14.1 of this deed poll.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a dispute by applying or considering the provisions of Part 1F of the *Civil Liability Act 2002* (WA) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the arbitral tribunal.

14.5 Award Final and Binding

Any award of the arbitral tribunal will be final and binding upon the parties.

15 GENERAL

15.1 Governing Law and Jurisdiction

This deed poll is governed by and will be construed according to the Laws of Western Australia and the Guarantor irrevocably submits to the exclusive jurisdiction of the courts of that state and the courts competent to determine appeals from those courts.

15.2 Severability of Provisions

Any provision of this deed poll that is prohibited, illegal or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this deed poll nor affect the validity or enforceability of that provision in any other jurisdiction.

15.3 Waivers and Estoppel

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy under any Law or under this deed poll by the Customer does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or this deed poll.
- (b) A waiver given by the Customer under this deed poll is only effective and binding on the Customer if it is given or confirmed in writing by the Customer.
- (c) No waiver of a breach of a term of this deed poll operates as a waiver of any other breach of that term or of a breach of any other term of this deed poll.
- (d) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy under any Law or under this deed poll by the Customer does not preclude, or operate as an estoppel of any form of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided under any Law or under this deed poll.

15.4 Rights Cumulative

Unless otherwise expressly specified in this deed poll, all rights and remedies under this deed poll are to be construed independently and without limitation in respect of each other.

EXECUTED as a deed poll

Guarantor

The common seal of

[insert Guarantor]

is fixed to this document in the presence of

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

Schedule 14 – Definitions

In this Agreement, unless the context indicates otherwise:

Term	Meaning
Acceptance Certificate	means, in relation to an Acceptance Test Item, a notice from the Customer to the Contractor indicating that the Customer is satisfied that the Acceptance Test Item has passed the relevant Acceptance Tests.
Acceptance Criteria	means the acceptance criteria set out in: <ul style="list-style-type: none">(a) the Acceptance Test Plan in respect of a particular Acceptance Test Phase;(b) the Customer's test scripts or Test Strategy; or(c) this Agreement, or otherwise agreed in writing by the Contractor and the Customer from time to time.
Acceptance Date	means in respect of each Acceptance Test Item, the day on which the Customer issues an Acceptance Certificate for the Acceptance Test Item.
Acceptance Test	means an acceptance test: <ul style="list-style-type: none">(a) conducted under an Acceptance Test Plan;(b) provided for in the Statement of Requirements, the Implementation Plan or a relevant Project Document (or agreed by the parties in writing); or(c) conducted following a direction from the Customer pursuant to clause 10.3.
Acceptance Test Item	means: <ul style="list-style-type: none">(a) a Deliverable or part of a Deliverable;(b) multiple Deliverables;(c) a portion of the Solution or the Solution as a whole; or(d) any Services, that are the subject of an Acceptance Test.
Acceptance Test Phase	means an individual phase of the Acceptance Tests specified in an Acceptance Test Plan.
Acceptance Test Plan	means an acceptance test plan submitted by the Contractor in accordance with clause 10.2.
ACSC Essential Eight	means the essential cyber threat mitigation strategies developed by the Australian Cyber Security Centre (available at https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/essential-eight).
Additional Services	means the provision of additional services of a similar nature to the Services (such as the inclusion of additional Credentials, the provision or

Term	Meaning
	implementation of Software Development Kits, and the provision of additional functionality or additional integration).
Aggregate At Risk Amount	has the meaning given to that term in the Performance Assessment Regime.
Agreement	means this agreement, and includes all schedules and all properly executed Variation Orders and Statements of Work, as set out in clause 1.4(a).
Approval Notice	means in respect of a Phase, a notice in writing from the Customer confirming that the Customer approves the commencement of, and Charges for, that Phase.
Approved Subcontractor	means a Subcontractor approved by the Customer in writing prior to the Subcontractor commencing the performance of any part of the Services, including the approved Subcontractors set out in Schedule 1.
Auditor General	means the Auditor-General of Western Australia.
Authorisation	means any approval, agreement, certificate, authorisation, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver, compliance report or environmental consent by any Government Agency required under any Law, and includes any renewal of, or variation to, any of them, but does not include any act or omission by the Customer under this Agreement.
Authority	means: <ul style="list-style-type: none"> (a) any Government Agency, administrative or judicial body or tribunal; and (b) any private electricity, telecommunications, gas, water, drainage, sewerage or other utility provider.
Background IP	means the subject matter of any Intellectual Property which comes into existence after the Commencement Date otherwise than in connection with this Agreement (or the procurement process for this Agreement).
BBSY Rate	means the rate (which is expressed as a yield per centum per annum to maturity) which is the buying rate for bank accepted Bills quoted at approximately 10.15am (Sydney time) on page 'BBSY' of the Reuters Monitor System on that day, having a term of one month.
Bank Guarantee	means an unconditional, irrevocable, enforceable undertaking, which is: <ul style="list-style-type: none"> (a) payable on demand; (b) in the form set out in Schedule 12, or in such form approved by the Customer in writing; and (c) for an amount equal to or greater than [insert amount [~5%] of contract value], and a reference to a Bank Guarantee includes any additional or replacement bank guarantee

Term	Meaning
Bill	has the same meaning as 'bill of exchange' in the <i>Bills of Exchange Act 1909</i> (Cth) (but does not include a cheque or payment order).
Breach Notice	means a notice identifying and giving details of a material breach and requiring the breach to be remedied.
Business Continuity Services	means any business continuity procedures, processes and services to be provided by the Contractor to the Customer to enable continuity of the Services at all times, including the Contractor's obligations under clause 47.
Business Day	means between 8.30am and 5.00pm on any day other than: <ul style="list-style-type: none"> (a) a Saturday or a Sunday; or (b) a gazetted holiday in Perth, Western Australia under the <i>Public and Bank Holidays Act 1972</i> (WA).
Change in Law	means a new Law, or a change in an existing Law, that: <ul style="list-style-type: none"> (a) takes effect after the Commencement Date; (b) the Contractor is required to comply with as a direct result of the provision of the Services to the Customer (and not arising from the Contractor's operation of its business generally or its provision of services to other customers); and (c) based on information that is publicly available, could not reasonably have been anticipated by a skilled contractor at the Commencement Date.
Charges	means the amounts payable by the Customer to the Contractor for the performance of the Contractor's obligations under this Agreement, as set out in the Pricing and Payment Schedule. The Charges include any amounts that the Customer is obliged, under this Agreement, to reimburse the Contractor based on the rates set out in the Pricing and Payment Schedule.
Claim	means any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity), made: <ul style="list-style-type: none"> (a) in connection with this Agreement or the Services; (b) at Law; or (c) for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.
Cloud Service	means any cloud services including the following: <ul style="list-style-type: none"> (a) Infrastructure as a Service (IaaS): the provision by a third party of infrastructure services, such as computing, storage and virtualisation, as customers require them, via a cloud, through the internet (e.g. Amazon Web Services (AWS) and Microsoft Azure); (b) Network as a Service (NaaS): a cloud service in which customers consume networking services from cloud service providers; (c) Platform as a Service (PaaS): the hosting by a cloud service provider of hardware and software on its own infrastructure, and the delivery by the cloud service provider of this platform to the user as an

Term	Meaning
	integrated solution, solution stack or service through an internet connection;
	(d) Software as a Service (SaaS): commercial application software hosted on the cloud and used over an internet connection via a web browser, mobile app or thin client. The Contractor is responsible for operating, managing and maintaining the software and all infrastructure on which it relies; and
	(e) Everything as a Service (XaaS): any consumption service delivered via cloud computing (including storage) and delivered remotely.
Cloud Service Provider	means a provider of Cloud Services used by the Contractor in connection with the Solution.
Commencement Date	means the date of this Agreement.
Confidential Information	means, in respect of a party, any information: <ul style="list-style-type: none"> (a) regarding this Agreement, the Services, Deliverables or Solution, or that party's performance of its obligations under this Agreement; (b) regarding the business, operations or affairs of that party; (c) regarding the customers, employees or contractors of, or other persons interacting with, that party; (d) regarding the commercial arrangements between the parties; (e) which is by its nature confidential, or which is designated as confidential by that party; (f) which the other party knows, or ought to know, is confidential; or (g) of a commercial, operational, marketing, business, technical or financial nature relating to the affairs of the party, and in relation to the Customer, also includes: <ul style="list-style-type: none"> (h) any of the above information that relates to Other Contractors, Credential Providers, Credential Consumers or their Personnel, (i) any of the above information that relates to the Customer's customers and other users of the Customer's ICT Environment (or their Personnel); (j) the Project Documents and the Customer Data.
Contract Details	means Schedule 1.
Contract Managers	means the Customer Contract Manager and the Contractor Contract Manager.
Contractor Contract Manager	means the person appointed by the Contractor to act as the Contractor's representative in relation to the Contractor's performance of this Agreement, as described in clause 28.1, as set out in the Contract Details and as updated by the Contractor from time to time by notice in writing to the Customer and in accordance with clause 28.1.
Contractor Fault	means any of the following: <ul style="list-style-type: none"> (a) a breach by the Contractor of this Agreement;

Term	Meaning
	<ul style="list-style-type: none"> (b) negligence of the Contractor or its Personnel; (c) a material delay caused or contributed to by the Contractor or its Personnel; (d) a failure by the Contractor or its Personnel to act reasonably in relation to the Project; or (e) any other fault on the part of the Contractor or its Personnel.
Contractor Premises	means any premises, other than the Customer Premises, at which the Services are, or will be, performed.
Contractor Software	the Software owned by the Contractor or its Related Companies, as described in the Contract Details, the Specifications, any Variation Order or any Statement of Work (and regardless of whether the Customer has entered into an end user licence agreement with respect to such Software). A reference to Contractor Software does not include any Developed Software or Customised Software unless the parties agree in writing in a Variation Order, a Statement of Work, or pursuant to clause 41.2(a)(ii)(B), that the Developed Software or Customised Software (as applicable) will be owned by the Contractor.
Contractor Systems	means any Systems owned by, or under the operation and management of, the Contractor (or its Related Companies) or any of their Subcontractors and used in providing the Services.
Contractor's Background IP	means any Background IP that is: <ul style="list-style-type: none"> (a) owned by or licensed to the Contractor or its Related Companies; or (b) otherwise procured by the Contractor in connection with this Agreement from third parties.
Control	<p>of a person, means either:</p> <ul style="list-style-type: none"> (a) the legal, financial or equitable ownership, directly or indirectly (including through any holding company), of 50% or more of the issued share capital ordinarily having voting rights (or other ownership interest, if not a corporation) of that person; or (b) the capacity to determine the outcome of decisions about the financial and operating policies of that person, as determined by assessing: <ul style="list-style-type: none"> (i) the practical influence that can be exerted over that person (rather than the rights that can be enforced); and (ii) any practice or pattern of behaviour affecting that person's financial or operating policies, <p>and Controlled has a corresponding meaning.</p>
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
COTS Software	means commercial, off-the-shelf software provided by third party vendors and forming part of the Solution and includes: <ul style="list-style-type: none"> (a) the third party off-the-shelf software set out in the Statement of Requirements; and (b) any third party off-the-shelf software specified in a Variation Order.

Term	Meaning
Credential	<p>means a type of Authorisation that is:</p> <ul style="list-style-type: none"> (a) issued by a State Agency, or by another body approved by the Customer in writing; and (b) is capable of being digitally verified and is nominated by the Customer for use in connection with the Solution.
Credential Consumer	means a person who is presented, using the Solution, with an Implemented Credential in respect of a Credentialed Individual.
Credential Provider	means a State Agency (or other body approved by the Customer in writing) that is responsible for administering a Credential.
Credentialed Individual	means an individual who has been issued an Implemented Credential by the relevant State Agency.
Customer Contract Manager	means the person appointed by the Customer to manage the Customer's relationship with the Contractor, as described in clause 28.2, as set out in the Contract Details and as updated by the Customer from time to time by notice in writing to the Contractor.
Customer Data	<p>means all data and other information (including Personal Information) that:</p> <ul style="list-style-type: none"> (a) is collected, produced, generated, compiled, modified, processed, transmitted or received in the course of performing the Services, or in the course of the operation of the Solution, in connection with this Agreement, and includes: <ul style="list-style-type: none"> (i) any data that is provided to the Contractor by the Customer or a Credential Provider; (ii) any Personal Information of a Credentialed Individual; (iii) any other Personal Information which the Contractor collects or has access to in the course of performing its obligations under or otherwise in connection with this Agreement; (iv) any information or data, including reports and databases, containing or using any other type of Customer Data; and (v) any data generated as a result of using the Solution including derived datasets and Solution-generated information used for reporting purposes; or (b) relates to the operations or affairs of a Credential Provider (including its assets, facilities, services, transactions, Personnel or Systems), and includes the Confidential Information, <p>in whatever form the data or information exists, and includes any:</p> <ul style="list-style-type: none"> (c) database in which data or information is contained; (d) documentation or records related to data or information; (e) products resulting from the use or manipulation of data or information; and (f) copies of any of the above.
Customer Fault	means a breach of this Agreement by the Customer that materially and adversely affects the Contractor's ability to perform the Services.

Term	Meaning
Customer ICT Environment	<p>means the hardware, Software, communications infrastructure, hosting services, cloud-based services and other managed service environments:</p> <ul style="list-style-type: none"> (a) of the Customer; or (b) used by the users of the Customer at any location, <p>and includes the Customer Systems.</p>
Customer Personal Property	<p>means all personal property of the Customer which is the subject of a security interest granted under this Agreement.</p>
Customer Policies	<p>means:</p> <ul style="list-style-type: none"> (a) all policies of the Customer that are relevant to the Contractor's obligations under this Agreement and: <ul style="list-style-type: none"> (i) are provided to the Contractor by the Customer; (ii) are published on any website of the Customer, the State Records Office of Western Australia, the Government Chief Information Officer, the Department of Finance, the Office of the Auditor General for WA, the Department of Premier and Cabinet or any other Government Agency agreed by the parties; or (iii) the Contractor should have been aware of, had it exercised reasonable prudence to identify those policies; and (b) any reasonable amendments to the policies and procedures referred to in item (a) above (as applicable) from time to time, which apply from: <ul style="list-style-type: none"> (i) the date on which the amendment takes effect, as noted in the relevant policy; or (ii) such other date which is nominated by the Customer (acting reasonably).
Customer Premises	<p>means any of the premises of the Customer at which any of the Services are, or will be, performed.</p>
Customer Software	<p>the Software used by the Customer (or to be procured by the Customer) which is to be integrated with, linked to, or that in any way relies upon, or is relied upon by, the Deliverables and thereby form part of the Solution, as described in the Statement of Requirements.</p>
Customer Systems	<p>means:</p> <ul style="list-style-type: none"> (a) the ServiceWA App; and (b) any Systems, other than the Contractor Systems, used by the Customer from time to time, and provided by the Customer or a third party to the Contractor, <p>and includes the Customer Software.</p>
Customised Software	<p>means modifications to the Contractor Software and Third Party Software (as applicable) as modified by the Contractor in accordance with the Specifications, a Variation Order or a Statement of Work.</p>

Term	Meaning
Dangerous Goods Safety Act	means the <i>Dangerous Goods Safety Act 2004</i> (WA).
Data Breach	<p>means any:</p> <ul style="list-style-type: none"> (a) impairment, compromise or damage to the confidentiality, reliability, integrity, value or assurance of Customer Data; (b) misuse or loss of, interference with, unauthorised access to, modification of, or disclosure of Customer Data; or (c) breach of the Contractor's obligations relating to Customer Data under the Agreement, <p>and includes, by way of example, the following:</p> <ul style="list-style-type: none"> (d) a storage device in any form such as a hard drive, tablet, laptop, USB or mobile phone that holds an individual's Personal Information (or other Customer Data) is lost by or stolen from Contractor's Personnel; (e) a database, application or system containing or transmitting Customer Data is hacked or compromised; and (f) Personal Information or other Customer Data (in whatever form) is sent to the wrong person or made available at the wrong location (e.g. a publicly accessible folder) by Contractor's Personnel.
Date for Acceptance	means in respect of a Portion or Milestone, the date for acceptance specified in the Implementation Plan, which date may be extended in accordance with clause 16.2(d).
Date for Solution Acceptance	means the date for acceptance of the Solution as a whole, as specified in the Implementation Plan, which date may be extended in accordance with clause 16.2(d).
Defect	<ul style="list-style-type: none"> (a) means any fault, failure, degradation, deficiency or error in respect of the Solution (or any part of the Solution) or a Deliverable which results in: <ul style="list-style-type: none"> (i) the Solution or Deliverable (as applicable) not complying with the Specifications or any other requirement of this Agreement; (ii) an error message being displayed by the system that the Solution or Deliverable is running on or being accessed from; (iii) the Solution or Deliverable doing something that it was not designed to do; or (iv) the Solution or Deliverable not doing something that it was designed to do, <p>which detrimentally affects the operation of the Solution, the Deliverable, the Customer ICT Environment or a Participating System; or</p> (b) any aspect of the Services or Deliverables that is not in accordance with the requirements of this Agreement.
Delay Costs	means the direct costs actually incurred by a party (first party) arising out of a delay by the other party, but only to the extent that those costs could not have been reasonably mitigated by the first party.

Term	Meaning
Delay Costs Cap	means, in any one Financial Year, an amount equal 10% of the Charges payable by the Customer in the Financial Year for Services and Deliverables provided under this Agreement.
Delay Event	means a breach of this Agreement by the Customer.
Deliverables	<p>means:</p> <ul style="list-style-type: none"> (a) the Design Deliverables; (b) the Project Documents; (c) the Software Development Kits; (d) the Developed Software; (e) the Customised Software; (f) the Contractor Software; (g) the Third Party Software; (h) the Equipment; (i) the Documentation; and (j) any other deliverables to be supplied by the Contractor pursuant to this Agreement.
Deployment	means the transition of a Portion (or the Solution as a whole) to an operational environment in accordance with clause 13, whether for demonstration purposes or full operational purposes, and following the achievement of Deployment Readiness. The stages of deployment are set out in the Statement of Requirements and the Project Plan, and each stage of deployment is referred to in this Agreement as a Deployment.
Deployment Date	means a date on which the Deployment of a Portion or the Solution is completed.
Deployment Readiness	<p>means that:</p> <ul style="list-style-type: none"> (a) a Portion that is, according to the Implementation Plan, to be Deployed; (b) the Solution; or (c) a Post-Deployment Change, <p>is in fact ready for a Deployment, meaning that, in respect of that Portion or the Solution, or the Post-Deployment Change (as applicable):</p> <ul style="list-style-type: none"> (d) the Customer has issued an Acceptance Certificate; and (e) the Contractor has completed all pre-Deployment activities contemplated in the Statement of Requirements or the Implementation Plan, or otherwise agreed by the parties in writing.
Design Deliverables	means the design documents, and the reports and other documentation relating to design of the Solution, specified in the Statement of Requirements.
Develop	in connection with a thing, includes to create, add, enhance, reduce, adapt or prepare derivative works based on that thing.

Term	Meaning
Developed Software	means the Software to be created by or on behalf of the Contractor as described in the Contract Details, the Specifications, a Variation Order or a Statement of Work.
Disaster	<p>means the occurrence of one or more events, including a Force Majeure Event, that:</p> <ul style="list-style-type: none"> (a) significantly disrupts, or is likely to significantly disrupt the Customer's ability to receive, or the Contractor's ability to supply, any of the Services (including interruption, destruction or other loss of operational capacity); and (b) cannot be managed by the Contractor within the context of normal operating procedures.
Disaster Recovery Services	means such disaster avoidance and recovery procedures, processes and services to be provided by the Contractor to the Customer in accordance with this Agreement, including clause 48, to restore and resume the Services following a Disaster.
Discrepancy	means that Credential-related data transmitted via the Solution to a Credential Consumer does not accurately reflect the relevant Credential as issued by the Credential Provider.
Dispute	means any real or perceived conflict, difference of opinion or unresolved issue in relation to this Agreement or the parties' rights or obligations under this Agreement, other than in relation to a party's decision to terminate this Agreement.
Dispute Notice	means a notice that states it is a notice in relation to a Dispute, and includes (or is accompanied by) reasonable particulars of the Dispute.
Documentation	<p>means:</p> <ul style="list-style-type: none"> (a) the Project Documents; and (b) all other documentation which is reasonably necessary to effectively design, build, implement, test, operate, use and maintain the Solution.
Emergency Release	<p>means a New Release that must be introduced as soon as possible in order to maintain service continuity, including a change introduced to:</p> <ul style="list-style-type: none"> (a) remediate or avoid a Priority Level 1 Incident or Defect; or (b) implement a critical patch.
End Date	means the date on which this Agreement ends, as determined under clause 2.
End User	means an end user of the Solution, and includes Credential Providers, Credential Consumers, Credentialed Individuals, public and private sector organisations and individuals (including members of the public).
Ending Obligations	<p>means:</p> <ul style="list-style-type: none"> (a) when this Agreement, expires or is terminated for any reason, the Contractor's obligations under this Agreement; or

Term	Meaning
	<p>(b) when a part of this Agreement expires or is terminated for any reason, the Contractor's obligations under the terminated part of this Agreement.</p>
Environment	has the same meaning as under the <i>Environmental Protection Act 1986</i> (WA).
Equipment	means all hardware or other equipment which is to be supplied by the Contractor and included in the Solution, as agreed by the parties in writing.
Excusable Event	<p>means an event or occurrence that is beyond the Contractor's reasonable control. In this Agreement:</p> <p>(a) an event or occurrence is considered beyond the Contractor's reasonable control if it:</p> <ul style="list-style-type: none"> (i) is set out in paragraphs (a) to (h) of the definition of Force Majeure Event; (ii) is an act or omission of the Contractor or its Personnel that is carried out in accordance with a direction properly made by the Customer pursuant to clause 26 (provided that the Contractor promptly advised the Customer of the likely delay or failure to comply arising from the direction); (iii) telecommunications failures or faults or defective network or internet connection; or (iv) except as provided in paragraph (b) of this definition, is an act or omission of a third party, excluding: <ul style="list-style-type: none"> (A) an act or omission of the Contractor's Personnel; (B) an act or omission carried out following the Contractor's written instructions, designs, specifications or formal written recommendations; or (C) an act or omission that would reasonably have been expected by a skilled contractor performing the Services in accordance with Good Industry Practice; and <p>(b) subject to paragraph (a) of this definition, an event or occurrence is not considered beyond the Contractor's reasonable control if it:</p> <ul style="list-style-type: none"> (i) arises from an act or omission of the Contractor or its Personnel; (ii) is set out in paragraphs (i) to (n) of the definition of Force Majeure Event; (iii) arises from the Contractor's failure to comply with the Agreement or failure to comply with any other reasonable requirement that would have been readily apparent to a skilled contractor performing services that are similar to the Services (other than where the failure to comply was itself an Excusable Event); or (iv) could have been mitigated or prevented by the Contractor taking reasonable steps in accordance with Good Industry Practice.
Extended Term	means an extended term as set out in the Contract Details (or as otherwise agreed by the parties in writing) in accordance with clause 2.2.
Fault	means:

Term	Meaning
	<ul style="list-style-type: none"> (a) a Defect or a Discrepancy; (b) any other failure of the Solution, or a part of the Solution, to operate as would reasonably be expected from the Specifications; or (c) any other failure of the Solution or the Services to meet the requirements of this Agreement.
Financial Year	means each 12 month period commencing on 1 July.
First Deployment Date	means the date on which the Solution (or a part of it) is first Deployed, after the Customer has issued an Acceptance Certificate, pursuant to clause 10.7(a) in respect of that Portion or the Solution.
Fix	means the permanent correction of a Defect, including the provision of any amendments to, or replacements of, the Project Documents that are required as a result of the correction.
Force Majeure Event	<p>means any of the following events to the extent that they are unforeseeable and beyond the reasonable control of the affected party and prevent the affected party from performing its obligations in whole or part under this Agreement:</p> <ul style="list-style-type: none"> (a) fire, lightning, flood or earthquake; (b) explosion, landslide, tsunami or volcanic eruption; (c) acts of God; (d) pandemic other than the novel coronavirus; (e) acts of war, terrorism or riots; (f) failure of a public utility; and (g) radioactive or biological contamination; (h) strikes or lockouts (other than strikes or lockouts involving only or principally the Contractor's Personnel), <p>other than in respect of:</p> <ul style="list-style-type: none"> (i) a lack of, or inability to use, funds for any reason; (j) any occurrence which results from the wrongful or negligent act or omission of the affected party, or the failure of the affected party to act in a prudent and proper manner and in accordance with Good Industry Practice; (k) an event or circumstance where the event or circumstance, or its effects on the affected party or the resulting inability of the affected party to perform its obligations, could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent party; (l) weather conditions or any effects of weather conditions, other than as described in paragraph (a) of this definition; (m) the novel coronavirus (COVID-19) pandemic, or any occurrence, event or circumstance arising out of the prevalence or spread of the novel coronavirus or out of the steps taken to limit its spread; or (n) in the case of the Contractor, non-performance caused or contributed to by the Contractor's Personnel.

Term	Meaning
Freedom of Information Act	means the <i>Freedom of Information Act 1992</i> (WA).
Full Deployment	means the Deployment of the Solution generally to End Users.
Good Industry Practice	means: <ul style="list-style-type: none"> (a) the exercise of the degree of skill, diligence, prudence and foresight that would be reasonably expected from a reputable and prudent person in providing services similar to the Contractor's obligations under this Agreement and under conditions comparable to those applicable to such obligations; (b) compliance with applicable standards and codes, being the standards and codes specified in this Agreement or, if this Agreement does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied in the circumstances; and (c) compliance with applicable Laws.
Governance Schedule	means Schedule 10.
Government Agency	means any Commonwealth of Australia, State or local government department, body, entity or instrumentality (or any other public authority or statutory body which has relevant jurisdiction) excluding the Customer.
GST	has the meaning given to it in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Guarantor	means [to be inserted].
Hypercare Period	means: <ul style="list-style-type: none"> (a) in respect of Full Deployment – the period from readiness for Full Deployment until the expiry of 12 weeks following the achievement of Full Deployment; (b) in respect of any other Deployment – the period from readiness for that Deployment until the expiry of 12 weeks following the achievement of that Deployment; and (c) in respect of any material changes to the Solution or the Ongoing Services – the period commencing on the date the change becomes operational in a live environment, and ending 12 weeks after that date.
Implementation Plan	means the timetable for performance of the Implementation Services, as set out in Schedule 4 (as amended by agreement of the parties in writing from time to time).
Implementation Services	means the services required to be performed by the Contractor pursuant to this Agreement for the purposes of the Project, as set out in the Statement of Requirements and relevant Project Documents.
Implemented Credential	means a Credential in respect of which the Solution has been configured for inclusion and use.

Term	Meaning
Indirect or Consequential Loss	<p>means:</p> <ul style="list-style-type: none"> (a) loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, including any failure to realise anticipated savings; (b) cost of capital and financing costs; or (c) damage to reputation or goodwill.
Industrial Action	<p>means a strike, lockout, demarcation or industrial dispute which affects the supply of the Deliverables or the performance of the Services.</p>
Industrial Relations Matter	<p>means any matter arising out of, or in connection with, the supply of the Deliverables or the performance of the Services and which relates to:</p> <ul style="list-style-type: none"> (a) a claim for payment for, or on behalf of, any Subcontractor or employee of the Contractor; (b) a claim for payment for, or on behalf of, any employee of a Subcontractor; or (c) a claim arising out of, or in connection with, changes in State or Federal awards or work practices.
Initial Term	<p>means the initial term set out in the Contract Details.</p>
Insolvency Related Event	<p>means, in relation to a corporation, the occurrence of any of the following events:</p> <ul style="list-style-type: none"> (a) (informs creditors) that corporation informs its creditors generally that it is insolvent; (b) (receiver) a liquidator, administrator, trustee in bankruptcy, receiver or receiver and manager or similar officer is appointed in connection with any of the assets of that corporation; (c) (execution) a distress, attachment or other execution is levied or enforced upon or against any assets of that corporation and in the case of a writ of execution or other order or process requiring payment, it is not withdrawn or dismissed within 10 Business Days; (d) (application) an application is made for the administration, dissolution or winding up of that corporation which application is not stayed within 10 Business Days after being made; (e) (winding up) an order is made for the administration, dissolution or winding up of that corporation; (f) (resolution) a resolution is passed for the administration or winding up of that corporation other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Customer; (g) (arrangement or composition) that corporation enters, or resolves to enter into or has a meeting of its creditors called to enter into any scheme of arrangement or composition with its creditors generally, or any class of its creditors, other than for the purposes of a solvent reconstruction or amalgamation on terms approved by the Customer; (h) (statutory demand) <ul style="list-style-type: none"> (i) that corporation fails to comply with, or apply to have set aside, a statutory demand within 10 Business Days after the time for compliance; or

Term	Meaning
	<ul style="list-style-type: none"> (ii) if that corporation applies to have the statutory demand set aside within 10 Business Days after the time for compliance, the application to set aside the statutory demand is unsuccessful and that corporation fails to comply with the statutory demand within 5 Business Days after the order of the court dismissing the application; (i) (execution levied against it) that corporation has an execution levied against it by creditors, debenture holders or trustees or under a floating charge which is not satisfied, withdrawn or dismissed within 10 Business Days; or (j) (insolvency) that corporation is unable to pay its debts when they fall due, or is deemed unable to pay its debts in accordance with any applicable Law.
Insurance Policies	means the insurances required to be effected and maintained in accordance with this Agreement.
Integrity Check	means the Police Clearances, register checks and other documentation referred to in clause 35.3(a).
Intellectual Property	means all intellectual and industrial property rights, including trademarks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights and other intellectual property rights as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights.
Intellectual Property Register	means the register of intellectual property, as kept and maintained by the Contractor, in the form reasonably required by the Customer, in connection with this Agreement.
Interfacing Providers	means a person with whom the Contractor must interface or interact as part of performing the Services specified in the Project Documents, or as notified to the Contractor by the Customer from time to time provided the interface requirements are in-scope.
Interfacing Services	<p>means:</p> <ul style="list-style-type: none"> (a) any Services that must interface with services performed by an Interfacing Provider; and (b) any interfacing services performed by an Interfacing Provider.
Key Personnel	<p>means any:</p> <ul style="list-style-type: none"> (a) key personnel of the Contractor listed in the Contract Details, the Statement of Requirements and elsewhere in this Agreement; (b) key personnel listed in the Project Documents; and (c) any other key personnel agreed from time to time by the parties in writing.
Laws	means all applicable present and future laws including:

Term	Meaning
	<ul style="list-style-type: none"> (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of any local government in Western Australia, or of the jurisdiction of Western Australia or the Commonwealth of Australia; (b) Authorisations; (c) principles of common law or equity; (d) standards, codes and guidelines; and (e) fees, rates, taxes, levies and charges payable in respect of those things referred to in paragraphs (a) to (d) of this definition, <p>whether or not existing on the Commencement Date.</p>
Liability	means any liability including any debt, obligation, Claim, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation, charge or other liability of any kind (including fines or penalties), actual, prospective or contingent and whether or not currently ascertainable and whether arising under or for breach of contract, in tort (including negligence), restitution, pursuant to statute or otherwise at Law.
Liability Cap	means, in respect of the Contractor, the aggregate Liability cap determined in accordance with clause 53.1.
Lobbyist Act	means the <i>Integrity (Lobbyists) Act 2015</i> (WA).
Lobbyist Code	means the Code of Conduct for Registrants and Lobbyists, which is available as at the date on which the last party signs this Agreement at https://www.lobbyists.wa.gov.au/code-conduct .
Loss	<p>means:</p> <ul style="list-style-type: none"> (a) any Liability of any kind whatsoever, including arising out of personal injury (including illness), death or damage; and (b) in relation to a Claim, includes amounts payable on the Claim and (whether or not the Claim is successful) reasonable legal costs and disbursements on a full indemnity basis, <p>whether based on contract (including under an indemnity), statute, warranty, tort (including negligence), indemnity or otherwise.</p>
Major Milestone	<p>means any of the following:</p> <ul style="list-style-type: none"> (a) the completion of a Phase; (b) the Solution Acceptance Date having occurred; (c) a milestone for payment as set out in the Pricing and Payments Schedule; (d) the other Milestones specified in the Implementation Plan or elsewhere in this Agreement or a Project Document as being Major Milestones; or (e) any other Milestone agreed by the parties in writing as being a Major Milestone.
Malicious Code	<p>means:</p> <ul style="list-style-type: none"> (a) any computer code (including a virus, bomb, Trojan horse) that is intended or known to be harmful or that would have the effect of

Term	Meaning
	<p>impairing, denying or otherwise adversely affecting authorised access to all or any portion of the Customer ICT Environment, the Participating Systems or the Customer Data; or</p> <p>(b) any attacks or other code that assists in or enables unauthorised access to, or theft or alteration of, the Customer ICT Environment, the Participating Systems or Customer Data.</p>
Material Breach	<p>means:</p> <p>(a) a material breach of this Agreement which is not capable of being remedied;</p> <p>(b) a material breach of this Agreement which is capable of being remedied but is not remedied by the party in breach within 10 Business Days (or as otherwise mutually agreed by the parties in writing) after receipt of a Breach Notice from the other party; or</p> <p>(c) in the case of the Contractor, 3 breaches of the same clause (including any paragraph in that clause) (other than clause 23.1(a)) during a 6 month period, whether or not any of those breaches are remedied.</p>
Milestone	<p>means:</p> <p>(a) any Major Milestone; and</p> <p>(b) any other milestone set out in the Implementation Plan or Statement of Requirements (or otherwise agreed by the parties in writing).</p>
Milestone Date	<p>means, in respect of each Milestone, the scheduled date for achieving that Milestone as specified in the Implementation Plan (or otherwise agreed by the parties in writing).</p>
Minister	<p>means a minister of the Crown in right of the State of Western Australia.</p>
Minor Defect	<p>means, in respect of any part of the Solution or a Deliverable, a Defect that meets all of the following requirements:</p> <p>(a) the Defect does not, either of itself or in combination with any other Defect:</p> <ul style="list-style-type: none"> (i) prevent the Solution or Deliverable from operating materially in accordance with the Agreement and the Project Documents; (ii) have an adverse impact (other than a minimal impact) on the Customer's operations or on the usability of the Solution or Deliverable; or (iii) in the Customer's reasonable opinion, cause a risk to the health or safety of any person; and <p>(b) the Defect was not present in any previous Acceptance Test unless:</p> <ul style="list-style-type: none"> (i) it was part of an agreed plan arising from that previous Acceptance Test, and the agreed time in that plan for fixing that Defect has not yet elapsed; or (ii) the Customer agrees otherwise in writing.
Moral Rights	<p>has the meaning given to that term in Part IX of the <i>Copyright Act 1968</i> (Cth).</p>

Term	Meaning
New Release	means any improvement to, or an extension of, the existing functionality or performance of the Contractor Software, Standard Customisations or Third Party Software, other than a Fix.
Object Code	means computer programs expressed in an object language or form which can be executed by a computer as commands.
Objectives	means the objectives, intended benefits and operating principles of this Agreement, as set out in clause 3.1.
Ongoing Services	means the Services to be performed by the Contractor in relation to the Solution, as set out in clauses 20 to 22, the Statement of Requirements, and the Ongoing Services Schedule.
Ongoing Services Commencement Date	means the date the Contractor must commence providing the Ongoing Services being either: <ul style="list-style-type: none"> (a) the First Deployment Date; or (b) any other date specified in a written notice from the Customer to the Contractor (including prior to the First Deployment Date), provided that the notice is given more than 10 Business Days prior to the specified date.
Ongoing Services Schedule	means Schedule 5.
Ongoing Services Term	means the period during which the Contractor must provide the Ongoing Services, which starts on the Ongoing Services Commencement Date and continues until the End Date.
Operations Documentation	means the operations documentation in relation to the ongoing operation, management and use of the Solution, as set out in the Statement of Requirements.
Optional Module	an optional module set out in the Statement of Requirements.
Other Contractor	means a contractor (other than the Contractor) who has been appointed by the Customer to provide services to the Customer.
Owner	has the meaning given in clause 33.1.
Participating System	means any System used by a Credential Provider or State Credential Consumer: <ul style="list-style-type: none"> (a) for provision of information or data relating to Credentials or relating to individuals who have applied for or been issued with a Credential; or (b) for communication with the Solution, or otherwise in connection with the Solution.
Performance Assessment Regime	means Schedule 6.

Term	Meaning
Performance Manager	means a person appointed by the Customer to manage the performance of the Contractor's obligations under this Agreement pursuant to clause 25.1.
Performance Remediation Plan	means a plan for the remediation by the Contractor of an Underperformance, failed Acceptance Test, Defect, delay, Service Level Failure or other failure by the Contractor to comply with this Agreement, which is to be prepared and submitted pursuant to clause 24.
Personal Information	means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not.
Personnel	<p>of a person means the officers, employees, contractors (including subcontractors and their officers, employees and contractors) and agents of that person and its Related Companies but, in the case of a party, does not include the other party or the contractors (including subcontractors and their personnel) of the other party or its Related Companies, and:</p> <ul style="list-style-type: none"> (a) a reference to the Contractor's Personnel includes officers, employees, contractors, Approved Subcontractors and agents of each contractor and Approved Subcontractor; and (b) a reference to the Customer's Personnel includes officers, employees, contractors and agents of the Customer.
Phase Start Date	means, in respect of a Phase, the date for commencement of that Phase, as set out in the Statement of Requirements or the Implementation Plan.
Phase	means a phase (or sub-phase) of the Services as set out in the Implementation Plan, or as otherwise agreed between the parties in writing.
Pilot Phase	means the pilot phase of the Project, as described in the Implementation Plan.
Police Clearance	<p>means:</p> <ul style="list-style-type: none"> (a) an Australian National Police Check; or (b) in respect of an individual not located in Australia, an equivalent federal or state criminal record screening check conducted by the relevant law enforcement body in the jurisdiction in which the individual resides.
Portion	<p>means:</p> <ul style="list-style-type: none"> (a) in respect of a Phase as a whole – all of the Deliverables and Services that form part of that Phase; or (b) in all other cases – any part of any Deliverable (including a complete Deliverable), or the Solution (but not the Solution as a whole), that is: <ul style="list-style-type: none"> (i) specified as such in the Statement of Requirements (as updated from time to time) or otherwise directed by the Customer; (ii) able to be delivered separately to other separate portions (although, for clarity, it may depend on other portions); and

Term	Meaning
	(iii) able to have Acceptance Tests meaningfully conducted in relation to it upon delivery.
Post Deployment Change	means a change to a Portion or the Solution following Deployment of that Portion or the Solution that has, as agreed by the parties in writing, been implemented by the Contractor.
PPS Law	means: <ul style="list-style-type: none"> (a) the PPSA; and (b) any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.
PPSA	means the <i>Personal Property Securities Act 2009</i> (Cth).
Pricing and Payment Schedule	means Schedule 7.
Priority Level	means the priority levels specified in Schedule 5 (Ongoing Services).
Privacy Laws	means: <ul style="list-style-type: none"> (a) the <i>Privacy Act 1988</i> (Cth) (including the Australian Privacy Principles); (b) any Western Australian legislation which: <ul style="list-style-type: none"> (i) is mandatory for the Contractor or the Customer to comply with; or (ii) if the Contractor does not comply with, will adversely affect the Customer's compliance with its obligations, requiring information relating to an individual to be kept confidential; and (c) any other Commonwealth or Western Australian legislation or guidelines relating to privacy (or confidentiality of Personal Information) which: <ul style="list-style-type: none"> (i) is mandatory for the Contractor or the Customer to comply with; or (ii) if the Contractor does not comply with, will adversely affect the Customer's compliance with its obligations.
Probity Event	means any event or thing that: <ul style="list-style-type: none"> (a) relates to the Contractor or its Personnel and, in the reasonable opinion of the Customer, has a material adverse effect on the public interest in, or public confidence in, the operations of the Customer; (b) has a material adverse effect on, or on the perception of, the character, integrity or honesty of the Contractor or its Personnel; or (c) involves a material failure of the Contractor or its Personnel to achieve or maintain good corporate citizenship or other standards of conduct that would otherwise be expected of a person involved in a State government project.

Term	Meaning
Project	means the design, configuration, implementation, test and deployment of the Solution and the provision of the other related services and deliverables specified in this Agreement (but excludes the Ongoing Services).
Project Documents	means: <ul style="list-style-type: none"> (a) the detailed design and integration documents in respect of the Solution; (b) the Acceptance Test Plans; (c) the Transition-Out Plan; (d) the Documentation; and (e) any other documents, as approved by the Customer, that the Contractor is obliged, under this Agreement, to prepare and provide to the Customer for approval (other than documents that form part of this Agreement).
Project IP	means the subject matter of all present or future Intellectual Property created, discovered or coming into existence as a result of, for the purpose of or in connection with the Project, the Solution or the performance of the Contractor's obligations under this Agreement.
Project Plan	means Schedule 7 to the RFP Response.
Project Term	means the period from the Commencement Date until the expiry of the Hypercare Period in respect of Full Deployment.
Records	means records and information of any kind, including originals and copies of all accounts, data, financial statements, books, files, reports, records, correspondence, documents, drawings, plans, diagrams, graphs, photographs, videos, computer models, design models and other materials directly or indirectly created for, or in respect of, or connected with, this Agreement or the Services, whether created by the Contractor or any Subcontractors, whether or not containing Confidential Information, and however those records and information are held, stored or recorded, including the Project Documents and anything which is a 'record' under the State Records Act.
Related Company	has the same meaning as 'related body corporate' in the Corporations Act but as if references in the Corporations Act to a 'subsidiary' were references to a Subsidiary as defined in this Agreement.
Relevant Individual	means an individual who: <ul style="list-style-type: none"> (a) is an office-holder of the Contractor or an Approved Subcontractor; (b) is a majority shareholder of the Contractor or an Approved Subcontractor, or an office-holder of such a majority shareholder; or (c) comprises the Contractor's Personnel, and who is (or is proposed to be) involved in the provision of the Services.
Relevant Period	means, in respect of any Record: <ul style="list-style-type: none"> (a) a minimum of 7 years after the date on which this Agreement ends; and

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	(b) any additional period required under any Law or by any Government Agency.
Remedy Plan	means, in respect of a breach specified in a Breach Notice, a plan containing full details of all steps which the Contractor is taking, or proposes to take, to remedy the breach.
Reputable Insurer	means an insurance company which: <ul style="list-style-type: none"> (a) is authorised by the Australian Prudential Regulation Authority to operate, and operates, as an insurance company in Australia; or (b) has a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited or an equivalent rating from another internationally recognised rating agency.
Request for Proposals (or RFP)	means Request Number DPC2142 issued by the Customer for the implementation and support of digital wallet and verifiable credentials solution.
Resources	means Personnel, facilities, equipment, systems, appliances, materials, tools and other resources.
RFP Response	means the formal documents submitted by the Contractor to the Customer as part of the procurement process for the Services, including: <ul style="list-style-type: none"> (a) [insert documents based on response received]
Security Audit	means a security audit that the Contractor is required to undergo pursuant to clause 45.5.
Security Breach	means: <ul style="list-style-type: none"> (a) a Data Breach; (b) a compromise of, or negative impact on, any data, applications, services, networks or devices that results from a person, in a manner not properly authorised by the Customer, having bypassed, diminished, defeated or negated underlying security mechanisms; (c) a breach of any of the obligations contained, or referred to, in clauses 42, 43, 44 and 45, whether by the Contractor or any of its Personnel; or (d) any other event that leads to a non-trivial violation of the Customer's Security Policies, processes or practices that puts Customer Systems or Customer Data at unnecessary risk, <p>and includes, by way of example, malware infections, impersonation, denial of service (distributed or not), insider breaches, unauthorised privilege escalation, unauthorised physical access, unauthorised changes such as website defacement, redirections and negative service impacts.</p>
Security Certification	means an independent certification of the Contractor Systems for compliance with: <ul style="list-style-type: none"> (a) ISO27001; (b) the ACSC Essential Eight (or demonstrated equivalent); and/or

Term	Meaning
	<p>(c) any other certification specified by the Customer, conducted, in accordance with generally applicable industry practice and applicable laws and standards, by a reputable third party experienced in information security management systems certifications and reasonably acceptable to the Customer.</p>
Security Policies	<p>means:</p> <p>(a) the Customer's Cloud Computing Policy; and</p> <p>(b) the Customer's security policies as advised by the Customer in writing from time to time.</p>
Service Credits	<p>means the amounts to which the Customer is entitled (by way of payment or reduction in the Charges) in the event of the Contractor's failure to meet a specified Service Level:</p> <p>(a) as set out in (as applicable) the Performance Assessment Regime or a Variation Order; or</p> <p>(b) as otherwise agreed by the parties in writing.</p>
Service Desk	<p>the help desk facility to be made available by the Contractor as part of the Ongoing Services, as set out in the Ongoing Services Schedule.</p>
Service Level Failure	<p>means any failure by the Contractor to meet the Service Levels.</p>
Service Levels	<p>means the metrics used to measure the Contractor's performance of the Services, as set out in the Performance Assessment Regime, or elsewhere in this Agreement, as updated in accordance with this Agreement.</p>
ServiceWA App	<p>means the mobile application known as "ServiceWA" that is provided and managed by the Customer and its Personnel, together with any Software, websites and other technology used in connection with the development, maintenance or operation of that mobile application.</p>
Services	<p>means:</p> <p>(a) the Implementation Services;</p> <p>(b) the Ongoing Services;</p> <p>(c) the Business Continuity Services, Disaster Recovery Services and Transition-Out Services;</p> <p>(d) the provision of licensed Deliverables;</p> <p>(e) the provision of any other Deliverables provided or to be provided by the Contractor;</p> <p>(f) the Additional Services that are the subject of a Statement of Work;</p> <p>(g) any other services which are described or referred to in this Agreement as being required to be performed by the Contractor; and</p> <p>(h) any services which are reasonably necessary or incidental to, or customarily and inherently included in, the performance of the services referred to in paragraphs (a) to (g) of this definition.</p>
Severity Level	<p>means the severity levels specified in the Ongoing Services Schedule.</p>

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Software	includes all computer programs and programming (including Source Code, Object Code and microcode), middleware, sub system software, operating systems, database management systems, system utilities and all software tools, methodology, associated documentation and media on which software is stored.
Software Development Kits	means the Software provided by the Contractor to the Customer and applicable Credential Providers (each a recipient) to enable the recipient to make the Solution interoperable with its Participating System.
Solution	<p>means the end-to-end digital wallet and verifiable credentials solution set out in the Contract Details, as further described in the Statement of Requirements, and comprising:</p> <ul style="list-style-type: none"> (a) the Third Party Software; (b) the Developed Software and the Customised Software; (c) the Software Development Kits; (d) the Contractor Software; (e) the Customer Software (including any COTS Software procured by the Customer); (f) any hosting infrastructure or managed services environment in which any of the Software comprising the Solution resides (or through which it is accessed); (g) the Equipment; and (h) any other Deliverables which are noted in the Statement of Requirements, or are specifically agreed by the parties in writing, to form part of the Solution, <p>operating together within the Customer ICT Environment and the Participating Systems in accordance with the Specifications, the Statement of Requirements, any relevant Project Documents and as otherwise required under this Agreement.</p>
Solution Acceptance Date	means the day on which the Customer issues an Acceptance Certificate for the Solution as a whole.
Source Code	<p>means:</p> <ul style="list-style-type: none"> (a) computer programs expressed in a source language or form which can be interpreted or compiled and then executed by a computer as commands; and (b) all documentation and tools reasonably required to enable a person familiar with computer programming to read, understand and modify such computer programs.
Specifications	<p>means the specifications for the Solution set out in this Agreement and the RFP, and includes (in order of precedence):</p> <ul style="list-style-type: none"> (a) any specifications set out in a Variation Order; (b) the specifications set out in Schedule 3 and the Statement of Requirements; and (c) the solution requirements set out in the RFP.

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Standard Customisations	means any of the modifications of any Third Party Software that the Contractor performs in accordance with this Agreement and that are the Contractor's standard modifications that it applies to deployments of the Third Party Software as part of other engagements that are similar to the deployment as part of the Solution.
Standards	<p>means (as updated from time to time by the body that issued those standards):</p> <ul style="list-style-type: none"> (a) the standards set out in the Statement of Requirements, relevant Project Documents or elsewhere in this Agreement; and (b) any other reasonable standards notified by the Customer to the Contractor from time to time, provided those standards are regularly complied with by contractors performing obligations similar to the Contractor's obligations under this Agreement,
State	means the State of Western Australia.
State Agency	<p>means:</p> <ul style="list-style-type: none"> (a) the Customer; and (b) any other Government Agency that represents the State or performs functions under a law of the State.
State Credential Consumer	means a Credential Consumer that is a State Agency.
State Records Act	means the <i>State Records Act 2000</i> (WA).
Statement of Requirements	means Schedule 2.
Statement of Work	means a statement of work for Additional Services, prepared in accordance with the form in Schedule 8, signed by the Customer and the Contractor pursuant to clause 18.
Step-in Notice	<p>means a notice given by the Customer under clause 26.1 which details:</p> <ul style="list-style-type: none"> (a) the Step-in Party's intention to step-in; (b) the effective date of the step-in; (c) the expected duration of the step-in; and (d) the relevant Services.
Step-in Party	means the Customer or a third party nominated by the Customer.
Step-in Services	means the parts of the Services that the Step-in Party will step in and perform.
Subcontract	means an agreement which the Contractor or a subcontractor to the Contractor intends to, or does, enter into with a subcontractor.

Term	Meaning
Subcontractor	means any person to whom the Contractor or a subcontractor (at any tier) to the Contractor subcontracts or allows to do any part of the Contractor's obligations under this Agreement (including the Services).
Subsidiary	has the same meaning as 'subsidiary' in the Corporations Act, except that an entity may be a subsidiary of a trust, and a trust may be a subsidiary of an entity, for the purposes of which a unit or other beneficial interest will be regarded as a share.
Support Hours	means the support hours specified in the Ongoing Services Schedule.
Systems	means any interconnected grouping of manual or electronic processes, including equipment, hardware, software and associated attachments, features, accessories, peripherals and cabling, platforms and all additions, modifications, substitutions, upgrades or enhancements to such systems.
Tax	means any tax, levy, impost, deduction, charge, duty or withholding which is levied or imposed by a Government Agency, including any income, capital gains, withholding, stamp and transaction tax, duty or charge together with interest, penalties, charges, fees, or other amounts (if any) imposed or made on or in connection with the above.
Term	means the term of this Agreement, as determined pursuant to clause 2.
Test Strategy	means the Customer's test strategy for the Solution (as amended following consultation with the Contractor), as provided in writing to the Contractor from time to time.
Termination Payment	<p>means the amount that is equal to the costs to the Contractor arising out of the termination to the extent that:</p> <ul style="list-style-type: none"> (a) the costs: <ul style="list-style-type: none"> (i) are reasonably, actually and demonstrably incurred by the Contractor as a result of the termination; (ii) are calculated in a manner that is consistent with the calculation of the Charges; and (iii) do not exceed 10% of the Charges payable for the current Financial Year; and (b) the Contractor has used all reasonable endeavours to avoid or lower the costs on behalf of the Customer, including by: <ul style="list-style-type: none"> (i) negotiating with the relevant third parties to waive or lower the costs; and (ii) attempting to use Resources for other purposes, including as part of the performance of services for other customers.
Third Party Software	means the Software that is owned by a third party and is to be provided to the Customer by the Contractor, as described in the Contract Details, Specifications, a Variation Order or a Statement of Work.
Time and Materials	means Charges for Services which are charged according to the time expended in the provision of the Services and Deliverables by the Personnel provided by Supplier at the agreed rates specified in Schedule 8.

Term	Meaning
Transition-Out	<p>means the transition-out of this Agreement (or if this Agreement expires or is terminated in part, the transition-out of the expired or terminated part of this Agreement), including:</p> <ul style="list-style-type: none"> (a) the timely and orderly winding up of the Contractor's performance of all Ending Obligations; and (b) where applicable, the transfer of responsibility for the performance of those Ending Obligations from the Contractor to the Customer or a third party.
Transition-Out Commencement Date	<p>means each date on which:</p> <ul style="list-style-type: none"> (a) a part of this Agreement terminates; or (b) this Agreement as a whole expires or terminates, <p>or such other date as the Customer may nominate (acting reasonably) in substitution for such a date.</p>
Transition-Out Period	<p>means the period starting from a Transition-Out Commencement Date and continuing for the period of up to 12 months notified by the Customer to the Contractor, as amended in accordance with clause 58.4(c) or 58.4(d).</p>
Transition-Out Plan	<p>means a detailed plan in respect of Transition-Out prepared in accordance with clause 58.</p>
Transition-Out Services	<p>means:</p> <ul style="list-style-type: none"> (a) subject to clause 58.5, all of the relevant Ending Obligations; (b) all services, functions and tasks assigned to the Contractor in the Transition-Out Plan, and any variation to those services made in accordance with this Agreement; and (c) all other services, functions and tasks that are reasonably necessary, desirable or reasonably requested by the Customer to ensure that Transition-Out takes place in a timely and orderly manner and to achieve the objectives of Transition-Out, as set out in clause 58.1.
Trade Control Laws	<p>means any export or import restrictions, and any economic or investment sanctions, imposed by a Government Agency in any jurisdiction (in Australia or any other country).</p>
Transferee	<p>means any person, other than the Customer, who is transferred Customer Data by the Contractor.</p>
TSM System	<p>means the telephone online trouble ticket system to be made available by the Contractor as part of the Ongoing Services, as set out in the Ongoing Services Schedule or Operations Documentation (or both).</p>
Underperformance	<p>means that the Services have not been performed in accordance with this Agreement (other than in a manner that is trivial or inconsequential), including any Service Level Failure.</p>
Use	<p>includes to install, copy, access, reproduce, distribute, transmit, perform and display.</p>

Term	Meaning
Variation	<p>means a variation to the Services, including:</p> <ul style="list-style-type: none"> (a) the deletion of any part of the scope of the Services; (b) the addition to the scope of any Services that is similar in nature to the existing Services; (c) a change to the Charges applying in respect of the Services; or (d) a change to any Service Levels, Service Credits or other terms applying to any specific Services.
Variation Order	<p>means:</p> <ul style="list-style-type: none"> (a) a document setting out a Variation directed by the Customer under clause 17.1; or (b) a Variation Request that has been signed by both the Contractor and the Customer pursuant to clause 17.3.
Variation Request	<p>means a written quote, prepared in accordance with clause 17.2, in respect of a proposed Variation.</p>
WA Government Cyber Security Policy	<p>means the cyber security policy published by the Department of Premier and Cabinet's Office of Digital Government (available at https://www.wa.gov.au/government/publications/2024-wa-government-cyber-security-policy).</p>
Work Around	<p>means a work around or temporary fix of a Defect and which permits the Customer to use the Solution without any material degradation in functionality or performance.</p>
Working Papers	<p>means all working papers, notes, reports, documents and other works (whether in paper, electronic or other forms) brought into existence by the Contractor for the purposes of performing the Contractor's obligations under the Agreement, including the Project Documents.</p>
Work Health and Safety Laws	<p>means all Work health and safety related:</p> <ul style="list-style-type: none"> (a) Laws; (b) compliance codes; (c) directions on safety or notices issued by any relevant Government Agency and (d) directions, instructions, requests or requirements relevant to, associated with or necessary for compliance by the Contractor, the Contractor's Personnel or the Customer with any of the Laws, codes, directions or notices referred to in paragraphs (a) to (c) of this definition, including any such matters of which the Contractor has been informed by the Customer orally or in writing, <p>which apply where any part of the Services is being performed.</p>