



AUSTRALIAN MEDICAL COUNCIL LIMITED

(‘CUSTOMER’)

AND

[INSERT NAME OF CONTRACTOR]

(‘CONTRACTOR’)

DRAFT / TEMPLATE ONLY

**AUSTRALIAN MEDICAL COUNCIL –
DEVELOPMENT AND IMPLEMENTATION
OF A NATIONAL E-PORTFOLIO TO
SUPPORT PREVOCATIONAL (PGY1 AND
PGY2) MEDICAL TRAINING IN AUSTRALIA**

Date Created: June 2023

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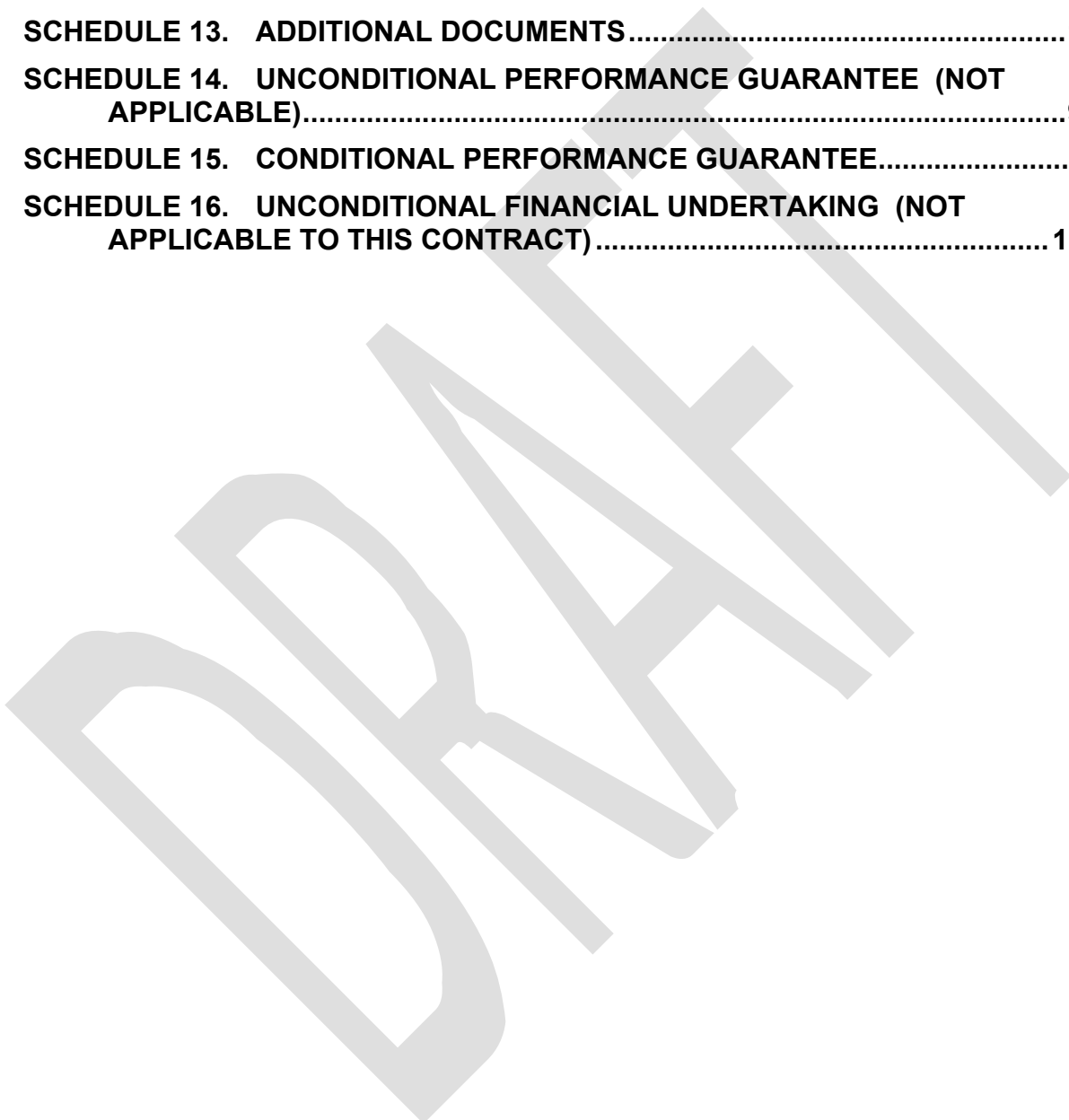
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THIS CONTRACT MADE ON THE DAY OF

PARTIES

1. **Australian Medical Council Limited ABN: 97 131 796 980 of, Level 3, 11 Lancaster Place, Majura Park, ACT 2609**

(‘Customer’)

2. **[Insert Name of Contractor] ACN [Insert ACN] of [Insert Address]**

(‘Contractor’)

BACKGROUND

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

TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1 Definitions

In this Contract, unless the contrary intention appears, the following definitions are used:

Acceptance means sign off by the Customer in acknowledgment that agreed acceptance test criteria or alternative acceptance formalities have been satisfied in respect of a Service or Product.

Accounting Standards means the standards of that name maintained by the Australian Accounting Standards Board (created by section 227 of the *Australian Securities and Investments Commission Act 2001*) or other accounting standards which are generally accepted and consistently applied in Australia.

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Associated Documentation means documentation which is owned by the Contractor or in which the Contractor has rights to sub-license and is associated with the Developed Software as it describes the characteristics of the Developed Software (including but not limited to technical, functional and performance characteristics) and/or it allows the Customer to make full use of the Developed Software.

Associated Tools means tools, object libraries and methodologies owned by the Contractor or in which the Contractor has rights to sub-license that relate to the Developed Software.

Auxiliary Material means any Material, other than Contract Material, in which a party or a Third Party holds Intellectual Property Rights, and which is made available by a party for the purpose of this Contract, on or following the Commencement Date, and includes:

- (a) material specified in the Schedules, as amended and updated by the parties from time to time;
- (b) any modifications that may be required under clause 17.8;
- (c) error corrections or translations to that Material; or
- (d) derivatives of that Material where such derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Matter.

Business Day means:

- (a) for receiving a notice under clause 22.3, a day that is not a Saturday, Sunday or public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, any day that is not a Saturday or Sunday or a national public holiday, and a 'national public holiday' is a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.

Business Hours means 7.00am to 7.00pm on a Business Day at the place where the Services are to be provided, unless specified otherwise in Item 6.

Commercial Exploitation means any commercial exploitation, but does not include any use, support, maintenance, modification, enhancement or other activity conducted in relation to the Developed Software, Associated Documentation, Associated Tools or Contractor Material, where such activities are conducted by a service provider engaged by the Customer to provide services to the Customer on commercial terms.

Commonwealth means the Commonwealth of Australia

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Commencement Date means the date specified in Item 5.

Consultancy Services means the consultancy Services to be supplied by the Contractor to the Customer, as specified in Item 45 and Schedule 2.

Contract means this agreement between the Customer and the Contractor, however made.

Contract Details means the information contained in Schedule 1.

Contract Material means any Material created by the Contractor that is delivered or required to be delivered to the Customer, for the purpose of or as a result of performing its obligations under this Contract but does not include modifications to the Contractor's software, tools and methodologies.

Contract Period means the Initial Contract Period plus any extension in accordance with clause 3.2, but subject to earlier termination or expiry in accordance with the provisions of this Contract.

Contractor means the party so specified in Item 1 and includes authorised employees, agents and subcontractors of the Contractor.

Customer means the Australian Medical Council Limited

Customer Data all data and information relating to the Customer, and its operations, facilities, customers, Personnel, assets and programs (including personal information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Customer.

Customer Material any Auxiliary Material provided to the Contractor by the Customer, including the Material (if any) specified in Item 18 of the Contract Details.

Developed Software means Software created by the Contractor for the Customer under this Contract, as specified in Item 61 and Schedule 2, which is included in Contract Material.

Documentation means the documentation to be provided by the Contractor under clause 8.4, as specified in Schedule 2.

DSC Material means all relevant Intellectual Property Rights in the Developed Software, Associated Documentation and Associated Tools.

Hardware means the hardware to be supplied under this Contract by the Contractor to the Customer, as specified in Item 52 and Schedule 2.

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Hardware Maintenance Services means the maintenance Services to be supplied by the Contractor in respect of equipment, as specified in Item 55 and Schedule 2.

Harmful Code means any virus, disabling or malicious device or code, 'worm', 'trojan', 'time bomb' or other harmful or destructive code, but does not include any 'software lock' or other technical mechanism that is included to manage the proper use of any Software.

Initial Contract Period means the period of time, beginning on the Commencement Date, for which this Contract is intended to continue, as specified in Item 7.

Intellectual Property Rights means all intellectual property rights, whether or not such rights are registered or capable of being registered, including but not limited to, the following:

- (a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks), and domain names;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.

Licensed Software means Software, to be supplied under this Contract by the Contractor to the Customer, in respect of which ownership does not pass to the Customer and in respect of which the Customer's rights of use are subject to the conditions specified in Clause 30 and Schedule 2 but does not include Developed Software.

Loss means liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party) and consequential and indirect losses and damages including those arising out of any third party claim.

Managed Services means the Services as specified in Item 48 and Schedule 2, whereby the Contractor agrees to either manage all or part of the Customer's information technology or otherwise to manage the external delivery of services to the Customer.

Material means any Software, firmware, documented methodology or process, tools, object libraries, Documentation, documentation or other material in

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whatever form, including without limitation any reports, Specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any Intellectual Property Rights.

Moral Rights means each and every 'moral right' as defined in the *Copyright Act 1968*.

Open Source Software means Software available under a licence which meets the criteria of the Open Source Definition published by the Open Source Initiative at <http://www.opensource.org>, and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at <http://www.creativecommons.org>.

Option Period means the period or periods specified in Item 8.

Personnel means a party's employees, officers, agents and subcontractors.

Product means any item to be supplied under this Contract by the Contractor to the Customer which is not a Service, and may include but which is not limited to Software, Hardware (including telecommunications equipment), plans and/or any supporting Documentation.

PSPF means the Customer's policies, practices and procedures which set out the Customer's requirements for the protection of its people, information and assets, as amended or replaced from time to time.

Service means a service (which may include but which is not limited to network cabling services, Managed Services, Consultancy Services, Software Development Services, Hardware Maintenance Services, Software Support Services and Systems Integration Services) to be supplied under this Contract by the Contractor to the Customer.

Software means software (including the source code and relevant Material to support that software), and includes Developed Software, Licensed Software, Open Source Software or Third Party Software as the context dictates.

Software Development Services means a Service whereby the Contractor agrees to develop Software in accordance with the Customer's requirements, as specified in Item 61 and Schedule 2.

Software Licence means for any one of the software deliverables, the right to run the software.

Software Support Services means a Service whereby the Contractor agrees to provide support, as specified in Item 87 and Schedule 2, in respect of Software.

Specifications or Statement of Work means the technical or descriptive

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statement of work or specifications of functional, operational, performance or other characteristics required of a Service or Product, attached as Schedule 2.

Specified Personnel means the Contractor's Personnel as required for the purposes of clause 14.3 of this Contract, and as specified in Item 30.

System means the combination of Products and Services to be supplied by the Contractor that when installed and implemented forms an ICT system that meets the specifications specified in Schedule 2.

Systems Integration Services means a Service whereby the Contractor agrees to implement a System, as specified in Item 90 and Schedule 2.

Third Party means a person other than the Contractor or the Customer.

Third Party Software means Software owned by a Third Party which is the subject of a Service.

WHS Law means the *Work Health and Safety Act 2011* (WHS Act) and any 'corresponding work health and safety law' as defined in section 4 of the WHS Act.

1.2 Interpretation

In this Contract, unless the contrary intention appears:

- (a) clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (b) words importing a gender include each other gender;
- (c) words in the singular number include the plural and vice versa;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (e) a reference to a clause, paragraph, schedule, appendix, attachment or annexure is to a clause or paragraph of, or schedule, appendix, attachment or annexure to, this Contract, and a reference to this Contract includes any such schedule, appendix, attachment or annexure;
- (f) a reference to a numbered Item is a reference to the Item with that number contained in Schedule 1.
- (g) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

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- (h) a reference to time is to the time in the place where the obligation is to be performed;
- (i) a reference to a party is to a party to this Contract, and includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (j) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (k) 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;
- (l) a word or expression defined in the Corporations Act 2001 has the meaning given to it in the Corporations Act 2001;
- (m) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (q) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- (r) monetary references are references to Australian currency.

1.3 Trustee Contractor

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

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

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- (c) it will not retire, resign or by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and
- (d) it represents and warrants that:
 - (i) such trust has been duly established and currently exists;
 - (ii) it is the duly appointed, current and only trustee of that trust;
 - (iii) as such trustee it has the power to enter into and perform its obligations under this Contract;
 - (iv) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
 - (v) conflict of interest and duty affecting it as such trustee (and/or its directors, if any) does not arise, OR otherwise is overcome by the terms of the relevant trust deed; and
 - (vi) no breach of the relevant trust deed exists or would arise.

2. Non-Completion of Contract Details

To the extent that the parties have not completed particulars relevant to an Item in Schedule 1, that Item will be deemed 'not applicable' unless the contrary intention is expressed.

3. Duration of Contract

3.1 Commencement of Contract Period

The Contract Period begins on the Commencement Date.

3.2 Extending Period of Contract

- (a) Subject to clauses 3.2(b) and 3.2(c), where the Customer gives written notice to the Contractor ("Notice"), for this Contract to be continued for the Option Period specified in the Notice, this Contract (on the terms and conditions then in effect) will be extended for that Option Period.
- (b) Extension of this Contract takes effect from the end of the then current Contract Period.
- (c) The Notice must be given not more than 6 months and no less than 1 month prior to the expiry of the then current Contract Period.

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4. Priority of Contract Documents

4.1 Prioritisation of Contract Documents

In the event and to the extent of any inconsistency between two or more documents which form part of this Contract, those documents will be interpreted in the following order of priority:

- (a) Schedule 1
- (b) Schedule 2 to Schedule 7;
- (c) these terms and conditions;
- (d) documents incorporated by reference in these terms and conditions;
and
- (e) the remaining Schedules to these terms and conditions.

5. Products and/or Services to other Agencies – Deleted as not applicable for this contract

6. General Obligations of the Parties

Each party will, at all times:

- (a) fully cooperate with each other to ensure timely progress and fulfilment of the Contract;
- (b) act reasonably and in good faith with respect to matters that relate to the Contract;
- (c) if, and to the extent, specified in Item 9, hold meetings (including meetings relating to planning, review and issue resolution) as necessary and report to the other on a regular basis in order to keep the other fully informed of the progress of work required under the Contract;
- (d) perform its obligations and responsibilities by the dates specified in the Contract;
- (e) work together in a collaborative manner.

7. Transition-in

- (a) If specified in Item 10, the Contractor must develop, in consultation with and for approval by the Customer, a Transition-in Plan that will provide for the transition of the Services from the outgoing contractor (or if none, the Customer) to the Contractor. The Transition-in Plan must, without limitation, provide for the matters referred to in this clause 7 and must not be inconsistent with this clause 7.
- (b) If required, the Contractor must in accordance with the Transition-in Plan:
 - (i) acquire from the Customer any assets so specified in Schedule 5;
 - (ii) comply with obligations regarding the transfer or management of Third Party contracts;
 - (iii) identify any Customer's Personnel that will be required to work with the Contractor and the role that they will perform;
 - (iv) ensure it is able to deliver the Services from the date stated in the approved transition-in plan;
 - (v) ensure (to the extent practical) that all Third Party Software licences and other relevant Third Party agreements entered into by the Contractor from the commencement of the Transition-in process incorporate a term requiring the licensor or Third Party supplier to consent to novation or assignment of the licence to an alternative service provider or to the Customer itself upon termination of the Services for any reason, with the cost of any increased charges resulting from the inclusion of that term to be borne by the Customer (subject to prior notification to the Customer), unless agreed by the parties to the contrary;
 - (vi) prepare a procedures manual which, once agreed by the Customer, will form part of this Contract and which, in addition to any other requirements specified in Schedule 5, will describe how the Contractor will manage the delivery of the Services, including:
 - A. how compliance with the service levels and other performance factors will be measured and met;
 - B. procedures to identify and rectify failures in the quality of the Services;
 - C. the Acceptance procedure for Products and/or Services to be delivered;

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- D. how changes to the Services or method of delivery will be identified and met;
- E. proposed audit requirements; and
- F. staffing, reporting, planning, and supervisory activities normally undertaken in respect of similar Services in similar circumstances.
- G. Must comply with technical and service management requirements specified in Part C of this proposal.

8. Specific Responsibilities of the Contractor

8.1 Customer Requirements

The Contractor will ensure the Services and Products comply with the Specifications, standards and service levels as specified in Schedule 1 to Schedule 8. The Contractor will comply with reasonable directions given by the Customer in discharging these obligations.

8.2 Facilities and Assistance

To enable timely progress and completion of this Contract, the Contractor will:

- (a) establish and maintain all necessary facilities for the effective conduct and management of its responsibilities unless otherwise specified in Item 11;
- (b) record any material changes in relevant facilities or procedures and make this record available to the Customer on request or as otherwise specified in Item 12; and
- (c) provide all reasonable assistance required by the Customer.

8.3 Not used

8.4 Documentation

- (a) The Contractor must give
- (b) the Customer the Documentation specified in the Statement of Work in the format and at the times specified in the Statement of Work.
- (c) The Contractor will ensure that the Documentation, publications and aids relevant to any Service or Product are:
 - (i) of a reasonable standard in terms of presentation, accuracy and scope;

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- (ii) the most current, accurate and up-to-date versions available at the date of the Contract; and
- (iii) published in English with all key terms, words and symbols adequately defined or explained.
- (d) If any Documentation is revised or replaced for any reason, the Contractor will supply the Customer with revisions or replacements at no additional cost to the Customer if the Customer is at that time in receipt of Software Support Services.

8.5 Training

The Contractor will provide the training specified in Item 14, at the price specified in Schedule 3.

8.6 Taxes

All taxes, duties and government charges ('Taxes') imposed or levied in Australia or overseas in connection with this Contract will be the responsibility of the Contractor.

8.7 Goods and Services Tax (GST)

- (a) In this clause 8.7, a word or expression defined in the *A New Tax System (Goods and Services Tax Act) 1999* (Cth) ('the GST Act') has the meaning given to it in that Act.
- (b) If a party (Supplier) makes a supply under or in connection with this Contract in respect of which GST is payable, the recipient of the supply (Recipient) must pay to the Supplier, an additional amount equal to the GST payable on the supply (GST Amount).
- (c) If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased
- (d) in accordance with clause 8.7(c).
- (e) If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.
- (f) Adjustments:

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- (i) If the GST payable by a Supplier on any supply made under or in connection with this Agreement varies from the GST Amount paid or payable by the Recipient under clause 8.7(c) such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (ii) Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 8.7(c).
- (iii) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.
- (g) A party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.

8.8 Preparation of Invoices

After Acceptance of a Service or Product, or as otherwise specified in Schedule 3, the Contractor will promptly and correctly prepare and deliver an invoice setting out the amounts then properly due to it from the Customer. To prepare the invoice correctly, the Contractor will ensure that:

- (a) the invoice contains detail such is sufficient to enable the Customer, acting reasonably, to identify:
 - (i) the Service or Product concerned;
 - (ii) when the Service or Product was supplied and (if relevant) Accepted; and
 - (iii) the amount payable in respect of each item;
- (b) the invoice is addressed in accordance with the Customer's requirements as specified in Schedule 3, or as otherwise advised in writing;
- (c) the invoice sets out the amount paid by the Customer as GST for supplies made under this Contract which are taxable supplies; and
- (d) the invoice is a valid tax invoice for the purposes of the GST Act.

8.9 Service Rebates

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

- (a) must pay to the Customer service rebates, the amount of which will be determined in accordance with Schedule 3. The parties agree that the amount of service rebates payable by the Contractor under this Contract will not exceed the total amount of the Service charges payable to the Contractor under this Contract;
- (b) acknowledges that any service rebates calculated in accordance with Schedule 3 are a genuine pre-estimate of the loss and damage the Customer will suffer as a result of a failure to achieve a Service Level;
- (c) acknowledges that payment of service rebates under this Contract will be without prejudice to any other rights or remedies that the Customer may have against the Contractor under, or arising from, this Contract as a result of the Contractor's failure to achieve a Service Level; and
- (d) will not be liable to pay any service rebates arising from the Contractor's failure to achieve a Service Level to the extent that failure arose as a result of:
 - (i) the Customer's failure to fulfil its obligations under this Contract; or
 - (ii) an event arising under clause 33.3 of this Contract.

8.10 Site Specification

The Contractor will provide the Customer with particulars of the implementation and environmental requirements of a Service and/or Product in order to permit the Customer to prepare the site accordingly.

8.11 Insurance Requirements

- (a) The Contractor will ensure that throughout the term of this Contract it is insured with, or is the beneficiary under a policy with, a reputable insurance company with respect to:
 - (i) public liability insurance to the minimum of the value specified in Item 15;
 - (ii) where the Contractor supplies Services, professional indemnity insurance to the minimum of the value specified in Item 16;
 - (iii) where the Contractor supplies Products, product liability insurance to the minimum of the value specified in Item 17; and

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- (iv) any additional insurance as specified in Item 18.

in respect of liability for the Contractor's performance under this Contract

- (b) In connection with the provision of Products and/or Services, the Contractor must have and maintain for seven years following the expiry or termination of the Contract, valid and enforceable insurance policies for either professional indemnity or errors and omissions (except where Maintenance Services are not being provided).
- (c) The Contractor must, on request by the Customer, provide satisfactory evidence that the Contractor has effected and/or renewed insurance policies as required in clause 8.11(a) of this Contract or that the Contractor continues to be a beneficiary under a particular insurance policy.
- (d) The Contractor will immediately advise the Customer if at any time during the term of this Contract the Contractor ceases to have the benefit of an insurance policy as required in clause 8.11(a) of this Contract, whether through cancellation, lapse or otherwise.

8.12 Performance Guarantee and Financial Undertaking

- (a) If required by the Customer, the Contractor will:
 - (i) arrange for a guarantor to enter into an agreement with the Customer substantially in the form of an unconditional performance guarantee as attached at Schedule 14 or a conditional performance guarantee as attached at Schedule 15; or
 - (ii) arrange for a guarantor to enter into an agreement with the Customer substantially in the form of an unconditional and irrevocable financial undertaking as attached at Schedule 16.
- (b) Without limiting the foregoing, the terms of an unconditional performance guarantee, conditional performance guarantee or financial undertaking must at all times be reasonably acceptable to the Customer. The Customer may require the Contractor to increase or reduce the amount of a guarantee or undertaking from time to time.
- (c) All charges incurred in obtaining and maintaining the guarantee or undertaking shall be borne by the Contractor.
- (d) The Contractor will disclose details of any performance guarantee or financial undertaking in place to the Customer upon request.
- (e) The Contractor will advise the Customer, at any time during the term of this Contract, a performance guarantee or financial undertaking required by this clause ceases to have effect for any reason, whether

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through cancellation, lapse or otherwise.

- (f) The Customer will consent to the discharge of a performance guarantee or financial undertaking if, upon provision of the Contractor's last deliverable under the Contract and the expiry of the warranty period (whichever occurs later), the Contractor can demonstrate to the Customer's reasonable satisfaction that there is no basis for any claim to be made against the performance guarantee or financial undertaking in the future.

8.13 Privacy

The Contractor agrees to comply with its obligations (if any) under or arising pursuant to the *Privacy Act 1988* to the extent relevant to this Contract. The Contractor also agrees to comply with:

- (a) such other Commonwealth, State or Territory legislation related to privacy which is relevant to this Contract;
- (b) any directions made by a Privacy Commissioner relevant to this Contract;
- (c) any additional privacy policies and procedures stated in Item 19; and
- (d) any other reasonable direction relating to privacy which is given by the Customer.

8.14 Anti-discrimination

- (a) The Contractor agrees to comply with its obligations, if any, under the *Workplace Gender Equality Act 2012*. The Contractor agrees not to enter into a subcontract with an entity named by the Director of the Workplace Gender Equality Agency in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Workplace Gender Equality Act 2012*.
- (b) The Contractor further agrees to comply with such other Commonwealth, State or Territory legislation relevant to anti-discrimination as may be relevant to this Contract.
- (c) The Contractor agrees to use its reasonable endeavours to provide employment opportunities to Aboriginal and Torres Strait Islander people where there are positions available and there are Aboriginal or Torres Strait Islander people available with suitable qualifications and expertise.

8.15 Work Health and Safety

- (a) In relation to this Contract the Contractor must:

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- (i) comply, ensure that the work conducted by or on its behalf comply, and ensure so far as is reasonably practicable that its Personnel comply, with the WHS Law and all applicable Laws, standards and policies and requirements of this Contract that relate to the health and safety of the Contractor, Personnel and Third Parties. The other provisions of clause 8.15 do not limit this clause;
- (ii) ensure so far as is reasonably practicable, that the health and safety of other persons (including Customer Personnel) is not put at risk;
- (iii) consult, cooperate and coordinate with the Customer in relation to the Contractor's work health and safety duties;
- (iv) promptly notify the Customer of any event or circumstance that has, or is likely to have, any adverse effect on the health or safety of persons to whom the Customer has a duty under WHS Law;
- (v) inform the Customer of any adverse court or tribunal decision for a breach of WHS Law made against it during the term of the Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
- (vi) if a 'notifiable incident' (as defined by WHS Law) (Notifiable Incident) occurs:
 - A. immediately report to the Customer all relevant details known to the Contractor, and
 - B. as soon as possible investigate the Notifiable Incident to determine (as far as can reasonably be done) its cause and any adverse effects on the Contract including risks to health and safety, and take all reasonable steps to remedy any effects on health and safety and to ensure the event or circumstances that led to the Notifiable Incident do not recur;
- (vii) comply, and ensure that its Personnel comply, with any direction given by the Customer in connection with its work under this Contract, that the Customer considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons (including a Notifiable Incident);
- (viii) promptly provide to the Customer, upon request, information documentation or evidence relevant to its obligations under this clause 8.15, or to assist the Customer and its Personnel to comply with their duties under WHS Law, including a written report on the investigation and response to an event or circumstance notified under clauses 8.15(a)(iv) or 8.15(a)(vi); and

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- (ix) cooperate fully with any investigation by any government agency (including the Commonwealth), parliamentary inquiry, board of inquiry or coronial inquiry with respect to a Notifiable Incident.
- (b) The Contractor agrees, when using the Customer's premises, to comply with all reasonable directions of the Customer, including but not limited to documented procedures relating to work health and safety, and security in effect at those premises. This obligation extends to all procedures which are notified to the Contractor by the Customer or which might reasonably be inferred by the Contractor in all the circumstances.
- (c) If the Contractor uses a subcontractor in relation to this Contract, it must ensure that the subcontract imposes obligations on the subcontractor equivalent to the obligations under clauses 8.15(a) and 8.15(b).
- (d) The Contractor acknowledges that it will meet its obligations under this clause 8.15 solely at its own cost and expense, and without charge to or reimbursement from the Customer.

8.16 Archival Requirements

The Contractor agrees to comply with, and to follow any reasonable directions by the Customer which are relevant to, any applicable Commonwealth, State or Territory legislation relating to archival requirements.

8.17 Maintenance of Records

The Contractor must at all times maintain full, true, and up-to-date accounts and records relating to this Contract. Such accounts and records must:

- (a) include appropriate audit trails for transactions performed;
- (b) record all receipts and expenses in relation to the Services performed and/or Products delivered for the Customer;
- (c) be kept in a manner that permits them to be conveniently and properly audited;
- (d) be drawn in accordance with any applicable Accounting Standards;
- (e) in the case of any Service performed on a time and materials or cost plus basis, identify the time spent by the Contractor's Personnel in performing that Service; and
- (f) be made available to the Customer as required for the performance of the Contractor's obligations under the Contract.

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8.18 Cooperation with Other Service Providers

The Contractor must cooperate with any Third Party service provider appointed by the Customer where this is necessary to ensure the integrated and efficient conduct of the Customer's operations. Without limiting the foregoing, the Contractor must provide such reasonable assistance to other service providers as the Customer may request from time to time, provided that the Contractor will be entitled by prior agreement with the Customer (which will not be unreasonably withheld) to charge for costs incurred as a direct result of providing such cooperation.

8.19 Harmful Code Warranty

The Contractor represents and warrants that:

- (a) it will not, nor will it suffer or permit its Personnel or any Third Party under its direction or control to, negligently or wilfully introduce into the Customer's systems or any Contract Materials any Harmful Code; and
- (b) if any Harmful Code is introduced into a Customer's systems or any Contract material, whether through a breach of clause 8.19(a) or otherwise, the Contractor must:
 - (i) immediately report that introduction to the Customer;
 - (ii) if the Harmful Code was introduced into the Customer's system or any Contract Materials through a breach of clause 8.19(a), promptly, and at its own cost, take all necessary action to eliminate the Harmful Code and repair any harm, damage or destruction caused by that Harmful Code, subject to any direction from the Customer; and
 - (iii) if the Harmful Code is introduced into the Customer's systems or any Contract Material other than through a breach of clause 8.19(a), promptly take all necessary action to eliminate the Harmful Code and repair any harm, damage or destruction caused by that Harmful Code if required by, and subject to any directions from the Customer, and the Contractor may recover its reasonably substantiated costs incurred in complying with this clause which must be agreed in writing by the Customer prior to the Contractor starting any rectification work.

8.20 Not used

9. Security Requirements

9.1 Compliance with PSPF

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

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- (a) Not used;
- (b) the requirements of the Customer's protective security policies and procedures under the PSPF, including as specified in Item 20;
- (c) any additional security requirements specified in Item 20; and
- (d) any other security requirements that are notified by the Customer to the Contractor from time to time, including any changes to the requirements referred to in clauses 9.1(a), 9.1(b) and/or 9.1(c). Such other security requirements must be complied with from the date specified in the Notice, or if none is specified, within 5 Business Days of receipt of the Notice.

9.2 Not used

9.3 Confidential Information

The Contractor acknowledges and agrees that:

- (a) if and when requested by the Customer, it, its Personnel and subcontractors, must promptly execute a declaration of interest (substantially in the form of Schedule 11) and deed of non-disclosure, in a form reasonably required by the Customer, relating to the use and non-disclosure of confidential information in connection with this Contract;
- (b) it must promptly notify and disclose to the Customer any conflict of interest affecting it, its Personnel or subcontractors, that may impact on security in the performance of the Contractor's obligations with respect to confidential information under this Contract;
- (c) it must promptly inform, and keep informed, its Personnel and subcontractors in respect of all the Customer's security requirements, and the security obligations of the Contractor under this Contract, including that the obligation to maintain confidentiality of confidential information is ongoing (notwithstanding termination or expiry of this Contract or their involvement with it);
- (d) it must, and must ensure that its Personnel and subcontractors, have and use systems, that meet the designated information security standards under the Australian Government Information Security Manual, for the electronic processing, storage, transmission and disposal of confidential information;
- (e) it must, and must ensure that its Personnel and subcontractors, notify the Customer immediately of any actual or suspected security incident, security infringement, security violation or security breach in connection with this Contract, including where it may impact upon the

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provision of the Products and/or Services, or confidential information held by or in the control of the Contractor; and

- (f) on termination or expiry of this Contract it must, and must ensure that its Personnel and subcontractors,
- (i) delete all confidential information from their respective ICT systems, and
- (ii) return all Customer resources and assets to the Customer,

except to the extent that the Law requires it to be retained by them, in which event the retained information, resource or asset continues to be subject to all security requirements applying under this Contract.

9.4 Security Clearance (Not Applicable)

9.5 Customer Data and Customer Material

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

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

9.6 Interpretation

In this clause 9:

- (a) Not used;
- (b) an obligation of the Contractor under any of clauses 9.1, 9.2, 9.3, 9.4 or 9.5 is additional to and does not affect nor derogate from the

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obligations of the Contractor under,

- (i) one or more of the other of those clauses, and/or
- (ii) any other provision of this Contract.

10. Specific Responsibilities of Customer

10.1 Charges and Payment

- (a) The charges payable in respect of this Contract are as specified in Schedule 3.
- (b) The Customer will make payment within 30 days of receipt of a correctly rendered invoice, unless an alternative period for payment is specified in Schedule 3.
- (c) The parties agree that payments may be effected by electronic transfer of funds in the manner specified in Schedule 3 or as otherwise agreed from time to time.
- (d) In the event of a dispute as to whether an amount is payable pursuant to an invoice, the Customer may withhold the disputed portion pending resolution of the dispute but will pay the undisputed portion within the period specified in clause 10.1(b).
- (e) For the purposes of clause 10.1, an invoice is correctly rendered if:
 - (i) it is correctly addressed and calculated in accordance with this Contract;
 - (ii) it relates only to the Products and/or Services that have been delivered to the Customer in accordance with this Contract;
 - (iii) it is a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999*; and
 - (iv) it meets any other requirement as specified in Item 22.

10.2 Customer Resources (Not Applicable)

10.3 Facilities

The Customer warrants that:

- (a) any facilities (including items of equipment and Software) which it makes available to the Contractor will comply with the specifications and any other standards set out in Item 24;

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- (b) facilities made available to the Contractor will be maintained in the manner specified (if at all) in Item 24; and
- (c) should a facility which is provided by the Customer under this clause fail at any time to meet the requirements specified in Item 24, then without limiting any other rights of the Contractor, the Customer will promptly take reasonable steps to ensure that the facility meets those requirements as soon as practicable.

10.4 Site Preparation

To the extent specified in Item 25, the Customer will be responsible for site preparation to enable delivery and implementation of a Product and/or the performance of a Service.

10.5 Access to Customer's Premises

The Customer will provide the Contractor with access to the Customer's premises as specified in Item 26 to enable the Contractor to fulfil its obligations under the Contract. Access may be temporarily denied or suspended by the Customer, at its sole discretion. Where access is temporarily denied or suspended by the Customer (except in circumstances where access is temporarily denied or suspended due to an investigation into the conduct of the Contractor's Personnel), the Contractor will be entitled to an extension of time to complete any obligations which are directly and adversely affected by the denial of access. Without limiting the foregoing, the Customer will, following a temporary denial or suspension of access, permit a resumption of access as soon as practicable.

11. Acceptance

11.1 Date of Acceptance

The Customer will accept a Service and/or Product on the date the tests have been successfully completed in accordance with the requirements for Acceptance testing as specified in Schedule 8. Where Schedule 8 does not specify that Acceptance tests are required, the Service or Product will be deemed to have been accepted on the date the Contractor delivers or (if installation is involved) installs the Service or Product in accordance with all relevant Contract stipulations.

11.2 Late Notification of Tests

If no Acceptance tests are specified in Schedule 8, the Customer may (if so specified in Schedule 8) stipulate reasonable tests to be conducted prior to Acceptance being deemed pursuant to clause 11.1.

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11.3 Customer Cooperation

To the extent specified in Schedule 8 and otherwise as reasonably requested by the Contractor, the Customer will provide Materials and facilities reasonably necessary for the conduct of the tests, including power, environment, consumables and data media.

11.4 Delays Caused by the Customer

Should the Customer cause a delay in the performance of the Acceptance tests for any reason, the Customer will agree to an extension of time for completing the tests that is reasonable in the circumstances. The Customer will be responsible for the reasonable additional costs incurred by the Contractor in these circumstances.

11.5 Test Procedures

The parties will conduct the Acceptance tests, and discharge their respective responsibilities, in the manner specified in Schedule 8.

11.6 Certificate of Acceptance

Where this Contract provides for Acceptance testing as a condition of payment, the Customer will issue a certificate of Acceptance within 5 Business Days of the date of Acceptance or within any other period specified in Schedule 8. The certificate of Acceptance will indicate the actual date of Acceptance and will be in the form specified in Schedule 8. The certificate of Acceptance constitutes an acknowledgment that the Contract requirements in respect of the tested Service or Product have been satisfied as at the date of Acceptance.

11.7 Failure of an Acceptance Test

If the Customer concludes that a Service and/or Product has failed an Acceptance test, the Customer must set out the basis of this conclusion in writing. Subject to consideration of any explanation provided by the Contractor in respect of the failure, the Customer may:

- (a) waive the requirement for the test in question to be satisfactorily completed;
- (b) require that further reasonable tests be conducted at the Contractor's expense, such tests to be satisfactorily completed as a condition of Acceptance within 30 days of the scheduled commencement date or within such other period as the parties agree;
- (c) conditionally Accept the Service or Product, subject to the Contractor agreeing to deliver a work-around or to otherwise rectify any outstanding deficiency within a set time frame; or

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- (d) subject to the Customer having provided the Contractor with at least one opportunity to conduct further tests pursuant to clause 11.7(b), reject the Service or Product concerned, whereupon the Contractor will be in breach of this Contract. Without limiting any other remedy which may be available in these circumstances, the Customer may require the removal of the rejected Product or any Materials associated with the rejected Service.

11.8 Supplementary Tests

- (a) If the Customer reasonably concludes at any time prior to Acceptance that there is a reasonable likelihood of non-compliance with the Acceptance criteria, it may require the Contractor to carry out supplementary tests to establish whether the relevant Service or Product in fact complies with the Acceptance criteria.
- (b) The Contractor will pay the costs of any such supplementary tests which demonstrate the Service or Product does not comply with the Acceptance criteria. Otherwise, the costs of such tests will be borne by the Customer.
- (c) The Contractor will not be responsible for delays caused by supplementary tests unless those tests demonstrate the Service or Product does not comply with the Acceptance criteria.

12. Warranties – Contractor

12.1 General

The Contractor warrants that:

- (a) during the warranty period, each Service and Product will conform and comply with the Specifications and Documentation, and where relevant and subject to clause 12.4, any Third Party warranties specified in Item 27;
- (b) during the warranty period, the Developed Software will be fit for purpose as set out in the Specifications, and together with the Associated Documentation be complete, accurate and free from material faults in design;
- (c) if and to the extent ownership of a Product is to pass to the Customer, the Product will be free from any charge or encumbrance;
- (d) it has the right to grant all licences specified in Item 28; and
- (e) where it has provided Software to an Agency and agreed to provide a licence to the Customer to use that Software, the Contractor will not

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charge the Customer if that Software is used under or in connection with this Contract (except in instances where the Software Licence is the Product).

12.2 Warranty Period

Without limiting any other rights of the Customer, the Contractor will promptly rectify any defect in a Product at no charge if it becomes aware of the defect:

- (a) during the warranty period specified Item 29; or
- (b) where no warranty period is specified in Item 29, during the first 90 days after Acceptance (or, where Acceptance is inapplicable, 90 days after the date of supply).

12.3 Compliance with Standards

A Service or Product supplied by the Contractor must comply with the applicable Australian or New Zealand standards or, if there are no applicable Australian or New Zealand standards, any applicable international standards.

12.4 Third Party Warranties

Where the Contractor supplies Products that have been procured from a Third Party, the Contractor assigns to the Customer, to the extent practicable and to the extent permitted by Law, the benefits of the warranties given by the Third Party. This assignment does not in any way relieve the Contractor of the obligation to comply with warranties offered directly by the Contractor under this Contract.

13. Audit and Access Requirements

13.1 Scope of Audits

Audits may be conducted under clause 13.3 in respect of:

- (a) the Contractor's compliance with all its obligations under the Contract; and
- (b) any other matters reasonably determined by the Customer to be relevant to the performance of the Contractor's obligations under the Contract.

13.2 Right to Conduct Audits

The Customer, including its authorised Personnel, may conduct audits relevant to the performance of the Contractor's obligations under this Contract. Audits may be conducted of:

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

13.3 Process of Conducting the Audits

- (a) The Contractor must participate promptly and cooperatively in any audits conducted by the Customer or its authorised Personnel.
- (b) Except in those circumstances in which notice is not practicable or appropriate, the Customer must give the Contractor reasonable notice of an audit and, where reasonably practicable, an indication of which documents and/or class of documents the auditor may require.
- (c) Subject to any express provisions in this Contract to the contrary, each party must bear its own costs associated with any audits.
- (d) Subject to clauses 13.3(e) and 13.3(f), the requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.
- (e) The Customer must use reasonable endeavours to ensure that audits do not unreasonably delay or disrupt any Material with respect to the Contractor's performance of its obligations under this Contract.
- (f) The Contractor must promptly take, at no additional cost to the Customer, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Contractor has under this Contract:
 - (i) supplied any Services or Products; or
 - (ii) calculated charges, or any other amounts or fees billed to the Customer.

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13.4 Access to the Contractor's Premises and Records

- (a) For the purposes of clause 13.2 and 13.3 and this clause 13.4, the Contractor must grant, and where relevant must ensure that its subcontractors grant, the Customer and its authorised Personnel access as required by the Customer or its authorised Personnel, to the Contractor's premises and data, records, accounts and other financial material or Material relevant to the performance of this Contract (excluding Material relating to the Contractor's margins, cost data, internal audit reports or information that relates to other customers of the Contractor).
- (b) In the case of documents or records stored on a medium other than in writing, the Contractor must make available on request at no additional cost to the Customer such reasonable facilities as may be necessary to enable a legible reproduction to be created.
- (c) The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause 13.4 and in clause 13.1 with respect to the subcontractor's premises, data, records, accounts, financial material and information of its Personnel.
- (d) This clause 13.4 applies for the term of this Contract and for a period of seven (7) years from the date of its expiry or termination.
- (e) In the exercise of the general rights granted by this clause 13.4, the Customer must use reasonable endeavours not to unreasonably interfere with the Contractor's performance under this Contract in any material respect.
- (f) Without limiting any of its other obligations under this Contract, the Contractor must, at its own cost, ensure that it keeps full and complete records in accordance with all applicable Accounting Standards and that data, information and records relating to this Contract or its performance are maintained in such a form and manner as to facilitate access and inspection under this clause.
- (g) Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Customer under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

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13.5 Not used

13.6 Not used

13.7 Not used

14. Personnel

14.1 Provision of Personnel

The parties will each utilise such Personnel as are necessary to enable them to fulfil their respective obligations under this Contract. Each party will ensure that the Personnel which it utilises pursuant to this clause have the requisite skills and experience.

14.2 Entry onto Customer's Premises

The Contractor will:

- (a) provide or procure the provision of such information as can be lawfully provided and which is reasonably requested by the Customer concerning the Personnel it proposes to bring onto the Customer's premises for the purposes of the Contract;
- (b) provide suitable replacement Personnel should the Customer, on reasonable grounds, deny access to or request removal of any Personnel; and
- (c) ensure its Personnel, when on the Customer's premises or when accessing the Customer's facilities and information, comply as necessary with the reasonable requirements and directions of the Customer with regard to conduct, behaviour, safety and security (including submitting to security checks as required and complying with any obligation imposed on the Customer by Law).

14.3 Specified Personnel

- (a) The Contractor must:
 - (i) provide the Services or any part of the Services to which their particular expertise relates, with the active involvement of, and using the expertise of the Specified Personnel as specified in Item 30; and
 - (ii) ensure that each of the Specified Personnel is aware of and complies with the Contractor's obligations in providing the Services.
- (b) Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in providing the Services, the

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Contractor must notify the Customer immediately. The Contractor must:

- (i) if requested by the Customer, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and
- (ii) obtain the Customer's written consent prior to appointing any such replacement person. The Customer's consent will not be unreasonably withheld.
- (c) The Customer may at any time request the Contractor to remove from work in respect of this Contract any of the Specified Personnel or the Contractor's Personnel. The Contractor must promptly arrange for the removal of such Personnel and their replacement in accordance with the process outlined in clause 14.3(b).

14.4 Subcontracting

- (a) Subject to the approval of the Customer, which will not be unreasonably withheld, the Contractor may subcontract the work to be performed under the Contract. Subcontractors specified in Item 31 will be deemed approved. The Contractor is responsible for ensuring that any obligations which it subcontracts are performed by the subcontractor concerned. The Contractor will ensure that each subcontractor is aware of the provisions of this Contract relevant to that part of the work which the subcontractor is to perform.
- (b) The Customer may on reasonable grounds request withdrawal and/or replacement of any subcontractor.

15. Non-disclosure and Use of Information

15.1 Extent of Obligation

- (a) Except to the extent necessary to comply with any applicable law relating to the public disclosure of confidential information, neither the Contractor nor the Customer will make public, disclose or use for purposes other than for the purposes of this Contract the confidential information of the other, unless the other gives its written approval. Confidential information includes:
 - (i) information marked as confidential, unless such information is of the nature described in clause 15.1(b); and
 - (ii) information which by its nature is confidential.
- (b) A party is not obliged by this clause to keep information confidential if

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that information:

- (i) is trivial or obvious;
 - (ii) was already in the receiving party's possession at the time of receipt from the other party;
 - (iii) has become public knowledge (other than through a breach of an obligation of confidence imposed under this Contract);
 - (iv) was published or otherwise becomes part of the public domain other than through a breach of this Contract by the disclosing party;
 - (v) was independently developed by the receiving party without reference to the confidential information of the furnishing party; or
 - (vi) was disclosed as a result of a legal obligation or by order of a stock exchange or government agency, provided that the receiving party must to the extent practicable give the disclosing party prompt notice of the existence of such an obligation and must, at the disclosing party's cost, make a reasonable effort to otherwise protect the confidentiality of such information.
- (c) Nothing contained in this Contract will restrict a party from the use of any ideas, concepts, know how or techniques which it independently develops or acquires under this Contract, except to the extent such use infringes the other party's Intellectual Property Rights.

15.2 Obligations of Personnel

- (a) Each party will take all reasonable steps to ensure its Personnel engaged to perform work under this Contract do not disclose confidential information of the other party obtained during the course of performing such work.
- (b) The Customer may at any time require the Contractor to arrange for its employees engaged in work under this Contract to execute a deed of confidentiality substantially in the form specified in Schedule 11.
- (c) The Customer may at any time require the Contractor to arrange for its agents or subcontractors engaged in work under this Contract to execute a deed of confidentiality substantially in the form specified in Schedule 11.

15.3 Disclosure to Media and Others

Neither party will disclose to the media any information regarding this Contract or work performed under this Contract without the written consent of the other party. Unless expressly prohibited in Item 33, however, the Contractor may

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include the Customer's name and a factual description of the work performed under this Contract:

- (a) in a list of references;
- (b) in proposals to third parties; and
- (c) in its annual report.

16. Protection of Personal Information

16.1 Interpretation of this Clause

In this clause 16:

- (a) 'APP' means the Australian Privacy Principles;
- (b) 'Australian Privacy Principles' has the meaning given to it in the Privacy Act;
- (c) 'contracted service provider' has the meaning given to it in the Privacy Act;
- (d) 'Personal Information' has the meaning given to it in the Privacy Act;
- (e) 'Privacy Act' means the Privacy Act 1988 (Cwlth); and
- (f) 'Registered APP Code' has the meaning given to it in the Privacy Act.

16.2 Obligations of Contractor in relation to Personal Information

- (a) The Contractor under and in relation to this Contract, agrees:
 - (i) to collect, use or disclose Personal Information obtained during the course of providing Services under this Contract, only for the purposes of this Contract;
 - (ii) not to commit any act, omission or engage in any practice which is contrary to the Privacy Act;
 - (iii) not to do any act or engage in any practice which if done or engaged in by an Agency, would be a breach of an APP;
 - (iv) not to engage in an act or practice that would breach an APP or a Registered APP Code (where applied to the Contractor), unless that act or practice is explicitly required under this Contract;
 - (v) Not used;

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- (vi) to notify the Customer immediately if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause 16 whether by the Contractor or its Personnel;
 - (vii) to comply with any directions, guidelines, determinations or recommendations notified to the Contractor by the Customer; and
 - (viii) to ensure that all Personnel required to deal with Personal Information for the purposes of this Contract are made aware of the obligations of the Contractor set out in this clause 16, to ensure that all Personnel required to deal with Personal Information for the purposes of this Contract are made aware of the obligations of the Contractor set out in this clause 16.
- (b) If the Contractor uses a subcontractor in relation to this Contract, it must ensure that the subcontract imposes obligations on the subcontractor equivalent to the obligations under this clause 16.2.

16.3 Handling of Complaints

A complaint alleging an interference with the privacy of an individual in respect of any Services performed under this Contract will be handled by the parties in accordance with the following procedures:

- (a) where the Customer receives a complaint alleging an interference with the privacy of an individual by the Contractor or any subcontractor, it must immediately notify the Contractor of only those details of the complaint necessary to minimise any breach or prevent further breaches of the privacy provisions of this Contract;
- (b) where the Contractor receives a complaint alleging an interference with the privacy of an individual by the Contractor or any subcontractor, it must immediately notify the Customer of the nature of the complaint but must only release to the Customer confidential information concerning the complainant with that person's consent;
- (c) after the Customer has given or been given notice in accordance with clause 16.3(a) or clause 16.3(b), it must keep the Contractor informed of all progress with the complaint as relates to the actions of the Contractor in connection with the allegation of an interference with the privacy of an individual; and
- (d) the Customer will give the Contractor 14 days written notice of an intention to assume a liability, loss or expense in accordance with this clause 16, including in that notice an explanation of how that liability, loss or expense was assessed and the Contractor's proposed share of that liability.

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- (e) The Contractor agrees to indemnify the Customer in respect of any Loss suffered or incurred by the Customer which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 16, or a subcontractor under the subcontract provisions referred to in clause 16.2(b)

17. Intellectual Property and Moral Rights

17.1 Auxiliary Material

For the avoidance of doubt, unless expressly stated to the contrary, this clause 17 does not affect the ownership of the Intellectual Property Rights in any Auxiliary Material.

17.2 Third Party Material

The Contractor must obtain all necessary copyright and other Intellectual Property Right permissions before including any Auxiliary Material, Third Party Material in the Contract Material or using Third Party Material as part of the Services.

17.3 Ownership Model for Intellectual Property Rights in Contract Material

- (a) The ownership model for Intellectual Property Rights in Contract Material is that contained in either, but only one of, clauses 17.4 or 17.5 or 17.6, as specified in Item 34.
- (b) If no ownership model is selected in Item 34, clause 17.4 applies and clauses 17.5 and 17.6 in their entirety, do not apply to this Contract.
- (c) Notwithstanding clause 4 and clauses 17.3(a) and 17.3(b), to the extent that the Software, or any part of the Software, is licensed under an Open Source Software arrangement:
 - (i) the terms of the relevant Open Source Software licence will apply to that Software; and
 - (ii) the provisions of the relevant Open Source Software licence will prevail over provisions of this Contract in the event and to the extent of any inconsistency.

17.4 Contractor Ownership of DSC Material, Customer Ownership of Other Contract Material

- (a) Subject to this clause 17

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- (i) all relevant Intellectual Property Rights in the Developed Software, Associated Documentation and Associated Tools (DSC Material) will, upon their creation, vest in the Contractor;
 - (ii) all Intellectual Property Rights in Contract Material (excluding DSC Material) will, upon their creation, vest in the Customer; and
 - (iii) each party must, at its own cost, do all things and execute all documents reasonably necessary or convenient to vest the relevant Material in the other, consistent with clauses 17.4(a)(i) and 17.4(a)(ii).
- (b) the Contractor will provide the Customer with a perpetual, irrevocable, non-exclusive, world-wide, royalty free, fully paid up licence to all Intellectual Property Rights, except a right of Commercial Exploitation, in the DSC Material for any use by the Customer (Licence) and:
- (i) the Licence includes a right to the Customer to sub-license which includes the right to engage Third Parties, contractors, or outsource suppliers of information technology services, to do anything with the DSC Material that the Customer is entitled to do under the Licence;
 - (ii) for the avoidance of doubt the right to sub-license that is granted to the Customer does not include a right to sub-license Third Parties, contractors, or outsource suppliers of information technology services, to engage in Commercial Exploitation of the DSC Material;
 - (iii) where the Customer relies on its right to sub-license, it may do so without the Contractor's consent and without any financial consequences for the Customer, the sub-licensee or any other Third Party, contractor, or outsource supplier of information technology services ;
 - (iv) for the avoidance of doubt the Customer is entitled to use the source code in the Developed Software for any use for its activities except Commercial Exploitation of the Developed Software;
 - (v) the Licence is not subject to any obligation on the Customer to receive support, maintenance, upgrades or other services from the Contractor.
 - (vi) Not used.
- (c) To the extent that the Customer needs to use any of the Auxiliary Material provided by the Contractor to receive the full benefit of the Services, including Software (owned by the Contractor or in which the Contractor has rights to sub-license) required for the proper functioning and performance of the Developed Software (Contractor Software):

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- (i) subject to clause 17.4(c)(ii), the Contractor grants to, or must obtain for, the Customer, a perpetual, world-wide, royalty-free, non-exclusive licence (including the right to sub-licence) to use, reproduce, adapt, modify, and communicate that Material; and
- (ii) the Contractor grants to the Customer a world-wide, non-exclusive, perpetual and irrevocable licence (including the right to sub-licence):
 - A. at the one-time charge, if any specified in Schedule 3,
 - B. to use, support, maintain, modify and enhance that Contractor Software or to engage other contractors to use, support, maintain, modify, and enhance that Contractor Software on its behalf,
 - C. to use, reproduce, revise, adapt and modify the technical or user documentation about that Contractor Software or to engage other contractors to do any of these on its behalf, and
 - D. the rights given in this clause 17.4(c)(ii) do not include a right of Commercial Exploitation.
- (d) To the extent that the Contractor needs to use any of the Customer Material or Contract Material (excluding DSC Material) for the purpose of performing its obligations under this Contract, the Customer grants to the Contractor for the Contract Period, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sub-licence) to use, reproduce, adapt, modify, and communicate such Material solely for the purpose of providing the Services.

17.5 Customer Ownership of and Licence to Intellectual Property Rights in Contract Material

- (a) Subject to this clause 17, and if so specified in Item 34:
 - (i) all Intellectual Property Rights in the Contract Material (including all relevant Intellectual Property Rights in the Developed Software, Associated Documentation and Associated Tools (DSC Material)) vest in the Customer; and
 - (ii) the Contractor must, at its own cost, do all things and execute all documents reasonably necessary or convenient to vest that Contract Material in the Customer.
- (b) To the extent that the Customer needs to use any of the Auxiliary Material provided by the Contractor to receive the full benefit of the Services, including Software (owned by the Contractor or in which the Contractor has rights to sub-licence) required for the proper functioning and performance of the Developed Software (Contractor

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Software):

- (i) subject to clause 17.5(b)(ii), the Contractor grants to, or must obtain for, the Customer, a perpetual, world-wide, royalty-free, non-exclusive licence (including the right to sub-licence) to use, reproduce, adapt, modify, and communicate that Material; and
- (ii) the Contractor grants to the Customer a world-wide, non-exclusive, perpetual and irrevocable licence (including the right to sub-licence) -
 - A. at the one-time charge, if any specified in Schedule 3,
 - B. to use, support, maintain, modify and enhance that Contractor Software or to engage other contractors to use, support, maintain, modify, and enhance that Contractor Software on its behalf,
 - C. to use, reproduce, revise, adapt and modify the technical or user, documentation about that Contractor Software or to engage other contractors to do any of these on its behalf, and
 - D. the rights given in this clause 17.5(b)(ii) do not include a right of Commercial Exploitation.
- (c) To the extent that the Contractor needs to use any of the Customer Material or Contract Material for the purpose of performing its obligations under this Contract, the Customer grants to the Contractor for the Contract Period a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sub-licence) to use, reproduce, adapt, modify and communicate such Material solely for the purpose of providing the Services.

17.6 Contractor Ownership of and Licence to Intellectual Property Rights in Contract Material

- (a) Subject to clause 17, and if so specified in Item 34:
 - (i) all Intellectual Property Rights in the Contract Material (including all relevant Intellectual Property Rights in the Developed Software, Associated Documentation and Associated Tools (DSC Material)) vest in the Contractor; and
 - (ii) the Customer must, at its own cost, do all things and execute all documents necessary or convenient to vest that Contract Material in the Contractor.
- (b) Unless otherwise specified:

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- (i) the Contractor will provide the Customer with a perpetual, irrevocable, non-exclusive, world-wide, royalty free, fully paid up licence to all Intellectual Property Rights, except a right of Commercial Exploitation, in the DSC Material for any use (Licence);
 - (ii) the Licence includes a right to the Customer to sub-license. For the avoidance of doubt, this right to sub-license includes the right to engage Third Parties, contractors, or outsource suppliers of information technology services, to do anything with the DSC Material that the Customer is entitled to do under the Licence;
 - (iii) for the avoidance of doubt, the right to sub-license that is granted to the Customer does not include a right to sub-license to Third Parties, contractors or outsourced suppliers of information technology services, to engage in Commercial Exploitation of the DSC Material;
 - (iv) where the Customer relies on its right to sub-license, it may do so without the Contractor's consent and without any financial consequences for the Customer, the sub-licensee or any other Third Party, contractor, or outsource supplier of information technology services;
 - (v) for the avoidance of doubt the Customer is entitled to use the source code in the Developed Software for any use for government activities except Commercial Exploitation of the Developed Software;
 - (vi) the Licence is not subject to any obligation on the Customer to receive support, maintenance, upgrades or other services from the Contractor.
- (c) To the extent that the Customer needs to use any of the Auxiliary Material provided by the Contractor or Contract Material to receive the full benefit of the Services (including the Contract Material), including Software (owned by the Contractor or in which the Contractor has rights to sub-license) required for the proper functioning and performance of the Developed Software (Contractor Software):
- (i) subject to clause 17.6(c)(ii), the Contractor grants to, or must obtain for, the Customer, a perpetual, world-wide, royalty-free, non-exclusive licence (including the right to sub-license) to use, reproduce, adapt, modify, and communicate that Material; and
 - (ii) the Contractor grants to the Customer a world-wide, non-exclusive, perpetual and irrevocable licence (including the right to sub-license):
 - A. at the one-time charge, if any specified in Schedule 3,

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- B. to use, support, maintain, modify and enhance that Contractor Software or to engage other contractors to use, support, maintain, modify, and enhance that Contractor Software on its behalf,
 - C. to use, reproduce, revise, adapt and modify the technical or user, documentation about that Contractor Software or to engage other contractors to do any of these on its behalf, and
 - D. the rights given in this clause 17.6(c)(ii) do not include a right of Commercial Exploitation.
- (d) To the extent that the Contractor needs to use any of the Customer Material for the purpose of performing its obligations under this Contract, the Customer grants to the Contractor for the Contract Period, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sub-license) to use, reproduce, adapt, modify and communicate such Material solely for the purpose of providing the Services.

17.7 Warranty

The Contractor warrants that:

- (a) the Auxiliary Material provided by the Contractor, Products, and Contract Material (Warranted Materials), and the Customer's use of the Warranted Materials will not infringe the Intellectual Property Rights or Moral Rights of any person; and
- (b) it has the necessary rights to vest under clauses 17.4 and 17.5, and to grant the licences as provided in this clause 17.

17.8 Continued Use or Replacement of Infringing Material

If a claim of infringement of Intellectual Property Rights or Moral Rights is made or threatened by a Third Party, the Customer will allow the Contractor, at the Contractor's expense, to either:

- (a) obtain for the Customer the right to continued use of the Product; or
- (b) replace or modify the Product so that the alleged infringement ceases so long as the Product continues to provide the Customer with equivalent functionality and performance as required in the Specifications.

17.9 Obtaining Consents

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

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

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

17.10 Specified Acts

In this clause, Specified Acts means:

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

18. Third Party Indemnity

18.1 Indemnity by Contractor

Unless specified to the contrary in Item 35, the Contractor will indemnify the Customer and its Personnel against all Losses reasonably sustained or incurred by the Customer as the result of a claim made or threatened by a Third Party arising out of or in connection with:

- (a) any negligent, unlawful or wilfully wrong act or omission of the Contractor or its Personnel; or
- (b) an allegation that any Service or Warranted Materials (including the use of any Services or Warranted Materials by the Customer or its Personnel) infringes the Intellectual Property Rights or Moral Rights of a Third Party. For the purposes of this clause 18.1(b), an infringement of Intellectual Property Rights includes unauthorised

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acts which would, but for the operation of the *Patents Act* 1990 section 163, the *Designs Act* 2003 section 96, the *Copyright Act* 1968 section 183 and the *Circuit Layout Act* 1989 section 25, constitute an infringement.

18.2 Customer's Obligations to Contractor

Where the Customer wishes to enforce an indemnity described in clause 18.1, it must:

- (a) give written notice to the Contractor as soon as practicable;
- (b) make reasonable efforts to mitigate the relevant Loss;
- (c) subject to the Contractor agreeing to comply at all times with clause 18.3, permit the Contractor, at the Contractor's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiations or litigation that may follow; and
- (d) in the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer under clause 18.2(c), provide all reasonable assistance to the Contractor in the handling of any negotiations and litigation.

18.3 Contractor's Obligations to Customer

Where the Contractor receives a notice referred to in clause 18.2(a) and the Contractor is permitted to handle negotiations or conduct litigation on behalf of the Customer under clause 18.2(c), the Contractor must:

- (a) consult with the Customer in relation to all significant steps in the negotiations and litigation;
- (b) keep the Customer informed of any significant developments relating to the conduct of the defence or settlement of any claim; and
- (c) provide to the Customer such information and Documentation as are reasonably requested by the Customer, to enable the Customer to ascertain whether the defence or settlement by the Contractor of any claim is being conducted appropriately, including any requirements relating to legal professional privilege and confidentiality.

19. Problem Resolution

19.1 Objective

The parties agree to use reasonable commercial efforts to resolve by negotiation any problem or dispute that arises between them under this Contract. Neither

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party will resort to legal proceedings, or terminate this Contract, until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.

19.2 Notification

If a problem or dispute arises (including a breach or an alleged breach) under this Contract which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at the operational level, a party concerned about the problem may notify the other. Management representatives of each of the parties will then endeavour in good faith to agree upon a resolution.

19.3 Mediation

Should the management representatives fail to reach a solution in accordance with clause 19.2 within 5 Business Days (or such other time frame agreed between the parties), the parties may agree to mediation. The mediator will be selected in the manner specified in Item 36.

19.4 Expert Determination

If mediation pursuant to clause 19.3 fails, or either party states it does not wish to attempt settlement through a mediator within 10 Business Days (or such other time frame agreed between the parties), the parties may agree to expert determination. The expert will be selected in the manner specified in Item 37. Where the parties agree to proceed by expert determination, the determination will be conducted pursuant to any relevant legislation.

19.5 Proceedings

If mediation and/or expert determination fails, or if either party states that it does not wish to proceed with either mediation or expert determination, then either party may commence legal proceedings against the other.

19.6 Continued Performance

Unless prevented by the nature of the dispute, the parties will continue to perform this Contract while attempts are made to resolve the dispute. In circumstances where the dispute relates to payment and the Contractor is required to continue to perform its obligations under this Contract pursuant to this clause, the Customer will continue to pay the Contractor any undisputed amounts.

19.7 Confidentiality

Any information or documents disclosed by a party under this clause 19:

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

19.8 Costs

Each party to a dispute must pay its own costs of complying with this clause 19. The parties to the dispute must equally pay the costs of any mediator.

20. Liability

20.1 Limitation of Liability

- (a) The liability of each party arising out of or in connection with this Contract (including under an indemnity) is, subject to clause 20.1(b), limited to the amount specified in Item 38.
- (b) Any limit on the liability of each party under clause 20.1(a) does not apply in relation to liability relating to:
 - (i) personal injury (including sickness and death);
 - (ii) loss of, or damage to, tangible property (including both Customer and Third Party property);
 - (iii) an infringement of Intellectual Property Rights;
 - (iv) a breach of any obligation of confidentiality, privacy or security requirement under clause 9; or
 - (v) any breach of statute or any wilfully wrong act or omission including, in the case of the Contractor, any act or omission that constitutes repudiation of the Contract.
- (c) Unless specified otherwise in Item 39, the limitation of liability referred to in this clause 20.1(a) applies in respect of each single occurrence or a series of related occurrences arising from a single cause.

20.2 Review of Limitation

- (a) The parties acknowledge that the limitation of liability specified in Item 38 will be subject to review in the event that the Contract is varied or extended.
- (b) For the avoidance of doubt, a party may require a review of the limitation of liability specified in Item 38 as a condition of its agreement to a Contract variation request, but only for the purpose of achieving a proportionate adjustment to reflect any alteration to that party's risk exposure arising out of that variation.

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20.3 Contributory Negligence

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

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

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

20.4 Consequences of Provision of Faulty Data by Customer

The Contractor will not be held accountable for a failure to meet its obligations under the Contract to the extent that the failure is caused by inaccurate or incomplete information supplied by the Customer which is required by the Contractor to perform the Contract. The Contractor must notify the Customer as soon as practicable if it becomes aware that the Contractor has provided incomplete or inaccurate information in any instance that might prevent the Contractor from complying with its obligations under this Contract.

21. Approval, Consent or Agreement

- (a) Where the Contractor has fulfilled its obligations under this Contract and the Customer unreasonably refuses to grant any approval (including but not limited to the issuing of a certificate of Acceptance) specified in Schedule 8:
 - (i) the Contractor may terminate the Contract;
 - (ii) the Customer will pay for work performed up to the point where the approval should reasonably have been granted and will further be liable in respect of all costs reasonably incurred by the Contractor in seeking that approval; and
 - (iii) ownership of any Intellectual Property Rights will be determined in accordance with the provisions of this Contract.
- (b) This clause states the Contractor's sole remedy in the event of termination of this Contract under this clause 21.

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22. Communication

22.1 Notices

A notice or other communication is properly given or served by a party if that party:

- (a) delivers it by hand;
- (b) posts it;
- (c) delivers it by facsimile;
- (d) transmits it by electronic mail; or
- (e) transmits it by any other electronic means;

to the address of the relevant officer of the other party specified in Item 1 or Item 3 as applicable, marked to that person's attention.

22.2 Change of Address

Each party will advise the other of any change in the address or identity of the relevant person to whom notices are to be addressed.

22.3 Deemed Receipt

Unless specified to the contrary in Item 40, a notice or other communication is deemed to be received if:

- (a) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for Service;
- (b) sent by post from and to an address within Australia, after 3 Business Days;
- (c) sent by post from or to an address outside Australia, after 10 Business Days;
- (d) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside Business Hours, at the time of resumption of Business Hours);
- (e) sent by electronic mail, only in the event that the other party acknowledges receipt by any means; or
- (f) sent by any other electronic means, only in the event that the other

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party acknowledges receipt by any means.

23. Termination

23.1 Termination and Reduction for Convenience

- (a) The Customer may, at any time, by notice, terminate this Contract or reduce the scope of the Services, at its absolute discretion.
- (b) On receipt of a notice of termination or reduction the Contractor must:
 - (i) stop work as specified in the notice;
 - (ii) take all available steps to minimise loss resulting from that termination and to protect Customer Material and Contract Material; and
 - (iii) continue work on any part of the Services not affected by the notice.
- (c) If this Contract is terminated under clause 23.1(a), the Customer is liable only for:
 - (i) payments under clause 10 and Schedule 3 for Services rendered before the effective date of termination; and
 - (ii) reasonable costs incurred by the Contractor and directly attributable to the termination.
- (d) If the scope of the Services is reduced, the Customer's liability to pay the Service Charges or to provide Customer Material abates in accordance with the reduction in the Services.
- (e) The Customer is not liable to pay compensation under clause 23.1(c)(i) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, exceed the total Service Charges payable under this Contract.
- (f) The Contractor is not entitled to compensation for loss of prospective profits.

23.2 Termination by the Customer for Default

- (a) Without limiting any other rights or remedies the Customer may have against the Contractor arising out of or in connection with this Contract, the Customer may terminate this Contract effective immediately by giving notice to the Contractor if:
 - (i) the Contractor breaches a material provision of this Contract where that breach is not capable of remedy;

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- (ii) the Contractor breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or
- (iii) an event specified in clause 23.2(b)(i) to 23.2(b)(vii) happens to the Contractor.
- (b) The Contractor must notify the Customer immediately if:
 - (i) the Contractor being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Contractor;
 - (ii) the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
 - (iii) the Contractor ceases to carry on business;
 - (iv) the Contractor ceases to be able to pay its debts as they become due;
 - (v) the Contractor being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
 - (vi) the Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
 - (vii) where the Contractor is a partnership, any step is taken to dissolve that partnership.
- (c) Without limitation, for the purposes of clause 23.2(a)(i), each of the following constitutes a breach of a material provision:
 - (i) a breach of warranty under clause 12.1 (Contractor warranties);
 - (ii) a failure to comply with clause 8.15 (Work Health and Safety);
 - (iii) a failure to comply with clause 14 (Personnel);
 - (iv) a failure to comply with clause 17 (Intellectual Property and Moral Rights);
 - (v) a failure to comply with clause 8.11 (Insurance);
 - (vi) a failure to comply with clauses 8.13, 15.1, 15.2, 15.3 and/or 19.7 (Confidentiality and privacy);
 - (vii) a failure to comply with clause 16 (Protection of personal information); or

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- (viii) a failure to notify the Customer of a conflict of interest under clause 33.5 (Conflict of interest).
- (d) In this clause 23.2, **controller**, **managing controller** and **administrator** have the same meanings as in the Corporations Act.

23.3 Termination by the Contractor for Default

- (a) Without limiting any other rights or remedies the Contractor may have against the Customer arising out of or in connection with this Contract, the Contractor may terminate this Contract by giving at least 5 Business Days' notice to the Customer if;
 - (i) the Customer has not paid a correctly rendered invoice or has not notified the Contractor that it disputes the changes specified under an invoice within 60 days of receipt of that invoice; and
 - (ii) the Contractor has given the Customer;
 - A. a first notice 30 days after the due date of the invoice, specifying the failure to pay and giving the Customer at least 30 days to pay the invoice, and
 - B. a second notice 15 days after the first notice, referring to the first notice and giving the Customer at least 15 days to pay the invoice.

23.4 After Termination

On termination of this Contract the Contractor must:

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

23.5 Termination does not Affect Accrued Rights

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

23.6 Survival

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

- (a) Clause 8.11 (Insurance Requirements);
- (b) Clause 8.13 (Privacy);

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- (c) Clause 9 (Security Requirements);
- (d) Clause 12 (Warranties);
- (e) Clause 13 (Audit and Access Requirements);
- (f) Clause 15 (Non-disclosure and use of Information);
- (g) Clause 16 (Protection of personal information)
- (h) Clause 17 (Intellectual Property and Moral Rights);
- (i) Clause 18 (Third Party Indemnity);
- (j) Clause 20 (Liability); and
- (k) Clause 24(b) (Knowledge transfer).

24. Disengagement

- (a) If specified in Item 43, within the period specified (or 3 months if no period is specified) after the Commencement Date, the Contractor must develop, in consultation with and for approval by the Customer, a disengagement plan in accordance with Schedule 6 that will provide for the disengagement of the Services from the Contractor to the Customer or its nominee at the expiration or termination of the Contract (in whole or in part).
- (b) If specified in Item 44, the Contractor must provide the following assistance to the Customer on termination or expiration of this Contract:
 - (i) transferring or providing access to the Customer to all information stored by whatever means held by the Contractor or under the control of the Contractor in connection with this Contract; and
 - (ii) making Specified Personnel and Contractor Personnel available for discussions with the Customer as may be required. The time, length and subject of these discussions will be at the sole discretion of the Customer, provided that any matter discussed is not considered to reveal any confidential information of the Contractor.

25. Consultancy Services

25.1 Description of Consultancy Services

Where the Contractor is to provide Consultancy Services, Schedule 2 will specify, to the extent relevant:

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- (a) the Consultancy Services required, including any functional and performance requirements for the Service, and the times and locations at which the work is to be done;
- (b) the resources required (including resources to be made available by the Customer) in support of the delivery of the Consultancy Services, identifying the party which is to provide them at Item 46; and
- (c) Specifications (and/or equivalent document, such as a statement of work) at Schedule 2; and
- (d) a project plan in the form of Schedule 4.

25.2 Methodology

The Contractor will:

- (a) manage all stages of the supply of the Consultancy Services;
- (b) take timely and corrective action where the Consultancy Services are not being performed in accordance with the requirements of this Contract;
- (c) record action taken to correct any deficiencies in the Consultancy Services; and
- (d) ensure the timely development and provision of corresponding Documentation or appropriate electronic records (if any) as specified in Item 47.

25.3 Performance Measures

The Consultancy Services will comply with any service levels and other performance measures specified in Schedule 7.

26. Managed Services

26.1 General Obligations of Contractor

Where the Contractor is to provide Managed Services:

- (a) the Contractor agrees to commence the Managed Services on the Service commencement date specified in Item 49 and to meet the Specifications and service levels for the Managed Services during the term of the Contract;
- (b) the Specifications will be deemed to include, and the Contractor will be deemed to have knowledge of, information that the Contractor could reasonably have obtained during due diligence which it had the

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opportunity to conduct prior to the date of the Contract, whether or not the Contractor in fact conducted such due diligence;

- (c) without limiting clause 26.1(b), the Contractor will be deemed to have made use of any reasonable opportunity provided by the Customer to conduct due diligence prior to the date of the Contract; and
- (d) unless agreed to the contrary, the Contractor must ensure that technology and work practices used in providing the Managed Services remain consistent with, and reflect, those used by the Contractor in delivering similar Services to other government Customers at the same time and in similar circumstances.

26.2 Service Delivery and Service Level Agreement

- (a) Unless the Customer agrees otherwise in writing, the Managed Services will be performed in Australia and, in addition:
 - (i) the Contractor agrees to provide the Managed Services in accordance with the service level Documentation and any other performance measures attached to or specified in Item 50;
 - (ii) the Contractor agrees to report to the Customer at regular intervals (or at the intervals, if any, specified in Item 51) and in conformity with any agreed format, as to the effectiveness of Service delivery, including the extent to which the Managed Services are being or have been adapted to meet the Customer's changing business needs; and
 - (iii) the Contractor will advise the Customer if it considers the Specifications or service levels should be revised to take account of new functions performed by the Customer that are outside the scope of this Contract (such revisions to be implemented, if at all, in accordance with the change control procedure set out in this Contract).
- (b) If the Contractor fails to meet performance requirements for the Managed Services as specified in the service level Documentation or fails to meet other performance measures specified in Schedule 7, the Contractor will promptly:
 - (i) investigate the underlying causes of the problem and use all commercially reasonable efforts to preserve any data indicating the cause of the problem; and
 - (ii) advise the Customer of the status of remedial efforts being undertaken with respect to the underlying cause of the problem;

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but such action will not deprive the Customer of a right to pursue any other remedy under this Contract arising from the failure to meet its obligations under the Contract.

27. Supply of Hardware (Not Applicable)

28. Hardware Maintenance (Not Applicable)

29. Software Development

29.1 Customer Specifications and Resources

Where the Customer requires the Contractor to create Developed Software (including modifications to Licensed Software unless such modifications are embraced by clause 31.4 Other Support Services.):

- (a) Item 61 and Schedule 2 will contain the Specifications for the Developed Software ('Customer Specifications'); and
- (b) Item 62 will specify the resources involved (including any resources to be made available by the Customer).

29.2 Preparation of Project Plan

The Contractor will prepare (or finalise) a project plan (including relevant milestones) and submit it to the Customer for approval by the date specified in Item 63.

29.3 Approval of Project Plan

- (a) The Customer will promptly review the project plan when the Contractor submits it.
- (b) The Contractor will accommodate any requests for alteration reasonably made by the Customer in order to satisfy the requirements of this Contract.
- (c) The Customer must approve the project plan when satisfied that it is consistent with the requirements of this Contract. The project plan must be approved by the date specified in Item 64 or, if applicable, before the expiry of any extended period which is specified in Item 65 or which is otherwise agreed between the parties.
- (d) The Customer is not required to approve the project plan if it is inconsistent with the requirements of the Contract. The Customer will provide the Contractor with details as to why it considers the project

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plan is inconsistent with the requirements of the Contract and provide the Contractor with an opportunity to rectify that inconsistency prior to the date upon which approval of the project plan is due.

- (e) The project plan will, when approved by both parties, become part of the Specifications.

29.4 Preparation of Design Specification

The Contractor will prepare a detailed specification ('Design Specification') and submit it to the Customer for approval by the date specified in Item 66. The Design Specification will give a technical explanation of how the functions in the Specifications will be met. To the extent reasonably required, the Customer will assist the Contractor in the preparation of the Design Specification.

29.5 Approval of Design Specification

- (a) The Customer will promptly review the Design Specification when the Contractor submits it. The Contractor may accommodate any requests for alteration reasonably made by the Customer in order to satisfy the Specifications.
- (b) The Customer must approve the Design Specification when satisfied that either it conforms to the Specifications or that any departures from the Specifications are reasonable in the circumstances. The Design Specification must be approved by the date specified in Item 67 or, if applicable, before the expiry of any extended period which is permitted in Item 68 or which is otherwise agreed between the parties.
- (c) The Customer is not required to approve the Design Specification if it is inconsistent with the requirements of the Contract. The Customer will provide the Contractor with details as to why it considers the Design Specification is inconsistent with the requirements of this Contract and provide the Contractor with an opportunity to rectify that inconsistency prior to the date upon which approval of the Design Specification is due.
- (d) The Design Specification will, when approved by both parties, become part of the Specifications.

29.6 Methodology

The Contractor will fully document the development process and will:

- (a) manage the Software Development Services;
- (b) take timely corrective action prior to Acceptance, where this is required, in accordance with the agreed methodology;

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- (c) take timely corrective action prior to Acceptance where the Developed Software is not performing in accordance with the Specifications;
- (d) ensure concurrent development and supply of user Documentation as specified in Item 69; and
- (e) ensure that the Developed Software is written and documented in a way which would enable future modification by a competent developer without further reference to the Contractor.

29.7 Source Code

- (a) Where the ownership of the Developed Software is to be retained by the Contractor, the Contractor agrees to enter into an escrow arrangement in the form specified in Schedule 12 if so requested by the Customer, unless it is expressly stated in Item 70 that the source code is not to be placed in escrow.
- (b) Where the ownership of the Developed Software is to pass to the Customer, the Contractor will deliver the source code to the Customer in accordance with Schedule 4.

29.8 Prior to Acceptance

- (a) The Customer may not use the Developed Software in production prior to Acceptance unless so specified in Item 71; and
- (b) The Contractor must provide the Customer with a copy of the Developed Software, Associated Documentation, Associated Tools and relevant Auxiliary Material at the Acceptance testing stage or within 14 days of a written request from the Customer to the Contractor.

29.9 Provision of Associated Documentation

- (a) The Contractor must provide the Customer with up to date technical and operator Associated Documentation containing sufficient information to enable the Customer to make full use of the Developed Software at all times;
- (b) The Associated Documentation must, at the time of delivery:
 - (i) be current and accurate and consistent with the specifications;
 - (ii) adequately explain key terms and symbols; and
 - (iii) unless specified otherwise in Item 69 be in English.

29.10 Product Developments made by Customer

All developments made by the Customer to the Developed Software Product remain the property of the Customer or, where relevant, the property of the service provider who made the developments where so provided in an agreement with the Customer.

30. Licensed Software

30.1 Licence Rights

The Contractor grants the Customer a non-exclusive licence of the Licensed Software at the charges specified in Schedule 3 to:

- (a) copy the Licensed Software into machine readable form to the extent permitted under the Copyright Act 1968;
- (b) use the Licensed Software on the Hardware platform/operating system combination, subject to any licence conditions specified in the Item 73;
- (c) use the Documentation supplied by the Contractor with the Licensed Software;
- (d) make such number of copies of the Licensed Software as is specified in Item 74; and
- (e) transfer the licence to an Agency within the same tier of government as the Customer, subject to:
 - (f) prior written notice to the Contractor,
 - (g) the other Agency consenting to the terms of the licence, and
 - (h) such right to transfer is specified in Item 75.

30.2 Period of Licence

Unless earlier terminated in accordance with this Contract or otherwise surrendered by the Customer, the licence remains in force for the period specified in Item 76.

30.3 Protection and Security

The Customer will:

- (a) if and to the extent required by Item 77, maintain records of the location of all copies of the Licensed Software;

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- (b) refrain from altering or removing a copyright statement or other notice of ownership of Intellectual Property Rights which accompanies the Licensed Software; and
- (c) ensure that, prior to disposal of any media, any Licensed Software contained on it has been erased or destroyed.

30.4 Implementation Services

The Contractor will install and integrate the Licensed Software, and provide training to the Customer's Personnel, to the extent specified in Item 78 and Schedule 2 and Schedule 4.

30.5 Updates and New Releases

- (a) Updates and new releases will be made available by the Contractor to the Customer on the terms specified in Item 79. Notwithstanding the foregoing, the Contractor will provide any update or new release at no cost where the Contractor makes such updates or new releases generally available to other government customers under similar circumstances at no cost. Where there is a cost, the charges and level of support applicable to the update or new release will be as specified in Schedule 3.
- (b) The Customer is not obliged to accept an update or new release offered by the Contractor pursuant to this clause. If the Customer rejects the offer of an update or new release, the Contractor must continue to maintain the version of the Licensed Software which the Customer is using until the expiry of 18 months (or alternative period specified in Item 80) from the date upon which the rejected update or new release was formally offered by the Contractor to the Customer.

30.6 Change of Designated Equipment

- (a) Item 81 may specify that use of the Licensed Software by the Customer is restricted to a particular processor.
- (b) If use of the Licensed Software is restricted to a particular processor, the Customer may:
 - (i) subject to obtaining prior written consent from the Contractor (such consent not to be unreasonably withheld), transfer the Licensed Software to an alternative processor of substantially the same capacity and performance standards; and
 - (ii) use the Licensed Software on any back-up hardware while the specified Hardware is for any reason temporarily inoperable.

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30.7 Protection of Contractor's Rights

The Customer agrees not to do anything that would prejudice the Contractor's right, title or interest in the Licensed Software. The Customer acknowledges and agrees that any such act may constitute a breach to which clause 22.3(f) applies.

30.8 Termination of Licence

Within 30 days (or such other period as may be specified in the Item 84) after termination of the licence, the Customer will destroy or return to the Contractor all copies of the Licensed Software and all related Documentation, save that the Customer may (unless specified to the contrary in Item 82) retain a copy of the Licensed Software and its related Documentation for archival purposes only. The use of Licensed Software for archival purposes will be subject to the restrictions specified in Item 83.

30.9 Escrow of Source Code

If so specified in Item 85, the Contractor will enter into an escrow arrangement in respect of the source code of the Licensed Software, substantially in the form set out in Schedule 12, and with the escrow agent named (if any) in Item 86.

30.10 No application to Software Leasing

This Contract does not apply in relation to the leasing of Software to the Customer.

31. Software Support

31.1 Availability of Support Services

The Contractor will provide Software Support Services to the Customer in accordance with the requirements of Item 87 and Schedule 2.

31.2 Commencement of Support

The Software Support Services will commence on the date specified in Item 88 and will be renewable as specified in Item 89. For the removal of doubt, the term of the Software Support Services will not commence, if the Services relate to Software supplied under this Contract, until the expiry of the relevant warranty period for the Software. Defect correction, the implementation of updates and new releases and the provision of help desk services will be provided free of charge during such warranty period unless specified to the contrary in Schedule 3.

31.3 Correction of Defects

Where the Customer identifies and reports a defect in the Licensed Software subsequent to the commencement of the Software Support Services, the Contractor will as soon as possible (and, where relevant, within the response times specified in Schedule 2) provide either defect correction information, a work-around or other remedial Services as are necessary to restore the Licensed Software to appropriate functionality.

31.4 Other Support Services

Unless specified to the contrary in Schedule 2, the Software Support Services will include, in addition to defect correction pursuant to clause 31.3:

- (a) ensuring, by responding to the Customer's, notification of defects or by acting in a manner otherwise specified in Schedule 2, that the Software remains in conformity with the operating Specifications or any other Specifications, standards or service levels described in Schedule 2;
- (b) ensuring the provision of a help desk service, full particulars of which will be as specified in Schedule 2; and
- (c) ensuring the correction of Documentation so that it is at all times up to date.

31.5 Service Response Times

The Contractor will respond to a request from the Customer for Software Support Services within the timeframes, and subject to any conditions, specified in Schedule 2.

31.6 Exclusions

Unless specified to the contrary in Schedule 2, the Software Support Services do not include Services involving:

- (a) correction of defects caused by:
 - (i) operation of the Software in a manner which contravenes the Customer's obligations as specified in this Contract;
 - (ii) failure by the Customer to operate the Software in accordance with Specifications which have been made known by the Contractor to the Customer;
 - (iii) use by the Customer of the Software in an information technology environment other than that provided for in the Specifications; or

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- (iv) failure by the Customer to use the Software in conformity with user Documentation provided by the Contractor under this Contract;
- (b) correction of errors or defects caused by the reproduction or adaptation of the Software by the Customer pursuant to the *Copyright Act 1968* section 47E or 47F;
- (c) equipment maintenance; or
- (d) any other Service expressly excluded in Schedule 2.

32. Systems Integration Services

32.1 Supply of System

If the Contractor will provide System Integration Services to the Customer in accordance with the requirements of Item 90 and Schedule 2. The Contractor further undertakes to comply with Schedule 4.

32.2 System Components

The System will comprise the Hardware, Software and other components specified in Schedule 2.

32.3 Hardware Components

To the extent that the System comprises equipment, the equipment will be supplied in accordance with the requirements of clause 27 unless and to the extent specified in Schedule 2.

32.4 Software Components

- (a) To the extent that the supply of the System involves the development of Software, such development will take place in accordance with Clause 29 and to the extent stipulated in Schedule 2.
- (b) To the extent the supply of the System requires the licensing of Software from the Contractor to the Customer, the Software will be supplied in accordance with the provisions of clause 30 and to the extent specified in Schedule 2.
- (c) To the extent the supply of the System requires the licensing of Third Party Software from a Third Party licensor direct to the Customer, and except as specified to the contrary in Schedule 2, the Contractor will procure for the Customer a non-exclusive, non-transferable licence to use such Software on terms consistent with the Customer's requirements as set out in this Contract.

32.5 System Warranty

In addition to and notwithstanding warranties otherwise provided by the Contractor to the Customer under this Contract, and notwithstanding any warranties provided by a Third Party to the Customer under a direct licence from the Third Party to the Customer or by reason of an assignment of warranty pursuant to clause 12.4, the Contractor warrants that for a period of 90 days from Acceptance (or such other period as is specified in Schedule 2):

- (a) the System is free from defects; and
- (b) all components of the System will interact with each other in accordance with the Specifications.

33. General

33.1 Entire Agreement

This Contract constitutes the entire agreement of the parties about its subject matter, and no written or oral agreement, arrangement or understanding made or entered into prior to the execution of this Contract may in any way be read or incorporated into the Contract, except as expressly stated to the contrary.

33.2 Assignment and Novation

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

33.3 Unforeseen Events

- (a) A party (the 'affected party') is excused from performing its obligations to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason), including but not limited to natural disasters, acts of war, riots and strikes outside that party's organisation.
- (b) When the circumstances described in clause 33.3(a) arise or are reasonably perceived by the affected party as an imminent possibility, the affected party will give notice of those circumstances to the other as soon as possible, identifying the effect they will have on its performance. An affected party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.
- (c) If non-performance or diminished performance by the affected party due to the circumstances described in clause 33.3(a) continues for a period of 30 consecutive days or such other period as may be specified in Item 41, the other party may terminate the Contract. If this Contract is terminated in these circumstances, each party will

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bear its own costs and neither party will incur further liability to the other. If the Contractor is the affected party, it will be entitled to payment for work performed prior to the date of intervention of the circumstances described in clause 33.3(a).

33.4 Waiver

A waiver by a party of a breach will not be regarded as a waiver of any other breach. A failure by a party to enforce a provision will not be interpreted as a waiver (unless the waiving party confirms in writing that a waiver was intended).

33.5 Conflict of Interest

Each party warrants that at the date of execution of this Contract it is not, to the best of its knowledge, aware of any business or personal relationship which may compromise its ability to discharge its obligations under this Contract in good faith and objectively. Each party will promptly notify the other in writing if a situation arises during the course of this Contract whereby a business or personal relationship may compromise it in this manner.

33.6 Variation

The parties agree that this Contract may only be varied in writing and with the agreement of both parties. If proposed changes will have the effect of varying the Specifications, the Schedules or any other technical requirements of the Customer, the parties must first complete and sign a change order in the form specified in Schedule 9.

33.7 Parties' Responsibilities

Neither party will be liable to the other for failing to comply with any obligations under this Contract to the extent that such failure results from the other party not performing its obligations as stated in the Contract.

33.8 Severability

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

33.9 Announcements

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

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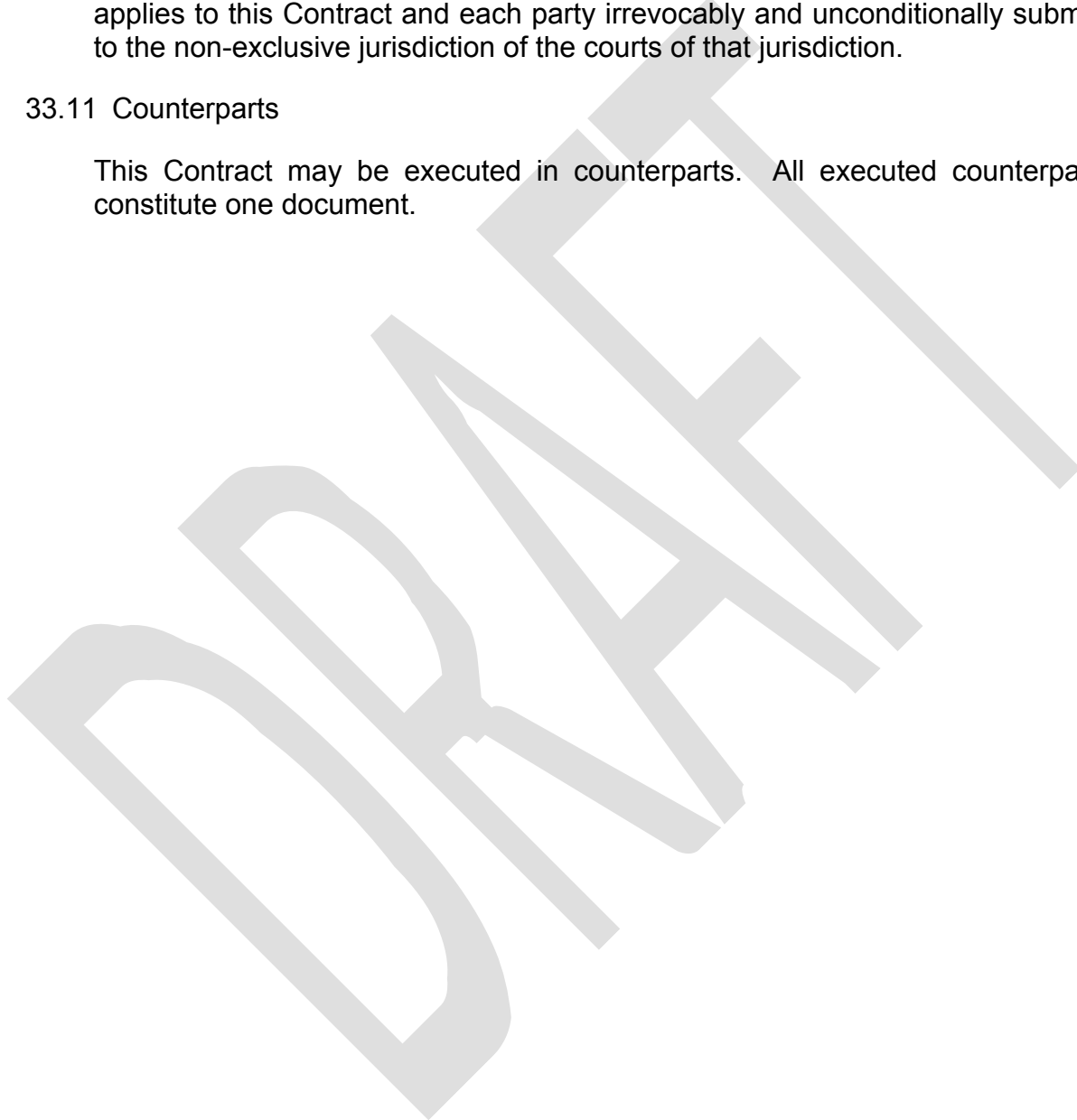
public announcement in connection with this Contract or any transaction contemplated by this Contract the Contractor must, to the extent practicable, first consult with and take into account the reasonable requirements of the Customer.

33.10 Governing Law and Jurisdiction

Unless otherwise specified in Item 42, the law of the Australian Capital Territory applies to this Contract and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

33.11 Counterparts

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



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EXECUTED AS A CONTRACT

CUSTOMER

Executed by and on behalf of the)
Australian Medical Council Limited)
ABN 97 131 796 980 by a duly)
authorised representative in the)
presence of:)
)
)

Signature of Witness

Signature of authorised representative

Name of Witness in full

Name of authorised representative

Date

Date

CONTRACTOR

Executed by **[Company Name]** ACN)
[ACN Number] in accordance with)
Section 127(1)-(3) of the Corporations)
Act 2001:)

Signature of Director

Signature of Director/Company Secretary

Name of Director

Name of Director/Company Secretary

Date

Date

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Schedule 1. Contract Details

Description	Clause Reference	Details
Contractor Details		
Item 1. Contractor Details	1.1 22.1	<Name> ACN: <Insert ACN> <Address> ABN: <Insert ABN>
Item 2. Contractor's Representative	1.1	<Name>
Customer Details		
Item 3. Customer Details	1.1 22.1	Australian Medical Council and Address
Item 4. Customer's Representative	1.1	Mr Matt Kendrick
Contract Dates		
Item 5. Commencement Date	3.1	<dd/mm/yyyy> [Date]
Item 6. Business Hours	1.1	<Business Hours are Defined as 7am to 7pm on Business Days – If hours are different Insert Details or N/A>
Item 7. Initial Contract Period	1.1	<Period of time, beginning on the Commencement Date, for which this Contract is intended to continue (i.e. 3yrs)>
Item 8. Option Period	3.2	<Specify option periods if any>
Meeting & Reporting		
Item 9. Meeting and Reporting Arrangements	6(c)	Weekly
Transition-in		
Item 10. Transition in Plan Required	7(a)	Yes, a Transition-in Plan is Required Draft Transition in Plan due: <xx/xx/xxxx> Customer to respond to draft : <xx/xx/xxxx>
Specific Responsibilities of the Contractor		
Item 11. Contractor Obligations to Establish and Maintain Facilities	8.2(a)	<If requirements vary to those in the Terms and Conditions, insert details here >

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Description	Clause Reference	Details
Item 12. Requirement to Make available the Contractor's Records	8.2(b)	<If requirements vary to those in the Terms and Conditions, insert details here >
Item 13. Extent that the Contractor is to act as the Customer's Agent	8.3	<If requirements vary to those in the Terms and Conditions, insert details here >
Item 14. Requirement to Provide Training	8.5	<Specify training requirements>
Insurance Requirements		
Item 15. Public Liability Insurance	8.11(a)(i)	\$20M
Item 16. Professional Indemnity Insurance	8.11(a)(ii)	\$20M
Item 17. Product Liability Insurance	8.11(a)(iii)	\$10M
Item 18. Additional Insurance	8.11(a)(iv)	<Insert details and minimums>
Privacy & Records		
Item 19. Specific privacy policies and Procedures	8.13	<Specify any additional Privacy Policies and/or Procedures>
Security		
Item 20. Additional Security Requirements	9.1(b) 9.1(c)	IRAP or ISO 27000
Item 21. Security Clearance – level, period and responsibility for cost.	9.4	Not Applicable
Specific Responsibilities of the Customer		
Item 22. Special requirements for a correctly rendered invoice	10.1	<Insert details of any special requirements>
Item 23. Resources to Be Provided by Customer	10.2	Not Applicable
Item 24. Customer's facilities	10.3(a) 10.3(b) 10.3(c)	<Insert details of specifications or standards any facilities which the customer is providing will need to meet>
Item 25. Site preparation requirements	10.4	<Insert details or N/A>
Item 26. Details of the Contractors Access Rights to the	10.5	<Insert details or N/A>

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Description	Clause Reference	Details
Customer's Premises		
Licences & Warranties		
Item 27. Applicable third party warranties	12.1(a)	<Insert details of Third party warranties>
Item 28. Licences to be Granted to the Customer	12.1(d)	<List licences that will be provided>
Item 29. Warranty Period	12.2(a) 12.2(b)	<Specify warranty period>
Personnel		
Item 30. Names of Specified Personnel and Their Role	14.3(a)(i)	<Names of Specified Personnel and their role>
Item 31. Subcontractors deemed approved	14.4(a)	<if requirements vary to those in the terms and conditions, insert details here.>
Non-Disclosure & Use of Information		
Item 32. Time Limit on Retention of Confidence	15.1(b)(v)	<insert time limit or N/A>
Item 33. Prohibitions on Certain Factual Disclosures	15.3	<If requirements vary to those in the Terms and Conditions, insert details here >
Intellectual Property		
Item 34. Ownership Model for Intellectual Property Rights in Contract Material (Select One)	17.3(a) 17.3(b)	<input type="checkbox"/> Contractor Ownership of DSC Material, Customer Ownership of Other Contract Material – 17.4
		<input type="checkbox"/> Customer Ownership of, and Licence to, Intellectual Property Rights in Contract Material – 17.5(a)
		<input checked="" type="checkbox"/> Contractor Ownership of, and Licence to, Intellectual Property Rights in Contract Material – 17.6(a)
Indemnity		
Item 35. Contractor's indemnity obligations	18.1	<If requirements vary to those in the Terms and Conditions, insert details here >

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Description	Clause Reference	Details
Problem Resolution		
Item 36. Selection of a mediator	19.3	<Describe the process for selecting a mediator>
Item 37. Selection of an expert for determination	19.4	<Describe the process for selecting an expert for determination>
Liability		
Item 38. Whether liability will be limited and if so, the amount to which it is limited	20.1(a) 20.2	<Specify amount or N/A>
Item 39. Whether any limitation on liability is for each single occurrence or for a series of related occurrences	20.1(c)	<If requirements vary to those in the Terms and Conditions, insert details here >
Communication		
Item 40. Deemed service of notices	22.3	<If requirements vary to those in the Terms and Conditions, insert details here >
General		
Item 41. Permissible period for non-performance	33.3(c)	<If requirements vary to those in the Terms and Conditions, insert details here >
Item 42. Law which governs the Contract	33.10	<If requirements vary to those in the Terms and Conditions, insert details here >
Disengagement		
Item 43. Disengagement Plan required	24(a)	Yes a Disengagement Plan is required
Item 44. Specified Assistance	24(b)	Yes

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Category Specific Items		
Consultancy Services		
Item 45. Brief Summary of Consultancy Services	25	<insert brief summary of the service to be provided>
Item 46. Resources required for Consultancy Services	25.1(b)	<Specify resources required including those provided by the customer>
Item 47. Documentation Requirements for Consultancy Services	25.2(b)	<Specify documentation required to be provided by the Contractor>
Managed Services		
Item 48. Brief Summary of Managed Services	26	See Part C Attached
Item 49. Service Commencement Date for Managed Services	26.1(a)	<dd/mm/yyyy>
Item 50. Service Delivery Requirements for Managed Services	26.2(a)(i)	See Part C Attached
Item 51. Reporting Intervals for Managed Services	26.2(a)(ii)	Monthly
Hardware		
Item 52. Brief Summary of Hardware Required	27	Not Applicable
Item 53. Time for Transfer of Title and Risk		Not Applicable
Item 54. Description of Implementation and Training Services for hardware		Not Applicable
Hardware Maintenance Services		
Item 55. Brief Summary of Hardware Maintenance Services	28	Not Applicable
Item 56. Commencement Date of Hardware Maintenance Services		Not Applicable
Item 57. Renewal Arrangements for Hardware Maintenance Services		Not Applicable

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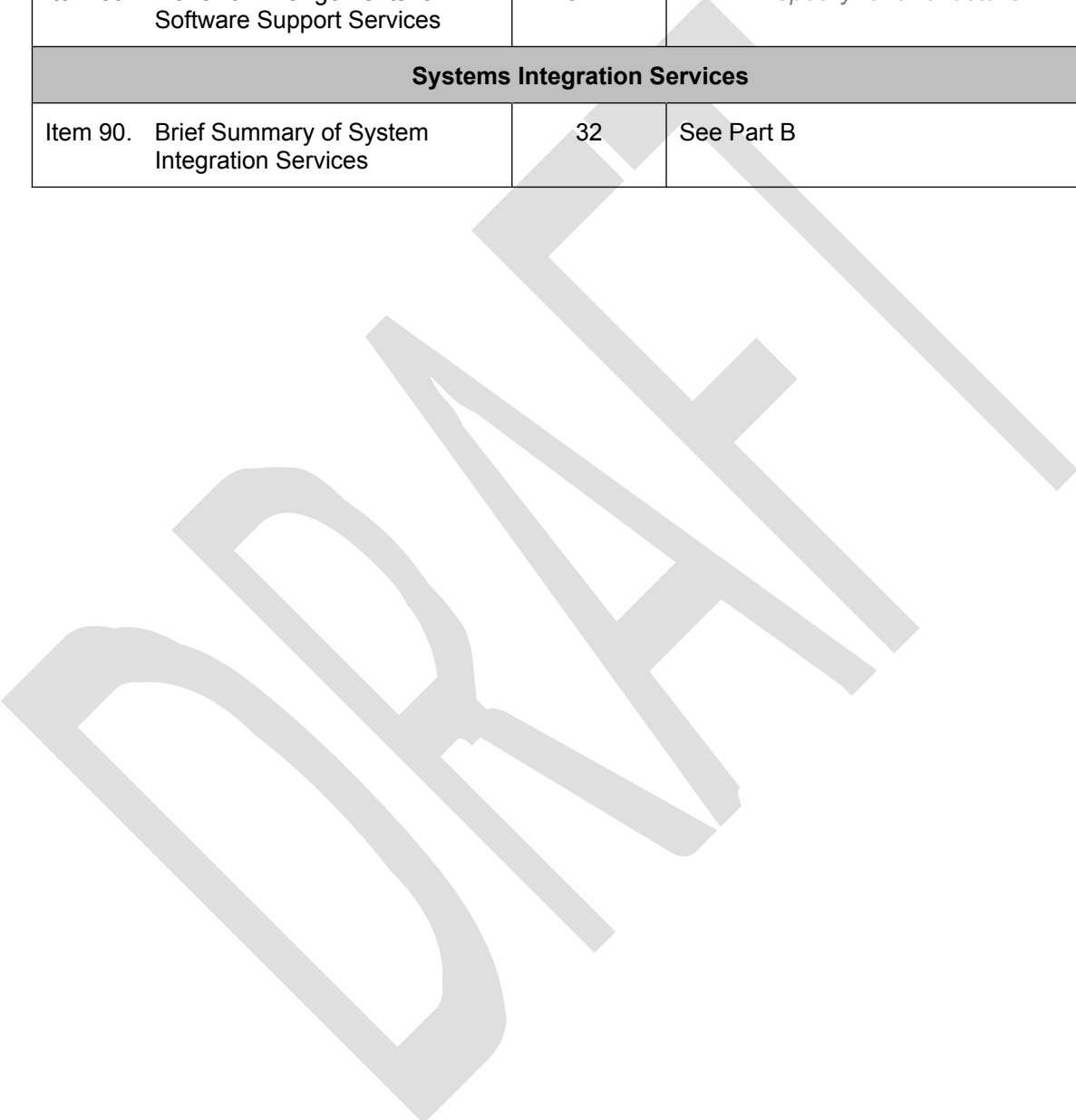
Item 58.	Whether Hardware Maintenance Service is to Commence Prior to the Expiry of a Warranty		Not Applicable
Item 59.	Whether Preventative Hardware Maintenance is Required		Not Applicable
Item 60.	Whether Remedial Hardware Maintenance is Required		Not Applicable
Software Development			
Item 61.	Brief Summary of Software Development	29	<insert brief summary of the Software to be provided>
Item 62.	Resources Required for Software Development	29.1(b)	<Specify resources required including those to be supplied by customer>
Item 63.	Date for Submission of Software Development Project Plan	29.2	<dd/mm/yyyy, or Specify a period of time>
Item 64.	Date for Approval of Software Development Project Plan	29.3(c)	<dd/mm/yyyy, or Specify a period of time>
Item 65.	Extended period for Approval of Software Development Project Plan	29.3(c)	<dd/mm/yyyy, or Specify a period of time>
Item 66.	Date for Submission of Software Development Design Specification	29.4	<dd/mm/yyyy, or Specify a period of time>
Item 67.	Date for Approval of Software Development Design Specification	29.5(b)	<dd/mm/yyyy, or Specify a period of time>
Item 68.	Extended Period for Approval of Software Development Design Specification	29.5(b)	<dd/mm/yyyy, or Specify a period of time>
Item 69.	Software Development Documentation Requirements	29.6(d) 29.9	<specify documentation required>
Item 70.	Whether Software Development Source Code is to be Placed in Escrow	(a)	<Yes, Source Code is to be Placed in Escrow or No, Source Code is not to be Placed in Escrow >
Item 71.	Whether Developed Software can be used prior to Acceptance	29.8(a)	<Yes, Developed Software can be used in a production environment prior to Acceptance or No, Developed Software can't be used in a production environment prior to Acceptance>

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Licensed Software		
Item 72. Brief Summary of Licensed Software	30	<insert brief summary of the Software to be provided>
Item 73. Special Licence Conditions of Licensed Software	(b)	<Insert special conditions or N/a>
Item 74. Number of Copies of Licensed Software	(d)	<Insert number of copies>
Item 75. Whether the Software Licence is Transferable	(e)	<Yes/no>
Item 76. Period of Software Licence	30.2	<Insert term of Licence>
Item 77. Customer's Record Keeping Requirements of Licensed Software	(a)	<Insert extent to which records will be maintained by the Customer>
Item 78. Implementation and Training Services for Licensed Software	30.4	<Insert requirements or N/A>
Item 79. Requirements for Updates and New Releases of Licensed Software	30.5(a)	<Insert terms relating to the provision of updates and new releases to be made available>
Item 80. Period During which Contractor must Maintain Superseded Version (if not 18 Months) of Licensed Software	30.5(b)	<insert time period if not 18 months>
Item 81. Designated Equipment (Processors) for the Licensed Software	30.6(a)	<insert specific processor or N/A>
Item 82. Whether the Customer requires an Archival Copy of Licensed Software	30.8	<Yes/no>
Item 83. Restrictions of Archival Use of Licensed Software	30.8	<If requirements vary to those in the Terms and Conditions, insert details here >
Item 84. Post Licence period for return or destruction of Licensed Software	30.8	< insert length of period or dd/mm/yyyy>
Item 85. Whether Escrow for Licensed Software Is Required	30.9	<Yes, Escrow is required or No, Escrow is not required>
Item 86. Name of Escrow Agent for Licensed Software if One Is Required	30.9	<Insert Escrow Agent details>

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Software Support Services		
Item 87. Brief Summary of Software Support Services required	31	See Part C
Item 88. Commencement Date for Software Support Services	31.2	<i><dd/mm/yyyy></i>
Item 89. Renewal Arrangements for Software Support Services	31.2	<i><Specify renewal details></i>
Systems Integration Services		
Item 90. Brief Summary of System Integration Services	32	See Part B



Schedule 2. Specifications & Statement of Work

[Insert particulars of relevant functional, operational, performance or other characteristic required of the Service or Product. In the case of a Systems Integration arrangement, insert details of system specifications]

To be completed prior to contract award.



Schedule 3. Charges

See Workbook: Pricing Schedule attached.



Schedule 4. Project Plan

To be agreed based on Proposal's Implementation Plan.



Schedule 5. Transition In Plan



Schedule 6. Disengagement Plan

1. Introduction and Definition

1.1 About this Schedule

This Schedule sets out the requirements for the Contractor's Disengagement Plan, as referred to in clause 24 of this Contract.

1.2 Obligations

The obligations in this Schedule 6 are in addition to the other parts of this Contract.

1.3 Definitions

In this Schedule 6:

- (a) 'Disengagement Period' means the period stated in the Disengagement Plan during which the Contractor will provide Disengagement Services;
- (b) 'Disengagement Plan' means the disengagement plan developed by the Contractor and approved by the Customer in accordance with this Schedule 6; and
- (c) 'Disengagement Services' means the services and activities required by the Disengagement Plan.

2. Disengagement Plan Requirements

2.1 Establish and maintain plan

The Contractor must establish a Disengagement Plan as required by clause 24 of the Contract. The Contractor must maintain the Disengagement Plan during the Contract Period, which must be updated at minimum annually or as directed by the Customer.

2.2 Requirements

The Contractor must ensure that the Disengagement Plan addresses all of the matters required in this Schedule 6, including, in particular, section 3 below, to enable the Contractor to complete the Disengagement Services as quickly and efficiently as possible in accordance with its obligations under this Contract.

3. Disengagement Plan Contents

3.1 Contents

The Disengagement Plan must contain a description of the activities that will be undertaken, and the procedures that will be followed by the Contractor during the provision of Disengagement Services which must include the matters described in this section 3.

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3.2 Timetable

The Disengagement Plan must include a clear timetable for completion of the Disengagement Services which must detail Milestones.

3.3 Personnel

The Disengagement Plan must provide a detailed description of the roles and responsibilities of the Personnel of the Contractor and other resources that will be used to provide the Disengagement Services.

3.4 Records and File Transfer

The Disengagement Plan must specify the Contractor's approach to the delivery of complete Customer Records and any other Customer property including Customer's Material.

3.5 Continuity

The Disengagement Plan must specify the Contractor's approach to ensuring continuity of the Services during the Disengagement Period.

3.6 Data management

The Disengagement Plan must provide a detailed description of the information systems required to migrate the Customer's Records and Customer Data.

3.7 Assistance required

The Disengagement Plan must specify any assistance required from the Customer.

3.8 Project plan

The Disengagement Plan must contain a project plan that includes:

- (a) the duration of the Disengagement Period;
- (b) timeframes and Milestones for the Disengagement Services;
- (c) the resources required with each activity specified in the Disengagement Plan;
- (d) key activities to be performed by all parties during the Disengagement Period; and
- (e) meetings to be conducted between the Contractor and the Customer.

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Schedule 7. Service Level Agreement

See Workbook: Response to Part C ITSM Requirements attached



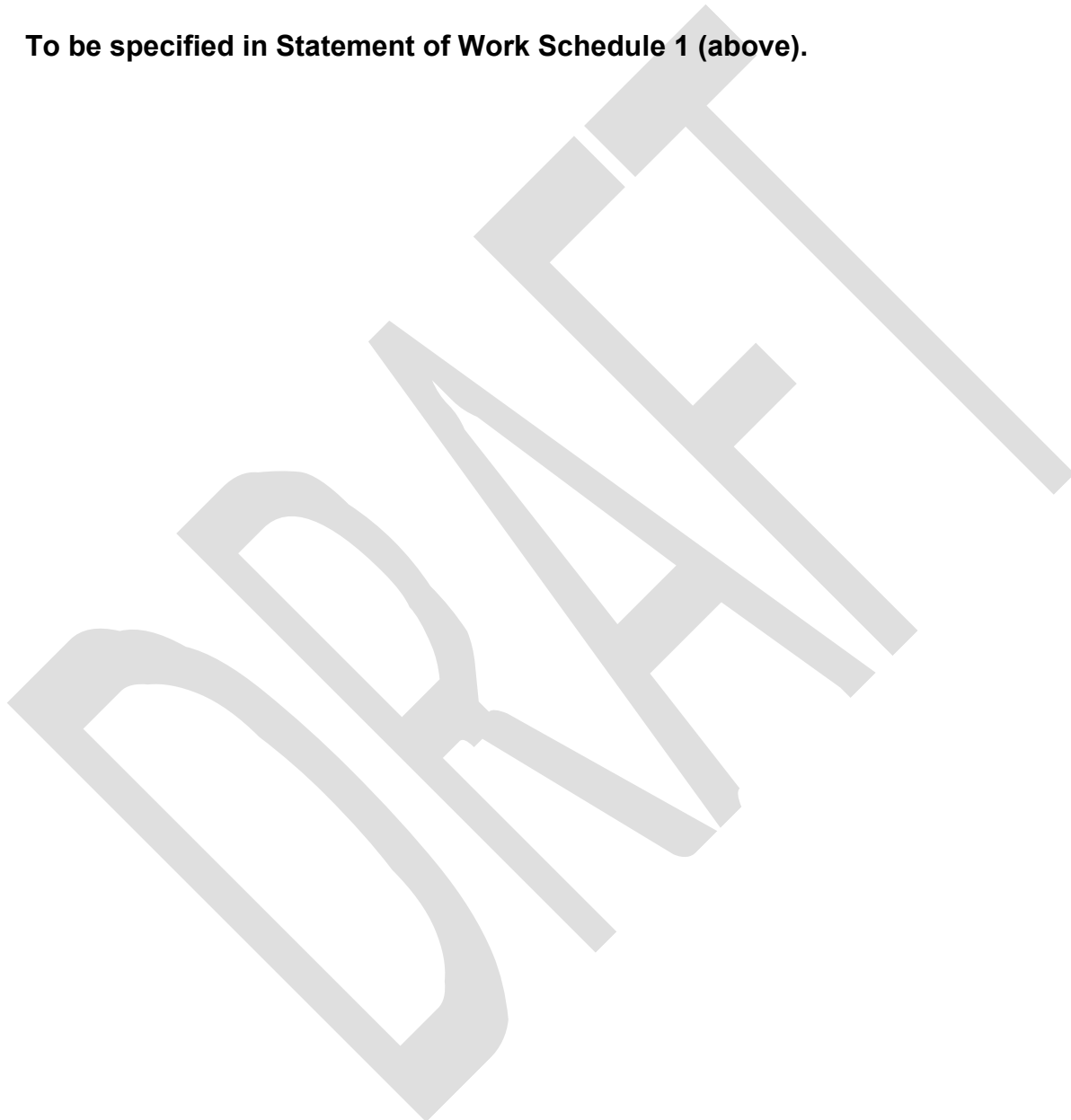
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Schedule 8. Acceptance Testing

Acceptance tests - Insert a description of the tests on Products and/or Services that need to be performed before the Customer accepts them.

- 1.
- 2.

To be specified in Statement of Work Schedule 1 (above).



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ACCEPTANCE CERTIFICATE

1. This Certificate is issued by the Customer
2. The following items provided by the Contractor have been accepted by the Customer:
 - (a)
 - (b)
 - (c)
 - (d)
3. The Customer accepts the items at Section 2 above subject to the following conditions:
 - (a)
 - (b)
 - (c)
 - (d)

CUSTOMER

Executed by and on behalf of the)
Australian Medical Council Limited)
ABN 97 131 796 980 by a duly)
authorised representative in the)
presence of:)
)
)

Signature of Witness

Signature of authorised representative

Name of Witness in full

Name of authorised representative

Date

Date

Schedule 9. Change Order

1. [If the proposed changes will vary the Specifications, the Contract Details or any other technical requirements of the Customer, the following form must be completed]
2. The Contract is changed in accordance with the terms of this Change Order and its attachments

Change order number	
Date proposed	
Name of party instigating the change	
Implementation date of change	
Details of change proposal	
Clauses affected by the proposal are as follows	
New charges payable to the Contractor or Customer affected by this change proposal	
Plan for implementing the change	
The responsibilities of the parties for implementing the change	
The new date for the acceptance testing of the system	
Effect of change on performance	

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Effect on documentation	
Effect on training	
Effect on the users of the system	
Any other matters which the parties consider are important	

CUSTOMER

Executed by and on behalf of the)
AUSTRALIAN MEDICAL COUNCIL)
LIMITED ABN: 97 131 796 980 by a)
duly authorised representative in the)
presence of:)
))
)

Signature of Witness

Signature of authorised representative

Name of Witness in full

Name of authorised representative

Date

Date

CONTRACTOR

Executed by **[Company Name] ACN**)
[ACN Number] in accordance with)
Section 127(1)-(3) of the Corporations)
Act 2001:)

Signature of Director

Signature of Director/Company Secretary

June 2023

Name of Director

Name of Director/Company Secretary

Date

Date



June 2023

Schedule 10. Agency Order Form (Not Applicable)

CUSTOMER

Executed by and on behalf of the)
AUSTRALIAN MEDICAL COUNCIL)
ABN 97 131 796 980 by a duly)
authorised representative in the)
presence of:)
)
)
)

Signature of Witness

Signature of authorised representative

Name of Witness in full

Name of authorised representative

Date

Date

CONTRACTOR

Executed by [Company Name] ACN)
[ACN Number] in accordance with)
Section 127(1)-(3) of the Corporations)
Act 2001:)

Signature of Director

Signature of Director/Company Secretary

Name of Director

Name of Director/Company Secretary

Date

Date

June 2023

Schedule 11. Deed of Confidentiality

THIS DEED OF CONFIDENTIALITY MADE ON THE DAY OF

BETWEEN

1. **[Insert Name of Beneficiary] ACN [Insert ACN]** of [Insert Address]
(**'Beneficiary'**)
2. **[Insert Name of Confidant] ACN [Insert ACN]** of [Insert Address]
(**'Confidant'**)

BACKGROUND

- A. The Confidant provides the undertakings set out below in respect of work to be performed, and information to be acquired, directly or indirectly in connection with the Contract.
- B. The Contract is the Contract between [Insert Name of Contract Date of Contract and Parties to the Contract].

TERMS AND CONDITIONS

1. Interpretation
- 1.1 Definition

'Information' means information, documents and data stored by any means and any information made available to me in the course of my dealings with the Customer and includes information relating to:

- (a) any intellectual property rights of the Customer;
- (b) to the financial position or reputation of the Customer;
- (c) the internal management and structure of the Customer;
- (d) the personnel, policies and strategies of the Customer;
- (e) the Customer's clients or suppliers;

and information of the Customer that has any actual or potential commercial value to the Customer or to the person or corporation which supplied that information.

2. Non-disclosure

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- 2.1 I will treat as secret and confidential all Information to which I have access or which is disclosed to me.
- 2.2 If the Customer grants its consent for me to disclose information, it may impose conditions on that consent. In particular, the Customer may require that I obtain the execution of a Deed in these terms by the person to whom I propose to disclose the Information.
- 2.3 My obligations under this Deed will not be taken to have been breached where I am legally required to disclose the Information.
3. Restriction on use
 - 3.1 I will use the Information only for the purpose of my dealings with the Customer (whether directly or indirectly).
 - 3.2 I will not copy or reproduce the Information without the approval of the Customer, will not allow any other person outside the Customer access to the Information and will take all necessary precautions to prevent unauthorised access to or copying of the Information in my control.
4. Survival

This Deed will survive the termination or expiry of any contract between the Customer and me providing for the performance of services or the provision of goods by me (whether directly or indirectly).
5. Powers of the Customer
 - 5.1 Immediately upon request by the Customer, I must deliver to the Customer all documents in my possession or control containing Information.
 - 5.2 If at the time of such a request I am aware that documents containing Information are beyond my possession or control, then I must provide full details of where the documents containing the Information are, and the identity of the person who has control of them.
6. Applicable law

This Deed will be governed in accordance with the law in the Australian Capital Territory.

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EXECUTED AS A DEED

BENEFICIARY

Executed by [Company Name] ACN)
[ACN Number] in accordance with)
Section 127(1)-(3) of the Corporations)
Act 2001:)

Signature of Director

Signature of Director/Company Secretary

Name of Director

Name of Director/Company Secretary

Date

Date

CONFIDANT

Executed by [Company Name] ACN)
[ACN Number] in accordance with)
Section 127(1)-(3) of the Corporations)
Act 2001:)

Signature of Director

Signature of Director/Company Secretary

Name of Director

Name of Director/Company Secretary

Date

Date

Schedule 12. Escrow Agreement (Not Applicable)



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Schedule 13. Additional Documents

[Attach all other relevant documents to this Contract here.]



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Schedule 14. Unconditional Performance Guarantee (Not applicable)



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Schedule 15. Conditional Performance Guarantee

THIS DEED OF AGREEMENT MADE ON THE DAY OF

BETWEEN

1. **Australian Medical Council Limited ABN: 97 131 796 980 of Level 3, 11 Lancaster Place ,Majura Park ACT 2609**

(‘Customer’)

2. **[Insert Name of Guarantor] ACN [Insert ACN] of [Insert Address]**

(‘Guarantor’)

3. **[Insert Name of Contractor] ACN [Insert ACN] of [Insert Address]**

(‘Contractor’)

BACKGROUND

- A. The Contractor has agreed to supply Services and/or Products to the Customer pursuant to a contract (‘Contract’).
- B. The Guarantor agrees to provide the guarantees and indemnities stated below in respect of the Contract.
- C. The Guarantor guarantees to the Customer the performance of the obligations undertaken by the Contractor under the Contract on the following terms and conditions.

TERMS AND CONDITIONS

1. If the Contractor (unless relieved from the performance of the Contract by the Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings under the Contract, the Guarantor will, if required to do so by the Customer, complete or cause to be completed the undertakings contained in the Contract.
2. If the Contractor commits any breach of its obligations, and the breach is not remedied by the Guarantor as required by this clause, and the Contract is then terminated for default, the Guarantor will indemnify the Customer against costs and expenses directly incurred by reason of such default.
3. Where the Guarantor consists of more than one legal person each of those persons agree to be bound jointly and severally by this Deed of Guarantee and

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the Customer may enforce this Deed of Guarantee against all or any of the persons who constitute the Guarantor.

4. The Guarantor will not be discharged, released or excused from this Deed of Guarantee by an arrangement made between the Contractor and Customer with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise.
5. The obligations of the Contractor will continue in force and effect until the completion of the undertakings of this Deed of Guarantee by the Guarantor:
6. The obligations and liabilities of the Guarantor under this Deed of Guarantee:
 - (a) will not exceed the obligations and liabilities of the Contractor under the Contracts; and
 - (b) \$500,000.
7. This Deed of Guarantee will be subject to and construed in accordance with the laws in force in the Australian Capital Territory.
8. Where the Contractor has failed to perform under the Contract the obligations of the guarantor will continue even though the Contractor has been dissolved or has been made subject to external administration procedures under Chapter 5 of the Corporations Law or any other law.
9. The rights and obligations under this Guarantee will continue until all obligations of the Contractor under the Contract have been performed, observed and discharged.
10. A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or facsimile) to the address last advised by one of them to the other.
 - 10.1 A notice or other communication is deemed to be received if:
 - (a) sent by post from and to an address within Australia, after 3 working days;
 - (b) sent by post from or to an address outside Australia, after 10 working days;
 - (c) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
 - (d) sent by electronic mail, only in the event that the other party acknowledges receipt by any means;

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- (e) sent by any other electronic means, only in the event that the other party acknowledges receipt by any means; or
- (f) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service.

10.2 Address of the Customer

Physical address: Level 3, 11 Lancaster Place, Majura Park ACT 2609

Postal address: PO Box 4810, Kingston, ACT 2604 Australia

Phone number: (02) 6270 9777

Fax number:

Email address: amc@amc.org.au

10.3 Address of the Guarantor

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

10.4 Address of the Contractor

Physical address:

Postal address:

Phone number:

Fax number:

Email address:

EXECUTED AS AN AGREEMENT

CUSTOMER

Executed by and on behalf of the)
Australian Medical Council Limited)
ABN 97 131 796 980 by a duly)
authorised representative in the)
presence of:)
)
)

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_____ Signature of Witness	_____ Signature of authorised representative
_____ Name of Witness in full	_____ Name of authorised representative
_____ Date	_____ Date

GUARANTOR

Executed by [Company Name] ACN)
[ACN Number] in accordance with)
Section 127(1)-(3) of the Corporations)
Act 2001:)

_____ Signature of Director	_____ Signature of Director/Company Secretary
_____ Name of Director	_____ Name of Director/Company Secretary
_____ Date	_____ Date

CONTRACTOR

Executed by [Company Name] ACN)
[ACN Number] in accordance with)
Section 127(1)-(3) of the Corporations)
Act 2001:)

_____ Signature of Director	_____ Signature of Director/Company Secretary
_____ Name of Director	_____ Name of Director/Company Secretary
_____ Date	_____ Date

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Schedule 16. Unconditional Financial Undertaking
(Not Applicable to this contract)

