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| Draft Contractfor Process and Systems Improvement ProjectBetween the **Australian Medical Council Limited (AMC)**and[**INSERT**] |

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1. Contract Details

***[Note to Tenderers: The Contract Details below will be completed, and may be further updated, based on the successful Tender.]***

|  |  |  |
| --- | --- | --- |
| **ITEM** | **DESCRIPTION** | **DETAILS** |
|  | **Contract name** | Provision of Services for the AMC’s process and systems improvement project  |
|  | **Contract number** | [INSERT] |
|  | **Date** | [INSERT] |
| 1.
 | **AMC** | NAME Australian Medical Council Limited ABN 97 131 796 980ADDRESS 4 Marcus Clarke Street, Canberra ACT  |
| 1.
 | **AMC Representative** | NAME TBA POSITION TBAADDRESS 4 Marcus Clarke Street, Canberra ACT EMAIL TBA |
|  | **Service Provider** | Name [INSERT]ABN [INSERT]Address [INSERT] |
| 1.
 | **Service Provider Representative** | NAME [INSERT]POSITION [INSERT]ADDRESS [INSERT]EMAIL [INSERT] |
|  | **Approved Subcontractors** | [INSERT] |
| 1.
 | **Commencement Date**  | [INSERT]ORThe date on which this Contract is executed by all parties, or if the parties execute on different dates, the date on which this Contract is executed by the last party. |
| 1.
 | **Initial Term** | [INSERT] |
| 1.
 | **Option Period** | This Contract can be extended by the parties by written agreement.  |

Recitals

1. The AMC requires the provision of Services to support the AMC’s process improvement project which:
2. meet the AMC’s requirements as set out in this Contract;
3. align with the AMC’s expectations for quality, timeliness, reliability, security and efficiency;
4. operate seamlessly with the AMC’s systems; and
5. include processes and deliverables which can be implemented into any future Business System used by the AMC**.**
6. The AMC has conducted a staged procurement process for the process improvement project. This Contract encompasses Stages 1 and 2 of the project. The Service Provider irrevocably offers to supply products and services for Stage 3 if required by the AMC, as further described in this Contract.
7. The Service Provider submitted a tender, in which it offered to perform the Services in accordance with the requirements of this Contract. The parties now intend to enter into a Contract for the Services detailed in this Contract, and in particular in Schedule 1 (Statement of Requirements).
8. Subject to the representations or information expressly set out in this Contract, the Service Provider has fully informed itself of all aspects of the work to be performed for the provision of the Services.
9. The AMC has agreed to engage the Service Provider to provide the Services, and the Service Provider has agreed to provide the Services, on the terms and conditions of this Contract.
10. Essentials

# Definitions and Interpretation

**Definitions**

In this Contract, unless the contrary intention is expressed, the definitions in Schedule 3 (Glossary) apply.

**Interpretation**

In this Contract, unless the contrary intention is expressed:

### a reference to this Contract is to all Parts of this Contract, including clauses 1 to 58, the Recitals to this Contract, and includes all Schedules and Attachments to this Contract as the context requires;

### a reference to a Part is to a Part in this Contract;

### the singular includes the plural and vice versa, and a gender includes all other genders;

### another grammatical form of a defined word or expression has a corresponding meaning;

### a reference to a clause, paragraph, Schedule or Attachment is to a clause or paragraph of, or Schedule or Attachment to the Contract as the context requires, and a reference to the Contract includes any Schedule or Attachment to this Contract;

### a reference to a Document, policy or instrument includes the Document, policy or instrument as novated, altered, supplemented or replaced from time to time;

### a reference to AUD, A$, $A, dollar or $ is to Australian currency;

### a reference to time is to the time in the place where the obligation is to be performed;

### a reference to a party is to a party to this Contract, as the context requires, and a reference to a party to a Document includes the party’s executors, administrators, successors and permitted assignees and substitutes;

### a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or other entity;

### 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;

### the meaning of general words is not limited by specific examples introduced by ‘including’, ‘for example’ or similar expressions;

### 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;

### headings are for ease of reference only and do not affect interpretation;

### any obligation, agreement, representation, warranty or indemnity in favour of two or more parties or persons is for the benefit of them jointly and severally; and

### 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 this Contract.

# Priority of Documents

Except as expressly specified otherwise in this Contract, in the event of any inconsistency between:

### Clauses 1 to 58 of this Contract and (if the AMC elects to proceed with Stage 3) Schedule 5 (Stage 3 Additional Terms);

### Schedule 1 (Statement of Requirements);

### Schedule 2 (Charges and Payments);

### Schedule 3 (Glossary);

### the other Parts and Schedules to this Contract in the order in which they appear;

### any attachment or annexure to a Schedule in the order in which they appear; and

### any Document referred to or incorporated by reference,

the clause or Document that is referenced earlier in this paragraph will prevail to the extent of any inconsistency with the clause or documents referenced lower in this clause.

# Term

This Contract begins on the Commencement Date and continues for the Initial Term unless:

### this Contract is terminated in accordance with clause 52; or

### this Contract is extended in accordance with this clause 3.

The Initial Term may be extended for the Option Periods, on the terms and conditions then in effect, by the AMC giving written Notice to the Service Provider. Such Notice must be provided:

### at least 90 days before the end of the then current Term; or

### within another period agreed in writing between the parties.

Any Option Period exercised in accordance with clause 3.2 takes effect from the end of the then current Term.

If the Transition Period, as determined in accordance with clause 7 (Transition Out) of Schedule 5 (Stage 3 Additional Terms), has not ended before this Contract would otherwise have ended but for this clause 3.4 (including through expiry, termination or a Notice given under clause 3), the Term will be deemed to have been extended until the end of the Transition Period.

For clarity, any perpetual licences granted under this Contract continue beyond the expiry or earlier termination of this Contract.

The Service Provider acknowledges and agrees that despite:

### the existence of an Option Period referred to in clause 3.2;

### any representations made by the AMC, expressly or implicitly; or

### the performance by the Service Provider of its obligations in the Contract,

the Service Provider is not entitled to expect that the Term will be extended or that the Service Provider will be offered any right to extend or negotiate any extension of the Term.

1. Scope of Services – General

# Objectives

## The Objectives of this Contract are as set out in Schedule 1 (Statement of Requirements).

## Subject to this Contract, the Service Provider must do all things necessary to achieve the Objectives of this Contract. However, this clause 4 is not intended to alter the plain meaning of the terms of this Contract.

## To the extent that any part of this Contract does not address a particular circumstance or is otherwise unclear or ambiguous, the terms of that part must be interpreted and construed by reference to the intention of the parties as described in this Contract and, in particular, in a manner that would result in the Milestones being met.

**Further assurances**

## In addition to and notwithstanding any other obligation under this Contract:

### the Service Provider must co-operate with the AMC in the pursuit of the Objectives; and

### each party must, as soon as practicable, consult with the other party on any matter arising which may materially affect the performance by such other party of its obligations under this Contract.

**Indigenous enterprises**

## The Service Provider acknowledges and agrees:

### the AMC has made a commitment to support the Indigenous business sector by providing Indigenous Australians with opportunities to provide goods or services to the AMC;

### to support the AMC’s commitment in clause 4.5.1, the Service Provider will use its best endeavours to identify opportunities to involve Indigenous Australians and Indigenous enterprises in the performance of the Services and will cooperate with the AMC to implement those opportunities; and

### on request by the AMC, the Service Provider must:

#### provide evidence of prioritising Indigenous Australians and Indigenous enterprises in the performance of the Services;

#### a copy of any policy it utilises that is relevant to dealing with Indigenous Australians and Indigenous enterprises in the performance of the Services (e.g. a Reconciliation Action Plan); and

#### report on the involvement of Indigenous Australians and Indigenous enterprises in the performance of the Services, in a format required by the AMC.

# Scope and Services

## The purpose of this Contract is to set out the Service Provider's obligation to perform the Services. This Contract sets out:

### the scope, requirements and performance standards for the Services;

### the Charges that apply to the Services;

### the collaboration, reporting, and governance arrangements with which the Service Provider must comply in the performance of the Services; and

### the Stage 3 Additional Terms that will apply if the AMC elects (in its absolute discretion) to procure Stage 3 Services from the Service Provider.

## The Service Provider must perform the Services:

### in accordance with this Contract;

### as specified in Schedule 1 (Statement of Requirements);

### in accordance with:

#### any change management requirements specified in Schedule 1 (Statement of Requirements);

#### the AMC’s policies, specifically the AMC’s:

##### Procurement Policy;

##### Code of Conduct;

##### Privacy Policy; and

##### any other policies supplied to the Service Provider from time to time;

#### other Documentation as required by the AMC and Notified to the Service Provider by the AMC from time to time;

#### any directions given by the AMC from time to time (provided such directions are consistent with this Contract); and

#### any timeframes (including so as to meet any Milestones) specified in this Contract or such other timeframes as reasonably Notified to the Service Provider by the AMC (or if no timeframes are specified or Notified, promptly and without delay);

### to meet or exceed the Milestones and otherwise to the satisfaction of the AMC;

### with due skill and care to the standard that would be expected of an experienced and professional supplier of similar services and to ensure that the Services are of acceptable quality and are materially free from defects;

### using Personnel (including any Subcontractors) who have the skills needed for the Services, and otherwise comply with the requirements of this Contract;

### to comply with any standards specified in Schedule 1 (Statement of Requirements) and any other industry standards or international standards represented by the Service Provider;

### to ensure that all Deliverables:

#### are complete and accurate; and

#### are prepared and supplied in strict compliance with all relevant Laws and codes, including licensing obligations and work health and safety Laws; and

### in accordance with all applicable Laws.

The Service Provider is not relieved of its obligations under this Contract because of any:

### involvement by the AMC in the provision of the Services;

### inability of the Service Provider to provide the resources (including Personnel) needed to perform the Services;

### payment of Charges to the Service Provider; or

### subcontracting of the performance of any part of the Services.

The Statement of Requirements sets out the scope of the Services that must be performed by the Service Provider on the terms of this Contract.

**Responsibility for the Services**

## The Service Provider acknowledges and agrees that the Service Provider:

### is fully responsible for the provision of the Services included in this Contract including to ensure that the requirements of this Contract are met;

### without limiting its obligations under thisContract, must immediately Notify the AMC if it becomes aware of any circumstances or requirements under this Contract that will, or are likely to, prevent the Service Provider from meeting its obligations under this Contract; and

### is responsible for (except to the extent specified in the in Schedule 1 (Statement of Requirements)) ensuring that the process maps developed by the Service Provider as part of the Stage 2 Services can be implemented by the AMC, including using any IT systems recommended by the Service Provider.

**Incidental Services**

## Without limiting the Service Provider's obligation to meet the Milestones:

### the Services, tasks and obligations set out in this Contract do not, and must not be interpreted so as to, limit the Service Provider's obligations under this Contract to the performance of only those Services, tasks and obligations;

### the Service Provider must meet its obligations in a manner that is consistent with this Contract, regardless as to whether or how the individual Services, tasks and obligations are described;

### the Service Provider must provide all resources and perform all services, functions or responsibilities that an expert in process improvement (after considering vendor and customer views) would reasonably consider to be necessary or incidental to meeting the Milestones and achieving the proper performance or provision of the Services; and

### except as expressly stated in Schedule 2 (Charges and Payments), the Charges reflect all services, functions and responsibilities the Service Provider must provide and meet in order to comply with the Contract.

# Stages

## This Contract may be performed in Stages as determined by the AMC in accordance with clauses 6.2 to 6.5.

**Stages 1 and 2**

## This Contract incorporates Stage 1 and Stage 2, as further described in Schedule 1 (Statement of Requirements). At any time during the Term, but not less than 30 Business Days before the expiry of the Stage 1, the AMC may give the Service Provider a notice which sets out that the AMC does not wish to engage the Service Provider to provide the Stage 2 Services after the conclusion of the Stage 1 Services.

## If the AMC issues a notice under clause 6.2, the Contract will end on conclusion of Stage 1 (subject to any provisions which survive the termination of this Contract).

## For clarity, a notice under clause 6.2 is not a notice of termination for convenience (under clause 52 of the Contract or otherwise) and will not limit the Service Provider’s obligations applicable on termination or expiry of the Contract.

## No compensation or other amount is payable by the AMC to the Service Provider in relation to a decision by the AMC not to proceed with any future Stages, or the issuing of a notice under clause 6.2.

**Stage 3**

## This Contract includes provisions that are relevant to the Stage 3 Services. However, for clarity, the Stage 3 Services are not in-scope for this Contract as at the Commencement Date.

## The AMC reserves its right to engage the Contractor to perform the Stage 3 Services or conduct a further procurement process for the provision of Stage 3 Services, and acknowledges that the AMC’s decision may take into account:

### the AMC’s assessment of the Services Provider’s performance of Stage the 1 Services, and Stage 2 Services if applicable;

### the AMC’s confirmation that the Deliverables provided as part of Stage 1, and Stage 2 Services if applicable, have met the requirements and achieved the objectives of those Stages consistent with this Contract; and

### whether the AMC decides to conduct a further procurement process in respect of Stage 3.

## The Service Provider irrevocably offers to provide the Stage 3 Services, if required by the AMC, in accordance with any applicable terms set out in this Contract, including:

### any not-to-exceed price, unit rates or other applicable charges set out into Schedule 2 (Charges and Payments); and

### the terms and conditions set out in Schedule 5 (Stage 3 Additional Terms).

## If the AMC decides to engage the Service Provider to provide the Stage 3 Services, then the AMC and the Service Provider will cooperate in good faith to agree a variation in accordance with clause 29 to incorporate the Stage 3 Services into this Contract.

# Additional Services

At any time, the AMC may request the Service Provider to provide a quote for the provision of Additional Services described in the request.

The Service Provider must, within 10 Business Days of receiving a request pursuant to clause 7.1 (or within the longer period (if any) specified by the AMC in the request), conduct a survey of the task and provide to the AMC a quote in the form reasonably required by the AMC that includes:

### a price for the provision of the requested Additional Services calculated by reference to Schedule 2 (Charges and Payments);

### if required by the AMC, a breakdown of the quoted price, showing the basis on which the quoted price has been calculated (including the number of days total level of effort by the Service Provider for the Additional Services and the level of Service Provider Personnel required); and

### details of the Additional Services which would be performed and the impact of the performance of those Additional Services on this Contract and the Services being performed pursuant to it.

Subject to clause 7.4, the AMC must within 10 Business Days of receiving a quote pursuant to clause 7.1 (or within the longer period (if any) specified by the Service Provider in the quote), either:

### Approve the quote and Notify the Service Provider of the Approval of the quote; or

### reject the quote.

If the AMC gives no Notice under clause 7.3 within the period determined in accordance with that clause, the AMC will be taken to have rejected the quote.

If the AMC Notifies the Service Provider, in accordance with clause 7.3, that a quote given in accordance with clause 7.2 has been Approved:

### the Additional Services will be deemed to be included in the Services;

### the Service Provider must provide the Additional Services in accordance with this Contract; and

### upon completion of the Additional Services, the Service Provider may make a claim in accordance with the payment provisions of this Contract and the Approved Quote for an amount not exceeding the Approved Quote.

The Service Provider acknowledges that:

### the AMC has absolute discretion to decide whether, and if so when, to make a request for Additional Services;

### the Service Provider must not charge the AMC as Additional Services for anything already included in the scope of the Services;

### the AMC has no obligation to reimburse the Service Provider for its costs in surveying and quoting for Additional Services, except to the extent (if any) that the AMC Approves the reimbursement in advance in writing; and

### unless otherwise stated in Schedule 1 (Statement of Requirements) the AMC may obtain services the same as or similar to the Additional Services from a person other than the Service Provider.

The Service Provider:

### warrants that the AMC will not be charged any amount for Service Provider or Subcontractor Personnel providing any Additional Services if the AMC is already being charged for those Personnel on a full time equivalent basis; and

### must ensure that:

#### it first seeks to use the spare capacity of any Personnel that the AMC is already paying for to satisfy any request by the AMC for the performance of Additional Services; and

#### any response to a request for Additional Services includes a price that reflects the use of those Personnel at no additional charge.

# Acceptance General

Unless specified otherwise in this clause or Schedule 1 (Statement of Requirements), the Deliverables and Services under this Contract are subject to Acceptance by the AMC.

The Deliverables will be considered for Acceptance in accordance with the requirements and process set out in this clause 8.

Deliverables that are Documentation, will be considered for Acceptance on the basis of their compliance with the requirements for those Deliverables specified in Schedule 1 (Statement of Requirements).

The Services and Deliverables must comply with any Acceptance Criteria set out in Schedule 1 (Statement of Requirements).

The issuing of a Certificate of Acceptance in accordance with clause 8.15.1 is not a waiver of rights and the AMC may, in issuing a Certificate of Acceptance, impose such conditions and qualifications as it reasonably requires.

Despite anything to the contrary in this Contract, the Approval or Acceptance of any Deliverable or any course of action by the AMC does not relieve the Service Provider from its obligations under this Contract and does not limit or waive any of the AMC’s remedies or rights under this Contract or at Law. Acceptance or Approval of any Deliverable or any course of action by the AMC must not be construed as any more than an indication that the Deliverable or course of action appears to the AMC to be capable of being used as a basis for further work.

**Acceptance Criteria for Services or Deliverables**

The parties agree that:

### any Acceptance Criteria which relates to the provision, performance or delivery of a Service or Deliverable must be consistent with the requirements of this Contract applicable to that Service or Deliverable; and

### if a Service or Deliverable is specified as being subject to Acceptance, but no Acceptance Criteria is specified in this Contract or the Acceptance Test Plan for that Service or Deliverable, the Service Provider must develop and document suitable Acceptance Criteria (that are consistent with the requirements in this Contract for that Service or Deliverable) for review and Approval by the AMC.

**Acceptance Testing**

Clauses 8.9 to 8.17 apply if any Deliverables are subject to Acceptance Testing.

The Service Provider must carry out Acceptance Testing as specified in this Contract, the Approved Acceptance Test Plan or as the AMC may reasonably require, to ensure that the Deliverables comply with the applicable criteria set out in the Statement of Requirements and the Acceptance Criteria in the Acceptance Test Plan.

Unless specified to the contrary in clause 8.11, the costs of Acceptance Testing must be borne by the Service Provider.

In accordance with clause 8.9, the Service Provider agrees that the AMC, or any of its contractors, may also carry out the Acceptance Testing or any part of the Acceptance Testing. The direct costs of the AMC undertaking the Acceptance Testing will be borne by the AMC unless the testing shows that the Deliverable failed to comply with the Acceptance Criteria, in which case the cost of the testing must be borne by the Service Provider.

The Service Provider must comply with any reasonable request by the AMC for further testing in relation to the Deliverables.

The Service Provider must allow the AMC or its authorised representative to observe the performance of the Acceptance Testing or other tests by the Service Provider.

The AMC must conduct the Acceptance Testing within 15 Business Days of receipt of the relevant Deliverable, or a different period agreed by the parties (including in the Acceptance Test Plan for the Deliverable).

**Acceptance Test Outcomes**

If the AMC finds that a Deliverable:

### has satisfied the Acceptance Criteria, the AMC must within 15 Business Days (or other such period agreed in writing) issue a Certificate of Acceptance in respect of that Acceptance Criteria in accordance with this Contract (and the Deliverables will then be deemed to have been Accepted by the AMC); or

### has not satisfied the Acceptance Criteria, the Service Provider must (at no cost to the AMC):

#### do all things necessary to rectify any problems to ensure that the Acceptance Criteria are met; and

#### repeat the Acceptance Testing as soon as practicable or within the time period agreed by the parties after Notification from the Service Provider that it believes it meets the Acceptance Criteria, and this clause 8.15 will apply to the repeated Acceptance Testing.

If further Acceptance Testing is required under clause 8.15.2 and the Service Provider does not rectify any problems to ensure that Acceptance Criteria are met within:

### 15 Business Days after the commencement of Acceptance Testing for that Deliverable; or

### such longer period as is notified by the AMC,

the AMC may treat the non-compliance as a failure by the Service Provider to comply with the relevant obligation under this Contract.

The Service Provider must bear all costs associated with replacing or correcting rejected Deliverables and of complying with the directions of the AMC.

**Conditional Acceptance**

The AMC may Accept Deliverables despite the existence of minor omissions or defects or other non-conformances in the Deliverables. The AMC must endorse such omissions, defects or non-conforming work by Notice to the Service Provider.

The Service Provider must, within 10 Business Days after signature of the Acceptance Certificate by the AMC, or within such time as permitted by the AMC, replace or correct the items identified in the Notice as omissions, defects or non-conforming work so as to meet the Acceptance Criteria.

If the AMC agrees that Acceptance may be achieved despite any minor omissions or defects or other non-compliance and the AMC does not wish to exercise its rights to Accept the Deliverables and require the Service Provider to make good non-conforming work in accordance with clause 8.15.2, the AMC may, by written agreement with the Service Provider:

### determine revised Charges reflecting the amount of the reduction in value for money attributable to the non-compliance with this Contract (**Reduction Amount**); and

### after determining revised Charges that reflect the reduced value for money of the non-complying Services or Deliverables, recover the Reduction Amount as a debt due to the AMC.

For clarity, the 15 Business Day time periods referred to in clauses 8.14 and 8.15 (as applicable) are paused while the parties discuss and document the approach under this clause 8.20 (after which, if the AMC does not Accept the Deliverable, the relevant period will continue to run).

# Procurement Assistance

At any time during the Term, the Service Provider must, following receipt of a request from and, at no additional cost to the AMC, provide to the AMC the following Material and information requested by the AMC including:

### accurate, complete and up-to-date information (including Deliverables) relating to the Services;

### AMC Supplied Items and New Material;

### answers to questions in relation to the Services;

### information relating to the Service Provider’s arrangements with Approved Subcontractors; and

### any other information that the AMC may reasonably require,

(**Procurement Assistance**), for the preparation by the AMC of any approach to market Documentation proposed to be undertaken by the AMC and to enable any third party to undertake due diligence activities and prepare responses in response to an approach to market undertaken by the AMC.

The AMC must acknowledge receipt of each request for Procurement Assistance within one Business Day following receipt of that request.

The AMC must provide the Procurement Assistance within 5 Business Days following receipt of a request, or such longer period specified in the request.

If the Service Provider reasonably considers that it is unable to provide the Procurement Assistance requested by the AMC within the timeframe stipulated in clause 9.3, the Service Provider must Notify the AMC that it requires additional time to provide the Procurement Assistance. If the AMC does not agree in writing to additional time for the provision of the Procurement Assistance (acting reasonably), the Service Provider must provide the Procurement Assistance in accordance with the timeframe specified in clause9.3.

If the AMC agrees to additional time for the provision of Procurement Assistance, the Service Provider must provide:

### the Procurement Assistance within the agreed alternative timeframe; and

### weekly updates on the status of the Procurement Assistance to the AMC, unless another period is agreed by the AMC.

## The Service Provider acknowledges and agrees that the integrity and transparency of any approach to market must be maintained.

## The Service Provider must ensure that Service Provider Personnel providing Procurement Assistance comply with all probity requirements specified by the AMC.

# General warranties

The Service Provider represents and warrants that:

### it has, and the Service Provider Personnel have, and they will both continue to have and to use, the skills, qualifications and experience to provide the Services in a skilful, diligent, responsive, professional, efficient and controlled manner, with a high degree of quality and to a standard that complies with this Contract and meets the AMC’s requirements in full;

### it will provide and use the necessary resources to provide the Services;

### it has and will be deemed to have done everything possible to inform itself completely as to:

#### the AMC’s requirements for Services under this Contract;

#### the Law and the conditions, risks, contingencies and all other factors which may affect the timing, scope, cost or effectiveness of performing this Contract; and

#### all things necessary for delivery and management of this Contract and the performance of the Service Provider’s obligations under this Contract;

### it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations;

### it does not rely on any representation, warranty, condition or other conduct, information, statement or document whether forming part of this Contract or not, which may have been made by the AMC or any person purporting to act on behalf of the AMC in entering into this Contract, other than an express warranty contained in this Contract;

### in providing the Services, it will at all times comply with this Contract;

### the Services will be complete and accurate;

### it conducts its business in a manner that is consistent with all applicable modern slavery laws, statutes, regulations and codes from time to time in force including but not limited to the *Modern Slavery Act 2018* (Cth);

### at all times during the Term it will meet, and seek to exceed any Milestones applicable to this Contract; and

### it has the right to vest all Intellectual Property Rights and grant all licences granted in accordance with this Contract.

The Service Provider represents and warrants that:

### it has the right to enter into this Contract;

### it has:

#### full corporate power and authority; and

#### all rights, title, licences, interests and property necessary,

#### to lawfully enter into, perform and observe its obligations under this Contract;

### the execution, delivery and performance of this Contract has been duly and validly authorised by all necessary corporate action; and

### the Service Provider’s signing, delivery and performance of this Contract does not constitute:

#### a violation of any judgment, order or decree;

#### a material default under any contract which relates in any way to the provision of the Services, and by which it or any of its assets are bound; or

#### an event that would, with Notice or lapse of time, or both, constitute such a default.

The Service Provider represents and warrants that:

### it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth);

### it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid the judgment amount;

### the person who signs this Contract for and on behalf of the Service Provider has the requisite authority to do so, and if that person is acting under a power of attorney that the power of attorney is in force and in existence and has not been revoked; and

### it is not, and its Personnel are not, an Inappropriate Person.

The Service Provider warrants that it will promptly Notify and fully disclose to the AMC any event or occurrence actual or threatened during the Term of this Contract that would materially affect the Service Provider’s ability to perform any of its obligations under this Contract, including but not limited to any event or occurrence referred to in clause 10.3.

**Effect of warranties**

Nothing in this clause 10:

### restricts the effect of any conditions or warranties which may be implied by the *Competition and Consumer Act 2010* (Cth), any sale of goods or services Laws, or fair trading Laws; or

### limits the AMC’s right to take action on the basis of the common law that would be applied by the High Court of Australia in respect of a breach of Contract, tort or any other common law or statutory cause of action.

The Service Provider acknowledges that the AMC is entering into this Contract in reliance on the warranties given by the Service Provider in this clause 10.

**Third party warranties**

Where the Service Provider supplies Services that have been procured from a third party, the Service Provider assigns to the AMC, 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 Service Provider of the obligation to comply with warranties provided directly by the Service Provider under this Contract.

# Not Used

# Not Used

1. Scope of Services – Delivery

# AMC Facilities and Assistance

**Access to the AMC’s Sites, systems, equipment and facilities**

The AMC will provide access to its Sites, Personnel, systems, equipment and facilities as set out in Schedule 1 (Statement of Requirements).

The Service Provider must, if using or accessing the AMC's Sites, Personnel and facilities, comply with all reasonable directions and procedures, including documented procedures relating to work health and safety and security, in effect at those or in relation to those Sites, systems, equipment or facilities:

### which the Service Provider is (or ought to be) aware of; or

### as Notified to the Service Provider in advance.

In addition to the requirements of clause 13.2, the Service Provider agrees that when accessing or using the AMC’s Sites, Personnel systems, equipment and facilities, it will comply with all applicable Laws, regulations and procedures relating to work health and safety.

Access to and use of the AMC's Sites, Personnel, systems, equipment and facilities may be temporarily denied or suspended by the AMC for such period as the AMC considers appropriate, at its sole discretion.

**General**

Without limiting clause 13.2, the Service Provider must comply with any terms or conditions set out or referred to in this Contract, or Notified by the AMC, in relation to any provision of assistance by the AMC.

# Documentation

## The Service Provider must provide the AMC with up-to-date Documentation in the manner specified in this Contract, including as set out in Schedule 1 (Statement of Requirements), or as otherwise required to be able to fully benefit from the Services.

The Service Provider must provide the Documentation:

### in accordance with this Contract;

### upon supply of the relevant Services to the AMC;

### at no additional cost to the AMC; and

### in an electronic form that is readable by generally available software products, unless otherwise directed by the AMC.

The Documentation must at the time of delivery:

### be of a professional standard in terms of its presentation, accuracy and scope;

### adequately explain key terms and symbols; and

### be in English.

If any Documentation is revised or replaced for any reason during the Term, or needs to be revised or replaced to update it or correct inaccuracies, the Service Provider must provide the AMC with access to revisions or replacements which comply with clauses 14.1 to 14.3 at no additional cost to the AMC.

# AMC Supplied Items

The AMC must provide the Service Provider, or ensure that the Service Provider is provided, with the AMC Supplied Items, as specified in Schedule 1 (Statement of Requirements) or in an Accepted Deliverable,for use by the Service Provider in the performance of the Services.

Nothing in this Contract affects the ownership of the AMC Supplied Items. If no longer required for the purposes of this Contract, the AMC Supplied Items must be returned to the AMC as soon as practicable unless other arrangements are agreed in writing by the parties.

The Service Provider must:

### ensure that all the AMC Supplied Items are used strictly in accordance with any conditions or restrictions which are set out in Schedule 1 (Statement of Requirements), set out in an Accepted Deliverable, or which are otherwise Notified or directed by the AMC from time to time (including to ensure that the Service Provider complies with applicable third party licensing restrictions);

### not use or allow others to use the AMC Supplied Item other than for the purposes of this Contract without the prior written Approval of the AMC;

### not part with possession of any AMC Supplied Items unless the AMC has provided its written consent, nor create or allow the creation of any lien, charge or mortgage over any of the AMC Supplied Item; and

### not modify or disclose the AMC Supplied Items without the prior written Approval of the AMC, unless expressly required by this Contract.

The Service Provider acknowledges and agrees that the AMC gives no warranty or representation about the suitability or fitness for purpose of the AMC Supplied Items or any particular use or application of them.

# Standards and Codes

The Service Provider must, in supplying the Services and the Deliverables, comply with:

### any standards or policies in Schedule 1 (Statement of Requirements) or an Approved or Accepted Deliverable;

### if there are no standards or policies specified under clause 16.1.1, any applicable Australian standards that are consistent with the requirements or this Contract; or

### if there are no applicable Australian standards or policies, any applicable New Zealand standard or policy; or

### if there are no applicable New Zealand standards or policies, international standards or policies that are consistent with the requirements of this Contract; and

### any industry codes or best practice methodologies,

and must, if requested by the AMC provide evidence of compliance with the applicable standards.

The Service Provider must perform its obligations under this Contract in such a way that the AMC is able to participate in any necessary inspections of work in progressing and testing of the Services, and is able to maintain full use of the Services for the purposes for which they are delivered, without being in breach of any occupational and safety Law.

# Language and measurement

All information delivered as part of the provision of the Services under this Contract, including Documentation must be written in English. If any information or Documentation is a translation into the English language, the translation must be accurate and free from ambiguity.

Measurements of physical quantity must be in Australian legal units as prescribed under the *National Measurement Act 1960* (Cth), or if Services or Deliverables are imported, units of measurement as agreed by the AMC.

1. Relationships and Contract Management

# General

The parties must, at all times:

### act in good faith in performing their obligations and exercising their rights under this Contract;

### diligently perform their respective obligations under this Contract; and

### without limiting any other obligation in clause 23 (Cooperation with Other Third Parties), work together in a collaborative manner with each other and with other organisations involved with the delivery of the Services.

# Governance

The Service Provider must comply with the governance requirements in Schedule 1 (Statement of Requirements) and any Accepted Deliverable.

The Service Provider must ensure that the Service Provider Representative (or another person agreed in writing by the AMC) is reasonably available to attend meetings and answer any questions relating to the provision of the Services raised by the AMC.

# Reporting

The Service Provider must provide the AMC with reports in accordance with the reporting requirements specified in Schedule 1 (Statement of Requirements).

# Directions

The Service Provider must comply with any direction of the AMC provided that it is not inconsistent with this Contract, including if the AMC reasonably considers that the Service Provider:

### will not be able to meet an obligation under this Contract; or

### has failed to meet an obligation under this Contract,

including one which:

### sets out the actions the Service Provider must take to meet the obligation;

### clarifies the Service Provider’s obligations to co-operate with any other person; or

### clarifies any governance or reporting arrangements which the AMC reasonably considers necessary to facilitate the Service Provider providing the Services and meeting the requirements of this Contract.

# Limitation of Relationship

The Service Provider must not represent itself, and must ensure that its Personnel and Subcontractors do not represent themselves, as being an officer, employee, partner or agent of the AMC, or as otherwise able to bind or represent the AMC.

This Contract does not create any relationship of employment, agency or partnership between the parties.

# Cooperation with Other Third Parties

**General**

The Service Provider must cooperate with:

### Other Service Providers identified in this Contract or otherwise nominated by the AMC from time to time; and

### other Third Parties who may use the Services, the Sites from which the Services are provided or infrastructure used to provide the Services,

(together the **Other Third Parties**). Without limiting this obligation, the Service Provider must comply with the specific cooperation obligations set out in the Contract and Schedule 1 (Statement of Requirements).

The Service Provider must respond to requests for information, assistance or support from the Other Third Parties, as requested by the AMC, on the terms of this Contract.

If this Contract permits the AMC to perform or retain a third party to perform any services that form part of or are related to the Services, the Service Provider must cooperate with the AMC or the third party to ensure that all services (including the Services) are able to be carried out in a co-ordinated, effective and timely manner, including by:

### providing access to all necessary Equipment, Products, Documentation, Service Provider Personnel, accommodation and facilities, subject to the Service Provider's reasonable intellectual property, confidentiality and security requirements and procedures as specified in this Contract;

### providing any information which a person with reasonable technical and commercial skills and expertise would find reasonably necessary for the AMC or the third party to perform the relevant services;

### providing any assistance to the AMC or the third party as required to:

#### connect or interface any Equipment or Product; or

#### make any Equipment, Product or the output of any Services compatible with Equipment, Products or the Services; and

### agreeing on procedures with the AMC and other third parties for the division of responsibilities in relation to services and functions that may overlap between the Service Provider and those other third parties.

# Service Provider and its Personnel Obligations

**Overview**

The Service Provider must utilise such Personnel as are necessary to enable it to fulfil its obligations under this Contract. The Service Provider must actively manage the performance of Service Provider Personnel at all times.

**Service Provider obligations**

The Service Provider must:

### provide, or procure the provision of, such information as can be Lawfully provided and which is reasonably requested by the AMC concerning the Service Provider Personnel it is using or proposes to use in performing its obligations under this Contract;

### ensure Service Provider Personnel are aware of all requirements under this Contract that relate to their duties in respect of the provision of Services, and take all reasonable action to ensure that Service Provider Personnel strictly comply with those requirements;

### if the AMC requires, ensure that each person engaged in the provision of the Services executes a deed of confidentiality substantially in the form in Schedule 4 (Deed of Confidentiality) or another form agreed by the AMC (including with respect to not accessing or otherwise safeguarding Personal Information as applicable), and provide those executed deeds to the AMC in accordance with any requirements that the AMC notifies;

### perform on-going checks of the Service Provider Personnel during the period of their employment or engagement to ensure their ongoing suitability to provide the Services;

### report unauthorised access to AMC Data by Service Provider Personnel and third parties;

### Notify the AMC of any incident that may affect or has affected the Services or any Deliverables to enable the AMC to assess and manage the associated impact;

### ensure Service Provider Personnel do not do anything which would:

#### breach the Service Provider’s obligations under this Contract; or

#### breach the Law, if done by the Service Provider or Service Provider AMC Personnel; and

### ensure Service Provider Personnel do not embarrass the AMC or otherwise bring the AMC into disrepute by engaging in any act or omission which is reasonably likely to diminish trust in the AMC or the proper performance of its duties, regardless of whether or not such act or omission is related to the Service Provider's obligations under this Contract.

**Personnel obligations**

The Service Provider must ensure that its Personnel involved in performing the Services:

### have the requisite skills, qualifications and experience for the tasks they are given;

### behave with integrity, in an ethical manner and do not breach the terms and conditions of this Contract including, without limitation, those relating to confidentiality, privacy, security and safety;

### comply with the AMC’s directions in accordance with clause 21; and

### when on the AMC’s Sites or when accessing the AMC’s facilities and information, comply as necessary with the reasonable requirements and directions of the AMC with regard to conduct, behaviour, safety and security (including submitting to security checks as required and complying with any obligation imposed on the AMC by Law).

### **Key Personnel**

For clarity, the provisions that apply to the Service Provider Personnel apply to all Key Personnel.

If a Key Person is specified in Schedule 1 (Statement of Requirements) as being responsible for the performance of key roles or tasks under this Contract, the Service Provider must:

### provide those individuals to perform those roles or tasks;

### ensure the Key Person that it uses for the role or tasks has the necessary education, training, qualifications and skills to fulfil that role or those tasks; and

### ensure the Key Person complies with the obligations of this Contract.

## Subject to clauses 24.16 and 24.17 the Service Provider must not remove any Key Personnel unless and until agreed by the AMC in writing, except when the removal arises as a result of the Key Personnel’s voluntary resignation, sickness or injury, or involuntary termination of employment for cause.

If a person specified as a Key Person is unavailable at any time, the Service Provider must promptly advise the AMC and propose a substitute. The substitute provided must also have the necessary education, training, qualifications and skills to fulfil those tasks.

Any substitute Key Person must be Approved by the AMC. The AMC may not unreasonably withhold its Approval of a substitute but it may give its Approval subject to such conditions as it reasonably considers necessary to protect its interests under this Contract.

The unavailability of a Key Person during the substitution process will not limit the Service Provider’s obligations to provide the Services under this Contract.

**Personnel payments**

The Service Provider is responsible for all wages, salaries and other payments to Service Provider Personnel and must fully comply with all relevant Laws and other AMC requirements in relation to Service Provider Personnel including labour and industrial relations Laws, awards and agreements, and those relating to working conditions, salary, wages, the payment of any relevant tax, superannuation, ‘pay as you go’ or other income tax remissions and any other amounts, remissions, or allowances. Upon request, the Service Provider must demonstrate that it has complied with these obligations.

The Service Provider must undertake all necessary recruitment, training, security clearance preparation and other functions as necessary, to ensure its Personnel have the requisite skills, experience and qualifications for the Service Provider to meet the requirements of this Contract.

**Personnel Skills**

The AMC may, at its discretion and at any time, give a Notice in writing, including reasons, directing the Service Provider to remove any Service Provider Personnel from work in respect of the Services if the Service Provider Personnel do not in the AMC’s reasonable opinion satisfy the requirements of this Contract. The Service Provider must arrange for replacement of Service Provider Personnel at the earliest opportunity with Service Provider Personnel of appropriate skills and experience.

The AMC is not obliged to pay Charges for any Service Provider Personnel who:

### the AMC has requested be removed after the date in the billing period in which the request was made; or

### do not have the skill level specified for that person in this Contract, for any period under the Contract.

A requirement to replace any of the Service Provider’s Personnel during the Term (whether at the request of the AMC or not) does not constitute an act or event that is beyond the reasonable control of the Service Provider in meeting the requirements of this Contract.

**Right to replace Personnel**

The AMC may, at any time and in its discretion, give the Service Provider a Notice in writing directing the Service Provider to remove any Service Provider Personnel (including Key Personnel) from work in respect of the Services.

If the AMC gives the Service Provider a Notice under clause 24.16, the Service Provider must, within the time specified in the notice:

### remove the Personnel from work in respect of the Services; and

### nominate, at the earliest opportunity, a suitable replacement for the AMC’s consideration if the Personnel removed were Key Personnel.

If the AMC is satisfied that a person nominated by the Service Provider under clause 24.17.2 is a suitable replacement for the relevant Key Personnel, the AMC must Notify the Service Provider that the nomination has been Approved.

If the AMC is not satisfied that a person nominated by the Service Provider under clause 24.17.2 is a suitable replacement for the relevant Key Personnel, the AMC must Notify the Service Provider in writing, which need not include any reasons, that the nomination has not been Approved.

If the Service Provider receives a notice under clause 24.19, the Service Provider must, at the AMC’s request, nominate a further replacement person for the AMC’s consideration. The provisions of clause 24.18 or 24.19 will apply (as applicable) with respect to that further nomination.

Any requirement to remove or replace any Personnel under this clause, and the Service Provider’s inability to find a suitable replacement person, will not be taken to be an event beyond the reasonable control of the Service Provider for the purposes of any performance relief.

If the Service Provider is unable to provide acceptable replacement Key Personnel, the AMC may terminate this Contract in accordance with the provisions of clause 52.

# Subcontractors

The Service Provider must:

### not subcontract any aspect of the performance of this Contract without the prior written Approval of the AMC, which will not be unreasonably withheld;

### not subcontract on terms that would permit the Subcontractor to do or omit to do something that would, if done or omitted to be done by the Service Provider, constitute a breach of this Contract;

### not subcontract with an entity that has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid any judgment amount;

### not subcontract with an entity that is, or which has one or more employees that are, or which is a member of an entity that is an Inappropriate Person;

### Notify the AMC of any material change to any Subcontractor or any Subcontract (including the novation of any Subcontract or the assignment of any rights under a Subcontract to a different entity);

### not subcontract on terms that would permit the Subcontractor to do or omit to do something that would, if done or omitted to be done by the Service Provider, constitute a breach of this Contract;

### comply with its obligations in respect of Subcontractors set out in this clause 25;

### ensure that any Subcontractor Approved under this Contract complies with the terms of this Contract that are applicable to the subcontracted services, including:

#### clause 26 (Conflict of Interest);

#### clause 41 (Confidentiality);

#### clause 42 (Privacy);

#### clause 44 (Security);

#### clause 56 in (Audit and Access); and

#### clause 7 (Transition Out) of Schedule 5 (Stage 3 Additional Terms).

### provide any information as requested by the AMC in relation to its Subcontractors or any subcontracted Services (**Subcontract Information**) as and when required by the AMC, including the names of Subcontractors engaged to provide products or services under a contract;

### require Subcontractors engaged to provide products or services under a subcontract to agree to the public disclosure of any Subcontract Information; and

### inform Subcontractors engaged to provide products or services under a subcontract that the Subcontractor’s participation in fulfilling a subcontract may be publicly disclosed.

The AMC may Notify the Service Provider at any time that a Subcontractor is no longer Approved and the Service Provider must cease using that Subcontractor from the date specified by the AMC in the Notice.

For clarity, where any part of the Services is directly or indirectly provided to the AMC by a Subcontractor:

### the Service Provider is and remains fully responsible in accordance with this Contract for providing those Services, regardless of the legal relationship (if any) between the AMC and the Subcontractor;

### any Approval of a Subcontractor by the AMC does not in any way relieve the Service Provider of any of its obligations or responsibilities under this Contract;

### the rights and remedies of the AMC under this Contract against the Service Provider for any default in the Service Provider's obligations under this Contract are not affected or in any way diminished by any such legal relationship between the AMC and the Subcontractor; and

### the Service Provider will manage the delivery of Services by the Subcontractor as if it were the Service Provider. In particular, the Service Provider will maintain full responsibility for managing procurement, billing, fault management, Service Requests, Intellectual Property Rights issues, privacy and confidentiality issues, Milestone attainment and defaults.

Clause 25.2 is in addition to, and does not waive, the AMC's right to seek any other remedy under this Contract, at Law, or in equity.

# Conflict of Interest

**Warranty that there is no Conflict of Interest**

The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no Conflict of Interest (either perceived or actual) exists or is likely to arise in the performance of its obligations under this Contract.

**Notification of a Conflict of Interest**

If, during the performance of this Contract, a Conflict of Interest arises, or appears likely to arise, the Service Provider must:

### Notify the AMC Representative immediately in writing;

### make full disclosure of all relevant information relating to the conflict; and

### take such steps as the AMC requires to resolve or otherwise deal with the conflict.

# Consents and Approvals

The Service Provider is responsible for obtaining any consents or approvals from third parties (including Subcontractors and Other Service Providers) which are required in connection with the provision of the Services.

# Representatives

In addition to the arrangements in Schedule 1 (Statement of Requirements), this clause sets out the contacts that the parties will use for the day-to-day administration of this Contract.

The Service Provider and the AMC must each appoint a representative with the authority to represent it and to:

### give and receive Notices under this Contract;

### exercise rights, and in the case of the AMC give Approvals or Acceptances, under this Contract; and

### conduct the day-to-day administration of this Contract.

A party must Notify the other party of a change to its Representative or its Representative’s contact details, including address for Notices.

The Service Provider Representative is responsible for the administration of this Contract on behalf of the Service Provider and is the only representative authorised to agree to changes to this Contract on behalf of the Service Provider.

The AMC Representative is responsible for administration of this Contract on behalf of the AMC and is the only representative authorised to agree to changes to this Contract on behalf of the AMC.

The AMC Representative and the Service Provider Representative must meet and communicate as required by the AMC or as specified in Schedule 1 (Statement of Requirements). The Service Provider must provide progress reports as required by the AMC or specified in Schedule 1 (Statement of Requirements).

The AMC Representative and Service Provider Representative may each delegate their functions, or authorise that their functions be carried out on their behalf, and will Notify the other party of any such delegation or authorisation.

Any oral directions given by a party that, in the other party's opinion will impact scope, costs, timing or resources relevant to this Contract, must be confirmed by Notice within a reasonable period.

# Variations to this Contract

Variations to this Contract will be dealt with as follows:

### either party may request a variation by providing a draft Variation Proposal to the other party setting out the proposed variations;

### within 10 Business Days of receipt of the draft Variation Proposal or within another period agreed by the parties, the parties must meet to consider the draft Variation Proposal. At the meeting, the Service Provider must advise and discuss as required the impact the variations will have on:

#### the Charges;

#### the Services;

#### the Service Provider's ability to perform its obligations under this Contract; and

#### this Contract;

### at the meeting of the parties, or within a period after that meeting that is agreed by the parties, each party must Notify the other party whether it accepts or rejects the draft Variation Proposal (based on the stated impact of the variations); and

### if all parties accept the draft Variation Proposal, the parties must execute the Variation Proposal.

Any changes to the Charges associated with a variation to this Contract must:

### not exceed any reasonable additional cost and the Service Provider must substantiate any proposed additional resource costs; and

### take fully into account any reduction in the cost of provision of the Services from efficiency improvements, increased volume or otherwise.

Any variation to this Contract takes effect from the date on which the parties execute a Variation Proposal or as otherwise agreed by the parties.

The parties must comply with any other change of control obligations (including in respect of roles, responsibilities and change logging) as set out in Schedule 1 (Statement of Requirements).

1. Payments and Performance

# Charges, Payment and Invoicing

**Charges and Payment**

Subject to the Contract, and the satisfactory performance of the Services, the AMC will use reasonable endeavours to pay the Charges set out in Schedule 2 (Charges and Payments) to the Service Provider within 30 calendar days.

For clarity and consistency with clause 30.1, the AMC is not obliged to pay any invoice for Services which were not performed satisfactorily or in accordance with this Contract.

The Service Provider acknowledges and agrees that the Charges set out in Schedule 2 (Charges and Payments) fully compensate the Service Provider for the Services (including for all effort, input, equipment and services required for the provision of the Services).

The Charges (including, for clarity, reasonable costs referred to in clause 52.6.3 and any other costs expressly referred to in this Contract) are the only costs payable by the AMC for provision of the Services. The AMC is not required to pay any other amounts, including in respect of any cost variables (including for changes in data storage costs or in relation to any third party fees, costs or charges), or any other costs or amounts in connection with this Contract (irrespective of whether those costs or amounts are set out in, or referred to as part of, this Contract, or are otherwise made known to the AMC).

The parties agree that payments may be effected by electronic transfer of funds.

**Requirements for the Charges**

The Charges set out under this Contract:

### must be calculated in accordance with this Contract;

### are in Australian Dollars; and

### are not subject to adjustment, except as provided for under Schedule 2 (Charges and Payment).

If the AMC disputes an invoice or an amount payable pursuant to an invoice:

### the AMC will promptly Notify the Service Provider of the details and nature of the disputed portion;

### the AMC may withhold the disputed portion pending resolution of the dispute but will pay the undisputed portion;

### if required by the AMC, the Service Provider must cancel the original invoice and issue a new Correctly Rendered Invoice for the undisputed portion, and the AMC will pay the new Correctly Rendered Invoice within the period specified in clause 30.1; and

### the provisions of clause 51 will apply in relation to the disputed portion and if that dispute resolution process results in a determination that the AMC should pay the disputed portion, the Service Provider may issue a new Correctly Rendered Invoice for that amount and the AMC must pay that invoice in accordance with clause 30.1.

**Timesheets**

If any part of the Charges include Charges calculated based on a rate card, the Service Provider must submit with any Correctly Rendered Invoice, timesheets to support the Charges charged. The timesheets must include at a minimum the time and date of each Business Day the work was performed and the number of hours taken to perform the Services on each Business Day.

**Travel and accommodation costs and other disbursements**

Unless otherwise specified, the Charges are inclusive of travel, accommodation or other disbursements. No additional Charges for travel, accommodation or other disbursements will apply unless Approved.

Any Charges for any travel, accommodation or other disbursements must be:

### Approved in advance by the AMC;

### no higher than the actual cost of the travel, accommodation or other disbursement incurred by the Service Provider (without any mark-up or margin);

### supported by any documentary evidence required by the AMC; and

### consistent with applicable AMC policies and directions and any requirements set out in this Contract.

**AMC’s Right to Delay or Reduce Payment**

Despite anything else in this Contract:

### the AMC is not obliged to pay the Charges for any Services that are not provided in accordance with this Contract;

### the AMC may defer payment or reduce the amount of any Charges payable until the Service Provider has completed, to the satisfaction of the AMC, that part of the Services to which those Charges relate;

### the AMC may set-off any amount the Service Provider owes it against any amount the AMC owes the Service Provider (including under any other contract);

### the AMC may require the Service Provider to pay any amount the Service Provider owes it to the AMC within the period of time required by the AMC (and the Service Provider must comply with the request); and

### the AMC may require the Service Provider to adjust the next invoice to reflect the amount owing to the AMC (and the Service Provider must comply with the request).

**Requirements for invoices**

An invoice is a Correctly Rendered Invoice if it meets the requirements for invoices specified in Schedule 2 (Charges and Payments) and any other requirements specified for an invoice in this Contract.

The Service Provider must provide Correctly Rendered Invoices to the AMC for all amounts payable by the AMC under this Contract.

The AMC is not required to pay any amount which is not invoiced in accordance with this Contract.

**Electronic payment**

The parties agree that payments may be effected by manner of electronic transfer of funds.

# Taxes

All taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Contract (subject to clause 32 must be met by the Service Provider and are included in the Charges. If any government or authority imposes a duty, tax (other than income tax), levy, or fee in respect of the Services provided under this Contract, or a rate of tax change, that is not otherwise provided for in the amount payable, the Service Provider may propose an amendment to this Contract (in accordance with clause 29) to adjust the Charges to take into account that change, but any amendment is subject to the prior written agreement of the AMC Representative.

# GST

**Interpretation**

In this clause 32, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

**GST gross up**

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

Clause 32.2 does not apply if the amount payable for the supply is expressed as 'GST inclusive'.

**Reimbursements**

If a party must reimburse or indemnify another party for a Loss, cost, or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss, cost or expense, and then increased in accordance with clause 32.2.

**Exclusion of GST from calculations**

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

**Adjustments**

If the GST payable by a Supplier on any supply made under or in connection with this Contract varies from the GST Amount paid or payable by the Recipient under clause 32.2, such that a further amount of GST is payable in relation to the supply or a refund or credit of GST 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. Any payment, credit or refund under this clause 32.6 is deemed to be a payment, credit or refund of the GST Amount payable under clause 32.2.

If an adjustment event referred to under clause 32.2 occurs in relation to a supply, the Supplier must give an adjustment note to the Recipient in relation to that supply within 10 Business Days after becoming aware of the adjustment.

**Tax invoice**

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

# Performance and Remedies

The Service Provider acknowledges the importance of ensuring the Services provided fully meet the requirements of this Contract, and agrees that it is reasonable that the AMC has a range of remedies available to it to deal with any non-compliances. The AMC agrees to exercise its remedies under this Contract in good faith, but this obligation does not limit the AMC’s ability to exercise its rights as needed to ensure the AMC can meet its obligations to stakeholders.

The Service Provider acknowledges that, if it fails to perform the Services in accordance with this Contract, the AMC may (without limiting any other right or remedy under this Contract or at Law):

### direct the Service Provider to remedy the non-compliance within a specified time in accordance with clause 21;

### direct the Service Provider to re-perform the Services in a specific manner in accordance with clause 21;

### use the governance arrangements applicable to this Contract to seek a prompt resolution of the failure (and the Service Provider must promptly respond and participate in such arrangements as requested by the AMC, including to escalate the issue to senior Personnel for urgent attention);

### dispute an invoice provided for those Services or decline to pay any Charges for those Services in accordance with clause 30;

### obtain the Services or remediation services from an alternative provider, and deduct the cost of those services from any Charges payable to the Service Provider under this Contract; or

### terminate or reduce the scope of the Services in accordance with clause 52.

The Service Provider must comply with the AMC’s exercise of any of the rights referred to in this clause, in accordance with this Contract.

1. Intellectual Property

# Intellectual Property Rights – General

The Service Provider must ensure that the AMC:

### has all Intellectual Property Rights required to receive the full benefit of the Services and to complete all functions and tasks contemplated by this Contract; and

### is provided with all necessary licence and usage rights to obtain the full benefit of, and to use and access, the Services.

This Contract does not affect the ownership of Intellectual Property Rights in any:

### Background Material;

### AMC Material; or

### any Intellectual Property Rights owned or licensed by a third party.

# Intellectual Property Rights – New Material

**New Material - General**

Ownership of Intellectual Property Rights in New Material is vested in the AMC from the date of creation.

If requested by the AMC, the Service Provider must bring into existence, sign, execute or otherwise deal with any document that may be necessary to give effect to clause 36.1.

**Licence to New Material - General**

To the extent that the Service Provider needs to use any of the New Material to perform its obligations under this Contract the AMC grants to the Service Provider a revocable, royalty free, non-exclusive, non-transferable licence to use, reproduce, modify, distribute and communicate that Material solely for the purpose of providing the Services.

The licence granted under clause 36.3:

### includes the right to permit the Service Provider’s Personnel to use the Material for the purpose of providing the Services; and

### is subject to any limitations, conditions or restrictions set out in this Contract or otherwise advised by the AMC from time to time (which may include limitations imposed by a third party owner of that Material).

The licence granted under clause 36.3 above does not affect the ownership of Intellectual Property Rights in New Material.

**Licence to AMC Material**

Nothing in this Contract affects the ownership of any AMC Material.

To the extent that the Service Provider needs to use any of the AMC Material to perform its obligations under this Contract the AMC grants to (or will procure for) the Service Provider a licence to use the AMC Material that is consistent with the licence to New Material provided under clauses 36.3 to 36.5 above.

**Termination or expiry**

The licence granted under clause 36.3 expires, and the Service Provider must return the AMC Material and New Material to the AMC (or to a third party nominated by the AMC), on the earlier of:

### in respect of a particular item of Material, the date that the item ceases to be required for the performance of the Services; or

### the last calendar day of the Transition Period.

# Intellectual Property Rights – Existing Material

**Existing Material – General**

Nothing in this Contract is intended to affect the ownership of Intellectual Property Rights in Existing Material.

Without limiting its other obligations in this Part, the Service Provider must obtain all necessary Intellectual Property Rights and permissions before using or making available any Existing Material for the purposes of this Contract (including obtaining all necessary authorisations and consents from third party owners of any Existing Material to the extent required to provide the Services).

**Existing Material – Service Provider Owned**

The Service Provider grants to the AMC a perpetual, irrevocable, worldwide, non-exclusive and royalty free licence (including a right of sublicense) to Existing Material that is owned by the Service Provider and is:

### incorporated in, or provided with, the New Material;

### otherwise provided or made available to the AMC in connection with this Contract; or

### otherwise needed by the AMC to obtain the benefit of this Contract;

to do anything with, and to permit any use of, that Existing Material in connection with the New Material or as necessary to receive the full benefit of the Services (including to hold, use, execute, reproduce, upload, display, perform, communicate, produce derivative works, alter, enhance, and sublicense that Existing Material).

**Existing Material – Third Party Owned**

For Existing Material that is owned by a third party and is:

### incorporated in, or provided with, the New Material;

### otherwise provided or made available to the AMC in connection with this Contract; or

### otherwise needed by the AMC to obtain the benefit of this Contract;

the Service Provider must procure for the AMC a licence on the same terms as for Existing Material in clause 37.3.

# Intellectual Property Warranty

The Service Provider warrants, represents and undertakes that:

### the Services will not infringe the Intellectual Property Rights of any person;

### it has the necessary rights to vest the Intellectual Property Rights and grant the licences in this Contract; and

### the Service Provider has undertaken all necessary investigations (for example, ensuring that the Services do not infringe any current patent) in order to provide the warranties in clauses 38.1.1 and 38.1.2.

This clause 38 survives the expiration or earlier termination of this Contract.

## Infringement of Intellectual Property Rights

If someone claims, or the AMC reasonably believes that someone is likely to claim, that all or part of the Services (including any Contract Material) infringes their Intellectual Property Rights, the Service Provider must, in addition to the indemnity under clause 50 and any other rights that the AMC may have against it, promptly, at the Service Provider’s expense:

### use its best efforts to secure the rights for the AMC to continue to use the affected Services (including any Contract Material) free of any claim or liability for infringement; or

### replace or modify the affected Services (including any Contract Material) so that the Services (including any Contract Material) or the use of them does not infringe the Intellectual Property Rights of any other person.

## The Service Provider must ensure its obligations under clause 38.3 do not degrade the performance or quality of the affected Services

# Moral Rights

To the extent permitted by applicable Laws and for the benefit of the AMC, the Service Provider must ensure that each of the Personnel used by the Service Provider in the production or creation of the New Material gives genuine consent in writing, in a form acceptable to the AMC, to the use of the New Material for the Specified Acts, even if such use would otherwise be an infringement of its Moral Rights.

In clause 39.1, ‘**Specified Acts**’ means:

### falsely attributing the authorship of any New Material, or any content in the New Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));

### materially altering the style, format, colours, content or layout of the New Material and dealing in any way with the altered New Material;

### reproducing, communicating, adapting, publishing or exhibiting any New Material; and

### adding any additional content or information to the New Material.

# IP Plan and Register

**IP Plan**

In accordance with Schedule 1 (Statement of Requirements), the Service Provider must prepare and deliver for Acceptance by the AMC an IP Plan setting out how the Service Provider will manage all Intellectual Property Rights incorporated in or related to the Services (including all Documentation and other Deliverables), and update that IP Plan as required, so that at all times it is clear:

### which party owns the Intellectual

### Property in the relevant material;

### any limitations or restrictions which apply to the Service Provider's, the AMC’s or either party’s Personnel (as applicable) access and use of that material; and

### the AMC’s and its Personnel’s rights to access and use that material after expiry or termination of this Contract.

Once Accepted, the Service Provider must implement and comply with the IP Plan.

**IP Register**

The Service Provider must, at no additional cost to the AMC:

### within 10 Business Days of the Commencement Date (or another time specified by the AMC), produce a register setting out all Intellectual Property Rights (**IP Register**) which are to be used in performing the Services, the owner of those rights and, where the Intellectual Property Rights are licensed, details of that licence (including the licensee and licensor and any limitations or conditions);

### review and update the IP Register as necessary to reflect all changes to the Intellectual Property Rights used in performing the Services from time to time and ensure it is up to date at all times;

### ensure the IP Register is consistent with this Contract and Approved by the AMC (any limitations or conditions have no effect unless they are consistent with this Contract or Approved by the AMC); and

### make the IP Register available to the AMC upon request by the AMC and upon termination or expiry of this Contract.

The IP Register must be in a form Approved by the AMC.

1. Information Management

# Confidentiality

**Disclosure of Confidential Information**

Subject to clause 41.8, a party must not, without prior Notice of consent from the other party, disclose or make public any Confidential Information of the other party to a third party.

In giving Notice of consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party must comply with these conditions if it proceeds to make the disclosure.

If the Service Provider becomes subject to a legal obligation to provide any Confidential Information of the AMC to a third party, the Service Provider must immediately:

### Notify the AMC;

### take all reasonable steps to lawfully resist or narrow the requirement to disclose Confidential Information; and

### assist and cooperate with the AMC if the AMC seeks to limit or resist the requirement for the Confidential Information to be disclosed.

## Return or destruction of Confidential Information

Unless otherwise agreed in writing with the AMC, upon the expiration or termination of this Contract, the Service Provider must deliver to the AMC (and not retain any copies of) all Confidential Information provided to the Service Provider by the AMC and allow the AMC to audit the Service Provider’s compliance with this clause. Alternatively, if requested by the AMC, the Service Provider must destroy such Confidential Information in the manner specified by the AMC and promptly certify to the AMC in writing that it has done so.

**Written undertakings**

Each party must take all reasonable steps to ensure that, subject to clause 41.8, its Personnel do not disclose Confidential Information of the other party.

The Service Provider must ensure that any of its Personnel to whom information may be disclosed pursuant to clauses 41.8.1 or 41.8.2 provide a written undertaking of acknowledgement of the Service Provider's obligations of confidentiality under this Contract in the form of the Deed of Confidentiality set out at Schedule 4 (Deed of Confidentiality).

If the Service Provider receives a request for a copy of the undertakings given pursuant to clause 41.6, it must promptly arrange for copies of all such undertakings to be given to the AMC.

**Exceptions to obligations**

The obligations of the parties under this clause 41 will not be taken to have been breached to the extent that Confidential Information:

### is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Contract;

### is disclosed to a party's Personnel solely to enable effective management, review or auditing of the Contract and Contract-related activities;

### is information for which disclosure is authorised or required by Law, including under this Contract, under a licence or otherwise, to be disclosed; or

### is in the public domain otherwise than due to a breach of this clause 41.

**Additional Confidential Information**

The parties may agree in writing at any time that certain additional information is to constitute Confidential Information for the purposes of this Contract, and that documentation will be Confidential Information from the date agreed.

**No reduction in privacy obligations**

Nothing in clauses 41.1 to 41.9 derogates from any obligation which either party may have either under the Privacy Act as amended from time to time, or under this Contract, in relation to the protection of personal information.

**Announcements**

The Service Provider must, before making any public announcement in connection with this Contract or any transaction contemplated by this Contract, obtain the AMC's Approval for the announcement, except if the public announcement is required by Law or a regulatory body (including the rules of a relevant stock exchange).

If the Service Provider is required by Law or a regulatory body to make a public announcement in connection with:

### this Contract; or

### any transaction contemplated by this Contract,

the Service Provider must limit the public announcement to the extent required by the relevant Law or regulatory body, and, to the extent practicable, first consult with and take into account the reasonable requirements of the AMC.

# Location of Personal Information

Without limiting this Contract, if any Personal Information is, or is to be, transferred, taken, accessed, stored, held, or processed outside Australia for any reason, the Service Provider must:

### inform the AMC in writing of the country and location where the Personal Information is, or is to be, transferred, taken, accessed, stored, held, or processed, including the country and location of any backups of that Personal Information and provide that information at such other times as requested by the AMC; and

### only proceed if that transfer, taking, access, storage, holding or processing is Approved by the AMC.

# Notifiable Data Breach

If the Service Provider becomes aware of an event which could amount to an Eligible Data Breach:

### the Service Provider must as soon as possible, which must be no later than 48 hours, Notify the AMC;

### comply with its obligations under the Privacy Act in relation to that event;

### provide the AMC with all information requested by the AMC about the event; and

### cooperate and comply with any reasonable requests or directions of the AMC so that the AMC can carry out an assessment of the Eligible Data Breach in accordance with its obligations under the Privacy Act.

## If the Service Provider Notifies the AMC of an Eligible Data Breach in accordance with clause 43.1, or if the AMC notifies the Service Provider that there has been an Eligible Data Breach in relation to any Personal Information held by the Service Provider as a result of this Contract or its provision of the Services, the Service Provider must:

### take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the compromised information relates;

### unless otherwise directed by the AMC, take all other action necessary to comply with the requirements of the Privacy Act; and

### take any other action as reasonably directed by the AMC.

If the Service Provider determines or the AMC determines and Notifies the Service Provider that an Eligible Data Breach has occurred and notification of that Eligible Data Breach is required under the Privacy Act:

### the parties must meet to discuss and endeavour to agree who will issue the notification (but if the parties are unable to agree, then the AMC will, acting reasonably, decide which party will issue that notification);

### if the Service Provider is to issue a notification, then:

#### the Service Provider must as soon as possible, but within 48 hours, provide the AMC with a draft of the notification;

#### make any changes to the draft notification that are reasonably required by the AMC; and

#### issue the notification in accordance with the requirements of the Privacy Act (including any applicable time periods).

If the AMC is to issue the notification, then:

### the AMC must as soon as possible, but within 48 hours, Notify the Service Provider and provide a draft of the notification;

### make any changes to the notification that are reasonably required by the Service Provider for consistency with the Privacy Act; and

### issue the notification in accordance with the requirements of the Privacy Act (including any applicable time periods).

The Service Provider must ensure that:

### the AMC is promptly notified of any investigation or other action taken by the Privacy Commissioner in connection with any actual or suspected Eligible Data Breach, or notification in relation to that matter; and

### the AMC is kept informed in relation to that investigation or other action.

The parties acknowledge and agree that nothing in clauses 43.1 to 43.7 affects or limits:

### their obligations under the Privacy Act; or

### the parties’ performance of their obligations under this Contract, unless otherwise agreed in writing by the AMC.

The Service Provider must ensure that each subcontract imposes obligations on the Subcontractor equivalent to the obligations under this clause 43.

### **Indemnity**

The Service Provider indemnifies the AMC in respect of any Loss suffered or incurred by the AMC which arises directly or indirectly from a breach of any of the obligations of the Service Provider under this clause 43, or a failure by a Subcontractor to comply with the applicable requirements of this clause.

### **Notification**

The Service Provider must notify the AMC as soon as reasonably practicable if it becomes aware of a breach or possible breach of the obligations contained in this clause 43.

### **Disclosure under Law**

Without limiting this Contract , if the Service Provider is required under any Law to disclose any AMC Material (including any AMC Data), Confidential Information, or Personal Information to a third party the Service Provider must, without limiting the AMC’s other rights:

### immediately Notify the AMC so the AMC can determine and take whatever action it considers necessary to protect the AMC’s interests;

### take reasonable steps to lawfully resist or narrow the requirement to disclose the AMC Material (including any AMC Data), Confidential Information, or Personal Information; and

### provide reasonable assistance and fully co-operate with the AMC to allow the AMC to take such steps as it considers necessary with respect to that AMC Material (including any AMC Data), Confidential Information, or Personal Information.

# Security

**Compliance with AMC requirements**

The Service Provider must, and must ensure that its Subcontractors and Personnel comply with, all relevant security policies and procedures including any security requirements Notified by the AMC.

**Security requirements**

## The Service Provider must

### take all possible steps to ensure that all AMC Data, in respect of which the Service Provider has custody or control for purposes connected with this Contract; and

### is protected at all times from unauthorised access or use by a third party, and from misuse, damage or destruction by any person.

**Hosting AMC Data and Location of Services**

## Unless otherwise specified, the Service Provider must ensure that:

### any AMC Data of which the Contractor has care, custody or control for purposes connected with this Contract is hosted in Australia or such other locations agreed in writing by the AMC at all times; and

### that the Services are performed within Australia.

**Misuse of AMC Data**

The Service Provider acknowledges and agrees that any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of information held in any computer (or, in some cases, any storage device) in the course of providing the Services may be an offence under Part 10.7 of the Schedule to the *Criminal Code Act 1995* (Cth) of which there are a range of penalties, including a maximum of 10 years imprisonment.

**Warranty in respect of AMC Data**

The Service Provider warrants, represents and undertakes that no AMC Data will be lost or corrupted in the course of the provision of the Services as a result of a breach by the Service Provider or any Service Provider Personnel of the obligations set out in this Contract.

**Information Security Management System - ISO 27001**

If specified by the AMC, the Service Provider must operate an effective system of security management capable of demonstrating as a minimum that its information security management system conforms to the requirements of the latest issue of ISO 27001 and is certified by an independent accredited third party.

Within 7 days of each anniversary of the Commencement Date, the Service Provider must provide the AMC with copies of certificates for ISO 27001 certifications that it holds at that time.

**Personnel security**

The Service Provider must ensure that the Service Provider’s Personnel involved in the performance of the Services:

### comply with the Service Provider’s security obligations under this Contract;

### are fit and proper persons to perform the Services for the AMC and the stakeholders; and

### meet the AMC’s requirements for security clearances as specified in this Contract or as Notified by the AMC to the Service Provider from time to time.

**Security Incidents and Reporting**

Without limiting clause 44, if the Service Provider becomes aware of a possible or actual Security Incident, the Service Provider must:

### immediately notify the AMC of the Security Incident;

### promptly take all reasonable steps to remedy the Security Incident at its expense;

### promptly provide all reasonable assistance to the AMC to identify the information impacted by the Security Incident and any information reasonably requested by the AMC for the purposes of investigating and responding to the Security Incident;

### within 5 Business Days or other period notified by the AMC in writing, provide the AMC with a Security Incident report which includes:

#### a full description of all Security Incident, including details of the information and data the subject of the Security Incident;

#### the steps taken by the Service Provider to address the Security Incident;

#### the actions the AMC should take in response and its impact on the information and data the subject of the Security Incident; and

#### any other information which the AMC reasonably requires from time to time;

### use its best efforts to prevent the occurrence of any Security Incident, including taking any additional security measures at the Service Provider’s own expense; and

### otherwise comply with all directions and procedures of the AMC in order to address the Security Incident, including by:

#### notifying the Australian Cyber Security Centre, or any other relevant body, as required by the AMC;

#### obtaining evidence about how, when and by whom the relevant information systems or the AMC Data has or may have been compromised, providing it to the AMC on request, and preserving and protecting that evidence for a period of up to 12 months;

#### implementing any mitigation strategies to reduce the impact of the Security Incident or the likelihood or impact of any future similar incident; and

#### preserving and protecting AMC Data (including as necessary reverting to any backup or alternative site or taking other action to recover AMC Data).

Except with the AMC’s prior written consent or as required by Law or as permitted by this Contract, the Service Provider must not disclose to any person any information relating to a Security Incident, including to any individuals whose non-public Personal Information may have been compromised.

# Harmful Code

The Service Provider must not, and must not permit Service Provider Personnel or any third party under its direction or control to, introduce into the AMC’s systems or software any Harmful Code.

If Harmful Code is introduced into the AMC’s systems or software in breach of clause 45.1 or if the Service Provider otherwise becomes aware that Harmful Code has been introduced into the AMC’s systems or software, the Service Provider must:

### immediately report that introduction to the AMC;

### take all necessary action to eliminate the Harmful Code (subject to any directions by the AMC); and

### promptly repair any harm or destruction caused by that Harmful Code, subject to any directions from the AMC.

The Service Provider’s obligations under clauses 45.2.2 and 45.2.3 must be performed at no cost to the AMC if the Harmful Code was introduced as a result of a breach of the Service Provider’s or the Service Provider Personnel obligations under clause 45.1 or this Contract.

1. Risk Management

# Service Provider to keep AMC Informed

## The Service Provider must ensure that the AMC is kept informed at all times during the Terms of this Contract of:

### the Service Provider’s progress under this Contract;

### risks to the performance of any Services and timeframes, including potential omissions and defects;

### and other potential or actual non-compliance with this Contract; and

### any emerging risks related to the performance of the services

# Insurance

**Obligation to maintain insurance**

The Service Provider must have and maintain valid and enforceable insurance policies (with reputable insurance companies that do not contain any unusual exclusions) to the following levels:

### for the Term of the Contract and any Transition Period:

#### AUD 20,000,000 per claim public liability;

#### AUD 20,000,000 per claim professional indemnity;

#### AUD 10,000,000 per claim product liability;

#### workers’ compensation as required by Law; and

#### any other, or increased, insurance specified in this Contract.

### for 7 years following the later of expiry or termination of this Contract, AUD 20,000,000 per claim professional indemnity.

With the exception of workers’ compensation insurance, and unless otherwise Approved by the AMC in writing, the insurances referred to in clause 47.1 must be effected with insurers with a financial security rating of “A-“ or better by Standard & Poor’s (or the equivalent rating from another recognised rating agency).

The Service Provider must ensure that its Subcontractors are insured as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of the services or work to be performed by them and in a manner consistent with the Service Provider’s obligations under this clause 47.

**Evidence of insurance**

The Service Provider must, upon request by the AMC, provide:

### evidence that it has current insurance policies which comply with the requirements of this clause 47 to the AMC; and

### details of any exclusions and other information about the required insurances as reasonably requested by the AMC.

**Notices**

The Service Provider must, in respect of the insurances required by this clause 47:

### promptly inform the AMC if it becomes aware of any actual, threatened or likely claims which could materially reduce the available limits of indemnity or which may involve the AMC, and must reinstate or replace any depleted aggregate limit resulting from claims that are unrelated to the work under this Contract, if requested to do so in writing by the AMC; and

### do everything reasonably required by the AMC to enable the AMC to claim and to collect or recover monies due under any insurance policy.

# Delays and Extension of time

**Notification of Delays**

## The Service Provider must take all reasonable steps to prevent and to minimise delay in delivery of the Services.

## The Service Provider must, as soon as practicable, but not later than twenty-four hours after it becomes evident to the Service Provider that it will be delayed or unable to meet an obligation in relation to provision of the Services, promptly Notify the AMC and provide details of the cause and nature of the delay and describe the steps it will take to contain the delay.

## The Service Provider must notify the AMC of the length of the delay as soon as it can reasonably be calculated.

**Extension of Time**

The Service Provider may, by notice in writing to the AMC’s Contract Manager and within seven days of a delay becoming evident, request approval of a postponement of the time for the delivery of the Services.

The AMC, in its absolute discretion, may determine whether to grant the Service Provider a postponement of the time for delivery of the Services. If the AMC grants a postponement, it will promptly notify the Service Provider in writing.

If the AMC determines that it will not grant a postponement of the time for delivery of the Services it will promptly notify the Service Provider in writing in which case the time for delivery of the Services will remain unchanged.

Whether or not the Service Provider has requested a postponement of the time for delivery of the Services, the AMC may by notice in writing to the Service Provider, postpone the time for delivery.

The Service Provider will not be entitled to postponement costs.

1. Liability and indemnity

# Liability

**Relevant Law**

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

**Limitation of Liability – the AMC and the Service Provider**

***A liability cap will be negotiated by the parties prior to contract execution.***

The liability of each of the AMC and the Service Provider arising out of or in connection with this Contract (including under any indemnity) is, subject to clauses 49.1 and 49.3, limited to the greater of $AUD [INSERT] or the total value of this Contract, as amended from time to time (where the total value of this Contract is the aggregate of all amounts paid or payable under this Contract).

Any limit on the liability of the AMC or the Service Provider under clause 49.2 does not apply in relation to liability relating to:

### personal injury (including sickness and death);

### loss of, or damage to, tangible property;

### an infringement of Intellectual Property Rights;

### a breach of any obligation of confidentiality, security or privacy;

### fraud, breach of a statute or any unlawful act or omission (including, in the case of the Service Provider, repudiation of this Contract); or

### the loss, or corruption of, AMC Data.

The parties agree to review the limitations on liability before any extension of the Term of this Contract under clause 3.2, with the intent that the parties may agree, for the extended Term, to maintain or increase the limits of the liability applicable to this Contract. If no change is agreed, the existing limits will apply to the extended Term.

**Mitigation**

Each party must use all reasonable endeavours to mitigate its Loss, damages and expenses arising under and/or in connection with a breach of this Contract, or in tort, or for any other common law or statutory cause of action arising under and/or in connection this Contract.

**Contribution**

The liability of a party for any Losses incurred by another party will be reduced proportionately to the extent that:

### any negligent act or omission of the party that incurred the Loss (or of its Subcontractors or Personnel); or

### any failure by the party that incurred the Loss to comply with its obligations under this Contract,

contributed to those Losses, regardless of whether legal proceedings are brought by either party for negligence or breach of Contract.

**Exclusion**

Notwithstanding anything in this Contract, neither party will be liable to the other party under this Contract for any loss of profits, business, revenue, goodwill or anticipated savings, or any Losses suffered by a party as a result of a breach of this Contract that cannot reasonably be considered to arise naturally from that breach.

# Indemnity

**Service Provider’s Indemnity**

The Service Provider indemnifies the AMC, and each of its subcontractors and Personnel (together the **Indemnified Persons**), against Losses incurred in connection with:

### loss of or damage to property of the Indemnified Persons or any other person;

### personal injury or death of any person; and

### any other liability owed by the Indemnified Persons,

arising from or as a consequence of:

### any breach of this Contract by the Service Provider or its Personnel;

### any breach of any Law by the Service Provider or its Personnel;

### any fraudulent, reckless, negligent, unlawful or deliberately wrongful act or omission of the Service Provider or its Personnel;

### a breach by the Service Provider or Service Provider Personnel of their obligations under clause 42 (Privacy); and

### any loss or corruption of the AMC Data or Personal Information caused by the Service Provider (other than loss or corruption due to an act or omission of the AMC or its Personnel, not including an act or omission which the Service Provider has advised or recommended to the AMC or its Personnel).

The AMC’s rights to be indemnified under clause 50 (including clause 50.3 below) are in addition to, and not exclusive of, any other right, power or remedy provided under this Contract or by Law.

**Service Provider’s Intellectual Property Right Indemnity**

The Service Provider indemnifies the AMC and its subcontractors and its Personnel, against Losses reasonably sustained or incurred by the AMC as a result of a claim made or threatened by a third party arising out of or in connection with an allegation that any Services infringe the Intellectual Property Rights or Moral Rights of a third party, except to the extent that any deliberately wrongful, reckless, negligent or unlawful act or omission of the AMC directly contributed to the relevant liability.

For the purposes of clause 50.3, an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.

**AMC obligations**

Where the AMC wishes to enforce an indemnity under clauses 50.1 or 50.3 it must:

### give written Notice to the Service Provider as soon as practical;

### subject to the Service Provider agreeing to comply at all times with clause 50.6, permit the Service Provider, at the Service Provider’s expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and

### in the event that the Service Provider is permitted to handle negotiations or conduct litigation on behalf of the AMC under clause 50.5.2, provide all reasonable assistance to the Service Provider in the handling of any negotiations and litigation.

**Service Provider’s obligations**

In the event that the Service Provider is permitted to handle negotiations or conduct litigation on behalf of the AMC under clause 50.5.2 the Service Provider must:

### keep the AMC informed of any significant developments relating to the conduct of the litigation or settlement of any claim;

### provide to the AMC such information and documentation as are reasonably requested by the AMC, including any requirements relating to legal professional privilege and confidentiality; and

### comply with any conditions imposed by the AMC.

**Rights held on trust**

Where an indemnity in this clause 50 provides a benefit to a person who is not a party to this Contract, that benefit will be held on trust for that person by the AMC through whom those rights are obtained and that benefit may be exercised by the person as beneficiary under the trust or on their behalf by the AMC as trustee.

1. Issue Resolution, Termination and Expiry

# Dispute Resolution

## The Parties undertake to use all reasonable efforts in good faith to resolve any disputes which arise between them in connection with this Contract.

## The parties agree that any dispute arising during the course of this Contract will be dealt with as follows prior to commencing any legal proceedings (except to the extent specified below):

### the party claiming that there is a dispute will send to the other a Notice setting out the nature of the dispute;

### the parties must use their best endeavours to resolve the dispute or difference at the working or operational level within 10 Business Days or within such other timeframe as the parties may agree;

### if the dispute or difference cannot be resolved by the parties in accordance with clause 51.2.2, the parties must refer the dispute to senior management of the parties with authority to intervene and direct some form of resolution;

### the parties have 10 Business Days from the date the dispute is referred to senior management in accordance with clause 51.2.3 (or such other time as is agreed by the parties) to reach a resolution or the dispute will be referred to mediation.

### Either party may only commence legal proceedings if:

#### the parties agree not to refer the dispute to mediation; or

#### there is a submission to mediation, but there is no resolution within 30 Business Days of the submission (or such extended time as the parties may agree in writing before the expiration of the 30 Business Days).

## Despite the existence of a dispute, the Service Provider must continue to provide the Services unless otherwise Notified by the AMC.

**Appointment of mediator**

If the parties cannot agree on any mediator to conduct the mediation, the chairperson of the Australian Disputes Centre or the chairperson's nominee will appoint a mediator.

**Role of mediator and obligations of parties**

The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a binding decision on a party to the dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 30 Business Days of the request for mediation (as applicable). The parties must attend the mediation and act in good faith to genuinely attempt to resolve the dispute. The parties agree to comply with any relevant or applicable mediation rules, including timeframes applicable to the mediation, for example the IAMA Mediation Rules.

**Confidentiality**

Any information or documents disclosed by a party under this clause 51:

### must be kept confidential; and

### may only be used to attempt to resolve the dispute.

**Costs**

Each party to a dispute must pay its own costs of the negotiation of a resolution and participating in any mediation under this clause 51. The parties to the dispute must equally pay the costs of any mediator.

**Survival**

Clauses 51.6 and 51.7 survive termination of the dispute resolution process.

**Breach of this clause**

If a party to a dispute breaches clauses 51.1 to 51.8, the other party does not have to comply with those clauses in relation to the dispute.

**Exemption**

Clause 51.1 does not apply to:

### action by the AMC under or purportedly under clause 52;

### action by the AMC under or purportedly under or in accordance with clauses 30.2 or 30.4; or

### either party commencing legal proceedings for urgent interlocutory relief.

# Termination

**Termination by the AMC for default**

Without limiting any other rights or remedies the AMC may have against the Service Provider arising out of or in connection with this Contract, the AMC may terminate this Contract in whole or in part, effective immediately, by giving Notice to the Service Provider if:

### the Service Provider commits a breach of this Contract where that breach is not capable of remedy;

### the Service Provider commits a material breach that is capable of remedy of this Contract and fails to remedy the breach within 10 Business Days or such other timeframe as is agreed in writing after receiving Notice requiring it to do so;

### a delay or failure of the Service Provider to perform its obligations which exceeds 45 days due to a Force Majeure Event; or

### the Service Provider commits a breach of a provision of this Contract where that breach permits the AMC to terminate this Contract immediately.

Without limitation, for the purposes of clause 52.1, each of the following constitutes a material breach:

### a failure by the Service Provider to provide replacement Specified Personnel acceptable to the AMC within 10 Business Days of the Specified Personnel becoming unavailable or receipt of a Notice from the AMC requiring removal of the Specified Personnel (or such other period agreed in writing by the AMC);

### a failure to Notify the AMC of a Conflict of Interest under clause 26 or an inability to resolve that Conflict of Interest to the reasonable satisfaction of the AMC;

### a failure to comply with the Service Provider’s obligations under clauses 35 to 39 (Intellectual Property Rights);

### a failure to comply with clause 41 (Confidentiality);

### a failure to comply with clause 42 (Privacy);

### a failure to comply with clause 44 (Security);

### a failure to comply with clause 47 (Insurance);

### if permitted by Law, an event specified in clause 52.3 happens to the Service Provider;

### a failure to comply with clause 53 (Laws and Policies);

### the Service Provider fails to obtain or ceases to hold any authorisation required to enable it to provide the Services or perform any of its obligations;

### the Service Provider ceases for any reason to be able lawfully to provide the Services;

### the Service Provider assigns or novates, or purports to assign or novate, its rights other than in accordance with this Contract;

### the Service Provider has regularly or persistently (including on two or more occasions) failed to meet any, some or all requirements of this Contract, whether or not the AMC has required the Service Provider to remedy a default;

### any material statement made or particular given by the Service Provider to the AMC prior to or in relation to this Contract is found to be incorrect in any material respect;

### any other event or series of events, whether related or not, exists or occurs which in the reasonable opinion of the AMC is materially affecting the ability of the Service Provider to comply with any of its obligations under this Contract; or

### the liability of the Service Provider has reached or exceeded any of the liability limits specified in clause 49

### **Change in Control**

The Service Provider must Notify the AMC immediately if:

### the Service Provider being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Service Provider which may have an adverse effect on the ability of the Service Provider to perform its obligations under this Contract;

### the Service Provider disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;

### the Service Provider ceases to carry on business;

### the Service Provider ceases to be able to pay its debts as they become due;

### the Service Provider being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed; or

### where the Service Provider is a partnership, any step is taken to dissolve that partnership.

**Termination and reduction for convenience**

The AMC may, by providing at least 90 days’ Notice to the Service Provider, terminate this Contract in whole or in part or reduce the scope of the Services under this Contract at any time.

For clarity, the right to reduce the scope of the Services under clause 52.4 includes removing Sites or categories of Services from scope.

If this Contract is terminated under clauses 52.4, the AMC, as appropriate, is liable only for:

### payments due under this Contract for Services provided in accordance with this Contract before the effective date of termination of this Contract (less any amount that the AMC is entitled to deduct);

### any charges applicable under the Accepted Transition Out Plan; and

### reasonable costs (if any) incurred by the Service Provider and directly attributable to the termination that are substantiated to the AMC’s reasonable satisfaction.

If the scope of this Contract is reduced, the AMC’s liability to pay the Charges will be reduced proportionately in accordance with the reduction in the scope.

The AMC is not liable to pay compensation under clause 52.6 in an amount which would, in addition to any amounts paid or due, or becoming due, to the Service Provider under this Contract, exceed Charges payable the one month prior to the date of termination.

For the purposes of clause 52.6, the AMC will not be liable for payments that would be due after the date of termination or for Loss of prospective profits, loss of business revenue, economic loss, indirect, special or Consequential Loss or any special or punitive damages.

**After termination**

On termination (in whole or part) of this Contract, the Service Provider must:

### stop performance of:

#### this Contract; or

#### if this Contract is terminated in part, the terminated part of this Contract;

### take all available steps to minimise Loss resulting from that termination and to protect material in which Intellectual Property Rights or Confidential Information of the AMC subsists;

### return all of the AMC’s Confidential Information associated with:

#### this Contract; or

#### if this Contract is terminated in part, the terminated part of this Contract,

to the AMC Representative as appropriate;

### follow any reasonable direction of the AMC; and

### continue to perform any part of this Contract not affected by the Notice (and the Charges will abate in accordance with the reduction in the scope of the Contract).

**Consequences of termination**

If this Contract is terminated (in whole or part) under this clause 52:

### subject to the terms of this Contract, the parties are relieved from future performance, without prejudice to any rights or remedies that have accrued at the date of termination; and

### subject to this Contract, all licences and authorisations relating to or concerning this Contract granted to the Service Provider by the AMC terminate immediately despite anything to the contrary contained in the licence or authorisation.

1. General Terms

# Laws and policies

## The Service Provider must, in performing its obligations under this Contract, comply with all applicable Laws and policies, including those set out in clauses 54 to 56, Schedule 1 (Statement of Requirements) and as Notified to the Service Provider from the AMC from time to time.

**Governing Law**

The Laws of the Australian Capital Territory apply to this Contract. The courts of the Australian Capital Territory have non-exclusive jurisdiction to decide any matter arising out of this Contract.

# Anti-Discrimination

The Service Provider must comply with all Commonwealth, State or Territory Laws relevant to anti-discrimination as may be applicable to this Contract, the Services or the Service Provider, including but not limited to the:

### *Disability Discrimination Act 1992* (Cth);

### *Racial Discrimination Act 1975* (Cth);

### *Sex Discrimination Act 1984* (Cth); and

### *Age Discrimination Act 2004* (Cth).

# Illegal Workers

The Service Provider must not engage Illegal Workers in any capacity to carry out any work under or in connection with the Contract.

Upon becoming aware of the involvement of an Illegal Worker, the Service Provider must:

### promptly Notify the AMC; and

### remove, or cause to be removed, the Illegal Worker and arrange for their replacement at no cost to the AMC immediately.

If requested in writing by the AMC, the Service Provider must provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations in respect of Illegal Workers.

# Audit and Access

## Right to conduct audits

The AMC, or a representative of the AMC may conduct audits relevant to the performance of the Service Provider’s obligations under this Contract at any time. Audits may be conducted of:

### the Service Provider’s operational practices and procedures as they relate to the Contract, including security procedures;

### the accuracy of the Service Provider’s invoices and reports in relation to the performance of the Contract;

### the Service Provider’s compliance with its confidentiality, privacy and security and other obligations under the Contract;

### material (including books and records) in the possession of the Service Provider relevant to the Contract; and

### any other matters determined by the AMC, or a representative to be relevant to the Contract.

## Access by the AMC

The AMC, or the AMC Representative may, at reasonable times and on giving reasonable Notice to the Service Provider:

### access the premises of the Service Provider to the extent relevant to the performance of the Contract;

### require the provision by the Service Provider, its Personnel, agents or Subcontractors, of records and information in a data format and storage medium accessible by the AMC, or a representative by use of the AMC’s existing computer hardware and software;

### inspect and copy relevant Documents, books and records, however stored, in the custody or under the control of the Service Provider or its Personnel; and

### require assistance in respect of any inquiry into or concerning this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the AMC’s organisation as appropriate), any request for information directed to the AMC as appropriate, and any inquiry conducted by Parliament or any Parliamentary Committee.

## Conduct of audit and access

The Service Provider must provide access to its premises to the extent necessary for the AMC to exercise its rights under this clause 56, and provide the AMC with any reasonable assistance requested by the AMC.

The AMC must use reasonable endeavours to ensure that:

### audits performed pursuant to clause 56.1; and

### the exercise of the general rights granted by clause 56.2,

### do not unreasonably delay or disrupt in any material respect the Service Provider’s performance of its obligations under the Contract.

## Costs

Except as set out in clause 56.6, each party must bear its own costs of any inspections, access or audits.

If the Service Provider is able to substantiate that it has incurred direct expenses in the AMC’s exercise of the rights granted under clause 56.1 or clause 56.2 which are substantial, the AMC and the Service Provider will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated, and will not be payable to the extent the audit reveals failures by the Service Provider to comply with this Contract.

## Consequences of audit

The Service Provider must promptly take, at no additional cost to the AMC, corrective action to rectify any error, non-compliance, or inaccuracy identified in any audit in the way the Service Provider has:

### performed the Services; or

### calculated any Fees or other amounts paid or payable by the AMC.

## No restriction

This clause 56 operates in addition to, and does not limit, any statutory function, power, right or entitlement of an Accountability Body.

## No reduction in responsibility

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

## Subcontractor requirements

The Service Provider must ensure that any subcontract entered into for the purpose of the Contract contains an equivalent clause granting the rights specified in this clause 56.

## Survival

This clause 56 applies for the Term and for a period of 7 years from the termination or expiry of the Contract, whichever is later.

# Notices and other communications

**Service of Notices**

Notice must be in written English and signed by:

### in the case of a Notice from the AMC, the AMC Representative; or

### in the case of a Notice from the Service Provider, the Service Provider Representative.

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

### delivers it by hand;

### posts it;

### transmits it by email; or

### transmits it by any other electronic means, to the recipient’s address for Notices specified in clause 57.4, marked for the attention of the person who at that time is the Service Provider Representative, or the AMC Representative, as appropriate.

**Deemed Receipt**

A Notice or other communication is deemed to be received if:

### delivered by hand – when it is delivered by hand to the party’s Representative;

### sent by post from and to an address within Australia and correctly addressed – 3 Business Days after posting;

### sent by post from or to an address outside Australia and correctly addressed – 10 Business Days after posting;

### sent by email – when it reaches the receiving party’s email server, unless the sending party receives an error message indicating that the receiving party’s Representative has not received the message; or

### sent by any other electronic means – only in the event that the other party acknowledges receipt in person, by phone or by message which has been generated by the intended recipient and not purely by a machine, or by other means agreed in writing by the parties.

**Address for Notices**

Subject to clause 57.5, the Service Provider Representative and the AMC Representative’s address for Notices are as set out in the Contract Details.

**Change of Address**

Each party must Notify the other parties of any change in its address for Notices, or in the identity of the Service Provider Representative or the AMC Representative (as applicable).

# General

**Approvals and consents**

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

**Costs of Contracting**

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

**Further action**

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

**Assignment and Novation**

A party may only assign its rights under this Contract with the prior written consent (by Notice) of the other party, and this consent must not be unreasonably withheld.

The Service Provider must not assign, in whole or in part, its benefits under this Contract without the prior written consent of the other party, and this consent must not be unreasonably withheld.

The Service Provider must not enter into discussions or facilitate a novation of this Contract without the prior written Approval of the AMC.

**Waiver**

Waiver of any provision of or right under the Contract:

### must be by Notice from the party entitled to the benefit of that provision or right; and

### is effective only to the extent set out in such Notice.

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Contract, does not amount to a waiver of any obligation of, or breach of obligation by, another party.

**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 that document will continue in force.

**Entire Agreement**

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

**Rights are Cumulative**

The rights, powers and remedies provided in this Contract are cumulative and are not exclusive of the rights, powers or remedies provided by Law independently of this Contract.

**No merger**

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

**Survival**

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

### clauses 35 to 40.4 (Intellectual Property Rights);

### clause 41 (Confidentiality);

### clause 42 (Privacy);

### clause 44 (Security);

### clause 47 (Insurance);

### clause 50 (Indemnity);

### clause 7 (Transition Out) of Schedule 5 (Stage 3 Additional Terms);

### the termination provisions so far as they relate to rights and obligations arising on termination; and

### any clauses that are expressed to or which by their nature survive termination or expiry, including warranties, limitations on liability, licensing and Intellectual Property Rights.

**Counterparts**

This Contract may be executed in any number of counterparts. All executed counterparts constitute the same Contract.

**EXECUTION**

***Note to Tenderers: The execution block will be updated with the successful Tenderer's details.***

Executed as a Contract.

|  |  |
| --- | --- |
| Executed by **the Australian Medical Council Limited ABN** 97 131 796 980 acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s 127 of the *Corporations Act 2001* (Cth): |  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .Signature of director | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Signature of director/company secretary |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Name of director (print) | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .Name of director/company secretary (print) |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Date | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Date |

|  |  |
| --- | --- |
| Executed by **[INSERT PARTY] ABN [INSERT ABN]** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s 127 of the *Corporations Act 2001* (Cth): |  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .Signature of director | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Signature of director/company secretary |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Name of director (print) | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .Name of director/company secretary (print) |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Date | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Date |

1. Statement of Requirements

***Note to Tenderers:*** *Please refer to the separately provided Statement of Requirements in the RFT. The Statement of Requirements as negotiated and agreed by the preferred Tenderer and the Australian Medical Council Limited will be inserted in the final execution version of the Contract, to reflect the preferred Tenderer's proposed approach to the delivery of the Services.*

1. Charges and Payments

***Note to Tenderers:*** *Please refer to the separately provided document. The charges and payments as negotiated and agreed by the preferred Tenderer and the Australian Medical Council Limited will be inserted in the final execution version of the Contract*

1. Glossary

| **Term** | **Meaning** |
| --- | --- |
| **Accept** | means the AMC’s acceptance of a Milestone, Service or Deliverable in accordance with clause 8 of this Contract. **Accepted** and **Acceptance** have corresponding meanings. |
| **Acceptance Criteria** | means the criteria which are used to determine if the Milestone, Service or Deliverable meets the requirements of this Contract and is fit to be Accepted by the AMC, and if applicable, whether payment should be made pursuant to this Contract. Acceptance Criteria are described in the Statement of Requirements or any Acceptance Test Plan, or otherwise agreed by the parties in writing.  |
| **Acceptance Test Plan** | means the plan for acceptance testing prepared and submitted by the Service Provider (if required) and approved by the AMC. |
| **Acceptance Testing** | means the performance of tests in accordance with clause 8 of this Contract, including to determine whether a Milestone, Service or Deliverable meets the applicable Acceptance Criteria **(Acceptance)**, for the purpose of considering the Milestone, Services or Deliverables for Acceptance. |
| **Additional Services** | means services which are, in the opinion of the AMC, related to the Services but which are not within the scope of the Services at the time of the AMC’s request for a quote for those Services.  |
| **Additional Terms** | has the meaning given in clause 4.1 of Schedule 5 (Stage 3 Additional Terms). |
| **AMC** | means the Australian Medical Council Limited as identified in Item 4 of the Contract Details with responsibility for administration of this Contract. |
| **AMC Data**  | means all data and information (including Personal Information) generated by or relating to the Services or the AMC and its functions (including data and information relating to the AMC Personnel and it stakeholders) in whatever form that data and information may exist. |
| **AMC Material** | means all Material belonging to the AMC and includes AMC Data. |
| **AMC Representative** | means the person appointed by the AMC to represent it in relation to the performance of this Contract, being (as at the Commencement Date) the person identified in Item 5 of the Contract Details. |
| **AMC Supplied Item** | means an item (including a Product) specified in the Statement of Requirementsor an Accepted Deliverable as an item to be supplied by the AMC for use by the Service Provider in the performance of the Services. |
| **Approval** | means a confirmation by the AMC in writing to the Service Provider that a document or action appears to meet the requirements of this Contract but does not:* 1. limit the Service Provider’s responsibility to ensure the document or action meets the requirements of this Contract; or
	2. waive any right the AMC has under this Contract if the document or action does not meet such requirements.

**Approved**, **Approve** have the corresponding meaning. |
| **Approved Quote** | means a quote approved by the AMC for Additional Services in accordance with clause 7 of this Contract. |
| **Background Material** | means the Material of a party which existed prior to the Commencement Date or which was acquired or created by, or licensed to, a party after the Commencement Date independently of this Agreement. Background Material excludes AMC Material.  |
| **Business Day** | any day that is not a Saturday, Sunday or a national or an ACT public holiday. |
| **Business Hours**  | means 8:30 am to 5:30 pm Monday to Friday.  |
| **Business System** | means the AMC’s systems, applications, infrastructure and hardware as outlined in Schedule 1 (Statement of Requirements). |
| **Certificate of Acceptance** | means a certificate issued by the AMC stating that the Milestone, Service or Deliverable that is subject to Acceptance has been Accepted. |
| **Charges** | means any amount payable in accordance with this Contract as specified in Schedule 2 (Charges and Payments). |
| **Commencement Date** | means the date specified in Item 9 of the Contract Details.  |
| **Commonwealth** | means the Commonwealth of Australia.  |
| **Confidential Information** | means:(a) in relation to the AMC, information that:i. is by its nature confidential;ii. is designated by the AMC as confidential;iii. the Service Provider knows or ought to know is confidential including:A. information comprised in or relating to any of the AMC's Intellectual Property;B. information relating to the policies, strategies, practices and procedures of the AMC and any information in the Service Provider's possession relating to the AMC;C. information relating to other contractors of the AMC; andD. security classified information; oriv. is AMC Data,but does not include information which:v. is or becomes public knowledge other than by breach by the Service Provider of any confidentiality obligation; orvi. has been independently developed or acquired by the Service Provider as established by written evidenceand(b) in relation to the Service Provider, the following information i. the Service Provider’s internal costing models;ii. information relating to Service Provider’s other customers, strategies, practices and procedures, security systems and processes; andiii. confidential information relating to the Service Provider’s employees, including employee records. |
| **Conflict of Interest** | means any known actual, potential or perceived conflict between:(a) the duty that the Service Provider, Service Provider Personnel, and any related body corporate has to the AMC under the Contract; and(b) either: i the personal interests of the Service Provider, Service Provider Personnel or a related body corporate; or ii the duty of the Service Provider, Service Provider Personnel or a related body corporate to another person or entity.A conflict of interest includes:(c) the Service Provider accepting benefits or bribes from a third party or providing benefits or bribes to Personnel of the AMC in respect of this Contract, including for the purposes of influencing the AMC to enter into this Contract with the Service Provider or a third party; or(d) unauthorised distribution of the AMC’s Confidential Information by the Service Provider for the purposes of the Service Provider gaining financial benefit from a third party. |
| **Consequential Loss** | means any loss, damage or expense recoverable at Law which is:1. indirect, special or incidental loss;
2. a loss of opportunity, reputation, or goodwill;
3. a loss of profits, anticipated savings, or business; or
4. a loss of the value of any equipment.
 |
| **Contract** | this Contract for the provision of the Services including all its Schedules and other attachments and any other documents (including plans) referred to in this Contract, as amended from time to time in accordance with this Contract. |
| **Contract Details** | means the Contract Details in Part 1 of this Contract.  |
| **Correctly Rendered Invoice** | means an invoice rendered in accordance with Schedule 2 (Charges and Payments), and which meets any other requirements specified for an invoice in this Contract.  |
| **Critical Milestone** | means a Milestone specified in Schedule 2 (Charges and Payments) as a Critical Milestone.  |
| **Deliverable** | means any document, product or other thing required to be created or provided by the Service Provider to meet the requirements of this Contract. |
| **Document** | includes:(a) any paper or other material on which there is works, figures, symbols or perforations having a meaning for persons qualified to interpret them; and (b) any article or material in which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device. |
| **Documentation** | means the Documents in relation to any Deliverables that are to be provided by the Service Provider under this Contract.  |
| **Eligible Data Breach** | has the meaning given to that term in the Privacy Act.  |
| **Equipment** | means equipment, including hardware, which is, or is required to be, provided as part of the implementation, operation or support of the Services. |
| **Existing Material** | means Material owned or provided by the Service Provider that:(a) is in existence prior to the Commencement Date of this Contract; or (b) is subsequently brought into existence other than as a result of the performance of obligations under this Contract. |
| **GST** | has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). |
| **GST Amount** | has the meaning in clause 32.2. |
| **Harmful Code** | means any virus, disabling or malicious device or code, worm, trojan, time bomb or other harmful or destructive code, or any other mechanism (including but not limited to automatic and/or random expiry date) which is likely to disable or reduce the functionality or performance of the AMC’s information and communication technology environment or the Services.  |
| **Illegal Worker** | means a person who:(a) has unlawfully entered and remains in Australia;(b) has lawfully entered Australia but remains in Australia after his or her visa has expired; or(c) is working in breach of his or her visa conditions.For more information refer to the Australian Immigration Guide to Work Entitlements available at: [http://www.immi.gov.au/employers](http://www.immi.gov.au/employers.). |
| **Inappropriate Person** | means any person or organisation that is listed on one or more of the following lists:(a) 'Regulation 8 Consolidated List' maintained by the Australian Government Department of Foreign Affairs and Trade ([www.dfat.gov.au/icat/UNSC\_financial\_sanctions.html](http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html))‘ or(b) 'Listing of Terrorist Organisations' maintained by the Australian Government ([www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/95FB057CA3DECF30CA256FAB001F7FBD?OpenDocument](http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/95FB057CA3DECF30CA256FAB001F7FBD?OpenDocument)). |
| **Indemnified Persons** | has the meaning given in clause 50.1. |
| **Initial Term** | means the initial term specified at item 10 of the Contract Details. |
| **Intellectual Property Rights (IPR)** | means all intellectual property rights, including but not limited to, the following rights:(a) patents, copyright, rights in circuit layouts, designs, trademarks (including goodwill in those marks) and business, company 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,whether or not such rights are registered or capable of being registered. |
| **IP Plan** | means the plan to be provided by the Service Provider under clause 40 of this Contract. |
| **IP Register** | means the register (in a form Approved by the AMC) that is developed and maintained by the Service Provider as described in clause 40 of this Contract. |
| **Key Person or Key Personnel** | means Service Provider Personnel specified or referred to in the Statement of Requirements as a key person and referred to in clause 24.4 of this Contract. |
| **Law**  | any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, AMC, the Commonwealth, or a local government, and includes the common law as applicable from time to time. |
| **Loss** | includes all losses, liabilities, damages, fines, costs and expenses, including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties. |
| **Material** | means any tangible thing in which Intellectual Property Rights can subsist, including without limitation software, firmware, documentation, reports, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions or other material. |
| **Milestone** | means a planned or scheduled event specified in this Contract and Schedule 1 (Statement of Requirements) and which the Service Provider must achieve by the applicable Milestone Date. Milestones are used to measure and report progress and may be linked to a payment amount. |
| **Milestone Date** | means the date by which a Milestone must be achieved, as specified in this Contract. |
| **Moral Rights** | means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth). |
| **New Material** | means the Material created by the Service Provider on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Contract, and includes any modifications that may be required for that purpose. |
| **Notice** | means a notice under this Contract that is sent in accordance with clause 57 of this Contract.**Notify, Notified** and **Notification** have the corresponding meaning. |
| **Objectives** | means the AMC's objectives for the Services including as set out in clause 4 of this Contract. |
| **Option Period** | means an option period described in Item 11 of Part 1 (Contract Details), which may be exercised in accordance with clause 3 of this Contract.  |
| **Other Service Provider** | means any other Service Provider, consultant, government entity, service provider or other person engaged to perform work of any description upon or that may impact upon the Services or otherwise in connection with the AMC's information and communications technology functions or requirements. |
| **Personal Information** | has the meaning given in the Privacy Act, as amended from time to time. |
| **Personnel** | means:(a) in respect of the AMC, its officers, employees, agents and contractors other than the Service Provider and Service Provider Personnel;(b) in respect of the Service Provider, its officers, employees, agents, Subcontractors and Subcontractor personnel, and(c) in respect of any Subcontractor, its officers, employees, agents and contractors. |
| **Privacy Act** | means the *Privacy Act 1988* (Cth), as amended from time to time. |
| **Privacy Commissioner** | has the meaning given to that term in the *Australian Information Commissioner Act 2010* (Cth), as amended from time to time.  |
| **Product** | means any Software, Equipment or Documentation used, or for use in or with, the Services, including as specified in the Statement of Requirements and/or Schedule 2 (Charges and Payments). |
| **Recipient**  | has the meaning in clause 32.2. |
| **Representative** | means either the Service Provider Representative or AMC Representative as the context requires.  |
| **Schedule**  | means documents identified as Schedules to this Contract. |
| **Security Incident** | means a deliberate, negligent or reckless action that leads, or could lead, to the loss, damage, compromise, corruption or disclosure of the AMC’s.  |
| **Service Provider** | means **[INSERT BUSINESS NAME AND ABN OF SERVICE PROVIDER]**, and includes its Personnel, as the context permits. |
| **Service Provider Representative** | means the person appointed by the Service Provider to represent it in relation to the performance of this Contract, being (as at the Commencement Date) the person identified in Item 7 of the Contract Details.  |
| **Services** | means all or part of the services, functions and responsibilities that must be performed by the Service Provider to the AMC in accordance with this Contract, as amended from time to time. Services includes all Services specified in the Statement of Requirements. |
| **Site** | means the AMC’s premises where the Services must be provided, as set out in the Statement of Requirement.  |
| **Software** | means software that falls within the definition of 'computer program' in the *Copyright Act 1968* (Cth) and which is used, or for use in or with, the Services, including as specified in the Statement of Requirements and/or Schedule 2 (Charges and Payments).  |
| **Statement of Requirements** | means the detailed descriptions of the requirements for the Services in Schedule 1 (Statement of Requirements). |
| **Stage** | means the stages that the AMC may enter into for the provision of Services under this Contract.  |
| **Stage 1 Services**  | means the services that the Service Provider must provide in accordance with Schedule 1 (Statement of Requirements) for the purposes of this Contract.  |
| **Stage 2 Services**  | means the services that the AMC may engage the Service Provider to provide in accordance with Schedule 1 (Statement of Requirements) for the purposes of this Contract. |
| **Stage 3 Additional Terms** | means Schedule 5 (Stage 3 Additional Terms) to this Contract. |
| **Stage 3 Commencement Date** | means the date the Service Provider must commence providing the Stage 3 Services in accordance with Schedule 5 (Stage 3 Additional Terms), if required by the AMC. |
| **Stage 3 Services**  | means the services that the AMC may engage the Service Provider to provide in accordance with Schedule 1 (Statement of Requirements) and with Schedule 5 (Stage 3 Additional Terms). |
| **Subcontract**  | means an agreement or other arrangement between the Service Provider and its Subcontractor.  |
| **Subcontract Information** | means any information as requested by the AMC in relation to its Subcontractors or any subcontracted Services. |
| **Subcontractor** | means an entity engaged under a Subcontract to perform any part of the work under this Contract and its Personnel. |
| **Supplier** | has the meaning in clause 32.2. |
| **Term** | means the term of this Contract and includes the Initial Term, the Option Periods (if exercised by the AMC) and the Transition Period.  |
| **Transition In** | means the project to transition in the Stage 3 Services as specified in Schedule 5 (Stage 3 Additional Terms).  |
| **Transition In Date** | means the Milestone Date for completion of the Transition In Services. |
| **Transition In Plan** | means the plan for the Transition In Services to be provided by the Service Provider in accordance with Schedule 5 (Stage 3 Additional Terms).  |
| **Transition In Services**  | means the Services required to transition the Stage 3 Services from the AMC’s current service arrangements to provision by the Service Provider, as described in Schedule 5 (Stage 3 Additional Services).  |
| **Transition Out** | means the transition out of the Services in accordance with clause 7 of Schedule 5 (Stage 3 Additional Terms). |
| **Transition Out Charges** | means the Charges payable in accordance with Schedule 2 (Charges and Payments). |
| **Transition Out Plan** | means the plan of that name described in clause 7 of Schedule 5 (Stage 3 Additional Terms). |
| **Transition Out Services** | means the Services specified as such in clause 7 of Schedule 5 (Stage 3 Additional Terms). |
| **Transition Period** | means the period specified in clause 7 of Schedule 5 (Stage 3 Additional Terms). |
| **Variation Proposal** | means a proposal (in a form Approved by the AMC) to vary this Contract as referred to in clause 29 of this Contract. |

1. Deed of Confidentiality

THIS DEED is made on the day of 20 .

BETWEEN

(1) **The** **Australian Medical Council Limited** (ABN 97 131 796 980) (**AMC**)

AND

(2) ***[insert name of Recipient]*** ABN ***[ABN]*** ***[or insert address for a natural person]*** (**Recipient**).

**RECITALS:**

1. The AMC has entered into a contract with ***[insert Service Provider's name and ABN]*** (**Service Provider**) ***[insert contract number]*** dated ***[insert date]*** for the provision of process improvement and consulting services (**Contract**).
2. In order to assist the performance of the Contract, the Service Provider and the Recipient have entered into a subcontract, employment, contractor or agency arrangement for the supply of ***[insert purpose of agreement and contract/order number as appropriate]*** (**Contract**).
3. In the performance of the Contract, the Recipient may become aware of Confidential Information belonging to the AMC or a third party that is or relates to the subject matter of the Contract and Personal Information that relates to the AMC’s Personnel or another person. The Recipient agrees to manage Confidential Information and Personal Information in accordance with this Deed.

**Definitions**

1. In the interpretation of this Deed, unless the contrary intention appears:

**Approved Person** means a person who is:

* + - 1. the AMC’s personnel; or
			2. any other person nominated or approved by the AMC.

(**Confidential Information**) means information that:

* + - 1. is by its nature confidential; or
			2. is designated by the AMC or a third party as confidential; or
			3. the Recipient knows or ought to know is Confidential Information; or
			4. is the AMC’s material or data,

but does not include information which:

* + - 1. is or becomes public knowledge other than by a breach by the Service Provider or the Recipient of any confidentiality obligation; or
			2. has been independently developed or acquired by the Service Provider or the Recipient as established by written evidence.

**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 as applicable from time to time.

**Loss/Losses** means all losses, liabilities, damages, fines, costs and expenses (including reasonable legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).

**Personal Information** has the meaning given in the *Privacy Act 1988* (Cth), as amended from time to time.

**Services** means the Services required to be provided under the Contract.

**Authorised representative**

1. Except where the Recipient is a natural person, the Recipient warrants that the signatory to this Deed is an duly authorised representative of the Recipient and is duly authorised to bind the Recipient.

**Protection of Personal Information and Confidential Information**

1. The Recipient agrees to keep secret and confidential all Personal Information and Confidential Information and will not directly or indirectly disclose to any person, other than an Approved Person, any Personal Information or Confidential Information. The Recipient agrees not to make any use of information contained in the Personal Information or Confidential Information except as it relates to provision of the Services.
2. The Recipient understands and acknowledges that any unauthorised use or disclosure of Personal Information or Confidential Information may make them liable for prosecution under applicable Laws of the Australian Capital Territory.
3. The Recipient agrees to immediately Notify the AMC if it becomes aware that any of the Personal Information or the Confidential Information:
	* + 1. has been used, copied or disclosed in breach of this Deed; or
			2. is required to be disclosed by Law.
4. The Recipient acknowledges that improper use or disclosure of any Personal Information or Confidential Information provided to or accessed by the Recipient pursuant to or in connection with the provision of the Services may be detrimental to the AMC in the performance of their functions and may cause harm to any third parties with an interest in the Personal Information or Confidential Information.

**Retrospectivity**

1. This Deed has retrospective effect and covers all Confidential Information and Personal Information disclosed to the Recipient by or on behalf of the AMC or the Service Provider in connection with the Contract or the Services, whether before or after the date of this Deed.

**EXECUTION**

Executed as a deed.

|  |  |
| --- | --- |
| **Executed as a deed** by the Australian Medical Council Limited ABN 97 131 796 980 acting by the following persons or, if the seal is affixed, witnessed by the following persons, in accordance with s 127 of the Corporations Act 2001 (Cth): |  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .Signature of director | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Signature of director/company secretary |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Name of director (print) | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Name of director/company secretary (print) |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Date | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Date |

**[*Note: select the appropriate signature block - examples for Australian corporations and natural persons are provided below.*]**

**[*If the Recipient is an Australian corporation, use the following signature block:*]**

|  |  |
| --- | --- |
| **Executed as a deed** by **[*name of Recipient*] ABN [*ABN*]** acting by the following persons or, if the seal is affixed, witnessed by the following persons, in accordance with s 127 of the *Corporations Act 2001* (Cth): |  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .Signature of director | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Signature of director/company secretary |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Name of director (print) | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Name of director/company secretary (print) |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Date | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Date |

***[If the Recipient is a natural person, use the following signature block:]***

|  |  |
| --- | --- |
| Signed, sealed and delivered by ***[name of Recipient]*** in the presence of: |  |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Signature of witness | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Signature of Recipient |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Name of witness (print) | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Name of Recipient |
| . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Date | . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . Date |

1. Stage 3 Additional Terms
2. Introduction and interpretation

# Introduction

The parties acknowledge that this Schedule 5 (Stage 3 Additional Terms) (**Stage 3 Additional Terms**) does not form part of the Contract between the AMC and the Service Provider unless Stage 3 is included in the Contract.

These Stage 3 Additional Terms specify the rights and obligations in relation to the Stage 3 Services that the Service Provider irrevocably offers to supply if required by the AMC, subject to the terms of the Contract.

**Precedence**

These Stage 3 Additional Terms set out terms and conditions specifically negotiated between the parties for the Stage 3 Services and are intended to have priority over any other terms or conditions set out in the Contract in relation to the Stage 3 Services, or incorporated by reference in, the other parts of the Contract.

In accordance with clause 2.1 of the Contract, except as expressly specified otherwise in this Contract, in the event of any inconsistency between:

### clauses 1 to 58 of this Contract and (if the AMC elects to proceed with Stage 3) Schedule 5 (Stage 3 Additional Terms);

### Schedule 1 (Statement of Requirements);

### Schedule 2 (Charges and Payments);

### Schedule 3 (Glossary);

### the other Parts and Schedules to this Contract in the order in which they appear;

### any attachment or annexure to a Schedule in the order in which they appear; and

### any Document referred to or incorporated by reference,

the clause or Document that is referenced earlier in this paragraph will prevail to the extent of any inconsistency with the clause or documents referenced lower in this clause.

# Interpretation

## Any capitalised terms used in these Stage 3 Additional Terms have the meaning given in the Contract.

# Scope and Services

## The purpose of these Stage 3 Additional Terms is to set out the Service Provider's additional obligations to perform the Stage 3 Services.

**Total responsibility for the Stage 3 Services**

## The Service Provider acknowledges and agrees that the Service Provider, in Stage 3, is responsible for (except to the extent specified in Schedule 1 (Statement of Requirements)):

### providing, configuring and implementing Deliverables that meet the requirements of the Accepted Stage 1 and 2 Deliverables, as well as all other requirements of this Contract;

###  the suitability, configuration, integration, compatibility and interoperability of all products which are incorporated in, or otherwise part of, the Stage 3 Services; and

### resolving any incompatibility, integration, interoperability or other design issue that may arise with respect to the Stage 3 Services.

## The Service Provider must:

### undertake all activities necessary to ensure that all components of the Stage 3 Services and the Stage 3 Deliverables are fully and seamlessly integrated and function as a whole;

### Notify the AMC as soon as practicable of any problems or potential problems concerning the integration of the Stage 3 Services and take all necessary steps to prevent or mitigate those problems or potential problems; and

### resolve any incompatibility, integration, interoperability or other issue that may arise during the performance of the Stage 3 Services provided under these Stage 3 Additional Terms of the Contract at no additional cost to the AMC.

# Application of Additional Terms

If the AMC, or any AMC Personnel, are required to accept any terms or conditions that purport to (including through any licensing or usage statement, shrink or click wrap arrangement, external link, hyperlink, website, or Documentation):

### modify the terms that would otherwise apply in accordance with these Stage 3 Additional Terms or the Contract; or

### be incorporated into, add to, or otherwise amend these Stage 3 Additional Terms or the Contract,

(**Additional Terms**), including to the extent they purport to:

### apply charges that are not consistent with or not calculated in accordance with this Contract;

### apply licence or usage rights or metrics, or vary any licence or usage rights or metrics other than those set out in this Contract;

### change the liability of the AMC to the Service Provider from the position set out in this Contract;

### reduce or limit any rights the AMC would otherwise have under the terms of this Contract, including any right for the AMC to:

#### terminate this Contract; or

#### recover damages for breach;

### include any additional grounds for the Service Provider to terminate this Contract or any licences granted pursuant to this Contract;

### include any additional rights for the Service Provider or third parties to access the Service Provider’s premises or systems; or

### limit or reduce the liability that the Service Provider or any third party would otherwise have under this Contract,

those terms do not create any separate agreement and do not apply, unless the Additional Terms have been expressly agreed in writing by the AMC.

The Service Provider must ensure that the AMC and the AMC’s Personnel are not required to accept any Additional Terms in order to receive or use the Stage 3 Services.

# General warranties for the Stage 3 Services

## The Service Provider warrants that the Stage 3 Services, and all components of the Stage 3 Services required to support the Stage 3 Services, will operate in accordance with the Contract.

## For a period of six (6) months following the Acceptance of any Stage 3 Deliverables, and at no additional cost to the AMC, the Service Provider warrants that it will remedy, by repair, replacement or reperformance, any defects in the Stage 3 Services or Deliverables that:

### are required to ensure the Stage 3 Services conform to the Statement of Requirements and all warranties applicable to this Contract; and

### are Notified by the AMC to the Service Provider.

## The Services Provider must meet all costs of, and incidental to, the performance of remedial work under clause 5.2.

**Effect of warranties**

For the purposes of the Stage 3 Services, nothing in this clause 4:

### restricts the effect of any conditions or warranties which may be implied by the *Competition and Consumer Act 2010* (Cth), any sale of goods or services Laws, or fair trading Laws; or

### limits the AMC’s right to take action on the basis of the common law that would be applied by the High Court of Australia in respect of a breach of contract, tort or any other common law or statutory cause of action.

The Service Provider acknowledges that the AMC agrees for the Service Provider to provide the Stage 3 Services in reliance on the warranties given by the Service Provider in this clause 5.

**Third party warranties**

If the Service Provider supplies Stage 3 Services that have been procured from a third party, the Service Provider assigns to the AMC, 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 Service Provider of the obligation to comply with warranties provided directly by the Service Provider under this Schedule 5 (Stage 3 Additional Terms) or the Contract.

# Transition In

On and from the Stage 3 Commencement Date, the Service Provider must do all things necessary so as to be able to perform the Stage 3 Services and otherwise meet all of its obligations under these Stage 3 Additional Terms and the Contract on and from the date for completion of Transition In as described in these Stage 3 Additional Terms (**Transition In**).

The Transition In Services must be provided:

### in accordance with the Accepted Transition In Plan, and before Acceptance, the draft Transition In Plan approved by the AMC at the Stage 3 Commencement Date;

### so that the Transition In Services are completed by the Transition-In Date; and

### so that the Service Provider is able to perform all of the Stage 3 Services and otherwise meet all of its obligations under these Stage 3 Additional Terms on and from the Transition-In Date.

The Service Provider must, when performing the Transition In Services:

### ensure that the Transition In Services are conducted in a timely, coordinated, risk managed and otherwise efficient manner without adversely affecting the AMC’s functions or operations;

### ensure a seamless transition from the AMC’s current service arrangements with no avoidable disruptions or delays;

### if disruptions or delays are unavoidable, ensure that such disruptions or delays are:

#### minimised (in their impact and duration); and

#### planned, assessed and agreed with the AMC prior to proceeding and implemented in accordance with the AMC’s change management processes;

### work collaboratively with the AMC to ensure that the Service Provider effectively manages all aspects of the Transition In Services; and

### diligently identify and resolve, or assist the AMC to resolve, any problems encountered in the completion of the Transition In Services.

If the Service Provider considers that any disruption to the AMC’s operations has or may occur, the Service Provider must:

### immediately notify the AMC about the actual or potential disruption and provide information sufficient for the AMC to understand the nature and duration of the disruption;

### notify the AMC of the steps the Service Provider is taking or will take to mitigate the effects of and resolve any disruption or potential disruption (including to minimise its impact and duration); and

### promptly comply with any direction of the AMC in relation to the disruption or potential disruption.

# Transition Out

**Transition Period**

The Transition Period will commence on the earliest of:

### the date on which a Notice of termination is given in accordance with clause 52 of the Contract; and

### 3 months before this Contract will expire in accordance with clause 3 of the Contract,

and the Transition Period will end on the date the AMC Notifies the Service Provider that all Stage 3 Services have been either transferred or completed in accordance with this Schedule 5 (Stage 3 Additional Terms) and the Contract.

**Service Provider’s Obligations in relation to Transition Out**

The Service Provider must:

### undertake all activities described in Schedule 1 (Statement of Requirements) in relation to the Transition Out of Services, including providing a Transition Out Plan for Acceptance, and then updating it in accordance with Schedule 1 (Statement of Requirements); and

### without limiting those activities, comply with the requirements as set out in this clause 7 of this Schedule 5 (Stage 3 Additional Terms).

At all times, the Service Provider must perform all of the Stage 3 Services in a manner that will effectively and efficiently allow AMC Material and New Material to be prepared, used and accessed by the AMC or an alternative service provider after the expiry or termination of this Contract.

During the Transition Period, the Service Provider must take all reasonable actions to ensure there is an efficient and effective disengagement from provision of the Stage 3 Services by the Service Provider to alternative arrangements as Notified to the Service Provider by the AMC. Without limiting this, the Service Provider must:

### liaise with the AMC as needed to finalise and submit to the AMC for Acceptance an updated Transition Out Plan in accordance with Schedule 1 (Statement of Requirements), and otherwise plan and implement all necessary actions for the Transition Period;

### implement the Accepted Transition Out Plan (including an Accepted updated Transition Out Plan) so as to ensure all transition activities are completed within the required timeframe;

### transfer to the AMC or its nominee all New Material and AMC Material in a non-proprietary format that is readily usable by the AMC or its nominee;

### not delete or destroy any New Material or AMC Material unless the AMC has confirmed that this may occur, in which case the Service Provider must:

#### remove, delete or destroy the relevant Material in accordance with any directions from the AMC; and

#### ensure that all back-up versions of the relevant Material are similarly removed, deleted or destroyed;

### continue to comply with all security and data protection obligations in this Contract; and

### if required, provide to the AMC such evidence as the AMC or its nominee requires verifying the Service Provider’s performance of its obligations under this clause 7.

During the Transition Period:

### the terms of this Schedule 5 (Stage 3 Additional Terms) and the Contract continue (except that after the time that the Term would have ended but for clause 3.4, the only amounts payable to the Service Provider are those expressly stated to be payable during this time in Schedule 2 (Charges and Payments) (if any)); and

### if requested by the AMC or specified in the Transition Out Plan, the Service Provider must continue to perform any Services that have not been transferred to another entity and must discontinue performing any of the Stage 3 Services that have been transferred.