

## Schedule 4: Service Terms and Conditions

### Agreement made at Sydney on the Commencement Date (as defined in this Agreement)

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#### Parties

The party to the Roles and Responsibilities Agreement that is the Requesting Party or that is the recipient of the Additional Services, WaterNSW Services or the DPIE Water Services (as applicable) ("**Requesting Party**")

The party to the Roles and Responsibilities Agreement that is the Service Provider or that is responsible for performing the Additional Services, WaterNSW Services or the DPIE Water Services (as applicable) ("**Service Provider**")

#### Background

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- A. The Requesting Party and the Service Provider are parties to the Roles and Responsibilities Agreement under which they have agreed to perform, subject to the terms of the Roles and Responsibilities Agreement, the Additional Services, WaterNSW Services and DPIE Water Services (as applicable) in accordance with the terms of this Service Agreement.

#### Agreed terms

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##### 1. Definitions

In this Service Agreement (including the Background), capitalised terms have the same meaning as in the Roles and Responsibilities Agreement (unless they are assigned a different meaning below), and the following terms have the meaning assigned to them below:

**Approval** means any licence, permit, registration, consent, approval, determination, certificate, administrative decision, permission or other requirement of any Authority having any jurisdiction in connection with the Services or under any applicable Law, which must be obtained or satisfied to carry out the Services.

**Authority** includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality.

**Authorised Person** in respect of a party means:

- (a) in the case of any WaterNSW Services and DPIE Water Services (as applicable), the relevant Authorised Person (as that term is defined in the Roles and Responsibilities Agreement) named in, or determined in accordance with, the Roles and Responsibilities Agreement; and
- (b) in the case of any Additional Services procured under clauses 6.1 and 6.2(b) of the Roles and Responsibilities Agreement, the primary contact person for the Requesting Party and the Service Provider (as applicable) as set out in the Purchase Order, or any other person appointed by a party to be its Authorised Person from time to time during the Services Term (which appointment will be made by that party giving Notice of such appointment to the other party).

**Background IP** in respect of a party means:

- (a) any Intellectual Property Rights belonging to that party that are pre-existing as at the Commencement Date; or

- (b) any Intellectual Property Rights that are brought into existence by or on behalf of that party, other than as a result of the performance of that party's obligations under this Service Agreement,

and used by a party in performing its obligations under this Service Agreement.

**Commencement Date** means:

- (a) in respect of the WaterNSW Services and DPIE Water Services, the date that is the Commencement Date of the Roles and Responsibilities Agreement; and
- (b) in the case of any Additional Services procured under clauses 6.1 and 6.2 of the Roles and Responsibilities Agreement, the date on which a Service Contract is deemed to be formed under clause 6.2 (b) of the Roles and Responsibilities Agreement.

**Consequential Loss** means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect).

**Deliverables** means all the goods, supplies, software or documents (including any design documentation) the Service Provider provides to, or creates or develops for, the Requesting Party under or in connection with this Service Contract (including in the course of performing the Services), including reports, documents and other materials embodying data, results and other information but does not include the parties' working documents, general correspondence or drafts.

**End Date** means:

- (a) in the case of any WaterNSW Services and DPIE Water Services (as applicable), the last day of the Term of the Roles and Responsibilities Agreement (unless otherwise agreed by the parties); and
- (b) in the case of any Additional Services procured under clauses 6.1 and 6.2 and of the Roles and Responsibilities Agreement, the date set out in, or determined by reference to, the Purchase Order, accepted Quote or Amended Quote (as applicable).

**Fees** means:

- (a) unless the parties agree otherwise during the Services Term, in the case of any relevant WaterNSW Services and DPIE Water Services (as applicable) that are Additional Services:
  - (i) an amount that is determined having regard to, the fees that the Requesting Party was obliged to pay to the Services Provider in respect of the relevant Services as at the Commencement Date of the Roles and Responsibilities Agreement; or
  - (ii) the lump sum amount, schedule of fees or other amounts (if any) set out in the relevant Approved Services Schedule in respect of the relevant Services or any other agreement entered into between the parties from time to time in respect of such Services; and
- (b) in the case of any Additional Services procured under clauses 6.1 and 6.2 of the Roles and Responsibilities Agreement, the lump sum amount, schedule of fees or other amounts (as applicable) set out in the Purchase Order, accepted Quote or Amended Quote (as applicable), as adjusted from time to time in accordance with this Service Agreement.

**GST or Goods and Services Tax** means the tax payable on taxable supplies under the GST Law.

**GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

**Intellectual Property Rights** means all present and future rights in relation to patents, designs, trademarks, copyright or other protected intellectual property rights (or any rights to registration of such rights) whether created before or after the Commencement Date and whether existing in Australia or otherwise.

**Key Performance Indicators** or **KPIs** means the key performance indicators, if any, set out in:

- (a) in the case of any WaterNSW Services and DPIE Water Services (as applicable), the relevant Approved Services Schedule; and
- (b) in the case of any Additional Services procured under clauses 6.1 and 6.2 of the Roles and Responsibilities Agreement, the Quote or Amended Quote (as applicable) or any other document that forms part of the relevant Service Contract.

**Moral Rights** means any of the moral rights defined in the *Copyright Act 1968* (Cth) or other analogous rights arising under any other Law that exists or may come to exist anywhere in the world.

**Notifiable Incident** has the meaning given in the *Work Health and Safety Regulations 2017* (NSW).

**Personnel** means:

- (a) in respect of the Service Provider, any directors, officers, employees, consultants, agents and subcontractors of the Service Provider; and
- (b) in respect of the Requesting Party, any directors, officers, employees, consultants, agents and contractors of the Requesting Party (other than the Service Provider).

**Policies and Procedures** means the most recent versions of the Service Provider's code of conduct, policies and procedures, and any other policies or procedures of the Requesting Party that may reasonably be notified to the Service Provider by the Requesting Party prior to the Commencement Date, each as updated from time to time.

**Requesting Party's Information** means any information (including Data) that is reasonably required by the Service Provider for the purposes of performing the Services, provided to the Service Provider by the Requesting Party from time to time in accordance with clause 4.1.

**Roles and Responsibilities Agreement** means the agreement titled "Roles and Responsibilities Agreement" that was entered into between the Department of Planning, Industry and Environment (ABN 20 770 707 468), the Natural Resources Access Regulator (ABN 94 426 785 505), the Water Administration Ministerial Corporation (ABN 32 471 530 421) and Water NSW (ABN 21 147 934 787) on or about 30 June 2021.

**Service Agreement** means the contractual relationship between the parties constituted by:

- (a) these Service Terms and Conditions;
- (b) the KPIs (if any); and
- (c) either:
  - (i) in the case of any WaterNSW Services and DPIE Water Services (as applicable), the Roles and Responsibilities Agreement and any Approved Services Schedule; or
  - (ii) in the case of any Additional Services procured under clauses 6.1 and 6.2 of the Roles and Responsibilities Agreement, each other document that comprises a Service Contract.

**Services** means:

- (a) in the case of any WaterNSW Services and DPIE Water Services (as applicable), the Services described in the Roles and Responsibilities Agreement and in the relevant Approved Services Schedule; and

- (b) in the case of any Additional Services procured under clauses 6.1 and 6.2 of the Roles and Responsibilities Agreement, the Services set out in the Purchase Order, accepted Quote or Agreed Quote (as applicable),

as varied or amended from time to time, including on account of any Variation.

**Services Term** has the same meaning as in clause 3.

**Variation** means:

- (a) in the case of any WaterNSW Services and DPIE Water Services (as applicable), and unless the parties agree otherwise during the Services Term, any change or variation to the relevant Services in accordance with the Roles and Responsibilities Agreement or as set out in an Approved Service Schedule; and
- (b) in the case of any Additional Services procured under clauses 6.1 and 6.2 of the Roles and Responsibilities Agreement, any change or variation to the Services in accordance with this Service Agreement,

including any addition, increase, decrease, omission, deletion or removal to or from the Services.

## **2. Other Clauses Incorporated**

Clauses 1.2 (Interpretation), 9 (Dispute Resolution), 10 (Notices) (except clause 10(d)), 11 (Confidentiality, Privacy and GIPA Disclosure) (except clause 11.1(a)), and 13 (General) (except clause 13.5) of the Roles and Responsibilities Agreement apply to this Service Agreement as if they were set out in full in this Service Agreement, except that any references to "Agreement" in those clauses will be taken to be a reference to this "Service Agreement".

## **3. Services Term**

This Service Agreement will commence on the Commencement Date and continue until the End Date, unless it is extended, or terminated earlier, in accordance with its terms (**Services Term**).

## **4. Requesting Party Obligations**

### **4.1 General**

The Requesting Party must, in accordance with the requirements of the Service Agreement:

- (a) allow the Service Provider to perform the Services; and
- (b) pay the Fees to the Service Provider for performing the Services.

### **4.2 Requesting Party Information**

- (a) The Requesting Party must use reasonable endeavours to provide to the Service Provider any Requesting Party's Information, as specified or otherwise set out in this Service Agreement, in a timely manner.
- (b) Subject to clause 4.2(d), if, during the Services Term, the Service Provider, in its reasonable opinion, requires additional Requesting Party's Information to perform the Services, it may request such information from the Requesting Party and the Requesting party will promptly provide the relevant additional Requesting Party's Information to the Service Provider.
- (c) The Requesting Party's Information will remain the property of the Requesting Party.
- (d) The Service Provider must protect and keep safe any Requesting Party's Information and may use the Requesting Party's Information only to the extent that the use of such

information is reasonably necessary to enable the Service Provider to perform the Services.

- (e) The Requesting Party is not required to comply with clause 4.2(b):
  - (i) to the extent that doing so is not permitted or authorised by, or would contravene, any Law;
  - (ii) where the relevant information is subject to legal professional privilege and disclosure by a party would waive such privilege; or
  - (iii) where doing so would constitute a breach of contract or would infringe the Intellectual Property Rights of another person.
- (f) In the event that the Requesting Party does not, or is unable to, provide the Requesting Party's Information under this clause 4.2, the Service Provider will be entitled to claim an extension of time under clause 14.

#### **4.3 Provide access**

- (a) If the Services require access to land, and unless otherwise specified in the Service Agreement, the Requesting Party must use reasonable endeavours to:
  - (i) as soon as practicable, provide the Service Provider with access to the land upon which the Services are to be performed; and
  - (ii) arrange access to any other property which may be necessary for the Service Provider to perform the Services.
- (b) The Service Provider must comply with all reasonable directions, procedures and policies relating to work health, safety and security pertaining to the land referred to in clause 4.4(a) when accessing and using the same.
- (c) In the event that the Requesting Party does not, or is unable to, provide or arrange access to land or property in accordance with clause 4.3(a), the Service Provider will be entitled to claim an extension of time under clause 14.

#### **4.4 Make decisions**

If:

- (a) the Service Provider requests the Requesting Party to consider the selection of alternative courses of action in respect of the Services or the performance of its obligations under the Service Agreement; and
- (b) all information required to enable a decision to be made is provided by the Service Provider or is otherwise available to the Requesting Party,

then the Requesting Party must give a decision on the required course of action to the Service Provider within a reasonable time period and so as not to delay or disrupt the performance of the Services. However, regardless of any request or decision under this clause, the Service Provider must continue to perform its obligations under the Service Agreement until the Requesting Party makes a decision on the required course of action.

### **5. Service Provider Obligations**

#### **5.1 General**

- (a) The Service Provider acknowledges that the Requesting Party has entered into the Service Agreement relying on the professional skill, care, diligence and expertise of the Service Provider in the performance of the Services.
- (b) During the Services Term, the Service Provider must perform the Services:
  - (i) in accordance with this Service Agreement (including any KPIs) and all relevant Laws;

- (ii) to the standard of professional care and skill expected of a service provider experienced in the performance of services that are the same or similar to the Services;
- (iii) in accordance with any reasonable directions given by the Requesting Party;
- (iv) where practicable, using reasonable endeavours to do so in a cost-effective manner;
- (v) where appropriate, having regard to the Roles and Responsibilities Agreement;
- (vi) using reasonable endeavours to avoid damage to property and the environment; and
- (vii) using reasonable endeavours to prevent nuisance, or unreasonable inconvenience to other persons.

## **5.2 Approvals, Policies and Procedures**

In performing the Services, the Service Provider must:

- (a) unless otherwise specified in the Service Agreement, obtain all relevant and necessary Approvals (if any); and
- (b) ensure that it and its Personnel are aware of, and comply with, the Policies and Procedures.

## **5.3 Deliverables and non-conforming Deliverables**

- (a) The Service Provider must prepare any Deliverables:
  - (i) in accordance with the Service Agreement (including any KPIs); and
  - (ii) so that they are reasonably suitable for their intended use (being the use contemplated in or reasonably ascertainable from the Service Agreement) and completed in accordance with this Service Agreement.
- (b) If in the opinion of the Requesting Party's Authorised Person (acting reasonably), any Deliverables have not been prepared, or any Services have not been performed, in accordance with the Service Agreement, the Requesting Party's Authorised Person may give the Service Provider a Notice specifying the non-complying Deliverables or Services and doing one or more of the following:
  - (i) requiring the Service Provider to:
    - (A) amend the Deliverables or re-perform the non-complying Services within a specified time period; and
    - (B) take reasonable steps to mitigate the effect on the Requesting Party of the failure to prepare the Deliverables or perform the Services in accordance with the Service Agreement; or
  - (ii) advising the Service Provider that the Requesting Party will accept the non-complying Deliverables or Services despite the non-compliance.
- (c) If a Notice is given under clause 5(i), the Service Provider must, at its cost, amend the Deliverables or re-perform the non-complying Services:
  - (i) within the time specified in the Requesting Party's Authorised Person Notice; and
  - (ii) so as to minimise any delay or disruption to the performance of the Services and demonstrate steps taken to prevent any similar future non-compliance.

## **6. Subcontracting**

The Service Provider:

- (a) must not subcontract the whole or any part of the Services without the prior written approval of the Requesting Party's Authorised Person, other than to any subcontractors

that are expressly specified in the Service Agreement or have been preapproved by the Requesting Party; and

- (b) will be fully responsible for the performance of the Services in accordance with this Service Agreement despite subcontracting the performance of any part of the Services;
- (c) must engage subcontractors on terms that are not inconsistent with this Service Agreement.

## **7. Work health and safety**

- (a) Without limiting the Service Provider's obligations under any other provision of the Service Agreement, the Service Provider must, and must ensure that its Personnel, comply with the WHS Legislation including:
  - (i) any obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter; and
  - (ii) if requested by the Requesting Party's Authorised Person or required by the WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any Approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters.
- (b) In performing its obligations under the Service Agreement, the Service Provider must:
  - (i) in carrying out the Services, enable the Requesting Party to discharge the Requesting Party's duties under the WHS Legislation;
  - (ii) ensure that in performing the Services, it does not do anything or fail to do anything that would cause the Requesting Party to be in breach of the WHS Legislation; and
  - (iii) as soon as practicable following a Notifiable Incident connected with the Services or the Service Agreement, notify the Requesting Party of the Notifiable Incident and provide the Requesting Party with a written report within 24 hours of such Notifiable Incident.
- (c) The Service Provider must, and must take reasonable steps to ensure that its subcontractors:
  - (i) have the necessary resources in place to comply with the WHS Law; and
  - (ii) take all necessary measures to identify foreseeable hazards in relation to the Services which could potentially give rise to health and safety issues or breaches and take all necessary measures to assess and eliminate or control the risks arising from those hazards.

## **8. Fees and payment**

### **8.1 Basis of Fees**

The Service Provider acknowledges that, unless otherwise expressly stated in the Service Agreement, the Fee:

- (a) is firm and inclusive of all taxes (other than GST), duties (including customs duty) and governmental charges imposed or levied in Australia or overseas;
- (b) includes the cost of any packaging, marking, handling, freight and delivery, insurance and any other applicable costs and charges, and costs of compliance with all other statutory, award or other legal or contractual requirements; and
- (c) to the extent that it relates to Services carried out by a third party on behalf of the Service Provider, is on a pass-through basis (including an amount on account of the Service Provider's overheads and administration as agreed by the parties from time to time or as set out in the Quote, Agreed Quote or Approved Service Schedule (as applicable), but excluding any amount for profit or margin).

## 8.2 Claims and payment

- (a) The Service Provider must give the Requesting Party's Authorised Person a payment claim on account of any Services provided and any other amounts payable by the Receiving Party to the Service Provider under the Service Agreement:
  - (i) if:
    - (A) the Purchase Order sets out payment milestones or stages for payment, on or after the date of that the relevant milestone or stage is achieved; and
    - (B) otherwise, on or before the last Business Day of each month after the Commencement Date in which the relevant Services were provided, or other amounts became payable;
  - (ii) in the form of a valid tax invoice that complies with the GST Law in respect of that taxable supply;
  - (iii) that clearly identifies the Services completed and the Fees claimed and that is accompanied by any documentation the Requesting Party reasonably requests which evidences that the relevant Services and any Deliverables have been performed in accordance with this Service Agreement;
  - (iv) which are based on the any schedule of Fees, milestone or stage payment to the extent such prices are relevant; and
  - (v) that are accompanied by a signed subcontractor's statement, in the form set out <https://www.revenue.nsw.gov.au/help-centre/resources-library/opt011.pdf> and that is not dated before the date of the relevant payment claim.
- (b) The Requesting Party must:
  - (i) notify the Service Provider within 10 Business Days of receipt of the payment claim:
    - (A) of any disputed costs or amounts set out in the relevant payment claim;
    - (B) if the Requesting Party requires the Service Provider to provide additional information for the purposes of assessing the payment claim; and
  - (ii) must pay the Service Provider the undisputed amount of any payment claim within 30 days of receipt of the payment claim.
- (c) If the Requesting Party requests additional information under this clause, then the Service Provider must provide that information to the Requesting Party promptly.
- (d) In the event that the Requesting Party notifies any disputed costs or amounts under clause 8(ii), the matter will be referred to Dispute resolution in accordance with clause 9.
- (e) If the Requesting Party pays any of the Fees under this clause, such payment does not constitute an admission on the part of the Requesting Party that the Services have conformed with this Service Agreement and no payment releases the Service Provider from its obligations under this Service Agreement.

## 9A. Limitation of liability

- (a) Neither party will be liable to the other for any Consequential Loss howsoever arising under or in connection with this Service Agreement.
- (b) Subject to clause 9A(c), but notwithstanding any other provision of the Service Agreement, the Service Provider's aggregate liability to the Requesting Party in contract, tort (including negligence) or otherwise under the Service Agreement is limited to an amount equal to:
  - (i) the Fees as adjusted from time to time, including on account of any Variations; plus



- (ii) any other amounts paid or payable by the Requesting Party to the Service Provider under or in connection with the Service Agreement.
- (c) Clause 9A(b) does not limit the Service Provider's liability in respect of:
  - (i) liability which cannot be limited at Law;
  - (ii) liability for the death or personal injury, or loss or damage to third party real or personal property;
  - (iii) fraud, wilful misconduct or criminal conduct by the Service Provider or any of its Personnel;
  - (iv) an amount payable under an insurance policy taken out in conjunction with this Service Agreement; or
  - (v) the Service Provider's abandonment of its obligations under the Service Agreement.

**10A. GST**

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in the Service Agreement are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party (**Supplier**) under or in connection with the Service Agreement or the Services, the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (c) Any amount payable under clause 10A(b) will be paid to the Supplier at the same time as the other consideration for the supply is paid to the Supplier.
- (d) If any party is required under the Service Agreement to reimburse or pay to the other party an amount (other than any payment on account of the Fees) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of the Service Agreement, where the Recipient is the Service Provider, it will not be obliged to pay any amount on account of GST to the Requesting Party (whether under this clause 10A or otherwise) in respect of a taxable supply made by the Requesting Party unless and until the Requesting Party issues to the Service Provider, a valid tax invoice that complies with the GST Law in respect of that taxable supply.
- (f) Where the Supplier is the Service Provider, the Service Provider must issue a valid tax invoice to the Requesting Party in respect of any taxable supply made by the Service Provider to the Requesting Party (including under clause 10A) as a condition precedent to the Requesting Party being obliged to pay any amount on account of GST to the Service Provider in respect of such taxable supply.
- (g) If the GST payable in relation to a supply made by the Supplier under the Contract varies from the additional amount paid by the other party under this clause 10A in respect of that 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 other party (as appropriate).
- (h) Each party acknowledges and warrants that at the time of entering into the Service Agreement it is registered for GST (and any entity making supplies or acquisitions under this Service Agreement is also registered for GST) and will notify the other party if it or any relevant entity ceases to be registered for GST.
- (i) In this clauses 10A:

- (i) terms defined in GST Law have the meaning given to them in GST Law, unless the context suggests otherwise;
- (ii) GST includes amounts defined as "GST" under the GST Law and "GST equivalents" payments under the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW) (or similar payments under corresponding legislation of any other State or Territory); and
- (iii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

#### **11A. Intellectual Property**

- (a) Each party will retain its Background IP and nothing in this Service Agreement assigns or transfers the Background IP of one party to another. Neither party may assert or bring any claim for ownership of any or all of the other party's Background IP.
- (b) Unless otherwise expressly agreed in a relevant Quote, Amended Quote or Approved Service Schedule (as applicable), The Requesting Party agrees that, immediately upon the creation of any Deliverables, the Service Provider owns the Deliverables.
- (c) The Service Provider grants to the Requesting Party a non-exclusive, irrevocable, perpetual, transferable, royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) all existing and future Intellectual Property Rights comprised in or subsisting in the Deliverables (including any Service Provider Background IP in the Deliverables):
  - (i) for the purposes of this Service Agreement;
  - (ii) to allow the Requesting Party the full benefit and enjoyment of the Services; and
  - (iii) for the purpose of performing its official functions and pursuing its official objectives and for internal research and education purposes.
- (d) Each party grants to the other party a non-exclusive, irrevocable, perpetual, transferable, royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) all existing and future Intellectual Property Rights comprised in or subsisting in the party's Background IP for the purposes of this Service Agreement.
- (e) The Service Provider must obtain or procure all consents or waivers from any person who has Moral Rights in the Deliverables to the extent necessary to ensure that the Service Provider may do or authorise any acts or omissions consistent with the ownership and licences granted by or under this clause 11A without infringing any Moral Rights.

#### **12. Insurance**

- (a) The Service Provider must:
  - (i) from the Commencement Date, effect or have in place the following insurance with reputable insurers:
    - (A) professional indemnity insurance, for the amount of \$1 million (and in the annual aggregate);
    - (B) workers' compensation insurance, for the maximum amount required by Law; and
    - (C) public liability insurance, for the amount of \$20 million in respect of any one occurrence;
  - (ii) in relation to workers compensation insurance, ensure that each of its subcontractors has similar insurance to the Service Provider's workers compensation insurance covering the subcontractor's employees; and

- (iii) upon request from the Requesting Party's Authorised Person, provide the Requesting Party's Authorised Person with copies of certificates of currency for the insurances referred to in clause 12(i) as required by the Requesting Party's Authorised Person from time to time.
- (b) The insurance which the Service Provider is required to have in place under clause 12(a) must be maintained:
  - (i) in the case of public liability insurance and workers compensation insurance, until completion of the Services; and
  - (ii) in the case of professional indemnity insurance, until the expiry of 6 years following completion of the Services.
- (c) The Service Provider must ensure that it does not do anything which prejudices any insurance maintained under this Service Agreement.

#### **13A. Keeping of records**

- (a) The Service Provider must keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with accounting principles generally applied in government sector practice in respect of its time charge billing, its reimbursable expenditure and fees and reimbursements payable to others properly engaged pursuant to the Service Agreement.
- (b) The Service Provider must, within a reasonable time of any request, give the Requesting Party's Authorised Person access to, or verified copies of, any information which may be reasonably required by the Requesting Party to substantiate a claim by the Service Provider.

### **14. Variations and extensions of time**

#### **14.1 Variations**

- (a) The Requesting Party's Authorised Person may instruct the Service Provider to carry out a Variation by:
  - (i) a written direction entitled "Variation Order"; or
  - (ii) an oral instruction confirmed within 1 Business Day by a written direction entitled "Variation Order",

**(Variation Order).**
- (b) The Fee will be adjusted for all Variations which have been the subject of a Variation Order by:
  - (i) an amount determined by the Requesting Party using any rates or prices which appear in the Service Agreement to the extent they are applicable to, or it is reasonable to use them for valuing, the Variation; or
  - (ii) in any other circumstance, a reasonable amount to be agreed between the parties or, failing agreement, determined by the Requesting Party's Authorised Person acting reasonably.
- (c) If a Variation the subject of a direction by the Requesting Party's Authorised Person omits or deletes any part of the Services, the Requesting Party may thereafter carry out such omitted or deleted work or activities either itself or by engaging another contractor to do so.

#### **14.2 Extension of time**

If the Service Provider is or will be delayed by a cause that is beyond its reasonable control and in a manner which will prevent it from performing or completing the Services by the relevant End Date (or any other specified date) unless that date is extended:

- (a) the Service Provider may claim an extension of time by giving the Requesting Party's Authorised Person a Notice within 10 Business Days of the commencement of the occurrence causing the delay and setting out:
  - (i) particulars of the delay and the occurrence causing the delay; and
  - (ii) the number of days extension of time claimed together with the basis of calculating that period, including the anticipated period that the Service Provider will be delayed in achieving the End Date (or other specified date); and
  - (iii) the Requesting Party's Authorised Person must assess the Service Provider's claim (acting reasonably) and the relevant End Date (or other specified date) will be extended by a reasonable period determined by the Requesting Party's Authorised Person (acting reasonably) and notified to the Service Provider's Authorised Person within 10 Business Days of the Service Provider's written claim under clause 14.2(a).
- (b) If either party disputes any claim for extension or a decision relating to such claim, the matter will be referred to Dispute resolution in accordance with clause 9.

## **15. Suspension and termination**

### **15.1 Suspension or termination for cause**

- (a) Subject to clause 15.4, where a party has breached any material provision of this Service Agreement:
  - (i) the other party may give a Notice to that party requiring it to rectify the breach within 30 days of receiving the Notice; and
  - (ii) if the party which received the Notice under clause 15.1(a)(i) fails to rectify that breach in the time stated in the Notice, the other party may:
    - (A) suspend the Service Agreement (in whole or in part) immediately by giving a further Notice to the party; or
    - (B) terminate this Service Agreement for cause.
- (b) If this Service Agreement is suspended under clause 15.1(a)(ii)(A), the party that suspended the Service Agreement may direct the other party to re-commence the carrying out of the relevant obligations under the Service Agreement by providing 10 Business Days prior written Notice to the relevant party to do so.
- (c) if the Service Agreement is terminated under clause 15.1(a)(ii)(B):
  - (i) the Requesting Party must pay the Service Provider for all Services performed and expenses incurred up to the date of termination (after taking into account any payments already made to Service Provider prior to that date); and
  - (ii) unless directed otherwise by the Requesting Party's Authorised Person, the Service Provider must return the Requesting Party's Information to the Requesting party's Authorised Representative.

### **15.2 Termination for convenience**

- (a) Subject to clause 15.4, the Requesting Party may by written Notice to the Service Provider terminate the Service Agreement at its convenience, with effect from the date stated in the Notice.
- (b) If the Requesting Party terminates the Service Agreement under clause 15.2(a), the Service Provider will be entitled to payment of the following amounts as determined by the Requesting Party's Authorised Person (acting reasonably):
  - (i) for all Services carried out and expenses incurred up to the date of termination, the amount which would have been payable up to the date of termination if the Service Agreement had not been terminated and the Service Provider submitted a payment claim for the Service Agreement value of the Services carried out and

expenses incurred up to the date of termination (deducting any payments already made to the Service Provider prior to the effective date of termination); and

- (ii) the reasonable direct costs incurred by the Service Provider (excluding profit but including an amount for overheads and administration) as a direct result of the termination.
- (c) In respect of the amounts contemplated under clause 15.2(b)(ii), the Service Provider must:
  - (i) take reasonable steps to mitigate such direct costs; and
  - (ii) provide any additional information reasonably required by the Requesting Party's Authorised Person to demonstrate the basis of any amounts claimed.
- (d) The amount to which the Service Provider is entitled under this clause 15.2 will be a limitation upon the Requesting Party's liability to the Service Provider arising out of, or in any way in connection with, the termination of the Service Agreement.

### **15.3 What the Service Provider must do if it receives a Notice**

Upon receipt of a Notice under clauses 15.1(a) or 15.2(a) the relevant party must:

- (a) in the case of the Service Provider, stop, suspend or reduce (as applicable) the Services as specified in the relevant Notice;
- (b) take reasonable steps to minimise its loss resulting from the termination, suspension or reduction (as applicable); and
- (c) continue to perform any obligations under the Service Agreement that have not been suspended or reduced.

### **15.4 Preservation of rights**

Nothing in this clause 15 or that a party does or fails to do pursuant to this clause 15 will prejudice the right of that party to exercise any right or remedy (including recovering damages) which it may have where the other party breaches (including repudiates) the Service Agreement.

### **16. Survival**

This clause 16, and clauses 9 (Dispute Resolution), 10 (Notices), 11 (Confidentiality, Privacy and GIPA Disclosure), 11A (Intellectual Property), 12 (Insurance), 13 (General), 13A (Keeping of records) and 15 (Suspension and Termination) survive termination or expiry of the Service Agreement.