

Terms and Conditions

1. Definitions and interpretations

1.1 In this Agreement:

“Acceptance Date” means, in respect of Services and Deliverables, the date OGA issues a notice to the Supplier for such Services and Deliverables.

“Agreement” means these Terms and Conditions and any attachments thereto.

“Anti-Social Forces” means an organized crime group, a member of an organized crime group, a related company or association of an organized crime group, and any other equivalent person of above.

“Applicable Anti-corruption Laws” means any anti-corruption Laws that are applicable to either OGA, the Supplier or this Agreement, including the US Foreign Corrupt Practices Act and the UK Bribery Act.

“Business Day” means a day which is not a Saturday, Sunday or public holiday in Western Australia.

“Change in Control” means a change in more than 50% of the shareholding or underlying control or the composition of the board of directors of a person.

“Claim” means a claim, action, demand, damage, loss, liability, cost, charge, expense (including legal costs on a full indemnity basis), outgoing, fine or payment.

“Commencement Date” means the date from which this Agreement takes effect, or if no such date is specified, the date on which this Agreement is executed by both parties.

“Competent Supplier” means a supplier of services with skill and experience in, and the expertise and resources necessary to complete, the performance of services, the same as or similar to, the Services.

“Confidential Information” in relation to a party means this Agreement and information of a confidential nature including information about its business, operations, strategy, administration, technology, affairs, clients, customers, employees, contractors or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.

“Consequential Loss” means any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity.

“Corporations Act” means the *Corporations Act 2001* (Cth).

“Defects” means any failure of the Service or Deliverable to comply with its Specifications.

“Deliverables” means all things, materials, documents, information and items developed by or on behalf of the Supplier or its Personnel in the course of or in connection with the supply of the Services in any form whatsoever (including electronic form) and includes all inventions, models, drawings, plans, artwork, designs, logos, reports, advices, proposals and records, including all things described as Deliverables.

“Delivery Date” means any date and time for delivery of the Services or Deliverables or as otherwise advised by OGA from time to time.

“Develop” means, in connection with a thing, to develop, create, add, enhance, reduce,

adapt or prepare derivative works based on that thing.

“Discloser” has the meaning given in clause 18.1.

“Dispute” has the meaning given in clause 25.

“Documentation” means any training manuals, user manuals, operating manuals, technical manuals, reports or other documentation or provided by the Supplier to OGA as part of the Services.

“Encumbrance” means any interest in or right over property and anything which would at any time prevent, restrict or delay the registration of any interest in or dealing with property including a Security Interest.

“Fees” mean the amounts payable by OGA under this Agreement for the Services or Deliverables (as applicable).

“Fix” means the permanent correction of a Defect and includes the provision to OGA of any amendments to, or replacements of, any Documentation that are required as a result of such correction.

“Force Majeure” means an unforeseeable event or circumstance beyond the reasonable control of a party including:

- (a) an act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
- (b) strikes or other industrial action, other than strikes or other industrial action of some or all of the Supplier’s Personnel; and
- (c) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic,

but excludes any act or omission of a subcontractor (except where that act or omission was caused by a Force Majeure).

“GST” means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

“GST Law” has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“Harmful Code” means any computer program or virus or other code that is harmful, destructive, disabling or which assists in or enables theft, alternation, denial of service, unauthorized access to, or disclosure, destruction or corruption of, information or data.

“Insolvency Event” means the occurrence of any event of insolvency including a winding up application being made and not withdrawn within 21 days, a failure to comply with a statutory demand, the appointment of a provisional liquidator or administrator, the entering into of an arrangement with creditors, a voluntary winding up other than for the purpose of a bona fide corporate reconstruction, any inability to pay debts as and when they fall due, any admission of insolvency, any court order relating to any of the above or anything which occurs under the law of any jurisdiction which has a similar effect to any of the above.

“Intellectual Property Rights” means all present and future rights in relation to copyright, trade marks, designs, patents, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary

rights, and any other rights to registration of such rights whether created before or after the date of this Agreement, and whether in Australia or otherwise.

“Key Personnel” means the Supplier’s Personnel specified in this Agreement.

“Law” means any applicable statute, regulation, by-law, ordinance, award, proclamation or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.

“Moral Rights” means the moral rights granted under the *Copyright Act 1968* (Cth), including the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, and any similar rights existing under foreign laws.

“Moral Rights Consent” means a waiver of Moral Rights to the extent permitted by law and an unconditional consent to any act or omission in relation to the Deliverables (if any) by or on behalf of the Supplier, or any licensee or subsequent owner of copyright in the Deliverables (if any).

“OGA” means Osaka Gas Australia Pty Ltd (ABN 49 093 246 381).

“OGA Data” means:

- (a) data owned or supplied by OGA to which the Supplier is provided access under this Agreement; or
- (b) data generated, compiled, arranged or developed by either party in the course of providing or receiving the Services or Deliverables under this Agreement.

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

“Personnel” means a party’s officers, employees and contractors.

“Pre-Existing Materials” means all things, materials, documents, information and items developed by or on behalf of the Supplier or OGA independently of this Agreement.

“Premises” means premises owned, leased or otherwise occupied by OGA.

“Recipient” has the meaning given in clause 18.1.

“Related Bodies Corporate” has the meaning given in section 50 of the Corporations Act.

“Requirements” has the meaning given in clause 11.2.

“Security Interest” means any interest or right which secures the payment of a debt or other monetary obligation or the compliance with any other obligation including any retention of title to any property and any right to set off or withhold payment of any deposit or other money.

“Service Credits” means, if applicable, the service credits payable by the Supplier to OGA as a consequence of any failure by the Supplier to meet the Service Levels for those Services.

“Service Levels” means the service levels specified in this Agreement.

“Services” means the services to be provided by the Supplier under this Agreement.

“Site” means any site or Premises for delivery of the Services and Deliverables as advised by OGA from time to time.

“Specifications” means in respect of Services and Deliverables, the requirements set out or referred to in this Agreement, including all agreed requirements as to quality, functionality, performance, interoperability, testing and other matters.

“Subsidiary” has the meaning given in section 46 of the Corporations Act.

“Supplier” means the party named as such in this Agreement.

“System” has the meaning given in clause 4.1.

“Terms and Conditions” means these terms and conditions.

“Taxes” means all taxes, levies, rates, charges, imposts of any kind whatsoever, including withholding tax.

“Tax Invoice” has the meaning given in the GST Law.

“Taxable Supply” has the meaning given in the GST Law.

“Term” means the term of this Agreement as extended by OGA under clause 2.2.

“Tested Items” has the meaning given in clause 11.2.

“Use” includes install, run, copy, distribute, support, maintain and anything reasonably incidental to such activities.

“Variation Notice” has the meaning given in clause 23.1.

“Variation Quotation” has the meaning given in clause 23.2.

“Warranty Period” means, with respect to any particular Deliverable, the period set out in this Agreement, commencing on the Acceptance Date.

1.2 In this Agreement, the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) "including", "includes" or "include" must be read as if it is followed by '(without limitation)';
- (f) a reference to:
 - a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - a party includes its successors and permitted assigns;
 - a document includes all amendments or supplements to that document;
 - a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to, this Agreement;
 - this Agreement includes all schedules and attachments to it;

an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and

a monetary amount is in Australian dollars;

an agreement on the part of two or more persons binds them jointly and severally;

when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and

no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

2. Term

2.1 This Agreement commences on the Commencement Date and continues for the Term unless terminated earlier in accordance with this Agreement.

2.2 OGA may extend the Term for the period specified on this Agreement by giving written notice of the extension to the Supplier prior to the expiry of the then current term.

3. Supply of Services and Deliverables

3.1 The Supplier must supply (and if required, deliver) the Services and Deliverables:

- (a) at the Site(s) identified;
- (b) on or before the relevant Delivery Date;
- (c) in accordance with:
 - (i) this Agreement, including the warranties set out in clause 5;
 - (ii) their Specifications;
 - (iii) all applicable Laws; and
- (d) using any identified Key Personnel.

3.2 The Supplier must supply all Documentation and information required to enable OGA to Use the Deliverables and Services.

4. Harmful Code

4.1 The Supplier must ensure that no Harmful Code or similar programming effects are coded or introduced into OGA's systems or systems within the control of the Supplier on which OGA Data is stored (**System**) as a direct result of:

- (a) the provision of any Services; or
- (b) an act or omission of the Supplier's Personnel.

4.2 If Harmful Code is found to have been introduced into the System, whether or not in contravention of clause 4.1, the Supplier must use its reasonable endeavours to

assist OGA in minimizing the effects of the Harmful Code and, if the Harmful Code causes a loss of operational efficiency or loss of data, to assist OGA to restore any such losses.

4.3 To the extent that the introduction of the Harmful Code is the result of a breach by the Supplier of its obligations under clause 4.1, the remedial efforts described in clause 4.2 will be at the Supplier's cost.

5. Warranties

- 5.1 The Supplier warrants, and it is a condition of this Agreement, that:
- (a) the Deliverables will:
 - (i) be free from Defects, and errors or omissions in design, materials and workmanship;
 - (ii) comply with their Specifications and meet the requirements of this Agreement;
 - (iii) be of good and merchantable quality; and
 - (iv) be fit for the purpose for which they are supplied;
 - (b) all Services will:
 - (i) be performed by suitably qualified and experienced Personnel;
 - (ii) be fit for the purpose for which they are supplied;
 - (iii) comply with their Specifications and meet the requirements of this Agreement; and
 - (iv) meet or exceed the Service Levels;
 - (c) all Documentation will:
 - (i) contain sufficient information to enable OGA to make full and proper Use of the relevant Services;
 - (ii) be reasonably acceptable to OGA in terms of its presentation, accuracy and scope; and
 - (iii) include the most current and up-to-date versions of documentation available;
 - (d) it has the right to supply the Deliverables to OGA;
 - (e) it will do all acts, matters and things that may be necessary for and incidental to the proper and efficient supply of the Services and Deliverables;
 - (f) it will ensure that the supply of the Deliverables and Services at the Site causes as little disruption as possible to the business activities of OGA;
 - (g) it will ensure that OGA will obtain the benefit of all warranties given by all manufacturers, subcontractors, suppliers and other relevant third parties in relation to the Deliverables;
 - (h) the supply of any Deliverables and Services, and the use of the Deliverables and Services, does not and will not:
 - (i) contravene any Laws; and
 - (ii) infringe the rights of a third party (including any Intellectual Property Rights and Moral Rights);
 - (i) it and its Personnel will supply the Services and Deliverables in an

- expeditious and professional manner, according to best industry practice and with the skill, care and diligence expected of a Competent Supplier;
- (j) it will comply, and will ensure that its Personnel comply, with all Laws relating to the supply of the Services and Deliverables, including OGA Policies and OGA's directions, and obtain all necessary consents and approvals to supply the Deliverables and Services; and
 - (k) it and its Personnel have not engaged in, and will not engage in, any collusive, anti-competitive or similar conduct in connection with this Agreement or any actual or potential contract with any entity for goods and services similar to the Services and Deliverables.
 - (l) it and its Personnel is not, and does not have any relationship with, a member of any Anti-Social Forces.

5.2 During any applicable Warranty Period, the Supplier must, at no additional charge and without prejudice to any other rights or remedies of OGA, repair or replace any Deliverable that does not comply with any of the applicable warranties within the timeframe reasonably required by OGA.

6. Service Levels and Service Credits

- 6.1 The Supplier must perform the Services to meet or exceed any applicable Service Levels.
- 6.2 If the Supplier fails to perform the Services to meet any applicable Service Levels, OGA is entitled to recover the applicable Service Credits from the Supplier (which OGA may require be paid to it in cash or as a credit against the next invoice issued under clause 13).
- 6.3 Any Service Credits payable to OGA are in addition to and do not limit any rights or remedies available to OGA at law or in equity for the Supplier's failure to meet the Service Levels or otherwise perform its obligations under this Agreement (including any right of OGA to recover damages and to terminate this Agreement).

7. Other Supplier obligations

The Supplier must, where the Supplier is required to provide or utilize tools, equipment and vehicles, ensure such tools, equipment and vehicles are suitable for the supply of the Services and Deliverables and are maintained in good and safe working condition.

8. Supplier's Personnel

- 8.1 The Supplier must ensure that its Personnel:
 - (a) are competent and have all necessary and appropriate skills, training, background and valid qualifications to carry out the duties and responsibilities of their positions and the tasks allocated to them;

- (b) behave in a professional and responsible manner at all times;
- (c) understand and agree to the requirements of this Agreement which are relevant to them; and
- (d) when accessing the Site(s), comply with any security, occupational health and safety and other policies and procedures specified by OGA from time to time.

8.2 The Supplier's Personnel are employees or contractors of the Supplier and are not employees or contractors of OGA. The Supplier is solely responsible for all of its Personnel and must comply with any Laws relating to the employment of its Personnel, including superannuation requirements, payment of tax instalment deductions and all Taxes including fringe benefits and payroll tax registration requirements, conditions on payment of wages, requirements to maintain records and payment of all remuneration (including salaries, wages, leave entitlements, superannuation and all other benefits).

8.3 If OGA becomes liable for any of the payments in clause 8.2, the Supplier indemnifies OGA from and against any Claims OGA suffers, incurs or is liable for arising out of or in connection with such payments.

- 8.4 The Supplier and its Personnel have no claim upon OGA in respect of:
- (a) remuneration to the Supplier's Personnel including superannuation, leave, other entitlements, Taxes or duties;
 - (b) claims under workers' compensation; and
 - (c) claims under any other law affecting or relating to the relationship between an employer and employee.

8.5 The Supplier remains liable to OGA for all acts and omissions of the Supplier's Personnel as if they were the acts and omissions of the Supplier.

9. Key Personnel

9.1 Subject to clause 9.2, the Supplier must engage the Key Personnel to perform the roles allocated to them.

9.2 The Supplier must not remove or replace any Key Personnel without OGA's prior written consent, except as a consequence of resignation, death, illness or incapacity of the relevant Key Personnel.

9.3 OGA may, while acting in good faith and reasonably, at its discretion and without giving a reason, direct the Supplier to remove its Personnel (including Key Personnel) from providing the Services. The Supplier must promptly arrange for replacement of the Personnel with personnel of equivalent or superior qualifications, competence and experience to the Personnel being replaced.

9.4 Where the Key Personnel are removed or replaced as permitted by this clause 9, the Supplier:

- (a) must not charge OGA for any costs involved, including travel expenses such as flight costs, in providing the replacement Personnel or removing the unsatisfactory Personnel;
- (b) must repay OGA the full cost incurred by OGA in any training undertaken by the removed Key Personnel; and
- (c) must ensure the removed Key Personnel conduct a handover to the replacement Personnel and the Supplier must not charge OGA for the time cost of the removed personnel for the duration of such handover.

10. Non-solicitation

10.1 The Supplier must not, without the prior written consent of OGA, during the Term and for 12 months after the expiry or termination of this Agreement, directly or indirectly engage, employ or seek to engage or employ any person who was an employee of or engaged by OGA and who was involved in the provision of the Services under this Agreement.

10.2 Clause 10.1 does not prevent either party from employing or engaging a person that responds to a genuine public advertisement placed by that party in good faith.

11. Review and testing

11.1 Prior to the delivery of any Deliverables, the Supplier may conduct testing to verify that the Deliverables and (if applicable) Services have no apparent Defects.

11.2 OGA reserves the right to review or conduct testing of the Services and Deliverables (**Tested Items**) to satisfy itself that those Tested Items have no apparent Defects and otherwise meet the requirements of this Agreement (**Requirements**). Where specified in Agreement, the Supplier must conduct, or assist in the conduct of, testing.

11.3 The Supplier must ensure that OGA is granted access to its premises and any subcontractor premises for the purposes of this clause 11.

11.4 If, after testing under clause 11.2, OGA is not satisfied that a Tested Item meets the Requirements, then OGA may, at its discretion, do one or more of the following:

- (a) require the Supplier to modify the Tested Items, or supply replacement Tested Items, so that they meet the Requirements, in which case OGA may further review or conduct further testing under this clause 11.4;
- (b) withhold payment under this Agreement until the Tested Items meet the Requirements;
- (c) where a Tested Item has failed review or testing more than once, reject the Tested Item. If OGA exercises its rights under this clause 11.4(c), then without prejudice to OGA's other rights and remedies, the Supplier must

refund all Fees and other amounts paid by OGA under this Agreement in respect of the rejected Tested Item; and/or

- (d) conditionally accept the Tested Item on such terms and conditions as OGA considers appropriate including a reduction in the Fees, provided that if the Supplier considers that any terms and conditions, or reduction in Fees, is not reasonable then it may refer the matter to the dispute resolution process in accordance with clause 25.

11.5 Where OGA is satisfied after reviewing or testing a Tested Item that it meets the Requirements, OGA will promptly notify the Supplier that the Tested Item has passed the review or tests. Any review, testing or notification by OGA does not constitute any waiver of rights, or give rise to any estoppel, if the Tested Item is later found not to comply with the Requirements.

12. Title and risk

12.1 Title to any Deliverable passes to OGA upon the earlier of delivery or the payment of the Fees by OGA to the Supplier for the relevant Deliverables.

12.2 Risk in any Deliverables passes from the Supplier to OGA upon the later of:

- (a) the time that OGA accepts delivery of the Deliverables; or
- (b) if testing is required, OGA notifying the Supplier that the Deliverables have passed any required testing in accordance with clause 11.

12.3 The passing of ownership or the delivery of the Deliverables to OGA, or any payment of the Fees under clause 13, does not constitute acceptance and does not affect OGA's rights to reject the Services or Deliverables under clause 11.4(c).

13. Invoicing and payment

13.1 The Supplier may invoice OGA for the Fees:

- (a) at the times, and upon achievement of the milestones (if applicable), set out in this Agreement; or
- (b) if no times or relevant payment milestones are set out in Agreement, on the later of:
 - (i) the time OGA accepts delivery of the Deliverables; or
 - (ii) if testing is required, upon OGA notifying the Supplier that the Deliverables have passed any required testing in accordance with clause 11.

13.2 The Fees are inclusive of all costs and expenses incurred by the Supplier and no further amounts are payable by OGA unless otherwise agreed in writing by OGA.

13.3 Subject to clauses 13.4 and 14, OGA will pay any correctly rendered undisputed invoice issued by the Supplier within 30 days from the date of receipt of that invoice.

13.4 An invoice is correctly rendered if:

- (a) the amount claimed in the invoice is due for payment in accordance with Agreement;
- (b) it is accompanied by verifying documentation, if required by OGA;
- (c) the Supplier has complied with its obligations under this Agreement as at the date of the invoice; and
- (d) the invoice is a Tax Invoice in the proper form for the purposes of GST.

13.5 If any part of any invoice is found to have been rendered incorrectly after payment has been made by OGA, then to the extent that it has been incorrectly rendered, any underpayment or overpayment will be recoverable by or from the Supplier, as the case may be.

13.6 Without limiting recourse to other available means, any overpayments by OGA may be offset against any amount subsequently due by OGA to the Supplier.

14. Disputed Invoices

14.1 If OGA disputes the amount of any invoice, OGA may, on written notice to the Supplier, withhold or suspend payment of any disputed part of the invoice until the dispute is resolved.

14.2 The Supplier must continue to perform the Supplier's obligations under this Agreement in the event of a dispute about an invoice, while that dispute is resolved.

14.3 OGA must:

- (a) pay any non-disputed amounts in accordance with clause 13; and
- (b) promptly pay any disputed amounts that are subsequently found to be correctly payable.

15. GST

The Fees are inclusive of all Taxes other than GST. If any supply under this Agreement is a Taxable Supply, then the party making the supply may, at the same time that an invoice is rendered for the agreed consideration for the Taxable Supply, recover the amount of GST payable on that Taxable Supply, subject to the issue of a valid Tax Invoice.

16. Intellectual Property

16.1 Pre-Existing Material

- (a) No change in ownership of the Intellectual Property Rights in any Pre-Existing Materials is effected by this Agreement.
- (b) The Supplier grants to OGA a worldwide, non-exclusive, royalty free, perpetual, irrevocable and transferable license (including a right of sub-license) to use and exploit the Intellectual Property Rights in the Supplier's

Pre-Existing Materials to the extent required to exercise the Intellectual Property Rights in the Deliverables.

- (c) OGA grants to the Supplier a non-exclusive, non-transferrable, royalty free license for the Term to use OGA's Pre-Existing Materials only to the extent required to provide the Services to OGA, without the right to grant a further sub-license.

16.2 Deliverables

- (a) The Supplier absolutely and unconditionally assigns, and must procure that Supplier's Personnel assign, to OGA all Intellectual Property Rights in any Deliverables immediately upon creation, free of all Encumbrances and third party rights.
- (b) The Supplier must, at its own cost, do all things necessary to give effect to the assignment in clause 16.2(a), including executing any required documents or effecting any required registrations.
- (c) OGA grants to the Supplier a non-exclusive, non-transferable, royalty free license for the Term to use the Deliverables only to the extent required to perform its obligations under this Agreement, without the right to grant a further sub-license.

16.3 OGA Data

Title to and all Intellectual Property Rights associated with the OGA Data vests in OGA.

16.4 Obligations regarding Intellectual Property Claims

If any third party makes a Claim that its Intellectual Property Rights have been breached (**Intellectual Property Claim**), if required by OGA, the Supplier must, at no cost to OGA procure for OGA the right to continue to Use, copy (and, where applicable, modify and Develop) any Documentation that is affected by the Intellectual Property Claim, in accordance with the terms of this Agreement.

17. Moral Rights Consent

To the extent that a person, other than the Supplier, has Moral Rights in the Deliverables or Pre-Existing Material, the Supplier must obtain a Moral Rights Consent from that person, and provide it on request by and in a form acceptable to OGA.

18. Confidentiality

18.1 Each party (**Recipient**) must keep confidential, and not disclose, any Confidential Information of the other party (**Discloser**) except:

- (a) as permitted under this Agreement;
- (b) with the prior written consent of the Discloser;
- (c) on a confidential, "needs to know" basis, to the Recipient's Related Bodies

- (d) Corporate, officers, professional advisers, auditors and employees; or if required in connection with any legal proceedings or any other form of dispute resolution process related to this Agreement;
- (e) to its sub-contractors to the extent necessary for purpose of performing the relevant sub-contract;
- (f) to a bona fide financier or investor and such of the financier's or investor's professional advisers as necessary or commercially desirable for the purposes of any proposed financing or investment;
- (g) to a bona fide purchaser and such of the purchaser's professional advisers or financiers and their professional advisers as necessary or commercially desirable for the purposes of the particular sale;
- (h) where the Recipient is compelled to do so by Law or by the rules of any stock exchange having jurisdiction over it or any of its Related Bodies Corporate.

18.2 The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed and in connection with this Agreement.

18.3 The Recipient must:

- (a) maintain effective security measures to protect all Confidential Information in the possession or control of the Recipient from unauthorised access, use, copying or disclosure;
- (b) notify the Discloser immediately in writing if the Recipient becomes aware of any suspected or actual breach of this clause by the Recipient and take all reasonable steps required to prevent or stop that breach, at the Recipient's expense; and
- (c) reasonably assist the Discloser in connection with any action or investigation by the Discloser regarding any anticipated, suspected or actual unauthorised disclosure or misuse of the Confidential Information by the Recipient.

18.4 Upon request from OGA, the Supplier must procure its Personnel that are engaged in the performance of the Services to execute a confidentiality undertaking, agreement or deed in a form acceptable to OGA.

19. Privacy

19.1 The Supplier acknowledges that it is a service provider for the purposes of Law relating to Personal Information.

19.2 The Supplier must:

- (a) in relation to the discharge of its obligations under this Agreement, comply with of applicable privacy act or legislations as if the Supplier was OGA;
- (b) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
- (c) not use Personal Information other than for the purpose of performing its

- obligations under this Agreement, unless required or authorised by Law;
- (d) not disclose Personal Information without the prior written consent of OGA, unless required or authorised by Law;
 - (e) not transfer any Personal Information outside of Australia without the prior written consent of OGA;
 - (f) ensure that access to Personal Information is restricted to those of its Personnel who require access in order to perform their duties under this Agreement;
 - (g) ensure that its officers and Personnel are aware of the Supplier's obligations under this clause 19 and comply with the same obligations imposed on the Supplier under this clause;
 - (h) fully cooperate with OGA to enable OGA to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints;
 - (i) immediately notify OGA if the Supplier becomes aware that a disclosure of Personal Information is or may be required or authorised by Law; and
 - (j) comply with such other privacy and security measures as OGA reasonably advises the Supplier in writing from time to time.

19.3 The Supplier must immediately notify OGA upon becoming aware of a breach of this clause 19.

20. Indemnity

20.1 Supplier indemnities

The Supplier indemnifies OGA, OGA's Subsidiaries and OGA's and OGA's Subsidiaries officers, employees and agents (**Indemnified Parties**) from and against any Claim which any of the Indemnified Parties pays, suffers, incurs or is liable for arising out of or in connection with:

- (a) any material breach of this Agreement by the Supplier;
- (b) the death or personal injury of any person;
- (c) loss of, or damage to, any property;
- (d) any breach of Law;
- (e) any infringement, or alleged infringement, of a third party's rights (including Intellectual Property Rights and Moral Rights); and
- (f) any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation, to the extent caused or contributed to by any act or omission of the Supplier or its Personnel.

21. Liability

21.1 Neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party arising out of or in connection with this Agreement, whether arising under contract, in tort (including negligence) or otherwise.

21.2 Clause 21.1 does not apply to the Supplier's liability under the indemnities in clauses

20.1(b) to 20.1(f).

21.3 To the maximum extent permitted by Law, OGA's maximum aggregate liability to the Supplier (whether under contract, tort, statute or in equity) arising out of or in connection with this Agreement is limited to the total amount of the Fees paid and payable under this Agreement.

22. Insurance

22.1 The Supplier must effect and maintain in a form appropriate to the Supplier's activities and with an APRA approved insurer, the insurances specified in this Agreement.

22.2 The Supplier must provide, on OGA's request, certificates of currency and such other evidence satisfactory to OGA of insurance coverage specified in this clause 22.

22.3 The Supplier must:

- (a) effect the workers' compensation and public liability insurance before commencing the supply of any Services and Deliverables and maintain them until this Agreement is terminated or expired; and
- (b) effect the professional indemnity insurance before commencing the supply of any Services and maintain it for not less than 3 years after this Agreement is terminated or expired.

23. Variations

23.1 OGA may by written notice to the Supplier request the Supplier to vary the scope of the Services or Deliverables to be supplied under this Agreement (**Variation Notice**).

23.2 Within 5 Business Days of receiving a Variation Notice, the Supplier will provide to OGA a reasonable written quotation (**Variation Quotation**) which details:

- (a) the variation as requested by the Variation Notice;
- (b) a reasonable variation (if any) to the Fees including evidence justifying the variation; and
- (c) all relevant Specifications, time frames and operational requirements relating to the varied Services and Deliverables additional to but not inconsistent with those in the Variation Notice.

23.3 OGA may by written notice to the Supplier:

- (a) accept the Variation Quotation within 10 Business Days of receiving it;
- (b) reject the Variation Quotation at any time if that Variation Quotation has not already been accepted;
- (c) require the Supplier to do the work as set out in the Variation Notice in a reasonable time as agreed by the parties for:
 - (i) fees based on the Fees specified in this Agreement;
 - (ii) if clause 23.3(c)(i) is not applicable, fees based on the rates usually

- charged by the Supplier in the ordinary course of its business; or
- (iii) if neither clauses 23.3(c)(i) nor 23.3(c)(ii) is applicable, reasonable fees having regard to the reasonable cost to the Supplier of effecting the variation.

23.4 OGA is not required to pay any additional fees unless and until:

- (a) OGA accepts the Variation Quotation under clause 23.3(a);
- (b) OGA requires the Supplier to effect the variation under clause 23.3(c); or
- (c) the parties otherwise agree in writing to the varied terms and fees.

24. Force Majeure

24.1 Delay in or failure of performance by a party does not constitute a breach of this Agreement by that party if and to the extent that the delay or failure is caused by a Force Majeure, provided the party claiming Force Majeure:

- (a) gives notice to the other party within 7 days of the occurrence of the Force Majeure providing details of the Force Majeure and its anticipated likely duration and effect;
- (b) continues to perform all unaffected obligations in accordance with this Agreement;
- (c) uses its best endeavours to perform the affected obligations, whether by way of a Work-Around or other methods agreed with the other party;
- (d) use reasonable endeavours to overcome the effects of the Force Majeure as promptly as possible and gives written notice to the other party within 7 days of the cessation of the Force Majeure.

24.2 The Supplier will not be relieved from the performance of the its obligations under this Agreement following the occurrence of a Force Majeure Event if such obligations could have been performed by invoking disaster recovery procedures reasonably expected of a supplier of goods and services similar to the Services.

24.3 If a delay caused by Force Majeure continues for more than 30 days, OGA may terminate this Agreement by giving 14 days written notice to the Supplier.

25. Dispute resolution

The parties irrevocably agree that the courts located within the jurisdiction of Western Australia will have non-exclusive jurisdiction to settle any dispute, claim or controversy that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes) (**Dispute**).

26. Termination

26.1 OGA may terminate this Agreement immediately upon written notice to the Supplier (subject, in the case of clause 26.1(e), to any applicable statutory stay on the exercise of rights, including sections 415D, 434J and 451E of the Corporations Act (as the

same may be)) if:

- (a) the Supplier breaches any obligation under this Agreement which is capable of remedy, and does not remedy that breach within 14 days of receipt of a notice from OGA specifying the breach and requiring it to be remedied;
- (b) the Supplier commits a breach of this Agreement which is incapable of remedy;
- (c) the Supplier breaches the warranty set out in clause 5.1(l) or clause 34.10;
- (d) the Supplier does anything that materially damages or is likely to materially damage the brand or reputation of OGA;
- (e) the Supplier or any of its Personnel commit any act of fraud or dishonesty in relation to this Agreement; or
- (f) an Insolvency Event occurs in relation to the Supplier.

26.2 OGA may at any time on at least 30 days' written notice to the Supplier terminate this Agreement without cause, in which case OGA's sole liability will be to pay the Supplier for all Services and Deliverables provided up to the effective date of termination.

26.3 The Supplier may terminate this Agreement immediately upon written notice to OGA (subject, in the case of clause 26.3(b), to any applicable statutory stay on the exercise of rights, including sections 415D, 434J and 451E of the Corporations Act (as the same may be)) if:

- (a) OGA commits a material breach of an obligation of this Agreement and does not remedy that breach within 30 days of receipt of a notice from the Supplier specifying the breach and requiring the breach to be remedied; or
- (b) an Insolvency Event occurs in relation to OGA.

27. Consequences of termination

27.1 As soon as practicable after expiry or termination of this Agreement, the Supplier must:

- (a) provide to OGA a copy of all Deliverables produced under this Agreement;
- (b) return to OGA all equipment, records, documents and materials provided by OGA for the purposes of this Agreement, including any security passes and keys;
- (c) return to OGA all copies of all Confidential Information and Personal Information of OGA in its possession or control;
- (d) provide such services as OGA reasonably requests to achieve an orderly, uninterrupted transition of the supply of the relevant Services or Deliverables to OGA or a new supplier of Services or Deliverables appointed by OGA; and

27.2 Clauses 16, 18, 19, 20, 21, 22.3(b), 25, 27 and 29 continue after termination or expiry of this Agreement.

28. Reporting and contract management

- 28.1 Each party appoints the contract representative specified on the Agreement to manage the relationship between the parties under this Agreement.
- 28.2 The parties will ensure that the contract representatives meet at the times and places as required by OGA to discuss the Supplier's performance of, and any issues arising under, this Agreement.
- 28.3 The Supplier must at no additional cost to OGA provide OGA with written reports at the intervals and containing the information specified in Agreement, or otherwise as required by OGA, regarding the Supplier's performance under this Agreement, including its performance against any applicable Service Levels.

29. Audit and records

- 29.1 The Supplier must permit OGA and its auditors access, on reasonable notice and during business hours on Business Days, to all records, books, staff, premises and other facilities of the Supplier and its subcontractors in connection with any audit of the Supplier's performance of this Agreement, including for the purpose of verifying any Fees and other amounts paid or payable under this Agreement.
- 29.2 OGA will bear the costs of any audit under clause 29.1 unless the audit reveals that the Supplier has overcharged OGA by 5% or more in relation to any particular Services or Deliverables, in which case the Supplier will reimburse OGA its reasonable costs and expenses of the audit and must promptly reimburse OGA for the amount of any overcharges.
- 29.3 If an audit reveals that the Supplier is not complying with its obligations under this Agreement, then the Supplier must take, and must ensure that any relevant Supplier subcontractor takes, such actions as are necessary promptly to remedy the non-compliance.
- 29.4 The Supplier must comply, and ensure that any relevant Supplier subcontractor complies, with any reasonable directions or instructions from OGA as to the manner (including timing) in which such non-compliance referred to in clause 29.3 must be remedied.
- 29.5 The Supplier must retain, and ensure each of its subcontractors retain, all financial and operational records relevant to this Agreement in an auditable and accessible format and otherwise as required by Law during the Term and for a period of at least 7 years after this Agreement has been terminated or expired.

30. Conflict of interest

The Supplier must declare any conflict of interest prior to providing any Services or Deliverables to OGA or, where Services or Deliverables are already being provided, as soon as such a conflict comes to the attention of the Supplier.

31. Subcontracting

- 31.1 The Supplier must not subcontract any of its rights or obligations under this Agreement without OGA's prior written consent.
- 31.2 The Supplier must ensure that its subcontractors comply with all Laws and all standards applicable to the performance of the Supplier's obligations under this Agreement.
- 31.3 To the extent that the Supplier subcontracts any of its obligations under this Agreement to a third party, the Supplier will remain liable to OGA for each act and omission of that third party (including its Personnel) in connection with the performance of such obligations as if it were an act or omission of the Supplier.

32. Notices

- 32.1 Any notice, demand, invoice, process or other communication relating to this Agreement (Notice) must be in writing in English and must be given to the other party's contact representative as specified on the Agreement or as notified to it by the other party from time to time.
- 32.2 A Notice may be given by being:
- (a) personally delivered to a party;
 - (b) left at the party's current delivery address for service;
 - (c) sent to the party's current postal address for service by pre-paid ordinary mail; or
 - (d) sent by facsimile transmission to the party's current facsimile number for service;
 - (e) sent by email to the party's current email address for Notices.
- 32.3 Subject to clause 32.4, a Notice is given:
- (a) if posted:
 - (i) within Australia to an Australian postal address, 3 Business Days after posting; or
 - (ii) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after posting;
 - (b) if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report; or
 - (c) if sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives

an automated message that the email has not been delivered. A Notice given under clauses 24 or 26, must not be given only by email.

32.4 If a Notice is given:

- (a) after 5:00pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt, it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

33. Personal Property Securities Act

- (a) For the purposes of this clause 33:
 - (i) **OGA Personal Property** means all personal property the subject of a security interest granted under this Agreement;
 - (ii) **PPS Law** means the PPSA and any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.
 - (iii) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
 - (iv) words and phrases used in this clause 33 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.
- (b) If OGA determines that this Agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Supplier agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which OGA asks and considers necessary for the purposes of doing any one or more of the following:
 - (i) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (ii) enabling OGA to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; or
 - (iii) enabling OGA to exercise rights in connection with the security interest.
- (c) OGA need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.
- (d) The Supplier must notify OGA as soon as the Supplier becomes aware of any of the following:
 - (i) if any personal property which does not form part of OGA Personal Property becomes an accession to OGA Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; or
 - (ii) if any of OGA Personal Property is located or situated outside Australia or, upon request by OGA, of the present location or situation of any of OGA Personal Property.

- (e) The Supplier must not:
 - (i) create any security interest or lien over any of OGA Personal Property whatsoever (other than security interests granted in favour of OGA);
 - (ii) sell, lease or dispose of its interest in OGA Personal Property;
 - (iii) give possession of OGA Personal Property to another person except where OGA expressly authorises it to do so;
 - (iv) permit any of OGA Personal Property to become an accession to or commingled with any asset that is not part of the Works; or
 - (v) change its name without first giving OGA 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- (f) Everything the Supplier is required to do under this clause 33 is at the Supplier's expense.
- (g) Neither OGA nor the Supplier will disclose information of the kind mentioned in section 275(1) of the PPSA and the Supplier will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause 33 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

34. General

34.1 Assignment

- (a) The Supplier must not assign or novate any of its rights or obligations under this Agreement without OGA's prior written consent.
- (b) To avoid doubt, a Change in Control of the Supplier without OGA's prior written consent will amount to an assignment of the Supplier's rights in breach of this clause 34.1.
- (c) OGA may, on reasonable notice to the Supplier, assign or novate this Agreement to another party without the approval of the Supplier.

34.2 Relationship

Nothing in this Agreement gives rise to any relationship of agency, partnership, employment or otherwise between the parties.

34.3 Set-off

OGA may by notice in writing to the Supplier reduce any Fees or other charges or costs payable to the Supplier under this Agreement by any fee, credit, rebate or other amount which is payable to OGA under or in connection with this Agreement.

34.4 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with their respective subject matter and supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.

34.5 Further assurance

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under this Agreement.

34.6 Inconsistency

In the event of any inconsistency between:

- (a) the special conditions specified in this Agreement (if any);
- (b) these Terms and Conditions;
- (c) the Schedules; and
- (d) any attachments,

the document listed first in this clause 34.6 will prevail to the extent of the inconsistency.

34.7 Waiver

No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it.

34.8 Variation

No variation of this Agreement is effective unless made in writing and signed by each party.

34.9 Severability

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction:

- (a) is to be:
 - (i) read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable; and
 - (ii) severed to the extent of the invalidity or unenforceability; and
- (b) does not affect the remaining provisions of this Agreement or the validity or unenforceability of that provision in any other jurisdiction.

34.10 Anti-Corruption

Each party, in performing this Agreement, must comply with any Applicable Anti-corruption Law and must not give or offer to give, receive, or agree to accept, any payment, gift or other advantage which violates an Applicable Anti-corruption Law.

34.11 Anti-Slavery

In performing this Agreement, the Supplier must comply with all applicable anti-slavery and human trafficking laws and regulations including but not limited to the Modern Slavery Act 2018 (Cth) and take reasonable steps to identify, assess and address risks of slavery and human trafficking practices in the operations and supply chains used in the provision of the Services and/or Deliverables. If at any time the Supplier becomes aware of such slavery and human trafficking practices in the

operations and supply chains used in the performance of the Agreement, the Supplier must promptly notify OGA and as soon as reasonably practicable take all reasonable action to address or remove these practices.

34.12 Governing law

This Agreement and any Dispute is governed by, and shall be construed in accordance with, the laws of Western Australia excluding any conflicts of law rules which would require the application of another jurisdiction's laws.

34.13 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.