

Module 12 – Managed Services

Version 3.1

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Use Guidelines

This Module should be used when the Customer is outsourcing day to day management responsibilities for databases and information services such as data recovery, storage, security, monitoring, network management, user management, data management, and systems management but does not include Saas, IaaS and PaaS for which there are separate modules.

See the Procure IT User Guide for more details.

This text is not to be used in interpreting the Module.

1 Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 12** form part of the Customer Contract when the Parties state that the Managed Services Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 **Additional Items** means the additional items stated in the Order Documents which are to be acquired by the Contractor under the Customer Contract.
- 1.2 **Additional Services** means the provision of additional Managed Services in respect of additional in-scope items (e.g. where the Customer Environment increases as additional items of in-scope equipment or services are added by the Customer).
- 1.3 **Assets** means the assets stated in the Order Documents which are to be acquired by the Contractor under the Customer Contract.
- 1.4 **Assumptions** means the assumptions on which the Parties agree the Contractor has based the performance of the Managed Services and the Pricing, as set out in the Order Documents.
- 1.5 **Client Contracts** means contracts between the Customer and purchasers of the Customer's products and services which are listed in the Module Order Form.
- 1.6 **Consolidation Period** means the first month of the Managed Services (commencing on the Services Commencement Date of the relevant Managed Service), or such other period stated on the Module Order Form.
- 1.7 **Contractor Services Data** means any data relating to the Environment (including statistical data, configuration information, technical architecture, process or procedures data, and any other such data necessary for administrative, corporate governance, operations, facilities management and related purposes) relating to the Contractor's provision of the Managed Services in accordance with this Customer Contract, which is generated by the Contractor, or its software, systems or equipment, and any reproduction, adaptation, translation or derivative of any of them.
- 1.8 **Customer Managed Services Data** means data supplied by the Customer to the Contractor to be processed using the Managed Services.
- 1.9 **Environment** means the technology environment that is in-scope for the provision of the Managed Services in the state it exists on the Commencement Date, and as may be amended by the addition or subtraction of items as varied from time to time in accordance with the Customer Contract.
- 1.10 **Exception** means the reasons that excuse the Contractor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 12.
- 1.11 **Managed Services** means Services whereby the Contractor agrees to either manage the information technology in the Environment or otherwise to manage the external delivery of services to the Customer, as more particularly described in the Order Documents, including the Module Order Form and the PIPP, and as varied from time to time in accordance with the Customer Contract. The term **Managed Services** may include:
 - (a) management of hardware, desktop environments, server environments or mainframes;

- (b) management of telephony services;
- (c) management of software, databases or applications (excluding SaaS, IaaS and PaaS);
- (d) management of help desk or support services;
- (e) management of printers, copiers or print related services;
- (f) any combination of any of these; or
- (g) any other technology or environment that is agreed by the Parties.

The term Managed Services includes:

- (a) the Managed Services provided from the Services Commencement Date;
- (b) any Additional Services;
- (c) any Transition Out Services.

The term Managed Services does not include:

- (a) Transition In Services; or
- (b) any Project Services.

- 1.12 Project Services** means specific consultancy works which are related to the Managed Services, but which form a discrete arrangement, and which will be performed under Module 7 (Professional Services).
- 1.13 Procedures Manual** means the Contractor's manual that sets out the processes and procedures for performing the Managed Services and working with the Customer and its Personnel. The Procedures Manual is the Contractor's Confidential Information and Intellectual Property Rights.
- 1.14 Services** in this Module means any of:
- (a) Transition in Services;
 - (b) Managed Services; and
 - (c) Project Services.
- 1.15 Services Commencement Date** means the date that the Contractor states it is ready to commence the Managed Services under clause 3.32, or such date that the Parties agree that the Contractor must commence the Managed Services under clause 3.33.
- 1.16 System** means the Contractor's information technology facilities, described in the Order Documents, including the Module Order Form or the PIPP, which is dedicated to the provision of the Managed Services to the Customer.
- 1.17 Third Party Contract** means a contract between the Customer and a third party provider of products or services which is identified in the Module Order Form.
- 1.18 Transition In Period** means the period from the Commencement Date until the Services Commencement Date.
- 1.19 Transition In Plan** means the Transition In plan that is attached to the Module Order Form.

- 1.20 Transition In Services** means the Services provided by the Contractor to the Customer during the Transition In Period, and includes the obligations described in the Order Documents.
- 1.21 Transition Out Period** means the 3 month period (or such other period stated in the Module Order Form or the Transition Out plan) prior to the effective date of termination of the Customer Contract.
- 1.22 Transition Out Services** means the Services to be provided by the Contractor to the Customer during the Transition Out Period in anticipation of the termination of the Customer Contract.

INTERPRETATION

- 1.23** Other capitalised words and expressions used in this Module are defined in Part 3 of the Agreement.

2 Term of Managed Services

TERM

- 2.1** The Contract Period commences on the Commencement Date and will continue:
- (a) during the Transition In Period; and
 - (b) from the Services Commencement Date of the first of the Managed Services to be commenced and throughout the period of the Managed Services, which will be three years (or such other period stated in the Module Order Form),
- unless the Customer Contract is terminated sooner in accordance with the Customer Contract.
- 2.2** The period of the Managed Services maybe extended by agreement between the Parties using the procedure stated in Schedule 4 – Variation Procedures.

EXCLUSIVE PROVIDER

- 2.3** During the Contract Period, the Customer engages the Contractor to be the exclusive provider of:
- (a) the Managed Services in respect of the Environment; and
 - (b) any similar or related services in relation to the Environment which impact the Contractor's ability to meet its obligations under this Customer Contract, including any Service Levels.

3 Transition In

SCOPE

- 3.1** The Parties must perform their obligations in relation to Transition In Services in accordance with the Transition In Plan.
- 3.2** The Customer must pay the Contractor the Price for performing the Transition In Services.

DUE DILIGENCE

3.3 Unless stated otherwise on the Module Order Form, the Transition In Services will include the Contractor performing due diligence, which may include assessment and definition of the:

- (a) Customer's goals, requirements and expectations in respect of the Managed Services;
- (b) Contractor's understanding of the Customer's and/or user's experience and requirements in relation to the Managed Services;
- (c) objectives to be met by the Contractor;
- (d) nature and scope of the Managed Services, including the Environment, the Assets, Client Contracts and Third Party Contracts, (and any requirement to novate or assign any of them);
- (e) end users who will be supported by the Managed Services;
- (f) necessary Assets and Additional Items and how they may need to be procured;
- (g) migration of Customer Managed Services Data;
- (h) Transition In plan;
- (i) required Deliverables;
- (j) resources required (including any Customer Supplied Items or Customer assistance);
- (k) complexity of the project; and
- (l) any Transition Out plan.

3.4 The due diligence must be completed within 30 days (or such other period agreed in the Order Documents). The Customer must provide such assistance, information and access to Personnel as may be reasonably required by the Contractor to assist the Contractor to perform the due diligence.

3.5 If the Contractor's due diligence determines that:

- (a) any aspect of the Services (including any of the items in clause 3.3) is different to that represented to the Contractor and/or there are items that were not known to the Contractor that will adversely affect the Contractor's ability to meet the Service Levels or other obligations under the Customer Contract;
- (b) any Assumption is not true;

then the Contractor will provide the Customer with a formal proposal to vary the Customer Contract (**Proposed Variation**) and the Parties will negotiate in good faith to vary the Price, and/or adjust the relevant Service Level or other obligation that is affected. If the Parties agree a variation to the Customer Contract this will be documented by a Change Request and the procedures stated in Schedule 4 – Variation Procedures will apply subject to clauses 3.6 to 3.9.

3.6 Any Proposed Variation:

- (a) of the Price will, as far as possible, be calculated using the Contractor's time and materials rates (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's rates for government), or the rates for providing Additional Services; and
- (b) of the Service Levels or other obligations must be done so as to provide the Customer with a level of service as close to the Service Level or obligation as set out

in this Customer Contract as is practical taking into account the reason for the variation.

3.7 If the Proposed Variation provides substantially similar Service Levels and other obligations as those set out in the Customer Contract, and the varied Price is not more than 5% higher than the Price set out in the Customer Contract at the Commencement Date, then the Customer Contract will be amended to reflect this Proposed Variation.

3.8 If the Proposed Variation:

- (a) does not provide substantially similar Service Levels and other obligations as those that were set out in the Customer Contract at the Commencement Date; or
- (b) proposes to increase the Price by more than 5% as set out in the Customer Contract at the Commencement Date,

then the Customer may terminate the Customer Contract by giving the Contractor Notice In Writing to terminate the Customer Contract within 21 days of receipt of the Contractor's Proposed Variation. If no such notice is received then the Customer Contract will be amended to reflect the Proposed Variation.

3.9 If the Customer does terminate the Customer Contract under clause 3.8, then the Customer must:

- (a) pay the Contractor any amount of the Price for the Transition In Services which have been completed that has not been paid;
- (b) indemnify the Contractor against any liabilities or expenses, which are reasonably and properly incurred by the Contractor to the extent that those liabilities or expenses were incurred as a result of preparing to perform the Managed Services; and
- (c) pay any amount that is stated in the Order Documents as being payable if the Customer Contract is terminated under clause 3.8.

3.10 If there is no requirement for a Proposed Variation or the Parties agree to a variation, then the Contractor must then complete the Transition In Services.

ASSETS AND ADDITIONAL ITEMS

3.11 Clauses 3.12 to 3.14 only apply where a transfer of Assets or Additional Items are required in the Module Order Form.

3.12 Prior to the date stated in the Order Documents, the Customer must conduct a stock take of the Assets and Additional Items. Upon completion of the stock take, the Customer must give written notice of the results and valuation of the Assets and Additional Items to the Contractor. The method of valuation must be agreed on the Order Documents, including the Module Order Form or the PIPP. The Contractor must agree the outcome of the stock take and the valuation, such agreement not to be unreasonably withheld, prior to being required to purchase the Assets and Additional Items.

3.13 Subject to clause 3.14, with effect on the Services Commencement Date and for the consideration calculated in accordance with the valuation agreed under clause 3.12 (or as otherwise agreed), the Customer will sell and the Contractor will purchase the Assets and Additional Items at the agreed value.

3.14 Unless agreed otherwise on the Module Order Form:

- (a) upon the Services Commencement Date, the title to the Assets and Additional Items will pass to the Contractor;

- (b) the risk of loss of the Assets and Additional Items will pass to the Contractor on the date that the Contractor takes possession of the Assets and Additional Items.

The Customer warrants that upon title to Assets and Additional Items passing to the Contractor, the Assets and Additional Items will pass to the Contractor free and clear of all liens, mortgages, charges, pledges and other encumbrances.

CONTRACTS

- 3.15** Clauses 3.16 to 3.21 only apply where the transfer of one or more Third Party Contracts or Client Contracts is required in the Module Order Form.
- 3.16** The Customer will be responsible for obtaining the novation of the Third Party Contracts and the Client Contracts effective from the Services Commencement Date or such earlier date agreed by the Parties.
- 3.17** If a Third Party Contract or Client Contract cannot be novated by the Services Commencement Date or such earlier date agreed by the Parties:
- (a) the Contractor must use its best efforts to procure the right to assume management responsibility on behalf of the Customer in respect of the Customer's rights and obligations under the relevant Third Party Contract or Client Contract and the Customer must provide all reasonable assistance to the Contractor in that regard;
 - (b) if the Contractor cannot procure management rights, the Parties will consult and cooperate in order to implement workarounds or other alternative solutions to enable the Contractor to provide the Managed Services; and
 - (c) the Customer must, at its own cost, promptly and fully enforce the Third Party Contract or Client Contract.
- 3.18** All costs associated with the novation of a Third Party Contract or Client Contract, the procurement of management rights for the Contractor or the performing of the obligations under clauses 3.16 and 3.17 in respect of the Third Party Contracts or Client Contracts, will be borne by the Customer, unless agreed otherwise on the Module Order Form.
- 3.19** If a Client Contract cannot be novated prior to the Services Commencement Date or such earlier date agreed by the Parties:
- (a) the Customer may at its option terminate the Client Contract or continue to perform its obligations to its client under the Client Contract;
 - (b) the Contractor will provide all reasonable assistance to the Customer in meeting its obligations under a Client Contract, and the Customer will reimburse the Contractor its reasonable costs in providing any such assistance.
- 3.20** If a Third Party Contract cannot be novated prior to the Services Commencement Date or such earlier date agreed by the Parties, at the Customer's option and direction, the Contractor will:
- (a) enter into an agreement direct with the third party (or any third party provider of similar goods or services) (but only where commercially reasonable terms can be agreed) for the acquisition of the relevant goods or services to replace the Third Party Contract to enable the Contractor to provide the Managed Services; or
 - (b) implement workarounds or other alternative solutions to enable the Contractor to provide the Managed Services; and
 - (c) the Customer will reimburse the Contractor its reasonable costs in following such directions.

- 3.21** The Contractor's obligations under clauses 3.17 to 3.20 are subject to it having been provided by the Customer with a reasonable opportunity to investigate and assess all relevant commercial, financial and legal information in the Customer's possession or control regarding the Third Party Contracts and relevant Client Contracts. However, the Customer does not warrant that the third party will agree to any form of due diligence inquiry and the Customer will not be obliged to provide the Contractor with confidential data or data not reasonably accessible to the Customer.
- 3.22** If as part of the Managed Services, a Deliverable is required to which the terms or conditions of another Module relate, those Deliverables may be procured by the Contractor either:
- (a) as a Nominee Purchaser, by placing an order under the relevant Contract Authority agreement in accordance with clause 2.5 of Part 2; or
 - (b) as stated in the Module Order Form.

DATA MIGRATION

- 3.23** If the Managed Services require the migration of Customer Managed Services Data to the System, the Parties will each comply with the obligations in relation to the migration of Customer Managed Services Data stated in the Order Documents.
- 3.24** The Customer will, with the assistance of the Contractor, test the migrated data in a manner to be agreed between the Parties to ensure that the migration of the Customer Managed Services Data has been successfully achieved.

PROCEDURES MANUAL

- 3.25** The Contractor must prepare a draft Procedures Manual for the approval of the Customer as part of the Transition In Services. The Procedures Manual will describe the key attributes of the Managed Services, including:
- (a) the governance arrangements between the Customer and the Contractor;
 - (b) the governance arrangements dealing with the Contractor and any third parties;
 - (c) the protocols for managing security issues between the Parties;
 - (d) the protocols for identifying and managing risks;
 - (e) how the key aspects of the Managed Services will be provided to the Customer;
 - (f) the procedures for providing Additional Services;
 - (g) how user complaints and disputes will be managed.

The Procedures Manual is not required to document the details of how every aspect of the Managed Services is to be provided; rather it is required to describe the key attributes of the Managed Services delivery.

- 3.26** Within 14 days of receipt of the draft Procedures Manual the Customer must:
- (a) approve the Procedures Manual; or
 - (b) provide written notice of any changes to the draft Procedures Manual that it requires, and provided those changes are reasonable, the Contractor must update the Procedures Manual and re-submit it for approval by the Customer.
- 3.27** Once the Procedures Manual has been approved by the Customer it forms part of the Customer Contract and the Parties must perform their obligations in accordance with it. The Contractor must, at no additional cost to the Customer, update the Procedures Manual if there

is a variation to the Customer Contract that impacts on any of the contents of the Procedures Manual. As the Contractor makes each update the updated version of the Procedures Manual must be approved by the Customer using the procedure in clauses 3.25(a) and 3.25(c). Once each updated Procedures Manual has been approved by the Customer it forms part of the Customer Contract and the Parties must perform their obligations in accordance with it.

BUSINESS CONTINGENCY

- 3.28** The Parties may agree to include a Business Contingency Plan in accordance with clauses 6.45 to 6.48 of Part 2.

SYSTEM

- 3.29** The Contractor must provide the Customer with written notice of the System that is to be used to provide the Managed Services as part of Transition In Services.

TRANSITION AND HANDOVER

- 3.30** As part of the Transition In Services, the Contractor must provide a document (in the form of a PIPP or otherwise) that includes the strategy for the delivery of the Managed Services that is appropriate for the Customer's needs and its user population, including:

- i. identification of the Services to be performed;
- ii. identification and procurement of necessary Assets and Additional Items;
- iii. identification of Client Contracts and Third Party Contracts and how they are to be managed;
- iv. mechanism to determine when Transition In Services are complete and the Managed Services can commence;
- v. allocation of responsibilities within each Party's organisation;
- vi. the payment schedule;
- vii. implementation of the Managed Services; and
- viii. how any Project Services will be identified and provided.

- 3.31** The Contractor must use its best efforts to ensure that it has completed the Transition In Services for the relevant Managed Services by the date(s) stated in the Order Documents, including the Module Order Form or the PIPP.

- 3.32** Once the Contractor has completed the relevant Transition In Services it must give written notice to the Customer stating that:

- (a) where the Parties have agreed criteria for determining that Transition In Services have been successful, that those criteria have been met; and/or
- (b) where the Parties have not agreed criteria for determining that Transition In Services have been successful, the date that the Contractor is ready to commence providing the relevant Managed Services.

- 3.33** The Contractor must commence providing the relevant Managed Services by the date stated in the written notice provided under clause 3.31, unless the Customer provides written notice within 5 days of the date of receipt of the Contractor's notice under clause 3.31, stating that:

- (a) where the Parties have agreed criteria for determining that Transition In Services have been successful, those criteria have not been met and the details of how they have not been met; or
 - (b) where the Parties have not agreed criteria for determining that Transition In Services have been successful, the details of the Customer's reasonable grounds for believing that the Contractor is not ready to provide the relevant Managed Services.
- 3.34** If the Contractor receives written notice under clause 3.32, then the Contractor must promptly remedy the defects and give the written notice to the Customer stating the date that the Contractor is ready to commence providing the relevant Managed Services. The Contractor must commence the Managed Services by the date in that notice.
- 3.35** Where the Managed Services are to be handed over in phases, clauses 3.31 to 3.33 will apply to the relevant Managed Services that are in each of the phases that are to be handed over.

4 Services

COMMENCEMENT

- 4.1** The Contractor must provide the Managed Services from the Services Commencement Date of the relevant Managed Service.

SYSTEM REQUIREMENTS

- 4.2** The Contractor will keep the Customer informed as to proposed alterations to the System which may materially affect compliance with the Service Levels for the Managed Services. The Contractor must obtain the Customer's written consent in advance to any such proposed alterations, such consent will not be unreasonably withheld or delayed.

SYSTEM COMPONENTS

- 4.3** At any time on request by the Customer, the Contractor must provide the Customer with:
- (a) a list of the key System's components relevant to the provision of the Managed Services;
 - (b) a brief description of the functionality of each such component; and
 - (c) any other relevant information reasonably requested by the Customer to enable the Customer to be informed as to the key components of the System.

CUSTOMER MANAGED SERVICES DATA

- 4.4** The Contractor must not place any lien, charge or other encumbrance over the Customer Managed Services Data.
- 4.5** The Contractor will, to the extent specified in the PIPP:
- (a) make backup copies of the Customer Managed Services Data; and
 - (b) store and retain backup copies.
- 4.6** The Contractor will provide such security measures in accordance with best practice industry standards in relation to the Customer Managed Services Data as specified in the Order Documents.
- 4.7** The Contractor will ensure the Customer has access to the Customer Managed Services Data at all reasonable times, in any reasonable manner and at no additional charge, whilst the Customer Managed Services Data is in the possession or under the control of the Contractor.

- 4.8** The Contractor will use commercially available products to protect the Customer Managed Services Data from unauthorised access by third parties. The Contractor may permit access to the Customer Managed Services Data by Contractor's Personnel who require access to perform the Managed Services, or any third parties connected with any Third Party Contract or Client Contract that permits such access. Any such access must be subject to any of the Customer's security requirements stated in Order Documents.
- 4.9** The Contractor may store, hold, process or otherwise deal with any Customer Managed Services Data and/or any Personal Information in any country in the world, provided that the Contractor provides the Customer with prior written notice of the countries in which such activities may occur and the Customer agrees to the nominated countries.
- 4.10** In respect of Customer Personal Information, the Contractor agrees that it:
- (a) shall comply with all applicable privacy laws as may be enforced from time to time which regulate the collection, storage, use or disclosure of or access to that information;
 - (b) shall comply with any Customer directions that are consistent with such laws; and
 - (c) shall ensure that before permitting any Customer Personal Information to be collected or stored by, or disclosed to, any person outside Australia, the Contractor will inform the Customer and provide such assurances the Customer reasonably requires, including as to the Contractor's security system and that the data protection interests of relevant individuals will not be materially different than would have been the case had the Customer Personal Information remained solely in Australia. Where the applicable privacy laws contain requirements applying to Customer Personal Information collected or stored by, or disclosed to, any person outside Australia, then this paragraph (c) shall not apply.

THIRD PARTY SERVICE PROVIDERS

- 4.11** If the Customer retains a third party to perform services that interact with any of the Managed Services or otherwise connect with the Environment, the Contractor will co-operate with the third party to assist the Customer to manage its third parties' responsibilities and so that they are carried out in a coordinated, effective and timely manner by:
- (a) providing access to the Contractor's facilities and resources as reasonably required by the third party;
 - (b) providing any information regarding the operating environment, protocols, interfaces, architecture and other operating parameters reasonably required by the third party;
 - (c) providing any assistance reasonably required by the third party in relation to the connection or interfacing of any equipment; and
 - (d) following reasonable directions by the Customer as to the division of responsibilities in relation to the discharge by the Contractor and a third party of their respective obligations.
- 4.12** The Customer must, at its own cost, promptly and fully enforce any contract with a third party whose products or services interact with any of the Managed Services or otherwise connect with the Environment.

SUPPLEMENTARY PROCESSES

- 4.13** The Order Documents or the Procedures Manual may specify supplementary processes and terms that apply to the provision of the Managed Services. If so, the Parties will comply with any such supplementary processes and terms, provided that the terms in this Module and the Agreement prevail over any such supplementary processes and terms if there is an inconsistency.

5 Service Levels

- 5.1** During the Consolidation Period the Contractor will use its best efforts (but will not be liable for any failure) to meet or exceed the Service Levels.
- 5.2** At the end of the Consolidation Period, the Contractor will provide the Customer with a report setting out how the Managed Services are operating under the provisions of the Customer Contract. Within 14 days of the end of the Consolidation Period, the Parties must meet and formally review the Managed Services and consider any changes that may be needed to meet the Customers' ongoing requirements. Any changes will be implemented via a Change Request and the procedures in Schedule 4 – Variation Procedures will apply.
- 5.3** From the day after the Consolidation Period the Contractor must meet or exceed the Service Levels, subject to any:
- (a) Event;
 - (b) act or omission of the Customer or its Personnel;
 - (c) act or omission of any person who is identified in the Order Documents as being organised by, or under the direction of, the Customer; or
 - (d) Exception.
- 5.4** Without limiting its obligations under the Service Level Agreement, the Contractor will, to the extent required by the Customer Contract:
- (a) consult as necessary with the Customer in order to provide the Customer with such information relevant to the Managed Services as the Customer reasonably requires concerning the current and anticipated future performance of the Managed Services;
 - (b) cooperate with all procedures reasonably implemented by the Customer in relation to the Managed Services; and
 - (c) implement such recommendations as may be reasonably made by the Customer in order to ensure the Managed Services continue to comply with the requirements of the Customer Contract.
- 5.5** If, at any time between the end of the Consolidation Period and the beginning of any Transition Out Services, the Contractor fails to meet a Service Level in a material way, it will promptly:
- (a) investigate the underlying cause of the failure;
 - (b) prepare and supply to the Customer a report on the failure;
 - (c) take whatever action is reasonably necessary to minimise the impact of the failure;
 - (d) correct the failure as soon as practicable; and
 - (e) keep the Customer advised as to the progress being made in rectifying any circumstances which caused the failure.
- 5.6** Where a Service Level is not met by reason of the Contractor's failure to meet its obligations under this Customer Contract, the reports and work provided under clause 5.5 will be completed at no cost to the Customer. In all other cases the Customer must pay the Contractor's reasonable costs at its time and materials rates (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current rates for government), for such reports and work.

6 Change Control

6.1 The Parties agree that:

- (a) where the Customer wishes to make a change to the Environment;
- (b) the Contractor recommends to the Customer that changes should be made to the Environment;
- (c) the volume of any Service increases beyond the volumes set out in the Order Documents and Additional Services are required;
- (d) there is a change to the Customer's policies, procedures or a change in law; or
- (e) either Party wishes to make a change to the Services or the Customer Contract,

then the Parties shall comply with the process in clause 6.

ADDITIONAL SERVICES

6.2 Where the requested change is for an Additional Service then the Customer must request Additional Services by providing the Contractor with a Change Request. Unless agreed otherwise in writing, any Additional Services shall be charged at the rates set out in the Order Documents, or if no rates are set out in the Order Documents, the Additional Services shall be charged at the Contractor's then current rates for government. The Contractor is not required to provide any Additional Services until a Change Request has been signed by the Parties.

PROJECT SERVICE

6.3 If the Customer requires a Project Service, the Customer must request that Project Service by providing the Contractor with a Change Request and the procedures in Schedule 4 – Variation Procedures will apply. The Change Request must include the details required in Module Order Form 7 as the Project Services are also subject to the provisions of Module 7.

PROCESS

6.4 The details of any new, changed or Additional Services, including the scope of the Services and the Prices that are payable for them, must be set out in a Change Request and the procedures in Schedule 4 – Variation Procedures will apply.

DISPUTES

6.5 For clarity, if there is any dispute arising out of or in connection with this Customer Contract, including as to whether a service or item is within the scope of the Managed Services, whether a service is an Additional Service, a Project Service or a new service, there is any other issue relating to the nature, scope or Price of any service or item or the scope of a Party's responsibilities, that dispute will be dealt with in accordance with clause 24 of Part 2.

7 Transition Out

7.1 If stated in the Module Order Form, the Contractor must, within 6 months, or such other date agreed by the parties, after the Services Commencement Date, develop a comprehensive Transition Out plan which will form part of the PIPP. The Transition Out plan must include:

- (a) the Price that is payable to the Contractor for performing the Transition Out Services;
- (b) any costs associated with selling, transferring, assigning or relocating assets that are exclusively used in the provision of the Managed Services;

- (c) any costs associated with winding down or stranded assets; and
- (d) how and when that Price and any other sums are due and payable.

7.2 The Transition Out Services may include:

- (a) selling, transferring, assigning or relocating assets that are exclusively used in the provision of the Managed Services and the amount payable to the Contractor for such items;
- (b) providing reasonable assistance in procuring novations or assignments of the Client Contracts and Third Party Contracts to a new services provider or to the Customer;
- (c) returning or, if requested by the Customer, destroying documents or materials containing the Customer's Confidential Information together with any reproduction of those documents or materials;
 - a. transitioning the Managed Services to a new service provider or to the Customer;
 - b. if requested by the Customer, granting or assisting the Customer (or new service provider) to procure a licence to continue using any generally commercially available software in the Australian market which is the same as that being used in the System, and any software owned by the Contractor which is integral to the ongoing provision of the Managed Services, subject to payment of licence fees by the Customer (or new service provider).

7.3 The Parties will review the Transition Out plan annually or at such other period agreed by the Parties in the Transition Out plan, and the Contractor must implement any agreed changes.

7.4 The Customer must pay the Contractor for the work necessary to provide the Transition Out plan, and any work necessary to change or review the Transition Out plan on a time and materials basis (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates).

7.5 Subject to clause 7.7, if the Customer requires the Contractor to perform the Transition Out Services, it must provide the Contractor with Notice In Writing of its requirement at least 30 days prior to the date that would allow the Transition Out Services to be performed in full prior to the last day of the Contract Period (i.e. If the Transition Out Services are to last 90 days then the Customer must provide the Contractor Notice in Writing that it requires the Contractor to perform the Transition Out Services at least 120 days prior to the last day of the Contract Period).

7.6 If the Contractor receives Notice in Writing under clause 7.5, the Contractor must provide the Transition Out Services to the Customer during the Transition Out Period, and the Customer must pay the Contractor:

- (a) the Price for the Transition Out Services;
- (b) any costs associated with winding down or stranded assets; and
- (c) any costs associated with selling, transferring, assigning or relocating assets that are exclusively used in the provision of the Managed Services.

7.7 Notwithstanding clauses 7.5 and 7.6, the Contractor has no obligation to provide Transition Out Services where the Contractor has terminated the Customer Contract under clause 25.6 of Part 2.

7.8 In the course of providing any Transition Out Services, the Contractor must, in consultation with the Customer and as stated in the Transition Out plan, (as may be applicable to the relevant type of Managed Service):

- (a) return any Customer Supplied Item;
- (b) freeze non-critical software changes in any of the Customer's software that is being supported as part of the Managed Services;
- (c) provide all reasonable transition assistance for the delivery of Customer Managed Services Data to the new service provider or to the Customer and the reloading of the production databases;
- (d) provide a list of outstanding service desk issues (provided as a csv file or as otherwise agreed by the Parties);
- (e) provide a list of the outstanding issues that are detailed on any issues register;
- (f) answer questions and provide such other information as may be reasonably sought by the new service provider or by the Customer to assist it in the transition process; and
- (g) surrender any remaining Customer owned reports and documents still in the Contractor's possession.

7.9 During the Transition Out Period:

- (a) the Contractor ceases to become liable to perform any part of the Managed Services as it is transitioned to a new service provider or to the Customer;
- (b) the Contractor's obligations to meet the Service Levels is reduced to a 'best efforts' obligation only and the Contractor is not liable for failing to meet the Service Levels;
- (c) the Customer must continue to pay the full Managed Services Price until the last day of the Contract Period, notwithstanding that some or all of the Managed Services may have been transitioned to a new service provider or to the Customer.

8 Payment

8.1 The Customer must pay the Contractor for the Transition In Services, in accordance with the payment details on the Module Order Form.

8.2 The Customer must pay the Contractor for:

- (a) the Managed Services;
- (b) any Additional Services;
- (c) any project Services;
- (d) any Transition Out Services;
- (e) any amounts due under clause 7.6;
- (f) any other amounts due under this Customer Contract,

monthly in arrears, unless otherwise agreed on the Module Order Form, PIPP or Change Request. The Contractor must send the Customer a Correctly Rendered Invoice for each payment after the relevant amount is due.

- 8.3** Where the Price is based on the number and/or type of items in the Environment, the Contractor must provide documentation supporting the Price payable for the Managed Services with the Correctly Rendered Invoice.
- 8.4** Unless agreed otherwise on the Module Order Form, the Contractor must pay the Customer the purchase price for the Assets and Additional Items specified in clause 3.12 within 30 days of receipt of a tax invoice, such invoice to be provided on or after the Services Commencement Date.
- 8.5** The Customer must pay the Contractor any amount agreed for the transfer of assets or other items under clause (a) on the last day of the Transition Out Services.

9 Intellectual Property and Ownership of Data

- 9.1** For the purposes of this Module 12, it is agreed by the Parties that clauses 13.1 to 13.11 of Part 2 are subject to this clause 9.
- 9.2** For the purposes of this clause 9 the definitions of Customer Managed Services Data and Contractor Services Data are not included within the definitions of Existing Material and New Material stated in Part 3.

CUSTOMER OWNED DATA

- 9.3** All Intellectual Property Rights in any Customer Managed Services Data remain vested in the Customer.
- 9.4** The Customer grants the Contractor a non-exclusive, non-transferable licence for the Contract Period for the Contractor and its Personnel to use the Customer Managed Services Data to the extent necessary for the Contractor to perform its obligations under the Customer Contract. For clarity clause 13.11 of Part 2 does not apply to Customer Managed Services Data.

CONTRACTOR OWNED DATA AND PROCEDURES MANUAL

- 9.5** All Intellectual Property Rights in any Contractor Services Data and Procedures Manual remain vested in, or are hereby transferred or assigned immediately upon creation to, the Contractor.
- 9.6** Where the Contractor provides any Contractor Services Data to the Customer, the Contractor grants the Customer a non-exclusive licence to use that Contractor Services Data during the Contract Period solely for the purposes of receiving the benefit of the Managed Services under the Customer Contract or assisting the Contractor to perform its obligations under the Customer Contract.
- 9.7** Where the Contractor provides the Procedures Manual to the Customer, the Contractor grants the Customer a non-exclusive licence to use that Procedures Manual during the Contract Period solely for the purposes of receiving the benefit of the Managed Services under the Customer Contract or assisting the Contractor to perform its obligations under the Customer Contract. For clarity clause 13.6(d) of Part 2 does not apply to the Procedures Manual provided under Module 12.
- 9.8** The Contractor may charge for any licence to use any Contractor Services Data, such fees to be stated in the Module Order Form.

CONTRACTOR INFRASTRUCTURE

- 9.9** Nothing in this Customer Contract grants the Customer any right to any Intellectual Property Rights in any physical infrastructure (including any telecommunications equipment, hardware, software or network) that is used to provide the Managed Services.

DISCLOSURE

- 9.10** Nothing in clauses 4.10 or 7.2(a) to (d) requires the Contractor to disclose to the Customer or any other person any of the Contractor's Confidentiality Information or any of its proprietary information, methodologies, software tools or other items.

10 Customer Responsibilities for Use

- 10.1** The Customer must not, and must ensure that its users do not:

- (a) process, or require the Contractor to process, any Customer Managed Service Data for any illegal, unlawful or fraudulent purposes; or
- (b) use the Managed Services:
 - (i) for any illegal, fraudulent or defamatory purposes;
 - (ii) to engage in the bulk transmission of unsolicited electronic mail;
 - (iii) to send or cause to be sent any computer worms, Viruses or other similar programs;
 - (iv) to make unauthorised access to any other computer accessible via the internet or network;
 - (v) to send any harassing, obscene, indecent, offensive or threatening electronic communication; or
 - (vi) to reproduce, distribute, transmit, publish, copy or exploit any material that constitutes an infringement or breach of any Intellectual Property Right, privacy right or right of confidentiality of any person.

11 Specific Warranties

SCOPE

- 11.1** The Contractor warrants that, subject to the Exceptions, the Contractor will provide:

- (a) the Transition In Services;
- (b) the Managed Services;
- (c) any Project Services;

in accordance with:

- (d) the requirements of the Contract Specifications in all material respects; and
- (e) due care and skill.

12 Exceptions

- 12.1** The Contractor is not liable for any breach of the Customer Contract which arises as the result of:

- (a) any Customer Supplied Item not operating in accordance with its documentation or the requirements in this Customer Contract;

- (b) modifications to any Deliverables that were effected or attempted by a person other than the Contractor or its authorised representative;
- (c) any act, error, fault, neglect, misuse or omission of the Customer;
- (d) damage caused by the operation of any part of the Environment other than in accordance with recommended operating procedures, Procedures Manual or otherwise than in accordance with the directions or recommendations of the original IP owner, authorised distributor or the Contractor;
- (e) any Virus, denial of service attack or other malicious act that adversely affects the Services, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specification;
- (f) improper use or mismanagement by the Customer; or
- (g) an Event.

12.2 Where the Contractor has been requested to provide any remedy and the item that was requested to be remedied is determined not to be a Defect (or to be a Defect in a Customer Supplied Item) then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.

