



City West Water™

# Information Technology Services Master Agreement

CWC [ ]

**CITY WEST WATER CORPORATION**

**ABN: 70 066 902 467**

**[CONTRACTOR]**

**ABN: [ ]**



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**THIS AGREEMENT** is made on the date that the last signing Party signs this Master Agreement.

**BETWEEN**            **City West Water Corporation** ABN 70 066 902 467 of 1 McNab Avenue, Footscray, Victoria, 3011 ("**CWW**")

**AND**                    **The person or company** named in **schedule 1** ("**the Contractor**")

**THE PARTIES AGREE:**

**PART 1: GENERAL**

**1 INTRODUCTION**

**1.1 Scope**

This Master Agreement establishes the terms and conditions under which the Contractor will, from time to time, provide the Products and the Services to CWW. A Statement of Work will be completed by the Parties each time CWW requires Products or Services from the Contractor.

**1.2 Definitions**

In this Master Agreement:

**"Acceptance Certificate"** means a written certificate issued by CWW in which CWW certifies that it is satisfied that a Tested Item passes Acceptance Testing;

**"Acceptance Testing"** means the testing to be conducted on the relevant Products and/or the System to determine whether CWW's requirements have been met, as specified in a Statement of Work or as CWW (or its nominee) may otherwise agree in writing;

**"Affiliate"** means in relation to a person, any person that Controls, is Controlled by or is under common Control with that first mentioned person;

**"Approved Off-Shore Services"** means those parts of the Services approved by CWW in accordance with **clause 12.1**;

**"Approved Off-Shore Location"** means the off-shore locations approved by CWW in accordance with **clause 12.1**;

**"Associated Utility Organisations"** means the water and utility authorities that CWW shares certain services, information and/or IT infrastructure with from time to time, as notified by CWW to the Contractor in writing;

**"Benchmarked Services and Products"** has the meaning in **clause 51.2**;

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in the State of Victoria, Australia;

**"Capped Price"** means the maximum price payable by CWW for all of the Products and Services to be provided by the Contractor under a Statement of Work, if so specified in that Statement of Work;

**"Commencement Date"** means the date identified as such in **schedule 1**;

**"Competitive"** means, with respect to the prices for the Benchmarked Services and Products, that those prices (taken as a whole in respect of the particular benchmarking exercise) are within the lowest (i.e. least expensive) quartile of prices for Equivalent Services or Products;

**"Completion Date"** means the date set out in **schedule 1**;

**"Confidential Information"** means information in any form which is disclosed by a Party ("**Discloser**") to the other Party ("**Recipient**"), or otherwise obtained directly or indirectly by the Recipient from or on behalf of the Discloser, that:

- (a) is by its nature confidential;
- (b) is designated by the Discloser as confidential; or
- (c) the Recipient knows or ought reasonably know is confidential, and includes:
  - (i) in the case of information of CWW:
    - (A) the Data, and any information relating to the policies, strategies, practices and procedures of CWW;
    - (B) information in relation to CWW's business, computing environment, networks, systems, assets, properties, operations and customers;
    - (C) the terms of this Master Agreement and each Statement of Work; and
    - (D) any information specified as confidential (if any) in a Statement of Work;
  - (ii) information comprised in or relating to any Intellectual Property Rights of the Discloser;
  - (iii) information relating to the financial position of the Discloser;
  - (iv) information relating to the Personnel of the Discloser including any Personal Information or sensitive information of individuals,

but does not include any such information that is:

- (d) already known to the Recipient (without any obligation of confidentiality);
- (e) independently developed by the Recipient; or
- (f) in the public domain (other than through a breach of an obligation of confidentiality);

**“Consequential Loss”** means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach, whether or not such loss may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the relevant breach;

**“Contestable Items”** means goods or services the subject of this Master Agreement for which there are competitive international suppliers and Australian and New Zealand suppliers. The Contestable Items are set out in Annexure A to **schedule 9**;

**“Contract Manager”** means the Contractor's authorised representative, as notified to CWW from time to time;

**“Contractor Material”** means all materials that were developed by the Contractor independently of this Master Agreement, excluding the Software;

**“Contract Personal Information”** is defined in **clause 20.1**;

**“Control”** means the ability of a person to directly or indirectly control the management and/or policies of another person, including by ownership of voting securities or by contract;

**“CPI Index Number”** means the all groups consumer price index for Australia published in any year by the Australian Bureau of Statistics;

**“Critical Deliverables”** means those Products and/or Services specified as “Critical Deliverables” in a Statement of Work;

**“CWW Materials”** is defined in **clause 7.2**;

**“CWW Policies and Procedures”** means CWW's policies and procedures notified to the Contractor from time to time including those in relation to occupational health and safety, security and access (both physical and remote), and includes the Privacy Policy;

**“CWW Representative”** means CWW's authorised representative, as notified to the Contractor from time to time;

**“CWW Supplied Items”** means the materials, resources and items specified as such in a

Statement of Work;

“**Data**” means all of the data and information, whether or not confidential, in whatever form such information may exist, which is owned by or in the possession of CWW including data and information which is, or is intended to be, stored in, processed by and retrievable from the computer systems operated by, or on behalf of, CWW and includes any results of the use or manipulation of any such data and information;

“**Defect**” means any failure to comply with the relevant Specifications, or any error, problem, malfunction or deficiency;

“**Developed Software**” means the software developed by the Contractor (if any) to meet the relevant Specifications, including any software specified as such in a Statement of Work and including all configuration scripts associated with that software;

“**Documentation**” means the technical manuals, user manuals, operating manuals, and any other documentation (if any) (including any revisions, replacements, amendments and additions to such manuals and documentation) relating to the use or operation of a Product or System (as applicable), as specified in a Statement of Work;

“**Equivalent Services or Products**” means services and products which are substantially similar to the Benchmarked Services and Products and which are provided on a comparable basis as the supply of the Benchmarked Services and Products by an organisation that is regarded by the benchmarking advisor as a peer of the Contractor and may include services or products provided from a location, or by an organisation, outside Australia;

“**Fixed Price**” means the total price payable by CWW for all of the Products (including fees payable in respect of the licence to use any Software) and/or Services to be provided by the Contractor under a Statement of Work, if so specified in that Statement of Work;

“**Force Majeure Event**” means an event:

- (a) which is outside of the reasonable control of the Party claiming that the event has occurred; and
- (b) the adverse effects of which could not have been prevented or mitigated against by that Party by reasonable diligence or reasonable precautionary measures,

and includes natural disasters, acts of terrorism, riots, revolutions, civil commotion, or epidemic, but excludes any act or omission of a sub-contractor (except where that act or omission was caused by a Force Majeure Event);

“**Government Authority**” means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether domestic, foreign or international;

“**Hardware**” means the computer hardware, equipment and any other similar items as specified in a Statement of Work;

“**ICN**” means Industry Capability Network Victoria of Level 11, 10 Queens Road, Melbourne, Victoria, 3004 (ABN 20 007 058 120);

“**Incentive**” means an amount that may be deducted from or added to fees payable to the Contractor under a Statement of Work, in connection with the Contractor’s failure or success in meeting or exceeding the Service Levels (as the case may be) or some other measure of the Contractor’s performance of its obligations under a Statement of Work, as specified in a Statement of Work;

“**Initial Term**” means the period specified as such in **schedule 1**.

“**Insolvency Event**” means any one (1) of the following:

- (a) a person is or states that the person is unable to pay from the person’s own money all the person’s debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay the person’s debts under any applicable legislation;

- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) days;
- (e) a controller, as defined in the *Corporations Act 2001* (Cth), is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the *Corporations Act 2001* (Cth) or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven (7) days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or
- (k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person;

**"Intellectual Property Rights"** means all rights generally falling within the scope of this term including copyright (including future copyright), trade mark, design, patent, and circuit layout rights, rights in respect of trade secrets and other confidential information, all rights in any applications for or registrations of the foregoing, whether registered or unregistered (and whether registrable or not) and existing in Australia or elsewhere in the world;

**"Key Personnel"** is defined in **clause 10.2**;

**"Laws"** means all laws including rules of common law and equity, statutes, regulations, determinations, by-laws, ministerial directions, subordinate legislation, ordinances, mandatory codes, standards (including Australian Standards) and guidelines, writs, orders, injunctions and judgements and any Government Authority requirements;

**"Master Agreement"** means the following documents:

- (a) the Special Conditions;
- (b) the general terms and conditions in **clauses 1 to 61** of this document;
- (c) the schedules to this document;
- (d) any Statements of Work; and
- (e) any documents attached to or incorporated by reference in to any of the documents referred to in sub-paragraphs (a) to (d) above;

**"Notice"** means a notice given in accordance with **clause 54**;

**"Parties"** means CWW and the Contractor and **"Party"** means CWW or the Contractor, as the case may be;

**"PDPA"** means the *Privacy and Data Protection Act 2014* (Vic);



**“Personal Information”** means information or an opinion (including where forming part of a database), whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable from the information or opinion, regardless of whether such information or opinion is provided by CWW, a Third Party, or created by the Contractor;

**“Personnel”** of a Party means the directors, officers, employees, agents and individual sub-contractors of the Party and its Affiliates. For the avoidance of doubt:

- (a) Personnel of CWW does not include the Contractor and its Personnel; and
- (b) Personnel of the Contractor includes the Personnel of the Contractor’s sub-contractors;

**“Privacy Laws”** means the Laws relating to the protection of Personal Information in force from time to time, including the PDPA, the *Privacy Act 1988* (Cth), the *Health Records Act 2001* (Vic) and any other legislation, regulation or binding code in respect of privacy and applicable to CWW;

**“Privacy Policy”** means CWW’s privacy policy as updated from time to time by CWW;

**“Products”** means the Software, the Developed Software, the Works, the Hardware and the Documentation;

**“Project Plan”** means the plans and timetable for the supply of the Products and/or the provision of the Services by the Contractor, as specified in a Statement of Work;

**“Recurring Fee”** means a recurring fee payable by CWW in respect of Software licences and/or the support and maintenance component of the Services to be provided by the Contractor under a Statement of Work, if so specified in that Statement of Work;

**“Responsible Minister”** means the Minister with responsibility for administering the *Victorian Industry Participation Policy Act 2003*;

**“Service Level”** means, in respect of a particular Service, the level and requirements (if any) which that Service is to meet or exceed, as specified in a Statement of Work;

**“Services”** means the services (if any) to be provided by the Contractor to CWW, as specified in a Statement of Work;

**“Sites”** means the locations of CWW at which Products or Services are to be supplied, as specified in a Statement of Work or as otherwise agreed in writing by the Parties;

**“Software”** means the computer programs (if any) to be supplied to CWW as specified in a Statement of Work, including the Standard Software, but excluding the Developed Software;

**“Source Code”** means:

- (a) computer programs expressed in a source language or form which can be interpreted or compiled and then executed by a computer as commands; and
- (b) all documentation, tools and data reasonably required to enable a person having commercially available computer programming skills to read, understand, modify, maintain and support such computer programs;

**“Special Conditions”** means additional terms and conditions as specified in the **Annexure**;

**“Specifications”** means the specifications for and the requirements in respect of the performance, output, function and operation of the Products, Systems and/or Services, as set out or referred to in a Statement of Work, and any other specifications and requirements as may be agreed in writing by the Parties;

**“Standard Software”** means any software which is readily available to CWW on reasonable commercial terms and is expressly specified as Standard Software in a Statement of Work;

**“Statement of Work”** means a document prepared and agreed in accordance with **clause 8**;

“**Subsequent Term**” means the period specified as such in **schedule 1**;

“**System**” means the Hardware, the Developed Software and the Software (or combinations of parts of them) operating in combination as a complete system, if such operation is required by the Specifications;

“**Tested Item**” is defined in **clause 40.2**;

“**Third Party**” means any person other than the Contractor and CWW;

“**Time and Materials Rates**” means the time and materials rates payable by CWW for the provision of Services under a Statement of Work, if so specified in that Statement of Work;

“**Transition In Plan**” has the meaning given in **clause 5.1**;

“**Transition Out Services**” has the meaning given in **clause 26.2**;

“**VIPP**” means the Victorian Industry Participation Policy made pursuant to section 4 of the *Victorian Industry Participation Policy Act 2003*;

“**VIPP Monitoring Table**” means the table included in Annexure A to **schedule 9**;

“**VIPP Plan**” means the VIPP Plan set out in Annexure A to **schedule 9**;

“**Virus**” means any files, programmes or code designed to affix themselves to, bury themselves within or send instructions to, other files, computers, or other programmes or programme code in order to disable, provide unauthorised access to or cause malfunctions, errors or destruction of any software, data, systems, networks, or other infrastructure;

“**Warranty Period**” in respect of a Product or System means the period specified as such in a Statement of Work, or if no period is specified, 12 months; and

“**Works**” means all designs, drawings, documents, reports, computer programs, coding, text, images, sound recordings, video recordings, prototypes and any other items or things, whether in electronic form or otherwise, produced or created at any time by the Contractor, or on the Contractor’s behalf, in relation to or as a result of the provision of the Services including the Developed Software (and the Source Code of the Developed Software), but excluding:

- (a) any computer programs and Source Code comprised in the Software and any related Documentation; and
- (b) Contractor Material.

### 1.3 Construction

In the context of this Master Agreement:

- (a) the clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (b) words importing the singular include the plural and vice versa;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as amended or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

- (v) a right includes a benefit, remedy, discretion or power;
  - (vi) time is to local time in Melbourne;
  - (vii) "\$" or "dollars" is a reference to Australian currency;
  - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the Parties;
  - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
  - (x) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this Master Agreement; and
  - (xi) any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one (1) or more of them;
- (e) the words "includes" or "including" are not to be construed as words of limitation; and
- (f) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it.

## 2 APPOINTMENT AND NON-EXCLUSIVITY

- 2.1 CWW appoints the Contractor as its contractor to provide the Products and the Services on the terms and conditions of this Master Agreement. The Contractor agrees to provide the Products and Services on the terms and conditions of this Master Agreement. The Contractor is an independent contractor, not CWW's agent, partner or joint venturer. The Contractor has no authority to bind CWW, or act on its behalf at any time, except as CWW may specifically authorise in writing. Except as specified in an agreed Statement of Work, CWW makes no representation or commitment to purchase any particular Products or Services or any particular volume of Products or Services from the Contractor.
- 2.2 Nothing in this Master Agreement will prevent CWW from obtaining any products or services, including products and services similar to the Products and the Services, from a Third Party.

## 3 TERM

- 3.1 This Master Agreement begins on the Commencement Date and continues for the Initial Term unless terminated earlier in accordance with the terms and conditions of this document.
- 3.2 CWW may at its entire discretion extend this Master Agreement for one (1) or more Subsequent Terms by written Notice to the Contractor at least 30 days prior to the expiry date of the Initial Term or then current Subsequent Term. The terms and conditions of this Master Agreement will govern each Subsequent Term.

## 4 CO-OPERATION WITH THIRD PARTIES

- 4.1 If CWW obtains any products or services from a Third Party, the Contractor must at all times during the term of the Master Agreement in connection with the performance of its obligations under a Statement of Work, in good faith, provide CWW and that Third Party with reasonable co-operation and assistance as requested by CWW or the Third Party in relation to any products or services supplied by that Third Party.
- 4.2 Without limiting **clause 4.1**, the Contractor must work together with the Third Party in connection with deliverables, projects, systems, products and services impacted by or having an impact on, or interacting with, the Services, Products or Systems (as applicable) provided by the Contractor under this Master Agreement. **Clauses 4.2(a) to 4.2(c)** are non-exhaustive examples of the types of co-operation the Contractor must provide to CWW and Third Parties if requested by CWW:

- (a) the Contractor must provide information to, and accept information from, CWW and any Third Party about the manner in which any Products and Services are provided to facilitate the Third Party providing their products and services to CWW. This includes providing information about:
  - (i) protocols;
  - (ii) interfaces;
  - (iii) architecture; and
  - (iv) any other operating parameters;
- (b) if specified in a Statement of Work, the Contractor must enter into an operating level agreement with any Third Parties specified in that Statement of Work in order to agree the procedures with CWW and the Third Party for dividing responsibilities in relation to services and functions that may overlap between the Contractor and the Third Party; and
- (c) the Contractor must meet with CWW and/or any relevant Third Party to engage in joint problem resolution.

The Contractor may require the relevant Third Party to enter into a confidentiality agreement on terms substantially similar to those set out in **schedule 6** (or such other terms approved by CWW) prior to engaging with a Third Party in the manner required by this **clause 4**. The Contractor will, if required by a Third Party that will be disclosing information to the Contractor in connection with services or products it provides to CWW, enter into a confidentiality agreement with that Third Party on terms substantially similar to those set out in **schedule 6** (or such other terms approved by CWW).

- 4.3 In the event of any dispute between Contractor and a Third Party in connection with the assistance and co-operation between the Contractor and a Third Party pursuant to **clauses 4.1 and 4.2**:
- (a) the Contractor will notify CWW in writing of the nature of the dispute;
  - (b) the Contractor will use reasonable endeavours to promptly discuss and resolve in good faith the dispute with the Third Party without involvement of CWW as soon as possible so as to avoid or minimise any disruption to the provision of the Services and Products;
  - (c) where the Contractor is unable to resolve a dispute with the Third Party despite using all reasonable endeavours then the dispute will be referred to CWW;
  - (d) CWW may attempt to assist in resolving the dispute between the Contractor and the Third Party and the Contractor will provide all assistance as required by CWW in attempting to resolve that dispute;
  - (e) if CWW is unwilling to attempt to resolve the dispute, CWW may require the Contractor to undergo (and the Contractor agrees to undergo) a formal dispute resolution procedure with the Third Party provided that:
    - (i) the dispute resolution procedure will be based on the process in **schedule 5** but with the Contractor and the Third Party as the relevant parties; and
    - (ii) the Third Party has agreed to comply with the dispute resolution procedure in **schedule 5** and its outcomes; and
  - (f) where the dispute relates to whether or not a task is within the scope of the Services or other obligations on the Contractor under this Master Agreement, CWW may direct the Contractor to, and the Contractor must, immediately perform the task if in the reasonable opinion of CWW the task is within the scope of the Services or other obligations on the Contractor under this Master Agreement. If the Contractor does not agree with CWW then it is entitled to dispute this in accordance with **clause 56** but it must continue to perform the task notwithstanding the dispute process.

- 4.4 Unless otherwise specified in a Statement of Work, the Contractor must not charge any fees or other amounts to CWW, or to any Third Party, in connection with performing its obligations or co-operating with any Third Parties in accordance with this **clause 4**.

## 5 TRANSITION IN

- 5.1 If specified in a Statement of Work, the Contractor will work with CWW to prepare and agree a plan ("**Transition In Plan**") for managing the transition of any existing services to the Contractor that complies with the requirements of **schedule 7** and the relevant Statement of Work. Once the Transition In Plan is agreed it forms part of the relevant Statement of Work and the Parties must comply with the provisions of that Transition In Plan.
- 5.2 Without limiting any provision in a Transition In Plan (or if CWW does not require a Transition In Plan under **clause 5.1**), the Contractor must:
- (a) ensure that the transfer of Services from any incumbent Third Party to the Contractor is carried out as quickly as possible and in a seamless manner which minimises any business or technical disruption or reduction in service or functionality to CWW;
  - (b) where necessary, facilitate disengagement of any outgoing Third Party service provider and complete all transition out activities relating to that Third Party;
  - (c) as soon as the Contractor is able to do so, notify CWW in writing of the earliest date on which the Contractor believes it will be able to complete its obligations under this **clause 5.2**; and
  - (d) once the Contractor has provided the Notice required under **clause 5.2(c)**, perform or assist with any Acceptance Testing relating to transition in that are specified in the relevant Statement of Work.
- 5.3 CWW will have no obligation to pay for any costs relating to the Contractor's compliance with its obligations under this **clause 5** except as specified in the relevant Statement of Work.

## 6 BANK GUARANTEE

- 6.1 Where required in a Statement of Work, the Contractor must provide CWW with an unconditional bank guarantee for the amount and for the period specified in the Statement of Work (the "**Bank Guarantee**"), such Bank Guarantee to be in a form acceptable to CWW (acting reasonably). The Bank Guarantee must be delivered to CWW on or before the date specified in the Statement of Work.
- 6.2 CWW may deduct from the Bank Guarantee any amounts:
- (a) for which the Contractor must reimburse CWW;
  - (b) which CWW pays on the Contractor's behalf; or
  - (c) which the Contractor owes CWW,
- in connection with the Statement of Work to which the Bank Guarantee relates.
- 6.3 If the Contractor is in breach of this **clause 6**, then without limiting CWW's other rights and remedies, CWW's obligation to pay any amounts due under this Master Agreement to the Contractor may be suspended and payment may be withheld until such time as the Contractor complies with this **clause 6**.

## 7 CWW SUPPLIED ITEMS AND CWW MATERIALS

- 7.1 To assist the Contractor in providing the Products and the Services, CWW will provide the CWW Supplied Items to the Contractor but is not otherwise required to provide any other resources, materials or items to the Contractor in order for the Contractor to perform its obligations under the relevant Statement of Work.
- 7.2 CWW licenses the Contractor on a non-exclusive basis to use:
- (a) the CWW Supplied Items; and

- (b) any other materials and items made available to the Contractor by or on behalf of CWW in connection with a Statement of Work,

(collectively, the “**CWW Materials**”) in accordance with **clauses 7.3 and 7.4**, and otherwise in accordance with the reasonable directions of CWW.

- 7.3 The Contractor must use the CWW Materials solely for the purposes of providing the Products and the Services to CWW. The Contractor must not use the CWW Materials for any other purpose and the Contractor must not licence, give, provide, display, assign, transfer or sell the CWW Materials to any other person, or copy, reproduce or encumber the CWW Materials or attempt or purport to do any of these things, except as otherwise permitted by CWW in writing.
- 7.4 The Contractor must comply with any specified terms, conditions and requirements relating to the CWW Materials as set out in a Statement of Work.
- 7.5 The Contractor will be liable for any damage (excluding reasonable wear and tear) to the CWW Materials caused directly or indirectly by the Contractor or the Contractor's Personnel and the Contractor will pay the costs associated with repairing or replacing the damaged CWW Materials.

## **8 STATEMENTS OF WORK**

- 8.1 The Products and Services which CWW requires the Contractor to supply and provide, from time to time, will be specified in Statements of Work. CWW may request that the Contractor prepare, or assist in the preparation of, Statements of Work. Unless expressly agreed in writing by CWW, the Contractor will not charge CWW for preparing, or assisting in preparing, a Statement of Work.
- 8.2 Each Statement of Work must be substantially in the form set out in **schedule 4** and should contain at least the following as appropriate:
- (a) details of the Products and/or Services to be supplied and/or provided to CWW;
  - (b) the Specifications for those Products and/or Services;
  - (c) details of any Service Levels;
  - (d) details of any Incentives applicable to the Service Levels or otherwise to the performance of the Contractor's obligations;
  - (e) details relating to the Sites for the delivery and installation of the Products and/or the provision of the Services;
  - (f) the Project Plan, including the timeframe within which the Products and/or Services must be supplied and/or provided to CWW;
  - (g) if Products are being supplied, details of any Acceptance Testing;
  - (h) details of the price payable by CWW for the Products and/or Services, in accordance with **clause 13** together with details of the payment timetable;
  - (i) if Software is being supplied, any special licence terms and conditions applicable to CWW's possession and/or use of the Software;
  - (j) confirmation of ownership of the Intellectual Property Rights in Works, in accordance with **clause 16**; and
  - (k) details of any other relevant matter or thing that is authorised or permitted by this Master Agreement.
- 8.3 A Statement of Work will not be taken to be agreed by the Parties until the CWW Representative and the Contract Manager have each signed the completed Statement of Work.
- 8.4 CWW will not be obliged to accept or pay for any Products or Services unless and until a Statement of Work is signed by the CWW Representative.
- 8.5 While this Master Agreement remains in force the Contractor will provide CWW with the Products and/or Services specified in agreed Statements of Work.

- 8.6 Unless terminated earlier under this Master Agreement, each Statement of Work will remain in force from the date the last Party signs that Statement of Work for the period specified in that Statement of Work or, if no period is specified, the term of this Master Agreement.
- 8.7 Each Statement of Work will be governed by and subject to the terms and conditions of this Master Agreement. Unless expressly authorised by a provision of this Master Agreement, terms and conditions contained in a Statement of Work which purport to vary the terms and conditions of this Master Agreement will be of no effect. Where authorised terms and conditions are contained in Statements of Work, those terms and conditions will form part of this Master Agreement.

## 9 PROVISION OF SERVICES AND PRODUCTS

- 9.1 The Contractor must:
- (a) ensure that the Services are provided in an efficient manner, to a high standard and to at least the relevant Service Levels;
  - (b) adhere to any timelines specified in a Project Plan or Statement of Work or otherwise agreed by CWW and the Contractor and, in any event, in a manner which is timely and satisfactory to CWW;
  - (c) give a high priority to CWW's requests and needs;
  - (d) observe, and ensure the Contractor's Personnel observe, CWW's reasonable directions and requirements relating to the provision of the Services, including any procedures to be followed in providing the Services, if any are specified in a Statement of Work; and
  - (e) ensure that only those persons who are the Contractor's employees provide the Services, unless the Contractor obtain CWW's prior written consent to the contrary.
- 9.2 If any of the Products ordered are found to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Master Agreement or the relevant Statement of Work, in addition to such other rights, remedies and choices as CWW may have by contract or by Law, CWW may, at its option and sole discretion:
- (a) reject and return such Products in exchange for a full refund of the fees paid in relation to those Products; or
  - (b) require the Contractor to inspect the Products and promptly remove and replace non-conforming Products with Products that conform to this Master Agreement and the relevant Statement of Work at no additional cost to CWW.
- If CWW elects paragraph (b) above and the Contractor fails to promptly make the necessary inspection, removal and replacement, CWW may at its option (and without limiting its other rights) inspect, remove and replace the Products (or procure a Third Party to do so) and the Contractor must pay CWW's costs relating to such inspection, removal and replacement.
- 9.3 If the Contractor materially fails to perform any of the Services in accordance with the requirements in this Master Agreement, including any failure to meet or exceed the Service Levels, then the Contractor must promptly and at no additional cost to CWW:
- (a) perform such analysis and reports as required by CWW including if required by CWW a root-cause analysis to identify the cause of that failure if required by CWW; and
  - (b) provide CWW with a written report identifying the cause of the failure, the impact of the failure and the Contractor's procedures for correcting the failure to minimise any risk of the failure being repeated.

For the avoidance of doubt, CWW may, without prejudice to its rights, determine whether to accept or reject the suggested actions proposed by the Contractor in a report issued pursuant to **clause 9.3(b)**.

## 10 CONTRACTOR PERSONNEL

- 10.1 The Contractor acknowledges and agrees that:
- (a) the Contract Manager has been delegated all required power and authority by the Contractor to manage the provision of the obligations of the Contractor and exercise the Contractor's rights under this Master Agreement; and
  - (b) CWW may treat any statement, act or omission of the Contract Manager as an authorised statement, act or omission of the Contractor.
- 10.2 The Contractor must ensure that any Contractor Personnel are:
- (a) properly qualified and experienced for the tasks they are to perform; and
  - (b) act in a proper and appropriate manner throughout the course of performance of the Services.
- 10.3 The Contractor must use the key Contractor Personnel (if any) listed in a Statement of Work to fulfil its obligations under that Statement of Work ("**Key Personnel**"). The Contractor must ensure that the Key Personnel give CWW priority over other customers. The Contractor may use other Contractor Personnel to assist those Key Personnel in fulfilling the Contractor's obligations under that Statement of Work. Where the Contractor is unable to provide any of the Key Personnel listed in a Statement of Work as required under this Master Agreement, it must (immediately upon becoming aware of this inability) notify CWW and CWW may at its sole discretion either accept alternative Contractor Personnel offered by the Contractor or terminate this Master Agreement or the relevant Statement of Work in accordance with **clause 25.3(k)**.
- 10.4 CWW may at any time, acting reasonably, request that the Contractor remove or replace specified Contractor Personnel, and the Contractor must immediately comply with that request. Without limiting the foregoing, the Contractor must (as applicable):
- (a) ensure that the specified Contractor Personnel leave or is immediately removed and does not return to CWW's premises or the relevant Site (or Sites) and has no further access to CWW's the System, the Data, the CWW Environment or any CWW Confidential Information;
  - (b) ensure that the specified Personnel immediately ceases to provide Services to CWW; and
  - (c) promptly replace the specified Contractor Personnel with a person or persons who have equivalent skills, experience and qualifications and who are acceptable to CWW.
- 10.5 All costs and expenses incurred by the Contractor in removing or replacing the specified Contractor Personnel (including any costs and expenses incurred in training the replacement Personnel) or reasonably incurred as a result of the absence of the specified Contractor Personnel must be borne by the Contractor.

## 11 EXTENSION OF TIME

If as a consequence of CWW's failure to provide the CWW Supplied Items (or any defect or deficiency in any CWW Supplied Items) or otherwise perform a task for which CWW is responsible under this Master Agreement ("**CWW Delay Event**"), the Contractor will be delayed or will otherwise be unable to perform any of its obligations under this Master Agreement:

- (a) the Contractor must immediately advise CWW in writing of the CWW Delay Event and the impact such CWW Delay Event will have; and
- (b) subject to the Contractor complying with **clause 11(a)**, and provided that the reason the Contractor is unable to perform its obligations is materially caused by the CWW Delay Event, the Contractor will be entitled to:
  - (i) an extension of time to perform the impacted Services or Products which is commensurate with the impact of the CWW Delay Event as notified by CWW in writing (acting reasonably); and



- (ii) for fixed price engagements, any applicable delay costs specified in the Statement of Work (if any).

The extension of time and delay costs specified in the Statement of Work (if any) are the Contractor's sole remedies for a CWW Delay Event. The Contractor must use reasonable endeavours to mitigate the impact of a CWW Delay Event and the delay costs it may suffer or incur, including by redeploying any impacted resources.

## 12 NO OFF-SHORING

12.1 The Contractor must not:

- (a) provide any of the Services from any off-shore location; or
- (b) change the off-shore location from where any of the Services are being provided, without CWW's prior written consent, which may be given or withheld at CWW's discretion and subject to any conditions required by CWW.

12.2 The Contractor must prior to, during and after the implementation of any Approved Off-Shore Services, work with CWW to mitigate any risks to CWW relating to the provision of the relevant Services from the Approved Off-Shore Location.

12.3 The Contractor must:

- (a) ensure that all Approved Off-Shore Services are and remain in compliance with all applicable Laws and the terms of this Master Agreement; and
- (b) provide CWW with all information and assistance required to enable CWW to comply with Laws related to the provision or receipt of the Services from any off-shore location.

12.4 The Contractor is not discharged from any obligation or liability under this Master Agreement or the relevant Statement of Work by any approval granted under **clause 12.1** and must ensure that it complies with the terms of this Master Agreement and the relevant Statement of Work with respect to the Approved Off-Shore Services.

## 13 PRICE

13.1 Subject to the terms and conditions of this Master Agreement, CWW will pay the Contractor for the Products and/or the Services:

- (a) the Fixed Price;
- (b) a fee based on Time and Materials Rates up to the Capped Price;
- (c) a fee based on Time and Materials Rates with no Capped Price;
- (d) the Recurring Fee; or
- (e) a combination of the above,

as specified in a Statement of Work. Subject to **clauses 13.3** and **13.4**, no other amounts are payable to the Contractor in relation to this Master Agreement or any Products and/or Services or other thing to be provided by the Contractor, unless expressly stated to the contrary in a Statement of Work.

13.2 Where a Statement of Work specifies Time and Materials Rates for the provision of Services (whether or not up to a Capped Price):

- (a) the Contractor must provide CWW with sufficiently detailed records of time spent and materials used by the Contractor to enable CWW to verify the accuracy of the actual amount claimed in respect of that Statement of Work. CWW is not obliged to pay any amount claimed by the Contractor until CWW has been provided with such detailed records as it considers sufficient; and
- (b) the Contractor may not charge CWW for any work required to resupply Services as a result of an error, fault or defect caused or materially contributed to by the Contractor.

13.3 Where specified in a Statement of Work, CWW will:

- (a) pay the Contractor Incentives for exceeding Service Levels or the Contractor's obligations under a Statement of Work; or
  - (b) deduct Incentives for the Contractor's failure to meet Service Levels or obligations under a Statement of Work.
- 13.4 If a Statement of Work provides that CWW is to reimburse the Contractor's out-of-pocket expenses arising in providing the Services, only reasonable out-of-pocket expenses will be reimbursed and only those in respect of which the Contractor obtains the CWW Representative's written consent before incurring the expense.
- 13.5 All Incentives will be calculated and payable in accordance with the formula and the procedures specified in the applicable Statement of Work.
- 13.6 Unless expressly stated to the contrary in a Statement of Work, the Contractor may increase the Recurring Fee and the Time and Materials Rates annually, by an amount no more than an amount equivalent to the percentage increase in the CPI Index Number as at the date of the proposed increase compared to the CPI Index Number as at the date of this Master Agreement (in the case of the first increase) or the date of the last increase (in the case of subsequent increases).
- 13.7 Notwithstanding **clause 13.1**, the Contractor must ensure that all amounts charged to CWW under this Master Agreement are, and will continue to be, no less favourable than the charges paid or payable by any other customers of the Contractor purchasing the same or substantially similar volumes of the same or substantially similar goods or services from the Contractor. If the Contractor is in breach of this **clause 13.7**, the Contractor must:
- (a) reduce the relevant prices such that the Contractor ceases to be in breach of this **clause 13.7**; and
  - (b) reimburse CWW for any overcharged amounts.
- 13.8 Notwithstanding **clause 13.1**, the Contractor must ensure at all times that the prices for Products and Services under this Master Agreement are competitive with market prices for the purchase of the same or substantially similar volumes of the same or substantially similar products and services in Australia.

## 14 PAYMENT AND TAXES

- 14.1 The amounts payable to the Contractor or by the Contractor (as the case may be), including any Incentives, will be paid or credited in accordance with the payment milestones and procedures and any other conditions specified in each Statement of Work.
- 14.2 Subject to **clauses 14.3** and **14.4**, CWW will make payment within:
- (a) 30 days from the date of the Contractor's Tax Invoice, correctly rendered in accordance with this clause, provided that the invoice is received by CWW at least 15 Business Days prior to the due date for payment; or
  - (b) such period as is agreed by the Parties and specified in the Statement of Work.
- 14.3 An invoice is correctly rendered if the:
- (a) amount claimed in the invoice is due for payment in accordance with the terms of this Master Agreement;
  - (b) amount specified in the invoice is correctly calculated in accordance with this Master Agreement and is net of all Incentives applicable to the invoiced period or work;
  - (c) invoice is set out in a manner that enables CWW to ascertain the Products or Services the invoice covers, the price or fee payable in respect of those Products or Services and the applicable Incentives (if any);
  - (d) invoice is a "tax invoice" within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*;

- (e) invoice is accompanied (where necessary) by documentation that provides evidence that the amount specified in the invoice is in accordance with this Master Agreement; and
  - (f) invoice is addressed to CWW and identifies this Master Agreement.
- 14.4 If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by the Contractor or CWW respectively, and without limiting any other rights of CWW, any overpayment may be offset against any other amount due to the Contractor.
- 14.5 Payment will be deemed to have been made:
- (a) if made by cheque – on the date on which the cheque is drawn by CWW; or
  - (b) if made by electronic funds transfer – at the time the funds are despatched electronically.
- 14.6 Unless otherwise stated in the applicable Statement of Work all amounts payable by CWW under this Master Agreement (including Incentives) include all taxes payable in respect of or in connection with this Master Agreement, including sales, excise, personal, property and other taxes, stamp duty, customs or levies but not including taxes payable on a Party's income.
- 14.7 CWW will be entitled at all times to set-off any amount owing from the Contractor to CWW (including any Incentives) under a particular Statement of Work against any amount payable by CWW in connection with that Statement of Work, subject to providing the Contractor with prior written Notice of its intention to set-off such amount.
- 14.8 In this **clause 14** the expressions "consideration", "GST", "input tax credit", "supply", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.
- 14.9 Unless otherwise expressly stated in the applicable Statement of Work, all amounts payable or consideration to be provided under or in accordance with this Master Agreement are inclusive of GST.
- 14.10 To the extent that any amount payable or consideration to be provided for any supply made under or in accordance with this Master Agreement is:
- (a) expressly stated in the applicable Statement of Work to be exclusive of GST; or
  - (b) non-monetary,
- the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the relevant taxable supply, subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Master Agreement.
- 14.11 If this Master Agreement requires a Party to pay for, reimburse or contribute to any expense, loss or outgoing ("**Reimbursable Expense**") suffered or incurred by the other Party, the amount required to be paid, reimbursed or contributed by the first Party will be the sum of:
- (a) the amount of the Reimbursable Expense net of input tax credits (if any) to which the other Party is entitled in respect of the Reimbursable Expense ("**Net Amount**"); and
  - (b) if the other Party's recovery from the first Party is a taxable supply, any GST payable in respect of that supply,
- such that after the other Party meets the GST liability, it retains the Net Amount.
- 14.12 The Contractor will provide invoices in the form, and in accordance with the procedure, reasonably required by CWW.

## 15 WARRANTIES

15.1 The Contractor represents and warrants to CWW that:

- (a) the execution of this Master Agreement has been properly authorised;
- (b) it has full corporate power to execute, deliver and perform its obligations under this Master Agreement;
- (c) this Master Agreement constitutes a legal, valid and binding obligation on it, enforceable in accordance with its terms by appropriate legal remedy;
- (d) to its knowledge there are no claims pending or threatened against it, or by it, which may have a material effect on the subject matter of this Master Agreement;
- (e) it has all licences, authorisations, consents, approvals and permits required by applicable Laws in order to perform its obligations under this Master Agreement;
- (f) the Hardware and materials provided in connection with the Hardware:
  - (i) are new and have not been previously installed or used, except for the purpose of conducting factory testing; and
  - (ii) may be used without risk to health or safety;
- (g) the Products will:
  - (i) during the Warranty Period, comply with and perform in accordance with the relevant Specifications;
  - (ii) be fit for the purpose for which:
    - (A) CWW has specified it will use the Products; or
    - (B) the Contractor has represented to CWW;
  - (iii) be of high quality and free from material defects in design, material, manufacture or workmanship; and
  - (iv) comply with all Laws applicable to the Products;
- (h) the Hardware, Software and Works will be compatible and interoperate with any system, network, hardware, software or service specified in the Statement of Work and will not detrimentally affect the operation or performance of any such system, network, hardware, software or service;
- (i) it has the right and authority to provide the Products and Services to CWW on the terms and conditions of this Master Agreement;
- (j) the Services and the Products do not of themselves or through their use infringe any other person's rights (including Intellectual Property Rights) or breach any Law;
- (k) the Works are the Contractor's original work (or the Contractor's employees', agents', officers' or sub-contractors' original work), not copied wholly or substantially from any other item or thing which is protected by copyright anywhere in the world;
- (l) no other person has any claim to, or interest in, any Intellectual Property Rights in the Works unless notified to CWW prior to creation of the relevant Work;
- (m) the Products and Services will be provided in accordance with the applicable Statement of Work;
- (n) the Contractor has the necessary skills and know-how to provide the Services;
- (o) the Services will be provided with due care and skill and in a timely and diligent manner and the Works and any other materials supplied in connection with the Services, including any media used for the storage of material in electronic form, will be fit for the purpose for which they are supplied and comply with all relevant Specifications;

- (p) the Contractor will comply with all applicable Laws in supplying and providing the Products and Services (including without limitation, all applicable national, state and local environmental, privacy, health and safety laws and regulations) and in particular the Contractor will comply with the CWW Policies and Procedures;
  - (q) the Software and Developed Software must, when delivered to CWW, be free from any Virus;
  - (r) the Contractor will not introduce, or permit the introduction of, any Virus into CWW's computer systems;
  - (s) the Contractor will ensure that security at the Contractor's premises is adequate to prevent unauthorised access to CWW's documents and the Data in the Contractor's possession or control (whether confidential or otherwise);
  - (t) the Contractor has satisfied itself before signing this Master Agreement as to all matters which are relevant to the obligations undertaken by the Contractor;
  - (u) all statements and representations made by the Contractor or on the Contractor's behalf to CWW are, to the best of the Contractor's knowledge, information and belief, true and accurate, and that the Contractor will advise CWW of any fact, matter or circumstance of which the Contractor may become aware which would render any such statement or representation false or misleading or likely to mislead; and
  - (v) the Contractor has full capacity and all necessary licences, permits and consents to enter into and to perform this Master Agreement.
- 15.2 Upon becoming aware of any breach of warranty under this Master Agreement, or upon receiving Notice of any breach from CWW, the Contractor must, without prejudice to any other rights, actions or remedies which have accrued or may accrue in favour of CWW, promptly and at its own expense take all necessary action to correct the breach within a reasonable period including, without limitation, by the provision of additional materials or the performance of additional Services. If the Contractor fails to rectify such breach, the Contractor is liable to CWW and must reimburse CWW on demand for any reasonable expenses incurred by CWW to rectify the breach itself (or by engaging a Third Party to do so).
- 15.3 CWW has used its reasonable endeavours to ensure that the information provided to the Contractor by CWW in connection with each Statement of Work is complete, up to date and accurate but CWW gives no warranty or representation, and to the extent permitted by Law excludes all liability (including, without limitation, for negligence), in connection with the provision of that information. The foregoing does not limit any specific assumptions agreed by the Parties in a particular Statement of Work.

## **16 INTELLECTUAL PROPERTY RIGHTS**

### **Contractor Material**

- 16.1 This Master Agreement does not affect any change in the ownership of any Intellectual Property Rights in the Contractor Materials.
- 16.2 The Parties agree that the Intellectual Property Rights in enhancements or modifications to the Contractor Material which are developed by or on behalf of the Contractor in the provision of the Services will be owned by the Contractor and shall form part of the Contractor Material.
- 16.3 Where any Contractor Material is provided to CWW under this Master Agreement or is otherwise incorporated in any of the Products, the Contractor hereby grants to CWW a worldwide, perpetual, irrevocable, royalty free, fully paid-up and non-exclusive licence to use and exercise the Intellectual Property Rights in that Contractor Material (including the right to allow CWW's Affiliates and any Third Party contractors to CWW to use and exercise the Intellectual Property Rights in such Contractor Materials ) for the purpose of:
- (a) obtaining the full benefit of the Services;

- (b) using, operating, maintaining, developing and modifying the Products and System; and
- (c) completing any deliverables or work product provided by or on behalf of the Contractor under this Master Agreement (whether such items are incomplete as a result of failing Acceptance Testing, termination or expiry of this Master Agreement or otherwise).

For the avoidance of doubt, the licence in this clause does not apply to Software (Software is licensed pursuant to **clause 34**).

**16.4 The Contractor acknowledges and agrees that:**

- (a) CWW, in collaboration with Associated Utility Organisations, performs shared in-house support and maintenance functions in relation to certain IT infrastructure and software using Personnel of CWW and the Associated Utility Organisations ("**Shared Support and Maintenance**"); and
- (b) CWW may allow Associated Utility Organisations to use, copy and modify the Contractor Materials that have been provided to CWW under the relevant Statement of Work or which are otherwise incorporated in any of the Products provided under that Statement of Work for the purposes of:
  - (i) performing and / or receiving Shared Support and Maintenance, including in relation to the Products (or products similar to the Products); and
  - (ii) the Associated Utility Organisations using, operating, maintaining, developing and modifying any products and systems similar to the Products and System.

**Works**

16.5 Unless expressly stated to the contrary in a Statement of Work, the Contractor assigns to CWW all Intellectual Property Rights in the Works immediately upon creation. The Contractor must, and must procure that its Personnel, do all things and sign all documents to give effect to the assignment in this clause. CWW grants the Contractor a licence to use the Works solely for the purpose of complying with the Contractor's obligations under this Master Agreement.

16.6 If a Statement of Work specifies that the Contractor retains ownership of any Works, the Contractor grants CWW a perpetual, worldwide, non-exclusive, irrevocable and royalty free licence to use, modify, sub-licence, communicate to the public and adapt those Works for any purpose, without further reference to the Contractor.

**Third Party Materials**

16.7 Prior to commencing to supply the Products and/or provide the Services, the Contractor must:

- (a) advise CWW of any Third Party licences or consents which the Contractor must obtain to enable the Contractor to provide the Products and/or the Services; and
- (b) not enter into any licences or consents with Third Parties until the Contractor has obtained CWW's approval (in writing) of the terms and conditions of any such licences or consents.

**Moral Rights**

16.8 In relation to all copyright material in the Works and Contractor Material, the Contractor must procure from any of the Contractor Personnel who is an author or maker of any such material a consent in writing authorising:

- (a) CWW and its permitted users;
- (b) CWW's licensees and successors in title; and
- (c) any other person authorised by CWW or by such a licensee or successor in title,

to use all such material for the purposes for which the material was created and for CWW's other business purposes, including exercising for any of those purposes all acts comprised in the copyright in the material, even if that use would, apart from this clause, infringe moral rights. The Contractor must provide CWW with written evidence of all such consents if required by CWW.

### **CWW Materials**

16.9 This Master Agreement does not affect any change in the ownership of any Intellectual Property Rights in the CWW Materials.

16.10 The Contractor must only use the CWW Materials in accordance with **clause 7**.

## **17 PERSONAL PROPERTY SECURITIES ACT**

17.1 In this **clause 17**:

- (a) **"Bailed Equipment"** means the CWW Supplied Items and any other items provided to the Contractor or its sub-contractors under or in connection with this Master Agreement;
- (b) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth);
- (c) **"PPS Register"** means the Personal Property Securities Register established under the PPSA;
- (d) **"Relevant Collateral"** means Collateral which is the subject of a Security Interest granted under this Master Agreement;
- (e) **"Short Term Bailment"** means a bailment, lease or hiring of goods which is not a PPS Lease; and
- (f) **"Accession", "Collateral", "Inventory", "PPS Lease", "Proceeds", "Secured Party" and "Security Interest"** have the meaning given in the PPSA.

17.2 The Contractor acknowledges that subject to **clause 17.3**:

- (a) unless the bailment of the Bailed Equipment under this Master Agreement is a Short Term Bailment, the bailment of Bailed Equipment under this Master Agreement gives rise to a Security Interest in the Bailed Equipment in favour of CWW being a PPS Lease; and
- (b) CWW's rights and interest in Proceeds derived from the Bailed Equipment constitute a Security Interest.

17.3 If the bailment of the Bailed Equipment under this Master Agreement is a Short Term Bailment, the Contractor acknowledges that the bailment does not give rise to a Security Interest and agrees to take all steps necessary to ensure that the Bailed Equipment does not become subject to a Security Interest by virtue of the Contractor's possession of the Bailed Equipment. Without limitation, the Contractor must:

- (a) return the Bailed Equipment in its possession within 12 months of the commencement of any bailment of the Bailed Equipment or 90 days of the commencement of any bailment of the Bailed Equipment for any goods that may or must be described by serial number in accordance with the regulations or the agreed renewal of such bailment; and
- (b) otherwise ensure that no Security Interest arises over any of the Bailed Equipment.

17.4 The Parties agree that:

- (a) CWW may, at CWW's expense, register any Security Interest granted under this Master Agreement on the PPS Register in any manner it chooses. The Contractor must provide CWW with any information it requires for the purposes of effecting such registration; and
- (b) for the purposes of section 157(3) of the PPSA, the Contractor irrevocably and unconditionally waives its right to receive any notice from CWW in connection with the registration of a Security Interest arising under this Master Agreement.

- 17.5 The Contractor agrees to take such steps as CWW reasonably requires to perfect or otherwise ensure the enforceability and first ranking priority of any Security Interest granted to it under this Master Agreement, including by:
- (a) obtaining and giving consents;
  - (b) producing and providing receipts;
  - (c) attending to the signing of documents or procuring the signing of documents;
  - (d) facilitating the registration of any Security Interest on the PPS Register;
  - (e) facilitating the giving of notice to any person, including any person who also has, or appears to have, a Security Interest over Relevant Collateral; and
  - (f) facilitating the exercise of CWW's right in enforcing any Security Interest.
- 17.6 The Contractor agrees to ensure that unless otherwise agreed in writing by CWW:
- (a) the Bailed Equipment does not become a fixture to any land;
  - (b) the Bailed Equipment does not become an Accession to other goods; and
  - (c) it takes such steps (at the Contractor's cost) as CWW reasonably requires to prevent or remedy the affixation of the Bailed Equipment to any land or goods including by:
    - (i) procuring appropriate acknowledgements and consents from landlords, mortgagees and property owners; and
    - (ii) detaching, or procuring the detachment of, the Bailed Equipment from any land or goods to which it becomes attached.
- 17.7 The Contractor warrants and undertakes that the Bailed Equipment is not, and will not during the term of this Master Agreement be, Inventory of the Contractor.
- 17.8 To the extent that this Master Agreement gives rise to a Security Interest which secures payment or performance of an obligation, the Parties agree that for the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply to any Relevant Collateral:
- (a) section 95 (notice by Secured Party of removal of Accession);
  - (b) section 121(4) (notice by Secured Party of enforcement of Security Interest in liquid assets);
  - (c) section 125 (obligation of Secured Party to dispose of or retain Collateral after seizure);
  - (d) section 130, to the extent that it requires CWW to give any notice to the Contractor (notice by Secured Party of disposal of Collateral);
  - (e) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account);
  - (f) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period);
  - (g) section 135 (notice by Secured Party of retention of Collateral); and
  - (h) section 143 (reinstatement of security agreement).
- 17.9 Without limitation to any other provision of this Master Agreement, it is a default of the Contractor under this Master Agreement for the purposes of section 123(1) of the PPSA if any person with a Security Interest in Relevant Collateral seizes or becomes entitled to seize that Relevant Collateral without the consent of CWW.
- 17.10 The Parties agree that:
- (a) information about the obligations secured by any Security Interest under this Master Agreement or the terms of payment or performance in respect of any obligation under this Master Agreement at any particular time; and



- (b) any information of the kind described in section 275(1) of the PPSA, including without limitation:
  - (i) information about this Master Agreement including a copy of it;
  - (ii) information about the amount or the obligation secured by any Security Interest created by or under this Master Agreement and the terms of such payment or performance at any time; or
  - (iii) information about Relevant Collateral at any time,
 is deemed to be Confidential Information and must be kept confidential and not disclosed except in accordance with **clause 21**.

## 18 PROTECTION AND SECURITY OF DATA

- 18.1 The Contractor acknowledges that the Data is, as between the Parties, the sole property of CWW and the right to access the Data is solely allowed to CWW except as provided in this Agreement. To the extent that any Intellectual Property Rights vest in or are created in the Data, or any compilation comprising the Data, the Contractor assigns to CWW immediately upon their creation any such rights that may from time to time vest in the Contractor.
- 18.2 The Contractor must:
- (a) only use the Data for the purposes of performing its obligations under this Master Agreement and for no other purpose;
  - (b) not transfer Data outside Australia, or allow any person who is located outside of Australia to access such Data, without the prior written consent of CWW;
  - (c) not assert that there exists any charge or lien over or including any part of the Data;
  - (d) not assert any other right to payment (however levied) in respect of access to, or other use of, the Data;
  - (e) ensure that CWW has and is granted access to the Data as and when required by CWW; and
  - (f) comply with any policies of CWW notified to the Contractor in respect of the collection, storage, use and disclosure of the Data, the use and protection of passwords and any other CWW system security codes and/or mechanisms, as specified in a Statement of Work or as notified to the Contractor from time to time.
- 18.3 The Contractor must use best endeavours to ensure that in the course of supplying the Products and/or providing the Services no errors (whether typographical, logical or otherwise) are introduced into the Data (as it exists from time to time) or the CWW computing environment by the Contractor, sub-contractors and any of their Personnel;
- 18.4 If CWW advises the Contractor in writing, or if the Contractor becomes aware, that the Data (in any form) contains any errors or is corrupted, lost or functionally disabled as a result of anything done or omitted to be done by the Contractor or on the Contractor's behalf (a "**Data Defect**"), the Contractor must:
- (a) immediately advise CWW of whether or not the Contractor can remedy the Data Defect, and agree with CWW a timeframe for the Contractor to remedy the Data Defect;
  - (b) if the Contractor cannot remedy the Data Defect within a timeframe acceptable to CWW, or if the Contractor fails to remedy the Data Defect within the agreed time, cooperate with CWW in remedying or procuring the remedy of the Data Defect itself or through a Third Party; and
  - (c) bear the costs and expenses of remedying Data Defects (including costs of a Third Party which CWW retains in order to remedy the Data Defect).

## 19 DISASTER RECOVERY

- 19.1 Where specified in a Statement of Work, the Contractor must develop, implement, and maintain appropriate and effective disaster recovery procedures throughout the term of the relevant Statement of Work, including appropriate back-up procedures and facilities, to ensure that the Contractor's performance of its obligations under the Statement of Work continues without interruption if a disaster occurs at any of the Contractor's sites ("**Disaster Recovery Plan**"). The Disaster Recovery Plan must comply with any specific requirements specified in a Statement of Work.
- 19.2 The Contractor must, where required by a Statement of Work:
- (a) provide CWW with a copy of the Disaster Recovery Plan;
  - (b) promptly make any changes to such Disaster Recovery Plan that are reasonably required by CWW; and
  - (c) test such Disaster Recovery Plan in the presence of CWW.

## 20 PRIVACY

- 20.1 The Contractor must comply with the Privacy Laws and the Privacy and Data Protection Policies in relation to any Personal Information collected by, disclosed to or accessed by the Contractor in connection with this Master Agreement (if any) ("**Contract Personal Information**") and must only use and disclose the Contract Personal Information for the purposes of and in accordance with this Master Agreement.
- 20.2 In performing the Contractor's obligations under this Master Agreement, the Contractor must:
- (a) not do any act or engage in any practice that would breach a Privacy Law or the Privacy or Data Protection Policies;
  - (b) not do any act or engage in any practice, which if done or engaged in by CWW, would cause CWW to breach a Privacy Law or the Privacy or Data Protection Policies;
  - (c) take all reasonable steps to keep Contract Personal Information in the Contractor's possession, custody or control secure against loss, destruction and unauthorised access, use, modification or disclosure;
  - (d) to immediately notify CWW if the Contractor becomes aware of a breach or possible breach of any Privacy Law or the Privacy or Data Protection Policies or the obligations contained in, or referred to in, this **clause 20**, by the Contractor or any of the Contractor Personnel;
  - (e) comply with any reasonable direction of CWW in relation to security, use or disclosure of Contract Personal Information; and
  - (f) only permit sub-contractors and Contractor Personnel with access to Contract Personal Information where necessary for the Contractor to perform its obligations under this Master Agreement and ensure that such sub-contractors and Contractor Personnel with access to Contract Personal Information are made aware of undertake in writing to comply with the obligations of the Contractor set out in this **clause 20**.
- 20.3 The Contractor must, if it receives a request from an individual for access to, alteration, correction or deletion of Contract Personal Information about the individual held by it in connection with this Master Agreement, promptly inform CWW in writing of the request. The Contractor must comply with any reasonable and lawful direction issued by CWW in respect of any such request.
- 20.4 The Contractor must not transfer or disclose any Contract Personal Information outside of Australia, or allow any person who is located outside of Australia to access Contract Personal Information, without the prior written consent of CWW.
- 20.5 The Contractor agrees to be bound by the Information Privacy Principles in the PDPA and any applicable code of practice made under the PDPA that may apply to CWW with

respect to any act done, or practice engaged in, by the Contractor for the purposes of this Agreement in the same way and to the same extent as CWW would have been bound by them in respect of that act or practice had it been directly done or engaged in by CWW.

## 21 CONFIDENTIALITY

21.1 The Recipient must:

- (a) keep all Confidential Information of the Discloser confidential;
- (b) use the Discloser's Confidential Information only to the extent required and for the purposes of carrying out its obligations under this Master Agreement;
- (c) not disclose or allow to be disclosed any Confidential Information of the Discloser to any person except as permitted by this Master Agreement;
- (d) notify the other Party as soon as practicable after it becomes aware of a breach of its obligations under this **clause 21**; and
- (e) co-operate with the Discloser in any reasonable action which the Discloser may take to protect the confidentiality of its Confidential Information.

21.2 **Clause 21.1** does not prevent a Recipient from disclosing Confidential Information of the Discloser to the extent specifically required by applicable Law, a Government Authority or the rules of an applicable stock exchange, provided that the Recipient:

- (a) immediately notifies the Discloser if it becomes aware that such disclosure may be required and provides all reasonable assistance to the Discloser to intervene in any process by which disclosure may be compelled;
- (b) discloses no more Confidential Information than is strictly required; and
- (c) takes any steps reasonably available to it to ensure that the disclosed Confidential Information is treated confidentially.

21.3 Notwithstanding **clause 21.2**, the Parties agree that to the extent permitted, they will not disclose information of the kind described by section 275(1) of the *Personal Property Securities Act 2009* (Cth) to any person except as permitted by **clause 21.4**, **clause 21.7** or required by any other Law.

21.4 **Clause 21.1** does not prevent the disclosure of Confidential Information by the Recipient:

- (a) subject to **clause 21.6**, to its sub-contractors and Personnel who need access to that Confidential Information to allow the Recipient to perform its obligations or to exercise its rights under this Master Agreement, provided that those persons agree to keep the Confidential Information confidential on terms equivalent to those in this Master Agreement;
- (b) to its solicitors, accountants, financiers, auditors and insurers provided that such Confidential Information is only disclosed and used solely for the purposes of advising or reporting to the Recipient provided that those persons agree to keep the Confidential Information confidential on terms equivalent to those in this Master Agreement; or
- (c) with the Discloser's prior written consent and, in giving its written consent, the Discloser may impose such terms and conditions as it thinks fit.

21.5 The Recipient remains responsible to the Discloser for any use or misuse of any Confidential Information by any person it has disclosed it to pursuant to **clause 21.4**.

21.6 If requested by CWW, the Contractor must procure its sub-contractors and any of its Personnel involved in providing Services to CWW to execute a deed of confidentiality substantially in the form set out in **schedule 6** and provide a copy of the executed deed to CWW within five (5) Business Days of such request.

21.7 Notwithstanding **clause 21.1**, CWW may disclose the Contractor's Confidential Information to:

- (a) any Affiliate (or, if **clause 16.4** applies, to the relevant Associated Utility Organisations) for the purpose of enabling such entity to have the benefit of the Services, Products and System provided under the relevant Statement of Work (including as required to use any Works and Contractor Materials as permitted by the terms of this Master Agreement), provided that such entities agree to keep such information confidential on terms substantially equivalent to those in this Master Agreement;
  - (b) any Minister, Department or officer of the State of Victoria or Commonwealth;
  - (c) any Government Authority;
  - (d) satisfy its obligations under the relevant freedom of information legislation; and
  - (e) satisfy its statutory reporting and auditing requirements.
- 21.8 Except as expressly permitted under this Master Agreement or otherwise required by Law, the Recipient must, on the request of the Discloser, immediately:
- (a) deliver to the Discloser; or
  - (b) if so requested, destroy and certify such destruction to the Discloser,
- all documents or other materials containing the Discloser's Confidential Information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it. Nothing in this clause requires CWW to return or destroy any Products, Works, or other deliverables provided under this Master Agreement which contain Confidential Information of the Contractor.
- 21.9 Each Party must keep the other Party's Confidential Information secure, both physically and logically as appropriate, from unauthorised access.
- 21.10 The Contractor acknowledges that unauthorised disclosure or use of the Confidential Information may cause irreparable harm for which damages would not be an adequate remedy and CWW may take legal proceedings against the Contractor to restrain any breach, or threatened breach of this Master Agreement, including by obtaining an injunction to restrain such breach.

## 22 INDEMNITY AND LIABILITY

- 22.1 Subject to **clause 22.2**, the Contractor indemnifies CWW, CWW's Affiliates and any of their Personnel ("**Those Indemnified**") against all losses, damages, liabilities, claims and expenses (including all legal costs) suffered or incurred by Those Indemnified arising out of or in connection with any:
- (a) injury to or death of persons or damage to property caused by the Contractor, the Contractor's Affiliates or any of their sub-contractors or Personnel;
  - (b) fraudulent or reckless act or omission or the wilful misconduct of the Contractor, the Contractor's Affiliates or any of their sub-contractors or Personnel in connection with this Master Agreement;
  - (c) allegation or claim brought against any of Those Indemnified by a Third Party which is caused by a breach of this Master Agreement by the Contractor; and/or
  - (d) allegation or claim brought against any of Those Indemnified by a Third Party that receipt of the Services, Products or other materials supplied by or on behalf of the Contractor under this Master Agreement ("**Affected Item**") (or use of the Affected Items in accordance with this Master Agreement) infringes a Third Party's Intellectual Property Rights ("**IP Infringement Claim**").
- 22.2 The Contractor's liability to indemnify CWW under this **clause 22** will be reduced proportionally to the extent that any acts or omissions of Those Indemnified directly contributed to the loss or liability.
- 22.3 Each Party's total cumulative liability under a Statement of Work to the other Party is capped at the amount specified in that Statement of Work (if no cap is specified, there is no cap on a Party's liability under that Statement of Work) provided that this cap will not apply to any loss or liability in relation to:

- (a) repudiation or wilful breach of this Master Agreement (including any obligation under the relevant Statement of Work);
  - (b) infringement of Intellectual Property Rights;
  - (c) misuse of Confidential Information or Contract Personal Information;
  - (d) damage to real or personal property;
  - (e) personal injury or death; or
  - (f) any fraudulent or reckless act or omission or any wilful misconduct or wilful or fraudulent misrepresentation.
- 22.4 In the event that any IP Infringement Claim is made, then without limiting any other rights CWW may have under this Master Agreement or at Law:
- (a) the Contractor must at CWW's option and at the Contractor's cost:
    - (i) procure for CWW the right to continue to use the Affected Item including by paying third parties any fees required to procure that right;
    - (ii) modify the Affected Item (without lessening the functionality of the Affected Item) so that its use becomes non-infringing; or
    - (iii) replace the Affected Item with an item which is non-infringing and is substantially similar to the Affected Item in both functionality and performance; or
  - (b) CWW may elect to terminate this Master Agreement or the relevant Statement of Work for cause in accordance with **clause 25.3**.
- 22.5 The limitation on liability set out in **clause 22.3** does not apply in relation to any liability for loss or damage sustained by CWW in respect of which the Contractor is, under the Master Agreement, required to obtain insurance provided that the Contractor's liability under a Statement of Work for such loss and damage will not exceed the higher of the:
- (a) relevant cap on liability for that Statement of Work determined pursuant to **clause 22.3**; or
  - (b) amount of insurance cover the Contractor is required to carry in respect of such liability.
- 22.6 Each Party will not be liable for any Consequential Loss suffered by the other Party arising out of or in connection with a breach of the Agreement.
- 22.7 The Contractor is not liable to CWW for loss of or corruption to Data except to the extent specified in **clause 18.4**. The exclusion of liability in this clause does not apply to any loss of or corruption to Data that is caused by any fraudulent or reckless act or omission or the wilful misconduct of the Contractor, the Contractor's Affiliates or any of their sub-contractors or Personnel.
- 22.8 Where the Contractor is required to indemnify Those Indemnified against a third party claim under this Master Agreement:
- (a) CWW must promptly notify the Contractor of the claim;
  - (b) the Contractor may, within a reasonable time following notification of the claim, make a request in writing to CWW that it wishes to conduct all negotiations to settle the claim and any litigation which may arise from it;
  - (c) CWW will permit the Contractor to take over the conduct of all negotiations to settle the claim and any litigation which may arise from it only if CWW's insurers have consented in writing to the transfer of responsibility of the claim to the Contractor and provided that the Contractor agrees in writing to any conditions CWW or CWW's insurers may require in giving such consent; and
  - (d) where the Contractor has taken over the conduct of a claim pursuant to **clause 22.8(c)**:

- (i) CWW must use reasonable endeavours not to make any statement which may prejudice the defence of the claim;
- (ii) CWW must co-operate and provide reasonable assistance (at the Contractor's cost) to Contractor in relation to the defence or settlement of such claim; and
- (iii) the Contractor must obtain the consent of CWW prior to agreeing to any settlement of any claim (such consent not to be unreasonably withheld).

## 23 INSURANCE

23.1 The Contractor must, and must ensure that each sub-contractor performing any of the Contractor's obligations under this Master Agreement does (unless CWW has otherwise given its written consent), procure and maintain for the duration of this Master Agreement (and in the case of professional liability insurance, for a period of at least six (6) years following the termination or expiry of this Master Agreement), insurance policies with a reputable insurer of the type and to the level of cover specified in **schedule 2** and as specified in a Statement of Work.

23.2 Upon request, the Contractor must provide CWW with relevant details of the insurance policies held by the Contractor and its sub-contractors and a copy of a certificate of currency including the name of the insurer, the policy period and an accurate and complete description of both coverage and exclusions.

## 24 ACCESS TO SITES AND ACCESS TO THE CONTRACTOR'S PREMISES

24.1 CWW will allow the Contractor reasonable access to the Sites and the CWW computing environment (the "**CWW Environment**") for the sole purpose and to the extent required in order for the Contractor to perform the Services and comply with its obligations under this Master Agreement. The details of such access (including any necessary security clearance) will be as specified by CWW and notified in writing or orally to the Contractor.

24.2 The Contractor must ensure that when attending the Sites and accessing the CWW Environment, the Contractor, Contractor's Affiliates and any of their sub-contractors and Personnel comply with such CWW Policies and Procedures and requirements (including those relating to security arrangements and occupational health and safety) as may be specified by CWW from time to time. The Contractor must take all necessary precautions to prevent the occurrence of any injury to person or property during the progress of work at the Sites.

24.3 CWW may, at any time and for any period, refuse the Contractor or its Personnel access to the Sites or the CWW Environment. Where by reason of such refusal the Contractor is unable to perform the Contractor's obligations under this Master Agreement, such refusal will be a CWW Delay Event and **clause 11** shall apply.

24.4 The Contractor must permit CWW or its representatives to have reasonable access to the Contractor's sites where any work under this Master Agreement is performed in order to assess:

- (a) the quality of the Services the Contractor is performing;
- (b) the Contractor's conformance with CWW's requirements as set out in this Master Agreement; and
- (c) conformance with the Contractor's representations and warranties as set out in this Master Agreement.

## 25 TERMINATION

25.1 In addition to any other remedies or rights CWW may have at Law or under this Master Agreement, CWW may terminate this Master Agreement without cause at any time by giving the Contractor 14 days' written Notice without liability except as provided under **clause 25.4**.

25.2 CWW may terminate a particular Statement of Work without cause and without liability except as provided under **clause 25.4** by giving the Contractor:

- (a) 14 days' written Notice if the Statement of Work is for a term of more than six (6) months; or
- (b) seven (7) days' written Notice if the Statement of Work is for a term of six (6) months or less.

25.3 CWW may terminate a Statement of Work immediately by written Notice to the Contractor if:

- (a) CWW rejects a Tested Item at any Site for failing to pass Acceptance Testing;
- (b) the Contractor breaches the Contractor's obligations in relation to confidentiality, security or privacy under this Master Agreement;
- (c) CWW determines that any of the representations or warranties the Contractor has made in relation to this Master Agreement are untrue;
- (d) the Contractor fails to perform the Services within the time specified in this Master Agreement or a particular Statement of Work (or any extension of that time agreed in writing by CWW) and does not cure such failure within a period of 10 days (or such longer period as CWW may authorise in writing or which is agreed in a Statement of Work) after receipt of Notice from CWW specifying such failure;
- (e) the Contractor breaches any other term of this Master Agreement and the breach is not capable of being remedied or, if the breach is one that is capable of being remedied, and the Contractor does not remedy that breach within 30 days of the date of CWW's Notice to the Contractor specifying the breach;
- (f) an Insolvency Event occurs in respect of the Contractor or if the Contractor ceases to conduct business to properly give effect to this Master Agreement;
- (g) the Parties are unable to agree on the reduction of fees in accordance with **clause 40.5(b)**;
- (h) in CWW's reasonable opinion, the Contractor or any of the Contractor's sub-contractors or Personnel are guilty of any fraud, dishonesty or any other wilful misconduct in connection with the Master Agreement;
- (i) the Contractor commits repeated Service Level failures and the Statement of Work specifies that such number or type of Service Level failures gives rise to a right for CWW to terminate the Statement of Work;
- (j) the Contractor fails to supply or provide one (1) or more Critical Deliverables by the due date specified in the relevant Statement of Work;
- (k) the Contractor fails to provide the Key Personnel in accordance with **clause 10.3**; or
- (l) pursuant to any other clause of this Master Agreement or a Statement of Work which expressly gives the Contractor the right to terminate.

CWW may terminate this Master Agreement immediately by written Notice to the Contractor if an Insolvency Event occurs in respect of the Contractor.

25.4 If CWW terminates this Master Agreement under **clause 25.1** or a particular Statement of Work under **clause 25.2**, CWW will pay the Contractor all amounts outstanding up to the date this Master Agreement or the particular Statement of Work (as the case may be) ends, but will not be liable to pay the Contractor any amount that would have been payable if this Master Agreement or the relevant Statement of Work had continued.

25.5 If CWW terminates this Master Agreement other than under **clause 25.1**, no further amounts are payable to the Contractor even if they had already been invoiced, and CWW reserves its rights to take action to recover any losses or damages incurred by CWW.

25.6 If CWW terminates a particular Statement of Work other than under **clause 25.2**, no further amounts are payable to the Contractor in respect of that terminated Statement of Work, even if they had already been invoiced, and CWW reserves its rights to take action to recover any losses or damages incurred by CWW.

25.7 The Contractor may terminate:

- (a) a Statement of Work by written Notice to CWW:
  - (i) if CWW:
    - (A) is in breach of a material term of the Master Agreement, in connection with the provision of the Products and/or Services to CWW under that Statement of Work; and
    - (B) has not remedied, nor commenced and diligently continued to remedy, that breach within 30 days of receiving written Notice from the Contractor of that breach; and
    - (C) fails (within a reasonable period) or refuses to comply with a resolution of the dispute in favour of the Contractor where the Parties have referred the breach to dispute resolution under **clause 56**; or
  - (ii) if CWW has not paid an undisputed invoice within 30 days of receipt of a Notice from the Contractor demanding payment of the outstanding invoice, where such invoice is correctly rendered by the Contractor in accordance with **clause 14** of this Master Agreement in connection with the Products and/or Services provided to CWW under that Statement of Work; or
- (b) this Master Agreement by written Notice to CWW if an Insolvency Event occurs in respect of CWW.

If the Contractor terminates this Master Agreement or a Statement of Work in accordance with this **clause 25.7**, CWW will pay the Contractor all amounts outstanding up to the date this Master Agreement or the particular Statement of Work (as the case may be) ends, but will not be liable to pay the Contractor any amount that would have been payable if this Master Agreement or the relevant Statement of Work had continued.

25.8 Termination of this Master Agreement will be without prejudice to rights accrued prior to the end of this Master Agreement.

25.9 If this Master Agreement is terminated, all Statements of Work will automatically terminate with this Master Agreement.

## 26 ACTION ON TERMINATION

26.1 When the Contractor has finished supplying the Products and/or providing the Services to CWW, upon termination or expiry of this Master Agreement or a Statement of Work, or sooner at CWW's request, the Contractor must immediately either:

- (a) return to CWW; or
- (b) if directed by CWW, destroy (and certify such destruction to CWW),

all CWW's Confidential Information, the Data, Contract Personal Information, the Works and the CWW Materials (and all documents and things containing or embodying any part of them or any reproduction of all or any part of them) and any other item or thing relating to this Master Agreement or a Statement of Work (as the case may be) which belongs to CWW which is in the possession, power or control of the Contractor or any of its Affiliates, sub-contractors or Personnel. In the case of items in electronic form, destruction means to permanently erase that material from all of the storage media, so that the material cannot later be retrieved or reconstituted.

26.2 On written request by CWW:

- (a) up to three (3) months prior to the date of expiry of a Statement of Work; or
- (b) within 14 days following termination of a Statement of Work for any reason,



the Contractor will provide CWW with services set out in **Schedule 8** and any transition out activities specified in the relevant Statement of Work ("**Transition Out Services**"). The Contractor may charge CWW for performing the Transition Out Services at the current Time and Materials Rates. For the avoidance of doubt, the Contractor will provide copies of Data as reasonably required by CWW at no charge to CWW. Unless otherwise agreed by the Parties, the Contractor must (if requested by CWW) provide Transition Out Services for a period of up to three (3) months following the then due date for termination or expiry of the relevant Statement of Work. The term of the relevant Statement of Work (and this Master Agreement) will be extended by the period of any Transition Out Services.

- 26.3 While the Contractor is performing the Transition Out Services the Contractor must ensure that there is no:
- (a) substantial changes in the Contractor Personnel involved in providing the Services (except where a change is beyond the Contractor's control); and
  - (b) degradation to or interruption in the provision of Services under this Master Agreement or any material adverse impact on CWW.

## 27 FORCE MAJEURE

- 27.1 If a Force Majeure Event occurs and prevents a Party (the "**Affected Party**") from performing its obligations under this Master Agreement, the Affected Party must promptly notify the other Party of the event, the time it started and likely duration, the extent that its obligations are affected and the measures proposed to remedy or mitigate its consequences. Subject to **clause 27.2**, the Affected Party's obligations are then suspended solely to the extent it is able to demonstrate that it is prevented from performing them by the Force Majeure Event. The Affected Party must:
- (a) promptly take all necessary steps to remedy or mitigate the Force Majeure Event's effects, so as to resume full performance of its obligations as soon as reasonably possible; and
  - (b) take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations.
- 27.2 The Affected Party must:
- (a) continue to perform all unaffected obligations in accordance with the Master Agreement;
  - (b) use reasonable endeavours to continue to perform the affected obligations, whether by way of a work-around or other methods agreed with the other Party; and
  - (c) notify the other Party as soon as it is no longer affected by the Force Majeure Event.
- 27.3 CWW is not required to pay for any fees in relation to any Products or Services not provided as a result of a Force Majeure Event.
- 27.4 The Contractor will not be relieved from performance of its obligations under this Master Agreement following the occurrence of a Force Majeure Event if such obligations could have been performed by invoking the Disaster Recovery Plan or disaster recovery procedures reasonably expected of a supplier of products and services similar to those provided by the Contractor.
- 27.5 If a delay or failure by the Contractor to perform the Contractor's obligations due to Force Majeure exceeds 30 days, CWW may immediately terminate this Master Agreement by Notice in writing to the Contractor.

## 28 CONFLICT OF INTEREST

- 28.1 The Contractor warrants that to the best of the Contractor's knowledge no conflict of interest exists or is likely to arise in the performance of the Contractor's obligations under this Master Agreement.

- 28.2 The Contractor must not, during the course of this Master Agreement, engage in any activity likely to compromise the Contractor's ability to perform the Contractor's obligations under this Master Agreement fairly and independently. The Contractor must immediately disclose to CWW any activity which constitutes or may constitute a conflict of interest.

## **PART 2: HARDWARE**

### **29 PURCHASE**

In return for payment of the relevant purchase price, the Contractor will sell the Hardware to CWW.

### **30 DELIVERY AND INSTALLATION OF HARDWARE**

30.1 The Contractor must deliver the Hardware and associated Documentation to the Sites in accordance with the Project Plan. Unless otherwise agreed, immediately after delivery, the Contractor must install and configure the Hardware in accordance with the Specifications.

30.2 Unless otherwise stipulated in a Statement of Work, Hardware must be shipped to CWW from the Contractor's premises. Transportation charges on Hardware must be prepaid by the Contractor. No charges for unauthorized transportation will be allowed.

30.3 Unless authorised by CWW in writing, the Contractor must not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet the delivery schedule for the Hardware set out in the Project Plan. It is the Contractor's responsibility to comply with the Project Plan but not to anticipate CWW's requirements. Hardware shipped to CWW in advance of the schedule set out in the Project Plan may be returned to the Contractor at the Contractor's expense.

### **31 RISK AND TITLE**

Risk in the Hardware will pass to CWW upon delivery to the Sites. Notwithstanding the passing of risk, title to the Hardware will pass to CWW when payment in full in respect of supply of that Hardware (other than payment for Services associated with the Hardware including implementation or maintenance services) has been made by CWW.

### **32 HARDWARE WARRANTIES**

32.1 During the applicable Warranty Period the Contractor will remedy Defects in the Hardware (or procure a Third Party to do so) at no cost to CWW. The Contractor's obligation to remedy Defects at no cost to CWW will not apply to any part of the Hardware that has been modified without the Contractor's consent, but will continue to apply to the extent that other parts of the Hardware have not been modified or have been modified with the Contractor's consent.

32.2 The Contractor will ensure that CWW receives the benefit of any warranties provided by the manufacturers of the Hardware, including after the termination or expiry of this Master Agreement.

### **33 TRADE IN**

Details of any trade-in of hardware or other equipment owned by CWW will be specified in a Statement of Work. If the Contractor purchases or acquires used hardware or other equipment from CWW, the Contractor acknowledge that CWW makes no representations or warranties with respect to the condition of the hardware or other equipment or its suitability for any general or particular purposes.

## **PART 3: SOFTWARE**

### **34 LICENCE**

- 34.1 The Contractor grants to CWW a non-exclusive, perpetual, irrevocable licence to use the Software (as modified in accordance with the Specifications) and the associated Documentation as is reasonably necessary to satisfy CWW's and its Affiliate's operating requirements. This licence is subject to the terms and conditions of this Master Agreement and any special licence conditions specified in a particular Statement of Work.
- 34.2 The Contractor grants CWW the licence to make a reasonable number of copies of the Software for back-up, disaster recovery and archival purposes and to make the number of copies of the Software and associated Documentation as specified in any relevant Statement of Work (or if the number of copies is not specified, a reasonable number).
- 34.3 Subject to **clause 34.2** and any rights CWW may have under **clauses 34.1, 36** or at Law, CWW must not reverse engineer or decompile the whole or any part of the Software, without the Contractor's prior written consent.
- 34.4 Notwithstanding any other provision of this Master Agreement, CWW will, after the termination or expiry of this Master Agreement be entitled to retain one (1) copy of the Software and all associated Documentation for archival purposes.

### **35 PROVISION OF SOFTWARE AND DEVELOPED SOFTWARE**

- 35.1 The Contractor must provide the Software or the Developed Software, as the case may be, and associated Documentation to the Sites in accordance with the Specifications and the Project Plan.
- 35.2 If requested by CWW and specified in a Statement of Work, the Contractor will install, or assist CWW in the installation of, the Software or the Developed Software, as the case may be, on the Hardware at each Site or at particular Sites as nominated by CWW. In installing the Software or the Developed Software, as the case may be, the Contractor will also install such data, files and other items as are required, and the Contractor will implement the Software or the Developed Software, such that the Software or the Developed Software can be used in a commercial environment by CWW.
- 35.3 The Software and the Developed Software must be free from any back door, time bomb, drop dead device or any other code designed to disable the Software or Developed Software (as applicable).
- 35.4 Unless otherwise specified in a Statement of Work, the Contractor must provide the Source Code for any Developed Software to CWW:
- (a) at the same time as it delivers the Developed Software to CWW;
  - (b) where the Contractor is under an obligation to update the relevant Developed Software pursuant to a Statement of Work, at the same time that the Developed Software is updated and delivered to CWW; and
  - (c) otherwise within five (5) Business Days of written request by CWW.

### **36 ESCROW OF SOURCE CODE**

- 36.1 If specified in a Statement of Work or if otherwise requested by CWW, the Contractor must arrange for itself, CWW and an escrow agent approved by CWW to enter into an escrow agreement in a form acceptable to CWW, for the purpose of enabling a copy of the then current Source Code of the Software licensed to CWW to be held in escrow with that escrow agent. The Contractor must update any Source Code that is held in escrow pursuant to this clause:
- (a) when the Software is materially updated; and
  - (b) otherwise within five (5) Business Days of written request by CWW.

- 36.2 If the Contractor is in breach of **clause 35.4 or 36.1**, then without limiting CWW's other rights and remedies, CWW's obligation to pay any amounts due under this Master Agreement to the Contractor may be suspended and payment may be withheld until such time as the Contractor complies with **clause 35.4 or 36.1** (as applicable).
- 36.3 Without limiting the terms of any escrow agreement, the Source Code of the Software will be released to CWW for use by or on behalf of CWW if the Contractor becomes subject to an Insolvency Event or if the Contractor is unable or unwilling to support or maintain the Software to the agreed level.
- 36.4 If the Source Code of the Software is released to CWW under this **clause 36**, the Contractor licences CWW (or its nominee) to use, reproduce, modify or adapt the source code of the Software for CWW's internal business purposes, and maintenance and support of the Software, as CWW may require.
- 36.5 The fees of the escrow agent for any Source Code held in escrow pursuant to this **clause 36** will be borne by CWW unless otherwise agreed in a Statement of Work.

### **37 SOFTWARE WARRANTY**

The Contractor will remedy Defects in the Software or the Developed Software, as the case may be, at no cost to CWW, during the applicable Warranty Period. The Contractor's obligation to remedy Defects at no cost to CWW will not apply to any part of the Software or the Developed Software, as the case may be, that has been modified without the Contractor's consent, but will continue to apply to the extent that other parts of the Software or the Developed Software, as the case may be, have not been modified or have been modified with the Contractor's consent.

### **38 UPDATES, RELEASES AND NEW VERSIONS**

Unless specified to the contrary in a Statement of Work:

- (a) updates and releases of the Software that are designed primarily to remedy Defects in the Software (whether or not they also extend the functionality of the Software) will be provided to CWW at no additional cost; and
- (b) new versions of the Software will be offered to CWW at a price that does not exceed the price payable in the ordinary commercial context.

CWW is not obliged to accept or implement any new version, update or release of the Software. If CWW does not implement an update or release intended to remedy particular Defects and provided that such update or release does not diminish the functionality of the Software, the Contractor is not required to separately remedy those particular Defects.

### **39 STANDARD SOFTWARE**

Unless otherwise specified in a Statement of Work, the Parties agree that **clauses 34 and 36** will not apply to Standard Software. Standard Software will be licensed to CWW, and CWW will use the Standard Software, on the terms and conditions set out or referred to in the applicable Statement of Work. To avoid doubt, the Contractor will remain responsible for its obligations in **clauses 35, 37 and 38** in relation to all Software, including the Standard Software.

**PART 4: ACCEPTANCE TESTING****40 PRODUCTS, SOFTWARE AND/OR SYSTEM**

- 40.1 Unless an alternative process has been specified in a particular Statement of work, the process in this **clause 40** applies.
- 40.2 Within a reasonable time after completion of the installation of the Products and/or the Software at a Site, the development of the Developed Software by the Contractor, or the implementation of the System at a Site (which completion will be as agreed by the Contractor and CWW), CWW may conduct Acceptance Testing of the Products, the Software, the Developed Software and/or the System (at CWW's option) at that Site (each, for the purposes of this **clause 40**, a "**Tested Item**"). If required by CWW, the Contractor will conduct or assist in the conduct of that Acceptance Testing as reasonably required by CWW without charge to CWW.
- 40.3 If CWW is satisfied that the Tested Item passes Acceptance Testing at a Site, CWW will issue an Acceptance Certificate in respect of the Tested Item for that Site. Issuing an Acceptance Certificate for:
- (a) one (1) Site does not of itself mean that CWW will issue Acceptance Certificates for other Sites;
  - (b) a part of the Tested Item does not imply acceptance by CWW of any other part of the Tested Item; or
  - (c) a Tested Item does not imply:
    - (i) acceptance by CWW of other Tested Items;
    - (ii) approval by CWW of the Contractor's performance of its obligations under any Statement of Work; or
    - (iii) admission or evidence that any Product or System complies with the Statement of Work.
- 40.4 If CWW is not satisfied that the Tested Item passes Acceptance Testing at a Site, CWW will advise the Contractor in writing, and the Contractor must immediately attempt to remedy the situation so that the Tested Item passes Acceptance Testing. CWW may then conduct further Acceptance Testing (or require the Contractor to conduct or assist in conducting Acceptance Testing, in which case, the Contractor must provide reasonable assistance without charge to CWW).
- 40.5 If, after such further Acceptance Testing as CWW may reasonably determine, the Tested Item still does not pass Acceptance Testing, CWW may by Notice to the Contractor:
- (a) reject the Tested Item at the relevant Site and request that the Contractor provide a replacement for the Tested Item as a matter of priority and at no additional cost to CWW (and the provision of such replacement for the Tested Item will be on the terms and conditions of this Master Agreement);
  - (b) accept the Tested Item, subject to a reduction in the amount payable by CWW in respect of that Tested Item as agreed between the Parties;
  - (c) reject the Tested Item and terminate the relevant Statement of Work; or
  - (d) reject the Tested Item and terminate both the applicable Statement of Work and this Master Agreement.
- 40.6 If CWW terminates a Statement of Work under **clause 40.5(c)** or this Master Agreement under **clause 40.5(d)** the Contractor must immediately refund to CWW any amount paid by CWW to the Contractor in respect of the rejected Tested Item and CWW will have no liability to pay any further amounts to the Contractor for that rejected Tested Item.
- 40.7 CWW will be deemed to have issued an Acceptance Certificate in respect of the Tested Item at a particular Site if CWW has:

- (a) used the Tested Item at that Site in a live commercial environment, other than for testing or training purposes, for a continuous period of 30 days; or
- (b) notified the Contractor in writing that it does not wish to conduct Acceptance Testing of the Tested Item at that Site.

#### **41 WARRANTY PERIOD**

- 41.1 Unless otherwise specified in a Statement of Work, the Warranty Period for each Product or System commences on the date of the final Acceptance Certificate for that Product or System.
- 41.2 The Contractor will remedy Defects in the Products or Systems, as applicable, at no cost to CWW, during the applicable Warranty Period. The Contractor's obligation to remedy Defects at no cost to CWW will not apply to any part of a System that has been modified without the Contractor's consent, but will continue to apply to the extent that other parts of the System have not been modified or have been modified with the Contractor's consent.
- 41.3 To the extent that Third Party manufacturers or suppliers provide the Contractor with warranty periods in respect of Products that exceed the applicable Warranty Period, CWW will be entitled to and the Contractor must pass through the benefit of those extended warranty periods.

## **PART 5: SUPPORT & MAINTENANCE SERVICES**

### **42 PROVISION**

- 42.1 If specified in a Statement of Work, the Contractor will as part of the Services provide CWW with support and maintenance in respect of the Products and/or System (as applicable) as specified in the applicable Statement of Work.
- 42.2 Without limiting **clause 42.1**, or the Specifications for the support and maintenance services component of the Services specified in a Statement of Work, the Contractor will provide such support and maintenance services as are required to ensure that the Products and/or System (as applicable) contain no Defects.
- 42.3 The Contractor must ensure that the support and maintenance services component of the Services are provided to a level that meets or exceeds any Service Levels specified in a Statement of Work.
- 42.4 Unless expressly stated to the contrary in a Statement of Work, the Contractor will provide the support and maintenance services component of the Services to CWW, at no cost to CWW, during the Warranty Period applicable to the Products and/or the Systems.
- 42.5 Unless otherwise specified in the pricing model set out in the Statement of Work, if the Contractor is required to visit a Site in order to attempt to address a Defect in a specific Product or System (as applicable) and it charges CWW for such visit in accordance with this Master Agreement but it is unable to rectify the Defect, the Contractor is not entitled to charge an additional fee for any subsequent visit to the Site that is required to rectify that same Defect.

### **43 REPLACEMENT PARTS**

If specified in a Statement of Work, the Contractor must keep adequate stocks of new replacement parts for the Hardware for the period specified in the Statement of Work. Title to replacement parts passes to CWW when the parts are fitted to the Hardware and title to the removed parts passes to the Contractor upon removal.

### **44 MINIMUM SUPPORT PERIOD**

- 44.1 Unless expressly stated to the contrary in a Statement of Work, the Contractor must provide the support and maintenance services component of the Services in respect of the Products and/or the Systems for the minimum period (if any), after the expiry of the applicable Warranty Period, specified in the applicable Statement of Work.
- 44.2 During the minimum support period specified in a Statement of Work (if any), CWW will not be obliged to implement any new versions of the Software or any subsequent models of the Hardware, and the Contractor will not be entitled to withdraw support and maintenance services on the basis that a Product or a System is considered by the Contractor (or any other person) to be obsolete. However, if a Product or System incorporates Third Party hardware or software that has been rendered obsolete and unsupported, the Contractor will be entitled to withdraw support and maintenance services for that obsolete component if, after reasonable Notice, CWW declines to implement an upgraded product to overcome the obsolescence.

### **45 SUPPORT WARRANTY**

The Contractor warrants to CWW that while the Contractor is providing Services to CWW under this **part 5** and a Statement of Work, the Products, Systems, Software and/or the Developed Software in respect of which those Services are provided will substantially comply with and perform in accordance with the relevant Specifications, provided that the Contractor will not be liable under this warranty if the failure to perform in accordance with the relevant Specifications is the result of improper use by CWW, the failure of equipment not supplied by the Contractor or, in the case of Software, a Virus not introduced by the Contractor or any of the Contractor's Personnel.



**46 TERMINATION OF SUPPORT SERVICES**

CWW's licence to use the Software and the associated Documentation will survive the expiry or termination of any Statement of Work for the provision of support and maintenance services in respect of the Software.

## **PART 6: CONSULTING AND OTHER SERVICES**

### **47 SCOPE**

The Contractor will provide CWW with software development services, design services, consulting services, installation and implementation services, project management services, facilities management services, network management services, training services and such other services as CWW may require, as specified in a Statement of Work, in accordance with the applicable Project Plan.

### **48 PROJECT DESIGN AND MANAGEMENT**

48.1 If specified in a Statement of Work, the Contractor will develop and supply to CWW:

- (a) a Project Plan;
- (b) Specifications;
- (c) sizing and scoping requirements in relation to:
  - (i) Hardware and/or Software; and
  - (ii) Third Party equipment and/or software (if any); and
- (d) such other project documentation as is specified by that Statement of Work, in relation to the performance of that Statement of Work.

48.2 Services under **clause 48.1** must meet the minimum requirements specified in the applicable Statement of Work and will be deemed complete when such Works are accepted in writing by CWW.

## **PART 7: MISCELLANEOUS**

### **49 REPORTING AND DOCUMENTATION**

- 49.1 The Contractor must submit regular reports of the Contractor's progress in providing the Services at the intervals and in the form described in the Statement of Work.
- 49.2 If requested by CWW, the Contractor must provide written reports to CWW relating to the Contractor's compliance with any applicable legal requirements or the terms of this Master Agreement, in a form satisfactory to CWW.
- 49.3 Any Documentation supplied by or on behalf of the Contractor must be sufficient to enable CWW to use the relevant Products and/or System and, where required by the Statement of Work, the Documentation must be kept current and up to date during the term of the Statement of Work.

### **50 CHANGE CONTROL**

Any variation (other than minor variations) to the Products, the Specifications or the Services to be provided by the Contractor under a Statement of Work must be made in accordance with the change control procedure specified in **schedule 3**.

### **51 BENCHMARKING**

- 51.1 If a Statement of Work specified that this **clause 51** applies to the Services or Products provided under that Statement of Work, CWW may, at any time during the term of that Statement of Work but no more than once in a 12 month period, benchmark the prices of all or any of the Services and Products under the relevant Statement of Work to provide assurance to CWW that the prices are Competitive.
- 51.2 When CWW wishes to initiate a benchmarking, it must give the Contractor at least five (5) Business Days' written Notice, specifying the Services, Products, or part thereof, which are to be subject to the benchmarking ("**Benchmarked Services and Products**").
- 51.3 CWW may appoint a benchmarking advisor. The benchmarking advisor must be independent and impartial and must not be a competitor of the Contractor.
- 51.4 Each Party is to bear its own participation costs in relation to the benchmarking. CWW will bear the costs of the benchmarking advisor. The benchmarking advisor will not be compensated on a contingency fee or incentive basis.
- 51.5 The Parties agree that the benchmarking will be conducted in accordance with the following provisions:
- (a) the benchmarking advisor must enter into a confidentiality agreement with the Parties that is reasonably acceptable to both Parties and that includes confidentiality obligations that are no less onerous than those that apply to the Parties under this Master Agreement;
  - (b) the benchmarking advisor will not be permitted to use the information provided by the Parties for any purpose other than the benchmarking;
  - (c) in performing the benchmarking, the benchmarking advisor must carry out a normalisation process to establish what fair market price for the Benchmarked Services and Products would be by considering the fees for Equivalent Services or Products;
  - (d) in carrying out the normalisation process, the benchmarking advisor must consider the following factors:
    - (i) the scope and nature of the Benchmarked Services and Products;
    - (ii) CWW's technology, including complexity and degree of standardisation; and
    - (iii) the Service Levels applicable to the Benchmarked Services and Products; and

- (e) the Parties will cooperate in good faith with the benchmarking advisor. Subject to any confidentiality obligations owed to a Third Party, each Party must provide the benchmarking advisor with such reasonable assistance and supporting information (including assistance and information regarding possible Equivalent Services or Products supplied by Third Parties), as the benchmarking advisory may reasonably request in the discharge of its functions.

51.6 The benchmarking advisor will present its findings by means of a written report ("**Benchmarking Report**") to both Parties simultaneously, as soon as practicable, but in any event no later than 10 weeks after the date on which the confidentiality agreement required under **clause 51.5(a)** has been signed by all the parties.

51.7 If the Benchmarking Report concludes that the prices for the Benchmarked Services and Products are not Competitive, the Contractor must, at CWW's written request, reduce the prices payable by CWW under the relevant Statement of Work so that they are Competitive.

51.8 A failure of the Contractor to comply with its obligations in **clause 51.7** will be considered to be a material breach of this Master Agreement and CWW may terminate the relevant Statement of Work or this Master Agreement for cause, in whole or in part, upon 30 days' Notice to the Contractor.

51.9 The Parties agree that there will be no upward adjustment of any prices as a result of the benchmarking or the findings or recommendations of a benchmarking advisor.

## 52 GENERAL

52.1 Any failure or delay by CWW in exercising any rights under this Master Agreement will not act as a waiver by CWW.

52.2 Every provision of this Master Agreement is severable from the others and the severance of any provision will not affect any other provision.

52.3 The remedies set forth in this Master Agreement will be cumulative and in addition to any other remedies available at Law.

52.4 Any variation of any term of this Master Agreement will only be effective when made in writing signed by CWW and by the Contractor.

52.5 The Contractor must, and must procure that its Affiliates, sub-contractors and any of their Personnel, do everything reasonably requested by CWW (including executing such further documents) to give effect to this Master Agreement and the transactions contemplated by it.

52.6 Each Party agrees that it will not solicit or engage the other Party's Personnel who are engaged in the delivery or receipt of the Services under a particular Statement of Work for a period of 12 months after completion of the relevant Services under the Statement of Work. This clause does not apply to restrict a Party from employing or engaging any person (including any Personnel of the other Party) that responds to a bona fide and publicly advertised position that is available at the Party.

## 53 SURVIVAL

Any obligations in this Master Agreement which, by their nature, are continuing, including, but not limited, to **clauses 16.3, 16.6, 16.8, 18, 20, 21, 22, 23, 25, 26, 32.2, 34, 36.4, 40.6, 41.3, 46, 52.5, 53, 55.1, 56, 60 and 61** will survive the termination or expiration of this Master Agreement and any Statement of Work.

## 54 NOTICES

Any Notice to be given by CWW or by the Contractor under this Master Agreement may be given by delivering it, posting it by prepaid post, by facsimile transmission or by any other means agreed between the Parties from time to time or permitted by Law, to the address specified, and marked to the attention of the person named, in **schedule 1**. Changes to addresses or contact persons must be notified to the other Party in writing and once so notified will be deemed to amend **schedule 1**.

## 55 ASSIGNMENT/SUB-CONTRACTING

- 55.1 The Contractor must not assign, novate or sub-contract this Master Agreement in whole or part or any other right or obligation under it to any other person without CWW's prior written consent, such consent not to be unreasonably withheld. CWW must not assign or novate this Master Agreement to any other person without the Contractor's prior written consent, such consent not to be unreasonably withheld.
- 55.2 The Contractor must not sub-contract the performance of all or any part of the Services or any other obligations under this Master Agreement without CWW's prior written consent. CWW may require and impose such conditions as it sees fit before giving such consent.
- 55.3 The Contractor must ensure that its own contracts with current and future sub-contractors performing any of the Contractor's obligations under this Master Agreement are consistent with this Master Agreement and that they contain:
- (a) appropriate obligations on the sub-contractor with regards to confidentiality, privacy, security and ownership of Intellectual Property Rights;
  - (b) the insurance it is required to obtain pursuant to **clause 23**; and
  - (c) a right of termination to take account of CWW's right to terminate for convenience under **clauses 25.1 and 25.2**.
- 55.4 The Contractor acknowledges that it will be liable to CWW for all acts and omissions of any sub-contractor, and any Personnel of any sub-contractor, as fully as if they were the acts or omissions of the Contractor. Without limiting the foregoing, the Contractor remains:
- (a) fully responsible as the "prime contractor" for the performance of all work provided under this Master Agreement and all costs incurred with respect to the Contractor's sub-contractors (including expenses such sub-contractors incur in providing work under a Statement of Work); and
  - (b) the single point of contact for CWW, unless otherwise agreed by CWW.

## 56 DISPUTES

Disputes arising under or in connection with this Master Agreement will be resolved using the procedures set out in **schedule 5**.

## 57 GOVERNING LAW

This Master Agreement will be governed by the laws of the State of Victoria, Australia and both Parties will conduct any litigation or other proceedings in the Courts or tribunals in that State.

## 58 ENTIRE AGREEMENT

This Master Agreement and any Statements of Work constitute the entire agreement between the Parties relating to the provision of the Products and/or the Services by the Contractor. Additions and alterations may be made to this document or any Statements of Work but only in writing signed by a duly authorised officer of each Party.

## 59 SPECIAL CONDITIONS AND PRIORITY OF DOCUMENTS

- 59.1 The Parties may agree to Special Conditions which override or amend the general terms and conditions in this document, and such Special Conditions are deemed to form part of this Master Agreement.
- 59.2 The documents comprising this Master Agreement will be read in the following order of precedence:
- (a) the Special Conditions;
  - (b) the general terms and conditions contained in **clauses 1 to 61** of this document;
  - (c) the schedules to this document;
  - (d) the Statements of Work; and

- (e) any documents attached to or incorporated by reference in to any of the documents referred to in sub-clauses (a) to (d) above.

Where any conflict occurs between the provisions contained in two (2) or more of the documents comprising this Master Agreement, the document lower in order of precedence will, where possible, be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions will be severed from the document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

- 59.3 Terms and conditions proposed or provided by the Contractor, including any contained on delivery dockets or invoices, will not form part of this Master Agreement nor be contractually binding on CWW.

## 60 AUDIT

- 60.1 The Contractor must keep accurate and complete accounting and technical records in connection with the Contractor's obligations under a Statement of Work for a period of at least six (6) years following the termination or expiry date of the Statement of Work (or such longer period as may be required by law).
- 60.2 The Contractor must permit CWW's authorised representative to have access to such records, and to inspect them and make copies of them, on CWW's request, provided that CWW is entitled to exercise its rights under this **clause 60.2** once only in any 12 month period. If such audit conducted by CWW reveals a discrepancy between any amount actually paid to the Contractor and the amount which should have been paid to the Contractor in accordance with this Master Agreement, then:
  - (a) if the discrepancy is an over-payment to the Contractor, the Contractor must promptly repay the over-paid amount to CWW and, if (in any 12 month period) the discrepancy exceeds 10% of the amount the Contractor should have been paid by CWW, reimburse CWW its actual and reasonable costs and expenses incurred in the conduct of the audit; or
  - (b) if the discrepancy is an under-payment to the Contractor, CWW will promptly pay to the Contractor the amount of the under-payment.
- 60.3 Unless **clause 60.2(a)** applies, CWW will reimburse the Contractor's actual and reasonable expenses incurred in connection with the audit conducted by CWW. CWW will, promptly after the completion of an audit, either return or destroy (as directed by the Contractor) all copies of the Contractor's records made by CWW.
- 60.4 Any third party representatives performing an audit for CWW pursuant to this **clause 60** must, if requested by the Contractor, execute a confidentiality agreement on terms reasonably consistent with **clause 21**.

## 61 PUBLICITY

- 61.1 The Contractor must not use CWW's name, logo, trade marks, photographs or other identifying characteristics without CWW's prior written approval.
- 61.2 The Contractor agrees that no acknowledgment or other information concerning the Services provided under the Master Agreement will be made public by the Contractor without CWW's prior written agreement.

Executed by **City West Water Corporation** )  
**ABN 70 066 902 467** by its Attorney under )  
Power of Attorney dated 27 June 2012 in the )  
presence of: )

.....  
Witness (Signature)

.....  
Attorney (Signature)

.....  
Witness (Printed Name)

.....  
Attorney (Printed Name)

Date signed:        /        /

Executed by **[Contractor]** ACN **[insert]** in )  
accordance with section 127 of the )  
*Corporations Act 2001* (Cth): )

.....  
Company Secretary / Director (Signature)

.....  
Director (Signature)

.....  
Company Secretary / Director (Printed Name)

.....  
Director (Printed Name)

Date signed:        /        /

{ TC "SCHEDULE 1 - Contract Details" \ 2 \ \* MERGEFORMAT } SCHEDULE 1

### CONTRACT DETAILS

Contractor	CWW
Name: [Insert]	
ABN: [Insert]	
ACN (if company): [Insert]	
Address: [Insert]	
Contract Manager: [Insert]	CWW Representative: [Insert]
Facsimile No.: [Insert]	Facsimile No.: [Insert]
Email Address: [Insert]	Email Address: [Insert]

**Commencement Date:**

The date the last party signs this Master Agreement.

**Completion Date:**

[insert completion date]

**Initial Term:**

Three (3) years.

**Subsequent Term:**

Twelve (12) months from the day following expiry of the Initial Term or the then current Subsequent Term, as the case may be.



{ TC "SCHEDULE 2 - Insurance" \ 2 \\* MERGEFORMAT }**SCHEDULE 2****INSURANCE****Public Liability**

The Contractor must be insured for a sum of \$20 million or more for any one (1) event and \$20 million or more in the aggregate in a year under a "Public Liability" policy.

**Professional Indemnity**

The Contractor must be insured for a sum of \$20 million or more for any one (1) event under a "Professional Indemnity" policy.

**WorkCover**

If required by law, the Contractor must be insured under a general cover policy for the Contractor's personnel. The Contractor must ensure that each sub-contractor retained in undertaking the Contractor's obligations under this Master Agreement is insured under a general cover policy for its personnel for the duration of its retainer.

**Property Damage**

The Contractor must be insured against loss of or damage to each of the CWW Supplied Items, and third party property to a level of cover acceptable to CWW.

**Product Liability**

The Contractor must be insured for a sum of \$10 million or more for any one (1) event under a "Product Liability" policy covering all Products supplied to CWW under this Master Agreement.

{ TC "SCHEDULE 3 - Change Control Procedure" \ 2 \ \* MERGEFORMAT } **SCHEDULE 3**

### **CHANGE CONTROL PROCEDURE**

CWW's change control procedure is as follows. It may be amended by CWW from time to time (as notified to the Contractor in writing).

#### **1 CHANGE CONTROL PROCEDURE**

##### **1.1 Scope**

Variations are to be documented and negotiated as defined within this **schedule**. Variations may be a result of, but not limited to, changes to:

- (a) the Products to be provided
- (b) the Services to be provided (including changes to the Service Levels)
- (c) the Specifications
- (d) Law which materially affect the cost of providing the Services

##### **1.2 Definitions**

**"Accepted Variation Quote"** means a Variation Quote which has been accepted by CWW under **item 1.5** of this **schedule**.

**"Variation Quote"** means a quote provided by the Contractor under **item 1.4** which must be in the form set out in **item 3** of this **schedule**.

**"Variation Request"** means a request for a variation to a Statement of Work made under **item 1.3** which must be in the form set out in **item 2** of this **schedule**.

##### **1.3 Variation Request**

Either Party may suggest to the other Party at any time a variation to a Statement of Work by providing to the other Party a Variation Request.

##### **1.4 Variation Quote**

- (a) The Contractor must prepare and submit to the relevant CWW Representative a Variation Quote within five (5) Business Days of:
  - (i) receiving a Variation Request from CWW; or
  - (ii) providing a Variation Request to CWW.
- (b) A Variation Quote may:
  - (i) only include an increase to the Fixed Fee, the Time and Materials Rates, the Capped Price or the Recurring Fee, as the case may be, which is based solely on the applicable rates set out in the relevant Statement of Work and any bona fide extra effort required to carry out the relevant variation that is the subject of the Variation Request;
  - (ii) include a decrease to the Fixed Fee, the Time and Materials Rates, the Capped Price or the Recurring Fee, as the case may be, based on the applicable rates set out in the relevant Statement of Work and any reduction in costs for reducing the scope of the Services as the case may be; and
  - (iii) only extend existing deadlines and set any new deadlines, based solely on any bona fide extra effort required to carry out the relevant variation that is the subject of the Variation Request.

##### **1.5 Acceptance of Variation Quotes**

The relevant CWW Representative will have five (5) Business Days from the date it receives a Variation Quote to either:

- (a) accept the Variation Quote, which it may do so in writing signed by the CWW Representative (or their authorised delegate); or

- (b) withdraw, refuse, defer or abandon the Variation Quote, in which case the relevant Statement of Work will continue in force unchanged.

### **1.6 Variation of agreement**

If CWW accepts the Variation Quote, the relevant Statement of Work will be deemed to be amended to the extent necessary to incorporate the terms, specifications and timing set out in the Accepted Variation Quote.

## **2 FORM OF VARIATION REQUEST**

The Variation Request must state at a minimum:

1. The business requirement/problem
2. The suggested form of the enhancement
3. The priority/importance of the request
4. Any timing constraints
5. Any specific requirements to integrate with any other modules
6. Any specific acceptance criteria

## **3 FORM OF VARIATION QUOTE**

The Variation Quote must state at a minimum:

1. Cost
2. Expected time of delivery
3. Any potential 'downsides' to the change for CWW (i.e. 'knock-on' effects of the change)
4. Any requirements on CWW to change existing data to accommodate the variation
5. Any expected changes in other parts of CWW's IT environment

{ TC "SCHEDULE 4 - Form of Statement of Work" \ 2 \ \* MERGEFORMAT } **SCHEDULE 4**  
**FORM OF STATEMENT OF WORK**

**STATEMENT OF WORK**  
**SAMPLE STRUCTURE OF A**  
**STATEMENT OF WORK FOR SERVICES AND/OR PRODUCTS**

**Statement of Work number [\*\*insert\*\*] between:**

City West Water Corporation (“CWW”)

- and-

[\*\*insert name\*\*] (“The Contractor”)

**Dated:**

[\*\*insert date\*\*]

**CWW Representative:**

[\*\*insert name\*\*]

This Statement of Work sets out the details of the services and/or products to be provided by the Contractor to CWW. The terms of the Master Agreement **CWC[\*\*insert contract number\*\*]** dated [\*\*insert\*\*] between the Contractor and CWW apply to the provision of the services and/or products set out in this Statement of Work.

**1 TERM OF STATEMENT OF WORK (refer to clause 8.6 of Master Agreement)**

**2 SERVICES TO BE PROVIDED**

**3 TRANSITION IN (refer to clause 5 of Master Agreement)**

**4 PRODUCTS TO BE PROVIDED**

**Hardware:**

**Software:**

**Standard Software:**

**Developed Software:**

**Documentation:**

**5 OWNERSHIP OF WORKS**

**6 SPECIFICATIONS OF PRODUCTS, SYSTEM OR SERVICES (or particular requirements in relation to Services)**

**7 ACCEPTANCE TESTS (refer to Part 4 of Master Agreement)**

**8 SERVICE LEVELS (refer to Part 5 and clause 25.3(i) of Master Agreement)**

**9 INCENTIVES (refer to clause 13.3 of Master Agreement)**

**10 PROJECT PLAN (refer to clauses 9.1, 25.3(J), 30.1, 35.1, 47)**

**11 PRICE OF PRODUCTS AND/OR SERVICES – inclusive of any GST payable (refer to clause 13 of Master Agreement)**

	Fixed Price for Services:	\$
	Fixed Price for Products:	\$
	Time and Materials Rates:	\$
	Capped Price for Time and Materials Rates:	\$
	Recurring Fees (eg. licence fees, maintenance and support fees):	\$
12	<b>PAYMENT PROCEDURE</b> (refer to clause 14 of Master Agreement)	
13	<b>SITE(S) WHERE SERVICES WILL BE PERFORMED OR PRODUCTS DELIVERED AND INSTALLED</b> (refer to clause 24 of Master Agreement)	
14	<b>CWW SUPPLIED ITEMS</b> (refer to clause 7 of Master Agreement)	
15	<b>WARRANTY PERIOD FOR EACH PRODUCT AND/OR SYSTEM</b> (refer to clause 41)	
16	<b>MINIMUM SUPPORT AND MAINTENANCE SERVICES PERIOD</b> (refer to clause 44 of Master Agreement.)	
17	<b>CONFIDENTIAL INFORMATION</b> (refer to clause 21 of Master Agreement)	
18	<b>REPORTING</b> (refer clause 49 of Master Agreement)	
19	<b>KEY PERSONNEL</b> (refer to clause 10.3 of Master Agreement)	
20	<b>BANK GUARANTEE</b> (refer to clause 6.1 of Master Agreement)	
	<b>Value –</b>	
	<b>Period Bank Guarantee is required –</b>	
	<b>Date Bank Guarantee must be provided –</b>	
21	<b>DISASTER RECOVERY</b> (refer to clause 19 of the Master Agreement)	
22	<b>INSURANCES</b> (refer to clause 23 of the Master Agreement)	
23	<b>TRANSITION OUT</b> (refer to clause 26.2 of the Master Agreement)	
24	<b>DELAY COMPENSATION</b>	
25	<b>POLICIES OF CWW</b>	
26	<b>PROCEDURES</b>	
27	<b>LIABILITY CAP FOR STATEMENT OF WORK</b>	
28	<b>TAXES</b>	
29	<b>SHARED SERVICES</b>	
30	<b>COOPERATE WITH THIRD PARTIES</b>	
31	<b>ASSUMPTIONS</b> (clause 15.3)	

**Execution of Statement of Work**

Pursuant to clause 8.3 of the Master Agreement, this Statement of Work is only binding on the Parties once it has been signed by the Contract Manager and the CWW Representative:

Executed by **City West Water Corporation** )  
**ABN 70 066 902 467** by its Attorney under )  
Power of Attorney dated 27 June 2012 in the )  
presence of: )

.....  
Witness (Signature)

.....  
Attorney (Signature)

.....  
Witness (Printed Name)

.....  
Attorney (Printed Name)

**Signed by Contract Manager**

**on behalf of the Contractor:** .....  
Signature

.....  
Printed Name

.....  
Date

{ TC "SCHEDULE 5 - Dispute Resolution Procedure" \ 2 \ \* MERGEFORMAT } **SCHEDULE 5**

**DISPUTE RESOLUTION PROCEDURE**

1. Before resorting to external dispute resolution mechanisms the Parties will use their best endeavours to resolve any dispute, arising under or in connection with this Master Agreement, between themselves (including by referring the matter to any person who may have authority to intervene and direct some form of resolution).
2. If a dispute has not been resolved by the Parties within five (5) Business Days of the dispute arising, a Party may give written Notice to the other Party that they are in dispute. At the expiration of five (5) Business Days from the date of service of the Notice, unless the dispute has otherwise settled, the dispute must be submitted to the dispute resolution process described below in **clause 3** of this Schedule.
3. Any dispute submitted to the dispute resolution process will be dealt with in the following manner:
  - the dispute will be referred initially to the Parties' respective representatives who are responsible for the management of this Master Agreement. These representatives will attempt to settle the dispute within five (5) Business Days of the referral;
  - if the Parties' representatives are unable to resolve the dispute within those five (5) Business Days, or other such period as is agreed, the dispute will be referred to the Parties' respective senior management; and
  - if the dispute remains unresolved after a further five (5) Business Days, or other such period as is agreed, the dispute will be referred to arbitration in accordance with the procedure described below in **clause 4** of this Schedule.
4. Any dispute which cannot be settled by negotiation between the Parties or their representatives within the time period specified (or other period as agreed) will be submitted to final and binding arbitration in Melbourne, Victoria to be administered by the Australian Commercial Disputes Centre ("**ACDC**"). The arbitration will be conducted in accordance with the ACDC Rules for Arbitration which are operating at the time the dispute is referred to ACDC and which terms are hereby deemed incorporated into this Master Agreement.
5. Nothing in this schedule will preclude a Party from taking immediate steps to seek injunctive relief, specific performance and/or declaratory relief before the appropriate court within the State of Victoria.
6. Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under this Master Agreement (except where the dispute relates to payment of an invoice in which case CWW will be entitled to withhold payment of the disputed component of that invoice until after such time as the dispute has been resolved).
7. The Parties will hold confidential, unless otherwise required by Law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute as disclosed during or for the purposes of dispute resolution. All information disclosed during or for the purposes of the dispute resolution process is provided on a "without prejudice" basis unless the Parties otherwise agree.

{ TC "SCHEDULE 6 - DEED OF CONFIDENTIALITY" \ 2 \\* MERGEFORMAT }**SCHEDULE 6**  
**DEED OF CONFIDENTIALITY**



## Confidentiality Deed Poll

**DATE:**

**BY**

\_\_\_\_\_ (name) of \_\_\_\_\_ (address)  
 (“Recipient”)

IN FAVOUR OF

City West Water Corporation, ABN 70 066 902 467 of 1 McNab Avenue, Footscray, Victoria, 3011, Australia (“CWW”)

### RECITALS:

- A. In the course of the Recipient performing certain products and/or services to CWW (whether directly or indirectly), the Recipient may become aware of information belonging to or in the possession of CWW that is confidential.
- B. Improper use or disclosure of that information may severely damage CWW's ability to perform its functions.
- C. CWW requires, and the Recipient agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that CWW's Confidential Information is kept confidential and that the Recipient performs those services faithfully and without any conflicting interest.
- D. CWW further requires, and the Recipient agrees, that all Intellectual Property Rights in materials created by the Recipient in the course of performing the services which are not otherwise assigned or licensed to CWW under a separate agreement are to be licensed to CWW under this Deed.

### AGREED COVENANTS:

#### 1. RECITALS

The Recipient acknowledges the truth and accuracy of the Recitals in every particular.

#### 2. INTERPRETATION

##### 2.1 Definitions

In this Deed:

“**Confidential Information**” means information in any form which is disclosed by or on behalf of CWW that:

- (a) is by its nature confidential;
- (b) is designated by CWW as confidential; or
- (c) the Recipient knows or ought to know is confidential;

and includes:

- (d) information comprised in or relating to any Intellectual Property Rights of CWW;
- (e) information relating to CWW's finances, business, computing environment, network, systems, assets, properties, personnel, operations or customers; and
- (f) any data in whatever form such information may exist, which is owned by or in the possession of CWW including data and information which is, or is intended to be, stored in, processed by and retrievable from the computer systems operated by, or on behalf of, CWW and includes any results of the use or manipulation of any such data and information,

but does not include information that is:

- (g) already known to the Recipient (without any obligation of confidentiality);

- (h) independently developed by the Recipient; or
- (i) in the public domain (other than through a breach of an obligation of confidentiality).

**“Intellectual Property Rights”** means all rights generally falling within the scope of this term including copyright (including future copyright), trade mark, design, patent, and circuit layout rights, rights in respect of trade secrets and other confidential information, all rights in any applications for or registrations of the foregoing, whether registered or unregistered (and whether registrable or not) and existing in Australia or elsewhere in the world.

## 2.2 General

Unless the contrary intention appears:

- (a) monetary references are references to Australian currency;
- (b) the clause and subclause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its subclauses;
- (d) words in the singular number include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) a reference to a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
- (g) a reference to a clause or subclause is a reference to a clause or subclause of this Deed; and
- (h) 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.

## 3. NON DISCLOSURE

- 3.1 The Recipient must not disclose the Confidential Information to any person without the prior written consent of CWW.
- 3.2 CWW may grant or withhold its consent in its absolute and unfettered discretion.
- 3.3 If CWW grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, CWW may require that the Recipient procure the execution of a Deed in these terms by the person to whom the Recipient proposes to disclose the Confidential Information.
- 3.4 If CWW grants consent subject to conditions, the Recipient must comply with those conditions. Unless otherwise specified in the conditions of the specific consent, where the Recipient is a corporation and CWW consents to the Recipient disclosing the Confidential Information to its directors, employees and agents (the **“personnel”**), the Recipient:
  - (a) must ensure that the personnel agree to keep the Confidential Information confidential on terms equivalent to those in this Deed; and
  - (b) will remain responsible to CWW for any use or misuse of any Confidential Information by the personnel.
- 3.5 The obligations of the Recipient under this Deed will not be taken to have been breached where the Confidential Information is required to be disclosed by law, by a court, Government Authority or the rules of any applicable stock exchange, provided that the Recipient must:
  - (a) promptly notify CWW in writing and provide CWW with all reasonable assistance to intervene in any process by which disclosure may be compelled;
  - (b) disclose no more Confidential Information than is strictly required; and

- (c) take any steps reasonably available to the Recipient to ensure that the disclosed Confidential Information is treated confidentially.

#### **4. RESTRICTION ON USE**

Subject to the terms of this Deed, CWW consents to the Recipient using the Confidential Information only for the purpose of providing services to CWW.

#### **5. SURVIVAL**

This Deed will survive the termination or expiry of the contract providing for the performance of services by the Recipient (whether directly or indirectly).

#### **6. POWERS OF CWW**

##### **Production of Documents**

- 6.1 The Recipient must on the request of CWW immediately deliver to CWW or, if requested by CWW, destroy and certify the destruction of, all documents in the possession or control of the Recipient containing any Confidential Information.
- 6.2 If CWW makes a demand under this clause 6, and the Recipient is aware that documents containing the Confidential Information are not in their possession or control, then the Recipient must provide full particulars of the whereabouts of the documents containing the Confidential Information including the identity of the person who has custody or control of the documents.
- 6.3 In this clause 6, "documents" includes any form of storage of information including those in electronic form.

##### **Legal Proceedings**

- 6.5 The Recipient acknowledges that unauthorised disclosure or use of the Confidential Information may cause irreparable harm for which damages would not be an adequate remedy and CWW may take legal proceedings against the Recipient to restrain any breach, or threatened breach of this Deed, including by obtaining an injunction to restrain such breach.

#### **7. CONFLICT OF INTEREST**

- 7.1 The Recipient warrants that before entering into this Deed it has disclosed to CWW all the past, current and anticipated interests of the Recipient which may conflict with or restrict the Recipient in performing services to CWW fairly and independently.
- 7.2 The Recipient must not during the course of this Deed engage in any activity or obtain any interest likely to conflict with or restrict the Recipient in providing services to CWW fairly and independently and must immediately disclose to CWW such activity or interest.

#### **8. NO EXCLUSION OF LAW OR EQUITY**

This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

#### **9. WAIVER**

- 9.1 A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right. CWW is not liable for any loss, cost or expense caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- 9.2 A right relating to this document may only be waived in writing signed by the party or parties waiving the right.

#### **10. REMEDIES CUMULATIVE**

##### **Cumulative**

- 10.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

### **Other Instruments**

10.2 Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.

### **11. VARIATIONS AND AMENDMENTS**

No term or provision of this Deed may be amended or varied unless such amendment or variation is reduced to writing and signed by CWW and the Recipient.

### **12. APPLICABLE LAW**

12.1 This document is governed by and is to be construed in accordance with the laws applicable in Victoria.

12.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### **13. NOTICES**

Any Notice to be given by CWW or by the Recipient under this Deed may be given to the other party by delivering it by hand, posting it by prepaid post or sending it by facsimile or email to the current contact details for that party specified on the front of this Deed (as may be updated by CWW or the Recipient from time to time by Notice in writing to the other party).

### **14. LICENCE OF MATERIALS**

To the extent that the Recipient creates any materials in the course of performing (directly or indirectly) services for CWW ("**Works**") and those Works are not assigned or otherwise licensed to CWW under a separate agreement, the Recipient hereby grants to CWW a perpetual, worldwide, non-exclusive, irrevocable, royalty free and fully paid up licence to use, copy, reproduce, modify, adapt, publish and communicate to the public any Works (and may sub-licence third parties to do those things), without further reference to the Recipient.

### **15. MORAL RIGHTS**

In relation to "moral rights" (as defined in the *Copyright Act 1968* (Cth)) in any materials created by the Recipient in the course of performing (directly or indirectly) services for CWW, the Recipient hereby consents to CWW, its licensees, assignees and successors in title to use any such materials created by the Recipient for the purposes for which those materials were created and in the ordinary course of CWW's or its licensees', assignees' or successors' business even if such use may, but for this clause, infringe the Recipient's moral rights.

**Executed as a Deed**

*[Use the following where Recipient is an individual]*

**Signed sealed and delivered by** )  
)  
)

.....  
Recipient (Printed Name)

.....  
Recipient (Signature)

in the presence of:

.....  
Witness (Signature)

.....  
Witness (Printed Name)

*[Use the following where Recipient is a corporation]*

**Executed by** )  
)  
)

.....  
Recipient (Corporation) (Printed Name)

.....  
Company Secretary/Director (Signature)

.....  
Director (Signature)

.....  
Company Secretary/Director (Printed Name)

.....  
Director (Printed Name)

{ TC "SCHEDULE 7 – TRANSITION IN" \ 2 \ \* MERGEFORMAT } **SCHEDULE 7**

**TRANSITION IN PLAN**

A Transition In Plan under **clause 5.1** of the Master Agreement must comply with the following requirements as a minimum:

**1 Timeline**

The Transition In Plan must specify:

- a roadmap setting out the timeframes for the transition of the Services to the Contractor; and
- the dates by which each Service must be successfully transitioned to the Contractor.

**2 Acceptance Criteria and Testing**

The Transition In Plan must specify:

- what criteria will be used to assess whether a Service has been successfully transitioned to the Contractor;
- what Acceptance Tests will be conducted to confirm that these criteria have been satisfied (and who will be responsible for conducting the Acceptance Tests); and
- the consequences if a Service fails to pass the relevant Acceptance Tests by the dates specified in the timeline.

**3 CWW Responsibilities**

The Transition In Plan must specify any CWW Supplied Items, CWW Personnel and handover activities that the Contractor requires CWW to provide in order for the Contractor to assume responsibility for the Services.

**4 Optional Provisions**

The Transition In Plan may include any other provisions as agreed by the Parties, including in relation to:

- governance arrangements for transition;
- security arrangements;
- treatment of Third Party contracts; and
- risks and mitigation strategies.

{ TC "SCHEDULE 8 – TRANSITION OUT" \ 2 \ \* MERGEFORMAT } **SCHEDULE 8**

**TRANSITION OUT**

The Transition Out Services that the Contractor may be required to provide under **clause 26** of the Master Agreement include:

- (a) such assistance reasonably requested by CWW to disengage the Services and, if requested by CWW, transfer the Services (or any part of them) to CWW or any Third Party nominated by CWW;
- (b) transferring or novating any relevant Third Party contracts to CWW (if requested by CWW);
- (c) assisting CWW with the transfer of any employees of the Contractor that accept employment with CWW;
- (d) providing to CWW any partially completed Products and any relevant documentation;
- (e) where the Contractor was required to maintain and update particular Documentation, provide copies of the updated Documentation in such form and manner as reasonably required by CWW;
- (f) assisting with knowledge transfer including by:
  - (i) providing to CWW any licences, materials or any information or instruction which it requires in order to continue to obtain the benefit of the supplied Services and Products;
  - (ii) providing briefings (in a form including but not limited to presentations, question and answer sessions, interviews) to CWW Personnel and/or any Third Party nominated by CWW that cover at least the following:
    - (A) a description of the different needs of CWW's business units and operations and any changes in those needs observed during the term of this Master Agreement; and
    - (B) a summary of any peculiarities of service delivery to CWW, including but not limited to, the peculiarities of CWW's IT environment and business operations;
  - (iii) conveying any lessons learned as a result of providing the Services, including but not limited to, any difficulties in satisfying CWW's Service Level and performance standard requirements; and
  - (iv) as reasonably required by CWW, making Contractor Personnel available during the transition out period for any *ad hoc* discussions with CWW Personnel and/or of any Third Parties CWW may nominate.

**SCHEDULE 9  
POLICIES AND PROCEDURES**

**[Drafting Note: Applicable policies and procedures to be deleted or retained as appropriate – note that VIPP applies where the project value over the term is \$3 million or more]**

**1 Victorian Industry Participation Policy (VIPP)**

**1.1 VIPP Plan**

- (a) The Contractor must, in performing its obligations under the *Contract*, comply with the VIPP Plan.
- (b) The Contractor acknowledges and agrees that its obligations as set out in the VIPP Plan apply during the Term, any extensions to the Term and until all of its Reporting obligations as set out in clause 1.3 are fulfilled.

**1.2 Revised VIPP Plan**

- (a) If at any time a variation to this Agreement is proposed which involves or effects a change in the nature of any Contestable Items, the Contractor must prepare a revised VIPP Plan which must be certified by ICN (“**Revised VIPP Plan**”).
- (b) When requested by the CWW Representative, the Contractor must provide the Revised VIPP Plan within the time stated in the CWW Representative’s request.
- (c) The Revised VIPP Plan must be agreed by the parties before any variation to the Agreement can take effect unless the parties agree that a Revised VIPP Plan is unnecessary.
- (d) Once the Revised VIPP Plan is agreed by the parties, the Revised VIPP Plan replaces the VIPP Plan in Schedule **[insert schedule number]** and forms part of this Agreement.

**1.3 Reporting**

- (a) The Contractor must prepare and maintain records in the form of the VIPP Monitoring Table demonstrating its compliance with the VIPP Plan.
- (b) The Contractor must provide an annual report demonstrating its progress towards implementing the VIPP Plan. The Contractor may comply with its annual reporting obligation by submitting a report in the form of the VIPP Monitoring Table.
- (c) Upon Practical Completion or within one (1) month of the Completion Date (whichever occurs first), the Contractor must provide to the CWW Representative:
  - (i) the VIPP Monitoring Table detailing the Contractor’s aggregate compliance with the VIPP Plan. The VIPP Monitoring Table must identify and explain any departures from the VIPP Plan and the aggregated outcomes as reported in the VIPP Monitoring Table; and
  - (ii) a statutory declaration in the form set out in Schedule **[insert schedule number]** confirming that the information contained in the VIPP Monitoring Table is true and accurate. The statutory declaration must be made by a director of the Contractor or the Contractor’s Chief Executive Officer or Chief Financial Officer.
- (d) For the purposes of this clause 1.3, Practical Completion is that stage of the Agreement where all substantive work required by the Agreement has been completed (excluding administrative or regulatory obligations remaining to be fulfilled).
- (e) At the request of the CWW Representative, the Contractor must provide further information or explanation of any departures from the VIPP Plan as reported in the VIPP Monitoring Table.
- (f) The reporting obligations are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.



#### 1.4 Verification of Contractor's compliance with VIPP Plan

- (a) The Contractor must:
  - (i) permit CWW, from time to time during ordinary business hours and upon notice, to inspect, verify and make copies at CWW's expense of all records maintained by the Contractor for the purposes of the Agreement;
  - (ii) permit CWW, or its duly authorised representative from time to time to undertake a review of the Contractor's performance in accordance with the VIPP Plan; and
  - (iii) ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by CWW to undertake such audit or inspection.
- (b) The Contractor acknowledges and agrees that CWW, CWW's duly authorised representative and ICN are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the VIPP Plan.
- (c) The Contractor's obligations in this clause 1.4 are in addition to and do not derogate from any other obligation under the Agreement.

#### 1.5 Use of VIPP information

The Contractor acknowledges and agrees that:

- (a) ICN will assess the Contractor's performance against the Contractor's VIPP Plan;
- (b) the statistical information contained in the Contractor's VIPP Plan and the measures of the Contractor's compliance with the VIPP Plan as reported in the VIPP Monitoring Table will be:
  - (i) included in the CWW's report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of CWW's compliance with the VIPP in the financial year to which the report of operations relates; and
  - (ii) provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the implementation of the *VIPP* during that year,

and may be disclosed in the circumstances set out in clause **[insert]** or as otherwise required by law.

**Annexure A to Schedule 9****Victorian Industry Participation Policy Plan****1. VIPP Plan**

The VIPP Plan is attached at Attachment 1 to this Schedule. **[insert VIPP Plan if relevant]**

**2. VIPP Monitoring Table**

The Contractor must complete the VIPP Monitoring Table at Attachment 2 to this Schedule for the purposes of its VIPP Compliance Reporting obligations as set out in cl 1.3(c)(i) of Schedule 9. The Contractor must provide the VIPP Monitoring Table to the CWW Representative upon Practical Completion or within one (1) month of the Completion Date (whichever occurs first).

**3. Statutory Declaration**

The form of Statutory Declaration required for the purposes of cl 1.3(c)(ii) is attached at Attachment 3 to this Schedule.

## Attachment 1 – VIPP Plan

## Attachment 2 – VIPP Monitoring Table

### ANZ value-added activity

Item Description	Company	Location	VIPP ANZ Activity Commitments %	ANZ Activity in Progress %	Secured ANZ Activity %	Comments

### Employment

Existing Jobs		New Jobs		Total Contracted Jobs	Total Actual Jobs	Difference
Contracted	Actual	Contracted	Actual			

### Skills and Technology Transfer Committed Achieved

Contracted Description	Status	Completion %

### Apprentices/ trainees

Existing Apprentices/ trainees		New Apprentices/ trainees		Total Contracted Apprentices/ trainees	Total Actual Apprentices/ trainees	Difference
Contracted	Actual	Contracted	Actual			

--	--	--	--	--	--	--

### Attachment 3 – Statutory Declaration

State of Victoria

## Statutory Declaration

I, \_\_\_\_\_  
[full name]

of \_\_\_\_\_ [address]

\_\_\_\_\_, do solemnly and sincerely declare that:-  
[occupation]

\_\_\_\_\_ achieved the Victorian Industry  
[contracted company]

Participation Policy objectives and outcomes relating to local content; employment;  
skills and technology transfer; and apprentices/ trainees reflected in the VIPP

Monitoring Table for \_\_\_\_\_ as submitted to  
[name and tender number of procurement activity]

\_\_\_\_\_ on \_\_\_\_/\_\_\_\_/\_\_\_\_  
[agency] [date]

**I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.**

Declared at \_\_\_\_\_

this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ .....

Signature of person making this declaration

[to be signed in front of an authorised witness]

Before me,

.....

Signature of Authorised Witness

The authorised witness must print or stamp his or her name, address and title under section 107A of the *Evidence (Miscellaneous Provisions) Act 1958* (as of 1 January 2010), (previously *Evidence Act 1958*), (eg. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner, Dentist)