

## **Introduction and scope**

This document sets out terms that apply to your work order in addition to the Master Agreement. Defined terms have the same meaning as in the Master Agreement.

## **Terms**

### **1. General**

You must, at all times:

- act reasonably in performing your obligations and exercising your rights under the work order; and
- diligently perform your obligations under the work order.

### **2. Warranties**

You represent and warrant that:

- you have the right to enter into the work order;
- you and your subcontractors and personnel have the necessary experience, skill, knowledge, expertise and competence to provide the deliverables and (when appropriate) will hold such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to provide the deliverables;
- you and your subcontractors and personnel will act in a fit and proper manner while providing the deliverables;
- the deliverables will be complete, accurate and free from material faults;
- any materials that you incorporate in the deliverables are free from defects in design, performance and workmanship;
- the work will be carried out and completed in a proper and professional manner and in the most cost-effective manner and using materials suitable for the purpose; and
- if you are a trustee, you enter into the work order personally and in your capacity as trustee and have the power to perform your obligations under the work order.

You acknowledge that you are fully responsible for providing the deliverables and for ensuring compliance with the requirements of the work order, and will not be relieved of that responsibility by any involvement by the buyer in providing the deliverables.

### **3. Standards and Codes**

You must, in supplying deliverables, comply with, and ensure your personnel comply with, any:

- specifications referred to in the work order;
- applicable Australian or New Zealand standards;
- applicable international standards; and
- industry codes or best practice methodologies.

If any of the deliverables will not meet these requirements (including because of any inconsistency between the above requirements), you must:

- promptly notify the buyer of the issue; and
- comply with the buyer's directions.

#### **4. Access to, and conduct at, the buyer's premises**

The buyer must cooperate with you by providing access to its premises and facilities as reasonably necessary to enable you to provide the deliverables.

You must, and must ensure your personnel, comply with all reasonable instructions, directions, policies and procedures relating to work health and safety in operation at the buyer's premises or facilities whether specifically drawn to your attention or as might reasonably be inferred from the circumstances.

#### **5. Third party warranties**

If you supply any deliverables that have been procured from a third party, you must pass through and assign to the buyer, to the extent permitted by law, the benefits of any warranties given by the third party. This does not limit any other warranties provided by you.

If during the term of the work order an issue arises in relation to a third party item, you must:

- notify the third party of the issue; and
- use reasonable efforts to cause the third party to repair or replace the defective item in accordance with the third party warranty.

If as a result of your act or omission, a third party warranty becomes void or unenforceable, or its application is limited, you must:

- use your best efforts to restore the full validity and application of the warranty; and
- comply with the buyer's directions, including any direction to purchase (at your expense) a replacement item or an extended or additional warranty.

#### **6. Co-operation**

You must, in providing the deliverables:

- fully co-operate with the buyer's personnel and other contractors; and
- use your best efforts to coordinate its activities so as to support and facilitate, in the buyer's best interests, the timely and efficient completion of all work and other activities to be performed for the buyer by any person.

#### **7. Relationship**

The work order does not create a relationship of employment, agency or partnership between the parties.

The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

You acknowledge and agree that:

- your personnel are not the buyer's employees, partners, legal representatives, agents, joint venturers or franchisees;
- this agreement does not create any contractual relationship between the buyer and your personnel;
- your personnel have no right or authority to bind the buyer, assume or create any obligations for or on behalf of the buyer, or make any representations or warranties for or on behalf of the buyer; and
- your personnel are not entitled to any benefit from the buyer usually attributable to an employee.

Unless otherwise specified in a work order, your personnel will not be required to exercise, and you must ensure that they do not purport to exercise, any delegation under the Public Governance, Performance and Accountability Act 2013 (Cth) or the Public Service Act 1999 (Cth).

You must ensure that any employment agreement or subcontract entered into for the purpose of the work order contains provisions to ensure that your personnel understand the above restrictions.

Unless otherwise specified in a work order, you are responsible for all payments to your personnel providing deliverables under the work order, including payment by way of salary, remuneration or commissions, bonuses, annual leave, long service leave, personal leave, termination, redundancy, taxes, superannuation or worker's compensation premiums or liabilities.

## **8. Your personnel**

You acknowledge and agree that you are fully responsible for the acts and omissions of your personnel, and accordingly that where the work order:

- imposes an obligation on your personnel, you are fully responsible for the performance by those personnel of such obligations; and
- prohibits an act by you, the performance of that act by any of your personnel will be deemed to be a performance of that act by you.

You must ensure that your personnel:

- are given full details of the deliverables to be carried out by them;
- are aware of, and comply with, your obligations in providing the deliverables;
- have the requisite skills and experience to undertake the deliverables;
- apply an appropriate level of professional skill and judgment as may be expected of an information technology specialist performing similar deliverables;
- provide such reasonable assistance to other service providers as the buyer may request from time to time; and
- cooperate with any third party service provider appointed by the buyer when this is necessary to ensure the integrated and efficient conduct of the buyer's operations.

## 9. Replacement of personnel

The buyer may at any time request you to remove any of your personnel from providing the deliverables, including:

- if your personnel fail to observe and conform to buyer policies and, if applicable, the buyer environment;
- if your personnel fail to comply with any law;
- if your personnel fail to comply with any workplace health and safety requirements specified in the work order;
- if the buyer is of the opinion that standards, competence or performance of any of your personnel falls below the standards, competence or performance required of your personnel under the work order; or
- to protect people or property.

If you are required to remove any of your personnel, you must immediately replace them with another appropriately qualified, competent and experienced person.

## 10. Intellectual property rights - material other than order material

This clause applies in addition to clause 8 (Intellectual property rights) of the Master Agreement.

*Note: Clause 8 (Intellectual property rights) of the Master Agreement provides that you must ensure the buyer is provided with any intellectual property rights, licence or usage rights it needs to use any material provided with (or needed for the use of) the order material.*

Unless otherwise set out in the work order, to the extent that the buyer needs to use any:

- proprietary software (or standard form documentation relating to that software) owned by you or a third party;
- material which is made available by you (or on your behalf) for the purpose of the work order, which was in existence prior to the commencement of the work order (pre-existing material);
- modifications or derivatives of pre-existing material if they cannot be used without infringing the intellectual property rights in the underlying material;
- material owned by a third party that is included, embodied in or attached to the order material or used as part of providing the deliverables; or
- other pre-existing material specified in the work order,

to receive the full benefit of the deliverables, you grant to, or must obtain for, the buyer a perpetual, irrevocable, fully paid-up, royalty-free, worldwide, non-exclusive licence to reproduce, publish, use, modify, adapt and communicate that material.

Unless otherwise set out in the work order, this licence:

- does not include a right to exploit the proprietary software for commercial purposes; but
- includes the right to sublicense the proprietary software to a third party so that they can provide deliverables to the buyer.

## **11. Intellectual property warranty and indemnity**

This clause applies in addition to clause 8 (Intellectual property rights) of the Master Agreement.

Warranted material means:

- order material;
- deliverables;
- the material listed in clause 10; and
- any other material you are required to provide under the work order.

You warrant that you have the necessary rights to vest the intellectual property rights and grant the licences as provided for in clause 10 and clause 8 of the Master Agreement.

You indemnify the buyer and its personnel and subcontractors against losses arising out of or in connection with any allegation that any warranted materials (including the use of any warranted materials for the purposes for which they are provided under the work order) infringes the intellectual property rights or moral rights of a third party.

Where permitted by the Legal Services Directions (issued under section 55ZF of the Judiciary Act 1903 (Cth)), and subject to your continued compliance with the requirements below, the buyer will permit you to handle settlement negotiations and litigation in relation to any claims covered by the indemnity. The buyer will provide all reasonable assistance to you.

You must:

- comply with government policy and obligations, as if you were the buyer, relevant to the conduct of the litigation and any settlement negotiation (including but not limited to the Legal Services Directions) and any direction issued by the Attorney General to the Commonwealth or delegate;
- keep the buyer informed of any significant developments relating to the conduct of the defence or the settlement of any claim; and
- provide to the buyer such information and documentation as are reasonably requested by the buyer, to enable the buyer to ascertain whether the defence or settlement by you of any claim is being conducted in accordance with the requirements of government policy and obligations, the Legal Services Directions and any specific instructions given by the buyer, including any requirements relating to legal professional privilege and confidentiality.

## **12. Intellectual property register**

Unless otherwise set out in the work order, you must maintain an accurate and complete intellectual property register that identifies:

- all material (including all deliverables) used in performing or providing the deliverables;
- all intellectual property rights in respect of that material, including the owner(s) of those rights; and
- when the intellectual property rights are licensed, details of that licence including details of any limitation on use by the buyer or its other contractors.

### **13. Buyer material**

This clause applies in addition to clause 15 (Buyer material) of the Master Agreement.

You must provide the buyer's representative with written acknowledgement of receipt of any material provided by the buyer within seven days of delivery (or such other period as may be agreed in writing by the buyer's representative).

Unless expressly provided otherwise in the work order or otherwise agreed by the buyer's representative in writing, you:

- must return any material no longer required for the purposes of the work order to the buyer as soon as practicable;
- must not copy, publish or part with possession of the material; and
- must not modify the material.

You may retain one copy of any documentation provided by the buyer for audit and record keeping purposes provided that you comply with your confidentiality obligations.

Any material provided by the buyer will remain the property of the buyer. You:

- must not create or allow the creation of any lien, charge or mortgage over the material;
- must take all reasonable care of the material;
- must promptly inform the buyer's representative of any loss, destruction or damage; and
- must comply with any reasonable instructions of the buyer's representative for dealing with or disposing of any damaged material.

You must indemnify the buyer for any loss or destruction of, or damage to, any material caused by any act or omission of you or your personnel, other than for fair wear and tear not caused by your failure to comply with the obligations set out above. If requested by the buyer's representative, you must as soon as practicable replace the material at your cost.

### **14. No warranty**

If the work order states that the buyer material is warranted by the buyer, you must, within seven days of delivery or such other period as may be agreed in writing by the buyer's representative:

- inspect the buyer material for any defect, deficiency or physical damage which will, or is likely to, have an adverse impact on the intended use of the buyer material; and
- notify the buyer's representative of its satisfaction or dissatisfaction with the buyer material.

If you have notified the buyer's representative of any defect, deficiency or physical damage which will, or is likely to, have an adverse impact on the intended use of any material warranted by the buyer, the buyer will be entitled to elect at its option:

- to remedy or otherwise replace the affected buyer material; or
- if it agrees that the defect, deficiency or physical damage will have an adverse impact on your ability to deliver the deliverables in accordance with the work order, determine a suitable variation to the work order.

If the buyer makes any material available to you which is not expressly warranted by the buyer, it will be made available on an 'as is' basis and you acknowledge and agree that, to the extent permitted by law, no representation has been made and no warranty is or has been given, express or implied, by or on behalf of the buyer in respect of:

- the condition, state of repair, quality, fitness for purpose or merchantability of any of that material; or
- its accuracy, completeness, currency, suitability or efficacy.

The buyer does not accept, and expressly disclaims, any responsibility or liability arising from any faults, failures or malfunctions in any material provided by the buyer which prevents you from providing the deliverables or which causes the buyer to incur any service rebates or other liabilities under the work order or otherwise unless:

- expressly provided otherwise in the work order; or
- the buyer's representative provides a written direction to you to use the material provided by the buyer for a prescribed purpose.

You acknowledge and agree that:

- you have undertaken, or will undertake, all necessary inquiries as to the accuracy of any material provided by the buyer prior to placing reliance on it; and
- the buyer will not be liable for any loss or damage you may suffer as a result of relying on any material provided by the buyer.

## **15. Security**

You must comply with:

- the security requirements detailed in the Australian Government Information Security Manual and the Commonwealth's Protective Security Policy Framework, each as amended or replaced from time to time; and
- any additional requirements advised by the buyer from time to time.

The buyer may undertake any security checks it considers appropriate in relation to you or your personnel.

If any of your personnel loses their security clearance or causes a security breach, the buyer may:

- after consultation with you, require the replacement of that person; or
- immediately terminate the work order for breach.

You must notify the buyer immediately on becoming aware of any security incident or security breach.

If a security incident or a security breach occurs, you must immediately comply with all the buyer's directions in order to address the incident or breach, and ensure it does not occur again.

## 16. Buyer data

You must not (and must ensure that your personnel do not):

- remove buyer data or allow buyer data to be removed from the buyer's premises without the buyer's prior written consent;
- use buyer data held or accessible by you for any purpose other than fulfilling your obligations under the work order;
- purport to sell, let for hire, assign rights in or otherwise dispose of buyer data;
- purport to commercially exploit buyer data; or
- alter buyer data in any way, other than in providing the deliverables as required under the work order.

You must establish and maintain safeguards against the destruction, loss or alteration of buyer data in your possession or control that:

- are no less rigorous than those notified by the buyer from time to time and will be no less rigorous than the safeguards that can be reasonably expected in well run projects; and
- comply with all laws and any procedures or requirements specified by the buyer from time to time

## 17. Harmful code

Harmful code means any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of any software.

You represent and warrant that you will not, nor will you suffer or permit any third party under your direction or control to, negligently introduce into the buyer's systems or any deliverables any harmful code.

If any harmful code is introduced, you must use all reasonable efforts promptly to report that introduction to the buyer. If harmful code is introduced as a result of a breach of the warranty set out above, you must:

- take all necessary action to eliminate the harmful code; and
- promptly repair any harm or destruction caused by that harmful code.

## 18. Offshoring

Unless otherwise specified in a work order, you must not, and must ensure that your subcontractors and personnel do not:

- transfer outside of Australia any personal information obtained as a result of, or in connection with, providing the deliverables, or allow access to such personal information from a location outside of Australia; or
- take or transfer any buyer data outside Australia; or
- allow any buyer data to be taken or accessed outside of Australia.



## 19. Work health and safety

In this document, the following definitions apply:

- **WHS Act** means the Work Health and Safety Act 2011 (Cth) and any corresponding WHS law as defined in that Act.
- **WHS Laws** means the WHS Act and regulations made under the WHS Act.
- **Inspector, Notifiable Incident, Regulator** and **WHS Entry Permit Holder** have the meanings given in the WHS Act.
- **covered workers** means your personnel who are workers in the buyer's business or undertaking within the meaning of the WHS Act.

You must:

- ensure the deliverables are carried out in a safe manner;
- not, and must ensure your personnel do not, by act or omission place the buyer in breach of the buyer's obligations under WHS Laws;
- inform yourself, and must ensure your personnel inform themselves, of the buyer's work health and safety policies and procedures relevant to the deliverables;
- comply with, and ensure your personnel comply with, all WHS Laws, all applicable standards, codes and other guides relating to work health and safety and the buyer's work health and safety policies and procedures, as amended from time to time, in relation to the deliverables carried out by the covered workers;
- comply with, and ensure your personnel comply with, any reasonable instruction or direction by the buyer regarding work health and safety relating to the deliverables carried out by the covered workers;
- provide to the buyer any relevant work health and safety management plan, risk assessment, or any other work health and safety documentation applying to the deliverables carried out by the covered workers prior to the commencement of work;
- consult, cooperate and coordinate with the buyer in relation to any health and safety issue that arises in relation to the deliverables in accordance with the WHS Laws; and
- fully cooperate with, and must ensure that the personnel fully cooperate with, any investigation conducted by the buyer into any incident which is required to be notified to any authority under the WHS Laws and, where requested by the buyer, provide the buyer with any reports relating to any incident or investigations conducted by or on your behalf.

You must immediately notify the buyer of:

- any concerns you have regarding work health and safety in relation to the deliverables carried out by the covered workers;
- any breach or suspected breach of the WHS Laws in relation to deliverables carried out by covered workers;
- the cessation of work on the deliverables, or any direction to cease work on the deliverables from any person having authority under the WHS Laws to do so, due to a risk to health and safety;

- the entry by a WHS Entry Permit Holder or Inspector to any place where deliverables are being carried out by covered workers;
- any incident arising out of the deliverables which is required to be notified to an authority under the WHS Laws, and if requested, provide a copy of any written notice given to the Regulator; or
- any proceedings brought against you or your personnel under the WHS Laws.

## **20. Subcontracting**

You are fully responsible for the providing the deliverables even if you subcontract any aspect of providing the deliverables.

You must ensure your subcontractors comply with all applicable laws.

You must ensure your subcontracting arrangements are consistent with your obligations to the buyer, including your obligations:

- to assign or license order material and other material to the buyer;
- to take all steps to manage a conflict of interest;
- to ensure that your subcontractors understand your relationship with the buyer;
- to ensure that subcontractors protect buyer data and personal information and use it appropriately;
- to ensure that your subcontractors do not engage illegal workers;
- in relation to work health and safety;
- to ensure that subcontractors maintain books and records;
- to ensure that subcontractors assist with audits; and
- to transfer knowledge to the buyer at the end of the work order.

If requested by the buyer's representative, you must provide the buyer with the names of your subcontractors and a copy of any subcontract. You:

- agree that the buyer may disclose publicly the names of any of your subcontractors; and
- must ensure that any subcontractor agrees that the buyer may disclose the subcontractor's name publicly.

## **21. Rights to use and disclose confidential information**

In addition to the rights to disclose confidential information under clause 16 of the Master Agreement:

- either party may disclose the other party's confidential information to its advisers;
- the buyer may disclose your confidential information within the buyer's organisation, or with another Commonwealth agency or body, when this serves the buyer's legitimate interests,

so long as the disclosing party:

- notifies the receiving person that the information is confidential information; and
- does not provide the information unless the receiving person agrees to keep the information confidential.

Either party may also disclose the other party's confidential information where authorised or required by the work order or a licence.

Upon the termination or expiry of the work order you must return all buyer confidential information to the buyer. You may retain one copy of the buyer confidential information for audit and record keeping purposes provided that you comply with your confidentiality obligations.

## 22. Protection of personal information

In addition to your obligations under clause 17 of the Master Agreement, in the course of providing the deliverables, you and your subcontractors must:

- collect, use, disclose, store, retain and dispose of any personal information obtained in the course of providing deliverables under the work order only for the purposes of, and as required by, the work order;
- not use any personal information obtained in the course of providing the deliverables for the purposes of direct marketing (as that term is used in the Privacy Act 1988 (Cth) (**Privacy Act**));
- comply with the security obligations in the work order in relation to the collection, storage, use or disclosure of any personal information obtained in the course of providing the deliverables;
- immediately notify the buyer if you become aware of any breach, or possible breach, of any of your obligations under this clause or clause 17 of the Master Agreement, including by your personnel or subcontractors.

You and your subcontractors must also comply with any notice given to you by the buyer which the buyer reasonably considers necessary in order to enable the buyer to comply with any:

- notice, direction, determination, recommendation or other requirement of the Office of the Australian Information Commissioner (**OAIC**); and
- any undertaking given by the buyer to the OAIC.

If you have reasonable grounds to suspect that there may have been an eligible data breach (as defined in the Privacy Act), you must:

- notify the buyer as soon as possible (but within two business days);
- comply with your obligations under the Privacy Act in relation to that event;
- provide the buyer with all information requested by the buyer about that event; and
- if requested by the buyer, allow the buyer to participate in your assessment of the event and whether it amounts to an eligible data breach.

If you (or the buyer) determine that an eligible data breach has occurred and notification is required under the Privacy Act:

- you must take all reasonable action to mitigate the risk of the eligible data breach causing serious harm to any of the individuals to whom the personal information relates;
- the parties will agree on which party will issue the notification;
- where it is agreed that you will issue the notification, you must comply with any instructions from the buyer in relation to drafting and issuing the notification; and
- you must promptly notify the buyer and keep the buyer informed of any investigation or other action taken by the OIAC in connection with any actual or suspected eligible data breach.

You must ensure that all your personnel (including subcontractors) who collect, use, disclose or retain personal information obtained in the course of providing the deliverables are made aware of your obligations under clause 17 of the Master Agreement and this clause.

You indemnify the buyer in respect of any losses suffered or incurred by the buyer which arise directly or indirectly from a breach by you or your subcontractors of this clause or clause 17 of the Master Agreement.

### **23. Knowledge transfer**

You warrant that you will, in the provision of the deliverables generally, and in accordance with any specific requirements included in the work order, facilitate an effective transfer of skills and knowledge to the buyer's personnel so that those personnel can make full use of the deliverables and any associated documentation.

Unless otherwise stated in the work order, you must provide the following assistance to the buyer on termination or expiration of the work order:

- transferring or providing access to the buyer to all information stored by whatever means held by you or under your control in connection with the work order; and
- making your personnel available for discussions as required by the buyer, provided that any matter discussed is not considered to reveal any of your confidential information.

### **24 Indemnity**

You indemnify the buyer, and its subcontractors and other personnel (**those indemnified**) against losses reasonably sustained or incurred by those indemnified made or threatened by a third party arising out of or in connection with any negligent, unlawful or wilfully wrong act by you or your subcontractors or other personnel.

The buyer will hold on trust the rights of those indemnified and those rights may be exercised by the buyer as trustee or those indemnified as beneficiaries under the trust.

Your liability to indemnify those indemnified will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.

When the buyer wishes to enforce the indemnity it must:

- give written notice to you as soon as practical; and
- make reasonable efforts to mitigate the relevant loss.

### **25. Limitation of liability**

Any limit on the liability specified in the work order does not apply in relation to liability relating to:

- personal injury (including sickness and death);
- loss of, or damage to, tangible property;
- an infringement of Intellectual property rights;
- a breach of any obligation of confidentiality, security matter or privacy; or
- any breach of statute or any wilfully wrong act or omission including, any act or omission that constitutes repudiation by you of the work order.

Any limit on the liability specified in the work order is also subject to review if the work order is varied or extended.

## 26. Contribution

The liability of a party (**Party A**) for any losses incurred by another party (**Party B**) will be reduced proportionately to the extent that:

- any negligent act or omission of Party B (or of its subcontractors or other personnel); or
- any failure by Party B to comply with its obligations and responsibilities under the work order,

contributed to those losses, regardless of whether legal proceedings are brought by Party A for negligence or breach of contract.

## 27. Workplace Gender Equality

You must not subcontract to a company named by the Director of the Workplace Gender Equality Agency in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the Workplace Gender Equality Act 2012 (Cth) (**WGE Act**).

If you are a 'relevant employer' for the purposes of the WGE Act you must:

- comply with your obligations, if any, under the WGE Act;
- provide a letter of compliance if you have not already done so; and
- notify the buyer's representative if you become non-compliant with the WGE Act during the term of the work order. If the non-compliance is not able to be rectified by you within a reasonable period (as determined by the buyer), the buyer may terminate the work order for your default.

*Note: You will generally be a "relevant employer" if you are a registered higher education provider or you employ 100 or more employees in Australia. If you cease to be a relevant employer because the number of your employees falls below 100, the WGE Act will continue to apply to you until the number of your employees falls below 80.*

## 28. Illegal Workers

Illegal worker means a person who:

- unlawfully entered and remains in Australia;
- has lawfully entered Australia, but remains in Australia after his or her visa has expired; or
- has lawfully entered Australia, but is working in breach of his or her visa conditions.

You must not, and you must ensure that your subcontractors do not, engage illegal workers.

If you become aware that any illegal worker is involved in providing the deliverables (whether engaged by you or a subcontractor), you must immediately arrange for them to be replaced.

If requested in writing by the buyer, you must provide evidence within 14 days that you have taken all reasonable steps to comply with this clause.

## **29. Fraud**

You must:

- comply with the Commonwealth Fraud Control Guidelines, as amended from time to time; and
- notify the buyer immediately if you know or have reason to suspect that any fraud has occurred or is occurring or is likely to occur in relation to the work order (including by you, your personnel or your subcontractors).

## **30. Books and records**

**Accounting Standards** means the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the Australian Securities and Investments Commission Act 2001 (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia

You must keep, and require your subcontractors to keep, adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable the amounts payable by the buyer under the work order to be determined or verified.

## **31. Access by the buyer**

The buyer may, to the extent relevant to the performance of the work order, at reasonable times and on giving reasonable notice to you:

- access your premises or your subcontractors' premises;
- require you or your employees, agents or subcontractors to provide records and information in a data format and storage medium accessible by the buyer by use of the buyer's existing computer hardware and software;
- inspect and copy documentation, books and records, however stored, in your custody or under the control of you or your employees, agents or subcontractors; and
- require assistance in respect of any inquiry into or concerning the deliverables or the work order. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the buyer), any request for information directed to the buyer, and any inquiry conducted by Parliament or any Parliamentary committee.

You must provide access to your computer hardware and software to the extent necessary for the buyer to exercise its rights under this clause and clause 19 of the Master Agreement, and provide the buyer with any reasonable assistance requested by the buyer to use that hardware and software.

## **32. Unforeseen events**

Unforeseen event means circumstances beyond a party's reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of you only), including acts of God, natural disasters, acts of war, riots and strikes outside a party's organisation.

A party is excused from performing its obligations under the work order to the extent it is prevented by unforeseen event provided that the affected party must:

- give notice of the unforeseen event as soon as possible, identifying the effect they will have on its performance; and
- make all reasonable efforts to minimise the effects of the unforeseen event on the performance of the work order.

If non-performance or diminished performance continues for a period of more than 30 consecutive days:

- the other party may terminate the work order immediately by giving the affected party written notice;
- each party will bear its own costs of the termination and neither party will incur further liability to the other; and
- you will be entitled to payment for deliverables provided in accordance with the work order prior to the unforeseen event.

### **33. Incorrect invoices or payments**

When the buyer disputes an amount in an invoice or a claim for reimbursement, the buyer will pay any part of the amount claimed that is not in dispute.

Payment of any amount by the buyer does not constitute any acceptance of the deliverable.

The buyer reserves the right to retrospectively adjust payments if the buyer determines that the deliverables have not been provided in accordance with the work order.

If an invoice is found to have been rendered incorrectly after payment:

- any underpayment will be recoverable by you; and
- any overpayment will be recoverable from you and, without limiting recourse to other available means, may be offset against any amount subsequently due by the buyer to you under the work order or any other contract between the parties.

### **34. Dispute resolution**

Clause 21 of the Master Agreement does not apply to:

- a dispute arising in relation to the buyer's termination of the work order or reduction of the scope of the deliverables under clause 23 of the Master Agreement; or
- proceedings for urgent interlocutory relief, but after a party has sought or obtained any urgent interlocutory relief that party must follow clause 21 of the Master Agreement.

If the parties to a dispute cannot agree on a mediator (or the process for appointment of a mediator) within seven days, the chairperson of Resolution Institute or their nominee will appoint a mediator.

The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a binding decision on a party except if the party agrees in writing. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the dispute.

Any information or documents disclosed by a party under clause 21 of the Master Agreement or this clause:

- must be kept confidential; and
- may only be used to attempt to resolve the dispute.

### **35. Consequences of a reduction in scope for convenience**

Where the work order is terminated by the buyer in part under clause 23 of the Master Agreement you must:

- take all available steps to protect buyer material and order material; and
- continue work on any part of the deliverables not affected by the notice.

The buyer's liability to pay the service charges or to provide buyer material abates in accordance with the reduction in the deliverables.

### **36. Termination for conflict of interest**

Without limiting any other rights or remedies the buyer may have against you arising out of or in connection with the work order under clause 23 of the Master Agreement or at common law, the buyer may terminate the work order effective immediately by giving notice to you if in the opinion of the buyer, a conflict of interest (as defined in the Master Agreement) exists which would prevent you from performing your obligations under the work order.

### **37. Change in control**

You must notify the buyer immediately if you are subject to a change in control.

Change in control means when the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect, including through one or more entities) to control:

- more than half of your voting power;
- the composition of your board of directors; or
- more than half of your issued share capital, excluding any part of it which carries no right to participate beyond a specified amount in the distribution of either profit or capital,

changes so as to reside with persons other than those holding that power at the commencement of the work order.

Without limiting any other rights or remedies the buyer may have against you arising out of or in connection with the work order under clause 23 of the Master Agreement or at common law, the buyer may terminate the work order effective immediately by giving notice to you if you are subject to a change in control.

### **38. Suspension**

The buyer may at any time direct you to suspend the whole or any part of the work under the work order.

You will not be entitled to any compensation for a suspension not exceeding 10 business days in total. If the work order is suspended for longer than 10 business days, you will be entitled to:

- payments due under the work order for deliverables provided before the effective date of suspension (less any amount that the buyer is entitled to deduct); and



- additional costs incurred by you (that are unavoidable and substantiated to the buyer's satisfaction) as a direct consequence of the suspension (if any).

### **39. Postponement**

You may request postponement of your obligations under the work order if you are delayed in achieving a milestone by one or more events which were:

- outside of your control; and
- not reasonably foreseeable to you at the date of entry into the work order.

If you request postponement for any reason, the buyer's representative may direct you to take reasonable measures which are:

- reasonably necessary to ensure achievement of the milestone by the required date; and
- consistent with the work order.

Directions do not relieve you of your obligation to comply with the work order.

Any claim for postponement may be rejected by the buyer if you do not demonstrate to their reasonable satisfaction that the delay meets the requirements of this clause. You will be fully responsible for any potential or actual delay or loss caused by a failure to achieve a milestone if a postponement request is not approved in writing by the buyer.

If the buyer approves a request for postponement, it may also approve postponement costs if:

- the delay is caused by the buyer's breach of contract;
- you have used reasonable endeavours to mitigate all losses; and
- you substantiate the claim to the satisfaction of the buyer.

### **40. Survival**

Termination of the work order does not affect any accrued rights or remedies of a party.

Clauses 30 (books and records) and 31 (Access by the buyer) applies to you and your subcontractors during the work order and for a period of three years after the expiry or termination of the work order.

The following clauses also survive the expiry or termination of the work order:

- clauses 10 (Intellectual property rights - material other than order material) and 11 (Intellectual property warranty and indemnity);
- clause 22 (Protection of personal information);
- clause 23 (Knowledge Transfer);
- clauses 24 (Indemnity); and
- clause 33 (Incorrect invoices or payments).

#### **41. Approvals and consents**

Except where the work order expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under the work order in its absolute discretion.

#### **42. Further action**

Unless otherwise stated, each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to the work order and any transaction contemplated by it.

#### **43. Severability**

A term or part of a term of the work order that is illegal or unenforceable may be severed from the work order and the remaining terms or parts of the terms of the work order continue in force.

#### **44. Announcements**

You must, before making a public announcement in connection with the work order or any transaction contemplated by it, obtain the buyer's written agreement to the announcement, except if required by law or a regulatory body (including a relevant stock exchange).

If you are required by law or a regulatory body to make a public announcement in connection with the work order or any transaction contemplated by the work order, you must, to the extent practicable, first consult with and take into account the reasonable requirements of the buyer.

Last updated: 31 May 2019