

- (f) **(copies)** the Supplier must supply to the Customer the number of copies of the Licensed Software as specified in the Details;
- (g) **(delivery and installation)** the Supplier must:
- (i) deliver or make available the Licensed Software to the Site (if applicable) by the Delivery Date; and
 - (ii) if required by the Customer, install the Licensed Software on the Designated Environment,
- in accordance with requirements set out in the Details;
- (h) **(Updates and New Releases)** if the Details specify that the Customer is entitled to Updates and/or New Releases for the Licensed Software as part of its licence to the Licensed Software:
- (i) the Supplier must make available to the Customer (and install, if specified in the Details) any Updates and New Releases if and when the Supplier makes them generally available to other customers, at the option of the Customer and at no additional cost to the Customer;
 - (ii) if the Customer elects not to accept or use an Update or New Release, it must notify the Supplier within 90 days of the date it is made available to the Customer;
 - (iii) the Customer may, before electing to accept or not accept an Update or New Release, require the Supplier to provide information to the Customer about the nature of the improvements and/or corrections contained in the Update or New Release;
 - (iv) the Customer is under no obligation to accept an Update or New Release;
 - (v) if the Customer decides not to use the Update or New Release:
 - (A) then the Customer acknowledges and agrees that subsequent Updates or
- New Releases may not operate with the Licensed Software; and
- (B) the Supplier is not responsible for any Defect in the Licensed Software, nor any incident or outage, which would not have occurred had the latest version of the Licensed Software been used;
- (i) **(ancillary services)** the Supplier must provide the ancillary services (if any) in connection with the Licensed Software as specified in the Details;
- (j) **(Machinery of Government)** the Customer may assign or otherwise transfer the licence granted in clause 5.3(a) in connection with a Machinery of Government Change in accordance with clause 22.4;
- (k) **(warranties)** the Supplier warrants that the Licensed Software will:
- (i) during the Warranty Period, comply with and perform in accordance with the Requirements;
 - (ii) during the Warranty Period, be compatible and inter-operate with, and will not detrimentally affect the operation or performance of, the Designated Environment when used in accordance with the Documentation;
 - (iii) be free from any back door, time bomb, drop dead device or any other code designed to disable the Licensed Software unless the Requirements specify otherwise; and
 - (iv) when delivered to the Customer, be free from any Harmful Code;
- Without limiting this clause 5.3(k), the Supplier does not guarantee that the Licensed Software will be error-free or will operate without interruption;
- (l) **(Defects)** subject to clause 5.3(m), during the Warranty Period the Supplier must, at no cost to the Customer:
- (i) remedy all Defects in the Licensed Software either by repair or modification; and

- (ii) take all reasonable measures (including providing a Workaround) to enable the Customer to continue to productively use the Licensed Software while remedying Defects;
- (m) **(exceptions)** the Supplier is not required to remedy any Defect in the Licensed Software to the extent the Defect arises as a result of:
 - (i) any failure of the Customer to comply with its obligations under the Contract;
 - (ii) any failure of a Customer Input (if applicable) to comply with the requirements specified in the Details;
 - (iii) modifications to the Licensed Software that were effected or attempted by a person other than the Supplier, its Personnel or a person authorised by the Supplier; or
 - (iv) damage caused by use of the Licensed Software other than in accordance with the Documentation and the Contract.

Where the Supplier, acting reasonably, determines that the Defect arises as a result of circumstances set out in this clause 5.3(m), then if the Customer requests the Supplier to remedy the Defect, the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier's then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that Defect, and

- (n) **(no transfer of ownership)** the Customer acknowledges that it has no right, title or interest in the Licensed Software except as set out in clause 5.3(a). All Intellectual Property Rights in:
 - (i) the Licensed Software remain vested in the Supplier; and
 - (ii) any adaptation, translation or derivative of the Licensed Software vests in, or is transferred

or assigned to, the Supplier immediately on creation.

5.4 Software Support Services

The following terms and conditions apply to the supply of any Software Support Services under the Contract:

- (a) **(support period)** the Supplier must provide the Software Support Services for the period specified in the Details;
- (b) **(general support)** the Supplier must provide the general support specified in the Details during the hours of support specified in the Details;
- (c) **(Defects)** after being notified of a Defect or possible Defect in the Supported Software, the Supplier must:
 - (i) remedy the Defect in the Supported Software either by repair or modification in accordance with the Service Levels; and
 - (ii) take all reasonable measures (including by providing a Workaround) to enable the Customer to continue to productively use the Supported Software while remedying Defects;
- (d) **(Updates and New Releases)** unless otherwise specified in the Details, the Software Support Services will include the provision and installation of Updates and New Releases to the Customer, at the option of the Customer and at no additional cost to the Customer, and:
 - (i) the Customer may, before electing to accept or not accept an Update or New Release, require the Supplier to provide information to the Customer about the features of the Update or New Release and the nature of the improvements and/or corrections contained in the Update or New Release;
 - (ii) the Customer is under no obligation to accept an Update or New Release, and a refusal by the Customer will not affect its entitlement to ongoing Software Support Services under the Contract except that if the Customer decides not to use the

Update or New Release then the Customer acknowledges and agrees that:

- (A) subsequent Updates or New Releases may not operate with the Supported Software; and
- (B) the Supplier may cease to provide Software Support Services for that release of the Supported Software from the date that is 18 months from the date of the general release of the New Release, and thereafter the Supplier is not responsible for any Defect in the Supported Software, nor any incident, outage or failure to meet a Service Level, which would not have occurred had the latest version of the Supported Software been used,

provided that nothing in this clause 5.4(d) reduces the Supplier's obligations under clause 5.4(e);

- (e) **(warranties)** the Supplier warrants that the Software Support Services will be performed:
 - (i) by appropriately qualified and trained Personnel; and
 - (ii) to a standard that ensures continuity of performance of the Supported Software in accordance with the Service Levels (or if no service levels are agreed, in a reasonable time and manner) and the Contract;
- (f) **(Service Levels)** the Supplier must measure its performance against the Service Levels and provide a report to the Customer at the frequency specified in the Details;
- (g) **(Service Credits)** subject to clause 5.4(h), if the Supplier fails to meet the Service Levels, it must apply the Service Credits against the next invoice issued after the relevant Service Credits accrue, or in accordance with the process set out in the Details. If the Contract has terminated or expired, the Supplier must promptly pay the amount

of the Service Credits to the Customer; and

- (h) **(exceptions)** the Supplier is not required to provide the Software Support Services and is not responsible for any failure to meet the Service Levels to the extent that the Defect or failure to meet the Service Levels arises as a result of:
 - (i) any failure of the Customer to comply with its obligations under the Contract;
 - (ii) any failure of a Customer Input (if applicable) to comply with the requirements specified in the Details;
 - (iii) modifications to the Supported Software that were effected or attempted by a person other than the Supplier, its Personnel or a person authorised by the Supplier; or
 - (iv) damage caused by use of the Supported Software other than in accordance with the Documentation and the Contract.

Where the Supplier, acting reasonably, determines that the Defect or failure arises as a result of circumstances set out in this clause 5.4(h), then if the Customer requests the Supplier to remedy the Defect or failure, the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier's then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that Defect or failure.

5.5 Developed Software

The following terms and conditions apply to the supply of any Developed Software under the Contract:

- (a) **(Design Specification)** if specified in the Details, the Supplier must prepare a detailed specification which provides a technical explanation of how the functions in the Requirements for the Developed Software will be met **(Design Specification)** and submit it to

the Customer for approval by the Delivery Date specified in the Details;

- (b) **(approval of Design Specification)** the Customer will notify the Supplier promptly of any comments on the Design Specification or any alterations it reasonably requires. The Supplier must not unreasonably refuse to amend the Design Specification to take account of the Customer's reasonable requirements.

The process under this clause 5.5(b) will be repeated until the Customer has no comments on the Design Specification and approves the Design Specification by written notice to the Supplier.

The Design Specification will, when approved by the Customer under clause 5.5(b), become part of the Requirements. If there is any inconsistency between the Requirements (excluding the Design Specification) and the Design Specification, the Design Specification will prevail to the extent of any inconsistency;

- (c) **(delivery and installation)** the Supplier must:

- (i) deliver or make available the Developed Software (and if the Details specify that Intellectual Property Rights in the Developed Software will be owned by the Customer, deliver the source code of the Developed Software) to the Site (if applicable) by the Delivery Date; and
- (ii) if specified in the Details, install the Developed Software on the Designated Environment,

in accordance with the requirements set out in the Details;

- (d) **(Intellectual Property Rights in Developed Software)** the Intellectual Property Rights in the New Material in the Developed Software will be owned by either the Customer or the Supplier as specified in the Details.

Where the Details specify that the Supplier will own the Intellectual Property Rights in the New Material in the Developed Software, the Developed

Software will be Licensed Software, and:

- (i) the terms of clause 5.3 will apply to the Developed Software; and
- (ii) clause 15 will not apply to the Developed Software.

Where the Details specify that the Customer will own the Intellectual Property Rights in the New Material in the Developed Software, clause 15 applies;

- (e) **(ancillary services)** the Supplier must provide the ancillary services (if any) in connection with the Developed Software as specified in the Details;

- (f) **(warranties)** the Supplier warrants that all Developed Software will:

- (i) during the Warranty Period, comply with and perform in accordance with the Requirements;
- (ii) when delivered to the Customer or, if testing will be conducted under clause 6, when the Customer notifies acceptance of the Developed Software under clause 6(d), be compatible and inter-operate with, and will not detrimentally affect the operation or performance of, the Designated Environment when used in accordance with the Documentation;
- (iii) be free from any back door, time bomb, drop dead device or any other code designed to disable the Developed Software, unless the Requirements specify otherwise; and
- (iv) when delivered to the Customer, be free from any Harmful Code;

Without limiting this clause 5.5(f), the Supplier does not guarantee that the Developed Software will be error-free or will operate without interruption;

- (g) **(Defects)** subject to clause 5.5(h), during the Warranty Period the Supplier must, at no cost to the Customer:

- (i) remedy all Defects in the Developed Software either by repair or modification; and

- (ii) take all reasonable measures (including providing a Workaround) to enable the Customer to continue to productively use the Developed Software while remedying Defects; and
- (h) **(exceptions)** the Supplier is not responsible for any breach of warranty set out in clause 5.5(f) and is not required to remedy any Defect in the Developed Software to the extent the Defect arises as a result of:
 - (i) any failure of the Customer to comply with its obligations under the Contract;
 - (ii) any failure of a Customer Input (if applicable) to comply with the requirements specified in the Details;
 - (iii) modifications to the Developed Software that were effected or attempted by a person other than the Supplier or its Personnel, a person authorised by the Supplier; or
 - (iv) damage caused by use of the Developed Software other than in accordance with the Documentation and the Contract.

Where the Defect is determined by the Supplier, acting reasonably, as arising as a result of circumstances set out in this clause 5.5(h), then if the Customer requests the Supplier to remedy the Defect, the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier's then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that Defect.

5.6 As a Service

The following terms and conditions apply to the supply of any As a Service under the Contract:

- (a) **(Subscription Period)** the Supplier must provide the As a Service to the Customer during the Subscription Period.

At the end of each Subscription Period, the As a Service will be automatically renewed for a further Subscription Period, unless either party has:

- (i) exercised a right to terminate the As a Service; or
- (ii) notified the other party that it does not wish to renew the As a Service by providing the minimum notice specified in the Details;
- (b) **(supply of As a Service)** the Supplier must perform and provide the As a Service using the Infrastructure and to a standard as specified in the Details;
- (c) **(minimum system requirements)** the Customer must:
 - (i) ensure that the Customer's IT System and Network used by the Customer to access the As a Service complies with the Minimum System Requirements; and
 - (ii) use the As a Service in accordance with any usage restrictions or guidelines,
 as specified in the Details;
- (d) **(As a Service Location)** if the Supplier will process, store or host any Customer Data as part of the provision of the As a Service and if specified in the Details, the Supplier must allow the Customer to specify the As a Service Location, including that it be in Australia. If the Customer specifies a jurisdiction outside of Australia, this will constitute the Customer's consent for the purpose of clause 18(c)(iii)(A) for the transfer of any Personal Information included in the Customer Data outside of Australia;
- (e) **(Customer Data)** if the Supplier will process, store or host any Customer Data as part of the provision of the As a Service, the Supplier must:
 - (i) comply with the procedures and requirements set out in the Details (if any) regarding storage and back-up of the Customer Data;
 - (ii) provide or make available to the Customer at no additional cost, tools and mechanisms on a self-service basis to enable the Customer to access and monitor

- the Customer Data, as specified in the Details;
- (iii) without limiting clause 17(f), on expiry (and non-renewal) or termination of the Subscription Period, either:
- (A) return the Customer Data to the Customer; or
- (B) allow the Customer to extract the Customer Data,
- in accordance with the procedures and requirements set out in the Details. In respect of Customer Data that is Metadata, the Supplier's obligations under clause 5.6(e)(iii) apply to the extent it is reasonable and practicable for the Supplier to do so;
- (f) (**security**) if the Supplier will process, store or host any Customer Data in performing the As a Service, the Supplier must establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards to protect the Customer Data from destruction, loss and unauthorised access or alteration which are industry standard for products and services similar to the As a Service and as otherwise specified in the Details;
- (g) (**general support**) the Supplier must provide the general support specified in the Details during the hours of support specified in the Details;
- (h) (**warranties**) the Supplier warrants that the As a Service will be performed so as to meet or exceed the Service Levels (or if no service levels are agreed, within a reasonable time and manner);
- (i) (**Defects**) after being notified of a Defect or possible Defect in the As a Service by the Customer, the Supplier must take all reasonable measures (including providing a Workaround) to enable the Customer to continue to productively use the As a Service in accordance with the Service Levels (if any) or, if no Service Levels apply, in a reasonable time and manner;
- (j) (**Service Levels**) the Supplier must:
- (i) measure its performance against the Service Levels and provide a report to the Customer at the frequency specified in the Details; or
- (ii) provide or make available to the Customer at no additional cost, tools and mechanisms on a self-service basis to enable the Customer to monitor the Supplier's performance against the Service Levels, as specified in the Details;
- (k) (**Service Credits**) subject to clause 5.6(l), if the Supplier fails to meet the Service Levels, it must apply the Service Credits against the next invoice issued after the relevant Service Credits accrue, or in accordance with the process set out in the Details. If the Contract has terminated or expired, the Supplier must promptly pay the amount of the Service Credits to the Customer;
- (l) (**exceptions**) the Supplier is not in breach of its obligations to provide the As a Service, and is not responsible for any failure to meet the Service Levels to the extent that the breach or failure to meet the Service Levels arises as a result of:
- (i) any failure of the Customer to comply with its obligations under the Contract;
- (ii) any failure of a Customer Input (if applicable) to comply with the requirements specified in the Details;
- (iii) a failure of the Customer to ensure that the Customer's IT System and Network complies with the Minimum System Requirements;
- (iv) damage or unavailability caused by use of the As a Service by the Customer other than in accordance with the Documentation and the Contract;
- (v) any event or circumstance outside the reasonable control of the Supplier which could not have been prevented or avoided by the Supplier by reasonable diligence or reasonable precautions; or

- (vi) such other circumstances specified in the Details.

Where the Supplier, acting reasonably, determines that the breach or failure arises as a result of circumstances set out in this clause 5.6(l), then if the Customer requests the Supplier to remedy the breach or failure, the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier's then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that breach or failure; and

- (m) **(changes to As a Service)** the Supplier may:

- (i) implement changes, additions or deletions to the functions, features, performance, or other characteristics of the As a Service (including Service Levels); and
- (ii) correct errors or provide upgrades to the As a Service,

provided that the functionality, features or Service Levels of the As a Service used by the Customer do not materially decrease during the Subscription Period. Subject to this clause 5.6(m), such changes update and become part of the Requirements on and from the date the change is made to the As a Service;

If the Customer (acting reasonably) considers that any change to the As a Service is a material reduction of any functionality, feature or Service Level of the As a Service, the Customer may, without liability (including payment of early termination fees or fees under clause 21.3), cancel the As a Service by providing the Supplier 30 days' written notice.

5.7 ICT Professional Services

The following terms and conditions apply to the supply of any ICT Professional Services under the Contract:

- (a) **(service period)** the Supplier must provide the ICT Professional Services for the period specified in the Details;

- (b) **(supply of ICT Professional Services)** the Supplier must supply the ICT Professional Services:

- (i) with due care and skill;
- (ii) by the Delivery Date (if applicable) or otherwise in a timely manner;
- (iii) in accordance with the professional standards applicable to the ICT Professional Services as specified in the Details; and
- (iv) in accordance with the Requirements and Details;

- (c) **(Business Hours)** the Supplier must supply the ICT Professional Services during Business Hours and as otherwise specified in the Details;

- (d) **(warranties)** the Supplier warrants that:

- (i) the ICT Professional Services will be performed:

- (A) with due care and skill and in a timely manner;
- (B) by appropriately qualified and trained Personnel;

- (ii) at all times during the Warranty Period, the Deliverables provided under this clause 5.7 will comply with the Requirements;

- (e) **(Defects)** subject to clause 5.7(f), the Supplier must, at no cost to the Customer:

- (i) where the supply of the ICT Professional Services involves the supply of Deliverables, during the Warranty Period:

- (A) remedy any Defects in the Deliverables;

- (B) take all reasonable measures (including providing a Workaround) to enable the Customer to continue to productively use the Deliverables while remedying Defects; or

- (ii) where the supply of the ICT Professional Services does not involve the supply of specific Deliverables and such ICT Professional Services do not meet the requirements specified in the Details, take all necessary steps

to ensure that the ICT Professional Services comply with the requirements specified in the Details, provided that the Customer notifies the Supplier of any failure of the ICT Professional Services to meet those requirements within 30 days of delivery or such other period specified in the Details;

- (f) **(exceptions)** the Supplier is not required to remedy any Defects in the Deliverables to the extent that the Defect arises as a result of:
- (i) any failure of the Customer to comply with its obligations under the Contract;
 - (ii) modifications to the Deliverables that were effected or attempted by a person other than the Supplier, its Personnel or a person authorised by the Supplier; or
 - (iii) damage caused by the operation or use of the Deliverable other than in accordance with the Documentation and the Contract.

Where the Supplier, acting reasonably, determines that the Defect arises as a result of circumstances set out in this clause 5.7(f), then if the Customer requests the Supplier to remedy the Defect, the Supplier is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in Schedule 1 – Price and Payment Terms, or if none are stated, at the Supplier's then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that Defect.

6 Acceptance Testing

- (a) **(pre-installation testing)** The Supplier must inspect and test all Deliverables to ensure that they meet the Requirements and have no apparent Defects, before delivery or installation (as applicable).
- (b) **(Conduct of testing)** If and as specified in the Details, the parties will conduct testing of the Deliverables (**Tested Items**) to determine whether the Tested Items meet the Requirements. If the Details specify that testing is not

required, this clause 6 (other than clause 6(e)) does not apply.

- (c) **(failure to meet acceptance tests)** If, after testing under clause 6(b), the testing demonstrates that the Tested Item fails to meet the Requirements, then the Customer must notify the Supplier of the failure of the Tested Item to meet the Requirements and the Customer may, at its discretion, do one or more of the following:
- (i) require the Supplier to modify the Tested Item, or supply a replacement Tested Item, so that it meets the Requirements, in which case the Customer may further review or conduct further testing under this clause 6;
 - (ii) withhold payment of the Price payable in respect of the relevant Tested Item under the Contract until the Tested Item meets the Requirements;
 - (iii) accept the Tested Item subject to a reduction in the Price as reasonably determined by the Customer to reflect the Defects in the Tested Item, provided that if the Supplier does not agree with the determination then it may dispute the determination in accordance with clause 20; or
 - (iv) where a Tested Item has failed the review or testing more than twice, without limiting any other remedy, reject the Tested Item in which case the Supplier must refund any of the Price and other amounts paid by the Customer in respect of the rejected Tested Item.
- (d) **(notification of acceptance)** Where the testing demonstrates that a Tested Item meets the Requirements, the Customer will promptly notify the Supplier.
- (e) **(deemed acceptance)** Unless otherwise agreed by the parties, a Deliverable is deemed accepted:
- (i) where the Details state that the Deliverable is required to undergo testing, if the Customer fails to notify the Supplier under clause 6(d) within 10 Business Days of

being satisfied after reviewing or testing a Tested Item that it meets the Requirements;

- (ii) where the Details state that testing is not required for a Deliverable, 3 Business Days (or such other period agreed by the parties in writing) following delivery of the Deliverable unless the Customer notifies the Supplier of any Defect or other issue promptly following delivery of the Deliverable; or
- (iii) if the Customer uses the Deliverables in a production environment (if applicable), other than for testing, without the prior written consent of the Supplier.

Any review, testing or notification by the Customer does not constitute any waiver of rights, or give rise to any estoppel, if the Tested Item is later found not to comply with the Requirements.

7 Additional Products and Services

- (a) If the Customer wishes to purchase any additional Products and/or Services from the Supplier during the Term:
 - (i) it will notify the Supplier of its requirements for the supply of the additional Products and/or Services; and
 - (ii) the Supplier must submit its proposal to the Customer promptly (and within a time agreed) after receipt of the Customer's request.
- (b) The cost of any additional Products and/or Services must be calculated using the applicable rates set out in Schedule 1 - Price and Payment Terms, or if none are stated, at the Supplier's then current commercial rates.
- (c) If the proposal is accepted by the Customer (including any negotiated modifications), both parties must sign a statement of work (or other document acceptable to the Customer) for the additional Products and/or Services, and the additional Products and/or

Services will be provided as set out in the statement of work.

- (d) Each statement of work forms part of and is subject to the terms and conditions of the General Contract Conditions.

8 Subcontracting and Personnel

8.1 Subcontracting

The Supplier may only subcontract any part of its obligations under the Contract to Subcontractors identified in the Details or with the Customer's prior written consent. The Customer will not unreasonably withhold consent, but may give consent subject to reasonable conditions.

8.2 Personnel

- (a) **(responsibility)** The Supplier must ensure that its Personnel comply with all the obligations of the Supplier under the Contract, and the Supplier is liable to the Customer for all acts and omissions of its Personnel, as fully as if they were acts or omissions of the Supplier.
- (b) **(not Customer employees)** The Supplier is not, and its Personnel are not, employees of the Customer.
- (c) **(removal)** If the Customer reasonably requests, the Supplier must promptly remove from the Customer's premises and/or the performance of the Contract, any individual who is a member of the Supplier's Personnel used in performance of the Contract, and in consultation with the Customer replace them with another individual who is a member of the Supplier's Personnel acceptable to the Customer (acting reasonably), at no additional cost to the Customer.
- (d) **(background checks)** If specified in the Details or if the Customer reasonably requests at any time during the Term, prior to permitting any Personnel to be involved in the supply of any Deliverables under the Contract the Supplier must either:
 - (i) conduct, and provide to the Customer an original or certified copy of the results of, a criminal background check or any other

- checks required by the Customer for such Personnel; or
- (ii) procure the consent of such Personnel for the Customer to conduct a criminal background check or any other checks required by the Customer.
- (e) The Supplier must notify the Customer promptly if it becomes aware during the Term that any of its Personnel involved in the supply of the Products and/or Services have been convicted of any criminal offence or any conduct which involves dishonesty.

8.3 Key Personnel

In providing the Services, the Supplier must:

- (a) subject to this clause 8.3, ensure that the Key Personnel perform the roles allocated to them in the Details;
- (b) promptly notify the Customer if any Key Personnel is unavailable to perform his or her allocated role for any reason;
- (c) not remove or replace any Key Personnel without the Customer's prior written consent, except for serious illness, incapacity or death, or the termination of such Key Personnel's employment or engagement with the Supplier; and
- (d) ensure that any replacement Key Personnel have at least equivalent, qualifications and experience, and promptly provide information reasonably requested about any proposed replacement Key Personnel, including the curriculum vitae for each relevant individual.

The Customer may reject any proposed replacement Key Personnel on reasonable grounds, in which case the Supplier must promptly propose an alternative.

8.4 Non-solicitation

- (a) Neither party may, without the prior written consent of the other party, during and for 6 months after the expiry or termination of the Contract, directly or indirectly engage, employ, solicit or otherwise retain any person who is an employee of or engaged by the other party and who is or was engaged in the performance of the Contract.

- (b) Clause 8.4(a) does not prevent either party from employing or engaging a person who responds to a genuine advertisement placed by or on behalf of that party in good faith.
- (c) The parties agree that the restrictions in this clause 8.4 are necessary to protect the legitimate interests of each party.

9 Price

9.1 Pricing all inclusive

Unless otherwise stated in Schedule 1 – Price and Payment Terms, the Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST. If the Contract requires the Supplier to do or provide anything, and there is no separate Price specified for performing that obligation and no express right of the Supplier to charge the Customer an additional cost for performing that obligation, the Supplier must comply with the obligation at no additional cost. The Supplier must not invoice the Customer, and the Customer is not required to pay, any amount except for the Price or any amount for which the Supplier has an express right to charge the Customer under the Contract.

9.2 Expenses

The Customer will not reimburse any travel, accommodation or other expenses except where:

- (a) the expenses are stated in Schedule 1 – Price and Payment Terms or the Customer has approved the expenses in writing before they are incurred;
- (b) the Supplier provides satisfactory evidence of payment of the expenses;
- (c) in the case of travel or accommodation expenses:
 - (i) the Customer requests that the Supplier travel away from the agreed service location; and
 - (ii) the Supplier complies with the Customer's travel policy (a copy of which will be provided on request).

9.3 Price review

The Supplier may change the Prices in accordance with any Price review mechanism specified in Schedule 1 – Price and Payment Terms. No other Price change or new Price

will be effective unless the Customer agrees in writing.

10 Invoices and time for payment

The Supplier may invoice the Customer at the times and, where applicable, in the amounts set out in Schedule 1 – Price and Payment Terms. The Supplier must ensure that each invoice includes adequate information for the Customer to verify that the invoice is accurate, and will provide supporting documentation reasonably requested by the Customer.

Unless expressly stated otherwise in Schedule 1 – Price and Payment Terms, the Supplier may not:

- (a) invoice the Customer (and the Customer is not required to pay) for Deliverables until the relevant Deliverables have been provided, and the Deliverables meet the Requirements; or
- (b) charge or pass through any fees, costs or charges associated with a payment method.

Unless expressly stated otherwise in Schedule 1 – Price and Payment Terms, the Customer will pay each correctly rendered tax invoice that complies with this clause 10 within 30 days of receipt.

The Customer may, on prior written notice to the Supplier, set off any amounts payable by the Supplier to the Customer against any amounts payable to the Supplier by the Customer under the Contract.

The Customer may withhold payment of any amount which it disputes in good faith, until the dispute is resolved and it is determined that the amount is payable.

11 GST

- (a) **(construction)** In this clause 11, words and expressions which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) **(GST exclusive)** Unless expressly stated, all moneys or other sums payable or consideration to be provided under the Contract are exclusive of GST.
- (c) **(payment of GST)** If GST is payable on any supply made under the Contract,

the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time that the consideration for the supply is to be provided under the Contract.

- (d) **(tax invoice)** The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 11(c). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.
- (e) **(adjustment event)** if an adjustment event arises in respect of a taxable supply made by a supplier under the Contract, the amount payable by the recipient under clause 11(c) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (f) **(reimbursements)** Where a party is required under the Contract to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

12 Liability

- (a) **(contribution)** Neither party will be liable to the other whether in contract, tort (including negligence) or otherwise in connection with the Contract, for loss or damage to the extent that the other party (or the other party's Personnel) contributed to the loss or damage.
- (b) **(Consequential Loss)** Subject to clause 12(e), to the extent permitted by Law, neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party

- whether in contract, tort (including negligence) or otherwise in connection with the Contract.
- (c) **(Supplier cap on liability)** Subject to clause 12(e) and 13, to the extent permitted by Law, the maximum liability of the Supplier to the Customer, whether in contract, tort (including negligence) or otherwise in connection with the Contract (including under an indemnity), is limited to the amount specified in the Details. If no limitation of liability is specified for the Supplier in the Details, the Supplier's liability is not limited by the Contract.
- (d) **(Customer cap on liability)** Subject to clause 12(e), to the extent permitted by Law, the maximum liability of the Customer to the Supplier, whether in contract, tort (including negligence) or otherwise in connection with the Contract, is limited to the amount specified in the Details. If no limitation of liability is specified for the Customer in the Details, the Customer's liability is not limited by the Contract.
- (e) **(no limitation)** The exclusions and limitations of liability in clauses 12(b), 12(c) and 12(d) do not apply to liability in relation to:
- (i) personal injury, including sickness and death;
 - (ii) loss of, or damage to, tangible property; or
 - (iii) an infringement of Intellectual Property Rights or Moral Rights;
 - (iv) any fraudulent act or omission of the Supplier or its Personnel; or
 - (v) any breach by the Supplier or its Personnel of any obligation under clause 17 or 18.
- (f) **(mitigation)** A party who suffers loss or damage must use reasonable steps to mitigate its loss. The other party will not be responsible for any loss, damage or expenses to the extent that the injured party could have avoided or reduced the amount of the loss, damage or expense, by taking reasonable steps to mitigate its loss.
- (g) **(Australian Consumer Law)** To the extent that there is a failure by the Supplier to comply with any applicable guarantee under sections 54 to 62 of the Australian Consumer Law in respect of goods or services that are not of a kind that are ordinarily acquired for personal, domestic or household use or consumption then, to the extent permitted by Law, the Supplier's liability for failure to comply with any such guarantee is limited to one or more of the following, at the election of the Supplier:
- (i) where the Supplier has supplied goods:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - (ii) where the Supplier has supplied services:
 - (A) supplying the services again; or
 - (B) payment of the cost of having the services supplied again.
- For clarity, the limitations of the Supplier's liability under this clause 12(g) do not apply to limit any other liability of the Supplier under the Contract.
- ### 13 Limitation of liability for Customer Data
- (a) Subject to clause 13(c), to the extent permitted by Law, the maximum liability of the Supplier to the Customer, whether in contract, tort (including negligence) or otherwise for loss of or damage to Customer Data in the Supplier's provision of the As a Service (if applicable), is limited to the amount specified in the Details. If no limitation of liability is specified for loss of or damage to Customer Data in the Details, the Supplier's liability for loss of or damage to Customer Data is not limited by the Contract.

- (b) Subject to clause 13(c), the limitation of liability in clause 13(a):
- (i) applies to the Supplier's liability under the indemnity in clause 14.1(a)(i) for loss of or damage to Customer Data where such loss or damage was caused by or in connection with the Supplier's breach of the Information Privacy Act or the Privacy Act;
 - (ii) applies to the Supplier's liability under the indemnity in clause 14.1(a)(iv) for loss of or damage to Customer Data where such loss or damage was caused by or in connection with the Supplier's breach of clause 17 or 18; and
 - (iii) does not apply to the Supplier's liability under the indemnity in clause 14.1(a)(i) or 14.1(a)(iv) for any other loss, damage, liability, cost or expense (including legal expenses) suffered or incurred by the Customer or its Personnel, whether in contract, tort (including negligence), or otherwise in connection with any breach by the Supplier or its Personnel of any obligations under the Information Privacy Act or the Privacy Act or clause 17 or 18.
- (c) The limitation of liability in clause 13(a) does not apply to the Supplier's liability for any loss of or damage to Customer Data to the extent that such loss or damage was caused or contributed to by any fraudulent act or omission of the Supplier or its Personnel.
- (d) For the purposes of clause 12(b), the Supplier is not liable to the Customer for any Consequential Loss specified in paragraphs (a) and (b) of the definition of Consequential Loss suffered or incurred by Customer whether in contract, tort (including negligence) or otherwise in connection with loss of or damage to Customer Data, except that the Supplier remains liable for, and the limitation of liability in clause 13(a) applies to, any loss of or damage to data that is Customer Data arising out of any obligation of the Supplier under the Contract with respect to:
- (i) the hosting, storage, migration, conversion, cleansing or back-up

of data for the Customer in providing Products or Services; or

- (ii) Harmful Code.

14 Indemnity

14.1 Supplier indemnity

- (a) The Supplier releases, discharges and indemnifies the Customer and its Personnel from and against any loss, damage, liability, cost or expense (including legal expenses) suffered or incurred by any of them, whether in contract, tort (including negligence), or otherwise in connection with any:
- (i) failure by the Supplier or its Personnel to comply with applicable Laws;
 - (ii) fraudulent or wilfully wrong act or omission of the Supplier or its Personnel;
 - (iii) Claim by a third party that any Deliverable or use of any Deliverable in accordance with the Contract infringes the Intellectual Property Rights or Moral Rights of that third party (**IP Claim**);
 - (iv) breach by the Supplier or its Personnel of any obligation under clause 17 or 18; or
 - (v) Claim by a third party arising out of any negligent act or omission of the Supplier or its Personnel in the performance of the Supplier's obligations under the Contract.
- (b) The Supplier is not required to indemnify the Customer or its Personnel in respect of an IP Claim to the extent the IP Claim is caused by:
- (i) the combination, operation or use of the Deliverable with any other product, equipment business method, software or data except as expressly stated in the Details, any schedule to the Details or any document which the Details states will form part of the Contract or is otherwise incorporated by reference in the Contract;
 - (ii) any Intellectual Property Rights including Moral Rights, material or thing provided by any person other than the Supplier or its

- Personnel, including any Customer Input;
- (iii) the Supplier following any design, instruction or specification in respect of the Deliverable provided to the Supplier by or on behalf of the Customer under the Contract;
- (iv) any modification of the Deliverable by any person other than the Supplier, its Personnel or a person authorised by the Supplier; or
- (v) the continued use of the Deliverable after the Supplier has provided the Customer a new software version, patch or correction, or replacement part or other correction that would have overcome the infringement.

14.2 Conduct of IP Claims

(a) **(Customer responsibilities)** If an IP Claim is made against the Customer or its Personnel, the Customer must:

- (i) give written notice of the IP Claim to the Supplier as soon as practicable;
- (ii) subject to the Supplier agreeing to comply at all times with clause 14.2(b), permit the Supplier, at the Supplier's expense, to handle all negotiations for settlement and, as permitted by applicable Law and Queensland Government policy, to control and direct any settlement negotiations or litigation that may follow the IP Claim;
- (iii) where the Supplier is permitted to handle settlement negotiations or conduct litigation on behalf of the Customer under clause 14.2(a)(ii), provide all reasonable assistance to the Supplier in the Supplier's handling of any settlement negotiations and litigation.

(b) **(Supplier conduct of IP Claim)** If the Customer notifies the Supplier of an IP Claim and the Supplier is permitted to handle settlement negotiations or conduct litigation in respect of that IP Claim under clause 14.2(a), the Supplier must:

- (i) keep the Customer informed of all developments relating to the conduct of the defence or settlement of the IP Claim including providing copies of all relevant documents;
- (ii) comply with Queensland Government policy and obligations relevant to the conduct of the litigation and any settlement negotiations, and provide the Customer with such information and documents as may be requested by the Customer to enable the Customer to verify whether the conduct of the litigation or settlement negotiations by the Supplier is being conducted in accordance with such policy and obligations;
- (iii) notify the Customer in writing and consult with the Customer prior to making or accepting any offer of settlement in respect of the IP Claim; and
- (iv) satisfy any settlement or judgment awarded.

(c) **(Customer conduct of IP Claim)** If the Supplier is not permitted to handle settlement negotiations or conduct litigation in respect of an IP Claim under clause 14.2(a):

- (i) the Customer must:
 - (A) keep the Supplier informed of developments relating to the conduct of the defence or settlement of the IP Claim including providing copies of all relevant documents;
 - (B) notify the Supplier in writing prior to making or accepting any offer of settlement in respect of the IP Claim; and
 - (C) not make or accept any offer of settlement without the Supplier's prior written consent (not to be unreasonably withheld or delayed); and
- (ii) the Supplier must satisfy any settlement or judgment awarded.

14.3 Additional obligations regarding IP Claims

- (a) If there is an IP Claim, without prejudice to the Customer's rights under clause 14.1(a)(iii), the Supplier must, with the consent of the Customer (not to be unreasonably withheld or delayed) and at the Supplier's cost, either:
- (i) obtain for the Customer the right to the continued use of the Deliverable(s) in accordance with the Contract; or
 - (ii) replace or modify the affected Deliverable(s) so that the alleged infringement ceases ensuring that the replaced or modified Deliverable(s) provides the Customer with substantially similar functionality and performance as required in the Requirements.
- (b) If the Supplier is unable to comply with its obligations in clause 14.3(a), then without prejudice to any other right or action which the Customer has:
- (i) the Supplier must reimburse the Customer for the total Price paid for the Deliverable(s) and take all necessary action to ensure that the alleged infringement ceases; and
 - (ii) clause 21.1(f) applies.

15 Intellectual Property Rights

15.1 Pre-Existing Material

- (a) All Intellectual Property Rights in:
- (i) any Pre-Existing Material remain vested in the party that owns the Intellectual Property Rights (**Owner**);
 - (ii) any adaptation, translation or derivative of that Pre-Existing Material vests in, or is transferred or assigned to, the Owner immediately on creation.
- (b) The Supplier grants the Customer an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide and transferable licence to exercise all such Intellectual Property Rights in any Pre-Existing Material of the Supplier which

is incorporated into a Deliverable for the purposes of using, supporting and/or modifying that Deliverable, in the course of the Customer's functions or activities, and for such other purposes specified in the Details.

- (c) The licence to Pre-Existing Material in clause 15.1(b):
- (i) does not permit the Customer to manufacture, sell or otherwise commercially exploit any Pre-Existing Material of the Supplier unless otherwise specified in the Details; and
 - (ii) permits the Customer to sublicense any of the rights in clause 15.1(b) to any:
 - (A) Department;
 - (B) Public Service Office;
 - (C) Hospital and Health Service established under the *Hospital and Health Boards Act 2011* (Qld);
 - (D) contractor that is providing services to the Customer that includes the use of the Pre-Existing Material, provided that such sublicense automatically terminates at the end of the period of the service arrangement between the Customer and contractor; and
 - (E) other entity specified in the Details,
 at no additional cost, unless the additional cost is specified in the Details.

15.2 Customer owned New Material

- (a) This clause 15.2 applies where the Details specify the Customer will own the Intellectual Property Rights in some or all of the New Material.
- (b) On creation of the relevant Deliverable that incorporates the New Material:
- (i) all Intellectual Property Rights in the relevant New Material vests in or is assigned to the Customer; and

- (ii) the Customer grants the Supplier an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, sublicensable, non-transferable licence to exercise all such Intellectual Property Rights in the relevant New Material, for any purpose of the Supplier, subject to the Supplier removing any of the Customer's Confidential Information and Personal Information incorporated or otherwise contained in the New Material prior to exercising its rights under this clause 15.2(b)(ii), and the Supplier will confirm to the Customer when this has been done.

15.3 Supplier owned New Material

- (a) This clause 15.3 applies where the Details specify the Supplier will own the Intellectual Property Rights in some or all of the New Material.
- (b) On creation of the relevant Deliverable that incorporates the New Material:
 - (i) all Intellectual Property Rights in the relevant New Material vests in or is assigned to the Supplier; and
 - (ii) the Supplier grants the Customer an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide and transferable licence to exercise all such Intellectual Property Rights in the New Material, for the purposes of using, supporting and/or modifying the Deliverable incorporating the New Material, in the course of the Customer's functions or activities and for such other purposes specified in the Details.
- (c) The licence to New Material in clause 15.3(b):
 - (i) does not permit the Customer to manufacture, sell, or otherwise commercially exploit any New Material unless otherwise specified in the Details; and
 - (ii) permits the Customer to sublicense any of the rights in clause 15.3(b) to any:

- (A) Department;
- (B) Public Service Office;
- (C) Hospital and Health Service established under the *Hospital and Health Boards Act 2011* (Qld);
- (D) contractor that is providing services to the Customer that includes the use of the New Material, provided that such sublicense automatically terminates at the end of the period of the service arrangement between the Customer and contractor; or
- (E) other entity specified in the Details,

at no additional cost, unless the additional cost is specified in the Details.

15.4 Third Party Material

- (a) If a Deliverable incorporates any Third Party Material, the Supplier must grant (or procure the grant by the applicable third party) to the Customer of a non-exclusive licence to exercise all Intellectual Property Rights in such Third Party Material for the purposes of using, supporting and/or modifying the Deliverable incorporating the Third Party Material, in the course of the Customer's functions or activities and for such other purposes specified in the Details, and subject to any terms and conditions (including licence terms and conditions) specified in the Details.
- (b) Clause 15.4(a) does not apply to any Licensed Software or As a Service (where applicable) supplied under the Contract.

15.5 Warranty of authorisation

The Supplier warrants that:

- (a) it is authorised to grant the rights in this clause 15; and
- (b) to the best of its knowledge and belief having made all reasonable enquiries, the Deliverables and the use of the Deliverables as permitted by the Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

16 Customer Data

- (a) As between the Customer and the Supplier, the Customer owns all Customer Data, including any Intellectual Property Rights in Customer Data, on and from creation. The Supplier has no right, title or interest in Customer Data except as specified in this clause 16. The Supplier must not access, use or modify, or permit third parties to access, use or modify, Customer Data except:
- (i) to the extent required to perform the Contract;
 - (ii) in accordance with all applicable Laws; and
 - (iii) in the case of Customer Data that is Metadata, to the extent expressly permitted by the rights granted to the Supplier under clause 16(c).
- (b) The Supplier must promptly notify the Customer upon becoming aware of any loss, destruction or damage to any Customer Data.
- (c) For Customer Data that is Metadata, and which is not Personal Information:
- (i) the Customer grants to the Supplier a perpetual, non-exclusive right to use such Metadata solely for the internal business purposes of the Supplier as specified in the Details (if any); and
 - (ii) notwithstanding clauses 17(f), 17(g) or 17(h), the Supplier may retain a copy of such Metadata to enable the Supplier to exercise the right granted under clause 16(c)(i) and otherwise to the extent required by applicable Law.

17 Confidentiality

- (a) Each party as Recipient must:
- (i) keep confidential all Confidential Information of the Discloser;
 - (ii) not use the Confidential Information except for the purposes of the Contract; and
 - (iii) not disclose the Confidential Information except:

- (A) to its Personnel on a need to know basis for the purpose of performing its obligations under the Contract;
- (B) with the Discloser's consent;
- (C) to the extent required by Law;
- (D) to its professional advisors;
- (E) in the case of the Customer:
 - (1) to a Minister, their advisors or Parliament; or
 - (2) as required under the Right to Information Act or the Information Privacy Act; or
- (F) in the case of the Customer, it may disclose the terms of the Contract to any Queensland Government Body.

- (b) The Customer may publish information about the Contract on the Queensland Government's contract directory, where required or recommended by Queensland Government policy, excluding any such Queensland Government Body that is a direct competitor of the Supplier.
- (c) Where the Recipient discloses the Confidential Information to a third party as permitted under the Contract (other than disclosure by the Customer as permitted under clause 17(a)(iii)(E)), the Recipient must inform the third party of the confidential nature of the Confidential Information, and will be responsible for all use and disclosure of the Confidential Information by the Recipient's Personnel and professional advisors.
- (d) If specified in the Details or if the Customer otherwise requests, the Supplier must obtain from its Personnel (including Subcontractors) a signed confidentiality and privacy deed in a form reasonably acceptable to the Customer.
- (e) The Supplier must not make any public announcement or advertisement relating to the Contract except where the Customer has approved the

- proposed public announcement or advertisement in writing.
- (f) If requested by the Customer, on termination or expiry of the Contract, the Supplier must promptly return or destroy (at the Customer's option) all Customer Data, Confidential Information and Personal Information of the Customer and will confirm to the Customer when this has been done.
- (g) The Supplier may retain a copy of any Confidential Information of the Customer to the extent required by Law, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.
- (h) Nothing in this clause 17 limits any obligations of the Supplier with respect to the return, destruction or retention of Customer Data, Confidential Information and Personal Information of the Customer under clause 5.6.

18 Privacy

- (a) This clause 18 applies if the Supplier collects or has access to Personal Information in order to perform its obligations under the Contract.
- (b) When performing the Contract the Supplier must:
- (i) if the Customer is an 'agency' for the Information Privacy Act, other than for chapter 3 of the Information Privacy Act – comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to the Customer, as if the Supplier were the Customer; or
 - (ii) otherwise – comply with the Australian Privacy Principles in the Privacy Act.
- (c) The Supplier must:
- (i) not use Personal Information collected or accessed in connection with the Contract other than for the purpose of performing its obligations under the Contract;
 - (ii) not disclose Personal Information without the prior written consent of the Customer, unless required or authorised by Law;
- (iii) not transfer any Personal Information collected or accessed in connection with the Contract, outside of Australia, except:
- (A) with the prior written consent of the Customer; or
 - (B) where the Personal Information is about the Customer's ordering officer or other personnel which is provided in connection with account management purposes or service delivery management under the Contract;
- (iv) fully cooperate with the Customer to enable the Customer to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints; and
- (v) comply with such other privacy measures as the Customer reasonably advises the Supplier in writing from time to time.
- (d) The Supplier must immediately notify the Customer upon becoming aware of:
- (i) any breach of this clause 18; or
 - (ii) any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with the Contract.
- (e) Nothing in this clause 18 is intended to limit any obligation of the Supplier under the Information Privacy Act or Privacy Act (as applicable), that the Supplier may have as an organisation with respect to Personal Information.

19 Anti-competitive conduct, conflict of interest and criminal organisations

19.1 Anti-competitive conduct

The Supplier warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in breach of any Law in connection with the Contract (including any related procurement process) or any actual or potential contract with any entity for products

and services similar to the Products and Services.

19.2 Conflict of Interest

- (a) The Supplier warrants that it and its Personnel:
- (i) do not hold any office or possess any property;
 - (ii) are not engaged in any business or activity; or
 - (iii) do not have any obligations,
- where a Conflict of Interest is created, or might appear to be created, in conflict with the Supplier's obligations under the Contract, except as disclosed in the Details.
- (b) If, during the Term, a Conflict of Interest arises, or appears likely to arise, the Supplier must notify the Customer promptly and take such steps to resolve or otherwise deal with the Conflict of Interest to the reasonable satisfaction of the Customer.
- (c) If the Customer requests, the Supplier must obtain from its Personnel a signed conflict of interest declaration in a form acceptable to the Customer.

19.3 Criminal organisation

The Supplier warrants that neither the Supplier and, to the best of its knowledge and belief having made all reasonable enquiries, its Personnel, have not been convicted of an offence under the Criminal Code where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of the Criminal Code.

19.4 Warranties are ongoing

The warranties in this clause 19 are provided as at the date of the Contract and on an ongoing basis. The Supplier warrants that it will immediately notify the Customer if it becomes aware that any warranty made in this clause 19 was inaccurate, incomplete, out of date or misleading in any way when made, or becomes inaccurate, incomplete, out of date or misleading in any way.

20 Disputes

- (a) Neither party will commence court proceedings or action against the other party under or in connection with the Contract (other than where urgent

interlocutory relief is required) unless it has first attempted to resolve the dispute under this clause 20.

- (b) Either party may give the other a notice in writing (**dispute notice**) setting out the details of the dispute. Within 5 Business Days after the date on which a party gives the other party a dispute notice (**dispute notice date**), representatives of the parties must meet and use reasonable endeavours to resolve the dispute.
- (c) If the dispute is not resolved under clause 20(b), senior management representatives of the parties must, within 10 Business Days after the dispute notice date, meet and use reasonable endeavours to resolve the dispute.
- (d) If the dispute is not resolved under clause 20(c) within 30 Business Days after the dispute notice date (or such other time as agreed between the parties), the dispute must be referred to mediation according to clause 20(e).
- (e) Where the dispute is referred to mediation, the parties:
- (i) will conduct the mediation in Brisbane in accordance with the Resolution Institute's Mediation Rules operating at the time the dispute is referred to the Resolution Institute, and the terms of those rules are incorporated in the Contract;
 - (ii) will jointly appoint the mediator, or if the parties cannot agree on the mediator within 5 Business Days of referral to mediation, the Chairperson of the Queensland Chapter of the Resolution Institute will determine the mediator;
 - (iii) may be legally represented at the mediation;
 - (iv) will each bear their own costs concerning the mediation, and will bear the costs of the mediation venue and the mediator equally; and
 - (v) will continue to perform their obligations under the Contract to the extent practicable having regard to the nature of the dispute

notwithstanding the existence of a dispute, unless the parties agree otherwise in writing.

If the mediation does not resolve the dispute, either party may commence any other form of action to resolve the dispute, including court proceedings.

21 Termination

21.1 For cause – by Customer

The Customer may terminate the Contract in whole or part immediately on written notice if:

- (a) the Supplier breaches the Contract and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within 30 days (or such longer period stated in the notice in writing) of the Customer issuing a notice of the breach to the Supplier;
- (b) a Conflict of Interest arises and has not been, or in the Customer's view cannot be appropriately managed, to the Customer's satisfaction;
- (c) the Supplier ceases business or indicates that it is unable or unwilling to complete the Contract;
- (d) the Supplier is or becomes Insolvent; or
- (e) the Customer believes the Supplier has breached any warranty in clause 19.1, 19.3 or 19.4;
- (f) the Supplier is unable to comply with its obligations in clause 14.3(a).

Without limiting any other rights or remedies the Customer may have, if the Customer terminates under this clause 21.1, the Customer may obtain from any other source a reasonably similar alternative to the Deliverables in which case the Supplier is liable to the Customer for any reasonable losses, damages or expenses incurred (including any price difference between the Deliverable and the similar alternative) or suffered by the Customer.

21.2 For cause – by Supplier

The Supplier may terminate the Contract immediately on written notice only if the Customer has:

- (a) not paid any amount which is undisputed and properly payable, and:

- (i) the Supplier has notified the Customer of the outstanding amount stating that it will terminate the Contract if the Customer does not pay such amount within 30 days (or such longer period stated in the notice in writing); and
- (ii) the period specified in the notice given under clause 21.2(a)(i) expires without the Customer disputing the amount or making payment;

- (b) breached its obligations under:

- (i) clause 15 or clauses 5.3, 5.5 or 5.6 regarding the Supplier's Intellectual Property Rights; or
- (ii) clause 17,

and the Customer has not rectified that breach within 30 days (or such longer period as stated in the notice in writing) of receipt of a notice in writing from the Supplier specifying the details of the breach.

21.3 For convenience

- (a) The Customer may terminate the Contract in whole or part at its absolute discretion by giving at least 30 days' written notice. The Supplier must comply with any directions given by the Customer in the notice in connection with the termination.
- (b) If the Customer terminates the Contract under this clause 21.3, the Customer will pay:
 - (i) the Supplier for the work performed and Deliverables supplied in accordance with the Contract but not yet invoiced, substantiated to the reasonable satisfaction of the Customer; and
 - (ii) either:
 - (A) the Supplier's reasonable and documented expenses incurred directly relating to the termination; or
 - (B) any amount specified in the Details.
- (c) The Customer will have no other liability to the Supplier relating to the termination. In no case will the

compensation payable as a consequence of termination by the Customer under this clause 21.3 exceed the Price that would have been payable if the Contract had not been terminated.

- (d) The Supplier must take reasonable steps to minimise its expenses relating to the termination.

21.4 Suspension

- (a) In addition to the Customer's termination rights under this clause 21, the Customer may suspend the Contract in whole or part immediately on written notice to the Supplier for the period specified in the notice:
- (i) at its absolute discretion; or
 - (ii) in any circumstances described in clause 21.1, provided that if the Customer seeks to suspend the Contract in the circumstances described in clause 21.1(a):
 - (A) the Customer has issued a notice of the breach to the Supplier; and
 - (B) if the breach described in clause 21.1(a) was capable of being remedied, the Supplier has not remedied the breach within 30 days (or such longer period stated in the notice in writing).
- (b) The Customer may end the suspension on written notice.
- (c) The Supplier must re-commence performance as soon as reasonably practicable after receiving the Customer's notice ending the suspension.
- (d) If the Customer suspends the Contract under clause 21.4(a)(i):
- (i) the Customer will pay the Supplier's reasonable and documented expenses directly resulting from the suspension; and
 - (ii) where the suspension continues for 30 days or more, the Supplier may remove or replace any Key Personnel, provided that where the Customer ends the suspension under clause 21.4(b) the Supplier must provide

replacement Key Personnel approved by the Customer with at least equivalent skills, qualifications and experience. The Customer may reject any proposed replacement Key Personnel on reasonable grounds, in which case the Supplier must promptly propose an alternative.

- (e) The Customer will have no other liability to the Supplier relating to the suspension. The Supplier must take reasonable steps to minimise its expenses relating to the suspension.

21.5 Consequences

Termination or suspension of the Contract will not affect the accrued rights and remedies of the parties prior to termination or suspension.

22 Assignment

22.1 By Supplier

The Supplier may not assign, transfer or novate any of its rights or obligations under the Contract without the Customer's prior written consent.

22.2 By Customer

The Customer may assign, transfer or novate any of its rights or obligations under the Contract:

- (a) with the Supplier's prior written consent; or
- (b) on written notice to the Supplier, in connection with a Machinery of Government Change.

For clarity, transfer of the Customer's rights and obligations within the same legal entity is not an assignment or novation.

The Contract is for the benefit of, and will bind the parties and their successors and permitted assigns.

22.3 Acting reasonably

Both parties will act reasonably in considering a request by the other party to assign, transfer or novate the Contract.

22.4 Transferability and portability of Products and/or Services

- (a) Notwithstanding any other provision of the Contract, the Supplier agrees that the Customer is entitled to transfer any Product and/or Service to other

Queensland Government Bodies, on the same terms and conditions, but only as a consequence of a Machinery of Government Change.

- (b) If Products and/or Services are transferred in accordance with clause 22.4(a), the Supplier:
- (i) must immediately notify the Customer of any proposed reduction in costs which may occur; and
 - (ii) may notify the Customer of any proposed additional fees for any additional:
 - (A) usage arising from the Machinery of Government Change, to the extent that such usage is greater than any limits on usage specified in the Details (including, in the case of Licensed Software, any limit on usage specified in the Class of Licence); and
 - (B) costs directly incurred as a result of the provision of additional overall Services.
- (c) The Supplier agrees to negotiate with the Customer in good faith to vary or consolidate the Contract to:
- (i) adjust the Price as a result of notice of the matters raised in subclause 22.4(b); and/or
 - (ii) comply with any specific requirements of the Queensland Government Body to which the Contract is transferred following the Machinery of Government Change.

23 General

The parties agree that:

- (a) **(act reasonably)** they will act reasonably in exercising all of its rights under the Contract;
- (b) **(Representatives)** each party may nominate one or more employee(s) as its nominated representative(s) in the Details (**Authorised Representative**). Any direction, consent or approval given by any person other than a party's Authorised Representative will not bind
 - (c) **(communication)** they will direct all enquiries relating to the Contract to the other party's Authorised Representative, or to another person if the other party directs;
 - (d) **(notices)** they will send all notices relating to the Contract to the other party's Authorised Representative (or as updated under clause 23(b));
 - (e) **(variation)** the Details, any Additional Provisions, any statement of work or any document which the Details state will form part of the Contract or is otherwise expressly incorporated by reference may only be varied by written agreement between the parties signed by Authorised Representatives of the parties;
 - (f) **(entire agreement)** the Contract sets out all the parties rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in the Contract;
 - (g) **(waiver)** clauses and rights in the Contract can only be waived in writing signed by the waiving party. Failure or delay of a party in exercising a right under the Contract does not waive the party's rights. A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights, or the same rights in other circumstances;
 - (h) **(relationship)** their relationship is of principal and contractor. The Contract does not create any partnership, joint venture or employment relationship. The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of the Customer;
 - (i) **(exclude implied terms)** that the *Sale of Goods (Vienna Convention) Act 1986*

(Qld) does not apply, to the extent that the parties are permitted by Law to exclude it;

- (j) **(survival)** clauses 1.2, 1.3, 4(p), 4(q), 4(s), 5.2(g), 5.4(g), 5.6(k), 8.4, 12, 13, 15, 16, 17, 18, 20, 21.5, 22.3, 23(e), (f), (g), (h), (i) (j), (k) and (l) any other clause in the Contract which is expressed to survive or by its nature survives, will survive termination or expiry of the Contract for any reason;
- (k) **(costs)** each party will bear its own costs in relation to the preparation, negotiation and execution of the Contract and any variations;
- (l) **(governing law)** the Contract is governed by and is to be construed in accordance with the laws applicable in Queensland. Each party submits to the jurisdiction of the courts of Queensland.

24 Definitions and Interpretation

24.1 Definitions

Actual Acceptance Date or AAD means the date the Deliverable is accepted under clause 6(d) or is deemed accepted under clause 6(e).

Additional Provisions means any terms and conditions agreed between the Customer and the Supplier in accordance with clause 1.4 and which may be specified in the Details or any other document which makes up the Contract.

As a Service means the IaaS, PaaS, SaaS or other (as applicable) as specified in the Details.

As a Service Location means the physical location, as specified in the Details, at which the Customer Data will be stored, hosted and processed as part of the As a Service.

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Authorised Representative has the meaning given in clause 23(b).

Business Day means any day other than a Saturday, Sunday or public holiday at the Customer's address.

Business Hours means between 9.00am and 5.00pm on Business Days unless otherwise specified in the Details.

Claim means any claim, action, proceeding, demand or investigation of any kind, and includes the allegation of a claim.

Class of Licence means the specific rights granted by the Supplier to the Customer to use the Licensed Software that are specified in the Details.

Confidential Information means all information disclosed by or on behalf of the Customer or the Supplier (**Discloser**) to the other party (**Recipient**) in connection with the Contract or created using that information, which is confidential in nature and designated as confidential, or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information. Confidential Information does not include any information which:

- (a) is or becomes public, except through breach of a confidentiality obligation;
- (b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient; or
- (c) the Recipient receives from another person on a non-confidential basis, except through breach of a confidentiality obligation.

Conflict of Interest includes any actual, reasonably anticipated or perceived conflict of interest, whether personal, financial, professional or otherwise.

Consequential Loss means:

- (a) indirect or consequential loss not arising as a natural consequence of a breach or other event giving rise to liability of a party;
- (b) any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity; or
- (c) loss of data, other than loss of data arising out of any obligation of the Supplier under the Contract with respect to:
 - (i) the hosting, storage, migration, conversion cleansing or back-up of data for the Customer in providing Products or Services; or
 - (ii) Harmful Code.

Contract means the agreement between the Customer and the Supplier, made up of documents specified in clause 1.3.

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

Criminal Code means the Criminal Code set out in Schedule 1 of the *Criminal Code Act 1899* (Qld).

Customer means the entity specified in the Details.

Customer Data means any information, material, data, dataset or database:

- (a) provided by or on behalf of the Customer to the Supplier for use, processing, storing or hosting by the Supplier in the provision of the Products or Services; and
- (b) created, produced or derived from the use, processing, storing or hosting of that information, material, data, dataset or database in the Supplier's provision or the Customer's use of the Products or Services,

and includes Metadata but does not include any Pre-Existing Material or New Material owned by the Supplier.

Customer Inputs means the Customer's equipment, premises, documents, access and any other resources that the Customer will provide or make available to the Supplier, which the Supplier will use to provide the Deliverables, set out in the Details.

Customer's IT System means the Customer's physical and computing environment that is operated, maintained or provided by or on behalf of the Customer relevant to the Deliverables under this Contract and includes the Designated Environment.

Defect means a failure of a Deliverable to comply with the Requirements.

Deliverables means the Products, Services and documentation to be provided to the Customer including as described in the Details and the Requirements.

Delivery Date means any date and time for delivery of a Deliverable as stated in the Details.

Department means any entity declared to be a department of government by the Governor in Council by gazette notice.

Design Specification has the meaning given to it in clause 5.5(a).

Designated Environment means the physical and computing environment specified in the Details with which the Deliverables must operate.

Details means a document titled '*General Contract Details – ICT Products and Services*' that contains information about a specific contract between the Customer and Supplier, which may be in a similar format to the '*General Contract Details – ICT Products and Services*' document available at:

<https://publications.qld.gov.au/dataset/qitc-framework>

Developed Software means any new software or software application that is to be developed and which comprises New Material, as further specified in the Details. Developed Software does not include any configuration or customisation of Licensed Software to activate or implement add-ons, features or functionality within such Licensed Software or any adaptations, translations or derivatives of such Licensed Software.

Discloser has the meaning given in the definition of Confidential Information.

Document includes:

- (a) any paper or other material on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device; and/or
- (d) a piece of text or text and graphics stored electronically as a file for manipulation by document processing software.

Documentation means any training manuals, user manuals, operating manuals, technical manuals or other documentations specified in the Details.

General Contract Conditions - ICT Products and Services or **General Contract Conditions** means this document titled '*General Contract Conditions - ICT Products and Services*'.

GST has the meaning given in the GST Law and includes an amount payable under or in accordance with section 5 of the *GST and Related Matters Act 2000* (Qld) or equivalent legislation.

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

Hardware means the hardware specified in the Details.

Hardware Maintenance Services means the hardware maintenance services specified in the Details.

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

ICT Professional Services means the information, communications or technology related services described in the Details. For clarity, ICT Professional Services do not include services provided under the direction, control and supervision of the Customer, or any other service the Supplier will provide to the Customer under clause 5.7 of the Contract.

Information Privacy Act means the *Information Privacy Act 2009* (Qld).

Infrastructure means the hardware, software, communications services and other resources, services and facilities (whether of the Supplier or a third party provider to the Supplier) for the Supplier's provision of the As a Service.

Infrastructure as a Service (IaaS) means the service provided by the Supplier to the Customer to provision processing storage, networks and other physical or virtual machines, hardware or other data centre components and which allows the Customer to control the operating systems, Customer Data and applications stored on the IaaS, as specified in the Details.

A person or entity is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act 2001 (Cth));

- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken (under section 459F(1) of the Corporations Act 2001 (Cth)) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001 (Cth) (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due, or

something having a substantially similar effect to (a) to (g) happens in connection with that person or entity under the Laws of any jurisdiction.

Intellectual Property Rights includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Contract, but excludes Moral Rights.

IP Claim has the meaning given in clause 14.1(a)(iii).

Key Personnel means the people identified in the Details as 'key personnel'.

Laws means all:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations in

force from time to time in Queensland and any other relevant jurisdiction;

- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables; and
- (c) the requirements of any authority with jurisdiction in respect of the Deliverables and/or the Site, as applicable.

Licensed Software means the software specified in the Details, and includes (as applicable);

- (a) any configuration or customisation of the Licensed Software to activate or implement add-ons, features or functionality within the Licensed Software or any adaptations, translations or derivatives of the Licensed Software; or
- (b) any Developed Software where the Details specify the Supplier will own the Intellectual Property Rights in that Developed Software.

Machinery of Government Change means a transfer of responsibility, function or operations, in whole or in part, from a Queensland Government department or agency or Queensland Government Body to another Queensland Government department or agency or Queensland Government Body.

Mandatory Engineering Changes means any changes and upgrades to the Supported Hardware which are authorised by the manufacturer as mandatory and which are designed to improve the safety, performance or reliability of the Supported Hardware.

Material means any Document or other item in which Intellectual Property Rights subsist.

Metadata means any system-generated data that is created or generated in connection with the Customer's use of the Products or Services, including in the use, processing, storing or hosting of any information, material, data, dataset or database in the provision of the Products or Services and includes any descriptive, structural and administrative metadata.

Minimum System Requirements means the minimum requirements for the Customer's IT System and Networks to access and use the As a Service in accordance with the

applicable Requirements and Service Levels, as specified in the Details.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world, whether existing before or after the date of Contract.

Network means any network that connects to computers to facilitate electronic exchange of information and includes the Internet, virtual private networks and telecommunications services.

New Material means all Material that is created, written, developed or otherwise brought into existence by or on behalf of the Supplier for the Customer in the course of the Supplier performing its obligations under the Contract, and includes the Material specified in the Details as New Material. New Material does not include Pre-Existing Material, Third Party Material, Licensed Software or As a Service.

New Release means software provided primarily to provide an extension, alteration, improvement or additional functionality to the Licensed Software or Supported Software (as applicable), but does not include any software that is generally licensed by the Supplier to its customers as a different product.

Personal Information has the meaning given:

- (a) for the purpose of the Information Privacy Act – in that Act; or
- (b) for the purposes of the Privacy Act – in that Act.

Personnel means officers, directors, employees and agents and, in the case of the Supplier, includes any Subcontractor and the Subcontractor's officers, directors, employees and agents.

Platform as a Service (PaaS) means the hosted environment provided by the Supplier to the Customer to configure, deploy and run applications using programming languages and tools supported by the Supplier and which allows the Customer to control the deployed applications on the PaaS as specified in the Details.

Pre-Existing Material means all Material, which existed at the Contract start date or

which is developed independently of the Contract, and includes the Material specified in the Details as Pre-Existing Material. Pre-Existing Material includes any adaptation, translation or derivative of the Pre-Existing Material, but does not include Licensed Software, As a Service or any Third Party Material.

Price means the price or prices described in the Details or Schedule 1 – Price and Payment Terms or calculated using a calculation method in the Details or Schedule 1 – Price and Payment Terms.

Privacy Act means the *Privacy Act 1988* (Cth).

Products means products the Supplier will provide, described in the Details.

Public Service Office has the meaning given in the *Public Service Act 2008* (Qld).

Queensland Government Body means any of:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local authority);
- (b) a body established by the State of Queensland through the Governor or a Minister; or
- (c) an incorporated or unincorporated body over which the State of Queensland exercises control.

Recipient has the meaning given in the definition of Confidential Information.

Related Body Corporate has the meaning given in the Corporations Act.

Requirements means the standards, Specifications and other requirements for the Deliverables and the performance of the Supplier's other obligations under the Contract, which are set out in the Contract.

Right to Information Act means the *Right to Information Act 2009* (Qld).

Services means the services the Supplier will perform, described in the Details.

Service Credits means the service credits in respect of Deliverables described in the Details.

Service Levels means the service levels in respect of Deliverables described in the Details.

Site means each of the site or premises at which the Deliverables are to be provided as specified in the Details.

Software as a Service (SaaS) means the provision of software or an application which is delivered as an online service by the Supplier as specified in the Details.

Software Support Services means the support services set out in the Details.

Specifications:

- (a) in respect of Products, Services and Deliverables, mean the requirements set out or referred to in the Details, including all agreed requirements as to quality, functionality, performance, interoperability, testing and other matters;
- (b) in respect of the Licensed Software, Hardware and As a Service, includes any published specifications of the Supplier or a third party manufacturer or supplier relating to the Licensed Software, Hardware and As a Service (as applicable).

Subcontractor means a third party to whom the Supplier subcontracts the performance or supply of any Deliverables in accordance with clause 8.1.

Subscription Period each period during which the Supplier will provide the As a Service to the Customer as specified in the Details.

Supplier means the entity specified in the Details.

Supported Hardware means the hardware in respect of which the Supplier will supply the Hardware Maintenance Services as specified in the Details.

Supported Software means the software which is supported in accordance with clause 5.4 and as specified in the Details.

Term has the meaning given in clause 3.

Tested Item has the meaning given in clause 6(b).

Third Party Material means all Material in which the Intellectual Property Rights are owned by a party other than the Supplier or the Customer, and includes the Material

specified in the Details as Third Party Material.

Update means a version of the software produced primarily to overcome Defects in the Licensed Software or Supported Software (as applicable).

Warranty Period means the warranty period as specified in the Details, commencing on the AAD of that Deliverable unless otherwise specified in the Details.

Workaround means a fix or alternative procedure to temporarily address a Defect.

24.2 Interpretation

Unless it is expressly stated that a different rule of interpretation will apply:

- (a) (**agreement**) a reference to an agreement includes any variation or replacement of the agreement;
- (b) (**Business Day**) if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- (c) (**currency**) all currency amounts are in Australian dollars;
- (d) (**headings**) headings are provided for convenience and do not affect the interpretation of the documents making up the Contract;
- (e) (**includes**) "include", "includes" and "including" must be read as if followed by the words "without limitation";
- (f) (**corresponding meaning**) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (g) (**joint and several**) agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (h) (**law**) a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;

- (i) (**person**) a person includes the person's executors, administrators and permitted novatees and assignees;
- (j) (**construction**) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it;
- (k) (**severability**) if any part of the Contract is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract will not apply but the other parts of the Contract will not be affected.

24.3 Notices

- (a) A notice will be deemed to be given:
 - (i) if posted:
 - (A) within Australia to an Australian postal address, – 5 Business Days after the date of posting; or
 - (B) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after posting;
 - (ii) if delivered by hand during a Business Day – on the date of delivery;
 - (iii) if emailed – subject to clause (b) below, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,

except that a delivery by hand or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.
- (b) A notice under clause 20 or 21 which is sent via email must also be sent by post, hand delivery or in any other way permitted by Law.

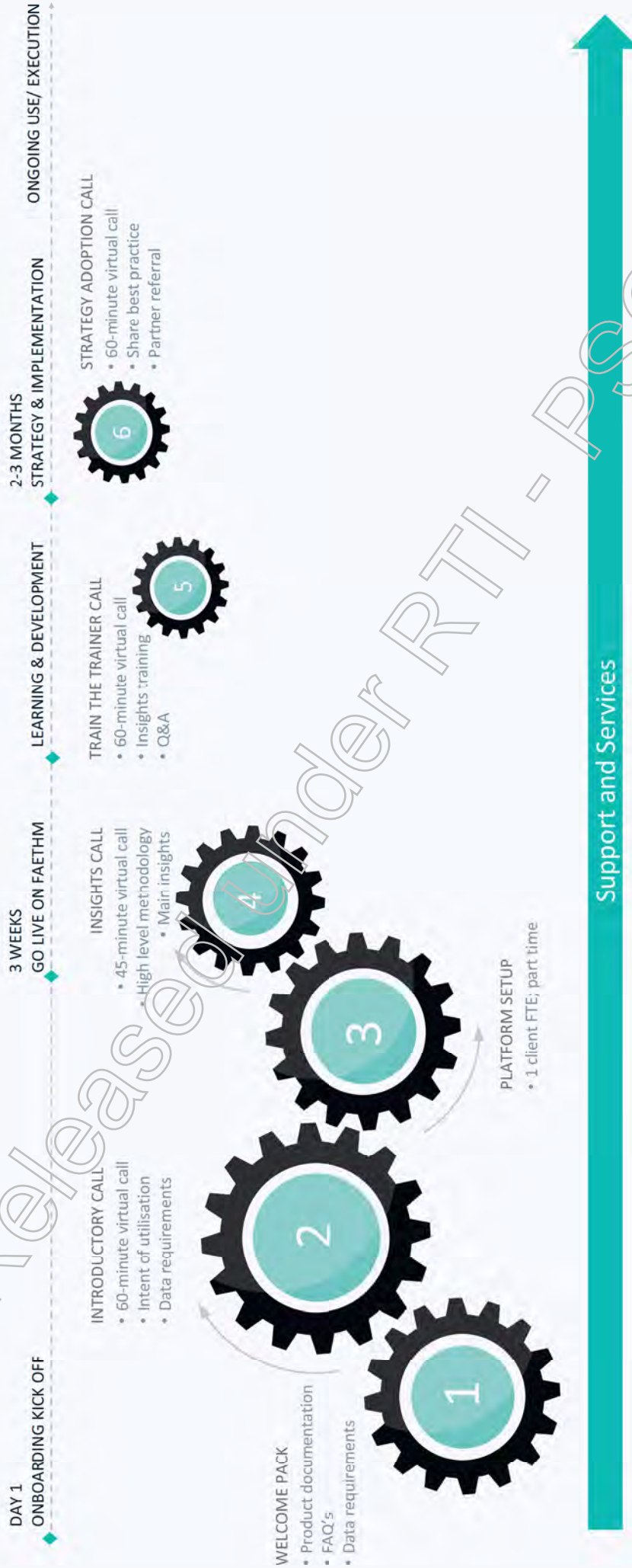
Released Under RTI - PSC

Welcome!

YOUR FAETHM EXPERIENCE

Faethm provides clients with technology and workforce automation, augmentation and addition (beta) insights through predictive scenario modelling. These insights can be used alongside organisation context to inform and enable workforce and technology strategy and implementation decisions.

FAETHM ROADMAP



ONBOARDING

Introduction, set-up and training on the Faethm Platform



***INTRODUCTORY CALL**

Introduction, set-up, data requirements and familiarisation with the Faethm platform

Agenda

Executive Sponsor lead:

- Intent of utilisation
- Goal/s for organisation
- Define team success

Faethm CSM Lead:

- Overview of data requirements and process for launch (important to note that the lead data analyst should be present)

Next Steps

- Workforce data upload

***INSIGHTS CALL (Once Live)**

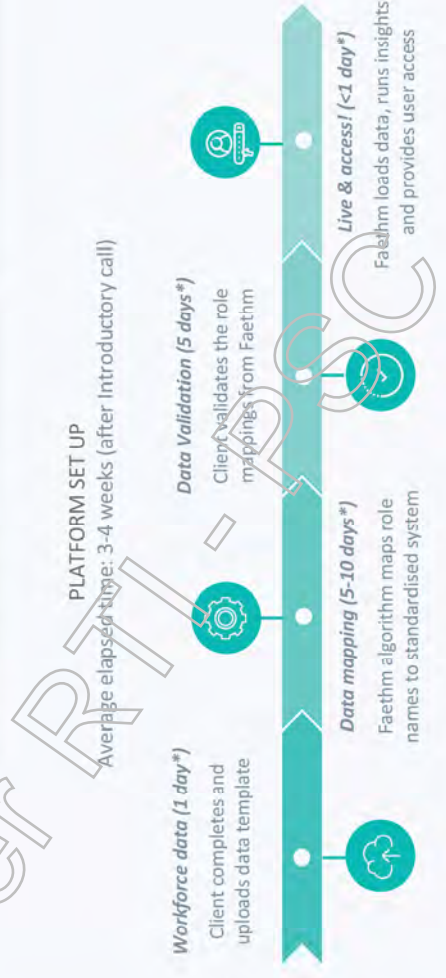
Finalise the on-boarding process by reviewing the live platform to delve into the insights.

Agenda

- High level methodology
- Draw out main insights
- Case studies and considerations
- Q&A

Next Steps

- Insights exploration



OPTIONAL ADVANCED ONBOARDING

- Two, 45-minute, "Insights" calls, or;
- Two "Train the trainer" calls
- Custom role creation of five unique company roles

INCLUDED IN CONTRACT

OPTIONAL ADVANCED

FAETHM

LEARNING & DEVELOPMENT

Create your own in-house Faethm expert and/or team:

Once you have had time to digest high level insights, Faethm can partner with you to help develop an in-house SME or trainer.

The aim is to provide an in-depth understanding of and use core Faethm functionality in your relevant teams covering:

- Faethm's analytics engine
- Automation, augmentation and addition (beta)
- Scenario modelling via filters
- Dashboard insights
- Technology adoption curves
- Chart interpretation
- Job Corridor

✔ TRAIN THE TRAINER CALL

Create your own internal Faethm SME. Enable an in-depth understanding of the platform's features and capability.

Agenda

- Ensure understanding of the platform
- Data insights and features
- Detailed methodology
- Admin capabilities
- FAQ's and guides
- Escalation points

Next Steps

- Faethm SME upskilled to train workforce if required

✔ INCLUDED IN CONTRACT

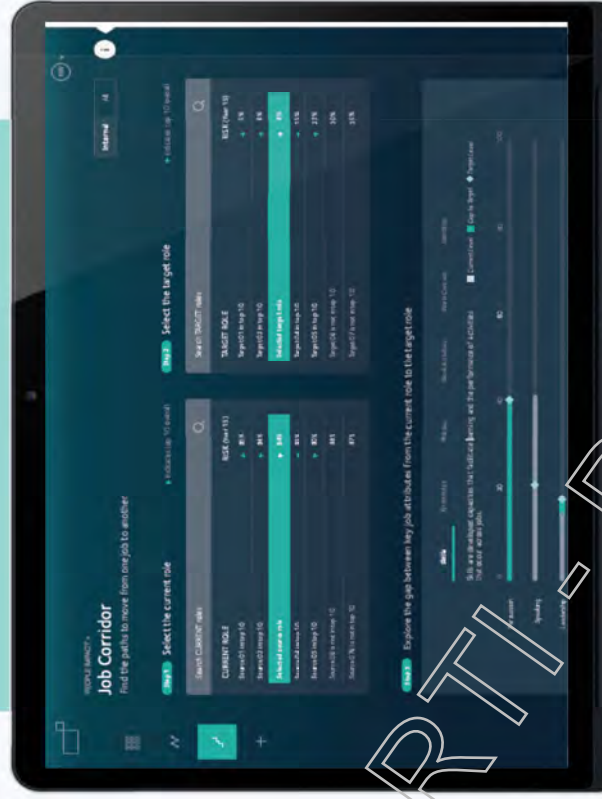
OPTIONAL ADVANCED



STRATEGY

TECHNOLOGY

PEOPLE



FAETHM

STRATEGY & IMPLEMENTATION

Implementation of future workforce and technology programs

Use Faethm to create a common language and understanding of emerging technologies and their impacts in and beyond the organisation with the board and executives.

Validate or challenge technology priorities and build on investment in Future of Work studies, business model design, technology and workforce strategy.

Target optimal value technology pilots and identify roles at risk. Scope change for impacted business units, processes, people and locations.

Execute transformation; implement L&D and change management to cross-skill people and transition them to future roles



- Predict and report on tech adoption
- Benchmark into the future
- Identify company-specific AI use cases
- Assess technology roadmaps
- Build view of future workforce

- Identify efficiencies to streamline
- Prioritise emerging technologies to pilot
- Inform business model innovation
- Develop business cases for investment
- Prepare employees for change

- Inform strategies for technologies
- Create company location strategies
- Mitigate future redundancies
- Identify job re-skilling pathways
- Re-define operations

- Shape change management
- Execute re-skilling & hiring programs
- Deploy technology pilot programs
- Build in-house capability
- Guide public relations & legal counsel

Example use cases:



STRATEGY ADOPTION CALL

Start to build your transformation agenda using contextually specific data and insights.

Agenda

- Next steps and roadmap
- Usage feedback
- Share best Practice
- Partnering options
- Updates and enhancements

Next Steps

- Ensure success and goal alignment

OPTIONAL ADVANCED CONSULTING

Consulting services, (can involve working with a partner of your choice) e.g.,

- Use cases
- Communications
- Insight translations & reporting
- Workforce reskilling programs
- Technology acquisition support

FAETHM INTELLIGENCE

CLIENT / PARTNER EXECUTION


INCLUDED IN CONTRACT

OPTIONAL ADVANCED

FAETHM

SUPPORT & SERVICES

Consultation support, ongoing assistance and updates

 <h3>Customer Support</h3> <ul style="list-style-type: none">Regular check insQuarterly data reloadsPlatform Q&A's	 <h3>Technical Support</h3> <ul style="list-style-type: none">Available 8:30-5:30pm, Monday – Friday (AEST)support@faethm.ai
 <h3>Platform Updates</h3> <ul style="list-style-type: none">Expanded insights capabilities and featuresDeeper data and model creation	
<h3>OPTIONAL ADVANCED SERVICES</h3> <p>8 days; Faethm Senior Consultant services; e.g.,</p> <ul style="list-style-type: none">Data interpretationUse casesAttendance at steering committee meetingsPresenting to company executives	

INCLUDED IN CONTRACT

OPTIONAL ADVANCED

APPENDIX 1.

DATA REQUIREMENTS

Faethm does not collect or store any personal employee information. All data needs to be provided in anonymised format. Personal employee information includes, but is not limited to: employee name, birth date, and home address.

INSTRUCTIONS

- Provide the mobile number (with country code) of person uploading your workforce data to support@faethm.ai (please cc' in the email your CSM)
- Fill in the template provided in English, save as: `faethm_companyname_date.csv`
- Faethm support will notify the data uploader upon account setup completion. To upload workforce data,
 - Access the secure file transfer site: <https://secure.faethm.ai/>
 - Choose the country in which your data will be stored (suiting your company's data security policies)
 - Enter the mobile number provided to receive a 6-digit access code via SMS
 - Upload the completed CSV data

Mandatory Field

Chart Impact

Optional Field

***Chart/Filter impact: features or filters in the platform will not render if field is not provided. Recommended field, unless otherwise directed by security policy.**

Field	Description	Best Practice
ID	Unique identifier for deanonymisation of data by HR team.	Do not use an id that enables easy identification of an employee by others. No chart impact, potential future feature.
Manager_ID	Direct manager unique id	Do not use an id that enables easy identification of an employee by others. No chart impact, potential future feature.
Employee_Type	"permanent", "Contract", or "Casual". Full time equivalent. Listed as a decimal percentage of full time; i.e. 0 - 1.	No chart impact, potential future feature.
FTE	The gender of the employee.	No chart impact* The FTE will be multiplied by the total compensation to provide an accurate budget impact
Gender	The year in which the employee was born.	Currently only "M" or "F" options available. Chart impact*
Birth_Year	Name of the specific employee role.	Do not include full birthdate. Birth year is used to bucket employees into 'age groups'. Chart impact*
Job_Name	One to two sentence description of the nature of work.	Most standardised role names possible. Removing descriptors or internal code not relevant to the nature of work; e.g. "Sydney Sales Manager" is better written as "Sales Manager". Chart impact*
Job_Description	The higher-level grouping of related roles.	May also include specific tasks or responsibilities, if available. No chart impact, role mapping purposes only.
Job_Family	Level of the employee role.	Groups the unique role names into a fewer set of families; e.g. "Sales Manager" and "Account Executive" might be in the "Sales" role family. No chart impact, role mapping purposes only.
Employer_Level	Organisation group hierarchy as defined by your company.	Please ensure the hierarchy of levels are easily understood. No chart impact, potential future feature.
Org_Level_1	Organisation group hierarchy as defined by your company.	Highest level on hierarchy. Chart impact*
Org_Level_2	Organisation group hierarchy as defined by your company.	Second level on hierarchy. Chart impact*
Org_Level_3	Organisation group hierarchy as defined by your company.	Third level on hierarchy. Chart impact*
Total_Compensation	The total compensation this employee would receive annually as 1 FTE. Total compensation can include: base salary, retirement contributions, etc. Please use single currency across all data. Ensure that exchange rates have been calculated prior to upload.	The more complete the compensation figure, the better the predictions will be regarding the cost savings when an employee is automated. Please note, the 'total' package figure must be a consistent methodology applied across the workforce. We apply the FTE rate above to these figures. For contractors, please only include the portion of compensation that would be earned in one fiscal year. Chart impact*
Bonus	Bonus is the financial value of the employees paid bonus for the last financial year. Please use single currency across all data. Ensure that exchange rates have been calculated prior to upload.	If provided do not include the bonus within in the total compensation figure. No chart impact, potential future feature.
Location_Granularity	Please indicate which level of granularity you would like to view location information in the platform: "street address", "city", "state", "post code", or "country".	Chart impact* (at least one field of location detail below recommended)
Site_Name	Name of the site where the employee works.	If mapping to the "street address", please fill this field in. e.g. "headquarters" or "Sydney branch". Chart impact*
Street_Address	Address at which the employee works.	Please include data to the level of granularity you would like to see your sites mapped; e.g. if looking to map to the "city level" please include information for "city", "state", "post code" and "country". This is needed so we can pin point your lat/long coordinates accurately. Chart impact*
City	City in which the employee works.	
State	State in which the employee works.	
Post_Code	Post Code in which the employee works.	
Country	Country in which the employee works.	

FAETHM SUBSCRIPTION AGREEMENT

BETWEEN

<Customer Legal Name> (Cust. Reg. No. _____)
of _____ <Address> _____
(Company)

AND

Faethm Pty Ltd
(ACN 611 627 368)
of Level 12, 10 Spring Street, Sydney NSW 2000 Australia
(Faethm)

BACKGROUND

- A. Faethm ("Faethm", "We," "Us", "Our", "Ours") owns and operates the Faethm platform ("Platform").
- B. The Platform is Our predictive Software as a Service (SaaS) analytics platform harnessing a global research base, proprietary algorithms, its own artificial intelligence and our proprietary analytics and applying it to Your Data.
- C. Company ("Company", "You", "Your" or "Yours") wishes to subscribe to the Platform. If You are entering into this Agreement on behalf of a company or other legal entity, You represent that You have the authority to bind such entity and its affiliates to these terms and conditions, in which case the terms "You" or "Your" shall refer to such entity and its affiliates.
- D. This Agreement governs Your acquisition and use of the Platform and by executing this Agreement You agree to the terms of this Agreement.
- E. This Agreement is effective commencing on the date You execute this Agreement and continuing for an initial contract period of 12 months. Company may extend this agreement by 12 months on up to 3 separate occasions by giving written notice of the extension to Faethm prior to the expiry of the current term.
- F. Unless otherwise provided in the applicable Order, the Platform is purchased as an annual subscription.
- G. You may not access the Platform if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Platform for purposes of monitoring availability, performance or functionality, or for any other benchmarking or competitive purposes.

THE PARTIES AGREE

1. Interpretation

The following definitions are incorporated in this Agreement:

- a) **Affiliate** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity;
- b) **Agreement** means this Faethm Subscription Agreement including any annexures or amendments thereof agreed in writing by the Parties;
- c) **Content** means Our proprietary information and other information obtained by Us from publicly available sources or third-party content providers and made available to You through the Platform;
- d) **Documentation** means the Platform online help and other documentation, and its usage guides and policies, as updated from time to time, accessible via the Platform;
- e) **Malicious Code** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses;
- f) **Master User** means an individual who is authorised by Us to use the Platform, for whom You have purchased a subscription and to whom We (at Your request) have supplied a user identification and password. A Master User is also a User;
- g) **Order** means an ordering document (Schedule 'n') or online order requesting a subscription to the Platform to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into an Order hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto;
- h) **Party** means either Company or Faethm and **Parties** means both Company and Faethm
- i) **User** means an individual who is authorised by You to use the Platform, for whom You have supplied a user identification and password. Users may include, for example, Your employees, consultants and contractors. Faethm will provide up to 50 Users;
- j) **Your Data** means electronic data and information submitted by or for You, excluding Content.

2. Our Responsibilities

2.1 We will:

- a) make the Platform and Content available to You pursuant to this Agreement and the applicable Order.
- b) use commercially reasonable efforts to make the Platform and Content available 24

hours a day, 7 days a week with a target SLA of 99.9 except for:

- (i) planned downtime, no more frequently than 1 weekend day per quarter (of which We shall give no less than 48 hours advance electronic notice), and,
 - (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labour problem (other than one involving Our employees), Internet service provider failure or delay, non-Platform application, or denial of service attack.
- c) Any unscheduled downtime will be managed in accordance with Our incident management workflow.

2.2 Protection of Your Data. We will:

- (a) maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except:
 - (i) to provide the Platform and prevent or address service or technical problems,
 - (ii) as compelled by law in accordance with section 8.3 (Compelled Disclosure) below,
 - (iii) as You expressly permit in writing,
 - (iv) in an unidentifiable aggregated form to further enhance the Platform.

3. Our Personnel

- 3.1 We will be responsible for the performance of our personnel (including our employees and contractors) and their compliance with our obligations under this Agreement, except as otherwise specified herein.

4. Your Responsibilities

4.1 You will:

- (a) be responsible for Users' compliance with this Agreement, Documentation and Orders,
- (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data,
- (c) use commercially reasonable efforts to prevent unauthorised access to or use of the Platform and Content, and notify Us promptly of any such unauthorised access or use,
- (d) use the Platform and Content only in accordance with this Agreement,

Documentation, Orders and applicable laws and government regulations.

5. Usage Restrictions:

5.1 You will not:

- a) make the Platform or Content available to, or use the Platform or Content for the benefit of, anyone other than You or Your Users, unless expressly stated otherwise in an Order or the Documentation,
- b) sell, resell, license, sublicense, distribute, make available, rent or lease the Platform or Content, or include the Platform or Content in a service bureau or outsourcing offering,
- c) use the Platform to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights,
- d) use the Platform to:
 - i. store or transmit Malicious Code,
 - ii. interfere with or disrupt the integrity or performance of the Platform or third-party data contained therein,
 - iii. attempt to gain unauthorised access to the Platform or Content or its related systems or networks,
 - iv. permit direct or indirect access to or use of the Platform or Content in a way that circumvents a contractual usage limit, or use the Platform to access or use any of Our intellectual property except as permitted under this Agreement, an Order, or the Documentation,
 - v. copy the Platform or any part, feature, function or user interface thereof,
 - vi. copy Content except as permitted herein or in an Order or the Documentation,
 - vii. frame or mirror any part of the Platform or Content, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted,
 - viii. access the Platform or Content in order to build a competitive product or service or to benchmark with a non the Platform product or service, or
 - ix. reverse engineer the Platform (to the extent such restriction is permitted by law).
- e) Any use of the Platform or Content in breach of this Agreement, Documentation or Order, by You or Your Users that in Our judgment threatens the security, integrity or availability of the Platform, may result in Our immediate suspension of the Platform however We will use commercially reasonable efforts under the circumstances to provide You with notice and an opportunity to remedy such violation or threat prior to

such suspension.

6. Fees and Payment

- 6.1 **Fees.** You will pay all fees specified in Your Order. Except as otherwise specified herein or in an Order:
- (a) fees are based on the Platform and Content annual subscriptions purchased and not actual usage,
 - (b) payment obligations are non-cancelable and fees paid are non-refundable, and
 - (c) quantities purchased cannot be decreased during the relevant subscription term.
- 6.2 **Invoicing and Payment.** You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us.
- (a) We will provide a valid Tax invoice to You, in the format reasonably required by you, in advance and otherwise in accordance with the relevant Order. Unless otherwise stated in the Order, invoiced charges are due net 30 days from the date that a valid Tax invoice is received by You. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.
- 6.3 **Overdue Charges.** If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies:
- (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or,
 - (b) We may condition future subscription renewals and Order on payment terms shorter than those specified in section 6.2 (Invoicing and Payment).
- 6.4 **Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for the Platform is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorised Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend the Platform until such amounts are paid in full. Other than for customers paying by credit card or direct debit whose payment has been declined, We will give You at least 10 days' prior notice that Your account is overdue, in accordance with section 13 (Notices, Governing Law and Jurisdiction) for billing notices, before suspending services to You.
- 6.5 **Payment Disputes.** We will not exercise Our rights under section 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.
- 6.6 **GST.** In this clause 6.6, a term or expression starting with a capital letter which is defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and associated acts

and legislative instruments (collectively, the GST Law) will have the same meaning as in the GST Law, unless the context otherwise requires.

- a) Each consideration or payment obligation in this agreement is exclusive of GST unless otherwise indicated.
 - b) If GST is or becomes payable on a Supply made under or in connection with this agreement, an additional amount is payable by the party providing consideration for the Supply equal to the amount of GST payable on that Supply as calculated by the party making the Supply in accordance with the GST Law.
 - c) The additional amount payable under paragraph 6 is payable at the same time and in the same manner as the Consideration for the Supply.
 - d) Unless otherwise stated in this Agreement, the following principles apply when determining the amount of a payment under this Agreement:
 - i) if a party is entitled under this Agreement to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed; and
 - ii) if a party sets off an amount under this Agreement, the same principles apply to calculate the amount to be set-off, as if the amount had been paid in accordance with paragraph 6.
 - e) If an Adjustment Event occurs, the parties must do all things necessary to make sure that the Adjustment Event may be appropriately recognised, including the issue of an Adjustment Note.
- 6.7 Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.
- 7. Proprietary Rights and Licenses**
- 7.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, We reserve all of Our rights, title and interest in the Platform and Content, including all of Our related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.
- 7.2 Access to and use of the Platform and Content. You have the right to access and use the Platform and applicable Content subject to the terms of applicable Orders, this Agreement and the Documentation.
- 7.3 Platform and Content including, but not limited to, statistics, metrics, information relating to best practices, research, question sets, taxonomy, templates, text, photographs,

illustrations, audio clips, video clips, artwork, graphic material, or other copyrightable elements, the selection and arrangements thereof, and trademarks, service marks, trade names and any other intellectual property related to the Platform and Content is Our property and is protected, without limitation, pursuant to copyright and trademark laws.

- 7.4 You may download material displayed on the Platform for Your internal use only during the period that you are licensed to use the Platform. No Content from the Platform may be copied, publicly displayed, reproduced, uploaded, downloaded, transmitted or otherwise used other than as set forth in these Terms of Use. Except for the reasonable requirements of business continuity planning and disaster recovery You shall not archive or retain any Content in any form without our written permission.
- 7.5 You may not distribute (including via e- mail or the Internet), or otherwise make available, copies to others, whether or not for payment or other consideration, without Our written permission. Any unauthorised or prohibited use may subject the offender to civil liability and criminal prosecution under applicable federal and state laws.
- 7.6 License to host Your Data. Subject to Our warranty that Your Data will remain within Australia at all times You grant Us, Our Affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Your Data, as reasonably necessary for Us to provide the Platform in accordance with this Agreement.

Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under this Agreement in or to any of Your Data.

- 7.7 License to use Your feedback and Your Data in an unidentifiable aggregated form. You grant to Us, a perpetual, irrevocable, royalty-free license to use and incorporate into the Platform any unidentifiable aggregated data, suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Platform. We will not publish Your Data in a form that identifies the information as Yours.

8. Confidentiality

- 8.1 Definition of Confidential Information. Confidential Information means all information disclosed by a party (Disclosing Party) to the other party (Receiving Party), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Platform and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Orders (including

pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that

- (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party,
- (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party,
- (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or was independently developed by the Receiving Party.

8.2 The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to:

- (a) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and,
- (b) except as otherwise authorised by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein.
- (c) Neither party will disclose the terms of this Agreement or any Order to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section.
- (d) Notwithstanding the foregoing, We may disclose the terms of this Agreement and any applicable Order to a subcontractor to the extent necessary to perform Our obligations to You under this Agreement, under terms of confidentiality materially as protective as set forth herein.

8.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally

permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

9. Representations, Warranties, Remedies and Disclaimers

9.1 Each party represents that it has validly entered into this Agreement and has the legal power to do so.

9.2 Our Warranties. We warrant that during an applicable subscription term:

- (a) this Agreement, the Order and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data,
- (b) We will not materially decrease the overall security of the Platform,
- (c) The Platform will perform materially in accordance with the applicable Documentation, and
- (d) We will not materially decrease the overall functionality of the Platform. For any breach of a warranty above, Your exclusive remedies are those described in 12.3 (Termination) and 12.4 (Refund or Payment upon Termination).

9.3 Disclaimers. Except as expressly provided herein, neither party makes any warranty of any kind, whether express or implied, statutory or otherwise, and each party specifically disclaims all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose or non-infringement, to the maximum extent permitted by applicable law. The Platform and Content are provided as is, exclusive of any warranty whatsoever. Each party disclaims all liability and indemnification obligations for any harm or damages caused by any third-party hosting providers.

10. Mutual Indemnification

10.1 Indemnification by Us. We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the Platform infringes or misappropriates such third party's intellectual property rights, a Claim Against You, and will indemnify You from any damages, attorney fees and costs finally

awarded against You as a result of, or for amounts paid by You under a settlement approved by Us in writing of, a Claim Against You, provided You:

- (a) promptly give Us written notice of the Claim Against You,
- (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and
- (c) give Us commercially reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to the Platform, We may in Our discretion and at no cost to You:
 - i) modify the Platform so that they are no longer claimed to infringe or misappropriate, without breaching Our warranties under Warranties above,
 - ii) obtain a license for Your continued use of the Platform in accordance with this Agreement, or
 - iii) terminate Your subscriptions for the Platform upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from Content, or Your use of the Platform in violation of this Agreement, the Documentation or applicable Orders.

10.2 Indemnification by You. You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that any of Your Data infringes or misappropriates such third party's intellectual property rights, or arising from Your use of the Platform or Content in violation of the Agreement, the Documentation, Order or applicable law (each a Claim Against Us), and You will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a settlement approved by You in writing of, a Claim Against Us, provided We :

- (a) promptly give You written notice of the Claim Against Us,
- (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and

(c) give You all reasonable assistance, at Your expense.

10.3 **Exclusive Remedy.** This section 10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this section 10.

11. Limitation of Liability

11.1 In no event shall the aggregate liability of each party together with all of its Affiliates arising out of or related to this Agreement exceed the total amount paid by You and Your Affiliates hereunder for the services giving rise to the liability in the twelve months preceding the first incident out of which the liability arose. The foregoing limitation will apply whether an action is in contract or tort and regardless of the theory of liability, but will not limit Your and Your Affiliates' payment obligations under section 6 (fees and payment).

11.2 **Exclusion of Consequential and Related Damages.** In no event will either party or its Affiliates have any liability arising out of or related to this Agreement for any lost profits, revenues, goodwill, or indirect, special, incidental, consequential, cover, business interruption or punitive damages, whether an action is in contract or tort and regardless of the theory of liability, even if a party or its Affiliates have been advised of the possibility of such damages or if a party's or its Affiliates' remedy otherwise fails of its essential purpose. The foregoing disclaimer will not apply to the extent prohibited by law.

12. Term and Termination

12.1 **Term of Agreement.** This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.

12.2 **Term of Purchased Subscriptions.** The term of each subscription shall be as specified in the applicable Order. Company may extend this Agreement by 12 months on up to 3 separate occasions by giving written notice of the extension to Faethm prior to the expiry of the current term. The per unit pricing during any renewal term will increase by up to 5% above the applicable pricing in the prior term, unless We provide You notice of different pricing at least 60 days prior to the applicable renewal term. Except as expressly provided in the applicable Order, renewal of promotional or one-time priced subscriptions will be at Our applicable list price in effect at the time of the applicable renewal.

12.3 **Termination.**

A party may terminate this Agreement for cause:

- (a) upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or
 - (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 12.4 Refund or Payment upon Termination. If this Agreement is terminated by You in accordance with section 12.3 We will refund You any prepaid fees covering the remainder of the term of all Orders after the effective date of termination. If this Agreement is terminated by Us in accordance with section 12.3, You will pay any unpaid fees covering the remainder of the term of all Orders. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.
- 12.5 Your Data Portability and Deletion. Upon request by You made within 30 days after the effective date of termination or expiration of this Agreement, We will make Your Data available to You for export or download as provided in the Documentation. After such 30-day period, We will have no obligation to maintain or provide Your Data, and will thereafter delete or destroy all copies of Your Data in the Platform or otherwise in Our possession or control, unless legally prohibited and except in depersonalised aggregated form.
- 12.6 Surviving Provisions. The sections 6 Fees and Payment, 7 Proprietary Rights and Licenses, 8 Confidentiality, 9 Representations, Warranties, Remedies and Disclaimers, 10 Mutual Indemnification, 11 Limitation of Liability, 12.4 Refund or Payment upon Termination, 12.5 Your Data Portability and Deletion, 12.6 Surviving Provisions and 16 General Provisions will survive any termination or expiration of this Agreement.

13. Notices, Governing Law and Jurisdiction

- 13.1 Notices. Any notice, consent, approval, undertaking, acknowledgement, verification or report contemplated by this Agreement, must be given in writing.
- 13.2 If a notice is:
- (a) delivered by hand, the notice will be deemed to have been received when delivered;
 - (b) sent by mail from within Australia to an address within Australia, the notice will be deemed to have been received three (3) working days after the date of posting;

- (c) sent by mail outside Australia or mailed to an address outside Australia, the notice will be deemed to have been received five (5) working days after the date of posting;
 - (d) sent by facsimile, the notice will be deemed to have been received when the sender receives confirmation that the transmission was successful, except that if a notice is deemed to have been received at a time after 5.00pm on a working day, or on a day that is not a working day, then the notice will be deemed to have been received on the following working day.
- 13.3 Notices given to a Party under this Agreement must be given to the addresses and facsimile numbers specified in the Agreement.
- 13.4 Governing Law. This Agreement will be governed by and construed in accordance with the law for the time being in force in New South Wales and the Parties submit to the jurisdiction of the courts of that State.
- 13.5 No Agency. For the avoidance of doubt, We are entering into this Agreement as principal and not as agent for any other company. Subject to any permitted assignment under section 16.1, the obligations owed by Us under this Agreement shall be owed to You solely by Us and the obligations owed by You under this Agreement shall be owed solely to Us.

14. Protection of Personal Information

- 14.1 We agree to:
- (a) use personal information held or controlled by Us in connection with this Agreement only for the purposes of fulfilling Our obligations under this Agreement;
 - (b) take all reasonable measures to ensure that personal information in Our possession or control in connection with this Agreement is protected against loss and unauthorised access, use, modification or disclosure;
 - (c) comply with the Information Privacy Principles in the Privacy Act 1988 (Cth) to the extent that the content of those principles apply to the types of activities We are undertaking under this Agreement, as if We were an agency as defined in that Act;
 - (d) cooperate with any reasonable demands or inquiries made by You on the basis of the exercise of the functions of the Office of the Australian Information

Commissioner under the Privacy Act 1988 and the Freedom of Information Act 1982.

- (e) ensure that any person who has an access level which would enable that person to obtain access to any personal information is made aware of, and agrees to observe the Information Privacy Principles and other obligations referred to in this Clause;
- (f) comply with any policy guidelines laid down by You or issued by the Privacy Commissioner from time to time relating to the handling of personal information; and
- (g) comply with any direction of Yours to observe any recommendation of the Information Commissioner relating to any acts or practices of Us that the Information Commissioner considers breaches the obligations in this Clause.

15. General Provisions

- 15.1 Assignment and Novation. Neither Party may novate or assign or otherwise deal with any of its rights or obligations under, this Agreement without the other Party's prior written consent.
- 15.2 Waiver. Failure by either Party to enforce a provision of this Agreement will not be construed as in any way affecting the enforceability of that provision, or the Agreement as a whole.
- 15.3 Severability. Each provision of this Agreement and each part thereof will, unless the context necessarily requires otherwise, be read and construed as a separate and severable provision or part. If any provision or part thereof is void or otherwise unenforceable for any reason then that provision or part will be severed and the remainder will be read and construed as if the severable provision or part had never existed.
- 15.4 Entire Agreement. This Agreement represents the Parties' entire agreement and its terms replace any prior representations, communications, agreements, statements or understandings, whether oral or in writing, relating to its subject matter. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be:
 - (1) the applicable Order,
 - (2) this Agreement, and

(3) the Documentation.

15.5 Further Assurances. Each Party must promptly at its own costs do all things (including executing and if necessary delivering all documentation) necessary or desirable to give full effect to this Agreement.

15.6 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

15.7 Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

16 Counterparts

16.1 This Agreement will be validly executed if signed in any number of counterparts and the counterparts taken together will constitute one agreement.

16.2 Each Party may communicate its execution of this Agreement by successfully transmitting an executed copy of this Agreement by facsimile or email to the other Party.

Released under RTIPSC

EXECUTED AS AN AGREEMENT

By and on behalf of Company)

)

by an authorised officer in the)
presence of

Signature of witness

Signature of authorised officer

Name of witness

Printed name of authorised officer

Date

By and on behalf of Faethm)

in the presence of its duly
authorised officers in accordance
with section 127 of the Corporations
Act 2001 (Cth):

Signature of witness

Signature of Director

Name of witness

Printed name of Director

Date

SCHEDULE 1 – Order

Commencement Date	The date the contract is executed by both Parties.
Initial Term	12 Months from the Commencement Date.
License terms for the Platform Subscription	License Fee based on the total number of employees to be loaded into the Platform: up to 2,303 employees for Agency 1 [redacted] and Agency 2 [redacted]
License Fees (excluding GST)	\$46,500
Payment Terms	Invoiced annually in advance net 30 days
Special Terms	
Your Master User	
	Name
	Title
	Mailing address
	Email Address
	Contact phone number

Released under RTI

SCHEDULE 2 – Onboarding Services

Faethm will provide to Company the Basic Onboarding Services detailed below and included in the License Fees paid in the relevant Order. If Company requires an increased level of support, Company can select one or more of the options below. Fees will be invoiced net 30 days from the Commencement Date.

Select	Service Option	Services Fees
<input checked="" type="checkbox"/>	<p>Basic Onboarding</p> <ul style="list-style-type: none"> • Service help desk available 8:30am to 5:30pm, M-F AEST • Initial data mapping of role names • 45-minute remote intro meeting with CSM to discuss business goals, onboarding process, workforce data, and questions via Zoom • 60-minute remote Platform & insights meeting with CSM (after data loading) to train client users in Platform best practice, use cases, and answer outstanding questions on Platform, methodology, etc. via Zoom • Quarterly workforce data refresh/upload • Product documentation • Communications on regular Platform updates 	Included
<input type="checkbox"/>	<p>Advanced Onboarding (optional)</p> <ul style="list-style-type: none"> • Includes Basic Onboarding above • Two additional 60-minute remote Platform & insights meetings with CSM via Zoom • Creation of up to 5 Company specific custom roles in the Job Neighbourhood • 2 additional workforce data uploads 	\$5,500 (excluding GST)
<input type="checkbox"/>	<p>Strategic Consulting (optional)</p> <ul style="list-style-type: none"> • Includes Advanced Onboarding above • 8 days of professional consulting services (blended rate across Exec Dir 10%, Director 50% & Snr Consultant 40%), to be used as required. Options include: <ul style="list-style-type: none"> ○ Data interpretation and PMO advice ○ Attendance of steering committee mtgs ○ Presentation to Company execs • Additional 10 Company specific custom roles created in the Job Neighbourhood (15 total) • 6 additional workforce data uploads 	\$20,000 (excluding GST)

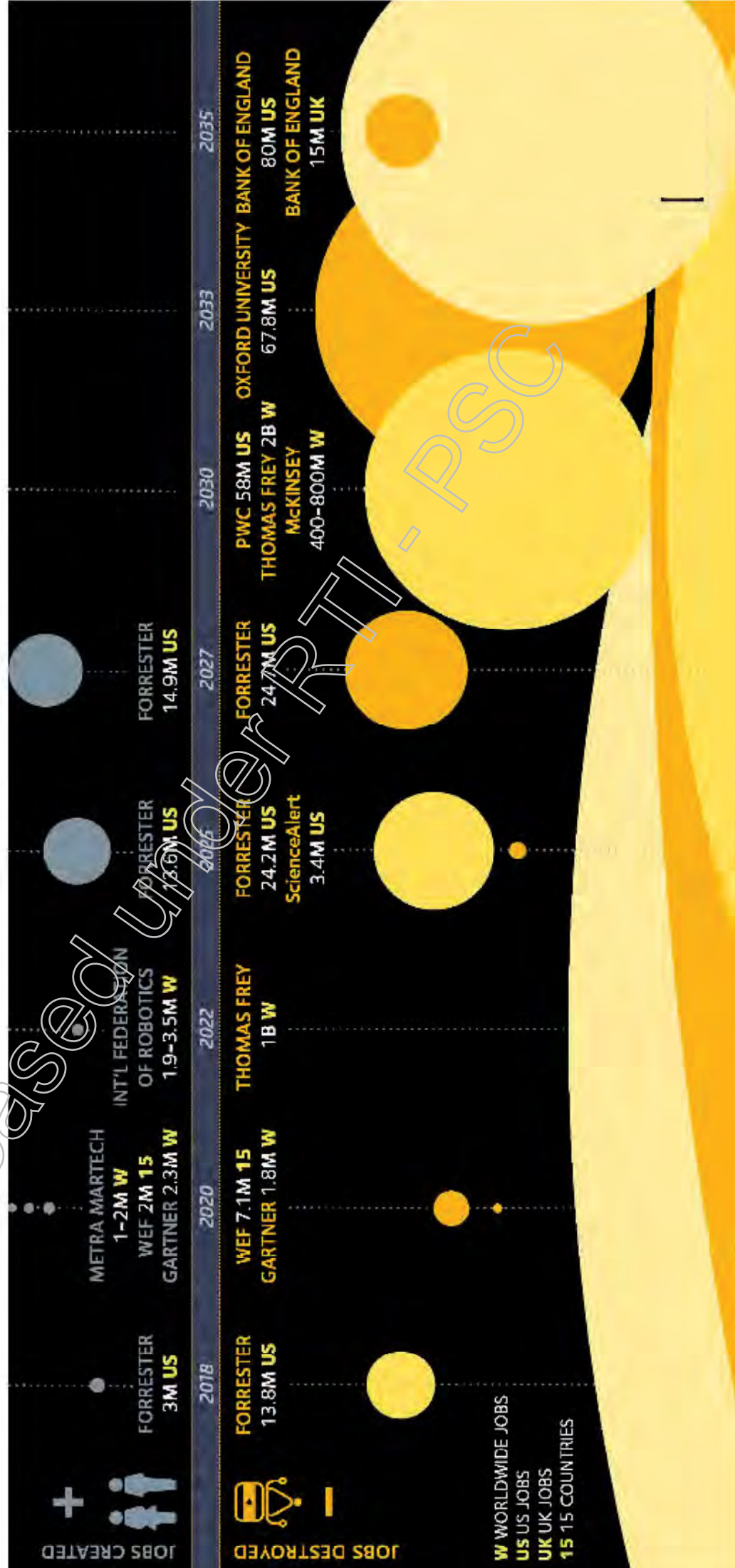
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PROBLEM

DIVERGENCE MASKS TRUTH, STOPS ACTION

The world of work is undoubtedly being transformed by emerging technologies however the inherent uncertainty and a wide range of potential outcomes prevents business and government leaders globally from developing and executing an effective strategic plan.

MIT Technology Review published a list of studies into the impact of technology on jobs in January 2018. Faethm's visualisation below illustrates the absolute lack of consensus and common methodology, and shows why leaders struggle to take action and further shows why Faethm is so needed.



WELCOME TO FAETHM

INFORMING EMERGING TECHNOLOGY ADOPTION AND PREDICTING THE FUTURE WORKFORCE

Faethm combines public and client data with proprietary analytics and machine learning to deliver insights to leaders of companies and governments that drive economic and social value. The Platform underpins scenario planning and delivers predictions and commercial information that, unlike the reports and studies featured by MIT Technology Review, are specific to any economy, industry, geography, company, business unit, team, role or individual.



COMPANIES

Informed technology deployment and strategic workforce transformation

OUTCOMES:

50% of labour impacted by automation = \$1 billion in value



GOVERNMENT

Better policy for industry, employment, education, foreign affairs and social services

OUTCOMES:

Innovation & Trade policy forged and launched



INVESTORS

Increased ROI from intelligent selection of technology and investment opportunities

OUTCOMES:

Automation investment and business case approved by board



Released Under RTIPSC

TECHNOLOGY IMPACT

In 2016 JPMorgan's 'COIN' did in seconds what took lawyers 360, 000 hours.

The bank's 2016 tech budget was \$9.4bn. Every company now operates in a market where the bar is being raised in this way. How is your company driving today's technology investment and deployment decisions?

Do you have the right data and insights to de-risk your Digital Transformation?

Which emerging technologies will deliver the largest return?

Where do you begin your automation journey?

How will future technologies impact your end Customer Experience?

Do you know when this will happen?

How will you select, prioritise, pilot and scale automation programmes and win your colleagues' endorsement?



Are you prepared to optimise your biggest single asset for the future?

- Do you know who in your organisation is at risk of replacement from tech automation?
- How much are you spending recruiting and onboarding roles that will be replaced by Artificial Intelligence or Robotics in 5 Years?
- What skills should you be looking for that are 'future-proof'?
- How many of your Top Performers are at risk of Technological displacement?
- What are the regional and social implications?

WORKFORCE IMPACT

With 47% of the U.S. workforce and 40% of the Australian workforce at risk of automation,

GE just appointed a CFO to lead a cross-functional and global Future of Work team. How will you develop actionable strategies to harness and manage this shift taking place across all Industries?

FAETHM ANALYTICS ENGINE

The Faethm analytics engine applies crowd-sourced expert forecasting and machine learning to predict the impact of emerging technologies on skills and roles in your organisation, industry or geography.

1. TECHNOLOGY ATTRIBUTION MODEL

We define how emerging technologies will impact work at the skill level over time, informed by expert panels, crowd-forecasting and applied data science. We identify technology driven opportunities and risks in your organisation.

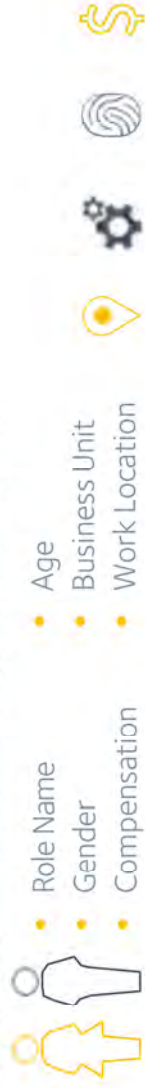


2. WORK ATTRIBUTION MODEL

We've defined work linked to the Standard Classification of Occupations and O*NET to benchmark 1000s of organisations, analysing roles and skills to predict risk of automation over time.



+ UNIDENTIFIABLE EMPLOYMENT DATA



COMPANY SPECIFIC INSIGHTS

- Automation Opportunities
- Future Workforce Landscape
- Financial Impact
- Augmentation Targets
- Key Technologies



ANYWHERE, ANYTIME SAAS PLATFORM

A cloud platform that equips corporate and government leaders to set better strategy and policy to address the risks and opportunities of emerging technologies.

TECHNOLOGY

- Secure fully encrypted AWS-cloud
- Accessible anywhere on any device
- Latest tech-stack (e.g. node.js, react.js)
- Proprietary advanced machine learning

DATA & INSIGHTS

- What emerging tech will impact your business?
- \$ savings generated
- Where will your org be impacted?
- Who in your org will be impacted?
- When will this impact be realised?



KEY FEATURES

AUTOMATION IMPACT

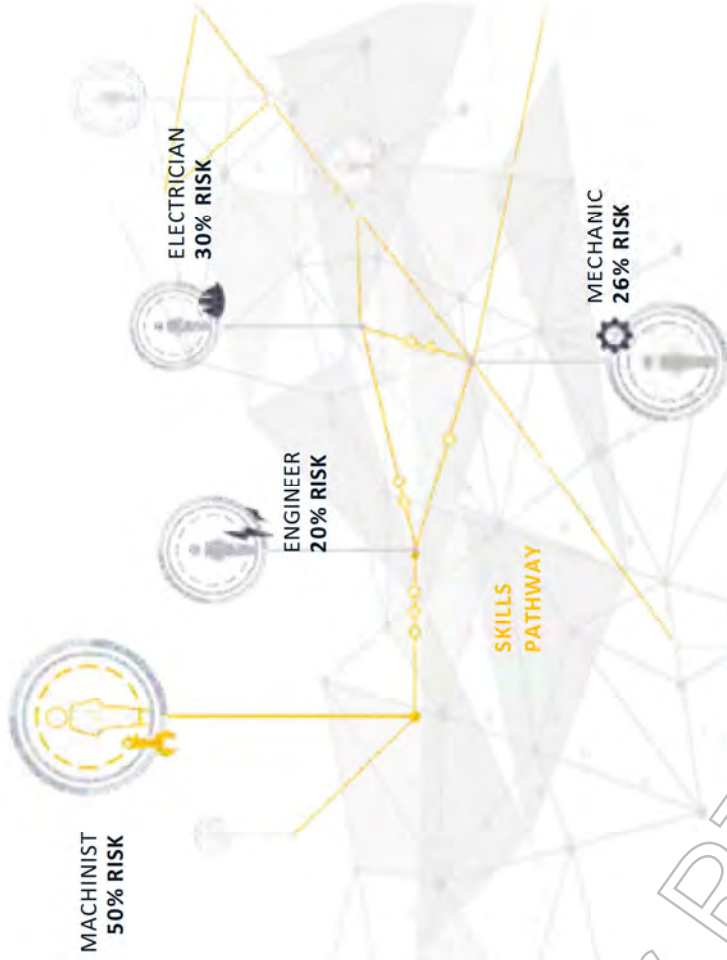
By entering a company's industry or location's workforce data (including role, salary, business unit, locations, gender) Faethm calculates and visualises both the number of employees impacted by automation and augmentation, along with the potential \$ labour cost savings and the addition of any new roles needed to support the future business. Results are presented on six dimensions through a series of easy to navigate visualisations summarised in a dashboard. Reporting is grouped into two tracks: Technology Automation Roadmap for strategic planning and People Impact for resource planning.

SCENARIO MODELLING

A series of filters can be applied to each of Faethm's six views allowing users to understand the impact of different strategic scenarios e.g., the impact of social AI on customer service centres in Newcastle over the next 3 years.

JOB NEIGHBOURHOOD AND CORRIDORS

Faethm's Job Neighbourhood, allows users to identify transition pathways from roles with a high risk of automation to roles with a low risk of automation, so called 'Job Corridors'. Faethm clusters roles by skills and attributes, analyses best fit transition options and identifies any skill gaps to close in order to move people along the corridor.



HOW CUSTOMERS ARE USING FAETHM

FAETHM

STRATEGY / CIO

- De-risk your Digital Transformation plan.
- Prioritize and win buy-in and funding for your transformation roadmap with financial and value forecasts and contextually-specific data and insight.
- Identify which technologies to invest in, when, and what the benefit will be.
- Inform emerging technology pilots with metrics and intent, to move from poc to impact.

HUMAN CAPITAL

- Build informed learning plans and personalised career pathways, to future proof employees.
- Stop recruiting roles/skills that are likely to be automated in the near future.
- Ensure your HIPOs in High Risk roles are fast tracked with future proof skills.
- Reduce redundancy costs by retraining and redeploying in a strategic and targeted way.

FACILITIES

- Know where automation of your workforce will impact real estate needs.
- Develop property and facilities for the future organisation's staff and business process needs.

COMMUNICATIONS

- Build buy-in and manage staff and customer perception by creating internal and external comms plans aligned to corporate automation strategy.
- Get in front of the impact your automation programs will have on Government, Investor and Union relations.

GOVERNMENT

- Ensure Education policy and curricula are aligned to the future skill requirements of Industry.
- Create Economic, Industry, Investment and R&D policies aligned to future demand, not just to today's industries.
- Understand the impact Automation will have on your closest Foreign Trading Partners, and on the socio-political dynamics of any region, globally.
- Know how Social Services will be impacted as Automation creates future under and unemployment, by geography.

INVESTORS

- Identify how industries in any country will respond to automation and the acceleration of technological innovation.
- Target investment and M&A opportunities with untapped productivity gains through automation initiatives.

MARKET AND EXPERT VALIDATION



The Faethm Platform is backed, bought and sold by clients and partners in industry, government, technology and academia to reduce uncertainty and set direction for emerging technology investment and the Future of Work.



The Faethm Insights Platform offers a way of tangibly estimating the impact of technology on our specific business. The fact that we can actually put a stake in the ground on the magnitude of that change... makes it compelling.

Andrew Garey, GM Business Improvement, BlueScope Steel



If industry and government are to shape an effective response to [the issue of automation], then it will need quality insight to help guide the development of such a response. We've had little by the way of concrete, tailored data to talk about what it might do in the Australian context.

Hon. Ed Husic, Shadow Minister for the Digital Economy



The Faethm Insights Platform works. It neatly fills the space of great uncertainty... to set a future direction and later organisational design and capability development priorities. It is a winning solution allowing us to help our clients plan with a higher level of precision and measure progress against reliable data.

Dr Markus Bowles, Chair, The Institute of Working Futures



MaRS Discovery District's Work and Learning sector is excited to bring Faethm to our community and to work with them to facilitate innovation adoption within our key public and private stakeholders. Faethm's work is a key enabler that will help us build a bridge between the workforce and work structures of today and the technology centered future addressing both economic and societal outcomes.

Krista Jones, MD, Work & Learning, MaRS



"The Center is focused on closing the gap between emerging technology and policy and we are excited that Faethm has joined our community to tackle this goal. Their work will help us to see the impact of the technology on jobs and co-create policy to address these changes for the benefit of humanity."

Kay Firth-Butterfield, Head of AI, World Economic Forum Center for the Fourth Industrial Revolution

LEADERSHIP

About Faethm: Faethm was established April 2016 and is lead by ex Partners and Executive Directors of BCG, SAP and Macquarie Bank; who have all built and led tech products and businesses internationally. Our deep expertise in B2B SaaS platforms, high growth tech start-ups, product development and data science, from start-ups to large enterprises positions the team to successfully scale Faethm in Australia and globally.



MICHAEL PRIDDIS

Chief Executive Officer

Before founding Faethm Michael was a Partner and Managing Director, Asia of BCG's technology innovation practice, Digital Ventures. Prior to this Michael was the founder and CEO of S&C, an award-winning design firm that was acquired by BCG.

Michael is frequently invited to share Faethm's work at conferences and in the media globally, sits on the 5-strong BHP Science & Innovation Council, and is an adviser to the Google.org-funded jobs and skills development program led by the MaRS innovation hub, Toronto.



CAROLYN COLLEY

Chief Operating Officer

Before founding Faethm Carolyn was CEO of Decimal, an ASX listed FinTech. Prior to Decimal Carolyn held executive roles in some of Australia's most prestigious finance institutions, including Macquarie Bank, St George Bank and BT Financial Group.

Carolyn is also an Independent Non-Executive Director of ANZ Banks Wealth Businesses, OnePath Custodians Limited and Oasis Fund Management Limited.



GREG MILLER

Executive Director

Prior to joining Faethm Greg was Executive Director of the Navigar Institute. Greg's career has spanned Silicon Valley start-ups & Australasian multinationals including SAP where he was COO and VP & GM Global Partner Operations and senior roles at Unisys, PeopleSoft, Siebel Systems & Oracle. Greg chairs the Young ICT Explorers youth STEM program and sits on the GAP STEM Taskforce for the Hon. Simon Birmingham, MP. He also founded The STEM Network with Westpac - an industry led body tackling the STEM agenda.



RICHARD GEORGE

Data Science Principal

Richard joined Faethm from Woolworths where he led Advanced Analytics. Prior to Woolworths Richard held Asia-wide consulting roles and worked in healthcare venture capital. Richard began his career as a data research scientist, focusing on cancer research.

Richard holds an MBA from both the AGSM and Tuck and a PhD in Bioinformatics. He is a strategy consultant, author, founding partner of a drug discovery start-up and adviser to health and tech startups.

Pages 134 through 180 redacted for the following reasons:

- CTPI - Operations of Agencies
- CTPI - Operations of Agencies - Agency 1
- CTPI - Operations of Agencies - Agency 2

Released under RTI - PSC