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Execution Version

New South Wales Banking, Financial and Related Services Agreement

The Treasurer of New South Wales on behalf of the
State of New South Wales (**State**)

and

Westpac Banking Corporation ABN 33 007 457
141(**Service Provider**)



Contents

Table of contents

1	Definitions and interpretation	2
1.1	Definitions	2
1.2	Definitions in Schedules	20
1.3	Interpretation	21
1.4	Interpretation of inclusive expressions	22
1.5	Conflict between provisions	22
1.6	Conflict between Agreement and Product Agreement	23
1.7	Supplemental Service Description and other documents	23
2	Objectives	25
2.1	Objectives	25
2.2	Effect of Objectives	25
3	Commencement, appointment and Term	25
3.1	Commencement, appointment and Term of this Agreement	25
3.2	Options to extend	25
3.3	Term of Product Agreement	26
3.4	No guarantee or exclusivity	26
4	Agreement structure	26
4.1	Agreement structure	26
4.2	Product Agreement structure	27
4.3	Provision of Banking Information to the State	27
4.4	Agency rights	27
5	Contracting process and Agencies	27
5.1	Overview of contracting process	27
5.2	Agencies	28
5.3	Product Agreements	28
6	Formation of a Product Agreement	29
6.1	Process with Agency	29
6.2	State oversight	30
6.3	Mandatory requirements of a Product Agreement	31
7	Transition-In Services	32
7.1	Framework Transition-In Plan	32
7.2	Agency Transition-In Plan	32
7.5	Existing products and services with Service Provider	34
8	Provision of Services	34
8.1	Service obligations	34
8.2	Service Provider Personnel	35
9	Co-operation and operating level agreements	36
9.1	Co-operation	36
9.2	Operating level agreement	37



10	Service levels and other outcome based performance management	37
10.1	Service levels	37
	[REDACTED]	
10.5	Remedies	38
10.6	Outcome based performance management	38
11	Innovation, continuous improvement and service reviews	38
11.1	Innovation and continuous improvement	38
11.2	Service reviews	39
12	Correction of non-compliant Services	39
12.1	Service Provider correction	39
12.2	Service Provider initiated notification and correction – level 1	40
12.3	State or Agency initiated notification and correction – level 2	40
12.4	Failure to rectify non-compliant Services – level 3	40
12.5	Costs and remedies	41
	[REDACTED]	
14	Special Conditions for Services	45
14.1	Service specific terms and conditions	45
14.2	No promotional material	45
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
16	Taxes	48
16.1	Banking Tax	48
16.2	GST	48
16.3	Other Taxes	49
	[REDACTED]	
	[REDACTED]	
18	Relationship management and authorised signatories	52
18.1	Overview	52
18.2	Authorised State and Agency Personnel	52
18.3	Authorised Representatives	52



19	Contract Changes and Operational / Technical Changes	53
	19.1 General.....	53
	19.2 Agreement Contract Change	53
	19.3 PA Contract Change independent of an Agreement Contract Change.....	54
	19.5 Protocols and Procedures and Operational / Technical Change.....	56
20	Notifications, reports & other information to be provided	57
	20.1 Notifications to State and Agencies.....	57
	20.2 Monitoring and information provision against Service Levels.....	57
	20.3 Information and reporting to the State.....	57
	20.4 Information and reporting to an Agency	58
	20.5 Accuracy and manipulation.....	59
21	Deliverables and goods	59
	21.1 Title and risk in Deliverables	59
22	ICT Services	60
	22.1 ICT Services.....	60
	22.2 Provision of documentation	61
23	State / Agency Data and State and Agency property	62
	23.1 State / Agency Data	62
	23.2 State and Agency property	63
	23.3 Retention and provision of source documents.....	63
24	Records and audit	64
	24.1 Records	64
	24.2 Inspection, reviews and audits.....	64
	24.3 General.....	65
25	Confidentiality and Government Information (Public Access)	65
	25.1 Confidentiality.....	65
	25.3 Announcements	67
26	Privacy	68
	26.1 Privacy and personal information.....	68
	26.2 Transfer of Personal Information outside of Australia	69
27	Fraud control and security	70
	27.1 General.....	70
	27.2 Authentication IDs or procedures	70
28	Intellectual Property Rights and Moral Rights	71
	28.1 State / Agency Material and State / Agency New Contract Material.....	71
	28.3 Moral Rights.....	73
	28.4 Indemnities for Intellectual Property Rights and Moral Rights	74

	28.5 Remedial action and further assurance	75
29	Representations and warranties	75
	29.1 Warranties as to authority	75
	29.2 Service Provider warranties - general	76
	29.3 Service Provider warranties – goods	76
	29.4 Compliance with law	76
	29.5 Service Provider's Tender	77
	29.6 Intellectual Property Rights	77
	29.7 Separate and reliance on representations and warranties	77
	29.8 Reliance on information	77
30	Conflict of interest	78
31	Commission, incentives and collusion	78
	31.1 Commissions and Incentives	78
	31.2 Collusion	78
32	Liability and indemnities	80
	32.5 Third parties	81
	32.6 Indemnities additional right and separate right to damages claims	81
	32.7 No obligation to act contrary to Law or Banking Industry Code	81
34	Termination of Agreement	83
	34.1 Termination for convenience	83
	34.3 Termination for Force Majeure, change in control and other termination rights	84
	34.4 Service Provider rights of termination – events of default	84
35	Termination of a Product Agreement	84
	35.1 Termination and reduction for convenience	84
	35.3 Termination for Force Majeure	86
	35.4 Service Provider rights of termination – events of default	86
36	Expiry or termination general and consequences	86
	36.1 Termination Events	86
	36.2 Material breach	86
	36.3 Notice periods	87
	36.4 Expiry or termination of this Agreement and effect on Product Agreements	87
	36.6 Other consequences of expiry or termination	88
	36.7 Partial expiry or termination	88
37	Transition-Out Services	88
	37.1 Transition-Out and Transition-Out Period	88
	37.2 Framework Transition-Out Plan and Agency Transition-Out Plan	89



38	Business continuity, disaster recovery and Force Majeure	91
	[REDACTED]	
	38.2 Force Majeure	92
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
41	Notices	95
42	Dispute resolution	96
	42.1 Objectives	96
	42.2 Disputes escalation procedure – Agency dispute	97
	42.3 State dispute or Agency dispute referred to State	97
	42.4 Dispute general and resolution flexibility	97
	42.5 Mediation	98
	42.6 Continued Performance.....	98
43	Miscellaneous	98
	43.1 Governing Law and Jurisdiction	98
	43.2 Invalidity and enforceability	99
	43.3 Waiver.....	99
	43.4 Variation.....	99
	43.5 Further action to be taken at each Party's own expense	99
	43.6 PPS registration	99
	43.7 Entire Agreement	99
	43.8 No reliance.....	99
	43.9 Counterparts	99
	43.10 Relationship	100
	43.11 Exercise of rights.....	100
	Signing page	101
	Schedule 1	
	List of Agencies at the Effective Date	103
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
	[REDACTED]	



[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Schedule 8

Base Transition-In Plan 127

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Schedule 12

Template Service Order and Product Agreement 139

Signing page for Product Agreement 145

Annexure A 147



New South Wales Banking, Financial and Related Services Agreement

Date ►

Between the parties

The Honourable Dominic Perrottet MP, the Treasurer, pursuant to section 6.14 of the *Government Sector Finance Act 2018* (NSW) on behalf of the State of New South Wales (the "**State**")

and

Westpac Banking Corporation (ABN 33 007 457 141) of C/- Westpac Group Secretariat, Westpac Place, Level 18, 275 Kent Street, Sydney NSW 2000

(the "**Service Provider**").

Recitals	A.	New South Wales Treasury, on behalf of the State issued a Request for Proposal on 6 June 2018 for the provision of banking, financial and related services including the Services.
	B.	The Service Provider tendered for and was awarded the contract for the provision of the Services.
	C.	The Service Provider has agreed that it will provide the Services in accordance with the terms and conditions of this Agreement.

This deed witnesses as follows:

The Banking, Financial and Related Services are separated into four service modules ('Modules'):

- **Module 1 – Cash and Liquidity Management**
- **Module 2 – Payment by Users (Merchant Services)**
- **Module 3 – Cross Border Payments**
- **Module 4 – Purchasing Cards and Alternative Solutions**

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this Agreement are set out below.

Term	Meaning
Additional Standard Terms and Conditions	has the meaning given to it in clause 13.
Agency	any of the following: <ol style="list-style-type: none"> 1 GSF Agency and any division, unit or other parts of any of them which is specified in Schedule 1 (List of Agencies) or which the State notifies the Service Provider in writing is permitted to be an Agency for the purposes of this Agreement; and 2 any entity, which is not a GSF Agency, that the Treasurer has entered into an agreement with pursuant to section 6.14(12) of the GSF Act and which the State notifies the Service Provider in writing is permitted to be an Agency for the purposes of this Agreement.
Agency Term	the duration of a Product Agreement as determined in accordance with that Product Agreement.
Agency Transition-In Plan	the plan developed in accordance with clause 6.1(b) of this Agreement and the relevant Product Agreement for the implementation of the Products and Services with respect to an Agency including any transition of the Products and Services from an Outgoing Supplier to the Service Provider.
Agency Transition-Out Period	the period referred to in clause 37.1(b).
Agency Transition-Out Plan	the plan developed in accordance with clause 37.2(a) or 37.2(d) of this Agreement and the relevant Product Agreement for the Transition-Out of Products and Services with respect to an Agency.
Agreement	this deed which includes the schedules including [REDACTED] (Service Provider Product Terms and Conditions) and any attachments and documents that are incorporated into this deed by reference, as varied from time to time in accordance with the terms of this deed.



Term	Meaning
Agreement Contract Change	has the meaning given to it in clause 19.2.
Auditor	<ol style="list-style-type: none">1 the Auditor-General;2 any auditor, inspector or Regulatory Body with competence or audit rights over the State or an Agency; and3 any representative (with or without audit-style backgrounds or skills) of the State or an Agency or other entity, which the State or an Agency nominates in writing from time to time.
Auditor-General	the New South Wales Auditor-General.
Authorised Representative	<ol style="list-style-type: none">1 in relation to the State or an Agency, a person nominated as such and notified to the Service Provider in writing from time to time under clause 18.2 or under a Product Agreement, whose identity has been verified to the satisfaction of the Service Provider (including under anti-money laundering, counter-terrorism financing or know your customer Laws) and in relation to whom the Service Provider has not received written notice from the State or relevant Agency that the appointment has been revoked; and2 in relation to the Service Provider, a person nominated as such and notified to the State and each Agency in writing from time to time, whose identity has been verified to the satisfaction of the State and each Agency and in relation to whom the State and each Agency has not received written notice from the Service Provider that the appointment has been revoked. The Service Provider may appoint, have verified and/or revoke Authorised Representatives for only some of the State and the Agencies but in that case only those of the State and the Agencies who have been personally and directly notified of those changes will be bound by them.
Banking Industry Authority	<p>any non-Regulatory Body which is a recognised banking or other financial or related industry association relevant to the provision of the Services or the Service Provider's other obligations under this Agreement or a Product Agreement including to the extent relevant:</p> <ol style="list-style-type: none">1 Australian Banking Association Inc.;2 Australian Payments Network Ltd (AusPayNet);3 BPay Pty Ltd;4 Reserve Bank of Australia in its capacity as administrator of the Service Provider's Exchange Settlement Account or its participation in Reserve Bank Information and Transfer System (or any equivalent Real-time Gross Settlement);5 any payment, clearing or settlement scheme including American Express, China UnionPay, Diners Club International,



Term	Meaning
	<p>eftpos, JCB, MasterCard, VISA, NPP Australia and the Society for Worldwide Interbank Financial Telecommunication (SWIFT); and</p> <p>6 any foreign organisations substantially similar or equivalent to any of the organisations listed above.</p>
Banking Industry Codes	<p>any rules, codes of practice, policies or procedures of a Banking Industry Authority applicable to the Services or a Party, including to the extent relevant:</p> <ol style="list-style-type: none">1 Australian Banking Association Inc. Code of Banking Practice;2 ePayments Code;3 rules and requirements of the Australian Payments Network Ltd (AusPayNet);4 BPay Scheme Rules and Operational Procedures;5 US National Automated Clearing House Association Rules; and6 rules and requirements of any payment, clearing or settlement scheme including American Express, China UnionPay, Diners Club International, eftpos, JCB, MasterCard, VISA, NPP Australia, the Society for Worldwide Interbank Financial Telecommunication (SWIFT) and any foreign organisation substantially similar or equivalent to any of those organisations.
Banking Information	has the meaning given to that term in section 6.4 of the GSF Act.
Banking Tax	any tax, duty or government charge, now or in the future, arising directly from the State's and the Agencies' banking transactions generally imposed or levied on the Services, but only to the extent there is no net benefit to the Service Provider from that tax, duty or government charge and to avoid doubt, excludes any tax in the nature of a goods and services tax and any tax on income in any form whatsoever.
Base Transition-In Plan	the base plan in Schedule 8 (Base Transition-In Plan) for the implementation of Products and Services from the Effective Date.
Benchmark Rate	a rate expressed in Schedule 9 (Pricing) and which by its nature is a variable rate (e.g. the Reserve Bank of Australia Target Cash Rate, a cash advance rate or an overdraft index rate offered by a Service Provider to all of its customers).
Business Day	a day that is not a Saturday, Sunday, bank holiday or public holiday in Sydney.



Term	Meaning
Cash and Liquidity Management Services	has the meaning given to it in section 1(a) of Part 1 (Module 1) of Schedule 3 (Service Specification).
Commissioned	the activities to set up the goods for use after delivery including where relevant installation and configuration and checks undertaken to verify that the goods appear to operate in accordance with a Product Agreement.
Confidential Information	<p>any information that is by its nature confidential, is designated as confidential or the recipient knows or ought to know is confidential, or which is not generally available to the public, and which:</p> <ol style="list-style-type: none">1 is disclosed by or on behalf of the State and / or an Agency to the Service Provider or its Personnel or which the Service Provider or its Personnel obtain relating to the State and / or an Agency in connection with this Agreement or any Product Agreement (such information being Confidential Information of the State or relevant Agency); or2 is disclosed by or on behalf of the Service Provider to the State or an Agency or its Personnel relating to the Service Provider in connection with this Agreement or any Product Agreement (such information being Confidential Information of the Service Provider), <p>and includes information:</p> <ol style="list-style-type: none">3 comprised in or relating to any Intellectual Property Rights of the State and an Agency as Confidential Information of the State or relevant Agency, or of the Service Provider as Confidential Information of the Service Provider;4 concerning the internal management and structure, personnel, ICT systems, processes and policies, commercial operations, financial arrangements or affairs of the State and an Agency, as Confidential Information of the State or relevant Agency, or of the Service Provider, as Confidential Information of the Service Provider;5 concerning the State's and an Agency's payors and payees, transactions and the State's and an Agency's banking and financial information, as Confidential Information of the State or relevant Agency; and6 relating to the clients or suppliers of the State and an Agency, as Confidential Information of the State or Agency or of the Service Provider, as Confidential Information of the Service Provider, <p>but does not include information which:</p> <ol style="list-style-type: none">7 is or becomes public knowledge other than by breach of this Agreement; or8 is in the lawful possession of the other recipient without restriction in relation to disclosure before the date of receipt of the information.

Term	Meaning
Conflict of Interest	having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with the ability of the Service Provider to perform its obligations under any of this Agreement and the Product Agreements fairly and objectively.
Contract Change	an Agreement Contract Change or a PA Contract Change, or both as the context requires.
Contract Change Management Procedure	has the meaning given to it in clause 19.1(c).
Contract Material	State / Agency Material, State / Agency New Material, Service Provider Material and Service Provider New Material.
Contract Year	the 12 month period from 1 April to 31 March.
Control	<ol style="list-style-type: none"> 1 the ability (directly or indirectly) to control the composition of the board of directors or governing body of the Service Provider; 2 the ability (directly or indirectly) to cast or control the casting of more than fifty per cent (50%) of the maximum number of votes that might be cast at any general meeting (or equivalent) of the Service Provider; or 3 the holding (directly or indirectly) of more than fifty per cent (50%) of the issued ordinary share capital, the equity, or other ownership interest, in the Service Provider.
Critical Service Level	a Service Level described as a Critical Service Level in Schedule 5 (Service Levels).
Customer	any person or entity which wishes to make or makes a payment to an Agency.
Cut-Over Date	1 April 2019.
Debt Product	financial accommodation provided or to be provided by the Service Provider under this Agreement or any Product Agreement.
Defect	any defect, error, malfunction or other failure.



Term	Meaning
Deliverable	all items (including documentation, software and goods) supplied by or to be supplied by, or on behalf of, the Service Provider under or in connection with this Agreement.
Disabling Code	any computer virus or other code which is intended to or would have the effect of intercepting, accessing, copying, disrupting, impairing, denying or otherwise adversely affecting security, performance, integrity, reliability, access to or use of any information technology, data or telecommunications system, equipment or network, including worms, spyware, adware, keyloggers, trojans and any new types of programmed threats that may be classified.
Effective Date	the date of this Agreement.
Enhanced Services	<p>any of the following:</p> <ol style="list-style-type: none">1 any new, additional, improved or varied product or service, or package of products or services, not part of the Services which is, or is related to Products and Services under a Module; and2 any other additions, improvements or variations to the Services including any additional, improved or varied technology, methodology or process, <p>which are not New Services.</p>
Fees and Charges	the fees and charges specified for the Services, as listed in [REDACTED] (Pricing) as varied in accordance with this Agreement from time to time and including interest payable by an Agency to the Service Provider.
First Option	has the meaning given to it in clause 3.2(a).
first Party	has the meaning given to it in clause 41(b).
Force Majeure	<ol style="list-style-type: none">1 acts of terrorism;2 war, rebellion, insurrection, invasion, national or state emergencies; or3 fire, storm, flood, earthquake or other natural event, <p>which occur in Australia (or, where relevant for a particular Service, another country) but only to the extent the event or its consequences could not have been prevented or mitigated by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligations under this Agreement and the relevant Product Agreement and in the case of the Service</p>

Term	Meaning
	Provider in compliance with its business continuity and disaster recovery obligations.
Framework Transition-In Plan	the plan developed in accordance with clause 7.1 for the implementation of the Products and Services for multiple Agencies.
Framework Transition-Out	the Transition-Out in connection with the expiry or termination of this Agreement or part of this Agreement including the expiry or termination of a Product or Service under this Agreement.
Framework Transition-Out Period	the period referred to in clause 37.1(a) for the Framework Transition-Out.
Framework Transition-Out Plan	the plan developed in accordance with clause 37.2 for the Framework Transition-Out.
Fraud and Security Control	has the meaning given to it in clause 27.1(a).
GIPA Act	<i>Government Information (Public Access) Act 2009 (NSW).</i>
Good Industry Practice	at any time, the exercise of that degree of care, skill, diligence, prudence, foresight and timeliness which would reasonably and ordinarily be expected at such time from a skilled and experienced provider of Services that are of the same or similar nature to the Services to a customer like the State and an Agency.
GSF Act	<i>Government Sector Finance Act 2018 (NSW).</i>
GSF Agency	has the meaning given in the GSF Act.
GST	has the meaning given to this term in the GST Law.
GST Exclusive Consideration	has the meaning given to it in clause 16.2(b).
GST Law	<i>A New Tax System (Goods & Services Tax) Act 1999 (Cth)</i> , related legislation and any delegated legislation made pursuant to such legislation.



Term	Meaning
ICT	information and communications technology including software and hardware.
ICT Deliverable	software, code and any other ICT equipment and materials to be delivered, or made available for delivery, by the Service Provider to the State or an Agency under this Agreement or any Product Agreement, excluding any Service Provider Systems made available remotely for use by the State or an Agency.
ICT Services	ICT Deliverables and Service Provider Systems.
Incoming Supplier	the service provider or supplier or part of the State or Agency nominated by the State or Agency to take over the provision of the Services or part of them, in connection with the expiry or termination of the Products and Services or part of them, including the Service Provider, where the Products and Services are replaced by other Products and Services provided by the Service Provider.
Information	has the meaning given to it in clause 29.8.
Initial Term	the period from the Effective Date up to and including 31 st March 2022.
Insolvency Event	<p>any of the following events:</p> <ol style="list-style-type: none">1 the Service Provider ceases to, or takes steps to cease to conduct its business in the normal manner;2 the Service Provider enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;3 the Service Provider is unable to pay its debts when they are due or is deemed under the <i>Corporations Act 2001</i> (Cth) to be insolvent;4 a liquidator or provisional liquidator is appointed to the Service Provider or a receiver, receiver and manager, official manager, administrator, trustee or similar official is appointed in respect of the Service Provider or over all or substantially all of the assets or undertakings of the Service Provider;5 an order is made or a resolution is passed for the winding up of the Service Provider which is not discharged within 14 days; or6 anything analogous or having substantially similar effect to any of the above occurs.
Intellectual Property	all industrial and intellectual property rights throughout the world.

Term	Meaning
Rights	<p>including all copyright and analogous rights, all rights in relation to inventions or discoveries (including patent rights), designs, registered and unregistered trade marks (including service marks), trade names, brand names, Confidential Information (including trade secrets) and circuit layouts. These rights include:</p> <ol style="list-style-type: none"> 1 all rights in all applications to register these rights; and 2 all renewals and extensions of these rights.
Interest Rates	<p>the interest rates set out in Schedule 9 (Pricing) and each such rate may comprise a Benchmark Rate plus or minus a margin.</p>
Instrument of Delegation	<p>an instrument under the GSF Act setting out the delegate(s) who may exercise the powers of the Treasurer under the GSF Act in respect of rights and obligations of the State under this Agreement.</p>
Key Personnel	<p>any Service Provider role specified in the Relationship Management Manual and any Service Provider role or Service Provider's Personnel identified as a key personnel in any Agency Transition-In Plan, Framework Transition-In Plan, Agency Transition-Out Plan, Framework Transition-Out Plan, Outcomes Based Product Plan and Transformation Plan, or elsewhere under this Agreement or a Product Agreement, as replaced from time to time in accordance with this Agreement or a Product Agreement.</p>
Law	<ol style="list-style-type: none"> 1 any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State of New South Wales or any other government; 2 the common law and the principles of equity as applied from time to time in the State of New South Wales; and 3 requirements, rules and guidelines of a Regulatory Body, <p>as applicable to any of the State, Agencies and the Service Provider and its Related Bodies Corporate and the Services.</p>
Machinery of Government Change	<ol style="list-style-type: none"> 1 a change to the allocation or reallocation of functions between government departments, agencies and Ministers, of the New South Wales Government or one or more individual GSF Agencies as a result of an "Administrative Arrangements Order" made under Part 7 of the <i>Constitution Act 1902</i> (NSW), Part 7 of the <i>Government Sector Employment Act 2013</i> (NSW); 2 a transfer of rights, or obligations, or both, by a State Owned Corporation under a vesting order pursuant to legislation; or 3 any other creation, abolition or transfer of responsibility, function, operations, rights, or obligations, in whole or in part, from one GSF Agency or part thereof to another GSF Agency or part thereof, including a vesting order pursuant to legislation.



Term	Meaning
Material	documents, information, data, know-how, skills, methodologies, tools, equipment, other goods, software and any other materials, excluding State / Agency Data.
Metadata	any system-generated data that is created or generated in connection with the State's or an Agency's use of the Services, including in the use, processing, storing or hosting of any information, material, data, dataset or database in the provision of the Services and includes any descriptive, structural and administrative metadata.
Modules	<p>the following categories of Products and Services procured under the Request for Proposal (and whether awarded to the Service Provider or any other service provider):</p> <ol style="list-style-type: none">1 Module 1 – Cash and Liquidity Management Services;2 Module 2 – Payments by Users (Merchant Services);3 Module 3 – Cross Border Payments; and4 Module 4 – Purchasing Cards and Alternative Solutions.
Moral Rights	<ol style="list-style-type: none">1 any moral rights arising under the <i>Copyright Act 1968</i> (Cth);2 any rights described in Article 6bis of the <i>Berne Convention for the Protection of Literary and Artistic Works 1886</i> (as varied or revised from time to time), being 'droit moral'; and3 any other similar rights arising under any other law in Australia or anywhere else in the world at any time.
New Services	<p>any of the following:</p> <ol style="list-style-type: none">1 any new, additional, improved or varied product or service, or package of products or services, not currently within the Services which is, or is related to, Products and Services under a Module; and2 any other additions, improvements or variations to the Services including any additional, improved or varied technology, methodology or process, <p>which is either a new or additional product or service, and therefore has its own terms and conditions or fees or charges, or both, or is an improvement or variation to any Services of such a material nature, that the Service Provider is offering that improvement or variation to its government or corporate customers with revised terms and conditions.</p>
Nominated Account	a bank account of an Agency referred to in clause 15.3(b) as advised by that Agency to the Service Provider, from which the Fees and Charges for Services provided to that Agency are to be

Term	Meaning
	debited.
Non-TBS Agency	in connection with any Cash and Liquidity Management Services, an Agency other than a TBS Agency.
Notice	a notice to be served in accordance with clause 41(b).
Objectives	has the meaning given to it in clause 2.1.
Open Source Software	software available under a licence which meets the criteria of the Open Source Definition published by the Open Source Initiative at http://www.opensource.org , and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at http://www.creativecommons.org .
Operational / Technical Change	has the meaning given to it in clause 19.5(c).
Operational / Technical Change Management Procedure	has the meaning given to it in clause 19.1(c).
Other Module Product Agreement	a Product Agreement between an Agency and the Service Provider under a Related Framework Agreement.
Outcomes Based Product Plan	has the meaning given to it in Schedule 6 (Innovation and Continuous Improvement).
Outcomes Based Performance Management Framework	a framework setting out the outcomes to be achieved by the Service Provider; the measurement and reporting of such outcomes; and consequences and procedures if those outcomes are not achieved.
Outgoing Supplier	the supplier or service provider specified by the State or an Agency as the current provider of products and services similar to the Services or any part of them.
Party	in connection with this Agreement, the State or the Service Provider as the context requires and "Parties" means both of them, and in connection with a Product Agreement, the applicable Agency or the Service Provider as the context requires and "Parties" means both of them.



Term	Meaning
PCI DSS	<p>the security standards set and governed by the PCI SSC (Payment Card Industry Security Standards Council), including:</p> <ol style="list-style-type: none">1 Data Security Standard (PCI DSS), which applies to the storage, processing or exchange of cardholder data;2 Payment Application Data Security Standard (PA-DSS) which apply to software applications that process cardholder data; and3 PIN Transaction Security (PTS) requirements, which apply to the security of cardholder data at the point of interaction.
Personal Information	<p>information or an opinion about an identified individual (i.e. a natural born person), or an individual who is reasonably identifiable (whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not), tax file numbers (within the meaning of the Income Tax Assessment Act) and information within the meaning of any other definition of a type of personal information or health information under Privacy Laws from time to time.</p>
Personnel	<p>of a Party means the officers, employees, agents and contractors (direct and indirect and their employees) of that Party and in the case of the Service Provider as a Party its Related Bodies Corporate, Sub-Contractors and their officers, employees, agents and contractors (direct and indirect and their employees).</p>
Privacy Laws	<ol style="list-style-type: none">1 the <i>Privacy and Personal Information Protection Act 1998</i> (NSW);2 the <i>Health Records and Information Privacy Act 2002</i> (NSW);3 the <i>Privacy Act 1988</i> (Cth);4 any other Laws relating to the processing, collection, disclosure and use of Personal Information; and5 any Laws relating to privacy, health information, credit information, data protection, surveillance, security or direct marketing, in each case as applicable to any of the State, Agencies and the Service Provider and its Related Bodies Corporate and the Services.
Product Agreement	<p>the agreement formed under clause 5.3 between an Agency and the Service Provider for the provision of Services.</p>
Product Agreement Contract Change or PA Contract Change	<p>has the meaning given to it in clause 19.3(b).</p>



Term	Meaning
Products and Services	the products and services specified in the Requirements / Specifications to be provided by the Service Provider under and in connection with this Agreement or a Product Agreement and any other products, services and other items (tangible or intangible) to be provided by the Service Provider under and in connection with this Agreement or a Product Agreement including the services provided under Schedule 6 (Innovation and Continuous Improvement), but excluding the Transition-In Services and Transition-Out Services.
Protocols and Procedures	the protocols and procedures which are necessary to enable the State and each Agency to receive or access the Services or any part thereof such as secure transaction authorisation and authentication procedures, as agreed to by the State and the Service Provider, or an Agency and the Service Provider in writing in accordance with clause 19.5.
Public Disclosure Obligations	has the meaning given to it in clause 25.2(a).
quarter	each period of 3 months from January to March (inclusive), April to June (inclusive), July to September (inclusive) and October to December (inclusive).
[REDACTED]	[REDACTED]
Regulatory Body	any government, or any governmental or semi-governmental entity, administrative, fiscal or judicial body, authority or agency, body politic (but excluding any political party), government department, local government council or statutory authority and includes the State of New South Wales and the Commonwealth of Australia.
Related Body Corporate	has the meaning given to it in the <i>Corporations Act 2001</i> (Cth).
Related Framework Agreement	any other agreement entered into between the State and the Service Provider for transactional banking, payments and related products and services from time to time.
Relationship Management Manual	the relationship manual attached at [REDACTED] (Relationship Management Manual) as varied from time to time in accordance



Term	Meaning
	with this Agreement.
Request for Proposal	the Request for Proposal issued by the State on 6 June 2018 for the NSW Banking, Financial, and Related Services including any formal addenda and amendments.
Requirements / Specifications	<ol style="list-style-type: none">1 the Service Specification, Supplemental Service Description, and Service Levels; and2 any other documents specifying the products or services to be provided by the Service Provider forming part of this Agreement or a Product Agreement or incorporated by reference and the Service Provider's standard product or services descriptions or specifications for the product or service including any information memorandum or disclosure document for each product or service.
Scheduled Downtime	has the meaning given to in [REDACTED] (Service Levels).
Schemes	has the meaning given to it in clause 17.4(b).
Second Option	has the meaning given to it in clause 3.2(b).
Service Credit	the price adjustments payable by the Service Provider (if any) for a failure to meet a Service Level, as specified in Schedule 5 (Service Levels) or elsewhere in a Product Agreement.
[REDACTED]	[REDACTED]
Service Levels	the service levels to be achieved by the Service Provider in performing the Services, as set out in [REDACTED] (Service Levels) or elsewhere in a Product Agreement.
Service Order	an order by an Agency for Services signed, or as the context requires to be signed, by an Agency and the Service Provider.
Service Provider Group	the Service Provider and its Related Bodies Corporate.

Term	Meaning
Service Provider Material	any Material which is provided or made available by or on behalf of the Service Provider under or in connection with this Agreement or a Product Agreement or used by the Service Provider in providing the Services, whether in existence at the Effective Date or created after the Effective Date but excluding the State / Agency Data, State / Agency Material, State / Agency New Material and Service Provider New Material.
Service Provider New Material	any Material created, written, developed, or otherwise brought into existence by or on behalf of the Service Provider in the course of performing its obligations under or in connection with this Agreement or a Product Agreement excluding State / Agency Data and State / Agency New Material.
Service Provider Product Terms and Conditions	the Service Provider's standard terms and conditions for the Services, subject to amendments and attached to [REDACTED] (Service Provider Product Terms and Conditions).
Service Provider Systems	ICT cloud services or any other form of ICT made available or to be made available "as a service" or remotely by or on behalf of the Service Provider for use by the State or an Agency.
Service Specification	the specifications for the Services specified in Schedule 3 (Service Specification).
Services	the Products and Services, the Transition-In Services and Transition-Out Services, and any other products or services under and in connection with this Agreement or a Product Agreement.
Services Commencement Date	the date for commencement of the Products and Services or any part of the Products and Services to the State or an Agency.
SIW and Compliance Terms	the terms and conditions in clauses 13(d)(1) and 13(d)(2) and subject to clauses 13(d)(3), 13(d)(4) and 13(d)(5).
SP Additional Descriptions	has the meaning given to it in clause 1.7(c).
Standard Industry-Wide Terms	<ol style="list-style-type: none"> 1 in relation to BPAY Services, BPAY Pty Ltd's BPAY documentation; 2 any other industry-wide documentation of a Banking Industry Authority required to be entered into by an Agency in order to receive a Service, but only to the extent required by that



Term	Meaning
	Banking Industry Authority; and
	3 any other provision in the Service Provider's Product Terms and Conditions to the extent it is required to enable the Service Provider to comply with a Banking Industry Code, but only to the extent required for that compliance.
State / Agency Data	<p>1 all data and information relating to the State or any Agency and all data and information relating to the finances, transactions (including payers and payees), operations, functions, services, facilities, ICT systems, customers, clients, residents, personnel, suppliers, assets and programs of the State or any Agency, and other individuals or entities with whom a State or an Agency may interact with or deal with, including Personal Information, in whatever form that information may exist and:</p> <ul style="list-style-type: none"> – which are supplied to the Service Provider by or on behalf of the State or an Agency; or – which the Service Provider collects, generates, processes, stores or transmits pursuant to this Agreement or a Product Agreement, <p>including: Metadata, information and data concerning the State's or an Agency's banking and financial information; and</p> <p>2 to the extent not otherwise in 1, State records under the <i>State Records Act 1998</i> (NSW).</p>
State / Agency Material	all Material provided by or on behalf of the State or an Agency to the Service Provider in connection with this Agreement or a Product Agreement.



Term	Meaning
	<div></div>
State Owned Corporation	has the meaning given to this term in the <i>State Owned Corporations Act 1989</i> (NSW).
State Set-Off Account	an account of the State or a TBS Agency the balance of which is within a State Set-Off Arrangements, in accordance with the specific terms and conditions applicable to that State Set-Off Arrangements.
State Set-Off Arrangements	the facility or facilities of the State which consolidate, group and set off credit and debit balances of certain accounts in Schedule 2 (Additional Terms and Conditions applicable to State Set-Off Arrangements).
Strategic Committee	has the meaning given to this term in the Relationship Management Manual and includes any replacement committee or working group performing similar functions.
Sub-Contractor	any direct or indirect agent or sub-contractor of the Service Provider including any Related Body Corporate, in each case which performs or is to perform any of the obligations of the Service Provider in connection with the Services.
Supplemental Service Description	the description of the Services specified in <div></div> (Supplemental Service Description), which provides additional detail on the Services and how the Service Provider will satisfy the Service Specification.
Supplied Material	Contract Material or State / Agency Data supplied or developed by or on behalf of the Service Provider.
Supplier	has the meaning given to it in clause 16.2(b).
TBS Agency	an Agency designated in writing by the State from time to time as an Agency which is mandated or otherwise instructed or permitted to open a State Set-Off Account.



Term	Meaning
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Term	subject to earlier termination in accordance with this Agreement, the Initial Term and any extensions to this Agreement, together with any Framework Transition-Out Period.
Termination Event	an event specified in clause 34.2 or 35.2, which permits the State to terminate this Agreement or an Agency to terminate a Product Agreement or both.
Third Option	has the meaning given to it in clause 3.2(c).
Third Parties	providers of banking, financial and related services other than the Service Provider and its Related Bodies Corporate (including ICT, data, business process services, knowledge process services, and other consultancy services).
Third Party Off-the-shelf Product	any standard commercially available off-the-shelf software product (including software and firmware embedded in equipment) or data product owned by a third party together with its associated documentation and licensed by a third party on separate terms (together with modifications or enhancements to any of them). For the purposes of this definition a member of the Service Provider Group is not a third party.
those indemnified	has the meaning given to it in clauses 28.4(a) and 32.2(a).
Transaction Agreements	this Agreement, the Product Agreements, any Agreement Contract Change, any PA Contract Change and any other amendment or other agreement under or in connection with this Agreement.
Transformation Plan	has the meaning given to it in Schedule 6 (Innovation and

Term	Meaning
	Continuous Improvement).
Transition-In Services	the services and other supplies to be provided by the Service Provider in accordance with the Base Transition-In Plan, Framework Transition-In Plan and Agency Transition-In Plan, as applicable, for completing an effective and orderly implementation of the Products and Services (or part of them) including any transition of products and services from any Outgoing Supplier to the Service Provider and the services under clause 7.4.
Transition-Out	the effective and orderly termination of the Products and Services (or part of them) and where the Products and Services are to be replaced, the effective and orderly transfer of responsibility for the provision of the Products and Services (or part of them) from the Service Provider to the Incoming Supplier and all matters related to or connected with the Incoming Supplier assuming control of the Products and Services (or part of them) to be provided to the State or an Agency.
Transition-Out Services	the services and other supplies to be provided by the Service Provider in accordance with the Agency Transition-Out Plan and Framework Transition-Out Plan, as applicable for completing an effective and orderly termination of the Products and Services (or part of them) and where the Products and Services are to be replaced, the effective and orderly transfer of responsibility for the provision of the Products and Services (or part of them) from the Service Provider to the Incoming Supplier.
Treasurer	the Treasurer of the State of New South Wales.
User	a natural person who is authorised by an Agency to use the Services or part of the Services under a Product Agreement, but only to the extent of their authorisation.
waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

1.2 Definitions in Schedules

Additional definitions are set out in Schedule 1 (List of Agencies) to [REDACTED] (Relationship Management Manual) of this Agreement and those definitions shall have the same meaning in clauses 1 to 43 of this Agreement or any other part of this Agreement or a Product Agreement, unless the context requires otherwise.



1.3 Interpretation

In this Agreement and a Product Agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this Agreement or a Product Agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this Agreement and a Product Agreement have a corresponding meaning.
- (e) An expression importing a person or entity includes any company, partnership, joint venture, association, corporation, other body corporate or other entity and any Regulatory Body or Banking Industry Authority as well as an individual.
- (f) A reference to a clause, schedule, annexure, attachment or exhibit is a reference to a clause of, and a schedule, annexure, attachment or exhibit to, this Agreement or a Product Agreement as the context requires.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees and transferees.
- (j) A reference to an agreement other than this Agreement and a Product Agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (k) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (l) No provision of this Agreement or a Product Agreement will be construed adversely to a Party because that Party was responsible for the preparation of this Agreement or a Product Agreement or that provision.
- (m) Without limiting clause 39, a reference to a body, other than a Party to this Agreement or a Product Agreement (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (n) A reference to A\$ and \$, means the lawful currency of Australia.
- (o) A reference to the State's or an Agency's ICT systems, or any part of them, includes ICT systems or any part of them provided by contractors to the State or the relevant Agency.

1.4 Interpretation of inclusive expressions

Specifying anything in this Agreement or a Product Agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.5 Conflict between provisions

- (a) If there is a conflict between any part of the documents listed below in this clause 1.5(a), and whether a conflict within that document or with another document listed below, then the greater or higher requirement, standard, quality, level of service, quantum or scope upon the Service Provider prevails:
- (1) Schedule 3 (Service Specification);
 - (2) Schedule 4 (Supplemental Service Description);
 - (3) Schedule 5 (Service Levels);
 - (4) Schedule 6 (Innovation and Continuous Improvement);
 - (5) Schedule 8 (Base Transition-In Plan) and any Framework Transition-In Plan, Agency Transition-In Plan, Framework Transition-Out Plan and Agency Transition-Out Plan;
 - (6) [REDACTED] (Service Provider Product Terms and Conditions) and the Service Provider Product Terms and Conditions; and
 - (7) a document expressly incorporated by reference in any part of this Agreement or a Product Agreement, or within the Requirements / Specifications.
- (b) If there is a conflict between any provisions of this Agreement or between any provisions of a Product Agreement, which is not resolved by clause 1.5(a), then the documents shall be given the following order of priority such that the conflicting provision in the document lower in the order of priority shall be read down or severed to the extent necessary to resolve the conflict:
- (1) clauses 1 to 43 of this Agreement and Schedule 2 (Additional Terms and Conditions applicable to State Set-Off Arrangements);
 - (2) Schedule 3 (Service Specification) and [REDACTED] (Pricing);
 - (3) Schedule 1 (List of Agencies), [REDACTED] (Service Levels), [REDACTED] (Innovation and Continuous Improvement), [REDACTED] (Approved Material Sub-Contractors), [REDACTED] (Relationship Management Manual), Schedule 12 (Template Service Order and Product Agreement) and any Relationship Management Manual;
 - (4) [REDACTED] (Supplemental Service Description), Schedule 8 (Base Transition-In Plan) and any Framework Transition-In Plan, Agency Transition-In Plan, Framework Transition-Out Plan and Agency Transition-Out Plan;
 - (5) a document expressly incorporated by reference in:
 - (A) clauses 1 to 43 of this Agreement and Schedule 2 (Additional Terms and Conditions applicable to State Set-Off Arrangements);
 - (B) Schedule 3 (Service Specification) and [REDACTED] (Pricing);
 - (C) the other Schedules other than [REDACTED] (Service Provider Product Terms and Conditions); and



- (6) [REDACTED] (Service Provider Product Terms and Conditions) and the Service Provider Product Terms and Conditions; and
- (7) a document expressly incorporated by reference in the Service Provider Product Terms and Conditions.
- (c) The Parties agree that the Service Provider Product Terms and Conditions attached in [REDACTED] (Service Provider Product Terms and Conditions), while partially amended, have not been fully amended to be consistent with other parts of this Agreement which have a higher precedence. Subject to clause 13(d), nothing in the Service Provider Product Terms and Conditions shall be interpreted to read down or limit the parts of this Agreement or a Product Agreement which are higher in the order of precedence.
- (d) To the extent of any inconsistency, this Agreement prevails over the Service Provider Product Terms and Conditions and clause 13(c) further provides for the Service Provider Product Terms and Conditions to be read down to ensure consistency with other parts of this Agreement and any Product Agreement. Where the inconsistency is between the Service Provider Product Terms and Conditions and other documents specified in clause 1.5(a), the inconsistency shall be resolved in accordance with the precedence specified in clause 1.5(a).

1.6 Conflict between Agreement and Product Agreement

- (a) If the State considers at any time that a proposed Product Agreement or PA Contract Change, or a Product Agreement or PA Contract Change, with an Agency is inconsistent with this Agreement and the State has not otherwise expressly agreed in writing to the inconsistency, then the State may direct the Service Provider not to enter into the proposed Product Agreement or PA Contract Change, until it is made consistent, or if the Product Agreement or PA Contract Change has been entered into with an Agency, not to comply with all or part of the Product Agreement which is inconsistent, and the Product Agreement will be deemed to be varied to the extent necessary to ensure it is consistent and the State may require the Service Provider to enter into such documentation it requires to give effect to this clause.
- (b) Subject to clause 6.3(c), the Service Provider must not, whether in connection with a new Product Agreement or a PA Contract Change:
 - (1) provide products or services to an Agency under this Agreement or a Product Agreement if those products or services are not within the Services under this Agreement; or
 - (2) incorporate provisions in a Product Agreement which are inconsistent with the provisions of this Agreement including, subject to clause 6.3(c), any variation to the Service Levels and any variation to the Interest Rates, Fees and Charges and Rebates set out in this Agreement,

including where requested by an Agency, and in the case of inconsistency between the provisions of this Agreement incorporated into a Product Agreement, and additional terms of a Product Agreement, the provisions of this Agreement shall prevail.

1.7 Supplemental Service Description and other documents

- (a) Subject to clause 1.7(b), the Parties agree that the Supplemental Service Description contains additional obligations of the Service Provider relating to the Services which are not set out in the Service Specification including:

- (1) obligations concerning the scope or other aspect of a Service specified in the Service Specification, which are additional or supplemental to and not set out in the Service Specification or which provide more detail in relation to a Service that is set out in the Service Specification; and
 - (2) description of some Services to be provided by the Service Provider, which are not set out in the Service Specification.
- (b) Nothing in the Supplemental Service Description shall be interpreted to read down or limit the Service Specification to the extent the Supplemental Service Description does not satisfy the Service Specification.
- (c) The State and the Service Provider acknowledge that the Supplemental Service Description and [REDACTED] (Innovation and Continuous Improvement) (SP Additional Descriptions) may contain:
 - (1) subject to clause 1.7(d), product or services for which there are no Service Provider Product Terms and Conditions in [REDACTED] (Service Provider Product Terms and Conditions); and
 - (2) subject to clause 1.7(e), obligations or proposed obligations on the State or an Agency.
- (d) If [REDACTED] (Supplemental Service Description) or [REDACTED] (Innovation and Continuous Improvement) include a description of a product or service for which there are no Service Provider Product Terms and Conditions in [REDACTED] (Service Provider Product Terms and Conditions), or [REDACTED] (Pricing) refers to a Product and Service as "Offered Only", that product or service shall not be a Product and Service under this Agreement unless it is accepted as a New Service pursuant to clause 6.3(b), except this clause does not apply to:
 - (1) consulting or advisory services provided by the Service Provider (including under [REDACTED] (Innovation and Continuous Improvement)); and
 - (2) any agreement by the Service Provider to undertake work in connection with a Product and Service which is preliminary or a pre-requisite to it being accepted as a New Service,

as they are Services which do not have and are not intended to have product terms and conditions for attachment in [REDACTED] (Service Provider Product Terms and Conditions).
- (e) Any part of the SP Additional Descriptions which imposes an obligation on the State or an Agency is of no force and effect. The State must expressly agree in writing to the proposed obligation. Mere inclusion in the SP Additional Descriptions is not sufficient to constitute such agreement in writing but any obligation or dependency agreed by the State or an Agency in any Product Agreement, Framework Transition-In Plan, Agency Transition-In Plan, Outcomes Based Product Plan or Transformation Plan would be sufficient to constitute such agreement.
- (f) Except to the extent expressly incorporated into this Agreement or a Product Agreement (for example in the SP Additional Descriptions), and then only to the extent and for the purpose of that incorporation, Annexure A (Selected Tender documents) is attached for information and reference only and does not form part of this Agreement or any Product Agreement.



2 Objectives

2.1 Objectives

The objectives of this Agreement and the Product Agreements are as follows:

- (a) to leverage the Services and expertise of the Service Provider to effectively and efficiently deliver Government services;
- (b) to improve citizen and business experience and outcomes;
- (c) to leverage the Services and expertise of the Service Provider to optimise liquidity across GSF Agencies and optimise the State's balance sheet;
- (d) to partner with the Service Provider to deliver best practice solutions and ongoing innovation to Government;
- (e) to minimise risk to the State and citizens; and
- (f) to ensure the State achieves value for money from the Service Provider in the short and long term,

(collectively, the **Objectives**).

2.2 Effect of Objectives

- (a) The Objectives are intended to be a general introduction to, and statement of the spirit of, this Agreement and the Product Agreements. They are not intended to expand or reduce the scope of the Parties' obligations or to alter the plain meaning of this Agreement and the Product Agreements.
- (b) If the terms of this Agreement and the Product Agreements do not address a particular circumstance, are unclear or ambiguous, or require the Parties to discuss, negotiate or agree on a particular matter, then those terms must be construed in accordance with, and each Party must act to give the fullest possible effect to, the Objectives.

3 Commencement, appointment and Term

3.1 Commencement, appointment and Term of this Agreement

- (a) Subject to clauses 34 to 37 (inclusive), this Agreement commences on the Effective Date and will continue for the Term.
- (b) The State appoints the Service Provider to provide the Services to Agencies during the Term.

3.2 Options to extend

- (a) The State may extend the Initial Term for the Services or any part of the Services in its absolute discretion for up to:
 - (1) 2 years for Module 1 by giving not less than 6 months' written Notice prior to the then expiry date of the Initial Term; and

- (2) 1 year for Module 2 or Module 3 or both by giving not less than 6 months' written Notice prior to the then expiry date of the Initial Term,

(First Option).

- (b) If the State has exercised the First Option, the State may extend the current Term for the Services or any part of the Services in its absolute discretion for up to a further 1 year by giving not less than 6 months' written Notice prior to the then expiry date of the current Term **(Second Option)**.
- (c) If the State has exercised the Second Option for Module 2 or Module 3 or both, the State may extend the current Term for the Services relating to Module 2 or Module 3 or both or any part of those Services in its absolute discretion for up to a further 1 year by giving not less than 6 months' written Notice prior to the then expiry date of the current Term **(Third Option)**.
- (d) Upon the State's exercise of its option, this Agreement will continue on the terms and conditions in effect for the Service or any part of the Services extended subject to the outcome of the review of the Fees and Charges pursuant to clause 17.2. Clause 36.4(b) applies to any part of the Services which are not extended.

3.3 Term of Product Agreement

A Product Agreement entered into under this Agreement ends on a date selected by the Agency during the Framework Transition-Out Period, unless:

- (a) the Product Agreement specifies an earlier expiry date;
- (b) the Product Agreement is terminated earlier in accordance with clause 35 of this Agreement or any other provision of this Agreement or the Product Agreement permitting or providing for termination; or
- (c) otherwise specified by the State in writing, and the Agency and the Service Provider have agreed in writing or agree in writing that the Product Agreement shall continue after the Term.

3.4 No guarantee or exclusivity

- (a) Neither the State nor any Agency makes any representation, warranty, promise, guarantee or other assurance that any particular volume of Services will be purchased by the State or any Agency under this Agreement or any Product Agreement.
- (b) Nothing in this Agreement or any Product Agreement creates an exclusive supply arrangement between the Service Provider and the State and any Agency.
- (c) The State and an Agency may, at any time, select another supplier or service provider to supply products and services that are the same as, or substantially similar to, the Services supplied by the Service Provider.

4 Agreement structure

4.1 Agreement structure

- (a) This Agreement is entered into by the Treasurer on behalf of the State.



- (b) In performing this Agreement, the State will act through delegates of the Treasurer pursuant to the Instrument of Delegation.

4.2 Product Agreement structure

- (a) A Product Agreement may be entered into:
 - (1) by an Agency as principal;
 - (2) by the State on behalf of the Agency pursuant to section 6.14 of the GSF Act; or
 - (3) by an Agency on behalf of another Agency if the first mentioned Agency is authorised by the second mentioned Agency to act on its behalf.
- (b) The Service Provider acknowledges that the Treasurer may from time to time issue directions and policies in relation to the provision of the Products and Services to Agencies under sections 3.1 and 6.15 of the GSF Act and agrees to assist Agencies to comply with such directions.

4.3 Provision of Banking Information to the State

Without limiting any other obligations to provide information under this Agreement, the Service Provider agrees to provide and give access to all Banking Information to the State, as requested by the State from time to time and as permitted under the GSF Act.

4.4 Agency rights

- (a) This Agreement is also entered into for the benefit of each Agency.
- (b) The Service Provider agrees, that in addition to the State's right to enforce this Agreement on behalf of any Agency that is the same legal entity as the State, any Agency that is a separate legal entity to the State is entitled to enforce this Agreement where the relevant right in this Agreement refers to an Agency.
- (c) Where an Agency is a separate legal entity to the State, the State is not liable under this Agreement or a Product Agreement, and the State does not guarantee or indemnify the Service Provider under this Agreement or a Product Agreement for that Agency's obligations, acts or omissions under or in connection with this Agreement or a Product Agreement, except for any guarantee and indemnity agreed to in writing by the State with the Service Provider (if any) to guarantee and indemnify the obligations of that Agency (including any legislative guarantee).

5 Contracting process and Agencies

5.1 Overview of contracting process

As set out further in this clause 5 and clause 6:

- (a) this Agreement is a framework agreement under which Agencies may order Services;
- (b) Agencies are entitled to place Service Orders for the Services as further described in clause 6; and

- (c) a Product Agreement for Services comes into force when a Service Order is signed in accordance with clause 5.3.

5.2 Agencies

- (a) The Service Provider acknowledges that the list of Agencies and the categorisation of an Agency for the purposes of this Agreement by the State may change from time to time. The State may, by notice in writing to the Service Provider:
 - (1) add a new entity as an Agency to Schedule 1 (List of Agencies);
 - (2) remove an Agency from Schedule 1 (List of Agencies); and
 - (3) change the categorisation of an Agency from a TBS Agency to a Non-TBS Agency and vice versa, and any other categorisation or inclusion within any other State Set-Off Arrangements.
- (b) The notification of removal of an Agency from Schedule 1 (List of Agencies) will, subject as set out below, have the effect that this Agreement will no longer operate in respect of that Agency as from the date stated in the notice or such other date as may be agreed between the State and the Service Provider and the Product Agreement between the Service Provider and that Agency will terminate from the date of notification of the removal of that Agency unless otherwise specified by the State and subject to that Agency's rights to an Agency Transition-Out Period. The removal of an Agency does not affect any outstanding liabilities, Fees and Charges for Services provided by the Service Provider to that Agency prior to the date of its removal from Schedule 1 (List of Agencies).

5.3 Product Agreements

- (a) A Product Agreement comes into force when a Service Order is signed in accordance with clause 6.1 by:
 - (1) the Agency as principal;
 - (2) by the State on behalf of the Agency pursuant to section 6.14 of the GSF Act; or
 - (3) by the Agency on behalf of another Agency if the first mentioned Agency is authorised by the second mentioned Agency to act on its behalf,
 and the Service Provider, or the terms and conditions of the Product Agreement are otherwise agreed and a binding Product Agreement is in effect.
- (b) The terms and conditions of the Product Agreement consist of:
 - (1) all of the provisions of this Agreement, which relate to an Agency or a Product Agreement, or both and all of the Service Provider's representations, warranties, obligations and other commitments under this Agreement, save to the extent that any of them are expressed as a representation, warranty, obligation or other commitment to the State only in its capacity as a Party to this Agreement, or the context requires that they are given to the State only in its capacity as Party to this Agreement; and
 - (2) subject to clause 6.3, any additional provisions or variations to this Agreement agreed between the Agency and the Service Provider in writing in a Service Order or otherwise.



6 Formation of a Product Agreement

6.1 Process with Agency

- (a) If an Agency (whether acting as principal or through the State or another Agency acting as agent on behalf of that Agency) notifies the Service Provider that it wishes to review or acquire all, or any, of the Services offered by the Service Provider under this Agreement, or review or vary the Services currently purchased by an Agency under this Agreement, the Service Provider must:
 - (1) promptly provide full details of the Services, Interest Rates, and Fees and Charges and Rebates, as relevant to the Agency, offered by the Service Provider under this Agreement;
 - (2) promptly provide information and respond to queries as reasonably required by an Agency to understand the Services, Interest Rates, and Fees and Charges and Rebates, as relevant to the Agency;
 - (3) use its reasonable endeavours to obtain appropriate information on the Agency's requirements for the Services; and
 - (4) advise an Agency of the features, benefits and capabilities of the Services to enable the Agency to evaluate the suitability of the Services or parts of the Services for that Agency.
- (b) If an Agency (whether acting as principal or through the State or another Agency acting as agent on behalf of that Agency) notifies the Service Provider that it wishes to purchase Services from the Service Provider, the Service Provider must:
 - (1) promptly prepare a Service Order (unless the Agency wishes to prepare the Service Order); and
 - (2) develop an Agency Transition-In Plan within 10 Business Days from the Agency notifying the Service Provider that it wishes to purchase Services (or such other time period agreed with the Agency) unless the Service Provider and an Agency agree in writing that an Agency Transition-In Plan is not required.
- (c) A Service Order must be substantially in the form set out in Schedule 12 (Template Service Order and Product Agreement) or in such other form as may be agreed between the State and the Service Provider in writing from time to time.
- (d) The Service Provider must comply with the State or relevant Agency's reasonable requests in relation to an Agency Transition-In Plan and any other content of a Service Order.
- (e) At the request of an Agency, and subject to credit approval being obtained for a new Debt Product which is included in the Service Order, if applicable, the Service Provider must promptly execute a Service Order with an Agency for Services ordered by the Agency.
- (f) This clause 6.1 and the Service Provider's obligations under it are subject to clauses 6.2 and 6.3 and clauses 6.2 and 6.3 prevail over clause 6.1 in the event of any inconsistency.

6.2 State oversight

- (a) Unless the State provides written consent authorising the Service Provider to enter into a Product Agreement directly with that Agency, the Service Provider agrees that a Product Agreement (and a PA Contract Change) will be entered into by the State on behalf of an Agency pursuant to section 6.14 of the GSF Act.
- (b) In addition to the Service Provider's reporting obligations to the State pursuant to clause 20.3, the Service Provider must:
 - (1) unless otherwise advised by the State, promptly inform the State when the Service Provider receives a notification from an Agency that it proposes to enter into a Product Agreement with the Service Provider and the State is not acting as agent on behalf of that Agency;
 - (2) provide the State with a copy of any executed Product Agreement; and
 - (3) provide the State with a copy of any PA Contract Change to a Product Agreement,
electronically within 5 Business Days of the execution of the agreement together with a statement in writing confirming that the terms of the executed Product Agreement or PA Contract Change, as applicable, are consistent with this Agreement.
- (c) If an Agency enters into a Product Agreement in its own right, and the State is not acting on behalf of that Agency:
 - (1) the State has the right to review any Service Order and any draft Service Order, including any Agency Transition-In Plan, and any PA Contract Change and draft PA Contract Change;
 - (2) the Service Provider must promptly notify the State if the Service Provider and an Agency cannot agree a Service Order and the Service Provider must comply with the State's reasonable requests to resolve or take steps to conclude the Service Order;
 - (3) if the State considers at any time that for any other reason the Service Provider must not enter into a proposed Product Agreement or PA Contract Change with an Agency, then the State may direct the Service Provider not to enter into the proposed Product Agreement or PA Contract Change;
 - (4) except to the extent otherwise directed by the State in writing (including where the State elects only to receive part of the information below or only relating to some Agencies), the Service Provider must notify the State in its monthly reports to the State of:
 - (A) Services purchased by Agencies in the previous month including whether under a new Product Agreement or an existing Product Agreement and including on an aggregated basis by Agency; and
 - (B) requests for products or services which are not within the Services or requests in connection with the Services which are materially different from provisions of this Agreement.
- (d) Unless otherwise directed by the State from time to time, the Service Provider must not deal directly with an Agency (other than the State) and must only deal



with the State acting as principal or as agent on behalf of Agencies, in connection with the following:

- (1) agreement of an Agency Transition-In Plan;
- (2) review of Services by an Agency pursuant to clauses 11.2(d) and 11.2(e);
- (3) exercise of an Agency's rights pursuant to clauses 12.2 and 12.3 (correction of non-compliant Services);
- (4) agreement of a PA Contract Change;
- (5) agreement of Protocols and Procedures;
- (6) information and reporting in clause 20.4;
- (7) agreement of an Agency Transition-Out Plan; and
- (8) any other matter which the State notifies the Service Provider in writing under or in connection with an Agency Product Agreement,

and the State may provide detailed written instructions from time to time to the Service Provider relating to the foregoing and the Service Provider must comply with those detailed written instructions.

- (e) In the exercise of any rights of an Agency under this Agreement, a reference to an Agency in this Agreement or a Product Agreement is interpreted to include a reference to the State acting on behalf of any Agency (where authorised to do so by an Agency or pursuant to any legislative or other power or authority) or any other Agency acting on behalf of that Agency (where authorised to do so by an Agency or pursuant to any legislative or other power or authority).

6.3 Mandatory requirements of a Product Agreement

- (a) Subject to clause 6.3(c), the Service Provider must not, whether in connection with a new Product Agreement or a PA Contract Change:
- (1) provide products or services to an Agency under this Agreement or a Product Agreement if those products or services are not within the Services under this Agreement; or
 - (2) incorporate provisions in a Product Agreement which are inconsistent with the provisions of this Agreement including, subject to clause 6.3(c), any variation to the Service Levels and any variation to the Interest Rates, Fees and Charges and Rebates set out in this Agreement,

including where requested by an Agency, and in the case of inconsistency between the provisions of this Agreement incorporated into a Product Agreement, and additional terms of a Product Agreement, the provisions of this Agreement shall prevail.

- (b) Unless otherwise specified by the State from time to time including for probity reasons during a procurement process, the Service Provider is entitled to discuss New Services with Agencies under or in connection with this Agreement, including as part of the Service Provider's obligations pursuant to [REDACTED] (Innovation and Continuous Improvement) prior to proposing an Agreement Contract Change to the State. If the Service Provider wishes to provide New Services, then the Service Provider may propose that those New Services are incorporated into the Services under this Agreement pursuant to an Agreement Contract Change. Save as otherwise agreed by the State in

writing, any New Services agreed to by the State will be made available to all Agencies.

- (c) The following provisions which are agreed to in a Product Agreement shall not be considered inconsistent with the provisions of this Agreement:
 - (1) additional Service Levels agreed between an Agency and the Service Provider, provided such additional Service Levels are agreed to by the State in writing;
 - (2) any improvements to the Service Levels specified in [REDACTED] (Service Levels); and
 - (3) any other provision in a Product Agreement, which is otherwise inconsistent with the provisions of this Agreement, but is agreed to by the State in writing from time to time pursuant to this clause 6.3(c).

7 Transition-In Services

7.1 Framework Transition-In Plan

- (a) Where the Service Provider is providing Transition-In Services to multiple Agencies as part of a coordinated program of work (including, but not limited to, during the period between the Effective Date and the Cut-Over Date), the Service Provider must develop a Framework Transition-In Plan for the co-ordinated, efficient and, where applicable, consistent provision of the Transition-In Services in accordance with the State's and the relevant Agencies' reasonable requirements.
- (b) A Framework Transition-In Plan should be prepared in accordance with the Base Transition-In Plan (if any and where applicable).
- (c) The Service Provider must prepare a final Framework Transition-In Plan (and all the related Agency Transition-In Plans) for the State's approval by the date (if any) specified in the Base Transition-In Plan and otherwise no later than the date for delivery of the related Agency Transition-In Plans under clause 6.1(b)(2).
- (d) To the extent any Agencies' requests for timing of Transition-In Services or commencement of Services during the period a Framework Transition-In Plan applies conflict with each other or with the requirements of the State, the Service Provider must comply with the instruction given by the State to resolve the conflict.
- (e) When the Framework Transition-In Plan is agreed to in writing by the State and the Service Provider, it is incorporated into, and shall form part of this Agreement and each applicable Product Agreement and Agency Transition-In Plan.

7.2 Agency Transition-In Plan

- (a) The Service Provider must develop Agency Transition-In Plans for Transition-In Services in accordance with the State and the relevant Agency's reasonable requirements and must provide a final version for approval by the relevant Agencies promptly and in any event as required under clause 6.1(b).
- (b) The Agency Transition-In Plans must cover:



- (1) identification of the business aspects of the new arrangements including equipment, systems, processes, training and documentation for Agencies and the establishment of the new service delivery structures;
 - (2) the approach or strategy to be adopted by the Parties including for implementation of the Service Provider Systems and ICT Deliverables and the process for engagement of stakeholders;
 - (3) the transition schedule, timeline and milestones (covering, amongst other things, logical sequencing of tasks and parallel tasking);
 - (4) governance framework and project management disciplines including respective roles and responsibilities of each Party's team, communication plan, escalation process, progress review meetings, status reporting and risks and mitigation plan;
 - (5) training;
 - (6) any acceptance testing required by the State or an Agency, or both, to test that the ICT Services comply with this Agreement and the Product Agreement and where contemplated properly and effectively interfaces with the State's and an Agency's ICT systems;
 - (7) cut-over process for the Services and training on use of the Services; and
 - (8) such other matters as the State and / or an Agency may reasonably require from time to time.
- (c) When the Agency Transition-In Plan is agreed to in writing by the relevant Agency, the State and the Service Provider it is incorporated into, and shall form part of, the relevant Product Agreement.

7.3 Transition-In Services

- (a) The Service Provider must provide Transition-In Services to each Agency for each of the Products and Services purchased by an Agency from time to time or a change to the Products and Services provided to each Agency, which require implementation activities, so that the Service Provider can provide the Products and Services from the applicable Services Commencement Date.
- (b) As part of the Transition-In Services, the Service Provider must perform all services and tasks specified in the Framework Transition-In Plan (if applicable) and the Agency Transition-In Plan, and all other things necessary, other than those assigned to the State or an Agency or any Outgoing Supplier (if applicable) to enable a timely and orderly transfer of responsibility for the provision of the Products and Services to the Service Provider, and the timely and orderly commencement of the Products and Services by the applicable Services Commencement Date.
- (c) The Service Provider must:
 - (1) perform the Transition-In Services in accordance with the Base Transition-In Plan (if applicable), the Framework Transition-In Plan (if applicable) and the Agency Transition-In Plan;
 - (2) co-operate with any Outgoing Supplier (if any);
 - (3) perform Transition-In Services so as to avoid or, where not reasonably practical to avoid, minimise disruption to the operations of the State and the Agencies; and



- (4) notify the relevant Agency and the State if it becomes aware of any problems with the Transition-In Services for that Agency or any potential risk that it may not be able to complete the Transition Services in accordance with the Framework Transition-In Plan (if applicable) and the Agency Transition-In Plan.
- (d) The State or Agency must use reasonable endeavours to ensure that the Outgoing Supplier (if any) cooperates with the Service Provider in connection with the Transition-In Services.

[REDACTED]

7.4 Transition team

[REDACTED]

- (b) The Transition Team must have an appropriate mix of service delivery, technical and project management skill sets.
- (c) Where reasonably required by an Agency, the Service Provider must provide assistance, additional resources and support to the Agency for the Agency's acquisition and implementation of the Services.

7.5 Existing products and services with Service Provider

If an Agency has an existing agreement with the Service Provider for any product or service outside of this Agreement, which is also a product or service under this Agreement, that existing product or service shall continue on the terms of the existing agreement, until the earliest of:

- (a) the Agency and the Service Provider execute a Product Agreement and the Product and Service under that Product Agreement replacing that existing product or service commences; or
 - (b) that existing agreement is otherwise terminated in accordance with its terms,
- except that, in relation to existing products or services provided before the Cut-Over Date, the pricing in [REDACTED] (Pricing) will apply on and from the Cut-Over Date.

8 Provision of Services

8.1 Service obligations

- (a) The Service Provider must provide the Services to the State and each Agency in accordance with:
 - (1) the terms of this Agreement; and
 - (2) subject to clauses 1.6(a) and 6.3, the Product Agreement.
- (b) The Service Provider must make available the Products and Services to Agencies from the Cut-Over Date.



- (c) The Service Provider acknowledges that the description of the products, services, activities and other items in this Agreement and a Product Agreement may not be a complete list of products, services, activities or other items required for the Service Provider to properly provide the Services. As part of the Services, the Service Provider must perform all services and responsibilities which are necessary to or incidental to, or customary for, the provision of the Services described in the Requirements / Specifications or are inherent subtasks for the proper performance and delivery of the Services.
- (d) The Service Provider must perform the Services:
 - (1) in accordance with Good Industry Practice;
 - (2) in compliance with the Requirements / Specifications;
 - (3) promptly and accurately; and
 - (4) in accordance with the State's and an Agency's reasonable instructions and requirements from time to time.
- (e) The Service Provider must:
 - (1) provide the Services in a manner that is customer-focussed and efficient;
 - (2) provide customer-focussed support services for the Services, which make use of the Services by the Agencies as user-friendly as practical; and
 - (3) use its best endeavours to establish a strong relationship with the Agencies.
- (f) The Service Provider must provide training services to an Agency on the use of the Services including any ICT Services so that each of the Services can be fully and efficiently used by an Agency. The Service Provider must provide training as part of Transition-In Services and on-going training for Users of the Services from time to time, and on-going training for enhancements or changes to the Services, and as reasonably requested by an Agency from time to time.
- (g) Any State's or Agency's Personnel shall be entitled to use the Services in the performance of their duties, services or supplies to an Agency including any Agency's Personnel which are providers of business process, ICT or payment services to an Agency, to the extent such Personnel are authorised by the State or Agency to use the Services on behalf of the State or Agency.
- (h) Any responsibility or activity under or in connection with this Agreement or a Product Agreement of the State or an Agency to review, comment upon, sign-off, confirm, approve, accept, or perform a similar act in connection with any of the Services does not limit or vary the Service Provider's obligations or absolve the Service Provider from its responsibility for provision of the Services in accordance with this Agreement and the Product Agreements.

8.2 Service Provider Personnel

- (a) The Service Provider must ensure that all persons within the Service Provider's Personnel are, and at all times remain, properly and sufficiently trained, skilled, experienced, qualified and instructed for their respective duties in connection with the Services.
- (b) The Service Provider must:
 - (1) consult with and obtain the prior written approval of the State (approval not to be unreasonably withheld or delayed) for any person

- to be appointed as Key Personnel from time to time in connection with this Agreement;
- (2) give the State reasonable prior notice of its intention to replace any Key Personnel and explain reasons for the actions; and
- (3) use its best endeavours to minimise variation of Key Personnel, unless requested by the State.
- (c) The Service Provider must replace any individual within the Service Provider's Personnel that performs duties in connection with the Services, if the State makes a reasonable request for their replacement including as a result of their poor performance or their engagement in conduct that is, or is likely to be, detrimental to the State or an Agency, in the opinion of the State.

9 Co-operation and operating level agreements

9.1 Co-operation

- (a) The Service Provider acknowledges the State and Agencies may engage Third Parties to provide banking, financial, payments and related products and services (including ICT, data, business process services, knowledge process services, and other consultancy services) to the State and Agencies.
- (b) The Service Provider must co-operate with, and provide such assistance as is reasonably necessary to, the State and Agencies and any actual or potential Third Parties to enable the State and Agencies to receive banking, financial, payments and related products and services in the manner contemplated by and otherwise enjoy the benefit of this Agreement and any Product Agreement and to enable Third Parties to provide their banking, financial, payments and related products and services to the State and Agencies including:
 - (1) providing such access, as may be reasonably necessary, to the premises, resources and services being provided, managed or operated by the Service Provider in the provision of the Services, subject to the Service Provider's reasonable and standard policies notified to the State and Agencies in advance of such access;
 - (2) providing such access, and copies, as may be necessary of the State / Agency Data in such format as the State and Agencies reasonably require;
 - (3) providing necessary information, documentation and instructions to enable products or services to interface, or be compatible, with the Services including specifications, requirements, standards, protocols, policies, constraints and parameters for the Services (including those used for quality assurance and development and performance acceptance testing);
 - (4) providing assistance and support services to permit the State and Agencies or Third Parties to acquire the knowledge necessary to efficiently provide, receive or operate products or services in connection with the Services; and
 - (5) providing access to individual Service Provider Personnel upon the giving of reasonable notice by the State or an Agency.
- (c) Nothing in this clause 9.1 operates to:



- (1) require the Service Provider to provide the Third Parties with access to any commercially sensitive information of the Service Provider; or
- (2) prevent the Service Provider from imposing reasonable controls and restrictions in relation to access to its Service Provider Material, Confidential Information, Protocols and Procedures and Service Provider Systems.

9.2 Operating level agreement

The State or an Agency may require that the Service Provider enters into an operating level agreement with any Third Party supplier to the State or an Agency, which describes how they will work together and interface with each other for the benefit of the State or an Agency and for the benefit of the end to end provision of services to the State or an Agency (including any services provided by an entity other than the Service Provider). Provided the Service Provider is satisfied (acting reasonably) with its terms, the Service Provider must promptly enter into such an operating level agreement and must comply with the operating level agreement. Nothing in that operating level agreement must derogate from this Agreement or any Product Agreement and in the case of conflict, this Agreement and any Product Agreement takes precedence.

10 Service levels and other outcome based performance management

10.1 Service levels

The Service Provider must perform the Services so as to meet or exceed the Service Levels (including the Critical Service Levels).

[illegible]



Without limiting any other right or remedy of the State or an Agency under this Agreement or a Product Agreement, if the Service Provider fails to meet any Service Level, the Service Provider must perform any remedy specified in [REDACTED] (Service Levels) for failure to meet or exceed the Service Level.

The Service Provider agrees to comply with any Outcomes Based Performance Management Framework as set out in the Relationship Management Manual.

The Service Provider acknowledges and agrees that the Service Provider's innovation and continuous improvement obligations are of the utmost importance to the State and the Agencies and the Service Provider must perform its obligations in [REDACTED] (Innovation and Continuous Improvement).



11.2 Service reviews

- (a) The State on behalf of the State and each Agency may review the Services to assess whether they are being performed in accordance with this Agreement and the Product Agreement and whether they continue to meet the Objectives.
- (b) The Service Provider must perform a review of the Services annually or such other frequency requested by the State. The State may also initiate and require a review of the Services or part of them including the Service Levels.
- (c) To the extent relevant to the Services subject to a review pursuant to this clause, and to the extent required or agreed to by the State, the Service Provider must:
 - (1) assess and report on the State's and Agencies' use of the Services including the Services being used by different Agencies;
 - (2) assess and report on the Service Provider's performance of the Services including Service Levels;
 - (3) assess and report on innovation and continuous improvement in accordance with [REDACTED] (Innovation and Continuous Improvement) and on the appropriateness of the Service Levels and potential improvement to the Service Levels, whether such improvements would be a variation to the output required or the level set;
 - (4) assess and report on the Services including Service Levels against similar or alternative services in the market;
 - (5) report (to the State only) on the interest paid, and the Fees and Charges charged, to the Agencies, and Rebates paid or credited;
 - (6) undertake and report on User satisfaction surveys; and
 - (7) perform other tasks directly connected to the review reasonably required by the State or an Agency or proposed by the Service Provider and agreed to by the State.
- (d) The State and any of its Auditors and an Agency and any of its Auditors may also undertake a review of the Services or part of them or perform any of the tasks specified in clause 11.2(c) and the Service Provider must co-operate with such a review and comply with clause 24.
- (e) The State and an Agency may exercise its rights under clause 12 if any review of the Services identifies any non-compliant Services.

12 Correction of non-compliant Services

12.1 Service Provider correction

If the Service Provider fails to perform the Services in accordance with the terms of this Agreement or a Product Agreement including in accordance with any Service Level, the Service Provider must, where possible and unless otherwise agreed by the State or an Agency, correct the failure including where appropriate by re-performing the Services.

12.2 Service Provider initiated notification and correction – level 1

If the Service Provider fails to perform the Services in accordance with this Agreement or a Product Agreement and such failure is not a one-off minor failure which does not adversely impact the State or an Agency or if the Service Provider fails to satisfy any Service Level, the Service Provider must:

- (a) perform a root cause analysis to identify the cause of such failure;
- (b) take all steps necessary to remedy the failure, and to minimise the consequences of such failure, and to prevent it from reoccurring as soon as reasonably practicable;
- (c) provide to the State and each Agency affected by the non-compliance a report as soon as reasonably practicable and in any event within 5 Business Days of the Service Provider identifying the cause of the failure, the consequences of the failure and the Service Provider's corrective action for correcting the cause of the failure and the consequences of such failure and must report on the outcome of the corrective action and when it is completed; and
- (d) comply with the State's and any affected Agency's reasonable instructions and requirements in relation to any corrective action.

12.3 State or Agency initiated notification and correction – level 2

- (a) If in the State's or an Agency's reasonable opinion the Service Provider's performance under this Agreement or a Product Agreement is not in compliance or may become non-compliant with this Agreement or a Product Agreement including the Service Levels, then, the State or an affected Agency may notify the Service Provider and require the Service Provider to comply with this clause 12.3.
- (b) On receipt of a notification pursuant to clause 12.3(a), the Service Provider must perform the same obligations as those specified in clause 12.2 as they relate to the cause or a potential cause of non-compliance including taking all steps necessary to remedy the failure, and to minimise the consequences of such failure, and to prevent it from reoccurring as soon as reasonably practicable and without waiting for approval by the State or an Agency of a formal action plan under this clause. In addition:
 - (1) the Service Provider must supply a formal action plan for approval by the State or an Agency that made the notification pursuant to clause 12.3(a) as soon as reasonably practicable and in any event within 5 Business Days (or such longer period as is agreed by the State or the Agency) of the State or the Agency's notification;
 - (2) the State or an Agency may at its discretion nominate one or more of its Personnel to have oversight of the corrective action; and
 - (3) in any event, within one month of approval date of the action plan (or such longer period as is agreed by the State or the Agency), the Service Provider must implement the action plan as approved by the State or an Agency that made the notification pursuant to clause 12.3(a).

12.4 Failure to rectify non-compliant Services – level 3

If the Service Provider has failed to remedy any non-compliance of its performance of the Services in accordance with this Agreement or a Product Agreement to the satisfaction of



the State or an affected Agency, pursuant to its obligations under clause 12.2 or clause 12.3, then:

- (a) the State may escalate the non-compliance to the Strategic Committee and require senior representatives of the Service Provider to make a presentation at the Strategic Committee as to the non-compliance and the corrective action to be taken;
- (b) the State or the affected Agency may re-exercise its rights pursuant to clause 12.3;
- (c) the State may re-exercise its rights pursuant to clause 12.3, but with a corrective action project under the direction of the State; and
- (d) the State may by Notice in writing to the Service Provider, do one or more of the following:
 - (1) suspend the Service Provider's right to supply Services to one or more Agencies or under this Agreement as a whole; and
 - (2) limit the Services that an Agency may obtain from the Service Provider to only those services specified in the Notice,until the State is satisfied acting reasonably that the Service Provider has successfully taken corrective action.

12.5 Costs and remedies

- (a) The Service Provider must perform its obligations under this clause 12 at its own cost and expense.
- (b) The State's and Agencies' rights under this clause 12 are without prejudice to the State's and Agencies' other rights and remedies.

13 Service Provider Product Terms and Conditions

- (a) The Parties agree that the only standard terms and conditions of the Service Provider which are incorporated into this Agreement and the Product Agreements are the Service Provider Product Terms and Conditions attached to [REDACTED] (Service Provider Product Terms and Conditions), as amended from time to time by any Agreement Contract Change. To the extent that any other standard terms and conditions of the Service Provider purport to be or are included or incorporated in any application form, document or agreement completed, signed, agreed to or accepted by the State or Agency or its Personnel in connection with the Services (**Additional Standard Terms and Conditions**) they shall not form part of the agreements between the Service Provider and the State and the Agencies, and shall be of no force and effect, unless they are agreed in writing by the State as an Agreement Contract Change, as an amendment to [REDACTED] (Service Provider Product Terms and Conditions).
- (b) Subject to clause 13(d), any provision in:
 - (1) the Service Provider Product Terms and Conditions;
 - (2) any Additional Standard Terms and Conditions (to the extent that notwithstanding clause 13(a), in law they form part of the agreements between the Service Provider and the State and Agencies); or

- (3) any document which is incorporated by reference into this Agreement or a Product Agreement including in any Service Provider Product Terms and Conditions and including any Protocols and Procedures or documents referred to in item (2) of the definition of Requirements / Specifications,

which:

[REDACTED]

- (5) provides for the Service Provider's standard or other terms and conditions to apply to the provision of Services (unless they are Service Provider Product Terms and Conditions attached to [REDACTED] (Service Provider Product Terms and Conditions) as amended from time to time by any Agreement Contract Change);

[REDACTED]

[REDACTED]

- (8) provides that notices or other documents must be signed by a director or other specified person, other than an Authorised Representative;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



- (13) is to the effect that a particular document or documents represent the entire contract between the Parties;
- (14) provides that the law of any place other than New South Wales is to apply or that the State, an Agency or any other person submits to the jurisdiction of the courts of any jurisdiction other than New South Wales; or
- (15) has been crossed out,

shall, other than where required by Law, be of no force and effect for Services provided under this Agreement or a Product Agreement and shall not form part of the agreements between the Service Provider and the State and Agencies.

(c) Subject to clause 13(d), any provision in:

- (1) the Service Provider Product Terms and Conditions;
- (2) any Additional Standard Terms and Conditions (to the extent that notwithstanding clause 13(a), in law they form part of the agreements between the Service Provider and the State and Agencies); or
- (3) any document which is incorporated by reference into this Agreement or a Product Agreement including in any Service Provider Product Terms and Conditions and including any Protocols and Procedures or documents referred to in item (2) of the definition of Requirements / Specifications,

which:

- (4) provides that the Service Provider may nominate how and when particular services may be utilised or are to be made available by the Service Provider (to the extent that such a provision would limit the obligation of the Service Provider to comply with its other obligations under this Agreement and the relevant Product Agreement including the obligation to comply with Service Levels) is amended by, and read down to ensure consistency with its other obligations under this Agreement and the relevant Product Agreement including the obligation to comply with Service Levels;

[REDACTED]

- (6) is otherwise inconsistent with other parts of this Agreement or a Product Agreement (excluding the Service Provider Product Terms and Conditions, the Additional Standard Terms and Conditions, and any document referred to in clause 13(c)(3)) is amended by, and read down to ensure consistency with, the other parts of this Agreement and any Product Agreement (excluding the Service Provider Product Terms and Conditions, the Additional Standard Terms and Conditions and any document referred to in clause 13(c)(3)).

(d) Clauses 13(b) and 13(c) shall not apply to the following SIW and Compliance Terms and if there is a conflict between any provisions of the SIW and Compliance Terms and any other provisions of this Agreement or a Product Agreement, the SIW and Compliance Terms must take precedence:



- (1) Standard Industry-Wide Terms, provided that the Standard Industry-Wide Terms are attached to [REDACTED] (Service Provider Product Terms and Conditions) and any changes to the Standard Industry-Wide Terms are incorporated pursuant to an Agreement Contract Change; or
- (2) any other provision in the Service Provider's Product Terms and Conditions attached to [REDACTED] (Service Provider Product Terms and Conditions) or incorporated pursuant to an Agreement Contract Change, to the extent it is required to enable the Service Provider to comply with applicable Laws, but only to the extent required for that compliance,

save that nothing in the Standard Industry-Wide Terms:

[REDACTED]

[REDACTED]

- (5) is to the effect that a particular document or documents represent the entire contract between the Parties,

shall be of force and effect for the Services provided under this Agreement or a Product Agreement and shall not form part of the agreements between the Service Provider and the State and the Agencies.

(e) The Parties acknowledge and agree that:

- (1) the State and the Service Provider have endeavoured to delete certain provisions and amend certain provisions in the Service Provider Product Terms and Conditions attached at [REDACTED] (Service Provider Product Terms and Conditions) to ensure consistency with clauses 13(b) and 13(c);
- (2) the State and the Service Provider have not deleted or amended all such provisions in the Service Provider Product Terms and Conditions to ensure such consistency; and
- (3) any failure to delete or amend any of such provisions in the Service Provider Product Terms and Conditions to ensure such consistency, shall not constitute a breach of this Agreement or be interpreted to limit the scope and effect of clauses 13(b) and 13(c).



14 Special Conditions for Services

14.1 Service specific terms and conditions

Schedule 2 (Additional Terms and Conditions applicable to State Set-Off Arrangements) sets out specific terms and conditions applicable to certain Products and Services under Module 1 provided by the Service Provider.

14.2 No promotional material

- (a) Unless otherwise agreed in writing by the State, the Service Provider must ensure that no promotional material other than in respect of the Services is provided or forwarded to the State's or an Agency's Personnel in any way arising out of the Personnel being or having been Users of the Services.
- (b) The Service Provider must not offer the State's or an Agency's Personnel a credit card or any other products or services (including financial products or services) for their personal use, based on the criterion of, or arising out of the fact that they are, Users of the Services.
- (c) The Service Provider must ensure that no incentives or promotions (for example, frequent flyer points or 'rewards' points) are offered or accrue to the State's or an Agency's Personnel in respect of the Services.
- (d) This clause 14.2 does not prevent the Service Provider providing promotional material or offering products or services, incentives or promotions to persons who are Personnel of the State or an Agency if:
 - (1) it is done in the ordinary course of the Service Provider's business;
 - (2) they receive them because they are members of a wider set of recipients that includes people who are not Personnel of the State or an Agency; and
 - (3) the Service Provider has access to their contact details and consent to receive such offers by means other than in connection with the Services.

[illegible]

[illegible]

16 Taxes

16.1 Banking Tax

The Fees and Charges are exclusive of any Banking Tax. Except as set out in [REDACTED] (Pricing), no Banking Tax is applicable to the Services as at the date of this Agreement. If there is any change in a Banking Tax (including the introduction or abolition of a Banking Tax):

- (a) the Service Provider must promptly inform the State and each affected Agency of the nature of the change and its impact on the State and each Affected Agency (including the date it takes effect, the amount or rate of the Banking Tax, the affected Services and, where applicable and appropriate, a non-binding estimate or calculation of the impact of the Banking Tax based on the State or Agency's historical product use and transaction volumes); and
- (b) the Banking Tax will be payable in full by each affected Agency in respect of its use of the Services affected by the Banking Tax (and where the change is a decrease in or a removal or abolishment of an existing Banking Tax, the affected Agency will be relieved from its obligation to pay commensurately).

16.2 GST

- (a) Any reference in this clause 16.2 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made by a party (**Supplier**) under or in connection with this Agreement and a Product Agreement does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause.



- (c) Any amount referred to in this Agreement or a Product Agreement (other than an amount referred to in paragraph (h) below) which is relevant in determining a payment to be made by one of the Parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) Unless the supply is expressly stated to include GST, to the extent that GST is payable in respect of any supply made by the Supplier under or in connection with this Agreement or a Product Agreement, the GST Exclusive Consideration to be provided under this Agreement or a Product Agreement for that supply is increased by an amount equal to the GST payable by the Supplier.
- (e) The recipient must pay the additional amount payable under paragraph (d) above to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The Supplier must issue a Tax Invoice (or a document satisfying the minimum requirements of the Australian Taxation Office to entitle the recipient to claim an input tax credit without holding a Tax Invoice) to the recipient of the taxable supply at or before the time of payment of the Fees and Charges or other amounts under this Agreement or a Product Agreement, or at such other time as the Parties agree.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Agreement or a Product Agreement, the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under paragraph (e) above, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (h) If one of the Parties to this Agreement or a Product Agreement is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement or a Product Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing. If the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with paragraph (d) above.

16.3 Other Taxes

Except as provided in clauses 16.1 and 16.2, all other taxes, duties and government charges imposed or levied on the Service Provider in Australia in connection with the performance of this Agreement and any Product Agreement will be borne by the Service Provider and will not be passed on to the State or the Agencies, whether through fees or otherwise.

[REDACTED]

[REDACTED]

[REDACTED]







18 Relationship management and authorised signatories

18.1 Overview

- (a) The Parties will comply with the Relationship Management Manual.
- (b) The Relationship Management Manual must include provisions dealing with the following principles:
 - (1) governance structures;
 - (2) goal setting;
 - (3) reporting;
 - (4) performance reviews;
 - (5) escalation procedure; and
 - (6) Outcomes Based Performance Management Framework.
- (c) The Parties may vary the Relationship Management Manual from time to time by agreement, acting reasonably.

18.2 Authorised State and Agency Personnel

- (a) The State and each Agency will provide details to the Service Provider of those Personnel who are natural persons and who are authorised to use the Services from time to time including the scope of their respective authorisations from time to time.
- (b) The State or an Agency may appoint certain State or Agency Personnel, who are natural persons and who have the rights to authorise and change the authorisations of State or Agency Personnel who are authorised to use the Services from time to time.
- (c) The State and each Agency authorises the Service Provider to act in reliance of information given or instructions provided which, prima facie, have been provided by the State or Agency Personnel who is a natural person within the scope of that person's authority in relation to the performance of the Services.

18.3 Authorised Representatives

- (a) Where this Agreement or a Product Agreement contemplates or requires that a document that is intended to be legally binding on a Party be signed or given by that Party, that document only has that effect as against that Party if it has been signed or given by an Authorised Representative of that Party.
- (b) A Party may rely on a document signed or given by an Authorised Representative of another Party as having been duly authorised and duly executed (or duly given, as the case may be) by that Party without making



further enquiry, unless the first Party actually knows or has reason to suspect otherwise.

- (c) A Party may decline to accept or act upon any document purportedly provided to it by another Party under or in connection with this Agreement or a Product Agreement unless and until that Party is satisfied that each person who signed or gave it was duly authorised to do so on that other Party's behalf.

19 Contract Changes and Operational / Technical Changes

19.1 General

- (a) The Service Provider acknowledges its innovation and continuous improvement obligations and the expectation that the Service Provider will provide Enhanced Services and New Services to the State and the Agencies under this Agreement and Product Agreements.
- (b) The Service Provider acknowledges that during the Term and any Agency Term there may be material changes to the functions and operations of the State and Agencies including changes to the structure of the State and the Agencies, changes to the State and Agencies' services, changes to ways of delivering State and Agency services and the sourcing of services from the private sector and not for profit sector. The Service Provider acknowledges and agrees that the Services will be flexible during the Term and any Agency Term so that they develop and adapt to any such changes.
- (c) This clause 19 sets out the change management procedure for an Agreement Contract Change to this Agreement and a PA Contract Change to a Product Agreement (**Contract Change Management Procedure**) and also includes provisions concerning any change management procedure for an Operational / Technical Change (**Operational / Technical Change Management Procedure**).

19.2 Agreement Contract Change

- (a) Either the State or the Service Provider may, from time to time request an amendment to:
 - (1) clauses 1 to 43 of this Agreement;
 - (2) Schedules 1 to 10 (inclusive) including Annexures; and
 - (3) [REDACTED] (Service Provider Product Terms and Conditions) and the Service Provider Product Terms and Conditions attached to [REDACTED] (Service Provider Product Terms and Conditions),including:
 - (4) to receive or provide New Services;
 - (5) to discontinue Services;
 - (6) to change the Services;
 - (7) to change the Service Levels;
 - (8) to change the Interest Rates, Fees and Charges, Rebates and conditions of payment;

- (9) to change or add to the Service Provider Product Terms and Conditions; and
- (10) to comply with changes in Law, Standard Industry-Wide Terms or Banking Industry Codes,

(Agreement Contract Change).

- (b) A change to add a New Service or to discontinue a Service under this Agreement is an Agreement Contract Change under this clause 19.2 even if it is not an amendment to the clauses and documents referred to in clause 19.2(a)(1) to 19.2(a)(3) (inclusive).
- (c) The Contract Change Management Procedure does not apply where the State or an Agency has a right to order, vary or terminate parts of the Services under other provisions of this Agreement or a Product Agreement or for any Operational / Technical Change.
- (d) An Agreement Contract Change of this Agreement must be in the form of a deed of variation executed by the State and the Service Provider to be binding on the State and each applicable Agency and the Service Provider.
- (e) Save as otherwise specified in the Agreement Contract Change, the Parties agree that an Agreement Contract Change:
 - (1) to provide New Services, will from the date specified in the Agreement Contract Change become available for order by all Agencies; and
 - (2) to discontinue Services, will not discontinue those Services provided to an Agency under a Product Agreement.
- (f) Save as otherwise specified in the Agreement Contract Change, the Parties agree that any Agreement Contract Change, other than an Agreement Contract Change specified in clause 19.2(e), will apply to all Agencies and all existing and future Product Agreements from the date specified in the Agreement Contract Change, and any existing Product Agreement will be amended accordingly. This includes Agreement Contract Changes to: Services, other than changes specified in clause 19.2(e) (in which case clause 19.2(e) applies); Interest Rates, Fees and Charges and Rebates; and amendments to the Service Provider Product Terms and Conditions.

19.3 PA Contract Change independent of an Agreement Contract Change

- (a) An Agency (or the State on behalf of an Agency) may at any time order, increase, decrease and terminate Services from time to time as specified in clause 35.1, subject, where applicable, to credit approval for new Debt Products. This right is not subject to the Contract Change Management Procedure or Operational / Technical Change Management Procedure.
- (b) Either an Agency (or the State on behalf of an Agency) or the Service Provider may, from time to time, request an amendment to the provisions of a Product Agreement including:
 - (1) to change the Services where the proposed change, is a change to the provisions of a Product Agreement; or
 - (2) to request additional or improved Service Levels, provided the State has consented to the approved or additional Service Level,
 independent of an Agreement Contract Change (**Product Agreement Contract Change or PA Contract Change**).

19.5 Protocols and Procedures and Operational / Technical Change

- (a) The Parties acknowledge that there will be Protocols and Procedures or parts of Protocols and Procedures that will be applicable to all Agencies using a Service, and Protocols and Procedures or parts of Protocols and Procedures that will be specific to one or a number of Agencies. Prior to the commencement of a Service under a Product Agreement, the State or an Agency shall agree the Protocols and Procedures for that Service with the Service Provider. Neither Party shall unreasonably withhold or delay its agreement to the Protocols and Procedures. For the purposes of this clause, it is reasonable for the State or an Agency to withhold its agreement, if the Protocols and Procedures proposed by the Service Provider would require the State or an Agency to incur additional cost or expense or would adversely affect the State's or an Agency's use of the Services.
- (b) The Protocols and Procedures must not incorporate obligations of the State or Agencies which are additional to or vary those set out in the clauses and Schedules of this Agreement and must not conflict with the clauses and Schedules of this Agreement. Any provisions of the Protocols and Procedures which do not comply with this clause 19.5(b) or conflict with the clauses and Schedules of this Agreement shall be of no force and effect.
- (c) To the extent clauses 1 to 43 of this Agreement (other than clause 19), or the provisions in Schedules 1 to 10 (inclusive) (excluding the Service Provider Product Terms and Conditions), do not otherwise include a provision for a change or variation to any of the following documents, the State or an Agency, or both, or the Service Provider may, from time to time, request a change to:
 - (1) any Framework Transition-In Plan, Agency Transition-In Plan, Framework Transition-Out Plan and Agency Transition-Out Plan;
 - (2) any Outcomes Based Performance Management Framework;
 - (3) the Relationship Management Manual;
 - (4) the Protocols and Procedures;
 - (5) any other documents which are incorporated by reference into this Agreement or a Product Agreement including Requirements / Specifications which are incorporated by reference; and
 - (6) the operations or the ICT systems relating to the Services which is not a change to this Agreement or a Product Agreement, but affects the operations or ICT systems of the other Party,

and such a change when agreed shall be an **Operational / Technical Change** and may be agreed in writing between the State and the Service Provider in connection with this Agreement, and between an Agency and the Service Provider in connection with a Product Agreement in writing.

- (d) The State or an Agency, or both, and the Service Provider may agree to Operational / Technical Change Management Procedures to manage these types of changes.
- (e) Neither Party shall unreasonably withhold or delay its agreement to a request to an Operational / Technical Change. For the purposes of this clause 19.5, it is reasonable for the State or an Agency to withhold its agreement, if the Operational / Technical Change proposed by the Service Provider would require the State or an Agency to incur additional cost or expense or would adversely affect the State's or an Agency's use of the Services.



- (f) Save as otherwise specified in an Operational / Technical Change, an Operational / Technical Change agreed to by the State in connection with this Agreement, will apply to all Agencies and all existing and future Product Agreements from the date specified in the Operational / Technical Change.

20 Notifications, reports & other information to be provided

20.1 Notifications to State and Agencies

The Service Provider must promptly notify and properly inform the State and each affected Agency as soon as it becomes aware of any event or occurrence, which:

- (a) is any misuse of or unauthorised access to an account or other Service;
- (b) is a breach or suspected breach of any of the Service Provider's obligations relating to confidentiality, privacy, security and fraud control or is any misuse, interference or loss to or unauthorised access, modification or disclosure of the Confidential Information, State / Agency Data or Personal Information;
- (c) is a failure to pay an amount to any employee of an Agency in accordance with an Agency's authorised instructions;
- (d) may materially affect or has materially affected the Service Provider's compliance with this Agreement or a Product Agreement; or
- (e) is an event or occurrence the State or an Agency has otherwise informed the Service Provider must be notified to it.

The purpose of this notification includes enabling the State and the affected Agencies to understand the consequences of the event or occurrence to them and to undertake any mitigation which they wish to undertake.

20.2 Monitoring and information provision against Service Levels

- (a) The Service Provider must:
 - (1) implement appropriate measurement, monitoring and management tools and procedures to enable it to measure its performance against the Service Levels; and
 - (2) on request, provide the State and the Agencies with the information and access to the measurement and monitoring tools and procedures to enable the State and the Agencies to verify that they accurately measure the Service Provider's performance.
- (b) Each report on Service Levels must contain a sufficient level of detail to enable the State and an Agency to verify the Service Provider's compliance with the Service Levels and calculation of any amounts paid or to be paid by the Service Provider.

20.3 Information and reporting to the State

The Service Provider must provide to the State the following information and reports (in such form as may be required by the State):

- (a) within 14 days of the end of each quarter or month if the State requests that this should occur monthly, a report on its performance against the Service Levels to all or any Agencies selected by the State from time to time including:

- (1) the extent to which the individual Service Levels were met or not met;
 - (2) explanations for any variances from the Service Levels;
 - (3) projections for the Service Provider's ability to meet the Service Levels in the future;
 - (4) steps taken or to be taken to remedy any failure to meet the Service Levels and to prevent future failings; and
 - (5) the remedies provided for breach of the Service Levels including any amounts paid or to be paid to the State or an Agency;
- (b) within 14 days of the end of each month, a report, which lists any notification event specified in clause 20.1 for the previous month, any event specified in clause 34.2 or 34.3 which has occurred in the previous month, and any Notice to remedy or Notice of termination served by an Agency under clause 35.2 or 35.3 in the previous month;
- (c) information in an electronic format through an online portal or such other method as may be agreed between the Parties, as well as reports, within 14 days of the end of each month, aggregated transaction data by all Agencies and categories of Agencies as selected by the State from time to time;
- (d) the information and reports specified in the Requirements / Specifications or elsewhere in this Agreement to be provided to the State including the innovation and continuous improvement reports specified in [REDACTED] (Innovation and Continuous Improvement) and reports specified in [REDACTED] (Service Levels);
- (e) if requested by the State, the information and reports specified in the Requirements / Specifications or elsewhere in this Agreement or a Product Agreement to be provided to an Agency; and
- (f) other information and reports as reasonably required by the State, or as otherwise agreed between the State and the Service Provider from time to time including relating to an Agency's transactions using the Services and the Services and to verify compliance with this Agreement and the Product Agreements and including the collation of transaction data in connection with any procurement by the State for services similar to the Products and Services or otherwise.

20.4 Information and reporting to an Agency

The Service Provider must provide to an Agency the following information and reports (in such form as may be reasonably required by an Agency):

- (a) within 14 days of the end of each quarter or month if the Agency requests that this should occur monthly, a report on its performance against the Service Levels to that Agency including: the extent to which the individual Service Levels were met or not met; explanations for any variances from the Service Levels; projections for the Service Provider's ability to meet the Service Levels in the future; steps taken or to be taken to remedy any failure to meet the Service Levels and to prevent future failings; and the remedies provided for breach of the Service Levels including any amounts paid or to be paid to the Agency;
- (b) within 14 days of the end of each month or quarter if the Agency requests that this should occur quarterly, a report which lists any notification event specified in clause 20.1 for the previous month relevant to that Agency and any event specified in clause 35.2 or 35.3 which has occurred in the previous month for the Agency;



- (c) the information and reports specified in the Requirements / Specifications or elsewhere in this Agreement or a Product Agreement to be provided to an Agency; and
- (d) other information and reports as reasonably required by an Agency from time to time including relating to transactions using the Products and Services for that Agency and the Services to that Agency and to verify compliance with this Agreement and the Product Agreements with that Agency and including the collation of transaction data in connection with any procurement by an Agency for services similar to the Products and Services.

20.5 Accuracy and manipulation

- (a) The Service Provider warrants that the ICT Services will provide accurate details of all transactions and balances. The Service Provider must ensure that the Service Provider accurately debits, credits, and charges interest and Fees and Charges and credits Rebates and that no statement of an account for any type of financial product or service or other Service and no report in any medium will be false or misleading.
- (b) All reports provided as part of the Services must be complete and accurate and reports containing data must be in an electronic format which can be easily manipulated for analysis by an Agency or the State.

21 Deliverables and goods

21.1 Title and risk in Deliverables

- (a) Except to the extent that the Intellectual Property Rights in Deliverables are assigned or licensed under clause 28.1(c) or 28.2 and except for any Deliverable which is expressly stated in this Agreement or a Product Agreement to remain the property of the Service Provider or another person:
 - (1) title to the Deliverables supplied to the State or an Agency passes to the State or Agency on the earlier of delivery at the premises of the State or an Agency and payment of those Deliverables; and
 - (2) if the Agency rejects the whole or any part of any Deliverables or returns any Deliverables for replacement, title in the Deliverables reverts to the Service Provider on collection by the Service Provider or when the goods are delivered to a carrier for return.
- (b) Risk in a Deliverable supplied to the State or an Agency transfers on delivery to at the premises of the State or Agency, and risk in a Deliverable that is collected by the Service Provider from the State or an Agency whether for repair, replacement or otherwise, or returned to the Service Provider for repair, replacement or otherwise, passes to the Service Provider on collection of that Deliverable at the premises of the State or Agency or delivery of the Deliverable to a carrier (as applicable).

[REDACTED]

[REDACTED]

[REDACTED]

22 ICT Services

22.1 ICT Services

- (a) The Service Provider must provide the State and each Agency with such ICT Services:
 - (1) to the extent applicable, as specified in this Agreement and a Product Agreement; and
 - (2) otherwise, as reasonably required to enable the State and each Agency to receive the Services in the manner specified in this Agreement and a Product Agreement.
- (b) The Service Provider warrants and represents that the ICT Services will:
 - (1) comply with the Requirements / Specifications and other provisions of this Agreement and a Product Agreement;
 - (2) be free from Defects;
 - (3) be fit for the purposes for which the ICT Services are to be used by the State or an Agency; and



- (4) operate so that the State / Agency Data can be migrated in CSV format and other commonly used formats to other replacement systems with minimal data conversion and migration effort, and so that the State or an Agency can transfer to a replacement system and replacement supplies.
- (c) The Service Provider must ensure that the Services and ICT Services are compatible with and operate effectively with the State's and Agencies' ICT systems.
- (d) The Service Provider must provide support and maintenance services for ICT Services. Included within the support and maintenance services, the Service Provider must:
 - (1) provide helpdesk or self-service services for dealing with (and must promptly respond to and resolve) queries, incidents and Defects raised by the State or an Agency;
 - (2) enhance ICT Services including to ensure they remain current and the Service Provider must make available any new release, version or upgrade to the ICT Services and any implementation of any new release, version or upgrade must occur in a planned and timely manner; and
 - (3) remedy incidents and Defects with the ICT Services.
- (e) The Service Provider must not make any enhancements or modifications to any ICT Services which adversely affect the functionality, compatibility, performance, or ease of use of the ICT Services or will require the State or an Agency to make material changes to its ICT systems or processes unless the State or the relevant Agency has agreed to that change in writing either as an Agreement Contract Change, PA Contract Change or an Operational / Technical Change.
- (f) The Service Provider must use its best endeavours to prevent any Disabling Code entering into or affecting the ICT Services or the State's or an Agency's ICT systems, must use up to date anti-virus software and ensure that the ICT Services have up to date security-related patches, fixes, versions and releases, and must not intentionally or negligently introduce any Disabling Code.

22.2 Provision of documentation

- (a) The Service Provider must inform each Agency in writing of the Protocols and Procedures as referred to in clause 19.5(a), including secure transaction authorisation and authentication procedures, which are relevant to the delivery of the Services. Subject to clause 19.5(b), the Agency will comply with those Protocols and Procedures.
- (b) Subject to clauses 19.5, the Service Provider must provide the State and each Agency with copies of all manuals and other documentation reasonably required to enable the State and Agencies to understand, use and make proper use of the Services including the ICT Services.
- (c) All documentation provided or to be provided by the Service Provider must be of good quality and accurate and contain the content and address the scope in accordance with this Agreement and any Product Agreement or as otherwise agreed in writing between the Service Provider and the State or an Agency.

22.3 Acceptance testing for ICT Services

- (a) Except as set out below, the implementation of, and any revised configuration, modification, fix, patch or upgrade to, the ICT Services is subject to the passing of the State or an Agency's acceptance tests to confirm whether the ICT Services comply with the provisions of this Agreement and any acceptance criteria (agreed between the Parties (agreement not to be unreasonably withheld or delayed) or to the extent not agreed, as reasonably required by the State or an Agency to verify compliance with this Agreement) and must not be released for use in a production environment for day to day operations of the State or an Agency, unless approved by the State or an Agency in writing. This requirement does not apply to any minor revised configuration, modification, fix, patch or upgrade to, the ICT Services (including critical and emergency security patches), which does not affect any compatibility with or integration with the State's or an Agency's ICT systems and this requirement does not apply where the State or an Agency agree in writing that such acceptance tests or pre-approval are not required.
- (b) The State or an Agency may request the Service Provider to conduct all or part of the acceptance tests on the State or an Agency's behalf.
- (c) The Service Provider must promptly remedy any Defects in the ICT Services identified during acceptance tests, and submit the revised ICT Services for repeat acceptance tests. If the ICT Services conform with this Agreement and any acceptance criteria, the State or an Agency must accept the ICT Services.
- (d) ICT Services which are comprised of multiple components, will not be finally accepted until acceptance tests for all components of the ICT Services are completed, and the State or an Agency finally accepts the ICT Services. The State or an Agency may reject the ICT Services and any and all component parts of the ICT Services, if the ICT Services as a whole fails to meet the acceptance tests, even if the State or an Agency has previously accepted some or all of the ICT Services. If the ICT Services as a whole passes the acceptance tests, the State or Agency must accept the ICT Services.



23 State / Agency Data and State and Agency property

23.1 State / Agency Data

- (a) Nothing in this Agreement or any Product Agreement is intended to give the Service Provider any Intellectual Property Rights in, or other rights in respect of, the State / Agency Data.
- (b) Subject to any obligation under this Agreement or any Product Agreement to destroy any State / Agency Data, the Service Provider must retain State / Agency Data, and the Service Provider must promptly deliver up and provide



access to the State / Agency Data to the relevant owner of the State / Agency Data, whether the State or an Agency, at the request of the relevant owner.

- (c) The Service Provider must not possess or assert any lien or other right against or to the State / Agency Data.
- (d) Subject to the Service Provider's compliance with Laws and Banking Industry Codes, the Service Provider must comply with the State's and an Agency's information management, data retention and destruction requirements as notified to the Service Provider from time to time. The Service Provider will promptly inform the State or an Agency of any issues the Service Provider has in complying with those requirements and the Parties will meet to resolve in good faith how the Service Provider's issues with those requirements will be addressed. If the Parties are unable to agree on a resolution to resolve the Service Provider's issues within 15 Business Days of the first meeting between the Parties, the matter will be dealt with in accordance with clause 42.
- (e) The Service Provider acknowledges and agrees that financial and other information relating to a State or an Agency's accounts for any type of financial product or service and transactions including, to the extent legally permitted, personal profiles and data relating to usage or spend, is the property of the State, as it relates to the State and otherwise the relevant Agency and will not be confidential to the Service Provider and the relevant owner will have unrestricted access to and the right to obtain and use that data for any purpose.
- (f) If the Service Provider is required to migrate, transfer, separate or copy State / Agency Data, the Service Provider must ensure that the State / Agency Data is migrated, transferred, separated or copied without loss, corruption or any reduction in its accessibility or useability.
- (g) In the event of any loss, corruption or reduction in the accessibility or useability of State / Agency Data in the Service Provider's or its Sub-Contractors possession, custody or control, the Service Provider must restore such data using best practice data restoration techniques.

23.2 State and Agency property

The Service Provider must provide to the State or an Agency any State / Agency Data, Contract Material owned by the State or an Agency or licensed to the State or an Agency, or any property of the State or an Agency, in the possession, custody or control of the Service Provider or its Sub-Contractors, as required by the State or an Agency from time to time.

23.3 Retention and provision of source documents

As part of the Service Provider's State / Agency Data obligations pursuant to this clause 23 and record retention obligations pursuant to clause 24, the Service Provider must:

- (a) ensure all source documents for accounts for any type of financial product or service and transactions including presented cheques are imaged and stored electronically; and
- (b) provide access to those electronic copies of the source documents to the State or an Agency, or both, upon request of the State or an Agency.

24 Records and audit

24.1 Records

- (a) The Service Provider must maintain complete and accurate records of, and supporting documentation for, Services supplied to the State and the Agencies including to:
 - (1) provide complete and accurate records of the State's and the Agencies' accounts for any type of financial product or service and transactions and to enable accounts for any type of financial product or service and transactions to be traced, checked and where an error has occurred, to be identified and corrected; and
 - (2) enable the Service Provider, State and the Agencies and their respective Auditors to inspect, review and audit the Services, accounts for any type of financial product or service, transactions, and the Service Provider's compliance with this Agreement and the Product Agreements and ability to comply with this Agreement and the Product Agreements.
- (b) The Service Provider will be responsible for the availability, accuracy, completeness and currency of all account and transaction information.
- (c) The Service Provider must maintain complete and accurate records in accordance with applicable Laws, and to enable the State and the Agencies to comply with applicable Laws, including *State Records Act 1998* (NSW), *GSF Act*, *State Owned Corporations Act 1989* (NSW) and *Public Finance and Audit Act 1983* (NSW).
- (d) Without limiting the generality of the above, where the Service Provider is advised that the Service Provider or its Sub-Contractors have custody of State records:
 - (1) the Service Provider must not arrange for, nor effect, a transfer or custody or ownership of any State records under the *State Records Act 1998* (NSW) without the prior written consent of the owner of the State record, whether the State or an Agency;
 - (2) the Service Provider must not remove any such record except in accordance with arrangements agreed to by the owner of the State record, whether the State or an Agency; and
 - (3) the Service Provider must comply with the requirements of the relevant owners, whether the State or an Agency, and with the State Records Authority and any other Regulatory Body's requirements in relation to such State records including as to transfer and full and free access to the State Records Authority and any other Regulatory Body.

24.2 Inspection, reviews and audits

- (a) On notice by the State or an Agency or the Auditor-General, the Service Provider must provide the State or an Agency or the Auditor-General or any Auditor appointed by or with competence over the State or an Agency, with access to:
 - (1) the State / Agency Data, and records relating to the Services and this Agreement and the Product Agreements that are in the possession,



custody or control of the Service Provider or its Sub-Contractors, or both; and

- (2) Service Provider's Personnel, premises and operations used by the Service Provider Group or Sub-Contractors, or both, in connection with the supply of the Services,

for the purpose of performing inspections, reviews and audits of the State's or an Agency's accounts for any type of financial product or service and transactions, and of the Services, interest paid, Fees and Charges and Rebates paid or credited and the Service Provider's compliance with this Agreement and a Product Agreement and ability to comply with this Agreement and a Product Agreement.

- (b) The Service Provider must permit and co-operate with inspections, reviews and audits in accordance with applicable Laws, and to enable the State and the Agencies to comply with applicable Laws, including by permitting audits by the Auditor-General pursuant to the GSF Act, *State Owned Corporations Act 1989* (NSW) and *Public Finance and Audit Act 1983* (NSW).
- (c) The Service Provider must co-operate fully with any inspection, review and audit conducted under this clause and provide the information required by any of the State, Agency, Auditor-General or other Auditor.
- (d) Subject to compliance with clause 24.2(b), any inspection, review and audit shall be subject to the Service Provider's reasonable confidentiality and security requirements as a financial services provider including for the Service Provider's compliance with applicable Laws and Banking Industry Codes.

24.3 General

The Parties' rights and obligations under clauses 23 and 24 shall continue as a minimum under this Agreement and under a Product Agreement until the later of:

- (a) 7 years after the date the Service Provider ceases to provide Services under this Agreement; and
- (b) the date required by any of the Service Provider, State and Agency to comply with applicable Laws and Banking Industry Codes.

25 Confidentiality and Government Information (Public Access)

25.1 Confidentiality

- (a) The Service Provider must not make public or disclose to any person or use the Confidential Information other than in accordance with this clause 25, without the prior written consent of the State or an Agency in relation to its Confidential Information.
- (b) In giving written consent the State or an Agency may impose such terms and conditions as it sees fit.
- (c) The Service Provider must only use the Confidential Information for the exercise of its rights or performance of its obligations in connection with this Agreement or any Product Agreement.
- (d) The Service Provider may disclose Confidential Information:

- (1) to the Service Provider's Related Bodies Corporate, legal advisors, auditors, insurers or accountants for the purpose of facilitating the Service Provider's performance of its obligations under this Agreement or a Product Agreement or for advising or reporting on matters arising from this Agreement or a Product Agreement; and
- (2) to the Service Provider's Personnel whose use of the Confidential Information is solely for the purpose of facilitating the Service Provider's exercise of its rights or performance of its obligations under this Agreement or a Product Agreement,

provided the persons are subject to equivalent obligations of confidentiality and must ensure that every person to whom disclosure is made pursuant to this clause 25.1(d) does not use or disclose the Confidential Information to any third party other than as permitted under this clause.

- (e) The Service Provider may also disclose:
 - (1) Confidential Information of an Agency to the State, subject to any exceptions to this disclosure required by an Agency or the State or required to comply with any applicable Laws and Banking Industry Codes; and
 - (2) Confidential Information where required to do so by Law or in accordance with the rules of any stock exchange upon which the Service Provider's securities are listed. In these circumstances, the Service Provider must give the State and the relevant Agency prompt advance written notice of the disclosure (where lawful and practical to do so) so that the State or the Agency has sufficient opportunity (where practical) to prevent or control the manner of disclosure by appropriate legal means.
- (f) Before a Sub-Contractor is given access to Confidential Information of the State or an Agency, the Service Provider must arrange for that Sub-Contractor to execute a deed of confidentiality in a form requested by the State or an Agency requiring that Sub-Contractor to comply with equivalent obligations under this clause 25.
- (g) The Service Provider must, in accordance with the written request of the State or an Agency, promptly return Confidential Information to the Party who is the owner of the Confidential Information or destroy the Confidential Information, subject to the Service Provider's record retention duties in accordance with Laws, Banking Industry Codes and its internal audit requirements.

25.2 State may disclose

- (a) Subject to this clause 25.2, the State and Agencies may at any time disclose information of the Service Provider and the contents of any Transaction Agreement:
 - (1) where disclosure is made in the course of the official duties of the State, an Agency or a Minister;
 - (2) to satisfy the requirements of parliamentary accountability;
 - (3) to the Auditor-General for the purposes of satisfying their audit and disclosure requirements;
 - (4) pursuant to policies of the State or Agency or both;
 - (5) in annual reports of the State or Agency or both; and



- (6) pursuant to the GIPA Act or any other Laws requiring the State and Agencies to disclose information,
- (being the State's and Agencies' **Public Disclosure Obligations**), and the Service Provider must use all reasonable endeavours to assist the State and Agencies to meet their Public Disclosure Obligations.
- (b) The Service Provider acknowledges that the State and Agencies are subject to the GIPA Act and agrees that the State and Agencies may disclose any part or all of any Transaction Agreements on its nominated website established for GIPA Act disclosures. The Service Provider irrevocably consents to the State or an Agency acting in accordance with this clause, subject to any rights afforded to the Service Provider to object to the disclosure of information in accordance with the GIPA Act.
- (c) To the extent that section 121 of the GIPA Act applies, the Service Provider must, upon receipt of a written request by State or an Agency, provide the State or the Agency with immediate access to the following information contained in records held by the Service Provider:
- (1) information that relates directly to the performance of Services by the Service Provider;
 - (2) information collected by the Service Provider from members of the public to whom it provides, or offers to supply, Services; and
 - (3) information received by the Service Provider from the State or an Agency to enable it to provide Services.
- (d) The State or an Agency must not publish or disclose in the public domain any Confidential Information of the Service Provider or information which the State or an Agency has previously agreed must not be disclosed or published on the basis that it is commercially sensitive, without the prior written consent of the Service Provider except if required to do so to comply with the Public Disclosure Obligations of the State and Agencies.
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (f) The State may disclose any of the Transaction Agreements to any GSF Agency (on a confidential basis) to enable it to determine whether it wishes to be an Agency under this Agreement.

25.3 Announcements

The Service Provider must not cause or permit any public announcement or media release to be made concerning any matter relating to this Agreement or a Product Agreement or its subject matter unless:

- (a) required by Law; or
- (b) the State has given specific approval in writing, which may be subject to conditions required by the State.

26 Privacy

26.1 Privacy and personal information

- (a) If the Service Provider collects or has access to Personal Information in the course of performing its obligations under this Agreement or a Product Agreement, the Service Provider must:
- (1) collect, use, access, disclose or hold such Personal Information obtained in connection with this Agreement or a Product Agreement only for the purposes of performing its obligations under this Agreement or the relevant Product Agreement;
 - (2) comply with all Privacy Laws as if it were a person subject to the Privacy Laws;
 - (3) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by the State or an Agency, would be a breach of any Privacy Laws;
 - (4) not disclose Personal Information to any other person without the prior written consent of the State (in the case of Personal Information under this Agreement) or the relevant Agency (in the case of Personal Information under a Product Agreement) or as expressly required by Law or to Sub-Contractors which require access to the Personal Information to perform their obligations in connection with this Agreement or a Product Agreement;
 - (5) notify the State and any affected Agency immediately upon becoming aware of a breach or suspected breach of any of the obligations in this clause 26.1, whether by the Service Provider, its Sub-Contractors or their Personnel, or in connection with any actual or suspected misuse, interference and loss, or unauthorised access, modification or disclosure of Personal Information and comply with any reasonable direction from the State or an Agency with respect to remedying any of the foregoing;
 - (6) notify any individual that makes a complaint to the Service Provider regarding the Service Provider's acts or practices in relation to such individual's Personal Information, that the complaint may be investigated by a Commonwealth or state privacy commissioner;
 - (7) comply with all reasonable directions of the State or an Agency in relation to the care and protection of Personal Information held in connection with this Agreement or a Product Agreement or the rights of individuals to access and correct such Personal Information, and take all technical, organisational and other security measures reasonably within the Service Provider's power to protect the Personal Information from misuse, interference and loss and from unauthorised access, modification or disclosure; and
 - (8) at the end of the Term or an Agency Term or on request by the relevant entity, whether the State or an Agency, promptly return to the entity or securely destroy (at the entity's election) all copies or other records containing Personal Information held in connection with the performance of duties under this Agreement or a Product Agreement for the benefit of the entity, save as required to be retained for the Service Provider's compliance with Laws and Banking Industry Codes.

27 Fraud control and security

27.1 General

- (a) The Service Provider must have in place and operate (and continuously improve):
 - (1) effective systems and processes for the Services to protect against and minimise unauthorised use, misuse and fraud in connection with accounts for any type of financial product or service, and other Services; and
 - (2) security procedures and safeguards against the misuse, interference and loss and unauthorised access, modification or disclosure of State / Agency Data, and any Confidential Information of the State or Agencies,
 including the Protocols and Procedures (**Fraud and Security Control**).
- (b) The Fraud and Security Control must include processes to monitor access to and use of the Services, and procedures and devices to limit access and use, and suspension and termination of access and use of the Services.
- (c) The Service Provider must, in connection with the Services:
 - (1) comply with (or have valid waivers or exceptions in place in respect of) all Laws, Scheme requirements and Banking Industry Codes relating to Fraud and Security Control including PCI DSS;
 - (2) assist the State to maintain PCI DSS compliance; and
 - (3) comply with ISO 27000 series and the security requirements in Schedule 3 (Service Specification).
- (d) The Service Provider must comply with any reasonable security requirements of the State or an Agency notified to the Service Provider from time to time.
- (e) An Agency must comply with any reasonable security requirements in the Protocols and Procedures from time to time.
- (f) Data sent electronically to the State or an Agency from the Service Provider must be secured using agreed encryption or other methods (such methods to include the objective that the data is not useable if intercepted by unauthorised persons or entities).

27.2 Authentication IDs or procedures

- (a) Each Party must ensure the confidentiality and security of the procedures, authentication passwords, user IDs or other identification and authentication procedures in its possession or control to be used to authorise communications and instructions to the Service Provider.
- (b) Each Party must take all necessary and reasonable steps to prevent unauthorised access to, or unauthorised use of, the Services.
- (c) If the Service Provider or an Agency becomes aware of any unauthorised access to, or unauthorised use of, the Services or access or use which is suspicious, it must immediately notify the other and the Service Provider must immediately activate a stop procedure on the account of any type of financial product or service or Service as appropriate to terminate that unauthorised access or use or suspicious access or use.



28 Intellectual Property Rights and Moral Rights

28.1 State / Agency Material and State / Agency New Contract Material

- (a) Except as otherwise provided under this Agreement, this Agreement and the Product Agreements do not affect the ownership of and Intellectual Property Rights in the State / Agency Material.
- (b) The State or relevant Agency will own all rights and all Intellectual Property Rights in any State / Agency New Material and in any State / Agency Data immediately from creation.
- (c) The Service Provider absolutely and unconditionally assigns, and must procure that its Personnel assign, to each relevant owner, whether the State or an Agency, or both, all rights and all Intellectual Property Rights in the State / Agency New Material and State / Agency Data on their creation, free of encumbrances and third party rights.
- (d) To the extent the Service Provider needs to use any State / Agency Material, State / Agency New Material and any State / Agency Data of the State or an Agency for the purposes of performing its obligations under this Agreement or a Product Agreement, the relevant owner or owners, whether the State or an Agency, or both, grant to the Service Provider a non-exclusive, non-transferable, licence (including to sub-licence to Sub-Contractors) to use the State / Agency Material, State / Agency New Material and any State / Agency Data for the sole purposes of performing its obligations under this Agreement or a Product Agreement.
- (e) The State or the relevant Agency may notify the Service Provider of additional terms applicable to the licence in clause 28.1(d) including any terms of any third party licensor.

[illegible]



[REDACTED]

28.3 Moral Rights

- (a) The Service Provider must ensure it has consents from all persons involved in the development of any State / Agency New Material and any Service Provider

Material or Service Provider New Material incorporated into any State / Agency Material, State / Agency New Material and State / Agency Data to any act or omission which might constitute an infringement of a person's Moral Rights including:

- (1) reproducing, publishing, adapting or communicating such Contract Material to the public without attributing its authorship or otherwise identifying the author of such Contract Material; and
 - (2) subjecting such Contract Material to any alteration or doing anything else to such Contract Material, including adapting, reproducing, publishing, communicating to the public, adding, deleting, editing or modifying the text, format or structure of such Contract Material.
- (b) The Service Provider must ensure that it has consents from all persons required to enable use of any Service Provider Material and Service Provider New Material in accordance with this Agreement or any Product Agreement to the extent that use might constitute an infringement of a person's Moral Rights including the acts or omissions specified in clause 28.3(a)(1) and 28.3(a)(2) in relation to that Contract Material.

28.4 Indemnities for Intellectual Property Rights and Moral Rights

- (a) The Service Provider must indemnify the State and each Agency and their Personnel (**those indemnified**) from and against all actions, claims, demands, losses, damages, costs and expenses (including legal costs and loss resulting from any proceedings brought against any of those indemnified) in relation to the alleged infringement of Intellectual Property Rights or Moral Rights of any person in Supplied Material, which:
- (1) may be brought against or made upon those indemnified; or
 - (2) those indemnified may incur or sustain,
- arising out of or as a consequence of the exercise of the Service Provider's or the State's or Agencies' rights and obligations granted pursuant to this Agreement and the Product Agreements.
- (b) Where an action, claim or demand (**Claim**) in relation to the alleged infringement of Intellectual Property Rights or Moral Rights in the Supplied Material is made or threatened by a third party against those indemnified, the State or the affected Agency must promptly provide the Service Provider with notice in writing of the details of the Claim. The State or the affected Agency, must (except to the extent there is any government policy that prohibits the Service Provider from handling the process for the defence of the Claim (including settlement of the Claim)) permit the Service Provider, at the Service Provider's expense, to handle the defence process of such Claim (including settlement of the Claim) and, as permitted by law, to control and direct any litigation that may follow such Claim (including selecting legal advisors and counsel), subject to the Service Provider agreeing to comply at all times with the government policy relevant to the conduct of the Claim.
- (c) Except to the extent there is any government policy that prohibits the Service Provider from handling the process for the defence of the Claim (including settlement of the Claim), and unless otherwise agreed between the Parties, the Service Provider must defend the Claim at its own expense. If the State or the affected Agency does not permit the Service Provider to handle the defence of the Claim (including settlement of the Claim) and, as permitted by law, to control and direct any litigation that may follow a Claim or if the Service Provider does not handle the defence of the Claim (including settlement of the Claim), then the



State or the affected Agency is entitled to defend the Claim (including settlement of the Claim) at the Service Provider's expense. The Party defending the Claim must:

- (1) as a minimum, keep the other Party informed of significant developments concerning the Claim including by the provision of copies of documents filed by the parties in the courts, and provide updates upon reasonable request by the other Party; and
 - (2) not settle the Claim without the written consent of the affected Party to the terms of that settlement, which consent shall not be unreasonably withheld or delayed.
- (d) The affected Parties must execute all documents and do all acts and things reasonably required for the purposes of giving effect to this clause 28.4.
- (e) Failure by the State or an Agency to comply with the indemnification procedures in this clause 28.4 does not relieve the Service Provider of any obligation to indemnify those indemnified under this clause in respect of the subject matter of the relevant Claim, except that the losses, damages, costs and expenses indemnified by the Service Provider shall be reduced proportionally to the extent the relevant amount would have been avoided or mitigated but for State's or an Agency's failure to comply with the procedure in this clause.

28.5 Remedial action and further assurance

- (a) If the Service Provider becomes aware that there is, or will be, an infringement or misappropriation of any Intellectual Property Rights or Moral Rights of any person in any Supplied Material arising out of this Agreement or a Product Agreement, the Service Provider must at its expense:
- (1) obtain for the State and the Agencies the right to continue to retain possession of and use of the Supplied Material; or
 - (2) replace or modify the Supplied Material so that the alleged infringement ceases and the replaced or modified Supplied Material provides the State and the Agencies with equivalent functionality and performance as required by this Agreement or a Product Agreement.
- (b) The Service Provider must perform or procure the performance of, all further acts and things, and must deliver, and procure the execution of further documents, which are reasonably desirable to give effect to this clause 28.

29 Representations and warranties

29.1 Warranties as to authority

The Service Provider represents and warrants, and it is an essential term of this Agreement and the Product Agreements, that:

- (a) the execution and delivery by the Service Provider of each Transaction Agreement is properly authorised;
- (b) it has full corporate power to execute, deliver and perform its obligations under each Transaction Agreement;
- (c) each Transaction Agreement constitutes a legal, valid and binding obligation of the Service Provider enforceable in accordance with its terms by appropriate

legal remedy (subject to general principles of equity, stamping and registration and other perfection requirements, statute of limitations and laws affecting creditors' rights generally); and

- (d) each Transaction Agreement does not conflict with, or result in the breach of, or default under, any provision of its constitution, any writ, order or injunction, judgment, or Law to which it is a party or is subject or by which it is bound.

29.2 Service Provider warranties - general

The Service Provider represents and warrants that:

- (a) it will perform the Services in accordance with Good Industry Practice;
- (b) the Services will comply with the Requirement/Specifications and other provisions of this Agreement and be fit for the purposes as set out in the Requirements /Specifications and elsewhere in this Agreement;
- (c) it has, and will at all times have, the skills, qualifications, expertise, capacity, resources and experience necessary to carry out its obligations under this Agreement; and
- (d) it has all rights, title, licences, authorisations, consents and other approvals necessary to provide the Services in accordance with the terms of this Agreement.

29.3 Service Provider warranties – goods

The Service Provider represents and warrants that any Contract Material supplied (whether sold, transferred or leased), which are goods:

- (a) complies with its respective description (including performance criteria);
- (b) corresponds with the sample, where the Service Provider gave the State or an Agency a sample prior to purchase;
- (c) is new and of good and acceptable quality;
- (d) complies with any relevant Australian standard and, to the extent that they are not inconsistent with any relevant Australian standard, and ISO (International Organisation for Standardisation) standard;
- (e) may be used without risk to health or safety;
- (f) has the full benefit of any manufacturer's warranties that may be applicable to it and enforceable for the benefit of the State and Agency; and
- (g) where sold is sold with full legal and beneficial title free of any security interests and encumbrances or where leased the Service Provider has the rights to lease the goods.

29.4 Compliance with law

The Service Provider represents and warrants that:

- (a) it will provide the Services and perform its obligations under this Agreement and the Product Agreements in accordance with, and to enable the State and Agencies to comply with, all applicable Laws and Banking Industry Codes, and it will at all times comply with all applicable Laws and Banking Industry Codes; and



- (b) it has all licences, authorisations, consents, approvals and permits required by all applicable Laws and Banking Industry Authorities in order to provide the Services and perform its obligations under this Agreement and the Product Agreements.

29.5 Service Provider's Tender

The Service Provider represents and warrants that all statements and representations in pre contractual proposals made by the Service Provider to the State or an Agency, and in the Service Provider's responses in the Tender, are true, complete and accurate, except to the extent of any inconsistency with a provision of this Agreement or a Product Agreement, which is higher in the order of precedence.

29.6 Intellectual Property Rights

The Service Provider represents and warrants that:

- (a) it has the right to grant any assignments and licences granted pursuant to this Agreement or a Product Agreement; and
- (b) the provision of the Services, the performance of the Service Provider's obligations under this Agreement and the Product Agreements and the use of the Services and any Supplied Material in accordance with this Agreement or a Product Agreement will not infringe the Intellectual Property Rights or Moral Rights of any person.

29.7 Separate and reliance on representations and warranties

- (a) Each representation and warranty made or referred to in this Agreement or a Product Agreement is to be construed independently of every other representation and warranty made or referred to in this Agreement or a Product Agreement and is not limited by any other representation or warranty.
- (b) The Service Provider acknowledges that the State and each Agency has relied on the representations, warranties and acknowledgements of the Service Provider in clause 29 and elsewhere in this Agreement and a Product Agreement, in entering into this Agreement and the Product Agreement to which the Agency is a party respectively.

29.8 Reliance on information

The Service Provider:

- (a) acknowledges and agrees that any information or material made available by the State or an Agency to the Service Provider for the purposes of the Request for Proposal process or any other part of the procurement process or entering into this Agreement or a Product Agreement (**Information**) may not be accurate or complete and that the Service Provider is responsible for making its own enquiries for those purposes;
- (b) acknowledges and agrees that, in relation to any Information which relates to future matters, the State and an Agency has taken no steps to verify that the Information is based on reasonable grounds, and no representation or warranty, expressed or implied, is made by the State, an Agency or any of their Personnel that the Information in relation to those future matters is accurate or complete;
- (c) warrants that it has not, in deciding whether or not to enter into this Agreement or a Product Agreement, relied on any Information or representation (whether

oral or in writing), or any other conduct of the State, an Agency or any of their Personnel, other than as expressly set out in this Agreement or a Product Agreement; and

- (d) waives any right to make any claims in relation to any loss or damage suffered or incurred, whether directly or indirectly, arising out of or in connection with any use of or reliance on the Information.

30 Conflict of interest

- (a) The Service Provider represents and warrants that, except as disclosed in its Tender, as at the Effective Date:
 - (1) no Conflict of Interest exists, or is likely to arise in the performance of this Agreement or any Product Agreement; and
 - (2) so far as it is aware, none of the Sub-Contractors listed in [REDACTED] (Approved Material Sub-Contractors) has a Conflict of Interest in the performance of this Agreement or any Product Agreement.
- (b) If a Conflict of Interest or risk of Conflict of Interest arises during the Term or Agency Term, the Service Provider must immediately notify the State and any affected Agency and:
 - (1) the State may direct the Service Provider as to how to manage the Conflict of Interest and the Service Provider must comply with any reasonable direction so given by the State and where the Conflict of Interest is of relevance to a specific Agency, the Agency's direction, except where it conflicts with the State's direction; and
 - (2) the State may suspend this Agreement, the Services or part of the Services with immediate effect and such suspension will apply to all Product Agreements unless otherwise specified by the State in writing and an Agency affected by the Conflict of Interest may suspend a Product Agreement, the Services or part of the Services.
- (c) If clause 30(b) applies, the Service Provider must notify the State and an affected Agency when the Conflict of Interest or risk of Conflict of Interest is resolved.

31 Commission, incentives and collusion

31.1 Commissions and Incentives

The Service Provider must not, and must ensure that its Personnel do not, give or offer anything to the State or Agency or any Personnel of the State or Agency, or to a parent, spouse, child or associate of Personnel of the State or Agency, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting to influence the State or Agency's actions in relation to this Agreement or a Product Agreement.

31.2 Collusion

The Service Provider warrants that:



- (a) except as is expressly disclosed to the State in its Tender, its Tender was not prepared (and any variations to this Agreement and a Product Agreement will not be prepared) with any consultation, communication, contract, arrangement or understanding with any competitor (including a contractor under a similar agreement with the State or Agency) regarding any of the following:
 - (1) prices, methods, factors or formulas used to calculate prices;
 - (2) the intention or decision to submit or not submit an offer (or request a variation) to this Agreement or a Product Agreement;
 - (3) the submission of a bid (or a request for variation) that is non-conforming with the terms of this Agreement or a Product Agreement; or
 - (4) the particulars of the Services to which this Agreement or a Product Agreement relates; the terms of the Tender (or variation) or a competitor's offer (or variation);
- (b) it has not provided any benefit (including money) directly or indirectly to, or entered into any agreement, arrangement or understanding to provide any benefit (including money) directly or indirectly to, any competitor (including any contractor or service provider under a similar agreement with the State or Agency) relating in any way to this Agreement or a Product Agreement;
- (c) it has not received any such benefit directly or indirectly, or entered into any agreement, arrangement or understanding to receive any such benefit directly or indirectly from any competitor (including any contractor or service provider under a similar agreement with the State or Agency) relating in any way to this Agreement or a Product Agreement;
- (d) it will not provide or receive any such benefit;
- (e) it has not consulted, communicated or entered into any agreement, arrangement or understanding to provide any benefit (including money), whether directly or indirectly, to a trade, industry or other association (above the published standard fee) relating in any way to this Agreement and a Product Agreement, nor has it provided, nor will it provide any such benefit;
- (f) except as is expressly disclosed in its Tender, at the time of entering into this Agreement the Service Provider and its directors and senior management, are not and have never been subject to proceedings relating to anti-competitive conduct in Australia or overseas; and
- (g) the Service Provider must notify the State immediately upon becoming aware that the Service Provider or a director or member of senior management becomes subject to an adverse finding, decision or ruling by a court or tribunal relating to anti-competitive conduct in Australia or overseas during the Term by disclosing, at a minimum: the names of the parties to the proceedings; the case number; the general nature of the proceedings; and the outcome or current status of the proceedings.

The Service Provider acknowledges that the State has entered into this Agreement and the Agencies have entered into the Product Agreements in reliance on the warranties in clause 31.2.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



- (a) The State declares that it holds the benefit of each indemnity given by the Service Provider in this Agreement and a Product Agreement for itself and on trust for its Ministers and its Personnel and each Agency declares that it holds the benefit of each indemnity given by the Service Provider in this Agreement and a Product Agreement for itself and on trust for its Personnel and the benefit of clause 32.4 for itself and on trust for its Users.
- (b) The Service Provider acknowledges the existence of such trusts and consents to the State and each Agency exercising its rights in relation to, or otherwise enforcing such indemnities on behalf of the Ministers and its Personnel, and in the case of an Agency clause 32.4 on behalf of its Users.
- (c) The Parties agree that notwithstanding this clause 32, neither the State nor an Agency requires the consent of any Minister, Personnel or User in his or her capacity as a beneficiary of the trust to amend or waive any provision of this Agreement or a Product Agreement respectively.

Any indemnity and its associated provisions in this Agreement or a Product Agreement shall not limit any other right or remedy available to those indemnified at law or in equity as a result of the actions or omissions of the Service Provider in connection with this Agreement including the right to bring a damages claim against the Service Provider under or in connection with this Agreement or a Product agreement.

Notwithstanding any other provision of this Agreement or a Product Agreement, the Service Provider is not liable to perform any Services, and may refuse to provide any Service in a particular circumstance, if the performance of those Services would contravene a Law or Banking Industry Code that applies to the Service Provider or one of its Related Body Corporates.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



34 Termination of Agreement

34.1 Termination for convenience

The State is entitled to terminate this Agreement at any time for convenience on not less than 6 months' prior written Notice.

[illegible]

(b)

34.3 Termination for Force Majeure, change in control and other termination rights

- (a) The State may terminate this Agreement in whole or in part by giving Notice to the Service Provider if the Service Provider is subject to a Force Majeure which affects the performance of its obligations under this Agreement or a Product Agreement for 30 days or more.
- (b) The State may terminate this Agreement in whole or in part by giving Notice to the Service Provider if the Service Provider or a holding company of the Service Provider is subject to a change in Control, other than a change in Control for which the State has confirmed in writing that it will not exercise its right to terminate under this clause 34.3.
- (c) The State may terminate this Agreement in whole or in part by giving Notice to the Service Provider if the Service Provider rejects any application for, increase to the limits of or the extension of, any Debt Product requested by the State or an Agency and the State disagrees with the Service Provider's rejection, and the State and the Service Provider fail to resolve the dispute within 30 days of the Service Provider's rejection (or such other longer period agreed between the State and the Service Provider to resolve the dispute).
- (d) The State may terminate this Agreement in whole or in part by giving Notice to the Service Provider if the Service Provider exercises its rights pursuant to clause 35.4.

34.4 Service Provider rights of termination – events of default

The Service Provider is not entitled to terminate this Agreement other than on prior written Notice to the State if:

- (a) the State has failed to pay an amount in aggregate in excess of \$25 million owing by the State to the Service Provider under the Product Agreements; and
- (b) the State fails to pay that amount within 60 days of the Service Provider's Notice to the State to make that payment and referring in that Notice to this clause and its intention to terminate this Agreement.

35 Termination of a Product Agreement

35.1 Termination and reduction for convenience

The Service Provider acknowledges and agrees that this Agreement is a framework for enabling the State on behalf of an Agency, and an Agency acting as principal or agent for another Agency to order, increase, decrease and terminate Services from time to time acting in their absolute discretion and no Product Agreement shall have a minimum term



29.5% of the sample.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



35.3 Termination for Force Majeure

An Agency may terminate any or all of its Product Agreements in whole or in part including by giving Notice to the Service Provider if the Service Provider is subject to a Force Majeure which affects the performance of its obligations under a Product Agreement for 30 days or more.

35.4 Service Provider rights of termination – events of default

The Service Provider is not entitled to:

- (a) terminate a Product Agreement;
- (b) withdraw, reduce or cancel a Service including any financial accommodation under a Debt Product; or
- (c) declare a default and require an Agency to pay immediately all amounts due under any Product Agreement including the debit balance of any financial accommodation under a Debt Product,

other than on prior written Notice served both on the State and the affected Agency if the Agency has failed to pay an amount in excess of \$10 million owing to the Service Provider under that Product Agreement within 60 days of the Service Provider's Notice to that Agency to make that payment and referring in that Notice to this clause and its intention to exercise its rights under this clause.

36 Expiry or termination general and consequences

36.1 Termination Events

- (a) The Service Provider warrants that, and it is an essential term of this Agreement that, no Termination Event specified in clause 34.2(a) occurs.
- (b) The Service Provider warrants that, and it is an essential term of a Product Agreement that, no Termination Event specified in clause 35.2(a) occurs.

36.2 Material breach

- (a) Without limitation to clauses 34.2(a)(4), 34.2(a)(5), 35.2(a)(4) and 35.2(a)(5), any of the following events or the following breaches constitute a material breach of this Agreement or a Product Agreement:
 - (1) any breach or series of breaches which is or are not commercially insignificant or which has or have an adverse consequence which is not minimal or of no consequence; or
 - (2) a breach of clauses 25.1 (confidentiality), 26 (privacy), 27.3 (security), 29.4 (compliance with laws), 30 (conflict of interest), or 31 (collusion), and any such breach shall be deemed to be a material breach that is not capable of remedy.
- (b) Without limitation to clauses 35.2(a)(4) and 35.2(a)(5), a Service Level Termination Event constitutes a material breach of a Product Agreement and



any such breach shall be deemed to be a material breach that is not capable of remedy.

36.3 Notice periods

Subject to any minimum notice period specified in clause 34 or 35 (if any), the notice period for any notice or Notice of termination may be selected by the Party serving the notice and may be effective immediately.

36.4 Expiry or termination of this Agreement and effect on Product Agreements

- (a) If this Agreement expires or terminates in whole, subject to clause 37, all Product Agreements will automatically expire or terminate on expiry or termination of this Agreement, unless otherwise specified by the State in writing.
- (b) If this Agreement expires or terminates in part including expiry or termination of part of the Services, subject to clause 37, all Product Agreements or parts of a Product Agreement relating to that part of this Agreement, which expires or terminates will automatically expire or terminate on expiry or termination of that part, unless otherwise agreed by the State, the relevant Agency and the Service Provider in writing.
- (c) Any Product Agreement or part of a Product Agreement which does not automatically expire or terminate pursuant to this clause 36.4 will continue in accordance with its terms and conditions, until it expires or terminates in accordance with its terms and conditions.
- (d) The Service Provider must not extend a Product Agreement under this Agreement beyond the end of the Framework Transition-Out Period, without the prior written agreement of the State, which agreement may be subject to conditions with which the Service Provider must comply.
- (e) Nothing in this clause or this Agreement shall prohibit the Service Provider after the end of the Framework Transition-Out Period from entering into a new agreement with any Agency, which wishes to purchase products and services from the Service Provider, previously provided under this Agreement:
 - (1) provided that those products or services are not provided or purported to be provided under this Agreement; and
 - (2) subject to any State instruction, policy, requirement or direction on the procurement of such products and services from an approved service provider, to an Agency subject to such instruction, policy, requirement or direction.

[REDACTED]

[REDACTED]

36.6 Other consequences of expiry or termination

- (a) No termination fee or other similar fee is payable by the State or Agency in connection with the expiry or termination of this Agreement or a Product Agreement or any of the Services.
- (b) Any expiry or termination of this Agreement or a Product Agreement is without prejudice to any accrued rights or remedies of either Party. This includes any right of the Service Provider to payment of any Fees and Charges which relate to Services properly performed or provided by the Service Provider up to the date of termination.
- (c) Clauses 13, 14.2, 15.5, 15.6, 23 to 28 (inclusive), 32, 33, 36, 37, 39 to 43 (inclusive) and any other provisions of this Agreement which are expressed to or, by their nature, survive expiry or termination of this Agreement or a Product Agreement, will survive the expiry or termination of this Agreement or a Product Agreement.

36.7 Partial expiry or termination

- (a) A reference to the State or an Agency's right to terminate this Agreement or a Product Agreement in part includes the right to terminate any of the products or services within the Services.
- (b) In the event of a partial expiry or termination of this Agreement or a Product Agreement or the Services, all references in this Agreement or a Product Agreement to the expiry or termination, Transition-Out and Transition-Out Services apply in relation to the expired or terminated part of this Agreement or a Product Agreement or Services.

37 Transition-Out Services

37.1 Transition-Out and Transition-Out Period

- (a) **Framework Transition-Out Period** means:
 - (1) in connection with the expiry of this Agreement, and in connection with the expiry of Services under this Agreement, the period commencing 6 months prior to the expiry date, and ending 12 months from the date of expiry or such longer period as the State notifies the Service Provider that it requires in good faith to replace any of the Products and Services for any Agency and complete a Transition-Out; and
 - (2) in connection with the termination of this Agreement, and in connection with termination of Services as a result of the termination or an Agreement Contract Change, the period commencing from the Notice of termination or date of the Agreement Contract Change and the period 12 months from the date of termination of this Agreement or date of Agreement Contract Change or such longer period as the State notifies the Service Provider that it requires in good faith to replace any of the Products and Services for any Agency and complete a Transition-Out.
- (b) **Agency Transition-Out Period** means:
 - (1) in connection with the expiry of a Product Agreement, and in connection with the expiry of Services under a Product Agreement,



- the period commencing 6 months prior to the expiry date, and ending 12 months from the date of expiry or such longer period as an Agency notifies the Service Provider that it requires in good faith to replace any of the Products and Services and complete a Transition-Out; and
- (2) in connection with the termination of a Product Agreement, and in connection with termination of Services as a result of the termination or an Agreement Contract Change or PA Contract Change, the period commencing from the Notice of termination or date of Contract Change and the period 12 months from the date of termination of the Product Agreement or date of Contract Change or such longer period as an Agency notifies the Service Provider that it requires in good faith to replace any of the Products and Services for any Agency and complete a Transition-Out.
- (c) On expiry or termination of this Agreement or a Product Agreement, the Service Provider must continue to provide the Products and Services for so long as the State requires the Products and Services for Agencies during the Framework Transition-Out Period or an Agency requires the Products and Services during the Agency Transition-Out Period. This Agreement or a Product Agreement, or both as the context requires, will continue in accordance with its terms and conditions notwithstanding the expiry date or date of termination, but for this provision. To avoid doubt, the State's and an Agency's right to a Framework Transition-Out Period and an Agency Transition-Out Period respectively are in addition to the State's rights to a First Option and Second Option specified in clause 3.2.

37.2 Framework Transition-Out Plan and Agency Transition-Out Plan

- (a) The Service Provider must develop a Framework Transition-Out Plan and Agency Transition-Out Plan for the Framework Transition-Out in accordance with the State's and the relevant Agencies' reasonable requirements respectively.
- (b) The Service Provider must prepare a Framework Transition-Out Plan for the State's approval within 30 days of the State's request at any time during the Term and in any event within 30 days from the commencement of the Framework Transition-Out Period and must provide Agency Transition-Out Plans under the Framework Transition-Out for approval by the State and the relevant Agencies in a timely fashion.
- (c) To the extent any Agencies' requests for timing of Transition-Out Services during the Framework Transition-Out Period conflict with each other or with the requirements of the State, the Service Provider must comply with the instruction given by the State to resolve the conflict, and the Agency is subject to that instruction.
- (d) The Service Provider must develop the Agency Transition-Out Plans for Transition-Out Services which are not part of the Framework Transition-Out in accordance with the relevant Agency's reasonable requirements and must provide a final version for approval by the relevant Agency within 30 days of its request at any time during the Term.
- (e) The Framework Transition-Out Plan and Agency Transition-Out Plans must specify:
- (1) the procedures and tasks for the effective and orderly termination of the Products and Services (or part of them) and where the Products and Services are to be replaced, the effective and orderly transfer of responsibility for the provision of the Products and Services (or part of

- them) from the Service Provider to the Incoming Supplier and all matters related to or connected with the Incoming Supplier assuming control of the Products and Services (or part of them) to be provided to the State or an Agency; and
- (2) such other matters as the State and / or an Agency may reasonably require from time to time.
- (f) When the Framework Transition-Out Plan is agreed to in writing by the State and the Service Provider, it is incorporated into, and shall form part of this Agreement and the Product Agreement and when the Agency Transition-Out Plan is agreed to in writing by an Agency and the Service Provider it is incorporated into, and shall form part of the relevant Product Agreement.

37.3 Transition-Out Services

- (a) The Service Provider must provide Transition-Out Services to the State and each Agency for the Transition-Out of any Products and Services.
- (b) As part of the Transition-Out Services, the Service Provider must perform all services and tasks specified in the Framework Transition-Out Plan (if applicable) and the Agency Transition-Out Plan and all other things necessary, other than those assigned to the State or an Agency or any Incoming Supplier (if applicable) to enable a timely and orderly Transition-Out by the applicable Transition-Out date.
- (c) The Service Provider must:
- (1) continue to provide the Products and Services as specified in clause 37.1(c);
 - (2) perform the Transition-Out Services in accordance with the Framework Transition-Out Plan (if applicable) and the Agency Transition-Out Plan, as applicable;
 - (3) cooperate with any Incoming Supplier, including in accordance with the obligations set out in clause 9.1(b) (subject to clause 9.1(c));
 - (4) perform Transition-Out Services so as to avoid or where not reasonably practical to avoid, minimise, disruption to the operations of the State and the Agencies;
 - (5) subject to clause 37.3(f), at the request of the State or an Agency, promptly deliver up, migrate, allow access to or irretrievably, confidentially and securely destroy its State / Agency Data, the Contract Material owned by the State or an Agency or licensed to the State or an Agency after the Term and any of property of the State or an Agency;
 - (6) subject to clause 37.3(f), migrate the State / Agency Data to the State, an Agency or the Incoming Supplier in print or non-print media in such format as the State or an Agency may reasonably request from time to time in relation to its respective State / Agency Data;
 - (7) notify the State if it becomes aware of any problems with the Framework Transition-Out or any potential risk that it may not be able to complete the Transition-Out Services in accordance with the Framework Transition-Out Plan; and
 - (8) notify an Agency if it becomes aware of any problems with the Agency Transition-Out for that Agency or any potential risk that it may not be



able to complete the Transition-Out Services in accordance with the Agency Transition-Out Plan.

- (d) The State or Agency must use reasonable endeavours to ensure that the Incoming Supplier cooperates with the Service Provider in connection with the Transition-Out Services.

[REDACTED]

- (f) The Service Provider is entitled to retain copies of the State / Agency Data to comply with its record retention duties in accordance with Laws, Banking Industry Codes and for its audit requirements and to comply with clauses 23 and 24.

- (g) The Service Provider acknowledges that the nature of the Products and Services means that the Service Provider will be required and must perform some Products and Services and Transition-Out Services to the State and an Agency for a period after the commencement of any services replacing the Products and Services including:

- (1) the provision of accounts for monies paid by payors to the State or an Agency until the State or an Agency requests a termination of that Product and Service, with the Parties acknowledging that the State's and an Agency's payors will continue to make payments to the Service Provider's accounts; and
- (2) providing access to State / Agency Data retained by the Service Provider including account of any type of financial product or service and transaction statements and answering queries concerning the accounts and transactions and resolving queries or errors.

38 Business continuity, disaster recovery and Force Majeure

38.1 Business continuity and disaster recovery

- (a) The Service Provider must operate, maintain and comply with business continuity and disaster recovery arrangements to avoid and mitigate against risks to its business which may affect the Services.

[REDACTED]

- (c) On request by the State or an Agency, the Service Provider must, within 30 days or as otherwise agreed in writing, prepare a disaster recovery and business continuity plan for the approval of the State.
- (d) The Service Provider must regularly (and no less than once in every year) review and, where appropriate, update its disaster recovery and business continuity plans, and must co-operate with any reviews instigated by State or an Agency. The Service Provider must also review its disaster recovery and business continuity plans if there are any material changes to the Services.

- (e) The Service Provider must test the processes set out in the disaster recovery and business continuity plans regularly (and no less than once in every year). At the request of the State, the Service Provider must provide reasonable details as to the nature and outcome of the testing and must take into account any feedback provided by the State.
- (f) If there is an interruption to the Service Provider's business that is contemplated by the disaster recovery and business continuity plans the Service Provider must perform the obligations in the disaster recovery and business continuity plans.
- (g) The Service Provider must provide reasonable assistance to the State and each Agency with respect to the State or Agency's business continuity and disaster recovery arrangements to avoid and mitigate against risks associated with the State or Agency's use of, interface with or reliance on the Services.

38.2 Force Majeure

- (a) A Party will not be liable or be in breach of this Agreement or any Product Agreement for any failure or delay in the performance of its obligations under this Agreement or a Product Agreement to the extent such failure or delay is caused by a Force Majeure, provided that it must:
 - (1) promptly advise the other Party of the details of the Force Majeure, and its likely effect on that non-performing Party's obligations under this Agreement or a Product Agreement; and
 - (2) take all steps reasonably necessary to recommence performance and minimise the delay caused by the Force Majeure, including by means of alternate sources, workarounds or other means.
- (b) If any Force Majeure has the result that the Service Provider is not able to provide any Service or part of any Service for any period of time, the State or Agency will not be obliged to pay any Fees and Charges in respect of such Service or part Service during such period.

39 Assignment and novation

- (a) The Service Provider must not assign or otherwise transfer any right or obligation under this Agreement or a Product Agreement without the State's prior written consent.
- (b) Notwithstanding any other provision of this Agreement or a Product Agreement, the State and an Agency are entitled, by giving Notice to the Service Provider, to transfer any of their respective rights and obligations under this Agreement and any Product Agreement in whole or part to an Agency, which:
 - (1) in the case of the State as the transferring party, is part of the Crown; and
 - (2) in the case of an Agency part of the Crown as the transferring party, is part of the Crown.
- (c) Subject to clause 39(e), the State must not assign or otherwise transfer any right or obligation under this Agreement to a legal entity, which is not part of the Crown, without the Service Provider's prior written consent.
- (d) Subject to clause 39(f):



- (1) an Agency which is part of the Crown must not assign or otherwise transfer any right or obligation under this Agreement or a Product Agreement to a legal entity, which is not part of the Crown; and
- (2) an Agency which is not part of the Crown must not assign or otherwise transfer any right or obligation under this Agreement or a Product Agreement to a legal entity which is not the same legal entity as that Agency,

without the Service Provider's prior written consent.

- (e) Without limiting clause 39(b), the State is entitled to transfer its rights and obligations in whole or in part to a GSF Agency that is not part of the same legal entity as the State, but only as a consequence of a Machinery of Government Change, and if the transfer of rights and obligations has not occurred at Law, by giving a Notice to the Service Provider.
- (f) Without limiting clause 39(b), an Agency is entitled to transfer its rights and obligations in whole or in part to another Agency that is not part of the same legal entity as the Agency, but only as a consequence of a Machinery of Government Change, and if the transfer of rights and obligations has not occurred at Law, by giving a Notice to the Service Provider.
- (g) If clause 39(e) or 39(f) applies, and if the transfer of rights and obligations has not occurred at Law the Service Provider must promptly execute a deed of novation in a form agreed between the State or the Agency as applicable and the Service Provider (whose agreement is not to be unreasonably withheld or delayed), and return it within 7 days from the receipt of a Notice from the State or Agency advising of the transfer and requiring the Service Provider to execute the deed of novation.

[REDACTED]

- (i) Nothing in this clause 39, prohibits the State or an Agency, including a State Owned Corporation from transferring its rights and obligations in whole or in part, in accordance with a vesting order pursuant to statute or other statutory mechanism.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]



[REDACTED]

41 Notices

- (a) A notice under or in connection with this Agreement or a Product Agreement, other than a Notice, may be given in any manner provided it is in writing including by hand, post, via facsimile or by email and provided it is sent to the other Party.
- (b) This clause 41(b) only applies to a reference in this Agreement or any Product Agreement to a 'Notice' with a capital 'N'. A Notice given to or served on either Party under the Agreement or a Product Agreement is deemed to have been duly given or served if it is in writing, signed by the Party giving the notice (the **first Party**) and is either delivered by hand, or posted to the other Party at the address set out below or such other address as is notified in writing to the first Party from time to time.

State:

Title: Deputy Secretary, Policy and Budget

Address: 127 Phillip Street, Sydney NSW 2000

Email: San.Midha@treasury.nsw.gov.au
Attention: San Midha

Agency:

c/- the State (as per the above details)

unless, different notices details are set out in the Product Agreement, in which case in accordance with those notice details.

Service Provider:

Title: Executive Director, Public Sector
Address: Level 3, Westpac Place, 275 Kent Street, Sydney NSW 2000
Email: jonross@westpac.com.au
Attention: Jon Ross

-
- (c) Such Notice is deemed to have been duly received:
- (1) if delivered by hand – at the time when the first Party holds a receipt for that document signed by a person apparently employed at that address for service;
 - (2) if sent by post – at the time when, in the ordinary course of the post, it would have been delivered at the address to which it is sent; or
 - (3) if sent via email – when the sender's system registers that the email has passed the internet gateway of the sender's system (and no delivery failure or out of office message is received by the sender within 24 hours of sending).
- (d) If delivery or receipt of a Notice occurs on a day other than a Business Day or is later than 4.00 pm local time in New South Wales, it shall be taken to have duly occurred at 9.00 am local time in New South Wales on the next Business Day.
- (e) Notwithstanding any other provision of this Agreement or a Product Agreement, where the Service Provider is a company under the *Corporations Act 2001* (Cth), any Notice served upon the Service Provider's registered office is deemed to have been given or served in accordance with this Agreement and a Product Agreement.

42 Dispute resolution

42.1 Objectives

- (a) Nothing in this clause prevents either Party from exercising its rights under the Agreement or a Product Agreement, or prevents proceedings being issued for urgent injunctive or declaratory relief.
- (b) Subject to clause 42.1(a):



- (1) the Parties must endeavour to resolve by negotiation any dispute that arises under this Agreement or a Product Agreement in accordance with clauses 42.2 to 42.5 (inclusive); and
- (2) a Party is not entitled to commence legal proceedings without complying with clauses 42.2 to 42.5 (inclusive).
- (c) Each Party shall bear its own costs in relation to its participation in any dispute resolution process, save to the extent those costs are agreed to be borne by the other Party or a court awards costs to be borne by the other Party.

42.2 Disputes escalation procedure – Agency dispute

- (a) If a dispute arises between an Agency and the Service Provider under or in connection with this Agreement or a Product Agreement, either the Agency or the Service Provider may refer the dispute to the Service Provider's Relationship Manager for the Agency and the Agency's Chief Financial Officer, or other Agency representative, who must meet and endeavour to resolve the dispute within 10 Business Days of referral of the dispute.
- (b) If the dispute remains unresolved within the 10 Business Days' period either the Agency or the Service Provider may refer the dispute to the State dispute resolution procedure in accordance with clause 42.3.

42.3 State dispute or Agency dispute referred to State

- (a) If a dispute arises between the State and the Service Provider under or in connection with this Agreement and the Product Agreements or between an Agency and the Service Provider under or in connection with this Agreement or a Product Agreement, which is either escalated by an Agency or which the Service Provider or the State wishes to escalate for State resolution, this clause 42.3 will apply.
- (b) The Service Provider's Relationship Manager for the State and the Treasury Business Partner, Director, Banking & Financial Services Division or their equivalent must meet and endeavour to resolve the dispute within 10 Business Days of referral of the dispute.
- (c) If the dispute remains unresolved within the 10 Business Days' period, either the State or the Service Provider may refer the dispute to the Service Provider's Executive Director, Public Sector and the Executive Director, Banking & Financial Services Division (or equivalent) who must meet and endeavour to resolve the dispute within 10 Business Days of referral of the dispute.
- (d) If the dispute is not resolved within the 10 Business Days' period, either the State or the Service Provider may refer the dispute to a senior executive of the Service Provider and the State who must meet and endeavour to resolve the dispute within 10 Business Days of referral of the dispute.

42.4 Dispute general and resolution flexibility

- (a) If the dispute relates to an issue with the performance of the Services, the Service Provider must respond to the Agency or the State within 2 Business Days of receipt of any correspondence on the matter from the Agency or the State. Any compensation agreed by the Service Provider for an issue relating to the performance of any of the Services may include a refund of Fees and Charges and other interest compensation.

- (b) Notwithstanding the procedures in clauses 42.2 and 42.3, the Parties may agree to vary the period for resolution or otherwise vary the dispute resolution procedure, including by agreeing an alternative or modified dispute resolution process under or in accordance with the Relationship Management Manual from time to time.
- (c) Notwithstanding the procedures in clauses 42.2 and 42.3, the State, an Agency or a Service Provider may:
 - (1) elect to specify a shorter period for resolution of the dispute;
 - (2) elect to escalate the dispute to a more senior level at any time; and
 - (3) appoint a representative other than the persons referred to in clauses 42.2 and 42.3 to represent it, provided that person has the requisite authority to represent the relevant Party for the applicable dispute.
- (d) Notwithstanding the procedures in clauses 42.2 and 42.3, the State may refuse to deal with a dispute between an Agency and the Service Provider referred by an Agency or the Service Provider to the State dispute resolution procedure, if the State considers that dispute should be dealt with between the Agency and the Service Provider.

42.5 Mediation

- (a) Should the Parties fail to resolve a dispute pursuant to clause 42.2 to 42.4, either Party may refer the Dispute to mediation on notice to the other Party. The mediator shall be agreed between the Parties or, failing agreement within 7 days from referral to mediation (or such other period agreed between the Parties in writing), shall be an accredited mediator appointed by the Chair of the New South Wales Chapter (or any other person holding a role as chair, president or equivalent within New South Wales or of the institute more generally) of the Australian Commercial Dispute Centre (or its successor or replacement from time to time).
- (b) The Parties agree to abide by the mediation rules agreed between them, or failing agreement, the mediation rules of the Resolution Institute (or its successor or replacement from time to time), in seeking to resolve the dispute in accordance with this clause 42.5. The period for resolving a Dispute through mediation is 30 days following appointment of the mediator (or such other period agreed between the Parties in writing).

42.6 Continued Performance

Notwithstanding the existence of a dispute, each Party shall continue to perform its obligations under this Agreement or a Product Agreement, as applicable, wherever practicable.

43 Miscellaneous

43.1 Governing Law and Jurisdiction

- (a) This Agreement and the Product Agreements are governed by the law in force in New South Wales.



- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement and a Product Agreement. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

43.2 Invalidity and enforceability

- (a) If any provision of this Agreement or a Product Agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 43.2(a) does not apply where enforcement of the provision of this Agreement or a Product Agreement in accordance with clause 43.2(a) would materially affect the nature or effect of the Parties' obligations under this Agreement or a Product Agreement.

43.3 Waiver

No Party to this Agreement or a Product Agreement may rely on the words or conduct of any other Party as a waiver of any right unless the waiver is in writing and signed by the Party granting the waiver.

43.4 Variation

Clauses 19.2 and 19.3 apply to Agreement Contract Changes and PA Contract Changes.

43.5 Further action to be taken at each Party's own expense

Each Party must, at its own expense, do all things and execute all documents necessary to give full effect to this Agreement, a Product Agreement and the transactions contemplated by them.

43.6 PPS registration

The Service Provider must not register any security interest as defined in the *Personal Properties Securities Act 2009* (Cth) that the Service Provider may have in connection with this Agreement or a Product Agreement.

43.7 Entire Agreement

This Agreement states all the express terms of the agreement between the Parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

43.8 No reliance

Neither Party has relied on any statement by the other Party not expressly included in this Agreement or a Product Agreement.

43.9 Counterparts

- (a) This Agreement or a Product Agreement may be executed in any number of counterparts.

- (b) All counterparts, taken together, constitute one instrument.
- (c) A Party may execute this Agreement or a Product Agreement by signing any counterpart.

43.10 Relationship

Nothing in this Agreement or a Product Agreement gives the Service Provider authority to bind the State or an Agency in any way and nothing in this Agreement or a Product Agreement gives the State or an Agency authority to bind the Service Provider in any way.

43.11 Exercise of rights

- (a) Unless expressly required by this Agreement or a Product Agreement, a Party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Agreement or a Product Agreement.
- (b) Except as otherwise provided in this Agreement a Party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Agreement or a Product Agreement. Any conditions must be complied with by the Party relying on the consent, approval or waiver.



Signing page

Executed as a deed

State

Signed, sealed and delivered by the Honourable Dominic Perrottet, MP the Treasurer on behalf of the State of New South Wales in the presence of:

sign here ►

Signature of Treasurer

print name _____

in the presence of

sign here ►

Witness

print name _____

Service Provider

Signed sealed and delivered for
Westpac Banking Corporation ABN 33 007 457 141
by its attorney under a power of attorney dated 17 January 2001

*sign
here* ►

Attorney

*name
and title* _____

Signature of attorney who declares that the attorney has been appointed as an attorney under the power of attorney and that the attorney has not received any notice of the revocation of the power of attorney

in the presence of

*sign
here* ►

Witness



HERBERT
SMITH
FREEHILLS

Signing page

*print
name*



Schedule 1

List of Agencies at the Effective Date

Part 1 - TBS Agencies

The following are TBS Agencies at the Effective Date:

- 1 Aboriginal Housing Office
- 2 ALPHA Distribution Ministerial Holding Corporation
- 3 Anzac Memorial Building Trust
- 4 Art Gallery of New South Wales Trust Staff Agency
- 5 Australian Museum Trust Staff Agency
- 6 Barangaroo Delivery Authority Staff Agency
- 7 Bio Diversity Conservation Trust
- 8 Board of Surveying and Spatial Information of NSW
- 9 Border Fence Maintenance
- 10 Building Insurers' Guarantee Fund
- 11 Building Professional Board
- 12 Centennial Park & Moore Park Trust
- 13 Central Coast Regional Development Corporation
- 14 Consolidated Fund NSW
- 15 Corp Sole Environment Planning Assessment Act
- 16 Crown Finance Entity
- 17 Crown Solicitor's Office
- 18 Dam Safety Committee
- 19 Department of Education
- 20 Department of Family and Community Services
- 21 Department of Finance, Services and Innovation
- 22 Department of Industry
- 23 Department of Justice
- 24 Department of Planning and Environment
- 25 Department of Premier and Cabinet
- 26 Department of Transport
- 27 Destination NSW Staff Agency
- 28 Electricity Assets Ministerial Holding Corporation
- 29 Electricity Retained Interest Corporation (ERIC A)
- 30 Electricity Retained Interest Corporation (ERIC E)

31	Electricity Transmissions Ministerial Holding Corporation
32	Environment Protection Authority Staff Agency
33	Environmental Trust
34	Epsilon Distribution Ministerial Holding Corporation
35	Financial Counselling
36	Fire and Rescue NSW
37	Generator Property Management Pty Limited
38	Greater Sydney Commission
39	Health Administration Corporation
40	Health Care Complaints Commission Staff Agency
41	Health Professional Councils Authority Office
42	Heritage Council of NSW
43	Historic Houses Trust of NSW
44	Hunter Development Corporation
45	Independent Commission Against Corruption
46	Independent Liquor and Gaming Authority
47	Independent Pricing and Regulatory Tribunal Staff Agency
48	Industrial Relations Commission
49	Information and Privacy Commission
50	Infrastructure NSW Staff Agency
51	Institute of Sport Staff Agency
52	Insurance and Care (iCare)
53	Jenolan Caves Reserve Trust
54	John Williams Memorial Charitable Trust
55	Judicial Commission of New South Wales
56	Lands Administration Ministerial Corporation
57	Legal Aid Commission Staff Agency
58	Legal Profession Admission Board
59	Liability Management Ministerial Corporation
60	Library Council of New South Wales Staff Agency
61	Lifetime Care and Support Authority NSW
62	Local Land Services Staff Agency
63	Long Service Corporation
64	Luna Park Reserve Trust
65	Mental Health Commission Staff Agency
66	Mine Subsidence Board
67	Minister Administering the Environmental Planning and Assessment Act 1979



68	Ministry of Health
69	Multicultural NSW Staff Agency
70	National Art School
71	Natural Resources Commission Staff Agency
72	New South Wales Crime Commission Staff Agency
73	New South Wales Electoral Commission Staff Agency
74	NSW Architects Registration Board
75	NSW Education Standards Authority Staff Agency
76	NSW Food Authority
77	NSW Government Telecommunications (TELCO)
78	NSW Institute of Psychiatry
79	NSW Land and Housing Corporation
80	NSW Police Force
81	NSW Skills Board
82	NSW Trains
83	NSW Trustee and Guardian
84	Office of Environment and Heritage
85	Office of Local Government
86	Office of Sport
87	Office of the Children's Guardian
88	Office of the Director of Public Prosecutions
89	Office of the Greyhound Welfare and Integrity Commission
90	Office of the Law Enforcement Conduct Commission
91	Office of the NSW Rural Fire Service
92	Office of the NSW State Emergency Service
93	Office of the Small Business Commissioner
94	Office of Transport Safety Investigations
95	Ombudsman's Office
96	Parliamentary Counsel's Office
97	Parramatta Park Trust
98	Port Botany Lessor Pty Ltd
99	Port Kembla Lessor Pty Ltd
100	Place Management NSW
101	Ports Assets Ministerial Holding Corporation
102	Professional Standards Council
103	Property NSW
104	Public Service Commission

105	RailCorp
106	Rental Bond Board
107	Revenue NSW
108	Roads and Maritime Services
109	Roads Retained Interest Pty Ltd
110	Royal Botanic Gardens and Domain Trust
111	Rural Assistance Authority
112	SAS Trustee Corporation Staff Agency
113	Self Insurance Corporation (SICORP)
114	Service NSW
115	Sporting Injuries Compensation Authority
116	State Archives and Records Authority (NSW)
117	State Insurance Regulatory Authority
118	State Library of NSW
119	State Library of NSW Foundation
120	State Transit Authority
121	Subsidence Advisory NSW
122	Sydney Cricket and Sport Ground Trust
123	Sydney Ferries
124	Sydney Living Museums
125	Sydney Metro
126	Sydney Olympic Park Authority
127	Sydney Opera House Trust Staff Agency
128	Sydney Trains
129	TAFE Commission Staff Agency
130	Teacher Housing Authority of NSW
131	Technical Education Fund
132	The Audit Office
133	The Legal Services Council
134	The Legislature
135	The Treasury
136	Treasury Banking System Agencies
137	Trustees of the Museum of Applied Arts and Sciences Staff Agency
138	UrbanGrowth NSW Development Corporation Staff Agency
139	Venues NSW
140	Veterinary Practitioners Board
141	Waste Assets Management Corporation



- 142 Western Sydney Parklands Trust
- 143 Workers Compensation
- 144 Workers Compensation (Dust Diseases) Board

Part 2 - Non-TBS Agencies

The following are non-TBS Agencies at the Effective Date:

- 1 Ambulance Service of NSW
- 2 Anzac Health and Medical Research Foundation
- 3 Art Gallery of NSW Trust
- 4 Bureau of Health Information
- 5 Central Coast Local Health District
- 6 Clinical Excellence Commission
- 7 Clinical Support Cluster Northern
- 8 Council of Law Reporting
- 9 Eddy Memorial Fund
- 10 Ehealth NSW
- 11 Far West Local Health District
- 12 Health Education and Training Institute
- 13 Health Infrastructure
- 14 Health System Support Group
- 15 Healthshare NSW
- 16 Hunter New England Local Health District
- 17 Illawarra Shoalhaven Local Health District
- 18 Justice Health and Forensic Mental Health Network
- 19 LandCom (SOC)
- 20 Legal Aid Commission of NSW
- 21 Mid North Coast Local Health District
- 22 Murrumbidgee Local Health District
- 23 Nepean Blue Mountains Local Health District
- 24 Northern NSW Local Health District
- 25 Northern Sydney Local Health Districts
- 26 NSW Health Foundation
- 27 NSW Health Pathology
- 28 NSW Trustee and Guardian (Trust Funds)
- 29 Office of Environment and Heritage (Bio Banking)
- 30 Royal North Shore Hospital of Sydney
- 31 South Eastern Sydney Local Health District
- 32 South Western Sydney Local Health District



- 33 Southern NSW Local Health District
- 34 Sydney Children's Hospitals Network (Randwick)
- 35 Sydney Local Health District
- 36 The Agency for Clinical Innovation
- 37 The T and G Society Scholarship (NSW Railway) Trust Fund
- 38 Western NSW Local Health District
- 39 Western Sydney Local Health District



Schedule 2

Additional Terms and Conditions applicable to State Set-Off Arrangements

1 Definitions and interpretation

1.1 Definitions

Unless otherwise defined in this Schedule 2 (Additional Terms and Conditions applicable to State Set-Off Arrangements), the terms used have the meaning set out below.

Term	Meaning
Actual Credit Balance	at any time the credit figure (if any) obtained by deducting: <ol style="list-style-type: none">1 the aggregate amount of any debit balances subsisting in the State Set-Off Accounts; from2 the aggregate amount of any credit balances subsisting in the State Set-Off Accounts.
Actual Debt Balance	at any time the debit figure (if any) obtained by deducting: <ol style="list-style-type: none">1 the aggregate amount of any credit balances subsisting in the State Set-Off Accounts; from2 the aggregate amount of any debit balances subsisting in the State Set-Off Accounts.
Actual Debt Balance Limit	at any time \$Nil or such other amount as may be agreed by the Parties in writing from time to time.
Charge Account	the State's account with the Service Provider, nominated in writing by the Treasurer for crediting of interest due on the Actual Credit Balance, or such account as the Treasurer and the Service Provider agree from time to time, but does not include a bank account of an Agency.
Drawing	in relation to a State Set-Off Account, any transaction that results in or, if effected, would result in a debit to that account, regardless of whether the balance is in credit or debit before that transaction. It includes a withdrawal, a payment direction, a direct debit, the payment of a cheque or other payment order, and a repayment, in each case regardless of how requested or directed.

Term	Meaning
Guaranteed Money	all money which the State and each TBS Agency may owe to the Service Provider, now or in the future, for any reason under or in relation to the State Set-Off Accounts or under this Schedule 2 (Additional Terms and Conditions applicable to State Set-Off Arrangements).
Nominal Debit Balances	at any time the aggregate amount of any debit balances subsisting in the State Set-Off Accounts.
Nominal Debit Balance Limit	at any time \$25 billion or such other amount as may be agreed by the Parties in writing from time to time.

1.2 Interpretation of this Schedule

- (a) References in this Schedule to 'terms and conditions' means this Schedule 2 (Additional Terms and Conditions applicable to State Set-Off Arrangements).
- (b) Any reference to TBS Agencies means a TBS Agency which is party to a Product Agreement and has a State Set-Off Account.

2 State Set-Off Arrangements

- (a) These terms and conditions comprise the State Set-Off Arrangements.
- (b) The State and the Service Provider agree that the following accounts are within the State Set-Off Arrangements:
 - (1) any account of a TBS Agency, unless otherwise advised in writing to the Service Provider from time to time by the Treasurer;
 - (2) the Charge Account; and
 - (3) accounts added in accordance with section 3.3,
 but not any accounts subtracted in accordance with section 3.3, any accounts denominated in a currency other than Australian dollars.

3 Commitment and Basis of "One Account"

3.1 Commitment

Subject to these terms and conditions (in particular section 3.4 below) the Service Provider will pay Drawings by the State and TBS Agencies on State Set-Off Accounts, whether or not that State Set-Off Account is in credit, but provided that the Nominal Debit Balances do not exceed the Nominal Debit Balance Limit and the Actual Debt Balance does not exceed the Actual Debt Balance Limit.

3.2 One Account

- (a) The Service Provider and the State agree that the State Set-Off Accounts are operated on the following basis:
 - (1) the State Set-Off Accounts are maintained for the convenient administration of the State and TBS Agencies, reflecting the State's established practice of keeping distinct accounts, and corresponding bank accounts, of receipts and disbursements for separate purposes;
 - (2) the State Set-Off Accounts are subject to banking account structuring agreed between the State and the Service Provider, consistently with section 6.14 of the GSF Act, under which the Service Provider is authorised to set off the credit and debit balances in the State Set-Off Accounts in accordance with these terms and conditions;
 - (3) pursuant to the GSF Act, including section 6.14 of that Act, the State agrees with the Service provider:
 - (A) the State Set-Off Accounts may also be treated as one account for the purpose of calculating an aggregate net balance;
 - (B) the balances in the State Set-Off Accounts are relevant for reporting and calculation purposes, and for allowing the State and each TBS Agency to establish different authorities for the operation of different State Set-Off Accounts; and
 - (C) unless otherwise agreed, the State will not at any time Draw moneys from the State Set-Off Account identified by the State as the consolidated fund bank account for that Service Provider in excess of an amount equivalent to the aggregate credit balance of the other State Set-Off Accounts forming part of the State Set-Off Arrangements; and
 - (4) the State Set-Off Arrangements have intra-day liquidity:
 - (A) with no limit at the individual State Set-Off Account level;
 - (B) with the only limits on the aggregate State Set-Off Accounts being those set out in this Schedule 2 (Additional Terms and Conditions applicable to State Set-Off Arrangements); and
 - (C) at no cost to the State or any Agency.
- (b) Notwithstanding section 3.2(a):
 - (1) arrangements agreed by the State and each TBS Agency with the Service Provider in relation to its accounts within the State Set-Off Arrangements continue to operate to the extent that they can do so consistently with section 3.2(a);
 - (2) the Service Provider will not combine or treat State Set-Off Accounts as combined except for the purposes of these terms and conditions; and
 - (3) each party reserves any rights it may have against the other in relation to disputed transactions with respect to any State Set-Off Account.

3.3 Adding and subtracting accounts and deposits

- (a) The State may nominate in writing at any time any TBS Agencies' accounts as an account that the State wishes to be included in the State Set-Off

Arrangements. The account becomes a State Set-Off Account on the Business Day the account is added to the State Set-Off Arrangements by the Service Provider.

- (b) The State may at any time notify the Service Provider in writing that a State Set-Off Account (or any or all of them) is to cease being part of the State Set-Off Arrangements if:
 - (1) there is a credit or nil balance in that State Set-Off Account; and
 - (2) upon the account ceasing to be a State Set-Off Account or part of the State Set-Off Arrangements, the Actual Debt Balance does not exceed the Actual Debt Balance Limit, and section 3.2(a)(3)(C) continues to be complied with.
- (c) Unless otherwise stated in the notice, the account will cease to be a State Set-Off Account on the Business Day that the account is removed from the State Set-Off Arrangements by the Service Provider.

3.4 Dishonour of Drawings

- (a) Notwithstanding any terms applicable to the State Set-Off Accounts the right of the State or any TBS Agency to Draw any amounts and the obligation of the Service Provider to accept any such application for a Drawing and to repay any credit balance in a State Set-Off Account is subject to the following conditions being satisfied:
 - (1) the Nominal Debit Balances do not and will not after such Drawing exceed the Nominal Debit Balance Limit; and
 - (2) the Actual Debt Balance does not and will not after such Drawing exceed the Actual Debt Balance Limit.
- (b) If:
 - (1) the Nominal Debit Balances at any time exceed or will exceed as a result of a proposed Drawing the Nominal Debit Balance Limit; or
 - (2) the Actual Debt Balance at any time exceeds or will as a result of a proposed Drawing exceed the Actual Debt Balance Limit,
 then without prejudice to any other rights or remedies it may have, the Service Provider may at such time and to such extent:
 - (3) with no less than three (3) Business Days' prior written notice to the State advising of its intention to do so from the date specified in such notice, dishonour any Drawing made upon any of the State Set-Off Accounts irrespective of:
 - (A) the nature or title or purpose or terms of the account upon which such Drawing is made;
 - (B) whether or not at the time of the dishonour, the State Set-Off Account upon which the Drawing is made is in credit in an amount equal to or greater than the amount of the Drawing;
 - (C) the amount of the debit and/or credit balances in any accounts, not being State Set-Off Accounts, conducted with the Service Provider by the State or any Agency;
 - (D) the amount of:
 - (I) the Nominal Debit Balances; or

- (II) the Actual Debt Balance,
as defined in any other agreement between the Service Provider on the one hand and the State on the other, being an agreement in terms similar to or identical with these terms and conditions and relating to accounts other than the State Set-Off Accounts;
- (E) the circumstance that at the time of the dishonour the:
 - (I) Nominal Debit Balances is already a figure which exceeds the Nominal Debit Balance Limit; or
 - (II) the Actual Debt Balance is already a figure which exceeds the Actual Debt Balance Limit; and
- (F) the circumstance that at any time prior to the dishonour the Nominal Debit Balance Limit or any Actual Debt Balance Limit, or both, were higher than they were at the time of dishonour; and
- (4) refuse to accept any application for Drawing of any amount from any State Set-Off Account, and the terms of such State Set-Off Accounts are deemed to be varied accordingly.
- (c) The Service Provider's rights under section 3.4(b) shall not be affected by any previous waiver, time or indulgence.
- (d) If there is any inconsistency these terms and conditions override any mandate and terms applicable to a State Set-Off Account (including those contained in Product Agreements).
- (e) Notwithstanding section 3.4(b) the Service Provider may at its discretion honour a cheque or order where section 3.4(b) applies and the State, through the State or relevant TBS Agency, will be liable accordingly.

3.5 Set-Off

- (a) The Service Provider may at any time apply by way of set off any credit balances in a State Set-Off Account against any debit balances in any other State Set-Off Account and the Service Provider agrees to subsequently give the State and the relevant TBS Agency written notification of any such application.
- (b) Other than as provided in these terms and conditions, the Service Provider waives all usual rights of set-off and rights to combine accounts which it may have as against the State and the TBS Agencies.

4 Other Agreements

These terms and conditions only modify the written and implied terms of this Agreement between the State and the Service Provider and any Product Agreement between an Agency and the Service Provider, to the extent necessary to give effect to the express terms of these terms and conditions. So, for example:

- (a) the State and each TBS Agency may operate each account according to its other terms, as if it was not part of the State Set-Off Arrangements;
- (b) these terms and conditions do not limit the Service Provider's right to dishonour Drawings to those occasions mentioned in section 3.4; and

- (c) they do not set out all of the fees and charges that the State and each TBS Agency may be obliged to pay in respect of the State Set-Off Accounts and transactions on them.

5 Guarantee

5.1 Guarantee

- (a) Subject to these terms and conditions, including section 5.1(b), the State and each TBS Agency jointly and severally and irrevocably guarantees to the Service Provider the due and punctual payment of the Guaranteed Money in consideration of the Service Provider, at the request of the State and each TBS Agency, providing or continuing credit to the State and each TBS Agency and not taking immediate action to enforce the State or each TBS Agency's obligations to the Service Provider.
- (b) Notwithstanding any other provision of these terms and conditions:
- (1) the State and each TBS Agency is only obliged to pay an amount under section 5 of these terms and conditions to the extent that the amounts can be satisfied out of the credit balances in the State's or relevant TBS Agency's State Set-Off Account;
 - (2) without limiting the generality of section 5.1(b)(1) of these terms and conditions, the Service Provider's right to recover from the State and each TBS Agency any amount in respect of the Guaranteed Money is limited to a right to recover an amount not exceeding the amount that can be recovered by exercising the rights set out in section 3.5 of these terms and conditions or by otherwise transferring, combining setting off or applying credit balances in the State's or relevant TBS Agency's State Set-Off Account against amounts owing by the State or relevant TBS Agency under section 5 of these terms and conditions; and
 - (3) if, after the exercise of the rights referred to in section 5.1(b)(2) of these terms and conditions, any Guaranteed Money remains outstanding, the Service Provider must not take any action, sue or otherwise seek to recover the amount from the State or TBS Agency on any personal covenant.

5.2 Continuing guarantee

The State and each TBS Agency's obligations under this guarantee are continuing and irrevocable. Even though the Service Provider receives payments from or makes arrangements with the State or a TBS Agency, the State and each other TBS Agency is still liable for the Guaranteed Money now and in the future, in accordance with these terms and conditions.

5.3 Unconditional obligation

The State and each TBS Agency's liability under this guarantee is unconditional. It is not affected by anything which might release the State or any TBS Agency from or limit all or part of its obligations, including if:

- (a) the Service Provider does not exercise any of its security or rights against the State or any TBS Agency;

- (b) the Service Provider makes any arrangement, transaction or compromise with the State or any TBS Agency, including one which varies, takes away or limits its security or rights or its freedom to exercise them;
- (c) the Service Provider gives the State or any TBS Agency a full or partial discharge or release or time to pay or any other concession;
- (d) this or any document or security is temporarily or permanently unenforceable, is not taken by the Service Provider, is lost, is not signed by anyone or is not binding on anyone intended to give a guarantee or security;
- (e) there is a change in the nature or constitution of the State or any TBS Agency including its members; or
- (f) the State or any TBS Agency has any claim against the Service Provider.

5.4 Indemnity

If for any reason (for example, lack of capacity or authority, administration, illegality or inadequate or improper execution or stamping):

- (a) the Service Provider has no legal right to recover an amount of the Guaranteed Money from the State or a TBS Agency, or
- (b) the State or a TBS Agency does not owe an amount that would otherwise have been included in the Guaranteed Money,

the amount will be taken to be part of the Guaranteed Money, and the State and each other TBS Agency will pay it to the Service Provider whenever the Service Provider demands (subject to these terms and conditions, including without limitation, section 5.1(b)). This applies even if the Service Provider knew or should have known of the problem, and even if, because of the problem, the State or relevant TBS Agency could never have been required to pay the Service Provider the amount.

5.5 Principal and independent obligation

This section 5 is a principal and independent obligation. The State and each TBS Agency is liable for all the Guaranteed Money (subject to these terms and conditions, including without limitation, section 5.1(b) of these terms and conditions) whether or not demand is made.

6 Payment of Interest

6.1 Interest

- (a) Debit interest will be charged on any Actual Debt Balance at the interest rate set out in and in accordance with Schedule 9 (Pricing).
- (b) Credit interest will be paid on the Actual Credit Balance at the rate set out in and in accordance with Schedule 9 (Pricing).

6.2 Charge Account

Interest will be debited or credited to the Charge Account.

6.3 Interest apportionment

- (a) On the same day that the total amount of interest (calculated in accordance with section 6.1) is debited or credited to the Charge Account (the **Interest Allocation Date**), the Service Provider will calculate interest (debit or credit) on a daily basis for each State Set-Off Account at the rate advised to the Service Provider in writing from time to time by the State. The Service Provider will then:
- (1) if the end of period interest accrual total for a State Set-Off Account is a credit interest amount, and the State has by notice in writing indicated that any credit interest is to be allocated to the State Set-Off Account, make a transfer of that credit interest amount from the Charge Account to the State Set-Off Account, or such other State Set-Off Account as may be nominated in writing from time to time by the State (such nominated State Set-Off Account hereinafter called the **Settlement Account**) to give effect to the credit interest rate as advised by the State; and
 - (2) if the end of period interest accrual total for a State Set-Off Account is a debit interest amount, and the State has by notice in writing indicated that any debit interest is to be allocated to the State Set-Off Account, make a transfer of that debit interest amount from the State Set-Off Account, or a Settlement Account, to the Charge Account to give effect to the debit interest rate as advised by the State,
- with any surplus of total credit interest not transferred remaining in the Charge Account and any shortfall in total debit interest being deducted from the Charge Account, as the case may be.
- (b) The State may from time to time provide the Service Provider with a notice in writing stating the rates it wishes each State Set-Off Account to be charged on debit balances and the rates it wishes each State Set-Off Account to be paid on credit balances, provided that:
- (1) if the total amount of interest is positive, the net amount of interest paid to the State Set-Off Accounts is equal to or less than the total amount of interest, the excess is to remain in the Charge Account; and
 - (2) if the total amount of interest is negative and the net amount of interest taken from the State Set-Off Accounts is equal to or less than the total amount of interest, the excess is to be deducted from the Charge Account.
- (c) Subject to sections 6.3(a) and 6.3(b), on the last Business Day of each month, or any other dates specified by the Service Provider from time to time, the Service Provider will allocate the relevant proportion of the total amount of interest (debit or credit) to each State Set-Off Account, or a Settlement Account, based on the written notice given to the Service Provider by the State from time to time and the Service Provider agrees to do so.
- (d) The State may from time to time, prior to an Interest Allocation Date, give written notice to the Service Provider to apply the credit interest surplus or debit interest shortfall to an account other than the Charge Account.
- (e) The Service Provider will make available to the State, a monthly account statement detailing:
- (1) the date of the statement;

- (2) the end of day balance (credit or debit) for each State Set-Off Account;
 - (3) the daily interest rate of each State Set-Off Account (credit or debit);
 - (4) the daily interest accrued (credit or debit) on each State Set-Off Account; and
 - (5) the interest amount (credit or debit) disbursed along with the relevant State Set-Off Account number.
- (f) The statement under section 6.3(e) will be provided on the day interest apportionment is effected. The State agrees to check each statement promptly and give the Service Provider notice of any discrepancies in the statement.
- (g) Interest apportionment on a State Set-Off Account will be based on the end of day ledger balance in that State Set-Off Account and will not factor in any back-valuation of balance in that State Set-Off Account.

7 Representations and Warranties

The State represents and warrants to the Service Provider as follows:

- (a) **(status)** all of the TBS Agencies have been lawfully created;
- (b) **(power)** the State has all the necessary power to enter into and perform its obligations under these terms and conditions, to carry out the transactions contemplated by these terms and conditions and to carry on its business as now conducted or contemplated; and
- (c) **(general)** its entry into and performance of its obligations under these terms and conditions does not contravene its enabling legislation or any other law to which it is subject. It has obtained all of the regulatory approvals and delegations it needs to obtain in order to enter into the arrangement documented in these terms and conditions.



Schedule 3

Service Specification



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Schedule 8

Base Transition-In Plan

[Not applicable]



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]





Schedule 12

Template Service Order and Product Agreement

Service Order and Product Agreement for New South Wales Banking, Financial and Related Services Agreement

Date ►

Between the parties

[Agency details to be inserted]

of [Address to be inserted]

(the "Agency")

and

Westpac Banking Corporation (ABN 33 007 457 141) of C/- Westpac Group Secretariat,
Westpac Place, Level 18, 275 Kent Street, Sydney NSW 2000

(the "Service Provider").

Recitals

- A. New South Wales Treasury, on behalf of the State of New South Wales and the Service Provider have entered into the New South Wales Banking, Financial and Related Services Agreement dated [insert] (the **Master Agreement**).
- B. Under the Master Agreement, Agencies are entitled to order Products and Services from the Service Provider.
- C. The Service Provider has agreed that it will provide the Products and Services to the Agency in accordance with the terms and conditions of this agreement (**Product Agreement or PA**).
- D. This Product Agreement is entered into by [Option 1: the Agency as principal] [Option 2: by the Treasurer on behalf of the Agency pursuant to section 6.14 of the GSF Act] [Option 3: by [other option to be inserted] [Guidance note: Execution block may be used as appropriate]].

The parties agree as follows:

1 Product Agreement, Products and Services and Pricing

1.1 Services Orders and Product Agreements

- (a) This document shall be interpreted as a separate Service Order under the Master Agreement for each Product and Service ordered in Schedule 1 until a Product Agreement comes into effect.
- (b) A Product Agreement comes into effect for each Product and Service ordered in Schedule 1, when this document is signed by the Agency and the Service Provider. If more than one Product and Service is ordered in Schedule 1, a number of separate Product Agreements therefore come into effect.
- (c) The terms and conditions of each Product Agreement are as set out in clause 5.3(b) of the Master Agreement.

1.2 Products and Services

Schedule 1 specifies the Products and Services ordered under this document.

1.3 Pricing

Schedule 2 specifies the Fees and Charges for any Products and Services which are "Quoted".

2 Additional documentation

2.1 [Agency Transition-In Plan]

[Schedule 3 attaches any Agency Transition-In Plan, which has been agreed by the Parties at the date of this document.] *[Guidance note: The Parties may attach any Agency Transition-In Plan to Schedule 3. The Parties may also agree Agency Transition In-Plans and not attach them to Schedule 3. If Transition-In Services are important it is recommended that the Agency Transition-In Plan is agreed prior to signing of this document.]*

2.2 [Agency Specific Protocols and Procedures and Requirements/Specifications]

Schedule 3 attaches Protocols and Procedures and Requirements/ Specifications specific to an Agency which have been agreed by the Parties at the date of this document, applicable to certain Products and Services ordered in Schedule 1. *[Guidance note: Under clause 19.5 of the Master Agreement, Protocols and Procedures are to be agreed between the State and the Service Provider. The State may agree these Protocols and Procedures to apply to all or some Agencies for some Products and Services. Schedule 3 is intended for attaching Agency specific Protocols and Procedures, agreed by the Parties. Similarly the Master Agreement already incorporates Requirements/ Specifications for the Products and Services. In some instances, however, the Parties will wish to agree additional Requirements/Specifications which could be attached to Schedule 3.]*



2.3 [Agency Specific Service Provider Product Terms and Conditions]

Schedule 3 attaches completed forms of the Service Provider Product Terms and Conditions specific to an Agency which have been agreed by the Parties at the date of this document, applicable to certain Products and Services ordered in Schedule 1, as contemplated by paragraph (e) of Part 2 of Schedule 11 (Service Provider Product Terms and Conditions). **[Guidance note: Under this paragraph, certain Service Provider Product Terms and Conditions are to be agreed between the Agency and the Service Provider.]**

3 Other provisions

[Guidance Note: Insert here any additional provisions required. In accordance with clause 5.3(b)(2), provisions which are inconsistent with the master Agreement must not be incorporated. In general, it is anticipated that no additional provisions will be required.]

4 Miscellaneous

4.1 Definitions and interpretation

- (a) Unless the context requires otherwise, terms not defined in this document have the meaning given to them in the Master Agreement.
- (b) Any reference to a clause or provision of the Master Agreement includes that clause or provision incorporated into this document.

4.2 Notices

The Agency's address for Notices in accordance with clause 41(b) of the Master Agreement is:

Title:

Address:

Email:

Attention:

4.3 Governing Law and Jurisdiction

- (a) Each Product Agreement is governed by the law in force in New South Wales.
- (b) Each Party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with each Product Agreement. Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

Schedule 1

Products and Services

1 General

- (a) Products and Services ordered under this document are set out below.
- (b) [Each numbered item is a separate Product and Service and is a separate Service Order and is subject to a separate Product Agreement.]
- (c) The Services Commencement Date for each Product and Service is the date set out below, or such other date otherwise agreed in writing between the Parties for that Product and Service.

2 Products and Services ordered

<u>Item</u>	<u>Product and Service</u>	<u>Applicable Product Terms and Conditions</u>	<u>Ordered (Y/N)</u>	<u>Services Commencement Date</u>
	Insert name of service			



Schedule 2

Pricing for "Quoted" Fees and Charges

[To be inserted]



Schedule 3

Additional documentation

[Guidance Note: Attach any additional documentation as described in section 2.]



Signing page for Product Agreement

Executed as an agreement

[Guidance Note: Relevant execution block to be used.]

Option 1

Signed on behalf of [Agency] by its Authorised Representative

sign here ► _____
Signature of [Insert Name / Position]

print name _____

in the presence of

sign here ► _____
Witness

print name _____

Option 2

Signed by the Honourable [Dominic Perrottet], MP the Treasurer on behalf of the Agency pursuant to section 6.14 of the *Government Sector Finance Act 2018* (NSW)

sign here ► _____
Signature of Treasurer

print name _____

in the presence of

sign here ► _____
Witness

print name _____



Agency - Option 3

[Guidance note: Other execution block may be used as appropriate]

Service Provider

Signed sealed and delivered for
Westpac Banking Corporation ABN 33 007 457 141
by its attorney under a power of attorney dated 17 January 2001

sign
here ►

Attorney

name
and title

Signature of attorney who declares that the attorney has been
appointed as an attorney under the power of attorney and that
the attorney has not received any notice of the revocation of the
power of attorney

in the presence of

sign
here ►

Witness

print
name



Annexure A

Selected Tender documents

Index

No.	Title
1.	Part B – Proposal Requirements – General Organisational Response
2.	Part B – Proposal Requirements – Module 1 – Cash Liquidity and Management
3.	Part B – Module 1 - Addendum 1 dated 16 August 2018
4.	Part B – Proposal Requirements – Module 2 – Payment by Users (Merchant Services)
5.	Part B – Module 2 - Addendum 1 dated 16 August 2018
6.	Part B – Proposal Requirements – Module 3 – Cross border payments
7.	Part B – Module 3 - Addendum 1 dated 14 September 2018