

Agreement for Supply of Goods and Services - Terms & Conditions

1 Supplier's acknowledgement

Supplier acknowledges and agrees an Order made under this Agreement does not impose an obligation on CBA to acquire Supplier's goods or services other than the Goods and/or Services specified in the Order.

2 Terms

- (a) Subject to paragraphs (b), (c), and (d) below, this Agreement will constitute the entire understanding between the parties for the purchase of Goods by or the supply of Services to CBA.
- (b) This Agreement may only be varied by written agreement between CBA and Supplier.
- (c) In the event there is any inconsistency between the documents comprising this Agreement, they must be read and interpreted in the following descending order of priority: (i) the Subsisting Principal Agreement, if any; (ii) this document; and (iii) a relevant Order.
- (d) For the avoidance of doubt, the parties acknowledge that: (i) the terms of any such Subsisting Principal Agreement continue to apply despite this document; (ii) to the extent that there is any inconsistency between the terms of a Subsisting Principal Agreement and this document, the terms of the Subsisting Principal Agreement prevail; and (iii) nothing contained in this document is intended to diminish or derogate from CBA's rights under a Subsisting Principal Agreement.

3 Price and GST

Unless otherwise stated in the Order: (a) the price specified in the Order is exclusive of GST but includes all other taxes, duties, delivery costs and all installation costs; and (b) payment will be made 30 days from receipt by CBA of correct tax invoices, being either paper based or e-invoice.

4 Delivery and acceptance

- (a) The Goods and/or Services will be delivered to or carried out at the Delivery Address by the Due Date or a Due Date as extended under clause 5.
- (b) Goods will be deemed finally accepted by CBA on the date they are ready for use,

inspected and tested that they are fit for purpose to CBA's reasonable satisfaction.

- (c) Services will be deemed finally accepted by CBA on the date they are completed to CBA's satisfaction.
- (d) CBA reserves the right to reject or revoke acceptance of Goods and/or Services that do not conform with the Order or the terms of the Agreement or to avail itself of any other legal remedies.

5 Delays

If Supplier is delayed or impeded (or anticipates that it will be delayed or impeded) in the supply or provision of the Goods and/or Services at the Delivery Address by the Due Date, Supplier will notify CBA in writing. CBA will within a reasonable time of receipt of such notice, in consultation with Supplier, grant Supplier either prospectively or retrospectively such written extension of the Due Date as is reasonable in the circumstances, but Supplier will not be entitled to claim any increase in the total amount of fees payable by CBA for the Goods and/or Services. If agreed between the parties, CBA may cancel the Order in the event that, in its opinion (acting reasonably), Supplier is unable to supply or provide the Goods and/or Services at the Delivery Address by the Due Date.

6 Title and risk

- (a) Title to the Goods passes to CBA when the Goods are delivered to the specified Delivery Address.
- (b) The risk in the Goods passes to CBA when the Goods are accepted by CBA.

7 Early delivery

CBA may, before the Due Date, reasonably request that Supplier complete performance on or before the Due Date and Supplier will use its best endeavours to comply with any such request, but will not be in breach of this Agreement if unable to comply.

8 Quality standards

Supplier is responsible for all inspection testing referred to in the Order. Supplier will comply with all legal requirements and industry practices relevant to the manufacture and supply of the Goods and/or Services. During the manufacturing process, at the time of shipment and a reasonable time after arrival at the Delivery Address, CBA may, where relevant and acting reasonably, send inspectors during working hours to any address where the Goods are located (including

any plant(s) of Supplier) and Supplier will permit such inspectors to observe work on and test the Goods. If CBA notifies Supplier that Supplier has not met or will not meet the standards of quality required in this Agreement, then Supplier will take all steps necessary to be able to meet those standards.

9 Warranties

- (a) Supplier warrants that: (i) the Goods are free from liens, encumbrances (including any registration or security interest under the *Personal Property Securities Act 2009* (Cth) (except for any registration or security interest in favour of CBA) and defects in design, material, workmanship and title; (ii) the Goods and/or Services will conform in all respects to the terms of the Order; and (iii) the Goods will comply to the applicable drawings and specifications issued for manufacture and (if no quality is specified) will be new and of best quality.
- (b) Without prejudice to any other rights CBA may have at Law, if: (i) in relation to Goods, within the manufacturers standard warranty period; and/or (ii) in relation to Services, within 12 months from the date of delivery, or such other period as specified in the Order, the Goods or Services or any part of the Goods or Services do not conform with these warranties or the Order, CBA may notify Supplier within a reasonable time after discovery whereupon Supplier must, at Supplier's expense, promptly correct such non-conformity to the reasonable satisfaction of CBA.
- (c) If Supplier fails to correct the non-conformity referred to in paragraph (b), CBA may give it further notice to rectify the non-conformity (if it is capable of rectification). If Supplier does not rectify the non-conformity within 5 business days of notice (or such other period as specified in the Order) or if the non-conformity is not capable of rectification, then CBA may: (i) revoke its acceptance of the Goods and/or Services; (ii) substitute other goods or services; and/or (iii) correct or carry out the correction work which Supplier has failed to carry out by the most expeditious means available.
- (d) The reasonable cost of correction or carrying out of work as set out in paragraph (c) by CBA will be borne by Supplier.
- (e) Goods and/or Services repaired, corrected or

replaced under this Agreement are also subject to this warranty from the date of repair, correction or replacement.

10 Indemnity and insurance

- (a) Subject to clause 10(c), Supplier will indemnify CBA for all Loss or liability in connection with any: (i) claim alleging that material provided to any CBA Group Member, or used by Supplier, infringes a third party's Intellectual Property Rights or other rights; (ii) death or injury (including sickness) to any person caused or contributed to by Supplier or its Personnel; (iii) loss of, or damage to, real or tangible personal property caused or contributed to by Supplier or its Personnel; (iv) breach of clauses 11 (Risk Management), 12 (Security), 18 (Confidentiality) or 19 (Privacy); or (v) act or omission of Supplier or its Personnel that causes or contributes to a CBA Group Member to breach any Laws or Regulatory and Industry Requirements.
- (b) Subject to clause 10(c), CBA will indemnify Supplier for all Loss or liability in connection with any: (i) death or injury (including sickness) to any person caused or contributed to by CBA or its Personnel; or (ii) loss of, or damage to, real or tangible personal property caused or contributed to by CBA or its Personnel.
- (c) To the extent permitted by Law, each party's liability under this Agreement for any Loss suffered by the other party will be reduced to the extent that the Loss was caused or contributed to by the negligent acts or omissions or wilful default of the other party or its Personnel.
- (d) Supplier must effect and maintain at its cost the insurances listed in paragraph (f) as well as any other insurances reasonably requested by CBA (**Required Insurances**) during the term of the Agreement and for a period of six years after termination of the Goods or Services to CBA. Supplier must provide certificates of currency for the Required Insurances upon provision of Goods or Services, and on request by CBA during the term of the Agreement, other than for any Worker's Compensation insurance under clause 10(f)(ii), for which a certificate

of currency must be supplied upon request.

- (e) Supplier must pay any excess / deductible under the Required Insurances.
- (f) The Required Insurances include: (i) Public and Products Liability insurance for not less than \$10,000,000 in respect of any single occurrence, and in the annual aggregate in respect of Products Liability; (ii) Workers' Compensation insurance, Work Care or equivalent insurance in accordance with legislation applicable to the state or territory in which the Services are to be performed or Goods to be supplied and in which Supplier employs persons; (iii) Professional Indemnity insurance for an amount not less than \$10,000,000 for any one loss and in the aggregate each policy year, for any civil liability arising out of Supplier's professional services or activities. Such insurance is to be maintained by Supplier for a period of 6 years after termination of this Agreement; and (iv) Material Damage Insurance to cover physical loss, destruction or damage to the property of CBA relevant to this Agreement under Supplier's care custody and control or where Supplier has accepted the risk of such loss or damage. Such property must be insured for its replacement cost.

11 Risk management

- (a) Supplier will provide CBA, upon request and no more than once per year, details of locations in which CBA Data is stored and accessed by Supplier and its subcontractors.
- (b) Where Goods or Services are performed on an ongoing basis, as requested and no more than once per year, Supplier will meet with CBA to discuss performance and delivery of ongoing Services/Goods.
- (c) Supplier will co-operate and complete due diligence activities as reasonably required by CBA from time to time and respond to questionnaires and/or requests for documentation or information in a timely manner.

12 Security

- (a) **Protecting security of CBA Data and the Services.** If Supplier stores, accesses or otherwise handles CBA Data, Supplier must take reasonable steps (which includes implementing, documenting and maintaining

appropriate safeguards) to protect against any unauthorised use, interference, access, disclosure, destruction, loss, alteration or unavailability of CBA Data.

- (b) **Use of CBA Data for testing purposes.** If Supplier stores, accesses or otherwise handles CBA Data, Supplier must not use any CBA Data for testing purposes unless that CBA Data has first been: (i) masked or de-identified in accordance with Industry Best Practice; or (ii) otherwise approved in writing by CBA for use by Supplier for testing purposes.
- (c) **Destruction or return of CBA Data.** If Supplier stores, accesses or otherwise handles CBA Data, without limiting clause 18(b), as soon as CBA Data is no longer required by Supplier to perform its obligations under this Agreement or any Laws, Supplier must: (A) at CBA's election, securely destroy or return all CBA Data in Supplier's possession and control, including permanently deleting all such CBA Data or returning all devices in Supplier's possession or control used to store CBA Data; and (B) provide to CBA, upon its reasonable request, reasonable evidence that Supplier has complied with its obligations under this clause 12.
- (d) **Notification about Security Incidents.** If Supplier becomes aware of a suspected or actual Security Incident, it must: (i) immediately, and in any event no later than 24 hours after the Security Incident first occurs, notify CBA in writing and give CBA all known details about the Security Incident; (ii) immediately take all necessary steps to stop the Security Incident and mitigate the consequences for Supplier and CBA; and (iii) promptly and transparently provide CBA with all reasonable information, assistance and co-operation requested by CBA to allow CBA to investigate and mitigate the Security Incident, including any forensic or other reports confirming that: (A) in the case of an actual Security Incident, the root cause of the Security Incident has been identified, the threat has been completely eradicated from Supplier Environment (where applicable), the Security Incident has been resolved, and all reasonable steps have been taken to prevent its recurrence; or (B) the suspected Security Incident was not an actual Security Incident.

13 CBA Policies

- (a) Supplier must in the performance of the Services and/ or provision of the Goods: (i) comply with all CBA Policies, Laws and Regulatory and Industry Requirements applicable to the Goods and/or Services and the performance of its obligations under this Agreement; (ii) obtain and maintain any licences, authorisations, consents, approvals and permits required by applicable Laws and Regulatory and Industry Requirements to provide the Goods and/or Services and to perform its obligations under this Agreement; and (iii) comply with reasonable directions of CBA and adopt and implement an anti-corruption policy.
- (b) Supplier must immediately notify CBA of any failures, alleged failures or suspected failures, to comply with CBA Policies, Laws and Regulatory and Industry Requirements immediately after Supplier has become aware of the failure, alleged failure or suspected failure.
- (c) Upon notification under clause 13(b), Supplier must: (i) in consultation with CBA, take any steps required to remedy the failure, alleged failure or suspected failure; (ii) use its best endeavours to provide any assistance reasonably required by CBA to remedy the failure, alleged failure or suspected failure; and (iii) take any reasonable steps required to prevent any recurrence of the failure, alleged failure or suspected failure.

14 No CBA endorsement

Without limiting Supplier's obligations arising out of this Agreement in respect of confidentiality of CBA's information, or privacy of Personal Information, Supplier must not, and must procure that Supplier's Personnel and Related Bodies Corporate do not, at any time disclose to any person that CBA or its Personnel endorse or use the services of Supplier or its Related Bodies Corporate except with CBA's prior written approval which may be granted or refused, in whole or in part, in CBA's sole discretion.

15 Right to audit

- (a) An auditor appointed by CBA, any authorised employee of CBA or CBA's internal auditor will be entitled, at reasonable times during normal business hours of Supplier and upon reasonable notice, to inspect and take copies

of any records and documents of Supplier, its agents or subcontractors relating to the performance of Supplier's obligations under this Agreement.

- (b) Supplier will cooperate (and will ensure that its agents and subcontractors co-operate) with the Auditor in such performance of its duties and will supply access to the relevant records and documents and give assistance and explanations as, in the Auditor's opinions, are necessary.
- (c) For clarity, the audit rights in paragraphs (a) and (b) do not require physical entry onto Supplier's premises, provided inspection and copies of any records and documents, and any assistance and explanations, can otherwise be provided.
- (d) Notwithstanding any other provision of this Agreement, the respective rights and obligations arising under this clause will continue for a period of 6 months following any termination of this Agreement.

16 Work health & safety

Supplier must:

- (a) comply with, and ensure that all Supplier Personnel and subcontractors engaged in the provision of the Goods and/or Services comply with, all applicable Safety Legislation and Safety Requirements at their own cost;
- (b) cooperate with and do all things reasonably necessary to assist, and refrain from doing anything that may impede, CBA Group Members or their personnel in discharging their obligations under the relevant Safety Legislation;
- (c) perform the Services in a manner that does not cause any CBA Group Member to breach its obligations under the relevant Safety Legislation; and
- (d) upon reasonable request by or on behalf of CBA, demonstrate compliance with such requirements including providing evidence of measures taken to achieve such compliance.

17 Intellectual property

- (a) Nothing in this Agreement gives a party any right, title or interest in the other party's Background Intellectual Property, other than those expressly set out in this Agreement.

- (b) On creation of any Goods, Services or other material provided by or on behalf of Supplier for CBA in connection with the performance of Supplier's obligations under the Agreement (regardless of whether those Goods, Services or material have been completed), Supplier: (i) absolutely and unconditionally assigns; and (ii) must procure that each Supplier Personnel absolutely and unconditionally assigns, to CBA or its nominee all Intellectual Property Rights in such Goods, Services and/or other work products without the need for further assurance, as an assignment of future property under section 197 of the Copyright Act and in equity.
- (c) Supplier represents and warrants that: (i) it has the right to assign the Intellectual Property Rights assigned to CBA under paragraph (b); and (ii) neither the provision, nor the taking of the benefit of, nor the use, modification, adaptation or other exploitation of the relevant Goods or Services by CBA, will infringe the Intellectual Property Rights or Moral Rights of any person or third party.
- (d) If an IPR Claim is made against CBA, without limitation, CBA requires Supplier to do any of the following at Supplier's expense: (i) procure for CBA the rights necessary for CBA to purchase and use the relevant Goods or Services; (ii) substitute substantially identical or similar, but non-infringing, Goods or Services for the infringing Goods or Services, if that is practicable in the circumstances; (iii) modify the infringing Goods or Services so that they become substantially identical or similar to the infringing Goods or Services without infringing the Intellectual Property Rights, if that is practicable in the circumstances; (iv) remove infringing Goods and refund the purchase price and relevant transportation and installation costs to CBA; and/or (v) take such other steps CBA may consider appropriate in the circumstances.

18 Confidentiality

- (a) **Confidentiality.** All Confidential Information, including technical and other proprietary information, furnished by either party under this Agreement, or which results from the joint efforts of the party's Personnel, will be deemed to have been furnished in confidence for the sole purpose of this Agreement. The parties undertake not to use any such information for any purpose not connected with the Agreement.

All information supplied by CBA to Supplier for the purpose of providing the Goods and/or Service will not be disclosed to any other party, other than as required by Law, or where authorised by CBA in writing.

- (b) **Return of Confidential Information.** Each party must on request from the other party: (i) return to the other party; (ii) destroy and certify in writing to the other party the destruction of; or (iii) destroy and permit an employee of the other party to witness the destruction of, the other party's Confidential Information in the party's possession or control other than one copy of any notes and other records that the party is required by Law to retain.

19 Privacy

- (a) **Obligation to comply with Privacy Laws.** Supplier must: (i) comply with the Privacy Act and other Privacy Laws as reasonably directed by CBA as though Supplier were subject to those Privacy Laws; (ii) not do or omit to do anything to cause a CBA Group Member to breach its obligations under a Privacy Law; (iii) provide all assistance reasonably required by CBA to assist CBA in complying with its obligations under any Privacy Law; and (iv) at its cost, ensure that all Supplier Personnel complete any training required by CBA in relation to Supplier's handling of CBA Personal Information.
- (b) **Handling of CBA Personal Information.** Supplier must: (i) collect, use and disclose CBA Personal Information only as permitted under this Agreement; (ii) not disclose CBA Personal Information except: (A) to Supplier Personnel to the extent necessary for performing its obligations under this Agreement; or (B) as required by Law, subject to giving notice to CBA immediately if Supplier becomes aware a disclosure may be required; or (C) with the prior written consent of CBA; and (iii) ensure that any person to whom CBA Personal Information is disclosed under clause 19(b)(ii), uses, discloses, retains, Processes and handles CBA Personal Information consistently with this clause 19.
- (c) **Notice requirements.** Supplier must not contact subjects of CBA Personal Information directly or collect Personal Information about subjects from third parties in connection with this Agreement, without first obtaining CBA's written consent, and complying with any

instructions from CBA.

- (d) **Transborder data flow.** Supplier must not transfer or disclose any CBA Personal Information to any recipient (including Supplier Personnel) located outside of Australia, or any country in which CBA Personal Information was first collected (the **Relevant Countries**), or allow any person (including Supplier Personnel) located outside the Relevant Countries to access any CBA Personal Information unless it first obtains CBA's written approval.
- (e) **Accurate recording and storage.** Supplier must take all reasonable steps to ensure that CBA Personal Information is stored and recorded accurately and ensure that CBA Personal Information is not altered or amended except as directed by CBA.
- (f) **Access and correction.** Supplier must only act as directed by CBA in relation to CBA Personal Information, and must immediately notify CBA if: (i) it receives a request from an individual requesting access to or correction of their CBA Personal Information; or (ii) it believes that any CBA Personal Information is inaccurate, out-of-date, incomplete, irrelevant or misleading.
- (g) **Data Breach.** Supplier must not do, or fail to do, anything which amounts to a Data Breach. If Supplier becomes aware or suspects that a Data Breach has occurred, Supplier must: (i) immediately notify CBA and provide CBA with full details of, and assist CBA in investigating, the Data Breach; (ii) use all reasonable efforts to prevent a recurrence of any Data Breach; and (iii) comply with any reasonable direction from CBA with respect to mitigating and remedying any Data Breach or any of the matters set out in this clause 19(g).
- (h) **Data Breach notification.** Supplier agrees that CBA will be solely responsible for determining whether a Data Breach may result in serious harm, and Supplier must not disclose the existence or circumstances of a Data Breach without CBA's prior written approval.
- (i) **Return of CBA Personal Information.** Supplier must return to CBA, or destroy and certify in writing to CBA the destruction of, at CBA's discretion, all materials containing CBA Personal Information: (i) when CBA Personal Information is no longer required by Supplier for the purposes of this Agreement; (ii) upon termination or expiry of this Agreement; (iii) upon demand by CBA; or (iv) if required by Law.

- (j) The obligations of this clause 19 apply notwithstanding any permitted Processing of Confidential Information.

20 **SpeakUP (whistleblower) service**

- (a) Supplier acknowledges that CBA provides a service that permits Supplier to notify CBA about ethical, conflict of interest, or other issues related to procurement that cannot be resolved through normal business channels. The service is also available for Supplier to report concerns that may be seen during interactions with CBA.
- (b) To make a report, Supplier should contact CBA Group's SpeakUP service at speakup@speakuphotline.com.au or 1800 SPEAKUP (1800 773 258), or reverse charge from overseas on +61 2 9151 9156, which is operated by a third party. There are options available for reporting via the SpeakUP service, including identifying yourself, remaining anonymous, or as a whistleblower under Group Whistleblower Policy.
- (c) Information relating to Group Whistleblower Policy can be found on CBA's website.

21 **Compliance**

- (a) Supplier must comply with all Laws, regulations and mandatory standards that apply to Supplier or the relevant Goods or Services, including any Laws, regulations and mandatory standards that relate to Information Security. Without limiting Supplier's obligations arising out of or in respect of this Agreement, Supplier on or before the date this Agreement must register with Supplier Prequalification and Induction Program at its own cost, to ensure that Supplier is prequalified and compliant and meets the minimum industry standard for the supply of Goods and/or Services to CBA. CBA will not submit an Order nor accept delivery of the Goods and/ or Services until Supplier confirms evidence of its registration.
- (b) Supplier must ensure that Supplier Personnel who are attending the Delivery Address unescorted by an authorised representative of CBA have: (i) completed Supplier Prequalification and Induction Program and have received compliant status and have been issued with an electronic certificate (**Electronic Certificate**); and (ii) obtained a current and satisfactory National Police History Check (**NPHC**), prior to commencing

activities at the Delivery Address (**Qualified Personnel**).

- (c) Supplier must procure that Qualified Personnel present the Electronic Certificate and NPHC to the site facilities manager or nominated representative of CBA, prior to commencing activities at a Delivery Address, and at such other times on request.
- (d) Supplier must ensure that where there is a material change in the information provided by Qualified Personnel in an Electronic Certificate or NPHC then those documents are updated accordingly.

22 Assignment or subcontracting

Neither party will assign or subcontract its right under this Agreement without the prior written consent of the other party.

23 Termination

- (a) **Breach of a material term.** If Supplier breaches a material term of this Agreement then CBA may give it notice specifying the breach and requiring the breach to be rectified (if it is capable of rectification) within 5 business days of receipt of the notice. If Supplier does not rectify the breach within 5 business days or if the breach is not capable of rectification, then CBA may terminate this Agreement at any time by giving at least 14 calendar days' notice of termination.
- (b) **Insolvency.** Subject to the provisions contained in the *Treasury Laws Amendment (2017 Enterprises Incentives No. 2) Act 2017* (Cth), CBA may terminate this Agreement immediately upon notice to Supplier if a receiver, receiver and manager, administrator or liquidator is appointed, or if Supplier makes any composition or arrangement with its creditors, or if it becomes Insolvent.
- (c) **Change in Control.** CBA may terminate this Agreement immediately by notice to Supplier, if there is a change in Control of Supplier, a Related Body Corporate of Supplier, or a Third Party to which Supplier subcontracts the supply of Services, which, in CBA's reasonable opinion, is likely to affect the supply of Services under this Agreement or the business, operations or reputation of CBA.
- (d) **Termination for convenience.** CBA may at its discretion, terminate this Agreement at any time in part or in whole for convenience by

giving Supplier 30 calendar days' prior written notice. If this Agreement is terminated under this clause 23(d): (i) CBA will pay Supplier (in respect of the terminated part of the Agreement): (A) the portion of the price stated in the affected Order(s) that is due and payable for Services provided prior to termination; and (B) reasonable costs incurred, evidenced, and which are otherwise unrecoverable by Supplier, for materials procured for the Services (provided any materials delivered are given to CBA); and (ii) Supplier must provide CBA a refund, on a pro rata basis, of any pre-paid portion of the price stated in the affected Order(s) relating to the period after such termination. The amount Supplier is entitled to be paid under clause 23(d)(i) will be a limitation upon CBA's liability for termination under this clause 23(d).

24 AML/CTF, Anti-bribery and corruption, Anti-Tax Evasion, Anti-Tax Evasion Facilitation and Sanctions

- (a) **AML/CTF Personnel obligations**
 - (i) Supplier agrees, at its own cost, to provide CBA with such assistance as CBA reasonably requires in order for CBA to maintain and comply with its AML/CTF Program in connection with this Agreement.
 - (ii) Supplier must comply with any procedures or reasonable directions issued to it in writing by CBA that CBA is of the reasonable opinion are for the purpose of assisting it to comply with the AML/CTF Requirements, and Supplier must comply with those procedures or directions within the time reasonably specified by CBA.
 - (iii) Supplier must ensure all Supplier Personnel undertake any training reasonably required by CBA in relation to the AML/CTF Requirements.
 - (iv) Supplier must establish and maintain a system that is satisfactory to CBA to manage any Supplier Personnel who fails to comply with this clause 24(a).
 - (v) Supplier must: (A) without limiting the

generality of CBA's other rights under this Agreement, permit CBA or a Government Agency to audit or inspect any issue, matter or thing relating to its obligations under this clause 24(a) and cooperate with such audit or inspection; (B) undertake regular reviews of its compliance with this clause 24(a) and maintain records of its compliance with this clause; (C) provide any documents or information reasonably requested by CBA in connection with this clause 24(a) as soon as reasonably practicable after that request is made; and (D) notify CBA of any failure to comply with its obligations under this clause 24(a) and immediately remedy such failures to the fullest extent possible.

- (b) **Anti-corruption, Anti-Tax Evasion and Anti-Tax Evasion Facilitation.** Supplier must: (i) comply with the applicable Anti-Corruption and Anti-Tax Evasion Laws; (ii) procure that its Associated Persons will comply with the Anti-Corruption and Anti-Tax Evasion Laws; and (iii) maintain and enforce policies and procedures to ensure compliance with Anti-Corruption and Anti-Tax Evasion Laws and make those policies and procedures available to CBA on request.
- (c) **Sanctions.** Supplier represents and warrants that: (i) neither it nor any of its subsidiaries, directors, officers, employees, agents or representatives is an individual or entity (each a "person") that is, or is owned or controlled by a person (**Restricted Person**) that is the subject of any sanctions administered or enforced by any relevant sanctions authority including, but not limited to, the Australian Department of Foreign Affairs and Trade, the Office of Foreign Assets Control of the US Department of Treasury, the European Union (**Sanctions**); (ii) it will not engage in, or be a party to, any transaction or activity: (A) with any Restricted Person; (B) with a person who is directly or indirectly associated with any Restricted Person; or (C) that is for the benefit of any Restricted Person; (iii) it will not engage in any activity which would amount to a breach of any Sanctions; (iv) it will notify CBA immediately in writing in the event that any of the warranties provided in paragraphs (i)-(iii) above are no longer accurate; and (v) it has adopted and will continue to maintain written

policies and procedures designed to achieve, and which are reasonably expected to continue to achieve, compliance with Sanctions.

- (d) **Consequences of a breach.** Notwithstanding any provision of this Agreement, if: (i) Supplier breaches, or CBA reasonably suspects such a breach of any of the representations or set out in paragraph (c) above; or (ii) any representation or warranty given in paragraph (c) above is or becomes untrue or misleading, without prejudice to any other remedy which CBA may have, CBA may terminate this Agreement in accordance with clause 23(a).

25 Diversity

Each party: (a) in all of its activities under or in connection with this Agreement, will respect the diversity of the communities in which it operates; (b) must not, under or in connection with this Agreement, make any decision having regard to, or treat any person less favourably than any other person by reason of: (i) any prohibited ground of discrimination under applicable law; or (ii) without limiting paragraph (i), the gender, sexual orientation, gender identity, disability, race or ethnicity of any person; and (c) agrees and acknowledges that a failure to comply with this clause may result in damage to the other party's brand or reputation.

26 Supplier Code of Conduct

Supplier agrees to comply with CBA's Supplier Code of Conduct.

27 Human rights law compliance

- (a) Supplier: (i) will, and will ensure Supplier Personnel, comply with all applicable anti-slavery and human trafficking Laws; and (ii) must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Services.
- (b) If Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the Agreement, Supplier must as soon as reasonably practicable inform CBA in writing and take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

28 Governance

- (a) CBA and Supplier agree to implement,

participate in and attend governance meetings in connection with this Agreement. Such meetings support (among other things) the: (i) effective management and regular monitoring of Services; and (ii) the provision of information between the parties to facilitate the timely resolution of problems, risks or issues under this Agreement.

- (b) The parties agree to participate in at least one governance meeting in each year of the Term. The parties may by mutual agreement add additional governance meetings as required.
- (c) The parties agree to the following governance meeting etiquette: (i) the parties will work together to facilitate and ensure attendance at governance meetings; (ii) Supplier representatives and CBA representatives in attendance will be of appropriate seniority, number and connection to the Agreement and will be empowered to discuss and make decisions in respect of matters on the agenda, subject always to clause 2(b). Each party will notify the other of such representatives reasonably in advance of the governance meeting; and (iii) the parties will work together prior to the governance meeting to agree: 1. a suitable agenda for the meeting, which may include relevant business updates, service performance, service management, invoicing, risk management, on-going projects, operational issues or contractual matters; and 2. the materials required to facilitate the meeting e.g. invoices and reporting.
- (d) Supplier will prepare and distribute the minutes and outcomes within a reasonable time following each governance meeting.
- (e) Supplier will complete due diligence activities in connection with the Agreement as reasonably required by CBA from time to time, and respond to CBA's reasonable requests for documentation or information in connection with the Agreement in a timely manner.

29 General

- (a) Waiver of any right, power, authority, discretion or remedy arising from any breach of this Agreement must be in writing and signed by the party granting the waiver.

- (b) This Agreement is governed by the law of the State of New South Wales and the parties irrevocably submit to the non-exclusive jurisdiction of its courts.
- (c) All notices or other communications under this Agreement will be hand delivered or sent by prepaid post or electronically. A notice will be deemed given in the case of prepaid post, on receipt by the addressee; in the case of hand delivery or registered mail, on acknowledgment of receipt by an officer or authorised employee, agent or representative or the receiving party; and in the case of electronic means, on receipt by the addressee.
- (d) A reference to a party to this Agreement includes that party's successors and permitted assigns.
- (e) The rights, obligations and indemnities in clauses 9 (Warranties), 10 (Indemnity and Insurance), 17 (Intellectual Property), 18 (Confidentiality), 19 (Privacy) and 23 (Termination) survive the termination or expiry of this Agreement.
- (f) Any clause which contemplates that a party has any rights or obligations after the termination or expiry of this Agreement also survives termination or expiry.

30 Definitions and interpretation

In this Agreement:

Agreement means: (a) this document setting out CBA's standard terms and conditions for the purchase of goods and/or services; (b) each Order; and (c) where there is such an agreement in place, the Subsisting Principal Agreement.

AML/CTF means Anti-Money Laundering and Counter-Terrorism Financing.

AML/CTF Program means the AML/CTF Program that CBA has implemented and is maintaining for the purposes of the AML/CTF Requirements.

AML/CTF Requirements means: (a) the requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**) and any regulations and rules made in connection with the AML/CTF Act; and (b) any directions given by a Government Agency in relation to the AML/CTF Act.

Anti-Corruption and Anti-Tax Evasion Law means: (a) the *Australian Criminal Code Act 1995* (Cth); (b) the *United States of America Foreign Corrupt Practices Act*

of 1977; (c) the *United Kingdom Bribery Act 2010*; (d) the *United Kingdom Criminal Finances Act 2017*; and (e) any other applicable law including: (i) statute, ordinance, rule or regulation; (ii) order of any court, tribunal or any other judicial body; (iii) rule, regulation, guideline or order of any public body, or any other administrative requirement); and (iv) similar instrument, which has as its objective the prevention of corruption, tax evasion or the facilitation of tax evasion.

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

Associated Person means a person or entity (including, without limitation, all officers, employees, agents, contractors, subcontractors and any person, including any subsidiaries or controlled entities) who performs (or has performed) services for or on behalf of Supplier in connection with this Agreement.

Auditor has the meaning given to it in clause 15(a).

Availability refers to accessibility and usability when required.

Background Intellectual Property means the Intellectual Property Rights of a party developed before or independent of the Agreement.

CBA means the Commonwealth Bank of Australia (ABN 48 123 123 124).

CBA Data means all data and information (including CBA Personal Information) relating to any CBA Group Member and their respective operations, CBA customers, Personnel, assets, products, sales and transactions, in whatever form that information may exist, including any data produced, generated or processed in the provision of the Goods or Services, and includes any database in which that data or information is contained, any documentation or records related to that data or information, any products (including new data or information) resulting from the use or manipulation of that data or information, any other data and other information entered into, generated by, stored by, or processed by any CBA equipment, and any data or information pertaining to Supplier's provision of the Services (excluding Supplier material and data or Confidential Information owned by Supplier).

CBA Group means CBA Group Members.

CBA Group Member means CBA, any Related Body Corporate of CBA, any entity that is Controlled by, Controls or is under common Control with CBA, any joint venture in which CBA or its related body corporate owns

50% or more of the relevant ownership interest, and any other entity nominated by CBA from time to time, in which CBA or its Related Body Corporate has an equity, business or other right or interest.

CBA Personal Information means Personal Information collected by a CBA Group Member, or has been provided by a CBA Group Member, or has been collected, accessed or used by Supplier in the course of performing its obligations under this Agreement or otherwise in connection with this Agreement.

CBA Policies means CBA's policies, procedures, standards, processes, operating principles, guidelines, technology strategies, technical data and application architectures as provided to Supplier and amended from time to time.

Confidential Information of a party means any information: (a) regarding the terms of this Agreement, or the commercial arrangements between the parties; (b) designated by that party as Confidential Information; (c) which is by its nature confidential or which is otherwise designated as confidential by that party; (d) which the recipient knows, or ought to know, is confidential; and (e) where CBA is the disclosing party: (i) CBA Data; (ii) information regarding the business or affairs of CBA Group Members; and (iii) information regarding CBA customers or the personnel of, or other persons doing business with, CBA Group Members, but does not include information that is: (f) in the public domain otherwise than as a result of a breach of this Agreement or another obligation of confidence; (g) independently developed by the recipient; or (h) already known by the recipient independently of its interaction with the disclosing party and free of any obligation of confidence.

Confidentiality refers to access being restricted to only those authorised.

Control means the legal, beneficial or equitable ownership, directly or indirectly, of 50% or more of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights or the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of such entity, by contract or otherwise.

Copyright Act means the *Copyright Act 1968* (Cth).

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

Data Breach means any: (a) breach of clause 19 by Supplier; (b) unauthorised disclosure, use, modification or access, or attempted unauthorised disclosure, use, modification or access, or misuse or loss of, CBA Personal Information; or (c) engaging a subcontractor to

process CBA Personal Information without CBA's prior approval.

Deliverables means all work product of Supplier which arises in connection with the Goods and/or Services and any inventions, improvements and processes relating to such work product, made or acquired by Supplier, including Documentation.

Delivery Address means the delivery address for Goods and/or Services as set out in an Order or otherwise notified by CBA to Supplier.

Documentation means manuals including release notes, reference guides, specifications or other documents relating to the Deliverables provided to by Supplier.

Due Date means the date that the Goods and/or Services are required for delivery by CBA, as stated in an Order.

Electronic Certificate has the meaning given to it in clause 21(b).

Goods means the Goods supplied by Supplier to CBA under the Agreement, as specified in an Order, from time to time.

Government Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

GST means goods and services tax or similar value added tax levied or imposed by the GST Law or otherwise on a supply.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Industry Best Practice means the proven best practice in relation to a Good, Service or any activity, function or work under this Agreement adopted by the leading providers of financial services or of services similar to the Services.

Information Asset means any (i) CBA Data or (ii) information and information technology, including software, hardware and data (both soft and hard copy) that form part of, or relate to, the Services or the Deliverables.

Information Security means the preservation of an Information Asset's Confidentiality, Integrity and Availability.

IPR Claim means any claim, action or proceeding alleging that the use, modification, adaptation or any other exploitation of the Goods, Services or any material provided by or on behalf of Supplier under or in connection with this Agreement infringes the Intellectual Property Rights or Moral Rights of any person and includes any claim, action, proceeding, damage, loss,

liability, cost, charge, expense or outgoing, of whatever nature, suffered or incurred by CBA arising out of or in connection with such a claim.

Insolvent has the meaning given to it in the Corporations Act.

Integrity refers to completeness, accuracy and freedom from unauthorised change or usage.

Intellectual Property Rights means all industrial and intellectual property rights throughout the world and includes rights in respect of copyright, patents, trade marks, designs, trade secrets, know-how, Confidential Information and circuit layouts and any application or right to apply for registration of any such rights.

Law means any: (a) law of Australia (or any other jurisdiction from which the Services are provided), regulations, by-laws, declarations, ministerial directions and subordinate legislation; (b) Government Agency requirement or authorisation; (c) guidelines, policies and codes; and (d) writ, order, injunction or judgment.

Loss means any loss, liability, damage, costs and expenses (including legal fees, disbursements, costs of litigation, settlement, judgment, interest and penalties and external costs of investigation).

ML/TF Risk means the risk faced by CBA that the provision of services by it, or the provision of the Services to CBA by Supplier, might involve or facilitate money laundering or the financing of terrorism.

Modern Slavery has the meaning given in the *Modern Slavery Act 2018* (Cth).

Moral Rights has the meaning given to that term in the Copyright Act.

NPHC has the meaning given to it in clause 21(b).

Order means an offer to purchase Goods and/or Services constituted by the official written purchase order of CBA signed by a person authorised by CBA for that purpose and issued by CBA to Supplier, by electronic means, from time to time.

Personal Information has the meaning given in the Privacy Act.

Personnel in the case of CBA, includes the officers, employees, agents and individuals that are contractors of CBA (except Supplier and Supplier Personnel).

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

Privacy Laws means the Privacy Act and legislation in force in any jurisdiction (to the extent Personal Information, a CBA Group Member or Supplier, is subject to the laws of that jurisdiction) affecting privacy, along with any rules, guidelines, orders, directions, directives, codes of conduct or other instruments.

Process or Processing in relation to Personal Information or Confidential Information (or both), includes collecting, recording, organising, storing, adapting, altering, retrieving, consulting, using, disclosing, making available, combining, blocking, erasing and destroying.

Qualified Personnel has the meaning given to it in clause 21(b).

Regulator means a body having regulatory or supervisory authority over the business or affairs of CBA, including APRA and ASIC.

Regulatory and Industry Requirements mean any: (a) financial services industry-wide non-statutory rule or obligation; (b) other non-statutory rule or non-statutory mandatory code of conduct; and (c) any industry-wide voluntary code, contract or arrangement, in force where the Services are provided that are applicable to Supplier, the Services and the performance of the Services and Supplier's other obligations under the Agreement, or otherwise notified in writing to Supplier.

Related Body Corporate has the meaning given to that term in the Corporations Act.

Relevant Countries has the meaning given to it in clause 19(d).

Required Insurances has the meaning given to it in clause 10(c).

Restricted Person has the meaning given to it in clause 24(c).

Safety Legislation means all applicable work health and safety, environment protection, dangerous goods and electricity safety Laws.

Safety Requirements means all directions or requirements necessary for compliance by Supplier or CBA with Safety Legislation.

Sanctions has the meaning given to it in clause 24(c).

Security Incident means any suspected or actual: (i) compromise of Information Security; (ii) breach of CBA Data, including loss, unauthorised access or unauthorised disclosure of CBA Data; (iii) breach of the Integrity of CBA Data, including unauthorised or accidental damage or destruction; (iv) event that adversely affects the Availability of CBA Data or the Services; (v) data incident or breach that materially affects (or has the potential to materially affect), financially or non-financially, any member of CBA Group or the interests of depositors, policyholders, beneficiaries or other customers of any member of CBA Group; or (vi) data incident or breach that has been or is required to be notified (including by Supplier or CBA) to any Regulator or Government Agency in Australia or in any other jurisdiction anywhere in the world that

relates to the Services or the Deliverables or otherwise affects CBA.

Services means the Services supplied by Supplier to CBA under the Agreement, as specified in an Order, from time to time.

Subsisting Principal Agreement means any current Master Goods and Services Agreement (howsoever called) which was made between the parties before the date of this document, is intended to govern the same Goods and/or Services the subject of this Agreement and continues in full force and effect at the date of this document.

Supplier means the person, business, partnership or company who agrees to supply Goods and/or Services to CBA.

Supplier Code of Conduct means the Code, as updated from time to time and notified to Supplier at <https://www.commbank.com.au/personal/apply-online/download-printed-forms/Supplier-Code-of-Conduct.pdf>.

Supplier Environment means: (i) all hardware, software, network, systems, services, equipment and other information technology (regardless of ownership) comprising Supplier's entire computing environment; and (ii) any physical or other information management systems of Supplier.

Supplier Personnel means, in relation to Supplier, any employee, secondee, agent, principal, contractor and subcontractor (including any subcontractor involved in the supply of the Goods or Services regardless of whether they are engaged directly by Supplier or by one of Supplier's subcontractors) who is an individual and includes any person who is a prospective employee, secondee, agent, principal, contractor or subcontractor.

Supplier Prequalification and Induction Program means the prequalification and induction program nominated by CBA, as further described in clause 21.