

## Purchase Order Terms and Conditions

Unless the parties have agreed that an Existing Agreement will apply instead to any Goods and/or Services procured through the Supplier Portal, these purchase order terms and conditions (**Purchase Order Terms**) form the legally binding contract between Bendigo and Adelaide Bank Limited (ABN 11 068 049 178) (**BEN, we, us and our**) and the party (**Supplier, you and your**) which is selected by BEN to supply Goods and/or Services to BEN. Please read these Purchase Order Terms carefully before agreeing to them.

Other capitalised terms used in these Purchase Order Terms have the meaning set out at the end of this document.

### 1 Contract Structure and Formation

If no Existing Agreement exists between BEN and the Supplier, the Purchase Order Terms will apply to the Supplier's supply of Goods and/or Services to BEN pursuant to an Order. By accepting the Order, you agree that you will deliver the Goods and/or Services to BEN on the terms of this Agreement and that no other terms and conditions that the Supplier may provide to BEN will apply to such Goods and/or Services. The Supplier agrees that BEN may at any time conduct credit checks on the Supplier, its parent (if any) and the directors of any of the foregoing. Promptly upon BEN's request, the Supplier must deliver to BEN the written consent of the Supplier's parent (if any) and each applicable director to such credit checks.

### 2 Term

- (a) This Agreement commences on the Commencement Date and will continue for the Term, unless terminated earlier in accordance with this Agreement.
- (b) At the end of the Term, this Agreement will cease and a new purchase order will be required for any additional work or extension to the Agreement.

### 3 Supplier's Responsibilities

- (a) (**Goods and/or Services**) In accordance with the requirements of the Order (including the Specifications, Delivery Dates, Delivery Locations and the Acceptance Criteria, as applicable), the Supplier must provide and supply to BEN and/or any of BEN's Affiliates within Australia, New Zealand and Nauru:
  - (i) the Goods and/or Services; and
  - (ii) any related services, functions, deliverables, hardware, goods or other responsibilities not specifically described in this Agreement, but which are reasonably incidental to and required for the Supplier's proper performance of its obligations referred to in this clause 3(a).
- (b) (**Care, skill and diligence**) The Supplier must perform its obligations under this Agreement in an efficient, timely, safe, prudent and reasonable manner and with the degree of professional skill, care and diligence which may reasonably be expected of a skilled and professional person suitably qualified and experienced in the

performance of obligations similar to those to be performed under this Agreement.

(**Reasonable directions**) The Supplier must observe, and ensure that its Personnel observe, BEN's reasonable directions and requirements relating to the provision of the Services, including any procedures to be followed (including in relation to workplace health and safety and security requirements), provided that such directions, procedures and requirements are not inconsistent with the Supplier's obligations under this Agreement.

(**Faults**) Without limiting clause 6, the Supplier must notify BEN if it becomes aware of any Fault in the Goods and/or Services. The Supplier must rectify any Faults (including as notified by BEN to the Supplier) as soon as reasonably practicable.

(**Reputation**) The Supplier must use reasonable endeavours to not cause reputational or brand damage to BEN or BEN's Affiliates.

### BEN's Responsibilities

(**Authorised Purpose**) Unless otherwise agreed in an Order, BEN and its Affiliates are entitled to use the Goods or Services for their respective business purposes.

(**Access and support**) BEN must provide such access and support to BEN's Sites and Personnel as is specified in the Order to enable the Supplier to perform the Services in accordance with this Agreement. The Supplier must ensure that its Personnel who are provided with such access comply with the reasonable policies and procedures of BEN which are communicated to the Supplier in writing from time to time.

### Regulatory Compliance and Consents

(**Laws**) Each party must comply with all applicable Laws associated with the performance of its obligations and exercise of its rights under this Agreement.

(**Directions**) The Supplier must comply with all lawful and reasonable directions issued by BEN or its Related Bodies Corporate that are necessary to assist BEN and/or any of its Related Bodies Corporate in complying with applicable Laws and their regulatory obligations.

### Delivery

(**Delivery**) The Supplier must deliver the Goods and provide the Services to BEN at the Delivery Location(s) on or by the Delivery Date(s). All Goods supplied must be free from Encumbrances and must be packaged to ensure maximum protection against theft or damage during transit, storage, delivery, loading and unloading.

(**Risk and Title**) Risk of loss and damage to the Goods will pass to BEN upon delivery to the Delivery Location. Title to the Goods will pass to BEN upon BEN paying the Supplier for the Goods in accordance with clause 8.

(**Inspection**) BEN may inspect any Goods delivered under this Agreement as reasonably required by BEN to satisfy

itself that the delivered Goods comply with this Agreement. If, during any such inspection, BEN identifies any non-compliance of the Goods with this Agreement (including any physical damage to or Faults in the Goods or that the Goods do not comply with the Specifications), BEN may reject the Goods which do not comply with the requirements of this Agreement (**Non-Compliant Goods**) by notice in writing to the Supplier. The Supplier must, at its own cost, collect the Non-Compliant Goods and re-supply Goods that comply with this Agreement to BEN within the time reasonably specified by BEN. This clause 6 will apply again in respect of such re-supplied Goods. BEN will not be obliged to pay the Fees as set out in the relevant Order until all fully complying Goods are delivered.

- (d) **(Services)** The Supplier must promptly notify BEN when the Services are completed. After an inspection, if BEN becomes aware that the Services are not complete, BEN will notify the Supplier of the reasons why BEN considers that the Services are not complete and the date by which the Supplier must complete them. BEN may at any time, and where it is in BEN's legitimate interests to do so, direct the Supplier to suspend providing all or part of the Services by providing the Supplier with 5 days' notice. If BEN provide the Supplier with notice that all or part of the Services must be suspended, the Supplier must promptly comply with any direction that BEN may give, and within 5 days comply with any direction to remove the Supplier's Personnel from BEN Sites. Unless the Supplier has caused or contributed to the reason for the suspension of services, BEN will compensate the Supplier for its reasonable direct costs incurred as a result of receiving notice of the suspension.
- (e) **(Personnel)** The Supplier is liable to BEN for the acts and omissions of the Supplier's Personnel as if they were the acts or omissions of the Supplier.
- (f) **(Subcontracting)** The Supplier must not subcontract the performance of any of its obligations under this Agreement without BEN's prior written consent.

## 7 Modern Anti-Slavery, Anti-Bribery and Anti Money Laundering Obligations

- (a) The Supplier must: (a) comply with all relevant Anti-bribery Laws and Anti-slavery Laws; and (b) have and maintain throughout the term of this Agreement, policies and procedures that are designed to ensure compliance with Anti-bribery Laws and Anti-slavery Laws by the Supplier and its Personnel and provide BEN with information concerning such compliance on request.
- (b) In providing the Goods and/or Services, the Supplier must comply with, and ensure that the supply of the Goods and/or Services does not cause BEN to breach:
  - (i) any Laws in respect of anti-money laundering and anti-terrorism in Australia to which BEN may from time to time be subject;
  - (ii) any Laws in respect of anti-money laundering and anti-terrorism enacted outside Australia, to which

BEN may from time to time be subject and which BEN has notified the Supplier of in writing; and

- (iii) any of BEN's internal principles, policies and procedures in respect of anti-money laundering and anti-terrorism which BEN has notified the Supplier of in writing.

## Fees, Invoices and Payment

The Fees for the Goods and/or Services are set out in the Order. Unless otherwise expressly stated, the Fees and any other sums payable under this Agreement or under an Order are exclusive of GST.

If GST is payable, or notionally payable, on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. The Supplier must provide BEN with all documentation required to claim any input tax credit for or in relation to any GST included in any payment made under this Agreement.

Subject to any provision of this Agreement that expressly indicates otherwise, the Supplier agrees that the amount of the Fees include all charges, taxes, costs and expenses incurred or sustained by it in the course of fulfilling its obligations under this Agreement.

The Supplier must submit an invoice for the Fees in the manner and at the times set out in the Order and must ensure that each such invoice:

- (i) is a valid tax invoice containing all of the elements of a tax invoice as required in accordance with clause 8(e);
- (ii) includes or refers to any purchase order number or other reference provided by BEN;
- (iii) correctly calculates the amount due for payment in accordance with the Order; and
- (iv) includes a description of each type of Service or Good being supplied, with the separate amounts applicable to each item.

BEN will pay undisputed, correctly rendered invoices (that comply with clause 8(d)) for any Fees in Australian dollars to the Supplier within 30 days from the date of receipt by BEN of a correctly rendered invoice.

Payment is on account, and is not an admission of liability, acceptance or approval of the Supplier's performance, the value of the Goods and/or Services or that the Goods and/or Services have been provided in accordance with this Agreement or the Order. BEN assumes no payment obligations for Goods and/or Services provided in a quantity that is greater than the quantity specified in, or which do not meet the specification authorised under, the

Order, except where BEN has agreed to the provision of such goods and/or services in writing. **10**

- (g) BEN may, acting reasonably, raise a bona fide dispute of an invoice (or part of it) by notifying the Supplier with reasons. BEN may withhold payment of the disputed amount of Fees until the dispute is resolved, but will pay the undisputed amount (if any).
- (h) The Supplier must continue to provide and deliver Goods and/or perform the Services despite the existence of a dispute relating to an invoice (or part of an invoice), unless those Goods and/or Services themselves are the subject of the dispute or to the extent the dispute precludes provision of those Goods and/or performance of those Services and related obligations.

## **9 BEN Data and Intellectual Property Rights**

### **9.1 BEN Data**

The Supplier agrees that all rights, title and interest (including all Intellectual Property Rights) in all BEN Data is and remains vested in BEN (including any modifications thereto that the Supplier and its Personnel may make or that the Supplier and its Personnel may create).

### **9.2 Developed Materials**

- (a) Each party grants to the other party a non-exclusive, royalty-free licence to use its Background IPR for the purpose of performing its obligations or exercising its rights under this Agreement (including, in the case of BEN, to exercise its rights in Developed Materials). The licence granted to BEN is perpetual and irrevocable and survives the termination or expiry of this Agreement. The licence granted to the Supplier is limited to the term of this Agreement.
- (b) The Supplier grants to BEN a perpetual, irrevocable, worldwide, non-exclusive, royalty-free, and fully paid-up licence (with the right to sub-license these rights) to use, distribute and modify any such Background IPR of the Supplier for the business purposes of BEN and any of BEN's Affiliates.
- (c) BEN will own all rights, title and interest (including all Intellectual Property Rights) in and to all Developed Materials from the time of their creation.
- (d) To the extent permitted by Law, the Supplier will obtain, at BEN's request, the unconditional and irrevocable consent of any of the Supplier's Personnel involved in the creation of any Developed Materials to BEN undertaking any act or omission that may (but for the consent) infringe the Moral Rights (as defined in the *Copyright Act 1968* (Cth)) of such personnel.

## **Privacy**

The Supplier must comply with:

- (i) the Privacy Laws; and
  - (ii) all other Laws relating to the handling of Data or Personal Information that apply to the Supplier.
- Without limiting any other provision of this Agreement, the Supplier:
- (i) must ensure that all BEN Data is hosted in Australia;
  - (ii) must not transfer or disclose any Personal Information to recipients located outside of Australia, or allow any person located outside Australia to access, view or receive any Personal Information, except with the prior written approval of BEN;
  - (iii) comply with any applicable policies, directions, instructions or guidelines relating to Personal Information (including the handling, storage and security of that Personal Information), as directed by BEN;
  - (iv) not do anything with any Personal Information that will cause BEN to breach any Privacy Law;
  - (v) notify BEN of any threatened, suspected or actual breach of this clause 10 immediately;
  - (vi) consult with BEN and obtain BEN's consent prior to issuing any notification of a breach of Privacy Law to applicable regulators or impacted individuals; and
  - (vii) if requested by BEN, co-operate with BEN to resolve any complaint made under any Privacy Law and provide other reasonable assistance required for BEN to comply with any applicable Privacy Law and assist BEN to investigate any actual or suspected breach of Privacy Law.

If the Supplier becomes aware of, or suspects there has been, any unauthorised access to or use or disclosure of, or breaches of security in relation to, including any loss of, any Personal Information or BEN Data in connection with its obligations under this Agreement or the Order (each a **Data Breach**), the Supplier must:

- (i) immediately notify BEN in writing at [servicenotifications@bendigoadelaide.com.au](mailto:servicenotifications@bendigoadelaide.com.au) and provide BEN with all details of the Data Breach;
- (ii) co-operate and comply with all reasonable directions of BEN in relation to the Data Breach;
- (iii) promptly take all reasonable steps to rectify or remedy the Data Breach where possible; and
- (iv) provide BEN with ongoing updates (at least daily) with respect to the Data Breach until such time as BEN determines that the Data Breach has been remedied.

## 11 Security

### 11.1 Application

This clause 11 only applies if the Supplier is managing BEN's or a BEN Affiliate's information assets as contemplated by paragraph 6 of Prudential Standard CPS234.

### 11.2 Information Security Controls

Supplier acknowledges and agrees that:

- (a) it has implemented and will maintain information security controls to protect BEN's information assets and has a program to ensure compliance with those controls; and
- (b) those controls will be fit for purpose and disclosed to BEN upon request, and reviewed and re-evaluated by the Supplier at regular intervals to respond to changing risks, threats and technology advances; and
- (c) without limiting clauses 11.2(a) and 11.2(b), the Supplier must allow BEN or BEN's nominee to test such controls from time to time.

### 11.3 Security Vulnerabilities

Supplier will:

- (a) notify BEN within 2 Business Days if Supplier becomes aware of any Security Vulnerability; and
- (b) implement a rectification plan as soon as possible thereafter.

### 11.4 Information Security Incident

Supplier will, during and after the Term, promptly (and in any case within 48 hours of becoming aware of it) notify BEN of any Information Security Incident and implement strategies to remedy the cause of the Information Security Incident and to reduce its impact and likelihood of any future similar Information Security Incident.

## 12 Confidential Information

### 12.1 BEN Confidential Information

The Supplier acknowledges that BEN's Confidential Information is, and remains, BEN's property. The Supplier must keep BEN's Confidential Information strictly confidential and must not without BEN's prior consent:

- (a) use or reproduce any of BEN's Confidential Information otherwise than in performing or giving effect to this Agreement;
- (b) transfer any of BEN's Confidential Information outside of Australia or allow a person outside of Australia to have access to it; or
- (c) disclose any of BEN's Confidential Information to any person, except:
  - (i) the Supplier's Personnel who need to know it for the purposes of providing the Goods or Services;
  - (ii) if required by Law or by the listing rules of any stock exchange provided that, so far as it is lawful and

reasonably practical to do so, prior to such disclosure the Supplier will promptly notify BEN and consult with BEN regarding the nature, timing and content of the proposed disclosure; or

- (iii) if required in connection with legal proceedings relating to this Agreement.

### 12.2 Consequences of Termination or Expiry

Except to the extent that the Supplier is required to retain BEN's Confidential Information to comply with Law, on the expiry or termination of this Agreement (or any part of it), or earlier on request by BEN, the Supplier must promptly return or destroy in a secure manner any of BEN's Confidential Information that relates to the expired or terminated part of this Agreement, in which case any right the Supplier has to use, copy and disclose that Confidential Information ceases.

## 13 Representations and Warranties

### 13.1 Supplier General Warranties

The Supplier represents and warrants that:

- (a) all Goods and/or Services will comply with or be performed in accordance with all applicable Laws; and
- (b) the supply or use of the Goods, Developed Material, the Supplier's Background IPR and/or Services as contemplated by the Agreement will not breach the Intellectual Property Rights of any third party.

### 13.2 Supplier Warranties - Goods

Where the Supplier is required to provide Goods or produce Developed Materials, the Supplier warrants that the Goods and deliverables the Supplier supplies:

- (a) each Good and Service will be delivered or provided in accordance with its Specifications and the requirements of the Order;
- (b) the Goods will be free from material errors and defects and are fit for the purpose for which goods of the same kind are commonly supplied or purchased;
- (c) the Goods are of merchantable quality and are new (unless otherwise specified in the Order);
- (d) the Goods conform to the manufacturer's or the supplier's published specifications or any other specifications provided by the Supplier; and
- (e) the Goods are supplied free of any liens, charges and encumbrances (including any security interest registered on the Personal Property Securities Register).

### 13.3 Supplier Warranties - Services

Where the Supplier is required to provide Services, the Supplier warrants that:

- (a) the Supplier has the tools, capabilities, skill, facilities and resources to provide the Services as required under the Order;



- (b) all Services will be provided efficiently, with due skill, care and diligence, by a sufficient number of appropriately qualified and experienced Personnel holding all relevant industry and individual accreditations or scheme memberships (but no more senior than a given task warrants);
- (c) each Service will be performed in a timely and professional manner;
- (d) the Services will be fit for the purpose for which services of that type are commonly acquired; and
- (e) the Supplier has all rights, licences, qualifications, accreditations and authorisations necessary for the Supplier to provide the Services as required under the Order.

### 13.4 Additional Representations and Warranties

The representations and warranties contained in these Terms and Conditions are in addition to any representation, warranty or guarantee given by the Supplier in respect of the Goods or Services or any representation, warranty, guarantee or term implied by Law.

### 13.5 Manufacturer Warranties

The Supplier must obtain and ensure that BEN has the full benefit of any manufacturer's or supplier's warranties. BEN may require the Supplier to: (a) assign to BEN any rights the Supplier have against your suppliers or manufacturers; or (b) pursue any reasonable claim against a supplier or manufacturer.

### 14 Limitation of Liability

The Supplier will be liable for any loss, liability, damage, cost or expense (including reasonable legal expenses and disbursements) suffered or incurred by BEN in connection with the supply of the Goods and/or Services as a result of any:

- (a) breach of this Agreement by the Supplier;
- (b) negligence or any fraudulent or wilful act or omission by the Supplier;
- (c) failure by the Supplier to comply with any relevant Law; or
- (d) infringement or unauthorised use of the Intellectual Property Rights of a third party,

except to the extent that any loss, liability, damage, cost or expense suffered or incurred is caused by BEN's breach, negligence or wrongful act or omission.

### 15 Insurance

- (a) The Supplier must take out and maintain during the Term the following insurance:
  - (i) physical property insurance covering damage to or destruction of any property, plant or equipment you use to supply the Goods and/or Services for not less than their restoration or replacement value;
  - (ii) public and products liability insurance not less than \$10 million;

- (iii) if the Order is for Services, professional indemnity insurance for an insured amount not less than \$10 million and for a minimum of seven years after the completion date of the Services;
- (iv) motor vehicle insurance for a minimum of A\$20 million covering vehicle damage, liability for the death of or bodily injury to any person and for loss or damage to third party property caused by or arising from the use of all owned and non-owned vehicles in the performance of this Agreement;
- (v) transit insurance, including loading and unloading, covering loss or damage to any property, plant or equipment used by you to supply the Goods or Services for not less than their replacement/reinstatement value; and
- (vi) worker's compensation insurance and any other insurance required by Law (including employers' liability insurance).

- (b) On request by BEN, the Supplier must promptly produce to BEN certificates of currency for any insurance that the Supplier is required to obtain.

### 16 Termination

Either party may terminate this Agreement with immediate effect by giving written notice to the other party at any time if:

- (a) the other party is Insolvent;
- (b) the other party commits a material breach of clauses 1 to 19 (inclusive) that is capable of remedy but fails to remedy that material breach within the longer of any agreed remediation period or twenty (20) Business Days after receiving a Notice requiring that material breach to be remedied; or
- (c) commits a material breach of clauses 1 to 19 (inclusive) which cannot be remedied.

### 17 Consequences of Termination

Upon the termination or expiry of the Agreement:

- (i) BEN will pay all Fees for the Goods and Services that are properly provided or performed by the Supplier in accordance with the requirements of this Agreement and the Order up to the effective date of termination or expiry but the Supplier will be responsible for any costs associated with any returned Goods (such as freight, packing and other such costs) or Services which are not completed; and
  - (ii) the Supplier will deliver in unencrypted form and in a format specified by BEN any works-in-progress, Goods that are partially complete and any associated drafts, instructions or notes in respect of the Order that have been paid for by BEN.
- (b) The following clauses will survive the termination or expiry of this Agreement and will continue in full force and effect: clauses 6(f) (Subcontracting), 8 (Fees, Invoices and

Payment), 9 (BEN Data and Intellectual Property Rights), 10 (Privacy), 11 (Security

- (c) Confidential Information), 13 (Representations and Warranties), 14 (Limitation of Liability), 17 (Consequences of Termination), 18 (General) and 19 (Definitions), and any other clauses which should by their nature survive termination of this Agreement, survive termination or expiration of this Agreement for any reason.

## 18 General

- (a) **(Entire Agreement)** This Agreement, including the Order, contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter, unless the parties agree in writing that certain representations can be relied upon. Neither party has relied on or is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it.
- (b) **(Amendment)** This Agreement or any Order may be amended only by an agreement in writing executed by an authorised representative of each of the parties.
- (c) **(Assignment)** The Supplier must not assign or novate any of its rights or obligations under this Agreement, or attempt or purport to do so, without BEN's prior written consent.
- (d) **(No waiver)** Failure by BEN to insist on strict performance of any term, warranty or condition of this Agreement will not be taken as a waiver of it or of any rights BEN may have and no waiver will be taken as a waiver of any subsequent breach of any term, warranty or condition.
- (e) **(Severability)** A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.
- (f) **(Relationship)** This Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- (g) **(Governing law and jurisdiction)** This Agreement is governed by the Laws of the State of Victoria.
- (h) **(Interpretation)** In relation to this Agreement, no rule of construction will apply to the disadvantage of a party because that party drafted or would benefit from any term. In the case of any inconsistency between this Agreement and the Order, the Order prevails to the extent of the inconsistency.
- (i) **(Publicity)** You may not use BEN as a reference, or make any public statements about this Agreement (including to any other actual or potential customers), without the prior written consent of BEN.

## 19 Definitions

**Affiliate** means, in relation to BEN:

- (a) a legal entity that is controlled by BEN, controls BEN, or is under the common control of BEN and a Related Body Corporate of BEN (where "control" means more than 50% of the voting power or ownership interests); or
- (b) a franchisee or agent of BEN or its Related Bodies Corporate which is a distributor who is distributing banking products and services only on behalf of BEN or its Related Bodies Corporate; or
- (c) a joint venture partner of BEN or its Related Bodies Corporate which is operationally integrated with BEN or its Related Bodies Corporate.

Affiliate also includes:

- (d) companies in the "Alliance Bank®" network, being organisations with whom BEN has a franchise agreement for the distribution of banking services and products; and
- (e) companies in the "Community Bank" network, being organisations with whom BEN has a franchise agreement for the distribution of banking services and products.

**Agreement** means this agreement.

**Anti-bribery Laws** means any Law which prohibits bribery, including Laws which prohibit the giving of benefits to retain business or business advantage including the *Criminal Code Act 1995* (Cth), the *Bribery Act 2010* (UK) and the *Foreign Corrupt Practices Act 1977* (U.S.).

**Anti-slavery Laws** means any Law which prohibits the use of slavery, servitude, forced labour, or other similar conditions, including the *Modern Slavery Act 2018* (NSW), *Modern Slavery Act 2015* (UK) and Division 270 of the *Criminal Code Act 1995* (Cth).

**Background IPR** of a party means Materials: (a) the Intellectual Property Rights in which are owned by that party as at the Commencement Date (including any improvements, enhancements and modifications but excluding any Developed Material); or (b) which are subsequently created by that party independently of this Agreement or (in the case of the Supplier) independently of the supply of the Goods and/or the performance of the Services.

**BEN Data** means information or data (including Data of BEN) which: (a) is provided to the Supplier by (or on behalf of) BEN or an Affiliate of BEN for the purposes of the Supplier performing a Service (**Raw Data**); or (b) is the output of the processing of Raw Data or is derived or modified through the processing of the Raw Data in the performance of a Service utilising the Raw Data.

**Business Day** means a day which is not a Saturday, Sunday or a public holiday in Melbourne, Australia.

**Claim** means, in relation to a party, a demand, claim, action or proceeding made or brought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.

**Commencement Date** means the date this Agreement is executed by both parties.

**Confidential Information** of BEN means the terms of this Agreement, BEN Data and any other Data or information relating to the business, finances, strategy, methods, processes, products, services or other affairs of BEN and its Affiliates which is disclosed to, learnt by or accessed by the Supplier in connection with this Agreement, whether before or after the Supplier were issued with an Order, whether orally, electronically, in writing or otherwise, but excludes information which: (a) is or becomes part of the public domain otherwise than as a consequence of a breach of this Agreement or an obligation of confidence owed to BEN; (b) the Supplier obtains from a source other than BEN where that source is entitled to disclose it to the Supplier; or (c) the Supplier developed or acquired independently before the date of the Order.

**Consent** means any licences, clearances, permissions, authorisations, waivers, approvals or consents.

**Data** of a party means any data, information or Personal Information accessible or provided to the other party (or any third parties who have access to, or have been provided with, such data, information or Personal Information through that party) in whatever format (including if it is encrypted or unencrypted) under or in connection with this Agreement.

**Data Breach** has the meaning given in clause 10(c).

**Delivery Date** means the date for delivery of the Goods or completion of the performance of the Services, as set out in the Order.

**Delivery Location** means the location for delivery of the Goods or the performance of the Services, as set out in the Order.

**Developed Material** means Material that is specifically created, modified or developed by or on behalf of the Supplier for BEN or in the course of performing its obligations under this Agreement (including Goods), but excludes BEN's Material, the Supplier's Material and third party Material.

**Existing Agreement** means an existing supply agreement between the Supplier and BEN (but excluding any previous Order that is subject to this Agreement).

**Fault** means a fault, defect or error in the Goods or Services that materially impacts the usability of the Goods or Services.

**Fees** means the amounts of any payments to be made by BEN to the Supplier in consideration for the supply of Goods and/or the performance of Services, as further detailed in the relevant Order.

**Goods** means any goods which are supplied, or which are required to be supplied, to BEN as set out in the Order or any document referred to in the Order.

**Information Security Incident** means any information security breach, or unauthorised access to Data: that materially affected or had the potential to materially affect, financially or non-financially, BEN, any BEN Affiliate or the interests of deposit holders, beneficiaries or other customers of BEN or any BEN Affiliate; or that has been notified (including by the Supplier or BEN) to any regulatory or supervisory body in Australia or in any other jurisdiction anywhere in the world.

**Insolvent** means, in relation to a body corporate or person, when the body corporate or person is insolvent as that term is defined in section 9 of the *Corporations Act 2001* (Cth) or is otherwise unable to pay its debts as and when they become due and payable.

**Intellectual Property Rights** means all rights conferred under statute, common law or equity now or in the future and wherever in the world subsisting in and in relation to: (a) inventions, discoveries, methods, patents, utility models including developments or improvements; (b) copyright in all literary works (including computer programs), artistic works, musical works, dramatic works, cinematograph films, sound recordings, broadcasts, published editions and any other works or subject matter in which copyright subsists now or in the future; (c) trade marks; (d) designs, design patents and design rights; and (e) eligible layout rights and circuit layouts, each of the foregoing whether registered, the subject of an application for registration, registrable or unregistered.

**Law** means common law, equity or any statute, regulation, order, rule, subordinate legislation or other document enforceable under common law, equity or any statute, regulation, rule or subordinate legislation.

**Material** includes equipment, hardware, computer Software, data, documentation, designs, drawings, reports, notes, calculations, specifications, photographs, audio-visual materials, recordings, manuals, tools and anything else which is in a material form (which, for the avoidance of doubt, includes information stored in an electronic form).

**Personal Information** means "personal information" as defined in the Privacy Act.

**Personnel** means, in relation to a party or other entity, the directors, officers, agents, employees, individual contractors and subcontractors of that party or other entity, provided however that the Supplier will not be considered to be the Personnel of BEN. **Privacy Laws** means: (a) the *Privacy Act 1988* (Cth), including the Australian Privacy Principles found in Schedule 1 to that Act; (b) the *Spam Act 2003* (Cth); (c) the *Do Not Call Register Act 2006* (Cth); (d) the *Telemarketing and Research Calls Industry Standard 2017* (Cth); and (e) the *Fax Marketing Industry Standard 2011* (Cth).

**Order** means the purchase order for Goods and/or Services issued by BEN to the Supplier for the items described therein together with any special terms and conditions provided by BEN to the Supplier in connection with such purchase order. **Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Security Vulnerability** means any material information security control weakness, which will not be able to be remediated in a timely manner. **Services** means the services, functions and responsibilities to be provided or performed by the Supplier to BEN as described in the Order.

**Site** means a physical location where Services are to be provided or received.

**Specifications** means the functional, operational, performance and technical specifications of the Goods and/or Services as set out in the Order.

**Tax** includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding that is levied or imposed by a government department, agency or regulator, and any related interest, penalty, charge, fee or other amount, but excludes GST (as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)).

**Term** means the initial term or period for the Order (howsoever described), as set out in the Order.