

National Disability Insurance Scheme Launch Transition Agency

Contract for the Provision of Services number [insert]

National Disability Insurance Scheme Launch Transition
Agency (**Agency**)

[Insert name of Contractor] (**Contractor**)

Note to the Contractor:

This Contract outlines the rights and obligations of you and the Agency in relation to the performance of the Services.

If this Contract has been issued following a tender process, the terms and conditions contained in clauses 1 to 29 should be the same as those in the draft contract provided as an attachment to the Request for Tender document, other than any amendments agreed between you and the Agency during contract negotiations. Please read any amended provisions (such as the descriptions of the Services and the Milestone Dates and Performance Criteria (if any)) carefully to ensure that they are correct.

The Agency Representative specified in this Contract is prepared to discuss any aspect of this Contract with you, but if you are still unsure about any aspect of this Contract you should seek independent legal advice before signing.

This Contract has been sent to you in duplicate. If the Contract is acceptable, please complete the signing page at the end of the Contract and return both signed copies to the Agency. The Agency will then sign and date the copies and return one original copy to you. This process must be completed before work may commence.

Contract Information

Parties

Name The National Disability Insurance Scheme Launch Transition Agency ABN 25
617 475 104
Short form name **Agency**

Name [insert name and ABN of Contractor]
Short form name **Contractor**

Overview

- A The Agency requires the provision of the Services specified in Schedule 2 and the Contractor is required to meet the Milestone Dates and provide the Deliverables specified.
- B The Contractor has agreed to provide the Services on the terms and conditions contained in this Contract.
- C The Agency has agreed to pay the Contractor the Service Charges in accordance with Schedule 3.
- D The Agency has agreed to engage the Contractor to provide the Services on the terms and conditions contained in this Contract.

Contract for the Provision of Services

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Agreed Terms

Part 1 – Services

1. Definitions and interpretation

1.1 Definitions

In this Contract, except where the contrary intention is expressed, the following definitions are used:

Accounting Standards	means the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
Advisers	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
Agency	the Agency as specified in item 1 of the Contract Details.
Agency Material	any Material provided to the Contractor by the Agency, including the Material (if any) specified in item 13 of the Contract Details.
Agency Representative	the person identified in item 3 of the Contract Details.
Business Day	a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the Notice is received.
Business Hours	from 9.00am to 5.00pm on a Business Day, unless specified otherwise in item 5 of the Contract Details.
Commencement Date	the date on which this Contract commences, as specified in item 6 of the Contract Details.
Confidential Contract Provisions	the provisions identified in Schedule 4.
Confidential Information	information that is by its nature confidential and: (a) is designated by a party as confidential and is described in Schedule 4 of this Contract; or (b) a party knows or ought to know is confidential, but does not include: (c) information that is or becomes public knowledge otherwise than by breach of this Contract or any other confidentiality obligation.
Contract	this agreement between the Agency and the Contractor, as amended from time to time in accordance with clause 29.2, and includes its schedules and any attachments.

Contract Details	the details set out in Schedule 1.
Contract Material	any Material created by the Contractor on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Contract and includes any modifications that may be required under clause 12.7(b).
Contractor	the party specified in item 2 of the Contract Details and includes its subcontractors and Personnel.
Contractor Representative	the person identified in item 4 of the Contract Details.
Contract Period	the Initial Contract Period plus any extension in accordance with clause 3.2.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Deliverable	any Contract Material or other item or element of a Service to be provided by the Contractor under this Contract.
Fair Work Principles¹	the principles referred to as such in the media release issued by the Minister for Employment and Workplace Relations on 31 July 2009.
Fair Work Principles User Guide	the guide of that name (available at http://employment.gov.au/fair-work-principles).
Initial Contract Period	the period of time for which this Contract is intended to continue, as specified in item 7 of the Contract Details.
Intellectual Property Rights	<p>all intellectual property rights, including:</p> <ul style="list-style-type: none"> (a) copyright, patents, trademarks, designs, trade secrets, know how, and any right to have confidential information kept confidential; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, <p>whether or not such rights are registered or capable of being registered.</p>
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Agency, or a local government, and includes the common law and rules of equity as applicable from time to time.
LEADR	the dispute resolution association with that name and the Australian Business Number 69 008 651 232.
Material	includes property, information, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any

¹ CAC Act agencies are subject to the Fair Work Act and Principles.

	category of Intellectual Property Rights.
Milestone Date	any fixed date to be met by the Contractor in performing any of its obligations under this Contract, as specified in Schedule 2.
Moral Rights	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
Notice	a notice, demand, consent, approval or communication issued under this Contract.
Official Information	any fact, opinion or document which comes to the knowledge of Personnel, or into the possession of Personnel, by virtue of the performance under this Contract, and which it is the duty of Personnel not to disclose.
Performance Criteria	the requirements set out in item 4 of Schedule 2 for each Service and Deliverable and if none are set out (or it states not applicable or anything to the same effect) the requirements in clauses 5.1(c) and 5.1(e).
Personnel	in relation to a party, any natural person who is an employee, officer, agent, or professional advisor of that party, and in the case of the Contractor, of any subcontractor.
Pre-existing Material	Material owned by a party before execution of this Contract, including the Material specified in Schedule 5.
Protective Security Policy Framework	the Australian Government <i>Protective Security Policy Framework</i> , as amended or replaced from time to time.
Schedules	the schedules to this Contract.
Security Classified Information	information classified as confidential, protected, secret or with any higher classification in the Australian Government Protective Security Policy Framework.
Service Charges	the charges payable to the Contractor in accordance with Schedule 3.
Services	the services to be provided by the Contractor, as specified in Schedule 2 and includes the provision of the Deliverables.
Specified Personnel	the Contractor's subcontractors and Personnel specified in item 12 of the Contract Details.
Third Party Material	Material owned by a third party that is: <ul style="list-style-type: none"> (a) included, embodied in or attached to the Contract Material; or (b) used as part of the performance of the Services.
WHS Law	the <i>Work Health and Safety Act 2011</i> and any legislative instruments registered under that Act.

1.2 Interpretation

In this Contract, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Contract, and a reference to this Contract includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) headings are for ease of reference only and do not affect interpretation.

1.3 Completion of Schedules

To the extent that the parties have not completed items in a Schedule, unless otherwise stated in the Schedule, those items will be taken to be 'not applicable' for the purpose of this Contract.

2. Priority of Contract documents

If there is inconsistency between any of the documents forming part of this Contract, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Agreed Terms;

- (b) Schedules;
- (c) any attachments to the Schedules; and
- (d) documents incorporated by reference in this Contract.

3. Duration of Contract

3.1 Initial Contract Period

This Contract begins on the Commencement Date and continues for the duration of the Contract Period unless terminated in accordance with clause 24.3 or clause 26.

3.2 Option to extend Contract Period

- (a) The Contract Period may be extended by the Agency for further period(s), specified in item 8 of the Contract Details (each an **Option Period**), on the terms and conditions then in effect, by giving written notice to the Contractor. Such notice must be given at least:
 - (i) 30 days; or
 - (ii) such other period specified in item 9 of the Contract Details (**Option Notice Period**),
before the end of the current Contract Period.
- (b) Any extension in accordance with this clause 3.2 takes effect from the end of the then current Contract Period.

4. General obligations of the Contractor

The Contractor will, at all times:

- (a) act reasonably in performing its obligations and exercising its rights under this Contract; and
- (b) diligently perform its obligations under this Contract.

5. Provision of Services

5.1 Service obligations

The Contractor must supply the Services:

- (a) to the reasonable satisfaction of the Agency Representative;
- (b) with due skill and care and to the best of the Contractor's knowledge and expertise;
- (c) to a high standard and in accordance with the professional standards of conduct applying to the relevant industry;
- (d) in accordance with the Performance Criteria;
- (e) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines, including any specified in item 10 of the Contract Details;
- (f) using the Specified Personnel (if any);
- (g) in accordance with all applicable Laws;
- (h) in accordance with Agency policies and specific requirements set out in Schedule 6;

- (i) in accordance with any directions in relation to the Services given by the Agency from time to time;
- (j) so as to meet the Milestone Dates and other project plan requirements, and where no Milestone Dates or project plan requirements are specified, promptly and without delay;
- (k) in accordance with the same standards and obligations that are imposed on Agency Personnel under the *Work Health and Safety Act 2011* (Cth);
- (l) so as to keep accurate and auditable records relating to the performance of the Services; and
- (m) otherwise in accordance with the provisions of this Contract.

5.2 Contractor warranties

The Contractor represents and warrants that:

- (a) it has the right to enter into this Contract;
- (b) it has all rights, title, licences, interests and property necessary to lawfully perform the Services;
- (c) it and its subcontractors and Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge, expertise and competence to perform the Services and (where appropriate) will hold such licences, permits or registrations as are required under any State, Territory or Agency legislation to perform the Services, and are fit and proper people;
- (d) the Services will be fit for the purpose as set out in Schedule 2;
- (e) the Services will be complete and accurate;
- (f) any materials that the Contractor incorporated in the Services are free from defects in design, performance and workmanship;
- (g) all work performed under this Contract will be carried out and completed in a proper and workmanlike manner and in the most cost-effective manner and using materials suitable for the purpose;
- (h) all insurance policies required to be held by the Contractor under this Contract:
 - (i) will remain in effect as provided for in this Contract; and
 - (ii) will not be varied by the Contractor without the Agency's written consent; and
- (i) if the Contractor is a trustee, it enters this Contract personally and in its capacity as trustee and has the power to perform its obligations under this Contract.

5.3 Contractor contracting as trustee

- (a) The Contractor represents and warrants to the Agency that:
 - (i) the Contractor has been duly established; and
 - (ii) it is the only trustee of the Trust; and
 - (iii) it has been validly appointed as trustee of the Trust and no action has been taken or proposed to remove it as trustee of the Trust; and
 - (iv) it has power under the Trust Deed to enter into this Agreement and comply with its obligations under this Agreement; and

- (v) it has in full force and effect the authorisations necessary for it to enter into this Agreement, to perform obligations under this Agreement and to allow the obligations to be enforced (including any authorisation required under the Trust Deed and its constitution (if any)); and
 - (vi) it has a right to be fully indemnified out of the Trust Property in respect of obligations incurred by it under this Agreement; and
 - (vii) it is not, and never has been, in default under the Trust Deed; and
 - (viii) no action has been taken or proposed to terminate the Trust; and
 - (ix) it and its directors and other officers have complied with their obligations in connection with the Trust; and
 - (x) entry into this Agreement is a valid exercise of its powers under the Trust Deed for the benefit of the beneficiaries.
- (b) The Contractor acknowledges and agrees that:
- (i) The Agency has entered into this Agreement in reliance on the representations and warranties in clause 6.3(a); and
 - (ii) it will promptly notify the Agency in the event of any change which affects the representations and warranties in clause 6.3(a); and
 - (iii) it has entered into this Agreement in its capacity as trustee of the Trust and is liable both in its own capacity and in its capacity as trustee of the Trust.
- (c) The Contractor must:
- (i) at the Agency's request, promptly exercise its right of indemnity from the Trust Property in respect of obligations incurred by it under this Agreement; and
 - (ii) not create an Encumbrance, or allow one to exist, over its right of indemnity from the Trust Property; and
 - (iii) not create an Encumbrance, or allow one to exist, over the Trust Property; and
 - (iv) comply with its obligations as trustee of the Trust.
- (d) Without the consent of the Agency, the Contractor must not, and must not agree, attempt or take any step to, do anything which:
- (i) effects or facilitates the retirement, removal or replacement of the Contractor as trustee of the Trust; or
 - (ii) could restrict the Contractor's right of indemnity from the Trust Property in respect of obligations incurred by the Contractor under this Agreement; or
 - (iii) could restrict or impair the ability of the Contractor to comply with its obligations under this Agreement; or
 - (iv) effects or facilitates the termination of the Trust.
- (e) In this clause, unless the contrary intention appears:

- (i) **Encumbrance** means any:
 - (A) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement; or
 - (B) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
 - (C) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
 - (D) third party right or interest or any right arising as a consequence of the enforcement of a judgment,
 - (E) or any agreement to create any of them or allow them to exist.
- (ii) **Trust** means the trust which, at the date of the Agreement, is known as <insert name> Trust (ABN [insert]).
- (iii) **Trust Deed** means the trust deed dated [insert date of trust deed under which the trust is constituted] between [insert trust deed parties].
- (iv) **Trust Property** means, all the Contractor's rights, property and undertaking which are the subject of the Trust:
 - (A) of whatever kind and wherever situated; and
 - (B) whether present or future.
- (f) This clause survives the expiry or termination of this Agreement.

5.4 Access to Agency's premises

The Agency must cooperate with the Contractor by providing access to its premises and facilities as reasonably necessary to enable the Contractor to provide the Services.

5.5 Conduct at Agency's premises

Without limiting clause 21, the Contractor must, if using or accessing the Agency's premises or facilities, comply with all reasonable directions and procedures relating to occupational health and safety and security in operation at those premises or facilities whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.

5.6 Cultural Diversity

The Contractor should be aware of the Charter of Public Service in a Culturally Diverse Society. The Contractor must be sensitive to cultural diversity and, where the Services involve the provision of services to the public, must have regard to the principles set out in that charter.

5.7 Subcontracting

- (a) The Contractor must:

- (i) not subcontract any aspect of the provision of the Services other than to those entities set out in item 11 of the Contract Details without the prior written approval of the Agency, which will not be unreasonably withheld;
- (ii) not, in any event, enter into a subcontract under this Contract with a subcontractor named by the Workplace Gender Equality Agency in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Workplace Gender Equality Act 2012* (Cth);
- (iii) as far as practicable:
 - (A) not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Department under the requirements of the Fair Work Principles; and
 - (B) ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations under clause 5.8 and this clause 5.7(a)(iii); and
- (iv) ensure that any subcontractor approved under this Contract complies with all applicable Laws and:
 - (A) Clause 17 (Insurance);
 - (B) Clause 18 (Confidentiality and privacy);
 - (C) Clause 19 (Protection of personal information);
 - (D) Clause 20 (Conflict of interest);
 - (E) Clause 21 (Security); and
 - (F) Clause 23 (Audit and access).
- (b) The Contractor is fully responsible for the performance of the Services even if the Contractor subcontracts any aspect of the provision of the Services.
- (c) The Contractor:
 - (i) must on request by the Agency provide the Agency with the names of any of the Contractor's subcontractors;
 - (ii) agrees that the Agency may disclose publicly the names of any of the Contractor's subcontractors; and
 - (iii) must ensure that any subcontractor agrees that the Agency may disclose the subcontractor's name publicly.

5.8 Fair Work Principles

- (a) The Contractor must comply, and as far as practicable must ensure its subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide, including by:
 - (i) complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;
 - (ii) informing the Department of any adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety laws or workers' compensation laws made against it during the Contract Period, and any remedial action it has taken, or proposes to take, as a result of the decision;

- (iii) providing the Department with any information the Department reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles; and
 - (iv) participating in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Department, its nominees and/or relevant regulators.
- (b) Compliance with the Fair Work Principles will not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.
 - (c) The Contractor acknowledges that, if it does not comply with the Fair Work Principles, then, without prejudice to any rights that would otherwise accrue to the Department, the Department will be entitled to publish details of the Contractor's failure to comply (including the Contractor's name) and to otherwise provide those details to other Agency agencies.

6. WHS Law requirements

6.1 Compliance with WHS Law

- (a) The Contractor, in connection with the Contract must:
 - (i) comply with the WHS Law as amended from time to time; or
 - (ii) not do or allow to be done, or omit or allow to be omitted anything which may result in the Agency being in breach of the WHS Law.
- (b) Without limiting the generality of clause 7.1(a), the Contractor must ensure, so far as is reasonably practicable:
 - (i) the health and safety of workers carrying out activities in connection with the Contract;
 - (ii) that the workers under its control and supervision take reasonable care while carrying out activities in connection with the Contract;
 - (iii) that workers receive the necessary training, instruction and supervision in order to comply with the WHS Law in relation to activities conducted as part of the Contract; and
 - (iv) that its workers are aware of, and comply with, all WHS Law, rules, regulations, policies and guidelines issued from time to time by the Contractor and any directive relating to work health and safety issued by the Agency.

6.2 Incident notification and investigation

- (a) The Contractor must immediately notify the Agency of any notifiable incidents or accidents (being an incident which is notifiable under WHS Law), injuries or damage to property of a serious nature that occurs in connection with the Contract.
- (b) In relation to any incident notified to the Agency under clause 7.2(a) above, the Contractor must provide to the Agency:
 - (i) an investigation report containing findings on the causes and effects of, and corrective and preventative actions arising from, any accident, notifiable incident, injury or damage to property notified to the Agency under clause 7.2(a); and

- (ii) following the completion of an investigation report in accordance with clause 7.2(b)(i) above, a monthly report identifying the status of any preventative or corrective actions identified in that investigation report.
- (c) The Contractor must permit and must procure such further permission as may be deemed necessary for the Contractor and the Agency (or any person nominated by it) to inspect, examine, interview and take statements from the Contractor's employees, contractors, subcontractors and agents workers as it deems fit (acting reasonably) for the purposes of determining the causes and effects of any notifiable incident or accident, injury or damage to property of a serious nature.

6.3 Consultation, Co-ordination and Co-operation for Work Health and Safety (WHS) matters

The Contractor must, so far as is reasonably practicable:

- (a) consult, co-operate and co-ordinate activities with the Agency to ensure compliance with the WHS Law in connection with the Contract, including (without limitation) taking reasonable steps to facilitate and participate in any meetings, furnish and maintain current information and to take any other steps agreed between the Agency and the Contractor;
- (b) consult with its workers to ensure compliance with WHS Law in connection with the Contract; and
- (c) consult, co-operate and co-ordinate activities with other persons holding a duty under a 'corresponding WHS Law' (as defined in the *Work Health and Safety Act 2011*) involved in or connected to the Contract (including all contractors and subcontractors), to ensure compliance with the WHS Law, including (without limitation) taking reasonable steps to facilitate subcontractor participation in any meetings, provision and maintenance of current WHS information and to take any other steps agreed between the parties and those other persons.

6.4 Principal contractor

In undertaking any activities under this Contract, the Agency will not be commissioning any construction projects in connection with the Contract or for the purposes of Part 6 of the WHS Regulations.

7. Co-operation with Personnel and contractors

The Contractor must in the performance of the Services under this Contract:

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

8. Monitoring progress

8.1 Progress meetings

The parties will meet at the times and manner set out in Schedule 2 (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services. The Contractor must ensure that the Contractor Representative, and the Agency must ensure the Agency Representative, is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

8.2 Reporting

The Contractor must provide the Agency with reports in accordance with Schedule 2.

9. Performance assessment

9.1 Assessment of Services

Without limiting any other obligation of the Contractor, each element of the Services is subject to assessment by the Agency against the relevant Performance Criteria.

9.2 Notice of non-compliant Services

If the Agency considers that all or part of the Services do not meet the Performance Criteria, the Agency must provide the Contractor with notice of that fact and include reasons for the Services not meeting the Performance Criteria.

9.3 Rectification of non-compliant Services

If the Agency notifies the Contractor that all or part of the Services do not meet the Performance Criteria, the Contractor must:

- (a) take all necessary steps to ensure that the Services are promptly corrected;
- (b) give notice to the Agency when the Services have been corrected; and
- (c) allow the Agency to repeat the assessment of all or part of the Services against the Performance Criteria,

within five Business Days after the date of the notice or such other time as agreed between the parties in writing.

9.4 Right to terminate

If any part of the Services does not meet the Performance Criteria on two or more occasions, the Agency may terminate this Contract immediately under clause 26.2 by giving the Contractor written notice.

9.5 Other Rights

Clauses 9.2, 9.3 and 9.4 do not limit in any way any other right, remedy or recourse of the Agency.

10. Personnel

10.1 Use of Specified Personnel

The Contractor must:

- (a) provide the Services or any part of the Services to which their particular expertise relates, with the active involvement of, and using the expertise of, the Specified Personnel; and
- (b) ensure that each of the Specified Personnel is aware of and complies with the Contractor's obligations in providing the Services.

10.2 If the Specified Personnel are not available

Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in providing the Services, the Contractor must notify the Agency immediately. The Contractor must:

- (a) if requested by the Agency, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and

- (b) obtain the Agency's written consent prior to appointing any such replacement person. The Agency's consent will not be unreasonably withheld.

10.3 Agency may request replacement of Personnel

The Agency may at any time request the Contractor to remove from work in respect of this Contract any of the Specified Personnel or any of the Contractor's subcontractors or Personnel. The Contractor must promptly arrange for the removal of such subcontractors or Personnel and their replacement in accordance with the process outlined in clause 10.2.

11. Agency Material

The Agency will provide to the Contractor the Agency Material and the Contractor must ensure that the Agency Material is used strictly in accordance with any conditions or restrictions specified in item 13 of the Contract Details and any direction by the Agency.

12. Intellectual Property Rights

12.1 Pre-existing Material and Third Party Material

This clause 12 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Material or Third Party Material.

12.2 Third Party Material

The Contractor must obtain all necessary copyright and other Intellectual Property Rights permissions before including any Third Party Material in the Contract Material or using Third Party Material as part of the Services.

12.3 Selecting an ownership model for Intellectual Property Rights in Contract Material

- (a) This Contract sets out a framework for the parties to select between the following ownership models for Intellectual Property Rights in Contract Material:
 - (i) **first model:** Intellectual Property Rights in Contract Material vest in the Agency, who provides a licence to the Contractor as set out in clause 12.4; or
 - (ii) **second model:** Intellectual Property Rights in Contract Material vest in the Contractor, who provides a licence to the Agency as set out in clause 12.5.
- (b) The ownership model for Intellectual Property Rights in Contract Material is the model set out in item 14 of the Contract Details.
- (c) If no ownership model is, or both ownership models are, selected in item 14 of the Contract Details, clause 12.4 applies and clause 12.5, in its entirety, does not apply to this Contract.
- (d) Each party must, at its own cost, do all things and execute all documents necessary or convenient to give effect to the ownership model.

12.4 First model: Agency ownership of Intellectual Property Rights in Contract Material

- (a) All Intellectual Property Rights in the Contract Material vest in the Agency on creation.
- (b) Unless otherwise specified in item 15 of the Contract Details, to the extent that:
 - (i) the Agency needs to use any of the Pre-existing Material or Third Party Material provided by the Contractor to receive the full benefit of the Services (including the Contract Material), the Contractor grants to, or must obtain for, the Agency for the

period specified in item 15 of the Contract Details, a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Pre-existing Material or Third Party Material;

(ii) the Contractor needs to use any of the:

(A) Agency Material; or

(B) Contract Material,

for the purpose of performing its obligations under this Contract, the Agency grants to the Contractor, subject to any conditions or restrictions specified in item 13 of the Contract Details and any direction by the Agency, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate such Material solely for the purpose of providing the Services.

(c) The licence granted to the Agency under clause 12.4(b)(i) does not include a right to exploit the Pre-existing Material or Third Party Material for the Agency's commercial purposes.

12.5 Second model: Contractor ownership of Intellectual Property Rights in Contract Material

(a) If specified in item 14 of the Contract Details, all Intellectual Property Rights in the Contract Material vest in the Contractor on creation.

(b) Unless otherwise specified in item 16 of the Contract Details, to the extent that:

(i) the Agency needs to use any of the:

(A) Pre-existing Material or Third Party Material provided by the Contractor;
or

(B) Contract Material,

to receive the full benefit of the Services, the Contractor grants to, or must obtain for, the Agency for the period specified in item 16 of the Contract Details a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate that Material; or

(ii) the Contractor needs to use any of the Agency Material for the purpose of performing its obligations under this Contract, the Agency grants to the Contractor, subject to any conditions or restrictions specified in item 13 of the Contract Details and any direction by the Agency, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate such Material solely for the purpose of providing the Services.

(c) The licence granted to the Agency under clause 12.5(b)(i) does not include a right to exploit the Pre-existing Material, Third Party Material or the Contract Material for the Agency's commercial purposes.

12.6 Warranty

The Contractor warrants that:

(a) the Pre-existing Material, Third Party Material, the Deliverables and the Contract Material (**Warranted Materials**) and the Agency's use of the Warranted Materials will not infringe the Intellectual Property Rights of any person; and

- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 12.

12.7 Remedy for breach of warranty

If someone claims, or the Agency reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights, the Contractor must, in addition to the indemnity under clause 16 and to any other rights that the Agency may have against it, promptly, at the Contractor's expense:

- (a) use its best efforts to secure the rights for the Agency to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

12.8 Delivery of Contract Material

- (a) On the expiry or termination of this Contract or on such earlier date as may be specified by the Agency, the Contractor must deliver to the Agency Representative all Contract Material.
- (b) Agency Material will remain the property of the Agency and the Contractor must only use that material for the purpose of providing the services or otherwise in accordance with any conditions notified to it by the Agency. The Contractor must ensure safe keeping and proper preservation of all Contract Material and Agency Material in its possession or control.

13. Moral Rights

13.1 Obtaining consents

To the extent permitted by applicable Laws and for the benefit of the Agency, the Contractor must:

- (a) give, where the Contractor is an individual, in a form acceptable to the Agency;
- (b) use its best endeavours to ensure that each of the Personnel used by the Contractor in the production or creation of the Contract Material gives, in a form acceptable to the Agency; and
- (c) use its best endeavours to ensure that any holder of Moral Rights in Third Party Material included in the Contract Material gives,

genuine consent in writing to the use of the Contract Material for the Specified Acts, even if such use would otherwise be an infringement of its or their Moral Rights.

13.2 Specified Acts

- (a) In this clause 13, unless otherwise specified in item 17 of the Contract Details, **Specified Acts** means:
 - (i) falsely attributing the authorship of any Contract Material, or any content in the Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
 - (ii) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;

- (iii) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
 - (iv) adding any additional content or information to the Contract Material.
- (b) For the purposes of clause 13.2(a), **Contract Material** includes any Pre-existing Material and Third Party Material to the extent that it is included in, forms part of or is attached to the Contract Material.

Part 2 – General requirements

14. Payment

14.1 Obligation to pay charges

Subject to this clause 14 and the Services meeting the requirements of this Contract including the Performance Criteria, the Agency must pay to the Contractor the Service Charges as set out in Schedule 3.

14.2 Contractor to provide invoice

The Contractor must provide a correctly rendered invoice to the Agency for the Service Charges in accordance with the requirements specified in Schedule 3.

14.3 Due date for payment

Unless otherwise specified in Schedule 3, the Agency must make payment of a correctly rendered invoice within 30 days after receiving the invoice.

14.4 Interest for late payment

Not applicable.

14.5 Incorrect invoices, under/over payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Agency to the Contractor under this Contract.

14.6 Expenses

Unless specified otherwise in Schedule 3, the Contractor must not charge the Agency for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Service Charges. Subject to clause 14.4, the Agency is under no obligation to pay any amount in excess of the Service Charges.

14.7 Taxes

The Contractor must pay all:

- (a) stamp duty (including penalties and interest) assessed or payable in respect of this Contract and the undertaking of the Services; and
- (b) subject to clause 15, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

15. GST

15.1 Interpretation

In this clause 15, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

15.2 GST gross up

If a party (**Supplier**) makes a supply under or in connection with this Contract in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier an additional amount equal to the GST payable on the supply (**GST Amount**).

15.3 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 15.2.

15.4 Exclusion of GST from calculations

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

15.5 Adjustments

- (a) If the GST payable by a Supplier on any supply made under or in connection with this Contract varies from the GST Amount paid or payable by the Recipient under clause 15.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) Any payment, credit or refund under this clause 15.5 is deemed to be a payment, credit or refund of the GST Amount payable under clause 15.2.
- (c) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.

15.6 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.

16. Indemnity

16.1 Indemnity

- (a) The Contractor will at all times indemnify, hold harmless and defend the Agency, its officers and employees (referred to in this clause 16.1 as those indemnified) from and against any loss or liability, including:
 - (i) loss of, or damage to, property of the Agency;
 - (ii) claims by any person in respect of personal injury or death;
 - (iii) claims by any person in respect of loss of, or damage to, any property; and
 - (iv) costs and expenses including the costs of defending or settling any claim referred to in clause 16.1(a)(ii) or clause 16.1(a)(iii),

arising out of or as a consequence of:

- (v) an infringement, or an alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of an act done by the Agency in relation to any part of the Services;
 - (vi) any actual, likely or threatened breach of the Contractor's or subcontractor's obligations relating to Confidential Information or personal information; or
 - (vii) without limiting the preceding paragraphs, any breach of this Contract by the Contractor, or negligence on the part of the Contractor, its Personnel or subcontractors or wrongful or unlawful act or omission on the part of the Contractor, its Personnel or subcontractors.
- (b) The Contractor's liability to indemnify those indemnified under clause 16.1(a) will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.
- (c) The Contractor will at all times indemnify, hold harmless and defend the Agency against any compensation, remuneration or other amount payable to a third party for the use or exploitation of the Contract Material (or any of it), or exercise of any Intellectual Property Right of a third party embodied in the Contract Material, by the Agency (or any person authorised by the Agency) in circumstances where that use, exploitation or exercise is permitted under legislation without infringing the third party's Intellectual Property Right, and against all loss, liability, cost and expense arising out of or in connection with a claim for payment of any such compensation, remuneration or other amount.

17. Insurance

17.1 Obligation to maintain insurance

In connection with the provision of the Services, the Contractor must have and maintain:

- (a) for the Contract Period, valid and enforceable insurance policies for:
 - (i) public liability;
 - (ii) either professional indemnity or errors or omissions;
 - (iii) workers' compensation as required by Law; and
 - (iv) any additional types specified in item 19 of the Contract Details; and
- (b) for seven years following the expiry or termination of this Contract, valid and enforceable insurance policies for either professional indemnity or errors or omissions, unless otherwise specified in item 19 of the Contract Details,

in the amounts specified in item 19 of the Contract Details.

17.2 Certificates of currency

The Contractor must, on request by the Agency, provide current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by clause 17.1.

18. Confidentiality and privacy

18.1 Prohibition on disclosure

- (a) Subject to clause 18.4, the Contractor must not, without the prior written consent of the Agency disclose any Agency Confidential Information to a third party.

- (b) Subject to clause 18.4, the Agency must not, without the prior written consent of the Contractor disclose any Contractor Confidential Information to a third party.

18.2 Conditions of approval

In giving written consent to use or disclose Agency Confidential Information, the Agency may impose such conditions as it thinks fit. The Contractor must comply with any term or condition imposed by the Agency under this clause 18.2.

18.3 Advisers and third parties

The Agency may at any time require the Contractor to arrange for:

- (a) its Advisers;
- (b) its Personnel and other employees and subcontractors engaged in the performance of the Services; or
- (c) any other third party, to whom Agency Confidential Information may be disclosed pursuant to clause 18.4(a) or clause 18.4(b),

to give a written undertaking relating to the use and non-disclosure of the Agency's Confidential Information in the form required by the Agency.

18.4 Exceptions to obligations

The obligations on each party under clause 18.1 or 18.10 will not be taken to have been breached to the extent that Confidential Information of the other party:

- (a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this Contract;
- (c) is disclosed by the Agency to the responsible Minister;
- (d) is disclosed by the Agency, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Agency within the Agency, or with another Agency, where this serves the Agency's or Commonwealth's legitimate interests;
- (f) is disclosed by the Agency to the Auditor General, Ombudsman or Privacy Commissioner;
- (g) is required by Law, to be disclosed; or
- (h) is in the public domain otherwise than due to a breach of this Contract.

18.5 Obligation on disclosure

Where a party discloses Confidential Information of the other party to another person:

- (a) pursuant to clauses 18.4(a), (b) or (e), the disclosing party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential, including in the case of Agency Confidential Information, the receiving person giving the Agency a legally binding undertaking to that effect in the form required by the Agency; or
- (b) pursuant to clauses 18.4(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information of the other party.

18.6 Additional confidential information

- (a) The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.
- (b) Where the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both parties have signed this documentation.

18.7 Period of confidentiality

The obligations under this clause 18 continue, notwithstanding the expiry or termination of this Contract:

- (a) in relation to an item of information described in Schedule 4, for the period set out in that schedule in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the parties in writing in respect of that information.

18.8 No reduction in privacy obligations

Nothing in this Contract derogates from any obligation which either party may have under the *Privacy Act 1988* (Cth) as amended from time to time, in relation to the protection of personal information as defined in that Act or information that is protected by the *Census and Statistics Act 1905* (Cth), or any other Act, regulation or other legislative instrument requiring secrecy or confidentiality in dealing with information.

18.9 Return of information

At the Agency's request or on the expiry or termination this Contract, the Contractor must promptly return all of the Agency's physical and written records containing Agency Confidential Information, and all documentation relating to that Agency Confidential Information (including copies), to the Agency in a form reasonably requested by the Agency. Alternatively, if requested by the Agency, the Contractor must destroy such items in accordance with the Protective Security Policy Framework (PSPF), Agency's Records Disposal Authorities (RDA), Normal Administrative Practice (NAP) policy or in a manner specified by the Agency and promptly certify to the Agency in writing that it has done so.

18.10 Confidential Contract Provisions

Notwithstanding any other provision of this Contract, the Agency may disclose the provisions of this Contract except the Confidential Contract Provisions.

18.11 Compliance with legislation

The Contractor must comply with the confidentiality and secrecy provisions in Chapter 4, Part 2 of the *National Disability Insurance Scheme Act 2013* (Cth).

19. Protection of personal information

19.1 Application of this clause

This clause 19 applies only where the Contractor deals with personal information when, and for the purpose of, providing Services under this Contract.

19.2 Obligations

The Contractor acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (the **Privacy Act**), and agrees in respect of the provision of Services under this Contract:

- (a) to use or disclose personal information obtained during the course of providing Services under this Contract, only for the purposes of this Contract;
- (b) not to do any act or engage in any practice that would breach an IPP contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
- (d) to notify individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Contractor, unless:
 - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Contract; or
 - (ii) in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the NPP or APC;
- (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;
- (g) to immediately notify the Agency if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 19, whether by the Contractor or any subcontractor;
- (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 19; and
- (i) to ensure that any employee of the Contractor who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this clause 19.

19.3 Subcontracts

The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the subcontractor has the same awareness and obligations as the Contractor has under this clause 19, including the requirement in relation to subcontracts.

19.4 Indemnity

The Contractor agrees to indemnify the Agency in respect of any loss or liability suffered or incurred by the Agency which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 19, or a subcontractor under the subcontract provisions referred to in clause 19.3.

19.5 Definitions

In this clause 19, the terms ‘agency’, ‘approved privacy code’ (**APC**), ‘Information Privacy Principles’ (**IPPs**), and ‘National Privacy Principles’ (**NPPs**) have the same meaning as they have in section 6 of the Privacy Act, and ‘personal information’, which also has the meaning it has in section 6 of the Privacy Act, means:

‘information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion’.

20. Conflict of interest

20.1 Warranty that there is no conflict of interest

The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

20.2 Notification of a conflict of interest

If, during the performance of the Services a conflict of interest arises, or appears likely to arise, the Contractor must:

- (a) notify the Agency immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the Agency requires to resolve or otherwise deal with the conflict.

21. Security

21.1 Australian Government Protective Security Policy Framework

The Contractor must have appropriate training in the application of security procedures and must comply with the security requirements detailed in the Australian Government Protective Security Policy Framework as minimum standards, and any Security Requirements.

21.2 Procedures for handling, processing and storing Security Classified Information and Official Information

- (a) Where Personnel engaged by or on behalf of the Contractor are required to handle, process or store Security Classified Information the Agency may require the Personnel to sign a Confidentiality and Privacy Undertaking in the form required by the Agency.
- (b) Where Personnel engaged by or on behalf of the Contractor are required to handle, process or store Security Classified Information the Contractor must ensure that its administrative procedures, information communication technology system and storage and other physical security arrangements meet the requirements of the Australian Government Protective Security Policy Framework for such information.
- (c) Without limiting the Contractor’s other obligations, the Contractor must ensure that:
 - (i) Security Classified Information is only used for the purposes of this Deed;
 - (ii) Security Classified Information is only copied with the prior written approval of the Agency;
 - (iii) it establishes and maintains procedures to secure all copies of Security Classified Information against loss and unauthorised access, use, modification or disclosure;

- (iv) all persons receiving copies or Security Classified Information are aware of and comply with the requirements of clause 21.2 for the use of the copies;
- (v) Security Classified Information is stored in a secure lockable commercial-grade cabinet when not being used;
- (vi) electronic documents forming part of the Security Classified Information are stored in a way to secure the documents from unauthorised access or use;
- (vii) where the Contractor is required to dispose of Security Classified Information:
 - (A) all hard copies of the Security Classified Information are treated as “Classified Waste”; and
 - (B) all electronic documents are removed from internal and external storage and from all media, including floppy disks, USB devices, CDs and DVDs; and
- (viii) where Security Classified Information is to be transferred, it is secure from unauthorised access and the person to whom it is being transferred is aware of and complies with the requirements of this Deed relating to the use of the Security Classified Information.
- (d) Where Personnel are engaged by or on behalf of the Contractor to assist in performing the Contract the Contractor must ensure that access to Official Information is limited to that Official Information required for performance of the Contract and that any Security Requirements are met.
- (e) The Contractor must not permit any third party to have access to Security Classified Information or Official Information in its possession because of a Contract unless the Agency consents to access being given.

21.3 Security clearances

- (a) If required by the Agency, each of the Personnel engaged by or on behalf of the Contractor must hold an Australian Government security clearance to the level required by the Agency.
- (b) The Agency will facilitate the obtaining of security clearances.
- (c) The cost of security clearances must be borne by the Contractor.

21.4 Security checks

The Agency may undertake any security checks it considers appropriate of the Contractor, its employees, agents and subcontractors and of the premises of any of these persons.

21.5 Security breaches

- (a) The Contractor acknowledges and agrees that if any Personnel lose their security clearance or causes a security breach, the Agency may, in its absolute discretion:
 - (i) after consultation with the Contractor, require the replacement of that person; or
 - (ii) immediately terminate this Deed or the Contract for breach.
- (b) The Contractor must notify the Agency immediately on becoming aware of any security incident or security breach. The Contractor agrees that if a security incident or a security breach occurs, the Contractor must immediately comply with all directions of the Agency in order to address the incident or breach, and ensure it does not occur again.

21.6 Survival

This clause 21 survives the expiry or termination of this Deed.

22. Books and records

22.1 Contractor to keep books and records

The Contractor must:

- (a) keep and require its subcontractors to keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable the amounts payable by the Agency under this Contract to be determined; and
- (b) retain and require its subcontractors to retain for a period of seven years after the expiry or termination of this Contract all books and records relating to the Services.
- (c) must manage all contract records and Agency Material in compliance with the *Archives Act 1983*, and Protective Security Policy Framework.

22.2 Costs

The Contractor must bear its own costs of complying with this clause 22.

22.3 Survival

This clause 22 applies for the Contract Period and for a period of seven years from the expiry or termination of this Contract.

23. Audit and access

23.1 Right to conduct audits

The Agency or a representative may conduct audits relevant to the performance of the Contractor's obligations under this Contract. Audits may be conducted of:

- (a) the Contractor's operational practices and procedures as they relate to this Contract, including security procedures;
- (b) the accuracy of the Contractor's invoices and reports in relation to the provision of the Services under this Contract;
- (c) the Contractor's compliance with its confidentiality, privacy and security obligations under this Contract;
- (d) Material (including books and records) in the possession of the Contractor relevant to the Services or this Contract; and
- (e) any other matters determined by the Agency to be relevant to the Services or this Contract.

23.2 Access by the Agency

- (a) The Agency may, at reasonable times and on giving reasonable notice to the Contractor:
 - (i) access the premises of the Contractor to the extent relevant to the performance of this Contract;
 - (ii) require the provision by the Contractor, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Agency by use of the Agency's existing computer hardware and software;
 - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Contractor, its employees, agents or subcontractors; and

- (iv) require assistance in respect of any inquiry into or concerning the Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Agency), any request for information directed to the Agency, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Contractor must provide access to its computer hardware and software to the extent necessary for the Agency to exercise its rights under this clause 23, and provide the Agency with any reasonable assistance requested by the Agency to use that hardware and software.

23.3 Conduct of audit and access

The Agency must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 23.1; and
- (b) the exercise of the general rights granted by clause 23.2 by the Agency,

do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under this Contract or its business.

23.4 Costs

Unless otherwise agreed in writing, each party must bear its own costs of any reviews and/or audits.

23.5 Auditor-General and Privacy Commissioner

The rights of the Agency under clause 23.2(a)(i) to 23.2(a)(iii) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.

23.6 Contractor to comply with Auditor-General's and Privacy Commissioner's requirements

The Contractor must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Privacy Commissioner's or his or her delegate's requirements, notified under clause 23.2, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.

23.7 No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

23.8 Subcontractor requirements

The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause 23.

23.9 No restriction

Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Agency under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

23.10 Access to documents

- (a) In this subclause, 'document' and 'Agency contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- (b) Where the Agency has received a request for access to a document created by, or in the possession of, the Contractor or any subcontractor that relates to the performance of this contract (and not to the entry into the contract), the Agency may at any time by written notice require the Contractor to provide the document to the Agency and the Contractor must, at no additional cost the Agency, promptly comply with the notice.
- (c) The Contractor must include in any subcontract relating to the performance of this contract provisions that will enable the Contractor to comply with its obligations under this clause 23.10.

23.11 Survival

This clause 23 applies for the Contract Period and for a period of seven years from the expiry or termination of this Contract.

24. Unforeseen events

24.1 Occurrence of unforeseen event

Subject to clause 24.2, a party (**Affected Party**) is excused from performing its obligations under this Contract to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of the Contractor only), including acts of God, natural disasters, acts of war, riots and strikes outside the Affected Party's organisation.

24.2 Notice of unforeseen event

When the circumstances described in clause 24.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.

24.3 Termination

If non-performance or diminished performance by the Affected Party due to the circumstances under clause 24.1 continues for a period of more than 30 consecutive days or other period as specified in item 21 of the Contract Details, the other party may terminate this Contract immediately by giving the Affected Party written notice.

24.4 Consequences of termination

If this Contract is terminated under clause 24.3:

- (a) each party will bear its own costs and neither party will incur further liability to the other; and
- (b) where the Contractor is the Affected Party, it will be entitled to payment for Services rendered in accordance with this Contract prior to the date of intervention of the circumstances described in clause 24.1.

25. Dispute resolution

25.1 No arbitration or court proceedings

If a dispute arises in relation to the conduct of this Contract (**Dispute**), a party must comply with this clause 25 before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this clause 25.

25.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

25.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 25.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of CEOs (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

25.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 25.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

25.5 Role of mediator and obligations of parties

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 25.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

25.6 Confidentiality

Any information or documents disclosed by a party under this clause 25:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

25.7 Costs

Each party to a Dispute must pay its own costs of complying with this clause 25. The parties to the Dispute must equally pay the costs of any mediator.

25.8 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 25.1 to 25.5. Clauses 25.6 and 25.7 survive termination of the dispute resolution process.

25.9 Breach of this clause

If a party to a Dispute breaches clauses 25.1 to 25.8, the other party does not have to comply with those clauses in relation to the Dispute.

26. Termination

26.1 Termination and reduction for convenience

- (a) The Agency may, at any time, by notice, terminate this Contract or reduce the scope of the Services, including for a machinery of government change.

- (b) On receipt of a notice of termination or reduction the Contractor must:
 - (i) stop work as specified in the notice;
 - (ii) take all available steps to minimise loss resulting from that termination and to protect Agency Material and Contract Material; and
 - (iii) continue work on any part of the Services not affected by the notice.
- (c) If this Contract is terminated under this clause 26.1, the Agency is liable only for:
 - (i) payments under clause 14 for Services rendered in accordance with this Contract before the effective date of termination; and
 - (ii) reasonable costs actually incurred by the Contractor and directly attributable to the termination.
- (d) If the scope of the Services is reduced, the Agency's liability to pay the Service Charges or to provide Agency Material abates in accordance with the reduction in the Services.
- (e) The Agency is not liable to pay compensation under clause 26.1(c)(ii) for an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, exceed the total Service Charges payable under this Contract.
- (f) The Contractor is not entitled to compensation for loss of prospective profits.

26.2 Termination for default

- (a) Without limiting any other rights or remedies the Agency may have against the Contractor arising out of or in connection with this Contract, the Agency may terminate this Contract effective immediately by giving notice to the Contractor if:
 - (i) the Contractor breaches a material provision of this Contract where that breach is not capable of remedy;
 - (ii) the Contractor breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or
 - (iii) an event specified in clause 26.2(c) happens to the Contractor.
- (b) Without limitation, for the purposes of clause 26.2(a), each of the following constitutes a breach of a material provision:
 - (i) breach of warranty under clause 5.2 (Contractor warranties);
 - (ii) a failure to comply with clause 5.8 (Fair Work Principles);
 - (iii) a failure to comply with clause 10 (Personnel);
 - (iv) a failure to comply with clause 12 (Intellectual Property Rights);
 - (v) a failure to comply with clause 17 (Insurance);
 - (vi) a failure to comply with clause 18 (Confidentiality and privacy);
 - (vii) a failure to comply with clause 19 (Protection of personal information); and
 - (viii) a failure to notify the Agency of a conflict of interest under clause 20 (Conflict of interest).
- (c) The Contractor must notify the Agency immediately if:
 - (i) the Contractor being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Contractor;

- (ii) the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (iii) the Contractor ceases to carry on business;
- (iv) the Contractor ceases to be able to pay its debts as they become due;
- (v) the Contractor being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
- (vi) the Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
- (vii) where the Contractor is a partnership, any step is taken to dissolve that partnership.

In this clause 26.2, **controller**, **managing controller** and **administrator** have the same meanings as in the Corporations Act.

26.3 After termination

On termination of this Contract the Contractor must:

- (a) stop work on the Services;
- (b) deal with Contract Material in accordance with clause 12.8;
- (c) deal with Agency Material as reasonably directed by the Agency; and
- (d) return all the Agency's Confidential Information to the Agency.

26.4 Termination does not affect accrued rights

Termination of this Contract does not affect any accrued rights or remedies of a party.

27. Survival

The following clauses survive the expiry or termination of this Contract:

- (a) Clause 5.7(c) (Subcontracting);
- (b) Clause 5.8(c) (Fair Work Principles);
- (c) Clause 12 (Intellectual Property Rights);
- (d) Clause 13 (Moral Rights);
- (e) Clause 15 (GST);
- (f) Clause 16 (Indemnity);
- (g) Clause 17 (Insurance) to the extent it relates to professional indemnity or errors or omissions insurance;
- (h) Clause 18 (Confidentiality and privacy);
- (i) Clause 19 (Protection of personal information);
- (j) Clause 21 (Security);
- (k) Clause 22 (Books and records); and
- (l) Clause 23 (Audit and access).

28. Notices and other communications

28.1 Service of notices

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile or email to the recipient's address for Notices specified in item 22 of the Contract Details, as varied by any Notice given by the recipient to the sender.

28.2 Effective on receipt

A Notice given in accordance with clause 28.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice; or
- (d) if sent by email, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

29. Miscellaneous

29.1 Ownership of Contract

All copyright and other Intellectual Property Rights contained in this Contract remain the property of the Agency.

29.2 Variation

No agreement or understanding varying or extending this Contract is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

29.3 Approvals and consents

Except where this Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.

29.4 Assignment and novation

The Contractor may not assign, novate or otherwise transfer its rights or obligations under this Deed without the prior written consent of the Agency.

29.5 Costs

Each party must pay its own costs of negotiating, preparing and executing this Contract.

29.6 Counterparts

This Contract may be executed in counterparts. All executed counterparts constitute one document.

29.7 No merger

The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

29.8 Entire agreement

This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

29.9 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.

29.10 Severability

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

29.11 Waiver

Waiver of any provision of or right under this Contract:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

29.12 Relationship

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Contract does not create a relationship of employment, agency or partnership between the parties.

29.13 Announcements

- (a) The Contractor must, before making a public announcement in connection with this Contract or any transaction contemplated by it, obtain the Agency's written agreement to the announcement, except if required by Law or a regulatory body (including a relevant stock exchange).
- (b) If the Contractor is required by Law or a regulatory body to make a public announcement in connection with this Contract or any transaction contemplated by this Contract, the Contractor must, to the extent practicable, first consult with and take into account the reasonable requirements of the Agency.

29.14 Governing law and jurisdiction

This Contract is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

Schedule 1 – Contract Details

Item number	Description	Clause Reference	Details
1.	Agency	1.1	National Disability Insurance Scheme Launch Transition Agency 16 Furzer Street, Woden, ACT 2606 ABN 25 617 475 104
2.	Contractor	1.1	
3.	Agency Representative	1.1	
4.	Contractor Representative	1.1	
5.	Business Hours	1.1	
6.	Commencement Date	1.1 and 3.1	
7.	Initial Contract Period	1.1 and 3.1	
8.	Option Period	3.2	
9.	Option Notice Period	3.2	
10.	Relevant Industry Standards	5.1(e)	
11.	Subcontractors	5.7	
12.	Specified Personnel	1.1 and 10	
13.	Agency Material	1.1 and 11	
14.	Intellectual Property Rights – ownership of Contract Material	12.3(b)	
15.	Intellectual Property Rights – licences	12.4(b)	
16.	Intellectual Property Rights – licences	12.5(b)	
17.	Moral Rights – Specified Acts	13.2	
18.	Payment – interest for late payment	14.4	
19.	Insurance	17.1	
20.	Security	21	
21.	Unforeseen events termination	24.3	

Item number	Description	Clause Reference	Details
	period		
22.	Address for Notices	28.1	Agency: Contractor:

Schedule 2 – Services

- 1. Purpose (clause 5.2)

- 2. Services (clauses 1.1 and 5)

	Description of Services	Milestone Date
1.		
2.		
3.		
4.		
5.		

- 3. Deliverables (clause 1.1)

	Deliverables	Milestone Date
1.		
2.		
3.		
4.		
5.		

4. Performance Criteria (clauses 1.1 and 9)

	Service/Deliverable	Performance Criteria
1.		
2.		
3.		
4.		
5.		

5. Progress meetings (clause 8.1)

Meeting	Attendees	Frequency	Place

6. Reporting (clause 8.2)

Report type and content	Frequency	Milestone Date

Schedule 3 – Payment

1. Fixed charges (clause 14)

	Charges (exclusive of GST)	GST Component	Total (inclusive of GST)
Service Charges (fixed)			
Other charges (if any)			
TOTAL			

2. Hourly rates (clause 14)

Personnel	Hourly Rate (exclusive of GST)	GST Component	Maximum Work Effort (Days)	Charges (exclusive of GST)	GST Component
Subtotal					
Add GST					
TOTAL					

3. Daily rates (clause 14)

Personnel	Daily Rate (exclusive of GST)	GST Component	Maximum Work Effort (Days)	Charges (exclusive of GST)	GST Component
Subtotal					
Add GST					
TOTAL					

4. Milestone payments (clause 14)

Milestone Date	Milestone/Deliverable	Milestone payment (exclusive of GST)
Subtotal		
Add GST		
TOTAL		

5. Invoicing requirements (clause 14.2)

The invoice must be in a form approved by the Agency which sets out:

- (a) the details of the amount of time spent by each of the person including Specified Personnel on the Services for the period to which the invoice relates and a record detailing how the relevant Milestone Dates have been met;
- (b) the contract or project number;
- (c) the amount of any allowances, costs and interest to be paid by the Agency together with any substantiating material required;
- (d) the name of the Agency Representative; and
- (e) such other information as the Agency requires.

Invoices should be submitted to:

[insert position and name of the Agency's representative]
 National Disability Insurance Agency
 [insert postal address]

6. Payment period (clause 14.3)

7. Expenses (clause 14.6)

Schedule 4 – Designated Confidential Information

1. Confidential information of the Agency (clause 1.1 and 18)

1.1 Contract provisions / Schedules

Item	Period of Confidentiality
[insert relevant items]	

1.2 Contract-related Material

Item	Period of Confidentiality
[insert relevant items]	

2. Confidential information of the Contractor (clause 1.1 and 18)

2.1 Contract provisions / Schedules

Item	Period of Confidentiality
[insert relevant items]	

2.2 Contract-related Material

Item	Period of Confidentiality
[insert relevant items]	

Schedule 5 – Pre-existing Material

1. Agency's Pre-existing Material (clause 12)

Item number	Item	Description	Date created

2. Contractor's Pre-existing Material (clause 12)

Item number	Item	Description	Date created

Schedule 6 – Agency requirements

Signing page

EXECUTED as an agreement.

Signed for and on behalf of the **National Disability Insurance Scheme Launch Transition Agency** by its duly authorised delegate in the presence of

Signature of witness



Signature of delegate



Name of witness (print)

Name of delegate (print)

Position of delegate (print)

Date executed by the Agency

/ / 2014

Executed by **[insert name of company]** in accordance with Section 127 of the Corporations Act 2001

Signature of director



Signature of director/company secretary/sole director and sole company secretary
(Please delete as applicable)



Name of director (print)

Name of director/company secretary/sole director and sole company secretary (print)

Date executed by the Contractor

/ / 2014