

# Department of Human Services

Deed of Standing Offer for the Provision of ICT Contractor  
Services number 11/1000006268

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Commonwealth of Australia as represented by the  
Department of Human Services (**Department**)

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

# Deed of Standing Offer for ICT Contractor Services

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# Deed Information

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## Date

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
day month year

## Parties

Name The Commonwealth of Australia as represented by the Department of Human Services

ABN 90 794 605 008

Short form name **Department**

Name *[insert name of Vendor]*

ABN *[insert ABN of Vendor]*

Short form name **Vendor**

## Overview

- A From time to time, the Department may require the provision of certain ICT Contractor Services.
- B The Vendor has agreed that when a Work Order is signed by both parties, the Vendor will provide the Services to the Department on the terms and conditions contained in this Deed.
- C The Vendor acknowledges that there is no guarantee or assurance:
  - (i) of any particular volume of business under this Deed; or
  - (ii) that any Work Orders will be placed with the Vendor.

# Agreed Terms

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## 1. Definitions and interpretation

### 1.1 Definitions

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

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<b>Accounting Standards</b>	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.
<b>Advisers</b>	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
<b>Agency</b>	(a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation (including a local authority); (b) a body established by the Governor-General or by a Minister of State of the Commonwealth including departments; or (c) an incorporated company over which the Commonwealth exercises control.
<b>Agreed Terms</b>	clauses 1 to 22 of this Deed, which set out terms and conditions agreed by the parties.
<b>Annual Performance Review</b>	the review to be conducted under clause 8.2.
<b>Attachment</b>	an attachment to a Work Order.
<b>Business Day</b>	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.
<b>Capped Rates</b>	the maximum rates for each Personnel Category that can be quoted for and applied to individual Work Orders as set out in Attachment A to Schedule 3.
<b>Change in Control</b>	in relation to a body corporate, where the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect, including through one or more entities): (a) to control more than half of the voting power of the body; (b) to control the composition of the board of directors of the body; or (c) to control more than half of the issued share capital of the body, excluding any part of it which carries no right to

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	<p>participate beyond a specified amount in the distribution of either profit or capital,</p> <p>resides with persons other than those holding that power on the Commencement Date.</p>
<b>Commencement Date</b>	the date on which this Deed commences, as specified in item 5 of the Deed Details.
<b>Confidential Information</b>	<p>information that is by its nature confidential and:</p> <p>(a) is described in item 11 of the Deed Details; or</p> <p>(b) a party knows or ought to know is confidential,</p> <p>but does not include:</p> <p>(c) information that is or becomes public knowledge otherwise than by breach of this Deed or any other confidentiality obligation.</p>
<b>Contract</b>	a contract formed under clause 5.4.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Deed</b>	this deed of standing offer between the Department and the Vendor, as varied from time to time in accordance with clause 22.1, and includes its schedules and any attachments.
<b>Deed Details</b>	the details set out in Schedule 1.
<b>Deed Material</b>	any Material created by the Vendor on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Deed.
<b>Deed Period</b>	the Initial Deed Period plus any extension agreed in accordance with clause 3.2.
<b>Deliverable</b>	any item or element of a Service to be provided by the Vendor under a Contract.
<b>Department</b>	the Department of Human Services and includes, as the context requires, its Personnel.
<b>Department Data</b>	any data and information relating to or concerning the Department, and its operations, facilities, customers, Personnel, assets and programs (including personal information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Department.
<b>Department Material</b>	any Material provided to the Vendor by the Department, including the Material (if any) specified in item 9 of the Deed Details.
<b>Department Representative</b>	the person identified in item 3 of the Deed Details, as amended from time to time.
<b>ICT</b>	information and communications technology.

<b>ICT Service Categories</b>	the description of Services to be performed by the Vendor as set out in Schedule 2.
<b>Initial Deed Period</b>	the period of time for which this Deed is intended to continue, as specified in item 6 of the Deed Details.
<b>Instrument of Acceptance</b>	the form set out in 0.
<b>Intellectual Property Rights</b>	<p>all intellectual property rights, including, the following rights:</p> <p>(a) copyright, patents, rights in circuit layouts, trade marks, designs, trade secrets, know how, domain names and any right to have confidential information kept confidential;</p> <p>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</p> <p>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.</p>
<b>Law</b>	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 Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
<b>LEADR</b>	the dispute resolution association with that name and the Australian Business Number 69 008 651 232.
<b>Legal Services Directions</b>	the Commonwealth Attorney General's Legal Services Directions issued under section 55ZF of the <i>Judiciary Act 1903</i> (Cth), as amended or replaced from time to time.
<b>Losses</b>	liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis, whether incurred by or awarded against a party).
<b>Material</b>	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 category of Intellectual Property Rights.
<b>Moral Rights</b>	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).
<b>Nominated Agency</b>	an Agency, listed in item 8 of the Deed Details, which may require the provision of Services under this Contract.
<b>Notice</b>	a notice, demand, consent, approval or communication issued under this Deed.

<b>Panel Member</b>	means a member of the Department's ICT Contractor Services panel.
<b>Personnel</b>	in relation to a party, any employee, officer, agent, or professional adviser of that party, and in the case of the Vendor, of any subcontractor.
<b>Personnel Categories</b>	the categories of Personnel to be provided by the Vendor as set out in Schedule 2.
<b>Pre-existing Material</b>	any Material, other than Deed Material, which is made available by a party for the purpose of this Deed, on or following the Commencement Date, and includes: <ul style="list-style-type: none"> <li>(a) error corrections or translations to that Material; and</li> <li>(b) modifications or derivatives of that Material where such modification or derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material.</li> </ul>
<b>Quotation</b>	means a written quotation in accordance with clause 5.3 from the Vendor to the Department in response to a Request for Quotation in the form of Schedule 6.
<b>Request for Quotation or RFQ</b>	a request for the Vendor to provide a quote for Services in the form of Schedule 5.
<b>Schedule</b>	a schedule to this Deed.
<b>Service Charges</b>	the charges payable to the Vendor in accordance with the Work Order.
<b>Services</b>	the services to be provided under a Work Order (including the provision of the Deliverables).
<b>Specified Personnel</b>	the Vendor's subcontractors and Personnel specified in item 14 of a Work Order, as replaced (temporarily or permanently) from time to time.
<b>Terms and Conditions of Contract</b>	the terms and conditions specified in Schedule 10.
<b>Vendor</b>	the party specified in item 2 of the Deed Details and includes its subcontractors and Personnel.
<b>Vendor Representative</b>	the person identified in item 4 of the Deed Details, as amended from time to time.
<b>Warranted Materials</b>	has the meaning given in clause 10.3(a).
<b>Work Order</b>	an order for Services executed by the parties in accordance with clause 5.

## 1.2 Interpretation

In this Deed, 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 Deed;
- (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 Deed, 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) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) 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;
- (l) 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;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it;
- (n) if a day on or by which an obligation must be performed or an event must occur (other than the Services) is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (o) headings are for ease of reference only and do not affect interpretation.

## 2. Priority of Deed documents

If there is inconsistency between any of the documents forming part of this Deed, 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 Deed.

## 3. Duration of Deed

### 3.1 Deed Period

This Deed begins on the Commencement Date and continues for the duration of the Deed Period unless terminated in accordance with clause 19.

### **3.2 Option to extend Deed Period**

- (a) The Deed Period may be extended by the Department for further period(s), specified in item 7 of the Deed Details (each a **Deed Option Period**), on the terms and conditions then in effect, by giving written notice to the Vendor. Such notice should be given at least 30 days before the end of the current Deed Period (**Deed Option Notice Period**).
- (b) Any extension in accordance with this clause 3.2 takes effect from the end of the then current Deed Period.

## **4. General obligations of the Vendor**

The Vendor will, at all times:

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

## **5. Standing offer**

### **5.1 Standing offer**

By this Deed the Vendor makes an irrevocable standing offer to supply the Services to the Department on the terms and conditions set out in this Deed.

### **5.2 Service Charges**

The Service Charges payable to the Vendor for performing the Services will be specified in a Work Order and must be based on rates which must not exceed the Capped Rates.

### **5.3 Issue of a Request for Quotation**

- (a) The Department may, during the Deed Period, require the Vendor to provide a Quotation prior to issuing an order for Services by issuing a Request for Quotation substantially in the form of Schedule 5.
- (b) If the Department issues a Request for Quotation, the Vendor must within the timeframe specified in the Request for Quotation:
  - (i) provide a Quotation substantially in the form of Schedule 6 in response to the Request for Quotation; or
  - (ii) notify the Department that it is declining the opportunity to provide a Quotation and the reasons for this.
- (c) The Department may, at its absolute discretion, withdraw a Request for Quotation at any time prior to signing a Work Order.

### **5.4 Issue of a Work Order**

- (a) After considering the Quotation provided in accordance with clause 5.3, the Department may complete, sign and send to the Vendor a Work Order substantially in the form of Schedule 7.
- (b) The Vendor's Quotation will be accepted by the Department and a Contract is formed when the Department and the Vendor have signed a Work Order.

## **5.5 Terms and Conditions**

The terms and conditions of a Contract are:

- (a) the terms and conditions specified in the Work Order; and
- (b) the Terms and Conditions of Contract.

## **5.6 Priority of Contract documents**

To the extent of any inconsistency between two or more documents which form part of a Contract, those documents will be interpreted in the following (descending) order of priority:

- (a) the Terms and Conditions of Contract;
- (b) the Work Order;
- (c) the Attachments to the Work Order; and
- (d) any other document referred to in the Work Order.

## **5.7 No guarantee**

- (a) Notwithstanding any other provision of this Deed, the Department does not guarantee or make any assurance that any services or any particular volume of services will be ordered from the Vendor under this Deed.
- (b) Notwithstanding any other provision of this Deed, the Department may at its absolute discretion obtain the Services from any source it chooses.

# **6. Services to other Agencies**

## **6.1 Obligation to provide Services**

- (a) The Vendor irrevocably offers to provide any other Agency with any and all Services during the Deed Period in accordance with the provisions of this Deed for a price not exceeding the charges set out in this Deed.
- (b) To accept the offer made by the Vendor pursuant to clause 6.1(a), an Agency will issue an Instrument of Acceptance to the Vendor.
- (c) Upon receipt by the Vendor of the Instrument of Acceptance executed by the Agency, a separate deed of standing offer will be created between the Vendor and the Agency on the terms of this Deed with the exception that:
  - (i) references to the Commonwealth of Australia (as represented by the Department of Human Services) as the contracting party and the Department will be references to the Agency as detailed in the Instrument of Acceptance;
  - (ii) any Work Order issued by the Department pursuant to this Deed does not form part of the standing offer; and
  - (iii) references to relevant information in this Deed as set out in the Instrument of Acceptance will be varied as set out in the Instrument of Acceptance.

# **7. Changes to government policy and administration**

The Vendor acknowledges and agrees that a fundamental objective of the Department in entering into this Deed is to ensure that the arrangement will at all times:

- (a) comply with all applicable Australian Government policy; and

- (b) be readily adaptable to ensure the Australian Government will receive the full benefit of the arrangement in circumstances where functions, operations, or accountabilities of the Department as at the date of this Deed are transferred in whole or in part to other Agencies or legal entities or where the Australian Government considers it desirable for relevant Agencies or legal entities to coordinate, cooperate, share or leverage arrangements or operations of any kind,

and accordingly the Vendor agrees to vary, split, replicate or novate this Deed (and any associated licence) or take such other action as the Department requests at any time, so as to fully and properly reflect and support the Department's and the Australian Government's ongoing requirements including as outlined above.

## **8. Monitoring performance**

### **8.1 Performance meetings**

The parties will meet at the times and manner as agreed in writing between the parties to discuss any issues in relation to this Deed or the provision of the Services. The Vendor must ensure that the Vendor Representative, and the Department must ensure the Department 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 Annual Performance Review**

- (a) The Department and the Vendor may conduct throughout the Deed Period an Annual Performance Review on or around each anniversary of the Commencement Date. The Annual Performance Review is an opportunity for the Vendor and the Department to discuss any issues which may have arisen over the previous 12 months.
- (b) The Department may instigate an Annual Performance Review by giving the Vendor 15 Business Days written notice. If the Department fails to instigate an Annual Performance Review by the next anniversary of the Commencement Date, the Vendor may instigate the Annual Performance Review by giving the Department 15 Business Days written notice.
- (c) At a minimum, the Department Representative and the Vendor Representative are required to attend the Annual Performance Review.

## **9. Department Material**

The Department may provide to the Vendor Department Material and the Vendor must ensure that the Department Material is used strictly in accordance with any conditions or restrictions specified in item 9 of the Deed Details and any direction by the Department.

## **10. Intellectual Property Rights**

### **10.1 Pre-existing Material**

- (a) This clause 10 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Material.
- (b) To the extent that the Department needs to use any of the Vendor Pre-existing Material for the purposes of the Deed, the Vendor grants to the Department the right to use, reproduce, adapt, modify and communicate that Pre-existing Material.

## 10.2 Department ownership of Intellectual Property Rights in Deed Material

- (a) All Intellectual Property Rights in the Deed Material vest in the Department on creation.
- (b) To the extent that the Vendor needs to use any of the Deed Material for the purposes of performing its obligations under the Deed, the Department grants to the Vendor for the Deed Period, subject to any direction by the Department, a world-wide, royalty free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate the Deed Material solely for the purposes of this Deed.

## 10.3 Warranty

The Vendor warrants that:

- (a) the Vendor's Pre-existing Material and the Deed Material (**Warranted Materials**) and the Department'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 10.

## 11. Moral Rights

### 11.1 Obtaining consents

To the extent permitted by applicable Laws and for the benefit of the Department, the Vendor must:

- (a) give, where the Vendor is an individual, in a form acceptable to the Department; and
- (b) use its best endeavours to ensure that each of the Personnel used by the Vendor in the production or creation of the Deed Material gives, in a form acceptable to the Department,

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

### 11.2 Specified Acts

- (a) In this clause 11, **Specified Acts** means:
  - (i) falsely attributing the authorship of any Deed Material, or any content in the Deed 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 Deed Material and dealing in any way with the altered Deed Material;
  - (iii) reproducing, communicating, adapting, publishing or exhibiting any Deed Material; and
  - (iv) adding any additional content or information to the Deed Material.
- (b) For the purposes of this clause 11, **Deed Material** includes any Pre-existing Material to the extent that it is included in, forms part of or is attached to the Deed Material.

## 12. Indemnity

### 12.1 Indemnity by the Vendor

- (a) The Vendor indemnifies the Department and its subcontractors and Personnel against Losses reasonably sustained or incurred by the Department as a result of a claim made or threatened by a third party arising out of or in connection with:
  - (i) any negligent, unlawful or wilfully wrong act or omission of the Vendor or its subcontractors or Personnel; or
  - (ii) an allegation that any Warranted Materials (including the use of any Warranted Materials by the Department or its subcontractors or Personnel) infringes the Intellectual Property Rights or Moral Rights of the third party. For the purposes of this clause 12.1(a)(ii), an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.
- (b) The Vendor's liability to indemnify those indemnified under clause 12.1(a) will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.

### 12.2 Department's obligations

Where the Department wishes to enforce an indemnity under clause 12.1 it must:

- (a) give written notice to the Vendor as soon as practical;
- (b) make reasonable efforts to mitigate the relevant Loss;
- (c) subject to the Vendor agreeing to comply at all times with clause 12.3, permit the Vendor, at the Vendor's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and
- (d) in the event that the Vendor is permitted to handle negotiations or conduct litigation on behalf of the Department under clause 12.2(c), provide all reasonable assistance to the Vendor in the handling of any negotiations and litigation.

### 12.3 Vendor's obligations

In the event that the Vendor is permitted to handle negotiations or conduct litigation on behalf of the Department under clause 12.2, the Vendor must:

- (a) comply with government policy and obligations, as if the Vendor were the Department, relevant to the conduct of the litigation and any settlement negotiation (including but not limited to the Legal Services Directions) and any direction issued by the Attorney General to the Commonwealth or delegate;
- (b) keep the Department informed of any significant developments relating to the conduct of the defence or settlement of any claim; and
- (c) provide the Department such information and documentation as are reasonably requested by the Department, to enable the Department to ascertain whether the defence or settlement by the Vendor of any claim is being conducted in accordance with the requirements of the Legal Services Directions, including any requirements relating to legal professional privilege and confidentiality.

## 13. Insurance

### 13.1 Obligation to maintain insurance

The Vendor must have and maintain:

- (a) for the Deed Period, valid and enforceable insurance policies for:
  - (i) public liability;
  - (ii) either professional indemnity or errors and omissions;
  - (iii) workers' compensation as required by Law; and
  - (iv) any additional types specified in item 10 of the Deed Details; and
- (b) for seven years following the expiry or termination of this Deed and any Contract, valid and enforceable insurance policies for either professional indemnity or errors and omissions,

in the amounts specified in item 10 of the Deed Details.

### 13.2 Certificates of currency

The Vendor must, on request by the Department, provide current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by clause 13.1.

## 14. Confidentiality

### 14.1 Confidential Information not to be disclosed

- (a) Subject to clause 14.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

### 14.2 Written undertakings

- (a) A party may at any time require the other party to arrange for:
  - (i) its Advisers; or
  - (ii) any other third party, other than a Department officer or employee or an officer or employee of the Commonwealth or a Commonwealth authority, to whom information may be disclosed pursuant to clause 14.3(a) or 14.3(e),to give a written undertaking in the form set out in Schedule 4 relating to the use and non-disclosure of the other party's Confidential Information.
- (c) If the other party receives a request under clause 14.2(a), it must promptly arrange for all such undertakings to be given.

### 14.3 Exceptions to obligations

The obligations on the parties under this clause 14 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its Advisers or Personnel solely in order to comply with obligations, or to exercise rights, under this Deed or a Contract;

- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Deed-related activities;
- (c) is disclosed by the Department to the responsible Minister;
- (d) is disclosed by the Department, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Department within the Department's organisation, or with a Commonwealth Agency, where this serves the Commonwealth's legitimate interests;
- (f) is authorised or required by law, including under this Deed or a Contract, under a licence or otherwise, to be disclosed; or
- (g) is in the public domain otherwise than due to a breach of this clause 14.

#### **14.4 Obligation on disclosure**

Where a party discloses Confidential Information to another person:

- (a) pursuant to clauses 14.3(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; or
- (b) pursuant to clauses 14.3(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information.

#### **14.5 Additional confidential information**

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

#### **14.6 Period of confidentiality**

The obligations under this clause 14 continue, notwithstanding the expiry or termination of this Deed:

- (a) in relation to an item of information described in item 11 of the Deed Details, for the period set out in the Deed Details in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the date of this Deed is to constitute Confidential Information for the purposes of this Deed, for the period agreed by the Parties in writing in respect of that information.

#### **14.7 No reduction in privacy obligations**

Nothing in this clause 14 derogates from any obligation which either party may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Deed, in relation to the protection of personal information.



## 15. Conflict of interest

### 15.1 Warranty

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

### 15.2 Notification of a conflict of interest

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

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

## 16. Books and records

### 16.1 Vendor to keep books and records

The Vendor 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 Department under this Deed 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 Deed all books and records relating to the categories of Services.

### 16.2 Costs

The Vendor must bear its own costs of complying with this clause 16.

### 16.3 Survival

This clause 16 applies for the Deed Period and for a period of seven years from the expiry or termination of this Deed.

## 17. Audit and access

### 17.1 Right to conduct audits

The Department or a representative may conduct audits relevant to the performance of the Vendor's obligations under this Deed. Audits may be conducted of:

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

## **17.2 Access by the Department**

- (a) The Department may, at reasonable times and on giving reasonable notice to the Vendor:
  - (i) access the premises of the Vendor to the extent relevant to the performance of this Deed;
  - (ii) require the provision by the Vendor, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Department by use of the Department'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 Vendor, its employees, agents or subcontractors; and
  - (iv) require assistance in respect of any inquiry into or concerning the Services or this Deed. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Department, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Vendor must provide access to its computer hardware and software to the extent necessary for the Department to exercise its rights under this clause 17, and provide the Department with any reasonable assistance requested by the Department to use that hardware and software.

## **17.3 Conduct of audit and access**

The Department must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 17.1; and
- (b) the exercise of the general rights granted by clause 17.2 by the Department,

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

## **17.4 Costs**

- (a) Except as set out in clause 17.4(b), each party must bear its own costs of any reviews and/or audits.
- (b) If the Vendor is able to substantiate that it has incurred direct expenses in the Department's exercise of the rights granted under clause 17.1 or clause 17.2 which are substantial, the Department and the Vendor will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

## **17.5 Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner**

The rights of the Department under clause 17.2(a)(i) to 17.2(a)(iii) apply equally to the Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner or his or her delegate, for the purpose of performing the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's statutory functions or powers.

## **17.6 Vendor to comply with Auditor-General's, Information Commissioner's, Privacy Commissioner's and Freedom of Information Commissioner's requirements**

The Vendor must do all things necessary to comply with the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's, or his or her delegate's requirements, notified under clause 17.2, provided such requirements are legally enforceable and within the power of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner or his or her respective delegate.

## **17.7 No reduction in responsibility**

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

## **17.8 Subcontractor requirements**

The Vendor must ensure that any subcontract entered into for the purpose of this Deed contains an equivalent clause granting the rights specified in this clause 17.

## **17.9 No restriction**

Nothing in this Deed reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner, or his or her delegate. The rights of the Department under this Deed are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General, Information Commissioner, Privacy Commissioner or Freedom of Information Commissioner, or his or her delegate.

## **17.10 Survival**

This clause 17 applies for the Deed Period and for a period of seven years from the expiry or termination of this Deed.

# **18. Dispute resolution**

## **18.1 No arbitration or court proceedings**

If a dispute arises in relation to the conduct of this Deed (**Dispute**), a party must comply with this clause 18 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 18.

## **18.2 Notification**

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

## **18.3 Parties to resolve Dispute**

During the 14 days after a notice is given under clause 18.2 (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 Chief Executive Officers (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.

## **18.4 Appointment of mediator**

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 18.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

## **18.5 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 18.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

## **18.6 Confidentiality**

Any information or documents disclosed by a party under this clause 18:

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

## **18.7 Costs**

Each party to a Dispute must pay its own costs of complying with this clause 18. The parties to the Dispute must equally pay the costs of any mediator.

## **18.8 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 18.1 to 18.5. Clauses 18.6 and 18.7 survive termination of the dispute resolution process.

## **18.9 Breach of this clause**

If a party to a Dispute breaches clauses 18.1 to 18.8, the other party does not have to comply with those clauses in relation to the Dispute.

## **18.10 Exception**

For the purpose of this clause 18, a Dispute does not include a dispute arising in relation to the Department's termination of this Deed under clause 19.2.

# **19. Termination of Deed**

## **19.1 Termination in the event of a centralised procurement**

The Vendor acknowledges that it is Commonwealth policy to develop a centralised procurement system for the delivery of certain goods and services to Commonwealth departments and Agencies, where it can be established that the centralised procurement of those goods and services could deliver savings to the Commonwealth. The process of identifying such goods and services is currently underway. It is therefore possible that the Commonwealth may approve the procurement of some or all of the same goods or services to the Commonwealth under a centralised process during the Deed Period. In this case, the Department may terminate the Deed for convenience, in whole or in part, in accordance with clause 19.2, without compensating the Vendor for loss of prospective profits.

## **19.2 Termination for convenience**

- (a) The Department may, at any time, by notice, terminate this Deed, including for a machinery of government change.
- (b) If this Deed is terminated under this clause 19.2, the Department is liable only for reasonable costs actually incurred by the Vendor and directly attributable to the termination.
- (c) The Vendor is not entitled to compensation for loss of prospective profits.

### 19.3 Termination for default

- (a) Without limiting any other rights or remedies the Department may have against the Vendor arising out of or in connection with this Deed or any Contract, the Department may terminate this Deed effective immediately by giving notice to the Vendor if:
  - (i) the Vendor breaches a material provision of this Deed where that breach is not capable of remedy;
  - (ii) the Vendor breaches any provision of this Deed and fails to remedy the breach within 14 days after receiving notice requiring it to do so;
  - (iii) the Department terminates a Contract for default by the Vendor;
  - (iv) in the opinion of the Department, a conflict of interest exists which would prevent the Vendor from performing its obligations under this Deed; or
  - (v) an event specified in clause 19.3(c) happens to the Vendor.
- (b) Without limitation, for the purposes of clause 19.3(a), each of the following constitutes a breach of a material provision of this Deed:
  - (i) a failure to comply with clause 13 (Insurance);
  - (ii) a failure to comply with clause 14 (Confidentiality);
  - (iii) a failure to notify the Department of a conflict of interest under clause 15 (Conflict of interest).
- (c) The Vendor must notify the Department immediately if:
  - (i) the Vendor being a corporation, there is a Change in Control of the Vendor;
  - (ii) the Vendor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
  - (iii) the Vendor ceases to carry on business;
  - (iv) the Vendor ceases to be able to pay its debts as they become due;
  - (v) the Vendor being a corporation enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
  - (vi) the Vendor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
  - (vii) where the Vendor is a partnership, any step is taken to dissolve that partnership.

In this clause 19.3, **controller**, **managing controller**, **liquidator** and **administrator** have the same meanings as in the Corporations Act.

### 19.4 After termination

On termination of this Deed the Vendor must:

- (a) stop work as specified in the notice;
- (b) take all available steps to minimise loss resulting from that termination and to protect Department Material;
- (c) deal with Department Material and Deed Material as reasonably directed by the Department; and
- (d) return all Department Confidential Information to the Department.

## **19.5 Termination does not affect Contracts**

Termination of this Deed does not affect the continuance of any Contract formed under this Deed unless the Department terminates the Contract.

## **19.6 Termination does not affect accrued rights**

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

## **20. Survival**

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

- (a) Clause 10 (Intellectual Property Rights);
- (b) Clause 11 (Moral Rights);
- (c) Clause 12 (Indemnity);
- (d) Clause 13 (Insurance) to the extent it relates to professional indemnity or errors and omissions insurance;
- (e) Clause 14 (Confidentiality);
- (f) Clause 16 (Books and records); and
- (g) Clause 17 (Audit and access).

## **21. Notices and other communications**

### **21.1 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, transmitted electronically or by facsimile to the recipient's address for Notices specified in item 12 of the Deed Details, as varied by any Notice given by the recipient to the sender.

### **21.2 Effective on receipt**

A Notice given in accordance with clause 21.1 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); or
- (c) if transmitted electronically or by facsimile, on receipt by the sender of an electronic or facsimile acknowledgement that the entire Notice has been properly transmitted to the recipient unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

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.

## **22. Miscellaneous**

### **22.1 Variation**

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

### **22.2 Approvals and consents**

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

### **22.3 Assignment and novation**

A party may only assign its rights or novate its rights and obligations under this Deed with the prior written consent of the other party.

### **22.4 Costs**

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

### **22.5 Counterparts**

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

### **22.6 No merger**

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

### **22.7 Entire agreement**

This Deed 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.

### **22.8 Further action**

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

### **22.9 Severability**

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

### **22.10 Waiver**

Waiver of any provision of or right under this Deed:

- (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.

### **22.11 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 Deed does not create a relationship of employment, agency or partnership between the parties.

## **22.12 Announcements**

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

## **22.13 Trustee**

The Vendor represents and warrants that if the Vendor is a trustee, it enters into this Deed personally and in its capacity as trustee and has the power to perform its obligations under this Deed.

## **22.14 Governing law and jurisdiction**

This Deed 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.



# Signing page

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**EXECUTED** as a deed.

**Signed, sealed and delivered** for and on behalf of the **Commonwealth of Australia as represented by the Department of Human Services** by



\_\_\_\_\_  
Name of delegate

\_\_\_\_\_  
Signature of delegate

\_\_\_\_\_  
Position of delegate

who is a Department official authorised to enter into deeds, in the presence of



\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Date

*[Select one of the following execution clauses. Where the Vendor is a company, select the first execution block below, otherwise, select the second option.]*

**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

Signed, sealed and delivered by **[insert contracting party name]** in the presence of

\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Signature of Vendor



\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Date

# Schedule 1 – Deed Details

Item number	Description	Clause reference	Details
1.	Department	1.1	Commonwealth of Australia as represented by the Department of Human Services  Caroline Chisholm Centre 57 Athllon Drive GREENWAY ACT 2900  ABN 90 794 605 008
2.	Vendor	1.1	<i>[insert name of Vendor]</i>  <i>[insert street address]</i>  <i>[insert ABN]</i>
3.	Department Representative	1.1	<i>Assistant Director,</i> <i>ICT Contract Services</i>  <i>ICT Corporate Services Branch.</i>
4.	Vendor Representative	1.1	<i>[insert position and/or name of Vendor's representative]</i>
5.	Commencement Date	1.1 and 3.1	1 September 2012
6.	Initial Deed Period	1.1 and 3.1	Three years
7.	Deed Option Period	3.2	Two periods each of two years duration.
8.	Nominated Agency	1.1 and 6	Any Agency
9.	Department Material	1.1 and 9	Department Material is to be used solely for the purpose of performing obligations under the Deed, including responding to a Request for Quotation.
10.	Insurance	13.1	Public liability insurance for an insured amount of \$5 million per occurrence and \$10 million in aggregate.  Either professional indemnity or errors and omissions insurance for an insured amount of \$5 million per occurrence and \$10 million in aggregate.  Workers compensation as required by Law.

Item number	Description	Clause reference	Details												
11.	<b>Confidential Information</b>	<b>1.1 and 14</b>	<p>Department Confidential Information:</p> <table border="1" data-bbox="959 309 1401 591"> <thead> <tr> <th data-bbox="962 311 1185 400">Item</th> <th data-bbox="1189 311 1398 400">Period of confidentiality</th> </tr> </thead> <tbody> <tr> <td data-bbox="962 405 1185 495">Department Data</td> <td data-bbox="1189 405 1398 495">Perpetual</td> </tr> <tr> <td data-bbox="962 499 1185 589">Department Material</td> <td data-bbox="1189 499 1398 589">Perpetual</td> </tr> </tbody> </table> <p>Vendor Confidential Information:</p> <table border="1" data-bbox="959 703 1401 945"> <thead> <tr> <th data-bbox="962 705 1185 795">Item</th> <th data-bbox="1189 705 1398 795">Period of confidentiality</th> </tr> </thead> <tbody> <tr> <td data-bbox="962 799 1185 889"><i>[insert relevant items]</i></td> <td data-bbox="1189 799 1398 889"></td> </tr> <tr> <td data-bbox="962 893 1185 943"></td> <td data-bbox="1189 893 1398 943"></td> </tr> </tbody> </table>	Item	Period of confidentiality	Department Data	Perpetual	Department Material	Perpetual	Item	Period of confidentiality	<i>[insert relevant items]</i>			
Item	Period of confidentiality														
Department Data	Perpetual														
Department Material	Perpetual														
Item	Period of confidentiality														
<i>[insert relevant items]</i>															
12.	<b>Address for Notices</b>	<b>21</b>	<p><b>Department:</b>  Assistant Director  ICT Contract Services  ICT Corporate Services Branch  PO Box 7788  Canberra BC  CANBERRA ACT 2610</p> <p>Level 1, Millar Building  134 Reed Street  GREENWAY ACT 2900</p> <p>Facsimile: (02) 6124 6006</p> <p>Email:  <i>IT.Contract.Staff@humanservices.gov.au</i></p> <p><b>Vendor:</b>  <i>[insert name and position of person to receive Notices]</i>  <i>[insert postal address]</i>  <i>[insert physical address]</i>  <i>[insert facsimile number]</i>  <i>[insert email address]</i></p>												

# Schedule 2 – ICT Service Categories

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## 1. ICT Service Categories

The Vendor must throughout the Deed Period be capable of providing Services across the following categories:

- (a) [to be inserted].

## 2 Personnel Categories

- (a) The Vendor must, throughout the Deed Period, be capable of providing Personnel across the Personnel Categories set out in the pricing tables in Attachment A to Schedule 3.
- (b) Additional Personnel Categories may be agreed on an 'as required' basis.

# Schedule 3 – Pricing

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## 1. Capped Rates

### 1.1 Hourly rates

The Panel Member must not respond to a Request for Quotation based on rates higher than the Capped Rates set out in Attachment A to this Schedule 3.

### 1.2 Discounts

Discounted rates are set out in Attachment A to this Schedule 3.

### 1.3 Variation

- (a) The Vendor may apply to vary the Capped Rates on the second and each subsequent anniversary of the Commencement Date. Any request for a variation will be capped at the equivalent of the percentage increase in the annual Average Weekly Earnings (AWE) (published by the Australian Bureau of Statistics as Average Weekly Earnings, Seasonally Adjusted, Public Sector, Full-time adult ordinary time earnings) during the 12 months prior to the date the application is made.
- (b) The Department may, acting reasonably, approve or deny any variation to the Capped Rates applied for under paragraph (a).

## 2. Invoicing requirements

### 2.1 Timesheets

- (a) The Vendor must maintain timesheet(s) in a form acceptable to the Department to record the actual level of effort provided by each resource.
- (b) Specified Personnel must complete each timesheet electronically on the Department's IT system as directed by the Department.
- (c) The Department will not be liable to pay any amounts where timesheets show the Vendor's Personnel working more than the agreed hours per week, unless prior written approval has been given by the Department.

### 2.2 Form of invoices

- (a) The invoice must be in a form approved by the Department which sets out:
  - (i) the details of the amount of time spent by each person including Specified Personnel on the Services for the period to which the invoice relates;
  - (ii) the Work Order number;
  - (iii) the amount of any allowances, costs and interest to be paid by the Department together with any substantiating material required;
  - (iv) the name of the Department Representative; and
  - (v) such other information as the Department requires.

- (b) Invoices should be submitted to the address specified in item 27 of a Work Order.

### 3. Vendor's bank account

- (a) Payments will be effected by electronic transfer of funds to the Vendor's bank account set out below:

<b>Account name</b>	XXXX
<b>Account number</b>	XXXXXX
<b>BSB</b>	XXXXXX
<b>Bank</b>	XXXXXX
<b>Branch name / address</b>	XXXXXX

#### Remittance confirmations

**Email:** [XXXXXX@XXXXXX.com.au](mailto:XXXXXX@XXXXXX.com.au)

**Fax:** (xx) XXXXXXXX

- (b) The Department will make all payments in Australian dollars (AUD).

# Attachment A to Schedule 3 – Capped Rates

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This page is intentionally blank for inclusion of Schedule 3 Attachment A.

# Schedule 4 – Non-disclosure undertaking in relation to Confidential Information

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DATE XXXXXX

## PARTIES

This Deed is executed by: XXXXXX of \_\_\_\_\_ ('I')

[insert name and address]

in favour of:

the Commonwealth of Australia represented by the Chief Executive Officer of the Department of Human Services ('Department')

## PURPOSE

- 1 The Department and XXXXXX ('the **Vendor**') have entered into a contract pursuant to clause 5.4 of the Standing Offer Terms by signing a Work Order dated XXXXX for the provision of certain Services ('**Contract**').
- 2 I will be engaged directly or indirectly by the Vendor in connection with the performance of the Contract.
- 3 In the course of performing a Work Order made under the Contract, I may have access to the Department's Confidential Information.
- 4 Improper use or disclosure of the Department's Confidential Information may damage the Department and impair its ability to perform its functions.
- 5 The Department therefore requires me to execute this Deed to ensure that the Confidential Information is protected by me.

## OPERATIVE PART

### 1. Definitions

In this Deed, unless the contrary intention appears:

- (a) 'Confidential Information' means in respect of the Department's confidential information, any information that is by its nature confidential: and:
  - (i) is designated by the Department as confidential in the Work Order; or
  - (ii) I know or ought to know is confidential; but does not include information which:
  - (iii) is or becomes public knowledge other than by breach of this Deed;
  - (iv) is in my possession without restriction in relation to disclosure before the date of receipt from the Department; or
  - (v) has been independently developed or acquired by me

- (b) 'Intellectual Property Rights' means all intellectual property rights, including but not limited to, the following rights:
  - (i) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks), domain names and any right to have confidential information kept confidential;
  - (ii) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
  - (iii) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.
- (c) 'Services' means the services to be performed by me under a Work Order.
- (d) 'Standing Offer Terms' means the standing offer terms in the Deed of Standing Offer for ICT Contractor Services dated xxxx xxxx 2012.
- (e) 'Work Order' means an order placed by the Department with the Vendor in accordance with the Contract.

## 2. Interpretation

In this Deed, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing persons include a partnership and a body whether corporate or otherwise; and
- (e) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

## 3. Non-disclosure

- (a) I have been notified, in writing, of all Confidential Information described in the Work Order.
- (b) I will treat as secret and confidential all Confidential Information to which I have access or which is disclosed to me.
- (c) I will not disclose any Confidential Information to any person without the prior written consent of Department.
- (d) If the Department grants its consent for me to disclose Confidential Information, it may impose conditions on that consent. In particular, the Department may require that I obtain the execution of a Deed in these terms by the person to whom I propose to disclose the Confidential Information.
- (e) My obligations under this Deed will not be taken to have been breached where I am legally required to disclose the Confidential Information.

#### 4. Restriction on use

- (a) I will use the Confidential Information only for the purpose of my duties in respect of performance of the Vendor's obligations under the Contract.
- (b) I will not copy or record the Confidential Information without the approval of the Department.
- (c) Subject to clause 3(c), I will not allow any other person other than the Department access to the Confidential Information.
- (d) I will take all necessary precautions to prevent accidental disclosure or, unauthorised access to or copying of the Confidential Information in my control.
- (e) Despite clause 3(e), if I am required or anticipate or have cause to anticipate that I may be required by law, to disclose Confidential Information, I must immediately notify the Department of the actual or anticipated requirement and use my best endeavours (without breach of applicable law) to delay and withhold disclosure until the Department has had a reasonable opportunity to oppose disclosure by lawful means.

#### 5. Powers of the Department

- (a) Immediately upon request by the Department, I must deliver to the Department all documents in my possession or control containing Confidential Information.
- (b) If at the time of such a request I am aware that documents containing Confidential Information are beyond my possession or control, then I must provide full details of the location of the documents and the identity of the person who has control of them.

#### 6. Acknowledgment

- (a) I acknowledge that any breach by me of this Deed may damage the Department and impair its ability to perform its functions.
- (b) Without limiting anything contained in this Deed, I acknowledge that my attention has been drawn to the following legislative provisions which may have application to my handling of Confidential Information:
  - (i) sections 70 and 79 of the *Crimes Act 1914* (Cth);
  - (ii) Part 10.7 of the *Criminal Code Act 1995* (Cth);
  - (iii) section 12ZU and sections 350 to 359 inclusive of the *Student Assistance Act 1973* (Cth);
  - (iv) sections 202 to 206 inclusive of the *Social Security (Administration) Act 1999* (Cth);
  - (v) sections 162 to 166 inclusive of the *A New Tax System (Family Assistance) Act* (Cth); and
  - (vi) the *Privacy Act 1988* (Cth).

## 7. Release in relation to Intellectual Property Rights

- (a) I make no claim to Intellectual Property Rights in any material developed for the Department under the Work Order, and I acknowledge that such Intellectual Property Rights are dealt with, as between the Department and the Vendor, as provided under the Contract.
- (b) I agree to join in and execute any further instrument which may be necessary to give effect to this clause 7.

## 8. Consent in relation to Moral Rights

- (a) In this clause 8 'Moral Rights' includes the following rights of an author of copyright material:
  - (i) the right of attribution of authorship;
  - (ii) the right of integrity of authorship; and
  - (iii) the right not to have authorship falsely attributed.
- (b) In this clause 8 'Specified Acts' in relation to any copyright material, means the following classes or types of acts or omissions:
- (c) those which would, but for this clause, infringe the author's right of attribution of authorship; and
- (d) those which would, but for this clause, infringe the author's right of integrity of authorship, but does not include:
- (e) those which would infringe the author's right not to have authorship falsely attributed.
- (f) I hereby consent to the Specified Acts (whether occurring before or after this consent is given) in relation to any copyright material developed under the Contract of which I am the author.

## 9. Declaration as to Conflict of Interest

- (a) In this clause 9, 'Conflict of Interest' means any circumstances in which the interests or personal circumstances of myself could influence, or could appear to influence my performance of duties or functions assigned to me under a Work Order in a manner detrimental to the Department.
- (b) I warrant that, to the best of my knowledge after making diligent inquiry, at the date of this Deed no Conflict of Interest exists or is likely to arise in the performance of the Services.
- (c) If, during the period of the Contract a Conflict of Interest arises, or appears likely to arise, I must:
  - (i) notify the Department immediately;
  - (ii) make full disclosure of all relevant information relating to the Conflict of Interest; and
  - (iii) to take any steps the Department reasonably requires to resolve or otherwise deal with the Conflict or Interest.

## 10. Conduct on Department Premises

- (a) When using the Department's premises I will comply with all reasonable directions of the Department, including but not limited to documented procedures relating to work health, safety and security in effect at those premises. This obligation extends to all procedures which are notified to me by the Department or which might reasonably be inferred by me in the circumstances.
- (b) In addition to the requirements in the preceding paragraph I agree that when working on the Department's premises I will comply with all applicable Commonwealth, State and local government laws, regulations and procedures relating to work health and safety in connection with the performance of the my duties in respect of the Contract.

## 11. Notices

- (a) A notice, request or other communication will be deemed to have been received by me if it is in writing, marked to my attention and delivered or posted to my address for notices set out in clause 11(c) below.
- (b) A notice is deemed effective:
  - (i) if delivered by hand, upon delivery;
  - (ii) if posted by pre paid ordinary post within Australia, upon the expiration of two business days following the date upon which it was posted; and
  - (iii) if transmitted electronically or by facsimile, on receipt by the sender of an electronic or facsimile acknowledgement that the entire Notice has been properly transmitted to the recipient.
- (c) My address for notices is set out below:

<b>Physical address:</b>	
<b>Postal address:</b>	
<b>Fax number:</b>	
<b>E-mail address:</b>	

## 12. Miscellaneous

- (a) This Deed records the entire agreement between the parties in relation to its subject matter.
- (b) No variation of this Deed is binding unless it is agreed in writing between the parties.
- (c) Any reading down or severance of a particular provision of this Deed does not affect the other provisions of this Deed.
- (d) No failure by the Department to exercise, or delay by the Department in exercising, any right in respect of this Deed operates as a waiver of that right.
- (e) A single or partial exercise by the Department of any right in respect of this Deed does not prevent the further exercise of that right or of any other right in respect of this Deed.

## 13. Survival

- (a) The provisions of this Deed (other than clause 9) shall survive the expiration or earlier termination of the Contract.

## 14. Applicable law

This Deed will be governed in accordance with the law in the Australian Capital Territory.

**Executed** as a Deed.

**Signed sealed and delivered** by **[name of signatory]** in the presence of<sup>1</sup>

\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Signature of signatory



\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Date

1. Note - the Deed must be witnessed: see *Civil Law (Property) Act 2006*(ACT) – s219(1)(b)).

# Schedule 5 – Request for Quotation

This Request for Quotation (including its attachments) is issued by the Department in accordance with clause 5 of the Deed of Standing Offer for the provision of ICT Contractor Services, executed between the Department and the Vendor on or about [insert date] (the Deed). Quotations, in the form of Schedule 6 to the Deed, must be sent via email to [IT.CONTRACT.STAFF@humanservices.gov.au](mailto:IT.CONTRACT.STAFF@humanservices.gov.au).

<b>RFQ number</b>	[insert RFQ number]
<b>RFQ closing date</b> <i>[Note to Panel Members: responses must be received by this date to be considered]</i>	[insert closing date of RFQ]
<b>Vendor</b>	[insert Vendor name]
<b>Vendor Representative</b>	[insert name and contact details]
<b>Department contact details for RFQ</b>	[insert name and contact details]

## Department requirements for this RFQ

Item number	Description	Details
1.	<b>Proposed Work Order Start Date</b>	[dd/mm/yy]
2.	<b>Proposed Initial Contract Period</b>	[Department to insert start date of Initial Contract Period e.g. dd/mm/yy] to [insert end date of Initial Contract Period e.g. dd/mm/yy]
3.	<b>Contract Option Period</b>	[Department to insert Contract Option Period eg, 2 periods each being 1 year in duration, including the start dates and end dates for each Contract Option Period (from dd/mm/yy to dd/mm/yy). Otherwise insert 'not applicable']
4.	<b>ICT Service Category</b>	[insert (e.g. applications development)]
5.	<b>Personnel Category (Skill set)</b>	[insert (e.g. software and middleware developers)]
6.	<b>Number of Specified Personnel required</b>	[insert number of Specified Personnel required]
7.	<b>Reduced activity period</b>	[Department to insert period(s) of reduced activity. For example, the Christmas / New Year holiday period.]
8.	<b>Business Hours</b>	[if Business Hours differ from those specified in the definition in clause 1.1 of the Terms and Conditions of Contract, specify alternative hours here. Otherwise insert 'not applicable']



Item number	Description	Details						
9.	Replacing Specified Personnel	<p data-bbox="655 264 1374 338"><i>[Department to specify whether the right to claim liquidated damages for replacing Specified Personnel will apply.]</i></p> <p data-bbox="655 360 1401 434"><input type="checkbox"/> Clause 11.6 of the Terms and Conditions of Contract will apply</p> <p data-bbox="655 450 1445 524"><input type="checkbox"/> Clause 11.6 of the Terms and Conditions of Contract <b>will not</b> apply</p> <p data-bbox="655 539 1422 651"><i>[If clause 11.6 will apply, the Department is to specify the particular Personnel Categories to which clause 11.6 will apply and the period for which clause 11.6 will apply.]</i></p> <table border="1" data-bbox="655 663 1193 1055"> <thead> <tr> <th data-bbox="655 663 930 842">Personnel Category of Specified Personnel</th> <th data-bbox="930 663 1193 842">Period</th> </tr> </thead> <tbody> <tr> <td data-bbox="655 842 930 987"><i>[e.g. Solution Architect]</i></td> <td data-bbox="930 842 1193 987"><i>[the first six months of the Contract Period]</i></td> </tr> <tr> <td data-bbox="655 987 930 1055"></td> <td data-bbox="930 987 1193 1055"></td> </tr> </tbody> </table>	Personnel Category of Specified Personnel	Period	<i>[e.g. Solution Architect]</i>	<i>[the first six months of the Contract Period]</i>		
Personnel Category of Specified Personnel	Period							
<i>[e.g. Solution Architect]</i>	<i>[the first six months of the Contract Period]</i>							
10.	Maximum no. of candidates	<i>[Identify the maximum number of candidates – if no number is specified, no more than three]</i>						
11.	Services/work required	<i>[insert details of the Services/work required to be performed (attach additional pages if required)]</i>						
12.	Indigenous Opportunities Policy	<p data-bbox="655 1274 1445 1379"><i>[Department to specify whether the Indigenous Opportunities Policy will apply. The Indigenous Opportunities Policy will apply if:</i></p> <p data-bbox="655 1402 1433 1469"><i>(a) the contract is valued at over \$5 million (GST inclusive); and</i></p> <p data-bbox="655 1491 1374 1559"><i>(b) the Services take place in a region or regions with a significant Indigenous population.</i></p> <p data-bbox="655 1581 1422 1648"><i>Information about significant Indigenous populations in regions can be accessed at</i></p> <p data-bbox="655 1659 1445 1727"><a href="http://www.deewr.gov.au/Indigenous/Employment/Pages/significantpopulationregions.aspx">http://www.deewr.gov.au/Indigenous/Employment/Pages/significantpopulationregions.aspx</a>.</p> <p data-bbox="655 1749 1433 1816"><i>Further information on the policy generally can be accessed at:</i></p> <p data-bbox="655 1827 1433 1895"><a href="http://www.deewr.gov.au/Indigenous/Employment/Documents/IOPGuidelines.pdf">http://www.deewr.gov.au/Indigenous/Employment/Documents/IOPGuidelines.pdf</a>.]</p> <p data-bbox="655 1917 1374 1984"><input type="checkbox"/> Clause 24 of the Terms and Conditions of Contract will apply</p> <p data-bbox="655 1995 1422 2063"><input type="checkbox"/> Clause 24 of the Terms and Conditions of Contract <b>will not</b> apply</p>						

Item number	Description	Details
13.	Methodology	
14.	Performance	
15.	Documentation	
16.	Skills knowledge transfer	
17.	<p><b>Selection criteria</b></p> <p>Please note the importance of responding to this Selection Criteria.</p> <p>Mandatory Criteria must be met to progress in the evaluation, where the Weighted Criteria is scored</p>	<p><i>[include selection criteria, including details of any mandatory/weighted qualifications and experience]</i></p> <p><b>Mandatory Criteria:</b></p> <p><b>Weighted Criteria</b></p>
18.	<p><b>Intellectual Property Rights – ownership of Contract Material</b></p>	<p>The Department owns the Intellectual Property Rights in Contract Material unless Vendor ownership of Intellectual Property Rights in Contract Material (clause 13.5) is selected below.</p> <p><input type="checkbox"/> Clause 13.5 of the Terms and Conditions of Contract (Vendor ownership of Intellectual Property Rights in Contract Material) is to apply</p>
19.	<p><b>Limitation of liability – cap</b></p>	<p><i>[Department to specify the amount to which liability is to be limited under the Work Order]</i></p> <p>Department will consider a liability cap at either;</p> <p>\$ <input type="checkbox"/> [insert] per occurrence</p> <p>or</p> <p>\$ <input type="checkbox"/> [insert] in the aggregate</p>
20.	<p><b>Insurance</b></p>	<p><i>[Department to specify if it requires higher insurance amounts than those set out in item 10 of the Deed Details]</i></p>
21.	<p><b>Fee structure</b></p>	<p><i>[insert details (e.g. hourly rates on a GST exclusive basis)]</i></p> <p><i>[If the Department wishes to allow Vendors to propose alternative fee structures include the following 'Vendors may propose an alternative fee structure in their response to this RFQ as an additional proposal']</i></p>
22.	<p><b>Other requirements</b></p> <p><b>E.g Location</b></p>	<p><i>[insert any other requirements]</i></p>

# Schedule 6 – Standard form of quotation

Quotation	
<p>1) <b>[insert name of Vendor]</b> submits a Quotation in accordance with the Deed entered into between the Department and the Vendor dated <b>[insert date]</b> to supply the Services specified in RFQ no. <b>[insert]</b>. The Vendor confirms that the terms and conditions specified in the Terms and Conditions of Contract and the Department's RFQ will apply in the event that this Quotation is accepted by the Department.</p> <p>2) This Quotation will remain valid for a period of 30 days from the date of submission.</p> <p>3) The Vendor acknowledges that no binding contract (express or otherwise) is created between the Department and the Vendor until the parties execute a Work Order.</p>	
<b>Date and RFQ no.</b>	<b>[insert date and the Department's RFQ number]</b>
<b>Vendor account manager</b>	<b>[insert name and contact details]</b>
<b>Specified Personnel</b>	<b>[insert name(s) of each candidate on offer. Identify no more than the maximum number of candidates specified in the RFQ (or if no number is specified, no more than 3)]</b>
<b>Personnel Category (skill set)</b>	<b>[insert from Department's RFQ (eg ICT Infrastructure Management – software and middleware developers)]</b>
<b>Subcontractors</b>	<p><b>[insert names, ABNs and ACNs of any subcontractors that the Vendor proposes to use to perform the Services. Otherwise insert 'not applicable']</b></p> <p>Note: The Vendor must provide information about any proposed subcontractor as requested by the Department (ie this information may be requested after submission of the Quotation to assist in the Department's evaluation of the Quotation. To avoid doubt, this will include any independent contractors engaged by the Vendor.</p>
<b>Reduced activity period</b>	<b>[insert response to the reduced activity period(s) specified by the Department in the RFQ.]</b>
<b>Business Hours</b>	<b>[insert response to the Business Hours specified by the Department in the RFQ]</b>
<b>Vendors must provide the information set out below for EACH CANDIDATE/SPECIFIED PERSONNEL offered under this Quotation:</b>	
<b>Name of candidate/Specified Personnel</b>	<b>[insert full name]</b>
<b>Responses to selection criteria specified in the RFQ</b>	<p><b>[insert responses to the selection criteria specified in the RFQ (eg If the criteria in the RFQ is designated as 'mandatory' and 'weighted' provide your response to each of the criteria as follows:)]</b></p> <p><u>Mandatory criteria</u></p> <p><b>[insert list and response to each of the criteria]</b></p>

	<p><u>Weighted criteria</u></p> <p><i>[insert list and response to each of the criteria]</i></p>
<b>Fee structure</b>	<p><i>[include details of the fee structure required in the RFQ (e.g. hourly rates on a GST exclusive basis)]</i></p> <p>Note: The rates specified here must not exceed the Capped Rates.</p>
<b>Curriculum Vitae</b>	<i>[attach CVs]</i>
<b>Referees</b>	<i>[insert contact details for at least 2 professional referees]</i>
<b>Other requirements</b>	<i>[insert response to items listed under 'Other requirements' of the RFQ]</i>

# Schedule 7 – Work Order

**Work Order number – [insert]**

**[insert name of Vendor]** has offered under clause 5.1 of the Deed specified at item 1 below to provide the Services to the Department. The Department accepts this offer on the terms and conditions set out in the Deed and in this Work Order and issues this Work Order in accordance with clause 5.4 of the Deed. Subject to clause 5.6 of the Deed, if there is an inconsistency between this Work Order and any other provisions of the Deed, the Deed will prevail to the extent of any inconsistency.

<b>Vendor</b>	[insert Vendor name]
<b>Department Representative (clause 1.1)</b>	[insert name and contact details]
<b>Vendor Representative (clause 1.1)</b>	[insert name and contact details]

<b>Item number</b>	<b>Description</b>	<b>Terms and Conditions of Contract clause reference</b>	<b>Details</b>
1.	<b>Deed No. and description</b>	1.1	[insert deed number, date and description]
2.	<b>Services Start Date</b>	1.1 and 2.1	[insert date e.g. dd/mm/yy]
3.	<b>Initial Contract Period</b>	1.1 and 2.1	[insert the start date of Initial Contract Period e.g. dd/mm/yy] to [insert end date of Initial Contract Period e.g. dd/mm/yy]
4.	<b>Contract Option Period</b>	2.2	[insert Contract Option Period eg, 2 periods each being 1 year in duration, including the start dates and end dates for each Contract Option Period (from dd/mm/yy to dd/mm/yy). Otherwise insert 'not applicable']
5.	<b>Purpose of Services</b>	4.2(e)	[insert a brief summary of the a. Department's business requirements relevant to the provision of the Services; and b. purpose of procuring the Services]
6.	<b>Services</b>	1.1 and 4	[insert details of the Services/work required to be performed (attach additional pages if required), including the Service Category]

Item number	Description	Terms and Conditions of Contract clause reference	Details						
7.	Reduced activity period	a.	[Department to insert period(s) of reduced activity. For example, the Christmas / New Year holiday period.]						
8.	Business Hours	1.1	[if Business Hours differ from those specified in the definition, specify alternative hours here. Otherwise insert 'not applicable']						
9.	Department requirements	4.1(g)	[insert particular requirements with which the Vendor must comply]						
10.	Documentation	5	[insert details of Documentation to be provided by the Vendor. Otherwise insert 'not applicable']						
11.	Training	6	[insert details of training courses, seminars and conferences that the Specified Personnel are required to attend. Otherwise insert 'not applicable']						
12.	Performance meetings	9.1	[insert frequency and manner of performance meetings. Otherwise insert 'not applicable']						
13.	Reporting	9.2	[insert a description of reports to be prepared by the Vendor (e.g. to assist the Department monitor the Vendor's performance. Otherwise insert 'not applicable']						
14.	Personnel Category/ Specified Personnel	1.1 and 11	<p>[insert names and Personnel Category for each Specified Personnel]</p> <table border="1" data-bbox="887 1402 1385 1615"> <thead> <tr> <th data-bbox="887 1402 1098 1458">Name</th> <th data-bbox="1098 1402 1385 1458">Personnel Category</th> </tr> </thead> <tbody> <tr> <td data-bbox="887 1458 1098 1559">[e.g. John Smith]</td> <td data-bbox="1098 1458 1385 1559">[System analyst]</td> </tr> <tr> <td data-bbox="887 1559 1098 1615"></td> <td data-bbox="1098 1559 1385 1615"></td> </tr> </tbody> </table>	Name	Personnel Category	[e.g. John Smith]	[System analyst]		
Name	Personnel Category								
[e.g. John Smith]	[System analyst]								
15.	Replacing Specified Personnel	11.6	<p>[Department to specify whether the right to claim liquidated damages for replacing Specified Personnel applies.]</p> <p><input type="checkbox"/> Clause 11.6 applies</p> <p><input type="checkbox"/> Clause 11.6 <b>does not</b> apply</p> <p>[If clause 11.6 does apply, the Department is to specify the Specified Personnel to which clause 11.6 applies and the period for which clause 11.6 applies.]</p>						

Item number	Description	Terms and Conditions of Contract clause reference	Details	
			<b>Name and Personnel Category of Specified Personnel</b>	<b>Period</b>
			[e.g. Joe Bloggs, Solution Architect]	[the first six months of the Contract Period]
16.	Subcontractors	4.6	[insert names and ABNs of any subcontractors. To avoid doubt, this will include any independent contractors engaged by the Vendor. Otherwise insert 'not applicable']	
17.	Department Material	1.1 and 12	[insert specific Material to be provided to the Vendor by the Department (if any) and any restrictions on the use of the Material. Otherwise insert 'not applicable']	
18.	Department Pre-existing Material	1.1 and 13	[insert a description of any specific Department Pre-existing Material. Otherwise insert 'not applicable']	
19.	Vendor Pre-existing Material	1.1 and 13	[insert a description of any specific Vendor Pre-existing Material. Otherwise insert 'not applicable']	
20.	Intellectual Property Rights – ownership of Contract Material	13.3	<p>The Department owns the Intellectual Property Rights in Contract Material unless Vendor ownership of Intellectual Property Rights in Contract Material (clause 13.5) is selected below.</p> <input type="checkbox"/> Clause 13.5 (Vendor ownership of Intellectual Property Rights in Contract Material) is to apply.	
21.	Payment – Service Charges	15.9	As set out in Attachment A to the Work Order.	
22.	Limitation of liability – cap	18.2(a)	[specify the amount to which liability is to be limited under the Work Order]  <input type="checkbox"/> \$[insert] per occurrence  or	

Item number	Description	Terms and Conditions of Contract clause reference	Details												
			<input type="checkbox"/> \$[insert] in the aggregate												
23.	Insurance	19	<i>[specify if the Vendor is required to provide additional or higher levels of insurance than those set out in item 10 of the Deed Details. Otherwise insert 'not applicable']</i>												
24.	Confidential Information	1.1 and 20	Department Confidential Information: <table border="1" data-bbox="885 640 1327 887"> <thead> <tr> <th>Item</th> <th>Period of confidentiality</th> </tr> </thead> <tbody> <tr> <td>Department Data</td> <td>Perpetual</td> </tr> <tr> <td></td> <td></td> </tr> </tbody> </table> Vendor Confidential Information: <table border="1" data-bbox="885 943 1327 1189"> <thead> <tr> <th>Item</th> <th>Period of confidentiality</th> </tr> </thead> <tbody> <tr> <td><i>[insert relevant items]</i></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> </tbody> </table>	Item	Period of confidentiality	Department Data	Perpetual			Item	Period of confidentiality	<i>[insert relevant items]</i>			
Item	Period of confidentiality														
Department Data	Perpetual														
Item	Period of confidentiality														
<i>[insert relevant items]</i>															
25.	Indigenous Opportunities Policy	24	<i>[Department to specify whether the Indigenous Opportunities Policy will apply. The Indigenous Opportunities Policy will apply if:</i> <p>(a) <i>the contract is valued at over \$5 million (GST inclusive); and</i></p> <p>(b) <i>the Services take place in a region or regions with a significant Indigenous population.</i></p> <p><i>Information about significant Indigenous populations in regions can be accessed at <a href="http://www.deewr.gov.au/Indigenous/Employment/Pages/significantpopulationregions.aspx">http://www.deewr.gov.au/Indigenous/Employment/Pages/significantpopulationregions.aspx</a>.</i></p> <p><i>Further information on the policy generally can be accessed at: <a href="http://www.deewr.gov.au/Indigenous/Employment/Documents/IOPGuidelines.pdf">http://www.deewr.gov.au/Indigenous/Employment/Documents/IOPGuidelines.pdf</a>.]</i></p> <input type="checkbox"/> Clause 24 applies <input type="checkbox"/> Clause 24 <b>does not</b> apply												



Item number	Description	Terms and Conditions of Contract clause reference	Details
26.	Security requirements, security clearances and police checks	27.1 and 27.2	<p><i>[insert details of:</i></p> <p>a. <i>any security requirements additional to those set out in clause 27;</i></p> <p>b. <i>security clearances to be held by Vendor Personnel; and</i></p> <p>c. <i>police checks (if required).]</i></p>
27.	Address for invoices	Section 2.2 of Schedule 3	<p><i>[insert name and position of person to receive invoices]</i></p> <p><i>[insert postal address]</i></p> <p><i>[insert physical address]</i></p> <p>or by email to: <i>[insert email address if used, otherwise insert 'not applicable']</i></p>
28.	Notices	36	<p><b>Department:</b>  Assistant Director  ICT Contract Services  PO Box 7788  Canberra BC  CANBERRA ACT 2610</p> <p>Level 1 Millar Building  134 Reed Street  GREENWAY ACT 2900</p> <p>Facsimile: (02) 6124 6006</p> <p>Email address: <i>[insert email address]</i></p> <p><b>Vendor:</b>  <i>[insert name and position of person to receive Notices]</i></p> <p><i>[insert postal address]</i></p> <p><i>[insert physical address]</i></p> <p><i>[insert facsimile number]</i></p> <p><i>[insert email address]</i></p>

**Department of Human Services' representative**

Name (print)	
Position	

Signature	
Date	

***Vendor's representative***

Name (print)	
Position	
Signature	
Date	

# Attachment A to the Work Order – Service Charges

## 1. Payment structure

*Note 1: Payments will be structured on the basis set out below*

*Note 2: All amounts are GST exclusive*

**[Department to insert details of all relevant charges, costs or fees for the performance of the Services in this Attachment.]**

**Hourly rates:** time and materials payments will be based on monthly payments of amounts based on rates which do not exceed the Capped Rates x work effort.

## 2. Hourly rates

*Note: Add hourly rates for each person.*

*Note: The following paragraph will be completed for each Vendor Personnel.*

Date (from – to)	Personnel	Hourly rate (exclusive of GST)	GST component	Maximum Work Effort (Hours)	Service Charges (exclusive of GST)	GST component
<b>Sub total</b>						
<b>Add GST</b>						
<b>TOTAL</b>						

## 3. Expenses

- (a) Subject to (b) below, the Department will not pay any travel, accommodation or other fees, charges or expenses unless they have been pre-approved in writing by the Department and do not exceed \$[insert] (exclusive of GST) in total.
- (b) The Vendor will be reimbursed for the travel and related accommodation at non-SES rates where they are pre-approved in writing by the Department. The Vendor must submit an invoice for those expenses and the Department will reimburse the Vendor in accordance with the invoicing procedures set out in Schedule 3 to the Deed.

Where applicable, Specified Personnel must comply with the Department's travel policies and procedures.



# Schedule 9 – Instrument of Acceptance

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**INSTRUMENT OF ACCEPTANCE** in respect to the irrevocable offer to supply Services to another Agency pursuant to

**The Deed of Standing Offer for the Provision of ICT Contractor Services between the Department and [insert name of Vendor].**

To:

[insert name of Vendor]

[Insert Vendor's address for notices under the Deed]

The offer to [insert name of Agency] to provide the Services under clause 6.1(a) of the Deed is accepted.

In accordance with clause 6.1(c) of the Deed the following modifications to the terms and conditions of the Deed apply to adapt it to the circumstances of [insert name of Agency].

*Note: The format of this Schedule is provided as an example only and may be amended to address particular Agency requirements.*

## **1 REFERENCES TO DEPARTMENT**

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1.1 A reference to Department is to be taken as a reference to the:

- (a) Commonwealth of Australia represented by [insert name of Agency]; or
- (b) [insert name of Agency],

as the case requires.

## **2 AMENDMENT OF SCHEDULE 1 (DEED DETAILS)**

---

### **Agency details**

2.1 The contents of the fourth column of item 1 in the Deed Details are deleted and replaced with:

[Insert name of Agency]

[Insert address of Agency]

[Insert ABN of Agency]

### **Specification of Agency Representative**

2.2 The contents of the fourth column of item 3 in the Deed Details is replaced with '[insert name of Agency Representative]'.

### **Specification of Commencement Date**

2.3 The fourth column of item 5 in the Deed Details is replaced with '[insert commencement date]'.

**Address for Notices**

2.4 The contents of the fourth column of item 12 in the Deed Details with respect to the Department are deleted and replaced with:

[Insert name of and position of person to receive Notices]

[Insert postal address of Agency]

[Insert physical address of Agency]

[Insert facsimile number]

**Specification of Address for Invoices**

2.5 The contents of clause 2.2 of Schedule 3 (below the words 'Invoices should be submitted to:') is replaced with the following:

[Insert position and name of the Agency representative]

[Insert postal address]

**3 SERVICE REQUIREMENTS**

---

3.1 [Additional requirements should be inserted here or attached]

Dated.....20

[insert Agency's signature block]

[Select one of the following execution clauses. Where the Vendor is a company, select the first execution block below, otherwise, select the second option.]

**Executed by [insert name of Vendor] 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

Signed by **[insert name of Vendor]** in the presence of

\_\_\_\_\_  
Signature of witness



\_\_\_\_\_  
Signature of Vendor



\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Date

# Schedule 10 – Terms and Conditions of Contract

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## 1. Definitions and interpretation

### 1.1 Definitions

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

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<b>Accounting Standards</b>	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.
<b>Advisers</b>	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
<b>Agency</b>	(a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation (including a local authority); (b) a body established by the Governor-General or by a Minister of State of the Commonwealth including departments; or (c) an incorporated company over which the Commonwealth exercises control.
<b>Business Day</b>	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.
<b>Business Hours</b>	from 9.00am to 5.00pm on a Business Day, unless specified otherwise in the Work Order.
<b>Change Order</b>	the form set out in Schedule 8 to the Deed.
<b>Change in Control</b>	in relation to a body corporate, where the power (whether formal or informal, whether or not having legal or equitable force, whether or not based on legal or equitable rights and whether direct or indirect, including through one or more entities): (a) to control more than half of the voting power of the body; (b) to control the composition of the board of directors of the body; or (c) to control more than half of the issued share capital of the body excluding any part of it which carries no right to participate beyond a specified amount in the distribution of either profit or capital,  resides with persons other than those holding that power on the

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	Services Start Date.
<b>Commonwealth</b>	the Commonwealth of Australia.
<b>Confidential Information</b>	information that is by its nature confidential and: <ul style="list-style-type: none"> <li>(a) is described in item 24 of the Work Order; or</li> <li>(b) a party knows or ought to know is confidential,</li> </ul> but does not include: <ul style="list-style-type: none"> <li>(c) information that is or becomes public knowledge otherwise than by breach of this Contract or any other confidentiality obligation.</li> </ul>
<b>Contract</b>	this agreement between the Department and the Vendor, as varied from time to time in accordance with clause 37.2.
<b>Contract Material</b>	any Material created by the Vendor on or following the Services Start 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 13.7(b).
<b>Contract Period</b>	the Initial Contract Period plus any extension in accordance with clause 2.2.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Covered Workers</b>	Personnel of the Vendor who are workers (within the meaning of the WHS Act): <ul style="list-style-type: none"> <li>(a) engaged, or caused to be engaged by the Department; or</li> <li>(b) whose activities in carrying out work are influenced or directed by the Department,</li> </ul> while at work (wherever occurring) in the Department's business or undertaking.
<b>Deed</b>	the deed of standing offer between the Department and the Vendor specified in item 1 of the Work Order.
<b>Deliverable</b>	any Contract Material or other item or element of a Service to be provided by the Vendor under this Contract.
<b>Department</b>	the Department of Human Services and includes, as the context requires, its Personnel.
<b>Department Data</b>	any data and information relating to or concerning the Department, and its operations, facilities, customers, Personnel, assets and programs (including personal information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Department.
<b>Department Material</b>	any Material provided to the Vendor by the Department, including the Material (if any) specified in item 17 of the Work Order.

<b>Department Policies</b>	the Department's policies and procedures as notified by the Department to the Vendor from time to time.
<b>Department Representative</b>	the person identified in the Work Order or, if no person is identified in the Work Order, in item 3 of Schedule 1 to the Deed.
<b>Documentation</b>	the documentation specified in the Work Order and any other documentation created by the Vendor under this Contract.
<b>Fair Work Principles</b>	the principles referred to as such in the media release issued by the Minister for Employment and Workplace Relations on 31 July 2009.
<b>Fair Work Principles User Guide</b>	the guide of that name issued by the Minister for Employment and Workplace Relations (available at <a href="http://www.deewr.gov.au/fairworkprinciples">www.deewr.gov.au/fairworkprinciples</a> ).
<b>Government Authority</b>	any international, federal, state or local government, semi-government, quasi-government or other department, body or authority (statutory or otherwise).
<b>Harmful Code</b>	any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of any software.
<b>Indigenous Opportunities Policy</b>	the policy published by the Department of Education, Employment and Workplace Relations which can be accessed at <a href="http://www.deewr.gov.au/Indigenous/Employment/Pages/IndigOpportunitiesPolicy.aspx#iop">http://www.deewr.gov.au/Indigenous/Employment/Pages/IndigOpportunitiesPolicy.aspx#iop</a> .
<b>Indigenous Opportunities Policy Guidelines</b>	the guide of that name issued by the Department of Education, Employment and Workplace Relations and available at <a href="http://www.deewr.gov.au/Indigenous/Employment/Documents/IOPGuidelines.pdf">http://www.deewr.gov.au/Indigenous/Employment/Documents/IOPGuidelines.pdf</a> .
<b>Initial Contract Period</b>	the period of time for which this Contract is intended to continue, as specified in item 3 of the Work Order.
<b>Insolvency Event</b>	in respect of the Vendor: <ul style="list-style-type: none"> <li>(a) the Vendor or any party having or exercising control over the Vendor becomes an externally-administered body corporate for the purposes of the <i>Corporations Act 2001</i> (Cth) or an external insolvency administrator is appointed to any such party under the provisions of any companies or securities legislation of another jurisdiction;</li> <li>(b) a controller (as that term is defined in the <i>Corporations Act 2001</i> (Cth)) or mortgagee in possession is appointed to the assets of the Vendor or any party having or exercising control over the Vendor, or such appointment is reasonably likely;</li> <li>(c) the Vendor or any party having or exercising control over the Vendor, fails to comply with a statutory demand in the manner specified in section 459F of the <i>Corporations Act 2001</i> (Cth), and has not made an application to set aside such demand under section 459G of the <i>Corporations Act 2001</i> (Cth);</li> </ul>

	<p>(d) if the Vendor is an unincorporated entity or trust:</p> <p>(i) an event of the kind referred to in paragraphs (a), (b) or (c) occurs in respect of any of the partners, joint venturers or proprietors of such entity; or</p> <p>(ii) a trustee in bankruptcy (or comparable person) is appointed to the assets and affairs of any of the partners, joint venturers or proprietors of such entity, or any of those partners, joint venturers or proprietors enter into an arrangement or composition with its or their creditors for the payment of their debts; or</p> <p>(e) the Vendor is unable to pay its debts as and when they fall due.</p>
<b>Intellectual Property Rights</b>	<p>all intellectual property rights, including, the following rights:</p> <p>(a) copyright, patents, rights in circuit layouts, trade marks, designs, trade secrets, know how, domain names and any right to have confidential information kept confidential;</p> <p>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</p> <p>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered.</p>
<b>Law</b>	<p>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 Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.</p>
<b>LEADR</b>	<p>the dispute resolution association with that name and the Australian Business Number 69 008 651 232.</p>
<b>Legal Services Directions</b>	<p>the Commonwealth Attorney General's Legal Services Directions issued under section 55ZF of the <i>Judiciary Act 1903</i> (Cth), as amended or replaced from time to time.</p>
<b>Losses</b>	<p>liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis, whether incurred by or awarded against a party).</p>
<b>Material</b>	<p>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 category of Intellectual Property Rights.</p>
<b>Moral Rights</b>	<p>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).</p>

<b>Notice</b>	a notice, demand, consent, approval or communication issued under this Contract.
<b>Personnel</b>	in relation to a party, any employee, officer, agent, or professional adviser of that party, and in the case of the Vendor, of any subcontractor.
<b>Pre-existing Material</b>	any Material, other than Contract Material, which is made available by a party for the purpose of this Contract, on or following the Services Start Date, and includes: <ul style="list-style-type: none"> <li>(a) error corrections or translations to that Material;</li> <li>(b) modifications or derivatives of that Material where such modification or derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material; and</li> <li>(c) Material specified in item 18 and item 19 of the Work Order.</li> </ul>
<b>Protective Security Policy Framework</b>	the <i>Australian Government Protective Security Policy Framework 2011</i> , as amended or replaced from time to time.
<b>Schedule</b>	a schedule to the Deed.
<b>Service Charges</b>	the charges payable to the Vendor in accordance with clause 15.
<b>Services</b>	the services to be provided by the Vendor, as specified in item 6 of the Work Order and includes the provision of the Deliverables.
<b>Services Start Date</b>	the date specified in item 2 of the Work Order.
<b>Specified Personnel</b>	the Vendor's subcontractors and Personnel specified in item 14 of the Work Order, as replaced (temporarily or permanently) from time to time.
<b>Third Party Material</b>	Material owned by a third party that is: <ul style="list-style-type: none"> <li>(a) included, embodied in or attached to the Contract Material; or</li> <li>(b) used as part of the performance of the Services.</li> </ul>
<b>Vendor</b>	the party specified in the Work Order and includes its subcontractors and Personnel.
<b>Vendor Representative</b>	the person identified in the Work Order or, if no person is identified in the Work Order, in item 4 of Schedule 1 to the Deed.
<b>Warranted Materials</b>	has the meaning given in clause 13.6(a).
<b>WHS Act</b>	the <i>Work Health and Safety Act 2011</i> (Cth) and any corresponding WHS law as defined in that Act.
<b>WHS Laws</b>	the WHS Act and regulations made under the WHS Act.
<b>Work Order</b>	the order for the Services executed by the parties in accordance with clause 5 of the Deed.

## 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 or paragraph is to a clause or paragraph of this Schedule 10;
- (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) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) 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;
- (l) 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;
- (m) 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;
- (n) if a day on or by which an obligation must be performed or an event must occur (other than Services) is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (o) headings are for ease of reference only and do not affect interpretation.

## 1.3 Completion of Work Order

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

## 2. Duration of Contract

### 2.1 Contract Period

This Contract begins on the Services Start Date and continues for the duration of the Contract Period unless terminated in accordance with clause 30.11 or 33.

## 2.2 Option to extend Contract Period

- (a) The Contract Period may be extended by the Department for further period(s), specified in item 4 of the Work Order (each a **Contract Option Period**), on the terms and conditions then in effect, by giving written notice to the Vendor. Such notice should be given at least 30 days before the end of the current Contract Period (**Contract Option Notice Period**).
- (b) Any extension in accordance with this clause 2.2 takes effect from the end of the then current Contract Period.

## 3. General obligations of the Vendor

The Vendor 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.

## 4. Provision of Services

### 4.1 Service obligations

The Vendor must supply the Services:

- (a) to the reasonable satisfaction of the Department Representative;
- (b) with due skill and care and to the best of the Vendor'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 relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines;
- (e) using the Specified Personnel (if any);
- (f) in accordance with all applicable Laws;
- (g) in accordance with any Department Policies and specific requirements set out in item 9 of the Work Order;
- (h) in accordance with any directions in relation to the Services given by the Department from time to time;
- (i) promptly and without delay;
- (j) in accordance with the same standards and obligations that are imposed on Department Personnel under the *Work Health and Safety Act 2011* (Cth);
- (k) so as to keep accurate and auditable records relating to the performance of the Services;  
and
- (l) otherwise in accordance with the provisions of this Contract.

### 4.2 Vendor warranties

The Vendor 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 Commonwealth legislation to perform the Services;
- (d) it and its subcontractors and Personnel, including its Specified Personnel, will act in a fit and proper manner while carrying out the Services;
- (e) the Services will be fit for the purpose as set out in the Work Order;
- (f) the Services will be complete, accurate and free from material faults;
- (g) any materials that the Vendor incorporated in the Services are free from defects in design, performance and workmanship;
- (h) 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;
- (i) it will not, nor will it suffer or permit any third party under its direction or control to negligently introduce into the Department's systems or any Deliverables any Harmful Code;
- (j) if any Harmful Code is introduced, it will use all reasonable efforts promptly to report that introduction to the Department and, where that Harmful Code is introduced as a result of a breach of clause 4.2(i), it will:
  - (i) take all necessary action to eliminate the Harmful Code; and
  - (ii) promptly, at its own cost, repair any harm or destruction caused by that Harmful Code; and
- (k) if the Vendor 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.

#### **4.3 Access to the Department's premises**

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

#### **4.4 Conduct at the Department's premises**

Without limiting clause 26, the Vendor must, if using or accessing the Department's premises or facilities, comply with all reasonable directions and procedures relating to work health and safety and security in operation at those premises or facilities whether specifically drawn to the attention of the Vendor or as might reasonably be inferred from the circumstances.

#### **4.5 Cultural diversity**

The Vendor should be aware of the Charter of Public Service in a Culturally Diverse Society. The Vendor 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.

#### **4.6 Subcontracting**

- (a) The Vendor must:
  - (i) not subcontract any aspect of the provision of the Services other than to those entities set out in item 16 of the Work Order without the prior written approval of the Department, which will not be unreasonably withheld;

- (ii) not, in any event, enter into a subcontract under this Contract with a subcontractor named by the Director of Equal Opportunity for Women in the Workplace in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the *Equal Opportunity for Women in the Workplace Act 1999* (Cth);
- (i) 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 22 and this clause 4.6(a)(i); and
- (iii) ensure that any subcontractor approved under this Contract complies with all applicable Laws and:
  - (A) clause 13 of the Deed (Insurance);
  - (B) clause 20 (Confidentiality);
  - (C) clause 21 (Protection of personal information);
  - (D) clause 24 (Conflict of interest);
  - (E) clause 27 (Security);
  - (F) clause 29 (Books and records);
  - (G) clause 30 (Audit and access);and
  - (H) clause 35 (Knowledge transfer).
- (b) The Vendor is fully responsible for the performance of the Services even if the Vendor subcontracts any aspect of the provision of the Services.
- (c) The Vendor:
  - (i) must on request by the Department provide the Department with the names of any of the Vendor's subcontractors;
  - (ii) agrees that the Department may disclose publicly the names of any of the Vendor's subcontractors; and
  - (iii) must ensure that any subcontractor agrees that the Department may disclose the subcontractor's name publicly.

## 5. Documentation

### 5.1 Provision of Documentation

The Vendor must give the Department the documentation specified in the Work Order in the format and at the times specified in the Work Order.

### 5.2 Documentation requirements

The Documentation must at all times:

- (a) fit for purpose;
- (b) adequately explain key terms and symbols; and
- (c) be in English.



## 6. Training

The Specified Personnel must attend training courses, seminars and conferences:

- (a) as specified in item 11 of the Work Order; and
- (b) as directed by the Department.

## 7. Varying the Services

### 7.1 Variations proposed by the Department

If the Department wants to vary the Services:

- (a) the Department must request the Vendor in writing setting out the proposed variations;
- (b) within 14 days after receiving the Department's request or within another period agreed by the parties, the Vendor must respond in writing to the Department specifying what impact those variations will have on:
  - (i) the Service Charges (see clause 7.3);
  - (ii) the Services or Deliverables, including any particular Deliverable;
  - (iii) the Vendor's ability to perform its obligations under this Contract; and
  - (iv) this Contract; and
- (c) within 14 days after receiving the Vendor's response, or within another period agreed by the parties, the Department must give the Vendor a written notice accepting or rejecting the response.

### 7.2 Variations proposed by Vendor

If the Vendor wants to vary the Services:

- (a) the Vendor must request the Department in writing setting out the proposed variations and specifying what impact those variations will have on:
  - (i) the Service Charges (see clause 7.3);
  - (ii) the Services or Deliverables, including any particular Deliverable;
  - (iii) the Vendor's ability to perform its obligations under this Contract; and
  - (iv) this Contract; and
- (b) within 14 days after receiving the request or within another period agreed by the parties, the Department must give the Vendor a written notice accepting or rejecting the Vendor's request.

### 7.3 Changes to Service Charges

Changes to Service Charges associated with a variation in the Services must:

- (a) not exceed any reasonable additional cost; and
- (b) take fully into account any reduction in cost.

### 7.4 Effective date of variation

Any variation in the Services takes effect from the implementation date set out in a Change Order. This Contract will be amended to give effect to the Change Order.

## 8. Co-operation with Personnel and Vendor

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

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

## 9. Monitoring performance

### 9.1 Performance meetings

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

### 9.2 Reporting

The Vendor must provide the Department with reports in accordance with the Work Order.

## 10. Measuring performance

### 10.1 Assessment of the Services

Each element of the Services is subject to assessment by the Department.

### 10.2 Notice of non-compliant Services

If the Department considers that all or part of the Services do not meet the requirements set out in the Work Order, the Department must provide the Vendor with notice of that fact and include reasons for the Services not meeting those requirements.

### 10.3 Rectification of non-compliant Services

If the Department notifies the Vendor that all or part of the Services do not meet the requirements set out in the Work Order, the Vendor must:

- (a) take all necessary steps to ensure that the Services are promptly corrected;
- (b) give notice to the Department when the Services have been corrected; and
- (c) allow the Department to repeat the assessment of all or part of the Services against the requirements specified in the Work Order,

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

### 10.4 Right to terminate

If any part of the Services do not meet the requirements set out in the Work Order on two or more occasions, the Department may (in addition to its other remedies) terminate this Contract immediately under clause 33.3 by giving the Vendor written notice.

## 11. Personnel

### 11.1 General

- (a) The Vendor acknowledges and agrees:
  - (ii) the Vendor Personnel are not the Department's employees, partners, legal representatives, agents, joint venturers or franchisees;
  - (iii) no contractual relationship exists between the Department and the Vendor Personnel;
  - (iv) the Vendor Personnel have no right or authority to bind the Department, assume or create any obligations for or on behalf of the Department, or make any representations or warranties for or on behalf of the Department; and
  - (v) the Vendor Personnel are not entitled to any benefit from the Department usually attributable to an employee.
- (b) The Vendor must ensure that any employment agreement or subcontract entered into for the purpose of this Contract contains provisions to ensure that the Vendor Personnel have the same awareness and obligations as the Vendor under clause 11.1(a).
- (c) The Vendor is responsible for all payments to its Personnel providing Services under this Contract, including payment by way of salary, remuneration or commissions, bonuses, annual leave, long service leave, personal leave, termination, redundancy, taxes, superannuation or worker's compensation premiums or liabilities.

### 11.2 Use of Specified Personnel

The Vendor must:

- (a) arrange for the Specified Personnel to be made available to undertake the Services as set out in the Work Order;
- (b) 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;
- (c) ensure that the Specified Personnel which it provides under a Work Order have the requisite skills and experience to undertake the Services;
- (d) ensure that each of the Specified Personnel is aware of and complies with the Vendor's obligations in providing the Services; and
- (e) ensure that prior to the commencement of the Services, the Specified Personnel executes and delivers to the Department a non-disclosure undertaking in relation to Confidential Information substantially in the form of Schedule 4.

### 11.3 Performance of Services by Specified Personnel

- (a) The Specified Personnel must perform the Services in the manner specified in the Work Order, and as directed from time to time by the Department.
- (b) In performing the Services, the Specified Personnel must apply an appropriate level of professional skill and judgement to be expected of an information technology specialist performing similar services.

- (c) In performing the Services the Specified Personnel must ensure that the Services are performed:
  - (i) in accordance with relevant international industry standards, best practice and guidelines or where none apply, relevant Australian industry standards, best practice and guidelines;
  - (ii) in accordance with all applicable Laws, Department Policies and any specific requirements set out in the Work Order or as specified by the Department from time to time;
  - (iii) promptly and without delay; and
  - (iv) otherwise in accordance with the provisions of this Contract.
- (d) Subject to clause 11.3(b) the Specified Personnel is subject to direction from time to time by the Department.
- (e) The Specified Personnel must comply with the Department's procedures for recording of time as specified in Schedule 3 to the Deed, or as notified by the Department from time to time.
- (f) The Specified Personnel must cooperate with any third party service provider appointed by the Department where this is necessary to ensure the integrated and efficient conduct of the Department's operations.
- (g) Without limiting clause 11.3(f), the Specified Personnel must provide such reasonable assistance to other service providers as the Department may request from time to time.
- (h) Notwithstanding anything else in this Contract, the Specified Personnel will not be required to exercise, and must not exercise, any delegation under:
  - (i) the *Financial Management and Accountability Act 1997* (Cth); or
  - (ii) the *Public Service Act 1999* (Cth).

#### **11.4 Obligations of Vendor regarding the Services**

- (a) The Vendor must ensure that the Specified Personnel follow the Department's procedures for timesheet recording in respect of each week that the Services are provided, as specified in Schedule 3 to the Deed, or as notified by the Department from time to time.
- (b) The Vendor must ensure that where required, for each week that the Services are provided, the Specified Personnel completes work effort recording.
- (c) The Vendor must ensure that Specified Personnel are given full details of the Services to be carried out by them, and the obligations to be met by the Vendor, under this Contract.
- (d) To avoid doubt, the Vendor acknowledges that it is fully responsible for the acts and omissions of its Specified Personnel, and accordingly:
  - (i) that where this Contract imposes an obligation on any Specified Personnel, the Vendor is fully responsible for the performance by those Specified Personnel of such obligations; and
  - (ii) that where this Contract prohibits an act by the Vendor, the performance of that act by any Specified Personnel will be deemed to be a performance of that act by the Vendor.

### **11.5 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 Vendor must notify the Department immediately. The Vendor must:

- (a) if required by the Department, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and
- (b) obtain the Department's written consent prior to appointing any such replacement person. The Department's consent will not be unreasonably withheld.

### **11.6 Consequences of replacing Specified Personnel**

- (a) This clause 11.6 applies if and to the extent specified in item 15 of the Work Order.
- (b) The Vendor acknowledges that Specified Personnel are important to the success of the Services, and any change to or replacement of Specified Personnel may result in significant delays and increased expenses and damage for the Department which may not, having regard to the nature of the Services, be able to be precisely calculated or proved.
- (c) If a Specified Person is replaced or ceases to provide the Services, without limiting any of the Department's other rights under this Contract or otherwise, the Department will be entitled, at its absolute discretion, to recover from the Vendor as liquidated damages, and not as a penalty, up to 20% of that portion of the Service Charges paid or payable by the Department in connection with the Services performed or to be performed by the Specified Person, which the Vendor agrees is a genuine pre-estimate of the damage that would be suffered by the Department in such an event.
- (d) Clause 11.6(c) does not apply in circumstances where the:
  - (i) Department requires replacement of the Specified Person under clause 11.7;
  - (ii) the Specified Person is unable to provide Services due to his or her ill health or incapacity; or
  - (iii) the Specified Person is unable to provide the Services due to ill health or incapacity of an immediate family member.
- (e) If the Department decides to reduce the Service Charges payable to the Vendor under this clause, it will notify the Vendor as soon as practicable of:
  - (i) its decision to reduce the Service Charges in accordance with this clause 11.6; and
  - (ii) the amount of the reduction to the Service Charges, expressed as a percentage and as a dollar figure.
- (f) The Department's rights under this clause 11.6:
  - (i) are not affected by the Department consenting to replacement Personnel under clause 11.5;
  - (ii) are not affected by any delay by the Department in providing the Vendor with the notice required under clause 11.6(e);
  - (iii) are not dependent on any breach of this Contract by the Vendor;

- (iv) do not relieve the Vendor from its obligation to provide the Services or from any other obligations or liability under this Contract; and
- (v) do not affect, limit or exclude the Department's rights or remedies in contract, tort (including negligence), equity or otherwise.

### **11.7 Department may require replacement of Personnel**

- (a) The Department may at its absolute discretion, require the Vendor to remove and replace any of the Vendor Personnel from performing the Services, including:
  - (i) if Vendor Personnel fail to observe and conform to Department Policies and, if applicable, the Department environment;
  - (ii) if Vendor Personnel fail to comply with any Law;
  - (iii) if Vendor Personnel fail to comply with any workplace health and safety requirements of this Contract;
  - (iv) if the Commonwealth, in its sole and absolute discretion, is of the opinion that standards, competence or performance of any of the Vendor Personnel falls below the standards, competence or performance required of the Vendor Personnel under this Contract; or
  - (v) to protect people or property.
- (b) Where the Vendor is required to replace Vendor Personnel, the Vendor must immediately do so with another appropriately qualified, competent and experienced person.

## **12. Department Material**

The Department will provide to the Vendor Department Material and the Vendor must ensure that Department Material is used strictly in accordance with any conditions or restrictions specified in item 17 of the Work Order and any direction by the Department.

## **13. Intellectual Property Rights**

### **13.1 General**

This clause 13 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Material or Third Party Material.

### **13.2 Third Party Material**

The Vendor 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.

### **13.3 Selecting an ownership model for Intellectual Property Rights in Contract Material**

- (a) Unless specified otherwise in item 20 of the Work Order, clause 13.4 applies and clause 13.5 in its entirety does not apply to this Contract.
- (b) Each party must, at its own cost, do all things and execute all documents necessary or convenient to give effect to the ownership model.

### **13.4 Department ownership of Intellectual Property Rights in Contract Material**

- (a) All Intellectual Property Rights in the Contract Material vest in the Department on creation.
- (b) To the extent that:
  - (i) the Department needs to use any of the Pre-existing Material or Third Party Material provided by the Vendor to receive the full benefit of the Services (including the Contract Material), the Vendor grants to, or must obtain for, the Department a perpetual, 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; or
  - (ii) the Vendor needs to use any of the:
    - (A) Department Material; or
    - (B) Contract Material,for the purpose of performing its obligations under this Contract, the Department grants to the Vendor, subject to any conditions or restrictions specified in item 17 of the Work Order and any direction by the Department, 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 Department under clause 13.4(b)(i) does not include a right to exploit the Pre-existing Material or Third Party Material for the Department's commercial purposes.

### **13.5 Vendor ownership of Intellectual Property Rights in Contract Material**

- (a) If specified in item 20 of the Work Order, all Intellectual Property Rights in the Contract Material vest in the Vendor on creation.
- (b) To the extent that:
  - (i) the Department needs to use any of the:
    - (A) Pre-existing Material or Third Party Material provided by the Vendor; or
    - (B) Contract Material,to receive the full benefit of the Services, the Vendor grants to, or must obtain for, the Department a perpetual, 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 Vendor needs to use any of the Department Material for the purpose of performing its obligations under this Contract, the Department grants to the Vendor, subject to any conditions or restrictions specified in item 17 of the Work Order and any direction by the Department, 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 Department under clause 13.5(b)(i) does not include a right to exploit the Pre-existing Material, Third Party Material or the Contract Material for the Department's commercial purposes.

## **13.6 Warranty**

The Vendor warrants that:

- (a) the Pre-existing Material and Third Party Material provided by the Vendor, the Deliverables and the Contract Material (**Warranted Materials**) and the Department'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 13.

## **13.7 Remedy for breach of warranty**

If someone claims, or the Department reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights, the Vendor must, in addition to the indemnity under clause 17 and to any other rights that the Department may have against it, promptly, at the Vendor's expense:

- (a) use its best efforts to secure the rights for the Department 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.

## **13.8 Delivery of Contract Material**

On the expiry or termination of this Contract or on such earlier date as may be specified by the Department, the Vendor must deliver to the Department Representative all Contract Material.

# **14. Moral Rights**

## **14.1 Obtaining consents**

To the extent permitted by applicable Laws and for the benefit of the Department, the Vendor must:

- (a) give, where the Vendor is an individual, in a form acceptable to the Department;
- (b) use its best endeavours to ensure that each of the Personnel used by the Vendor in the production or creation of the Contract Material gives, in a form acceptable to the Department; 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.

## 14.2 Specified Acts

- (a) In this clause 14, **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 this clause 14, **Contract Material** includes any Pre-existing Material or Third Party Material to the extent that it is included in, forms part of or is attached to the Contract Material.

## 15. Payment

### 15.1 Obligation to pay charges

Subject to this clause and the Services meeting the requirements set out in the Work Order, the Department must pay to the Vendor the Service Charges as set out in that Work Order.

### 15.2 Due date for payment

Subject to clause 15.4, the provisions for reimbursement set out in clause 15.8 and clause 16, the Department will pay the amounts to be paid by it as specified in a Work Order plus the relevant amount of GST, within 30 days after:

- (a) the approval of a correctly completed Cross Application Time Sheets ('CATS') for the calendar month;
- (b) the approval of a correctly rendered claim for reimbursement by the Vendor; and
- (c) where clause 16.8 applies, receipt of a valid tax invoice from the Vendor.

### 15.3 Date of rendering

The date of rendering is the date upon which the correct claim for reimbursement of travel or other expenses is accompanied by the necessary documents proving delivery, is received by the Department.

### 15.4 Vendor's responsibility with respect to CATS

The Vendor is responsible for ensuring that the Specified Personnel correctly complete the CATS.

### 15.5 Payment does not imply acceptance

Payment of any amount by the Department is not:

- (a) of or an admission that the Services have been accepted by the Department or provided by the Vendor in accordance with this Contract;
- (b) evidence of the value of the Services;

- (c) an admission of liability; nor
- (d) acceptance or approval by the Department of the Vendor's performance.

### 15.6 Retrospective adjustment of payments

The Department reserves the right to retrospectively adjust payments where the Department determines that the Services have not been provided in accordance with this Contract.

### 15.7 Disputes relating to CATS or a claim for reimbursement

Where the Department disputes an amount in CATS or a claim for reimbursement, pending resolution of the dispute, the Department will pay any part of the amount in the time sheet or the claim for reimbursement, as the case may be, not in dispute.

### 15.8 Claims for reimbursement

- (a) Claims for reimbursement will be paid by the Department if these costs and expenses:
  - (i) are approved in writing by the Department before any cost has been incurred;
  - (ii) are substantiated by supporting documentation for accommodation costs, such as receipts, to verify the expenditure;
  - (iii) do not exceed the Department's non-SES travel and accommodation rates, as amended from time to time; and
  - (iv) are invoiced as an 'Interstate Travel Service Charge'.
- (b) For the purposes of this clause an 'Interstate Travel Service Charge' is an amount charged on a per person basis not exceeding the Department non-SES rates/allowances for meals and incidentals.

### 15.9 Obligation to pay charges

Subject to clauses 15 and 16 and Acceptance of the Services, the Department must pay to the Vendor the Service Charges as set out in item 21 of the Work Order.

### 15.10 Electronic payment

- (a) The Vendor acknowledges that the Department's preferred method of payment is by electronic funds transfer direct to the Vendor's bank account.
- (b) The Vendor must notify the Department of a change of the Vendor's bank account no later than 10 Business Days before a payment by the Department is due (the **Cut-off Date**).
- (c) The Department will not be liable to make any additional or interim payments where details of the Vendor's bank account are:
  - (i) incorrectly notified by the Vendor; or
  - (ii) notified after the Cut-off Date for that payment.
- (d) Unless the contrary is shown, payment will be deemed to have been made on the date the Department instructs its bank that funds are to be transferred.

### 15.11 Interest for late payment

- (a) Subject to clause 15.10(b), if the Department does not make payment of a correctly rendered invoice by the day it is due and payable, the Department must pay the Vendor simple interest on the unpaid amount in accordance with the following formula:

$$SI = UA \times GIC \times D$$

where:

$$SI = \text{simple interest amount;}$$

- UA = the unpaid amount;
- GIC = the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day; and
- D = the number of days from the day after payment was due up to and including the day that payment is made, where **the day that payment is made** means the day when the Department's system generates a payment request into the banking system for payment to the Vendor (or the Department otherwise pays the Vendor).

- (b) The Department is only required to pay interest in accordance with clause 15.11(a) if:
  - (i) the amount of interest exceeds \$10; and
  - (ii) the Vendor has issued a correctly rendered invoice in relation to the interest in accordance with the requirements specified in Schedule 3 of the Deed.

### **15.12 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 Vendor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Department to the Vendor under this Contract.

### **15.13 Expenses**

Unless specified otherwise in Attachment A to the Work Order, the Vendor must not charge the Department 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 15.9, the Department is under no obligation to pay any amount in excess of the Service Charges.

### **15.14 Taxes**

The Vendor must pay:

- (a) all 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 16, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

## **16. GST**

### **16.1 Interpretation**

In this clause 16, 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.

### **16.2 GST exclusive consideration**

Unless expressly stated otherwise in this Contract, any consideration payable or to be provided for a supply made under this Contract does not include any amount on account of GST. To avoid doubt, where an amount is expressly stated in this Contract to include GST, the amount will not be increased any further on account of GST under clause 16.3.

### **16.3 GST gross up**

Subject to clause 16.2, 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**).

### **16.4 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 16.3.

### **16.5 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.

### **16.6 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 16.3 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 16.6 is deemed to be a payment, credit or refund of the GST Amount payable under clause 16.3.
- (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.

### **16.7 Recipient created tax invoice**

The parties agree that the following will apply to all supplies made by the Vendor to the Department under this Contract unless the Department notifies the Vendor otherwise in accordance with clause 16.8:

- (a) the Department will issue to the Vendor, a recipient created tax invoice ('**RCTI**') for each taxable supply made by the Vendor to the Department under this Contract;
- (b) the Vendor will not issue a tax invoice in respect of any taxable supply it makes to the Department;
- (c) each party acknowledges and warrants that at the time of entering into this Contract, it is registered for GST; and
- (d) each party must notify the other party if it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by an authority relating to the creation of RCTIs.

### **16.8 Tax invoices**

- (a) The Department may, by serving written notice on the Vendor revoke the RCTI agreement made under clause 16.7 in respect of any taxable supply (or supplies) made by the Vendor under this Contract which notice must specify the particular supply (or supplies) in respect of which the RCTI agreement is revoked.

- (b) If the Department provides written notice under clause 16.8(a), then from the date specified in the notice:
  - (i) the Department will cease issuing RCTIs in accordance with clause 16.7;
  - (ii) the Vendor must issue tax invoices to the Department; and
  - (iii) the Department need not pay the GST Amount in respect of the taxable supplies identified in the notice until the Vendor has provided the Department with a valid tax invoice.

## 17. Indemnity

### 17.1 Indemnity by the Vendor

The Vendor indemnifies the Department, and its subcontractors against Losses reasonably sustained or incurred by the Department:

- (a) made or threatened by a third party arising out of or in connection with:
  - (i) negligent, unlawful or wilfully wrong act of the Vendor or its subcontractors or Personnel; or
  - (ii) an allegation that any Warranted Materials (including the use of any Warranted Materials by the Department or its subcontractors or Personnel) infringes the Intellectual Property Rights or Moral Rights of the third party. For the purposes of this clause 17.1(a)(ii), an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 96 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.
- (b) The Vendor's liability to indemnify those indemnified under clause 17.1 will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.

### 17.2 Department's obligations

Where the Department wishes to enforce an indemnity under clause 17.1 it must:

- (a) give written notice to the Vendor as soon as practical;
- (b) make reasonable efforts to mitigate the relevant Loss;
- (c) subject to the Vendor agreeing to comply at all times with clause 17.3, permit the Vendor, at the Vendor's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and
- (d) in the event that the Vendor is permitted to handle negotiations or conduct litigation on behalf of the Department under clause 17.2(c), provide all reasonable assistance to the Vendor in the handling of any negotiations and litigation.

### 17.3 Vendor's obligations

In the event that the Vendor is permitted to handle negotiations or conduct litigation on behalf of the Department under clause 17.2, the Vendor must:

- (a) comply with government policy and obligations, as if the Vendor were the Department, relevant to the conduct of the litigation and any settlement negotiation (including but not limited to the Legal Services Directions) and any direction issued by the Attorney General to the Commonwealth or delegate;

- (b) keep the Department informed of any significant developments relating to the conduct of the defence or settlement of any claim; and
- (c) provide to the Department such information and documentation as are reasonably requested by the Department, to enable the Department to ascertain whether the defence or settlement by the Vendor of any claim is being conducted in accordance with the requirements of the Legal Services Directions, including any requirements relating to legal professional privilege and confidentiality.

## 18. Liability

### 18.1 Relevant Law

The liability of a party for breach of this Contract, or in tort, or for any other common law or statutory cause of action arising out of the operation of this Contract, will be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

### 18.2 Limitation

- (a) The liability of each party arising out of or in connection with this Contract (including under any indemnity) is, subject to clause 18.2(b), limited to the amount specified in item 22 of the Work Order per occurrence or series of related occurrences arising from a single cause.
- (b) Any limit on the liability of each party under clause 18.2(a) does not apply in relation to liability relating to:
  - (i) personal injury (including sickness and death);
  - (ii) loss of, or damage to, tangible property;
  - (iii) an infringement of Intellectual Property Rights;
  - (iv) a breach of any obligation of confidentiality, security matter or privacy; or
  - (v) any breach of statute or any wilfully wrong act or omission including, in the case of the Vendor, any act or omission that constitutes repudiation of the Contract.

### 18.3 Review of limitation

The parties acknowledge that the limitation of liability specified in item 22 of the Work Order will be subject to review in the event that the Contract is varied or extended.

### 18.4 Contribution

The liability of a party (**Party A**) for any Losses incurred by another party (**Party B**) will be reduced proportionately to the extent that:

- (a) any negligent act or omission of Party B (or of its subcontractors or Personnel); or
- (b) any failure by Party B to comply with its obligations and responsibilities under this Contract,

contributed to those losses, regardless of whether legal proceedings are brought by Party A for negligence or breach of Contract.

## 19. Insurance

### 19.1 Obligation to maintain insurance

- (a) In connection with the provision of the Services, the Vendor must have and maintain valid and enforceable insurance policies for those types of insurance described and the amounts specified in:
  - (i) item 10 of the Deed Details; and
  - (ii) item 23 of the Work Order.
- (b) The level of insurance required is the higher of the amounts specified in the items referred to in paragraph (a) above.

## 20. Confidentiality

### 20.1 Confidential Information not to be disclosed

- (a) Subject to clause 20.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

### 20.2 Written undertakings

- (a) A party may at any time require the other party to arrange for:
  - (i) its Advisers; or
  - (ii) any other third party, other than a Department officer or employee or an officer or employee of the Commonwealth or a Commonwealth authority, to whom information may be disclosed pursuant to clause 20.3(a) or (e),  
  
to give a written undertaking in the form set out in Schedule 4 to the Deed relating to the use and non-disclosure of the other party's Confidential Information.
- (b) If the other party receives a request under clause 20.2(a), it must promptly arrange for all such undertakings to be given.

### 20.3 Exceptions to obligations

The obligations on the parties under this clause 20 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its Advisers or Personnel 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 Contract-related activities;
- (c) is disclosed by the Department to the responsible Minister;
- (d) is disclosed by the Department, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Department within the Department's organisation, or with a Commonwealth Agency, where this serves the Department's legitimate interests;

- (f) is authorised or required by law, including under this Contract, under a licence or otherwise, to be disclosed; or
- (g) is in the public domain otherwise than due to a breach of this clause 20.

#### **20.4 Obligation on disclosure**

Where a party discloses Confidential Information to another person:

- (a) pursuant to clauses 20.3(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; or
- (b) pursuant to clauses 20.3(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information.

#### **20.5 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.

#### **20.6 Period of confidentiality**

The obligations under this clause 20 continue, notwithstanding the expiry or termination of this Contract:

- (a) in relation to an item of information described in item 24 of the Work Order, for the period set out in the Work Order 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.

#### **20.7 No reduction in privacy obligations**

Nothing in this clause 20 derogates from any obligation which either party may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Contract, in relation to the protection of personal information.

### **21. Protection of personal information**

#### **21.1 Application of this clause**

This clause 21 applies only where the Vendor deals with personal information when, and for the purpose of, providing Services under this Contract.

#### **21.2 Obligations**

- (a) The Vendor acknowledges that it is a ‘contracted service provider’ within the meaning of section 6 of the *Privacy Act 1988* (Cth) (**Privacy Act**), and agrees in respect of the provision of Services under this Contract:
  - (i) to use or disclose personal information obtained during the course of providing Services under this Contract, only for the purposes of this Contract;



- (ii) 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;
  - (iii) to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
  - (iv) to notify individuals whose personal information the Vendor holds, that complaints about acts or practices of the Vendor may be investigated by the Privacy Commissioner who has power to award compensation against the Vendor in appropriate circumstances;
  - (v) 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 Vendor, unless:
    - (A) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Contract; or
    - (B) 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;
  - (ii) 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;
  - (iii) to immediately notify the Department if the Vendor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 21, whether by the Vendor or any subcontractor;
  - (iv) 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 21; and
  - (v) to ensure that any employee of the Vendor who is required to deal with personal information for the purposes of this Contract is made aware of the obligations of the Vendor set out in this clause 21.
- (b) The Vendor acknowledges that during the Contract Period:
- (i) the Privacy Act may be amended; and
  - (ii) the IPPs and NPPs may be replaced by the Australian Privacy Principles (**APPs**).
- (c) Without limiting any other obligations set out in this clause 21.2, the Vendor must:
- (i) comply with any amendments to the Privacy Act;
  - (ii) comply with the APPs; and
  - (iii) carry out and discharge the obligations contained in the APPs as if it were an entity under the Privacy Act.
- (d) Without limiting any other obligations set out in this clause 21.2, the Vendor must comply with all applicable State and Territory privacy Laws, including all applicable State and Territory Law regulating the use of Personal Information.

### **21.3 Subcontracts**

The Vendor 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 Vendor has under this clause 21, including the requirement in relation to subcontracts.

### **21.4 Indemnity**

The Vendor agrees to indemnify the Department in respect of any Losses suffered or incurred by the Department which arises directly or indirectly from a breach of any of the obligations of the Vendor under this clause 21, or a subcontractor under the subcontract provisions referred to in clause 21.3.

### **21.5 Definitions**

In this clause 21, 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'.

## **22. Fair Work Principles**

- (a) The Vendor 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 (available at [www.deewr.gov.au/fairworkprinciples](http://www.deewr.gov.au/fairworkprinciples)), including by:
  - (i) complying with all applicable workplace relations, work 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, work 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 to the Department any information the Department reasonably requires to confirm that the Vendor (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 Vendor from its responsibility to comply with its other obligations under this Contract.
- (c) The Vendor 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 Vendor's failure to comply (including the Vendor's name) and to otherwise provide those details to other Agencies.

## 23. Work health and safety

### 23.1 Definitions

In this clause 23, **Inspector**, **Notifiable Incident**, **Regulator** and **WHS Entry Permit Holder** have the meanings given in the WHS Act.

### 23.2 General obligations

- (a) The Vendor must ensure the Services are performed in a safe manner.
- (b) The Vendor must not, and must ensure its Personnel do not, by act or omission place the Department in breach of its obligations under the WHS Laws.
- (c) The Vendor must, and must ensure its Personnel, if using or accessing the Department's premises or facilities, comply with all reasonable instructions, directions, policies and procedures relating to work health and safety in operation at those premises or facilities whether specifically drawn to the attention of the Vendor or as might reasonably be inferred from the circumstances.
- (d) Where the health and safety of any person may be affected by the performance of the Services, the Vendor must consult, cooperate and coordinate with the Department in relation to the health and safety issue.
- (e) The Vendor must inform itself, and ensure its Personnel inform themselves, of the Department's work health and safety policies and procedures relevant to the Services.
- (f) The Vendor must, and must ensure its Personnel:
  - (i) comply with the WHS Laws in relation to Services performed by Covered Workers;
  - (ii) in relation to Services performed by Covered Workers, comply with all relevant work health and safety policies and procedures of the Department as specified by the Department from time to time;
  - (iii) immediately comply with any reasonable instruction from the Department regarding work health and safety in relation to Services performed by Covered Workers; and
  - (iv) immediately comply with any direction in relation to Services performed by Covered Workers from any person having authority under the WHS Laws to give directions.

### 23.3 Notifying the Department

- (b) The Vendor must notify the Department as soon as practicable of any concern the Vendor has regarding work health and safety in relation to Services performed by Covered Workers.
- (c) The Vendor must immediately notify the Department of any:
  - (i) breach or suspected breach of the WHS Laws in relation to Services performed by Covered Workers;
  - (ii) cessation of work on the Services, or direction to cease work on the Services from any person having authority under the WHS Laws to do so, due to unsafe work;
  - (iii) entry by a WHS Entry Permit Holder or Inspector to any place where Services are being performed by Covered Workers; or

- (iv) proceedings against, decision by the Regulator in relation to, or request from the Regulator to, the Vendor or its Personnel under the WHS Laws.
- (d) The Vendor must provide to the Department a copy of any notice issued to the Vendor under the WHS Laws in relation to Services performed by Covered Workers as soon as possible and in any event within 24 hours after receipt.
- (e) If the Vendor is required by the WHS Laws to report a Notifiable Incident to the Regulator in relation to Services performed by Covered Workers, the Vendor must:
  - (v) as soon as is practicable in the circumstances, notify the Department of the Notifiable Incident and, if requested by the Department, provide a copy of any written notice given to the Regulator; and
  - (vi) if requested by the Department, provide within the timeframe specified by the Department a report on the Notifiable Incident, the results of any investigations into its cause, and any recommendations for prevention in the future.

### **23.4 Investigations**

- (a) The Vendor must cooperate with any investigation undertaken by the Department in relation to a Notifiable Incident, or breach or suspected breach of the WHS Laws, arising out of or in respect of the Services.
- (b) The requirement for, and cooperation with, investigations does not in any way reduce the Vendor's responsibility to perform its obligations in accordance with this Deed.

### **23.5 Documentation**

If the Vendor is required by the WHS Laws to:

- (a) prepare, submit, supply, obtain or review any document (including a management plan, risk assessment, safe work method statement, emergency plan, safety data sheet, notice to the Regulator or register); or
- (b) obtain or sight any licence, permit or authorisation (**Licence**),

in relation to Services performed by Covered Workers, the Vendor must, before commencing or continuing work:

- (c) prepare, submit, supply, obtain or review the document or obtain or sight the Licence as required; and
- (d) provide a copy of the document or Licence to the Department, allowing sufficient time for the Department to review the document or Licence and consult as it considers appropriate.

### **23.6 Suspension**

- (a) Without limiting any other right or remedy of the Department, if the Department is not satisfied that the Vendor is performing the Services in compliance with its work health and safety obligations under this Deed or relevant legislation, the Department may direct the Vendor to suspend work on part or all of the Services.
- (b) If the Department directs the Vendor under clause 23.6(a), the Vendor must suspend work on the Services as directed until the Vendor satisfies the Department that the Services will be performed in compliance with its work health and safety obligations.

## 23.7 Subcontracts

The Vendor must ensure that any subcontract entered into in relation to Services performed by Covered Workers imposes obligations on subcontractors equivalent to the obligations the Contractor has under this clause 23, including the requirement in relation to subcontracts.

## 23.8 Relationship to other obligations

- (a) Where there is any inconsistency between this clause 23 and the WHS Laws, the WHS Laws prevail to the extent of the inconsistency.
- (b) The Vendor acknowledges that it is responsible for:
  - (i) complying with its obligations under work health and safety laws; and
  - (ii) providing the Services in accordance with this Contract,  
and will not be relieved of that responsibility because of:
    - (iii) anything in this clause 23 or in any policy or procedure referred to in this clause 23;
    - (iv) any instruction or direction or failure to give an instruction or direction under this clause 23;
    - (v) any exercise of, or failure to exercise, the Department's rights under this clause 23;  
or
    - (vi) any notice or other document or communication from the Vendor under this clause 23.

## 23.9 Costs

The Vendor must bear its own costs of complying with this clause 23.

# 24. Indigenous Opportunities Policy

## 24.1 Application of clause

This clause 24 applies if specified in item 25 of the Work Order.

## 24.2 Vendor to submit to DEEWR an Indigenous Training, Employment and Supplier Plan

- (a) The Vendor must submit an Indigenous Training, Employment and Supplier Plan (**Plan**) to DEEWR for approval no more than 90 days after the Services Start Date.
- (b) The Vendor must provide the Department with notification of submission no more than 60 days after the Services Start Date.
- (c) The Vendor must amend and resubmit its Plan until it is approved by DEEWR.
- (d) The Vendor must provide the Department with its notification of approval no more than 10 Business Days after approval of the Plan is confirmed by DEEWR.

## 24.3 Reporting

- (a) The Vendor must provide DEEWR with an annual implementation and outcomes report (**Report**) that meets the implementation and outcomes report requirements stipulated in the Indigenous Opportunities Policy Guidelines. The Report must be submitted no more than two months after the anniversary of the approval of the Vendor's Plan or as otherwise advised by the Department or DEEWR.

- (b) The Vendor must maintain a current Plan throughout the Contract Period and to meet all reporting requirements pursuant to clause 24.3(a).

#### **24.4 Consent to release information**

The Vendor consents to the Department or any Agency:

- (a) publicising or reporting on the Vendor performance in relation to the Plan and level of compliance with the Plan; and
- (b) publicising or reporting on any information contained in the Plan or the Report under this Contract.

#### **24.5 Failure to comply**

Without limiting the Department's rights, the Department may withhold or suspend any payment in whole or in part, if the Vendor has not performed its obligations under this Contract related to maintaining a current Plan and reporting to the satisfaction of the Department.

### **25. Conflict of interest**

#### **25.1 Warranty that there is no conflict of interest**

The Vendor 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.

#### **25.2 Notification of a conflict of interest**

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

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

### **26. Compliance with Department Policies**

#### **26.1 Department Policies**

The Vendor and its Personnel must comply with Department Policies to the extent that:

- (a) they are applicable to the Services and the Vendor in its capacity as a Vendor to the Department; and
- (b) they are not inconsistent with any other requirement of the Contract.

### **27. Security**

#### **27.1 Protective Security Policy Framework**

The Vendor must comply with the security requirements detailed in the Protective Security Policy Framework as minimum standards (to the extent applicable to the Services), any security requirements specified in item 26 of the Work Order and any additional requirements advised by the Department from time to time.

#### **27.2 Security clearances and police checks**

- (a) If specified in item 26 of the Work Order or as otherwise notified by the Department, each of the Specified Personnel engaged by or on behalf of the Vendor must:

- (i) hold an Australian Government security clearance to the level required by the Department; and/or
- (ii) undergo a police check.
- (b) The Department will facilitate the obtaining of security clearances.
- (c) The cost of security clearances will be borne by the Vendor.

### **27.3 Security checks**

The Department may undertake any security checks it considers appropriate of the Vendor, its employees, agents and subcontractors.

### **27.4 Security breaches**

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

## **28. Protection of Department Data**

### **28.1 Use of Department Data**

The Vendor must not (and must ensure that its Personnel do not):

- (a) use Department Data held by the Vendor, or which the Vendor has access to, other than for the purposes of fulfilling its obligations under this Contract;
- (b) purport to sell, let for hire, assign rights in or otherwise dispose of Department Data;
- (c) purport to commercially exploit Department Data; or
- (d) alter Department Data in any way, other than in providing the Services as required under this Contract.

### **28.2 Safeguarding data**

The Vendor must establish and maintain safeguards against the destruction, loss or alteration of Department Data in the possession or control of the Vendor that:

- (a) are no less rigorous than those notified by the Department from time to time and will be no less rigorous than the safeguards that can be reasonably expected in well run projects; and
- (b) comply with all Laws and any procedures or requirements specified by the Department from time to time.

### **28.3 Removal of Department Data**

The Vendor must not, and must ensure that its subcontractors and Personnel do not:

- (a) remove Department Data or allow Department Data to be removed from the Department's premises; or

- (b) take Department Data or allow Department Data to be taken or accessed outside of Australia,

without the Department's prior written consent.

## **29. Books and records**

### **29.1 Vendor to keep books and records**

The Vendor 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 Department 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.

### **29.2 Costs**

The Vendor must bear its own costs of complying with this clause 29.

### **29.3 Survival**

This clause 29 applies for the Contract Period and for a period of seven years from the expiry or termination of this Contract.

## **30. Audit and access**

### **30.1 Right to conduct audits**

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

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

### **30.2 Access by the Department**

- (a) The Department may, at reasonable times and on giving reasonable notice to the Vendor:
  - (i) access the premises of the Vendor to the extent relevant to the performance of this Contract;
  - (ii) require the provision by the Vendor, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the Department by use of the Department'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 Vendor, 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 Department), any request for information directed to the Department, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Vendor must provide access to its computer hardware and software to the extent necessary for the Department to exercise its rights under this clause 30, and provide the Department with any reasonable assistance requested by the Department to use that hardware and software.

### **30.3 Conduct of audit and access**

The Department must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 30.1; and
- (b) the exercise of the general rights granted by clause 30.2 by the Department,

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

### **30.4 Costs**

- (a) Except as set out in clause 30.4(b), each party must bear its own costs of any reviews and/or audits.
- (b) If the Vendor is able to substantiate that it has incurred direct expenses in the Department's exercise of the rights granted under clause 30.1 or clause 30.2 which, having regard to the value of this Contract, are substantial, the Department and the Vendor will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

### **30.5 Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner**

The rights of the Department under clause 30.2(a)(i) to 30.2(a)(iii) apply equally to the Auditor-General, Information Commissioner, Privacy commissioner and Freedom of Information Commissioner, or his or her delegate, for the purpose of performing the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's statutory functions or powers.

### **30.6 Vendor to comply with Auditor-General's, Information Commissioner's, Privacy Commissioner's and Freedom of Information Commissioner's requirements**

The Vendor must do all things necessary to comply with the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's, or his or her delegate's requirements, notified under clause 30.2, provided such requirements are legally enforceable and within the power of the Auditor-General, Information Commissioner, the Privacy Commissioner or Freedom of Information Commissioner, or his or her respective delegate.

### **30.7 No reduction in responsibility**

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

### **30.8 Subcontractor requirements**

The Vendor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause granting the rights specified in this clause 30.

### **30.9 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 Department 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.

### **30.10 Survival**

This clause 30 applies for the Contract Period and for a period of seven years from the expiry or termination of this Contract.

### **30.11 Centralised procurement**

The Vendor acknowledges and agrees that a fundamental objective of the Department in entering into this Contract is to ensure that the arrangement will at all times:

- (a) comply with all applicable Australian Government policy; and
- (b) be readily adaptable to ensure the Australian Government will receive the full benefit of the arrangement in circumstances where functions, operations, or accountabilities of the Department as at the date of this Contract are transferred in whole or in part to other Agencies or legal entities or where the Australian Government considers it desirable for relevant Agencies or legal entities to coordinate, cooperate, share or leverage arrangements or operations of any kind,

and accordingly the Vendor agrees to vary, split, replicate or novate this Contract (and any associated licence) or take such other action as the Department requests at any time, so as to fully and properly reflect and support the Department's and the Australian Government's ongoing requirements including as outlined above.

## **31. Unforeseen events**

### **31.1 Occurrence of unforeseen event**

Subject to clause 31.2, 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 Vendor only), including acts of God, natural disasters, acts of war, riots and strikes outside the Affected Party's organisation.

### **31.2 Notice of unforeseen event**

When the circumstances described in clause 31.1 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.

### **31.3 Termination**

If non-performance or diminished performance by the Affected Party due to the circumstances under clause 31.1 continues for a period of more than 30 consecutive days, the other party may terminate this Contract immediately by giving the Affected Party written notice.

### **31.4 Consequences of termination**

If this Contract is terminated under clause 31.3:

- (a) each party will bear its own costs and neither party will incur further liability to the other; and
- (b) where the Vendor 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 31.1.

## **32. Dispute resolution**

### **32.1 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 32 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 32.

### **32.2 Notification**

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

### **32.3 Parties to resolve Dispute**

During the 14 days after a notice is given under clause 32.2 (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 Chief Executive Officers (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.

### **32.4 Appointment of mediator**

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 32.3, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

### **32.5 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 32.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

### **32.6 Confidentiality**

Any information or documents disclosed by a party under this clause 32:

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

### **32.7 Costs**

Each party to a Dispute must pay its own costs of complying with this clause 32. The parties to the Dispute must equally pay the costs of any mediator.

### **32.8 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 32.1 to 32.5. Clauses 32.6 and 32.7 survive termination of the dispute resolution process.

### **32.9 Breach of this clause**

If a party to a Dispute breaches clauses 32.1 to 32.8, the other party does not have to comply with those clauses in relation to the Dispute.

### **32.10 Exception**

For the purposes of this clause 32, a Dispute does not include a dispute arising in relation to the Department's termination of this Contract or reduction of the scope of the Services under clause 33.2.

## **33. Termination**

### **33.1 Termination in the event of centralised procurement**

The Vendor acknowledges that it is Commonwealth policy to develop a centralised procurement system for the delivery of certain goods and services to Commonwealth departments and Agencies, where it can be established that the centralised procurement of those goods and services could deliver savings to the Commonwealth. The process of identifying such goods and services is currently underway. It is therefore possible that the Commonwealth may approve the procurement of some or all of the same goods or services to the Commonwealth under a centralised process during the Contract Period. In this case, the Department may terminate the Contract for convenience, in whole or in part, in accordance with clause 33.2, without compensating the Vendor for loss of prospective profits.

### **33.2 Termination and reduction for convenience**

- (a) The Department may, at any time, by providing the Vendor with at least 5 Business Days notice, terminate this Contract in whole or in part, or reduce the scope of the Services, including where:
  - (i) there is a machinery of government change;
  - (ii) the need for the Services has been cancelled;
  - (iii) the scope of the Services required has been reduced; or
  - (iv) funding is depleted.
- (b) On receipt of a notice of termination or reduction the Vendor must:
  - (i) stop work as specified in the notice;
  - (ii) take all available steps to protect Department Material and Contract Material;
  - (iii) continue work on any part of the Services not affected by the notice; and
  - (iv) comply with any directions in the notice.
- (c) If this Contract is terminated under this clause 33.2, the Department is liable only for payments under clause 15 for Services rendered in accordance with this Contract before the effective date of termination.
- (d) If the scope of the Services is reduced, the Department's liability to pay the Service Charges or to provide Department Material abates in accordance with the reduction in the Services.
- (a) The Vendor is not entitled to compensation for loss of prospective profits.

### 33.3 Termination for default

- (a) Without limiting any other rights or remedies the Department may have against the Vendor arising out of or in connection with this Contract or the Deed, the Department may terminate this Contract effective immediately by giving notice to the Vendor if:
  - (i) the Vendor breaches a material provision of this Contract where that breach is not capable of remedy;
  - (ii) the Vendor breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so;
  - (iii) the Department terminates the Deed for default by the Vendor;
  - (iv) in the opinion of the Department, a conflict of interest exists which would prevent the Vendor from performing its obligations under this Contract; or
  - (v) an event specified in 33.3(c) happens to the Vendor.
- (b) Without limitation, for the purposes of clause 33.3(a), each of the following constitutes a breach of a material provision of this Contract:
  - (i) breach of warranty under clause 4.2 (Vendor warranties);
  - (ii) a failure to comply with clause 11 (Personnel);
  - (iii) a failure to comply with clause 13 (Intellectual Property Rights);
  - (iv) a failure to comply with clause 19 (Insurance);
  - (v) a failure to comply with clause 20 (Confidentiality);
  - (vi) a failure to comply with clause 21 (Protection of personal information);
  - (vii) a failure to comply with clause 22 (Fair Work Principles);
  - (viii) a failure to comply with clause 23 (Work health and safety);
  - (ix) a failure to notify the Department of a conflict of interest under clause 24 (Conflict of interest);
  - (x) a failure to with clause 27 (Security); and
  - (xi) a failure to comply with clause 28 (Protection of Department Data).
- (c) The Vendor must notify the Department immediately if:
  - (i) there is a Change in Control of the Vendor;
  - (ii) the Vendor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
  - (iii) the Vendor ceases to carry on business;
  - (iv) the Vendor ceases to be able to pay its debts as they become due;
  - (v) the Vendor being a corporation enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
  - (vi) the Vendor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or

(vii) where the Vendor is a partnership, any step is taken to dissolve that partnership.

In this clause 33.3, **controller**, **managing controller**, **liquidator** and **administrator** have the same meanings as in the Corporations Act.

### **33.4 After termination**

On termination of this Contract the Vendor must:

- (a) stop work on the Services;
- (b) deal with Contract Material in accordance with clause 13.8;
- (c) deal with Department Material as reasonably directed by the Department; and
- (d) return all Department Confidential Information to the Department.

### **33.5 Termination does not affect accrued rights**

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

## **34. Survival**

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

- (a) clause 4.6(c) (Subcontracting);
- (b) clause 13 (Intellectual Property Rights);
- (c) clause 14 (Moral Rights);
- (d) clause 16 (GST);
- (e) clause 17 (Indemnity);
- (f) clause 18 (Liability);
- (g) clause 19 (Insurance) to the extent it relates to professional indemnity or errors and omissions insurance;
- (h) clause 20 (Confidentiality);
- (i) clause 21 (Protection of personal information);
- (j) clause 22 (Fair Work Principles);
- (k) clause 27 (Security);
- (l) clause 29 (Books and records);
- (m) clause 30 (Audit and access); and
- (n) clause 35 (Knowledge Transfer).

## **35. Knowledge transfer**

Subject to any qualification or provision to the contrary in the Work Order, the Vendor must provide the following assistance to the Department on termination or expiration of this Contract:

- (a) transferring or providing access to the Department to all information stored by whatever means held by the Vendor or under the control of the Vendor in connection with this Contract; and

- (b) making Specified Personnel and the Vendor available for discussions with the Department as may be required. The time, length and subject of these discussions will be at the sole discretion of the Department, provided that any matter discussed is not considered to reveal any 'Commercial-in-Confidence' information of the Vendor.

## **36. Notices and other communications**

### **36.1 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, transmitted electronically or by facsimile to the recipient's address for Notices specified in item 28 of the Work Order, as varied by any Notice given by the recipient to the sender.

### **36.2 Effective on receipt**

A Notice given in accordance with clause 36.1 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); or
- (c) if transmitted electronically or by facsimile, on receipt by the sender of an electronic or facsimile acknowledgement that the entire Notice has been properly transmitted to the recipient unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

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.

## **37. Miscellaneous**

### **37.1 Ownership of Contract**

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

### **37.2 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.

### **37.3 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.

### **37.4 Assignment and novation**

A party may only assign its rights or novate its rights and obligations under this Contract with the prior written consent of the other party.

### **37.5 Costs**

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

### **37.6 Counterparts**

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

### **37.7 No merger**

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

### **37.8 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.

### **37.9 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.

### **37.10 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.

### **37.11 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.

### **37.12 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.

### **37.13 Announcements**

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

### **37.14 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.