



Australian Government

Department of Finance

Panel Head Agreement

A Deed

Between

**the Commonwealth of Australia as represented by
the Department of Finance**

And

[insert name]

**for the Provision of Recruitment and Search
Services to the Australian Government**

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Parties

The **COMMONWEALTH OF AUSTRALIA** as represented by the Department of Finance
ABN 61 970 632 495 (**Finance**);

and

[Insert name ABN and address of Service Provider] (**Service Provider**).

Recitals

- A. Finance has established a Panel for the provision of Recruitment and Search Services to the Australian Government to which the Service Provider has been appointed.
- B. The Service Provider has represented to the Commonwealth in respect of this Head Agreement that it has the ability to provide the Services to Entities.
- C. The Service Provider acknowledges and agrees that Finance will administer this Head Agreement and the Panel for the benefit of all Entities.
- D. The Service Provider offers to provide Services on the terms and conditions contained in this Head Agreement and any Contract formed under this Head Agreement.
- E. An Entity may acquire Services from the Service Provider by issuing the Service Provider with an Order.

Operative Provisions

1 Definitions and interpretation

1.1 Definitions

- 1.1.1 In this Head Agreement and any Contract, except where the contrary intention is expressed, the following definitions are used:

ABN	the Australian Business Number issued by the Australian Taxation Office.
Accounting Standards	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.
Additional Board Activities	has the meaning given in clause 8.4 of Schedule 2 (Services)
Additional Board Fees	means the Fee for Board Searches set out in Table 9 of Schedule 3 (Pricing)
Additional Requirements	requirements or terms and conditions, such as additional insurance, which are additional to the obligations of the Service Provider under this Head Agreement.
Additional Expert/Specialised Role Activities	has the meaning given in clause 6.4 of Schedule 2 (Services)
Additional Expert/Specialised Role Recruitment Fees	means the Fees for Additional Specialist Activities set out in Table 5 of Schedule 3 (Pricing)
Affirmative Measures	means the provisions and actions designed to improve employment outcomes for certain demographics by allowing particular jobs in the Australian Public Service to be open only to people fitting certain criteria, such as Aboriginal and Torres Strait Islander people, or people with disability.
APS Merit Principle	means the decision to engage or promote a person within the Australian Public Service based on merit as outlined at https://www.apsc.gov.au/working-aps/aps-employees-and-managers/guidance-and-information-recruitment/aps-merit-principle
Artificial	has the meaning given to it in the Policy for the Responsible Use of AI

Intelligence	in Government published by the Digital Transformation Agency.
Australian Standard	a standard published by Standards Australia Limited at the applicable Order Commencement Date.
Board Search	means an 'end-to-end' board search process in which case the Service Provider must provide all of the Board Search Activities in respect of that Board Search.
Board Search Activities	has the meaning given in clause 8.2 of Schedule 2 (Services) .
Board Search Fee	means the Fee for Board Searches set out in Table 8 of Schedule 3 (Pricing)
Board Search Services	means the services described in Item 4 of clause 2.1 of Schedule 2 (Services) .
Bundled Activities	has the meaning given in clause 5.4 of Schedule 2 (Services)
Bundled Fees	means the Fees for Processes set out in Table 1A and Table 1B of Schedule 3 (Pricing)
Business Day	a day not being a Saturday, Sunday or a public holiday in the location where the Services are being provided, or if no such location is specified, in Canberra.
Candidate Sourcing Fees	means the Fees for Candidate Sourcing Services set out in Table 6 of Schedule 3 (Pricing)
Candidate Sourcing Services	has the meaning given in clause 7.1 of Schedule 2 (Services)
Change of Control	<p>(a) if the Service Provider is listed on a stock exchange - a change in 20% or more of the direct or indirect beneficial ownership or control of the Service Provider; or</p> <p>(b) if the Service Provider is not listed on a stock exchange - a change in any of the direct or indirect beneficial ownership or control of the Service Provider.</p>
Commonwealth	the Commonwealth of Australia.
Confidential Information	<p>information that is protected by privacy, secrecy and non-disclosure provisions or by its nature confidential, and</p> <p>(a) in the case of Finance or an Entity is:</p> <p style="padding-left: 40px;">(i) Contract Material, not including Existing Material; or</p> <p style="padding-left: 40px;">(ii) Entity Material; and</p> <p>(b) in the case of the Service Provider, is listed at Schedule 8</p>

	<p>(Service Provider's Confidential Information) and/or described in an Order,</p> <p>but does not include information which is or becomes public knowledge other than by a breach of this Head Agreement, any Contract or Law.</p>
Conflict of Interest	any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or Subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to an Entity fairly and independently.
Consultancy Services	consultancy services as defined in Finance's Resource Management Guide 423, <i>Procurement Publishing and Reporting Obligations</i> , as updated from time to time (which is currently defined as temporary services that involve the development of intellectual output that assists with decision making and which represents the independent view of a service provider, including services available under the Whole-of-Australian-Government Management Advisory Services Panel).
Contract	a contract for the provision of Services formed between the Service Provider and an Entity in accordance with clause 11 of this Head Agreement.
Contract Material	<p>any Material:</p> <ul style="list-style-type: none"> (a) created by the Service Provider for the purposes of a Contract; (b) provided or required to be provided to the Entity as part of the Ordered Services; or (c) derived at any time from the Material referred to in (a) and/or (b) above, <p>but which excludes the Service Provider's internal working papers.</p>
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
eInvoicing	is an automated exchange of invoices in a seamless manner between the Entity and the Service Provider financial systems using an access point accredited to the PEPPOL standard by the Australian Taxation Office.
Eligible Data Breach	has the meaning it has in the Privacy Act.
Entity	<ul style="list-style-type: none"> (a) a Non-corporate Commonwealth Entity; (b) a corporate Commonwealth entity as defined by the PGPA Act; and (c) any other government entities authorised by Finance and advised in writing to the Service Provider from time to time. <p>To avoid doubt, a reference to an Entity does not include Finance</p>

	unless Finance issues an Order to the Service Provider.
Entity Material	any Material provided by an Entity to the Service Provider for the purposes of an RFQ or a Contract, or derived at any time from that Material.
Entity Representative	the person nominated by an Entity to represent the Entity as identified in an Order.
Executive Recruitment Services	means the services described in Item 1B of clause 2.1 of Schedule 2 (Services) .
Existing Material	<p>(a) any pre-existing Material including any improvements, modifications or enhancements to such pre-existing Material in performing the Services; and</p> <p>(b) any other Material, created independently of an Order after the Order Commencement Date,</p> <p>which is made available to the Entity by the Service Provider for the purpose of a Contract, but excluding any tools or methodologies of the Service Provider.</p>
Expert/Specialised Role Recruitment Services	means the services described in Item 2 of clause 2.1 of Schedule 2 (Services) .
Expert/Specialised Role Search Activities	has the meaning given in clause 6.3 of Schedule 2 (Services) .
Expert/Specialised Role Recruitment Fee	means the Fees for Specialist Recruitment Services set out in Table 4 of Schedule 3 (Pricing) .
Fees	the Service Provider's fees listed in Schedule 3 (Pricing) , in an RFQ or an Order, as the context requires.
Finance	the Commonwealth represented by the Department of Finance as a party to this Head Agreement and which is responsible for administering the Panel.
First Finance Senior Executive	the position identified in Item 2 of Schedule 1 (Head Agreement Details) , or as otherwise advised by Finance from time to time.
FOI Act	the <i>Freedom of Information Act 1982</i> (Cth).
General Interest Charge Rate	the general interest charge rate determined under section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth) on the day payment is due, expressed as a decimal rate per day.
General	means the services described in Item 1A of clause 2.1 of Schedule 2

Recruitment Services	(Services).
GST	has the meaning it has in the GST Act.
GST Act	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Head Agreement	clauses 1 to 33 of this head agreement between Finance and the Service Provider, and includes the Schedules (and any Attachments to the Schedules) as the context requires.
Head Agreement Commencement Date	the date of execution of this Head Agreement or, if executed on different dates, the date of last execution.
Head Agreement Period	the period referred to in clause 3.3 and any extension periods.
Indigenous Enterprises	as defined in the Indigenous Procurement Policy.
Indigenous Procurement Policy	the policy of that name, as amended from time to time, available at https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp .
Integrity Requirements	<p>compliance with:</p> <ul style="list-style-type: none"> (a) the Commonwealth policies referred to in clause 16 (being the Workplace Gender Equality, Indigenous Procurement, Payment Times for Subcontractors, Shadow Economy and Australian Industry Participation Policies) and the requirements referred to in clause 16 regarding Significant Events notification, Modern Slavery and the Commonwealth Supplier Code of Conduct; (b) the warranties in clauses 17.1.1(b) and (c) (relating to Statutory Licences); (c) the warranties in clauses 17.1.1(d) and (e) (relating to offences by directors and shareholders, and ongoing compliance with the Tenderer's Declaration); (d) the warranties in clauses 17.1.1(f), (g) and (h) (relating to Workplace Gender Equality, unpaid judicial decisions regarding employee entitlements and terrorism); (e) Laws relating to taxation and superannuation; (f) Laws relating to employee entitlements, and <p>any other Laws or requirements notified by Finance from time to time, or specified in an Order, for the purposes of this definition.</p>

Intellectual Property	<p>(a) all rights in respect of intellectual property, whether or not such rights are registered or capable of being registered;</p> <p>(b) any application or right to apply for registration of any intellectual property; and</p> <p>(c) all rights of a similar nature to any of the rights referred to in paragraphs (a) and (b) which may subsist in Australia or elsewhere.</p>
Law	any applicable law, without limitation, including Commonwealth, State and Territory law, common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-laws, ordinances or any other legislative or regulatory measures (including any amendment, modification or re-enactment of them).
Mandatory Minimum Requirements	as defined in the Indigenous Procurement Policy.
Material	anything in relation to which Intellectual Property rights arise.
Moral Rights	<p>the following non-proprietary rights of authors of copyright Material:</p> <p>(a) the right of attribution of authorship;</p> <p>(b) the right of integrity of authorship; and</p> <p>(c) the right not to have authorship falsely attributed.</p>
NACC Act	means the <i>National Anti-Corruption Commission Act 2022 (Cth)</i> .
Non-corporate Commonwealth Entity	a non-corporate Commonwealth entity as defined by the PGPA Act.
Non-identifying Aggregated Information	<p>means Confidential Information of a party that:</p> <p>(a) is aggregated;</p> <p>(b) does not identify the party; and</p> <p>(c) does not enable the identity of the party to be ascertained.</p>
Order	an order in the form of Schedule 6 (Order Template) , or in another form issued by an Entity, to the Service Provider for the provision of Services. Where the context permits, a reference to an Order includes a Contract.
Order Commencement Date	the date specified in an Order that the Order is to commence.
Order Term	the term of an Order, as specified in the Order.

Ordered Services	the services described in an Order to be provided by the Service Provider under a Contract.
Pan-European Public Procurement On-Line Framework	a network for the exchange of electronic business documents relating to e-commerce and e-procurement, primarily between public sector organisations and their suppliers.
Panel	the Whole of Australian Government (WoAG) Recruitment and Search Services Panel to which the Service Provider has been appointed, as updated by Finance from time to time.
Panel Administration Platform	a technology solution to support the administration of the Panel.
Panel Manager	the position identified in Item 1 of Schedule 1 (Head Agreement Details) , or as otherwise advised by Finance from time to time.
Panellists	members of the Panel, as appointed by Finance from time to time.
PEPPOL	Pan-European Public Procurement On-Line, a secure network used to send invoices to Entities in the public sector.
Performance Management Framework	the framework described in Schedule 7 (Performance Management Framework and Service Levels) .
Personal Information	has the meaning it has in the Privacy Act
Personnel	<p>in relation to:</p> <ul style="list-style-type: none"> (a) the Service Provider, any natural person who is a partner, officer, employee or other personnel of the Service Provider (and, in the case of clauses 22 and 24 only, or an agent or professional adviser of the Service Provider); and (b) Finance or an Entity, any natural person, other than a person referred to in paragraph (a), who is an officer, employee, agent or professional advisor or other personnel of Finance or an Entity.
PGPA Act	the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
Privacy Act	the <i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	the Privacy Commissioner of the Commonwealth.
Process	has the meaning given in clause 5.2.1 of Schedule 2(Services)

Protective Security Policy Framework	the Commonwealth's <i>Protective Security Policy Framework</i> outlined at www.protectivesecurity.gov.au , including the Australian Government Information Security Manual outlined at https://www.cyber.gov.au/resources-business-and-government/essential-cyber-security/ism .
PTR Act	means the <i>Payment Times Reporting Act 2020</i> (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the Act.
Quotation	a submission made by the Service Provider in response to an RFQ.
Recruitability	the scheme which aims to attract, support and develop applicants with disability applying for jobs within the Australian Public Service and also facilitate cultural changes in selection panels and Entity recruitment in assessing and recruiting applicants with disability.
Reporting Entity	as defined in the PTR Act.
Request for Quotation or RFQ	a request by an Entity to the Service Provider to provide a Quotation for Services.
RFQ Closing Date	the date and time specified by an Entity in an RFQ that a Quotation is to be submitted by.
Second Finance Senior Executive	the position identified in Item 3 of Schedule 1 (Head Agreement Details) , or as otherwise advised by Finance from time to time.
Services	for the purposes of this Head Agreement: <ul style="list-style-type: none"> (a) services provided to Finance in relation to the administration of this Head Agreement; or (b) any part of the Services described in Schedule 2 (Services) for which the Service Provider is approved to provide; and/or (c) for the purposes of a Contract, the Ordered Services provided, or to be provided, by the Service Provider.
Service Category/ies	the Service Categories specified in Schedule 2 (Services) for which the Service Provider is approved to provide, as amended from time to time in accordance with clause 5.4 of this Head Agreement.
Service Level Failure	has the meaning given in clause 3.6 of Schedule 7 (Performance Management Framework and Service Levels) .
Service Levels	the service levels contained in Schedule 7 (Performance Management Framework and Service Levels) and in an Order.
Service Provider	a party to this Head Agreement.
Service Provider	means:

Proprietary Information	<p>(a) the Service Provider's cost models, profit margin information and cost plus information (being the separate disclosure of both direct and indirect costs from the profit margin); and</p> <p>(b) information relating to other customers of the Service Provider.</p>
Service Provider's Entity Contact	the person identified in Item 6 of Schedule 1 (Head Agreement Details) , or as otherwise advised by the Service Provider from time to time.
Service Provider's Panel Administration Platform Representative	the person identified in Item 9 of Schedule 1 (Head Agreement Details) , or as otherwise advised by the Service Provider from time to time.
Service Provider's Representative	the person identified as holding this role in Item 4 of Schedule 1 (Head Agreement Details) , or as otherwise advised by the Service Provider from time to time.
Service Provider's Senior Executive	the person identified as holding this role in Item 5 of Schedule 1 (Head Agreement Details) , or as otherwise advised by the Service Provider from time to time.
Shadow Economy Procurement Connected Policy	means the <i>Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019</i> .
Significant Event	has the meaning given in clause 16.1.4 .
Statement of Work	the section of a Request for Quotation or an Order, describing the Ordered Services required by an Entity.
Statutory Licence	any licence or authorisation required to operate a recruitment business under State or Territory Law, or under any national licensing regime introduced during the Head Agreement Period.
Subcontractor	a party engaged by the Service Provider to perform any part of the Services under a Contract, and that party's directors, officers, employees, agents and consultants (as relevant).
Tax Invoice	has the meaning given under the <i>A New Tax System (Goods and Services Tax) Act 1999</i> .
Tenderer's Declaration	the declaration made by the Service Provider in the request for tender process for the establishment of the Panel.
Unbundled Activities	has the meaning given in clause 5.6 of 0 (Services)
Unbundled Fees	means the Fees for Unbundled Activities set out in Table 2 and Table 3 of Schedule 3 (Pricing)

Wage Price Index	the private sector seasonally adjusted wage price index as published by the Australian Bureau of Statistics
Whole-of-Australian Government Arrangement	an arrangement that was established as a coordinated procurement that is mandatory for Non-corporate Commonwealth Entities to purchase goods and/or services through. Details of these arrangements, which are updated from time to time, are available at: https://www.finance.gov.au/government/procurement/whole-australian-government-procurement
WHS Law	means the <i>Work Health and Safety Act 2011</i> (Cth) and corresponding State and Territory legislation

1.2 Interpretation

- 1.2.1 In this Head Agreement and any Contract, except where the contrary intention is expressed:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a clause, paragraph, Schedule or Attachment is to a clause or paragraph of, or Schedule or Attachment to, this Head Agreement or any Contract and a reference to this Head Agreement or any Contract includes any Schedule or Attachment to this Head Agreement or the Contract, as the context requires;
 - (d) a reference to a clause, section or paragraph includes a reference to a subclause of that clause, subsection of that section or subparagraph of that paragraph;
 - (e) a reference to a document, publication, standard, Commonwealth policy or instrument (including a reference to a website) is a reference to the document, publication, standard, Commonwealth policy or instrument (or website) as altered, supplemented or replaced from time to time;
 - (f) a reference to A\$, \$A, AUD, dollar or \$ is to Australian currency unless stated otherwise;
 - (g) a reference to time is to the time in the place where the obligation is to be performed unless otherwise expressly stated;
 - (h) a reference to a party is to a party to this Head Agreement or any Contract as the context requires, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
 - (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - (j) if the Service Provider is a trustee, the Service Provider warrants that it has the power to perform its obligations under this Head Agreement and any Contract;

- (k) a word or expression defined in the Corporations Act or GST Act has the meaning given in the Corporations Act or GST Act, as applicable;
- (l) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Head Agreement, the applicable Contract or any part of those documents;
- (o) headings are for ease of reference only and do not affect interpretation; and
- (p) a reference to a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after proper inquiry, including inquiry which a reasonable person would be prompted to make by reason of knowledge of a fact.

1.2.2 To the extent that the parties have not completed items in a Schedule or Attachment, unless otherwise stated in that Schedule or Attachment, that item will be taken to be 'not applicable' for the purpose of this Head Agreement and any Contract.

Part A – Overview and Objectives

2 Scope of the Services

2.1 Overview

- 2.1.1 The Services required under the Panel are for commonly used Recruitment of Australian Public Service personnel required by an Entity for ongoing or non-ongoing positions and search activities relating to board positions.
- 2.1.2 Entities may at any time during the Head Agreement Period engage the Service Provider, through the processes set out in **clause 11** of this Head Agreement, to provide any of the Services in a Service Category for which the Service Provider is approved by Finance to provide (as set out in **Item 8 of Schedule 1 (Head Agreement Details)**).

2.2 Out of scope

- 2.2.1 The Services required under the Panel do not include:
- (a) services available under other Whole-of-Australian Government Arrangements such as legal services and property services;
 - (b) independent contractors providing information and communications technology services, or other specialist services;
 - (c) global search services;
 - (d) labour hire services;
 - (e) Consultancy Services;
 - (f) delivery of training; or
 - (g) the engagement of an eminent person, a prominent individual, appointed by an Entity to provide particular services.

These out of scope services may be further defined by Finance during the Head Agreement Period.

3 Structure of this Head Agreement

3.1 Overview

- 3.1.1 **Part A** of this Head Agreement provides an overview of the operation of the Panel, the term and effect of this Head Agreement.
- 3.1.2 **Part B** of this Head Agreement describes the process for an Entity to order Services under this Head Agreement.
- 3.1.3 **Part C** of this Head Agreement sets out general terms and conditions to apply to this Head Agreement and any Order issued under this Head Agreement.

3.2 Order of precedence

3.2.1 If there is inconsistency between any of the documents forming part of this Head Agreement, those documents will be interpreted in the following (descending) order of priority to the extent of any inconsistency:

- (a) the terms of this Head Agreement;
- (b) the Schedules;
- (c) the Attachments (if any);
- (d) documents incorporated by reference.

3.3 Head Agreement Period

3.3.1 This Head Agreement begins on the Head Agreement Commencement Date and continues until 30 September 2028 (**Head Agreement Period**), unless terminated earlier in accordance with **clause 27**.

3.3.2 The Initial Head Agreement Period may be extended by Finance (at its sole discretion) by providing written notice to the Service Provider, for a further period (or periods) of up to two years in total, which may be taken in whole or in part, and in any number or combination of time periods.

4 Panel structure

4.1 Objectives of the Panel

4.1.1 The objectives of the Panel are to:

- (a) provide Entities with consistent and efficient processes to engage Service Providers;
- (b) deliver high quality Services that represent value for money;
- (c) ensure Services are provided by reputable organisations that adhere to the highest integrity standards (including the Integrity Requirements); and
- (d) provide increased transparency through improved data and reporting.

5 Scope of this Head Agreement

5.1 Overview

5.1.1 This Head Agreement is a standing offer between Finance and the Service Provider under which, on an as-required basis, any Entity may enter into a Contract with the Service Provider.

5.2 Role of Finance

5.2.1 Finance will manage the Panel and this Head Agreement for the benefit of all Entities.

5.2.2 Finance's role is to do each of the following:

- (a) administer this Head Agreement;

- (b) approve any change to this Head Agreement;
- (c) monitor the Panellists' performance against **Schedule 7 (Performance Management Framework)**;
- (d) collect data from the Service Provider through the reporting framework set out in **Schedule 4 (Reporting)**; and
- (e) monitor and report on the operation of the Panel, including its operation, viability and expenditure.

5.3 No guarantee

5.3.1 The Service Provider acknowledges and agrees that:

- (a) there is no guaranteed volume of Services that will be ordered or required under this Head Agreement; and
- (b) Finance or an Entity may, at their absolute discretion (and during the term of this Head Agreement) obtain the Services, or services similar to the Services, from any other source they choose on any other terms.

5.4 Panel review and refresh

5.4.1 Finance reserves the right to, at any time during the Head Agreement Period, review the operation of the Panel and do any one or more of the following:

- (a) add to or remove Service Categories over the Head Agreement Period;
- (b) suspend or remove the Service Provider or other Panellists from the Panel for noncompliance with this Head Agreement as further described in **clause 26**;
- (c) approach the market to:
 - (i) add suppliers to the Panel in one or more Service Categories; or
 - (ii) add additional Service Categories to the Panel (for which the Service Provider and other suppliers may tender to provide).

5.5 Panel Administration Platform

5.5.1 Subject to this **clause 5.5**, Service Providers must use the technology solution established by Finance for use under the Head Agreement and under any Contract to support the administration of the Panel (**Panel Administration Platform**).

5.5.2 The Panel Administration Platform will assist Finance in administering various activities under the Panel. These activities include, but are not limited to:

- (a) the submission of reports by the Service Provider as required under **Schedule 4 (Reporting)**.

5.5.3 The Service Provider agrees it will:

- (a) use and participate in that platform under this Head Agreement or any Contract at its own cost.

5.5.4 Finance will provide all reasonable information and assistance to the Service Provider to assist in its use of and participation in the Panel Administration Platform.

6 Party representatives

6.1 Panel Manager

- 6.1.1 The Panel Manager will represent Finance and will administer this Head Agreement on behalf of the Commonwealth and each Entity.
- 6.1.2 The Panel Manager has authority to deal with the Service Provider in relation to the Service Provider's responsibilities under this Head Agreement.

6.2 First Finance Senior Executive

- 6.2.1 The First Finance Senior Executive has authority to deal with the Service Provider in relation to important or significant matters (as determined by Finance including, for example, the resolution of disputes) and any other matters requested by the Panel Manager in relation to this Head Agreement.

6.3 Second Finance Senior Executive

- 6.3.1 The Second Finance Senior Executive has authority to deal with any matter that has already been considered by the First Finance Senior Executive under **clause 6.2.1** and which has subsequently been escalated by the Panel Manager or the First Finance Senior Executive for consideration by the Second Finance Senior Executive.

6.4 Service Provider's Representative

- 6.4.1 The Service Provider's Representative will represent the Service Provider and is the primary contact for Finance under this Head Agreement.

6.5 Service Provider's Senior Executive

- 6.5.1 The Service Provider's Senior Executive has authority to deal with Finance in relation to important or significant matters (as determined by the Service Provider including, for example, the resolution of disputes) and any other matters requested by the Service Provider's Representative in relation to this Head Agreement.

6.6 Service Provider's Entity Contact

- 6.6.1 The Service Provider's Entity Contact will be the key point of contact for Entities to submit any RFQs and issue any Orders.

6.7 Service Provider Personnel contact details

- 6.7.1 The Service Provider is responsible for ensuring that the contact details in Schedule 1 (**Head Agreement Details**) for the Service Provider are correct and current.

7 Service Provider Personnel

7.1 General

- 7.1.1 The Service Provider must use suitably qualified Personnel as are necessary to enable it to fulfil its obligations under this Head Agreement.

7.1.2 The Service Provider must:

- (a) provide such information as can be lawfully provided and which is reasonably requested by Finance or an Entity concerning the Personnel the Service Provider is using, or proposes to use, in performing its obligations under this Head Agreement or a Contract;
- (b) ensure its Personnel comply with the Service Provider's obligations in this Head Agreement and any Contract; and
- (c) ensure its Personnel, when on an Entity's premises or when accessing an Entity's facilities and information, comply as necessary with the reasonable requirements and directions of the Entity, notified to the Service Provider or those Personnel, with regard to conduct, behaviour, safety and security (including submitting to security checks or clearances as required), and complying with any obligation imposed on an Entity by Law.

7.2 Subcontracting

7.2.1 The Service Provider must not subcontract any aspect of the Ordered Services without the prior written approval of the relevant Entity (such approval may be subject to conditions). Subcontractors specified in an Order are considered to have been approved by the Entity for the purposes of the relevant Contract.

7.2.2 The Service Provider must not subcontract with an entity that:

- (a) has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid any judgment amount; or
- (b) is on, or which has one or more employees that are on, or which is a member of an entity that is on, the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies; or
- (c) is named by the Workplace Gender Equality Agency as a supplier that has not complied with the *Workplace Gender Equality Act 2012* (Cth); or
- (d) is non-compliant with any of the Integrity Requirements.

7.2.3 The Service provider must inform its Subcontractors that the Subcontractor's provision of any Services under this Head Agreement or a Contract may be disclosed publicly.

7.2.4 The Service Provider must ensure that each agreement with a Subcontractor includes provisions to ensure the Subcontractor must comply with the requirements on the Service Provider set out in **clause 23** of this Head Agreement.

7.2.5 The Service Provider is fully responsible for the performance of the Services, even if the Service Provider subcontracts any aspect of the provision of the Services.

8 Performance Management Framework and Service Levels

8.1 Performance Management Framework

8.1.1 In supplying the Services, the Service Provider acknowledges that it must comply with the Performance Management Framework.

- 8.1.2 The Service Provider acknowledges and agrees that its performance in providing Services to Entities will be:
- (a) assessed and reported on by Entities in accordance with the Performance Management Framework; and
 - (b) collected and used by Finance and shared with Entities on a confidential basis for the purpose of achieving the objectives of the Panel.

8.2 Service Levels

- 8.2.1 The Service Provider must provide the Services so as to meet or exceed the Service Levels described in **Schedule 7 (Performance Management Framework and Service Levels)** and any additional Service Levels specified in an Order.
- 8.2.2 If requested, the Service Provider must provide all necessary information and assistance to enable Finance or an Entity to verify the Service Provider's performance of the Services against the Service Levels.

9 Reporting

9.1 Reporting to Finance

- 9.1.1 The Service Provider must, at its own expense, provide Finance with reports in accordance with **Schedule 4 (Reporting)**, and any additional reports reasonably requested by Finance.
- 9.1.2 The Service Provider must, if requested by Finance, provide written verification of the accuracy of any reports delivered.
- 9.1.3 On expiry of this Head Agreement, the Service Provider must continue to provide, at no cost, reports in accordance with **Schedule 4 (Reporting)** in relation to any existing Contract until all invoices are paid and reported to Finance.

9.2 Reporting to Entities

- 9.2.1 The Service Provider agrees to provide an Entity with the reports specified in an Order and any other reports reasonably required by the Entity from time to time relating to the Contract.

10 Relationships

10.1 General obligations of the parties

- 10.1.1 Each party must:
- (a) diligently perform its obligations under this Head Agreement and any Contract; and
 - (b) work together in a collaborative manner in good faith.
- 10.1.2 If requested by Finance or an Entity, the Service Provider must participate in any meetings (which may be by virtual attendance), in relation to the operation of this Head Agreement or any Contract. If the Service Provider will incur material external

costs as a result of participation in such a meeting, the Service Provider may seek reimbursement from Finance or the Entity (as relevant) for those costs provided they are reasonable in amount, substantiated to the reasonable satisfaction of Finance or the Entity and have been notified to Finance or the Entity prior to those costs being incurred.

Part B – Ordered Services

11 Ordering Services

11.1 Overview

11.1.1 An Entity may at any time during the Head Agreement Period, issue the Service Provider's Entity Contact and/or any other Panellists appointed to the Panel with:

- (a) a Request for Quotation for the provision of Services; and/or
- (b) an Order.

11.2 Request for Quotations

11.2.1 An Entity may issue an RFQ to the Service Provider's Entity Contact in the format provided in **Schedule 5 (Request for Quotation Template)**, or similar format, at any time during the Head Agreement Period. Finance may update the Request for Quotation Template from time to time by notice to the Service Provider.

11.2.2 The RFQ will describe the scope of the Services required by the Entity.

11.2.3 In seeking a Quotation, an Entity may request Fees lower than those set out in **Schedule 3 (Pricing)** by seeking that quotes are given on a fixed price or other basis.

11.2.4 In an RFQ, an Entity may also:

- (a) require Additional Requirements; and
- (b) stipulate Service Levels in addition to the Service Levels in **Schedule 7 (Performance Management Framework and Service Levels)**.

11.2.5 Upon receipt of an RFQ, the Service Provider must:

- (a) prepare and submit a Quotation by the RFQ Closing Date with:
 - (i) details of the Services proposed to be provided in response to the RFQ;
 - (ii) the applicable Fees to provide the Services in the form required by the RFQ and consistent with **Schedule 3 (Pricing)**; and
 - (iii) any other information requested by the Entity in the RFQ; or
- (b) advise the Entity in writing, or through a communication method nominated by Finance from time to time, as soon as possible (and, in any event, before the RFQ Closing Date), that the Service Provider is not submitting a Quotation in response to that RFQ.

11.2.6 When responding to an RFQ the Service Provider may:

- (a) offer Fees that are lower than the Fees set out in **Schedule 3 (Pricing)**; and
- (b) set out charges for any Additional Requirements and, where such charges are in addition to the Fees, providing an explanation for the difference, noting that the Entity will assess whether there is a reasonable basis for any such additional charges.

- 11.2.7 Quotations must remain open for acceptance by the Entity for a minimum of 30 days after the RFQ Closing Date, or for such time as specified by the Entity in an RFQ.
- 11.2.8 By issuing an RFQ, there is no obligation on the Entity to issue an Order.

11.3 Forming a Contract

- 11.3.1 A separate Contract will be formed between the Service Provider and an Entity when an Entity issues an Order to the Service Provider and the Order is signed by both parties.
- 11.3.2 An Entity may issue an Order to the Service Provider in the format provided in **Schedule 6 (Order Template)**, or similar format, at any time during the Head Agreement Period. Finance may update the Order Template from time to time by notice to the Service Provider.

11.4 Modifications to Head Agreement

- 11.4.1 Any terms in an Order or Contract that seek to modify the terms of this Head Agreement to reduce the obligations on a Service Provider have no legal effect.

12 Terms of a Contract

12.1 Terms and conditions

- 12.1.1 The terms and conditions of each Contract will be:
- (a) the relevant terms and conditions of this Head Agreement;
 - (b) the terms and conditions of the Order; and
 - (c) any other documents specified as being part of, incorporated into, or otherwise applicable to, the Contract (including relevant attachments and attached documents).
- 12.1.2 For a Contract, to the extent of any conflict between any of the provisions referred to in **clause 12.1.1**, the (descending) order of precedence set out in that clause will apply.

12.2 Contract period

- 12.2.1 A Contract begins on the Order Commencement Date and continues for the Order Term, as specified in the Order, unless the Contract is terminated in accordance with **clause 27**.
- 12.2.2 Where an Order Term extends beyond the Head Agreement Period or termination of this Head Agreement, the Order Term cannot be extended, unless otherwise agreed by Finance.
- 12.2.3 The terms of this Head Agreement continue to apply to the Contract for the entire Order Term notwithstanding the expiry or termination of this Head Agreement.

13 Provision of Services under a Contract

13.1 Service Provider obligations

- 13.1.1 Upon entering into a Contract, the Service Provider must provide the Ordered Services as detailed in the Contract:
- (a) with due skill and care and to the best of the Service Provider's knowledge, expertise and ability;
 - (b) by Personnel who have the qualifications, expertise, capacity and capability to provide the Ordered Services to a high standard;
 - (c) in accordance with relevant Australian Standards or where none apply, relevant international industry standards, where applicable; and
 - (d) in accordance with the requirements of this Head Agreement and the Order.

13.2 Inquiries

- 13.2.1 The Service Provider agrees to provide all reasonable assistance requested by an Entity in respect of any inquiry concerning the Service Provider's performance of the Ordered Services. If the Service Provider will incur material external costs as a result of provision of such assistance, the Service Provider may seek reimbursement from the Entity for those costs provided they are reasonable in amount, substantiated to the reasonable satisfaction of the Entity and have been notified to the Entity prior to those costs being incurred.
- 13.2.2 Without limitation to the generality of **clause 13.2.1**:
- (a) the assistance to be provided by the Service Provider under **clause 13.2.1** will include, as appropriate, the preparation of reports, the provision of documents or other Material, and making available relevant Service Provider Personnel and Subcontractors to provide information or answer questions on any matters relevant to or arising from an Order which might reasonably be expected to be within the knowledge of the Service Provider. To avoid doubt, this assistance will not include the provision of any legally privileged information; and
 - (b) an inquiry referred to in **clause 13.2.1** will include any administrative or statutory review, audit or inquiry (whether within or external to the Entity), any requests for information or documents directed to the Entity and any inquiry conducted by Parliament or any Parliamentary committee.
- 13.2.3 The Entity Representative will endeavour to notify the Service Provider as early as possible of any assistance required under **clause 13.2.1**, and the Service Provider acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.
- 13.2.4 This **clause 13.2** survives expiry or termination of this Head Agreement.

13.3 Relationship of parties

- 13.3.1 The Service Provider is not by virtue of this Head Agreement or a Contract an officer, employee, partner or agent of the Commonwealth, Finance or an Entity, nor does the

Service Provider have any power or authority to bind or represent the Commonwealth, Finance or an Entity, unless specifically authorised in writing.

- 13.3.2 The Service Provider or any officer, employee, partner or agent must not:
- (a) misrepresent its relationship with the Commonwealth, Finance or an Entity;
 - (b) engage in any misleading or deceptive conduct in relation to the Services; or
 - (c) represent itself as an employee of the Commonwealth, Finance or an Entity.

14 Fees and payment

14.1 Fees

- 14.1.1 All Fees are inclusive of GST.
- 14.1.2 The total invoiced amount for a Contract must not exceed the amount in the Contract unless the parties vary, in advance and in writing, the total Fees payable under the Contract.
- 14.1.3 Subject to **clause 11.2.6**, the Fees specified in **Schedule 3 (Pricing)** are the maximum Fees that may be charged unless adjusted in accordance with **clause 14.2.1**.

14.2 Fee adjustment

- 14.2.1 Subject to this **clause 14.2**, the Service Provider will be awarded an increase to the Fees in **Schedule 3 (Pricing)** in accordance with this **clause 14.2**, to take effect on 1 July each year. A Fee increase will only be awarded for the 1 July that is at least 12 months after the Head Agreement Commencement Date and will be made for each subsequent 1 July during the Head Agreement Period.
- 14.2.2 If Services or a Service Category are added to this Head Agreement after the Head Agreement Commencement Date, they will be included in a Fee increase under this **clause 14.2** no earlier than 12 months after the date they are added to this Head Agreement.
- 14.2.3 A Fee increase awarded under this **clause 14.2** will:
- (a) be equal to the percentage change in the Wage Price Index for the 12 months ending on 31 March of the year in which the increase applies; and
 - (b) apply to Contracts entered into after the relevant 1 July.
- 14.2.4 Finance will notify all Service Providers of the updated Fees each year. All updated Fees will be rounded to the nearest two decimal places.

14.3 Invoicing

- 14.3.1 The Service Provider must submit a correctly rendered Tax Invoice to the Entity in accordance with the requirements in a Contract. If a Tax Invoice is not correctly rendered, the Entity will return it to the Service Provider for correction and resubmission.

- 14.3.2 Tax Invoices must include:
- (a) information required by law;
 - (b) payment terms and payment details;
 - (c) a description of the Services to which the invoice relates;
 - (d) itemised amounts payable (broken down by type); and
 - (e) any other information specified by the Entity in an Order.

14.4 Payment timeframes

- 14.4.1 The Entity will pay the Service Provider in accordance with the timeframes described in the Australian Government's *Supplier Pay on-Time or Pay Interest Policy* available at <https://www.finance.gov.au/publications/resource-management-guides/supplier-pay-time-or-pay-interest-policy-rmg-417> (or applicable superseding policy).

15 GST and taxes

15.1 GST

- 15.1.1 Words or expressions used in this **clause 15** which are defined in the GST Act have the same meaning in this **clause 15**.
- 15.1.2 Unless described otherwise in this Head Agreement or an Order, any consideration to be paid for a supply made under or in connection with this Head Agreement or a Contract is 'GST inclusive'.
- 15.1.3 If a party (**Supplier**) makes a supply under or in connection with this Head Agreement on which GST is imposed (being a supply described in this Head Agreement as 'GST exclusive):
- (a) the consideration payable or to be provided for that supply under this Head Agreement but for the application of this **clause 15.1.3 (GST exclusive consideration)** is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable on the supply (**GST Amount**); and
 - (b) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- 15.1.4 The Recipient need not make a payment for a taxable supply made under or in connection with this Head Agreement until the Supplier has given the Recipient a Tax Invoice for the supply to which the payment relates.

15.2 Other taxes

- 15.2.1 Except as provided by this **clause 15**, the Service Provider agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Head Agreement or a Contract.

Part C – General Terms and Conditions

16 Commonwealth Laws and policy requirements

16.1 Compliance with Laws and policies

- 16.1.1 The Service Provider must comply with, and ensure its Personnel and Subcontractors comply with all Laws and Commonwealth policies applicable to the provision of Services under this Head Agreement and any Contract, and any Entity-specific policies referred to in this Head Agreement or specified in an Order.
- 16.1.2 Without limiting this **clause 16**, the Service Provider must comply with, and ensure its Personnel and Subcontractor comply with the following Laws:
- (a) *Crimes Act 1914* (Cth);
 - (b) *Criminal Code Act 1995* (Cth);
 - (c) *Privacy Act 1988* (Cth);
 - (d) *Copyright Act 1968* (Cth);
 - (e) *Workplace Gender Equality Act 2012* (Cth);
 - (f) *Work Health and Safety Act 2011* (Cth);
 - (g) *Auditor-General Act 1997* (Cth);
 - (h) Part 4 of the *Charter of the United Nations Act 1945* (Cth);
 - (i) *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Cth);
 - (j) *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);
 - (k) *Modern Slavery Act 2018* (Cth); and
 - (l) all applicable laws relating to taxation.
- 16.1.3 The Service Provider acknowledges, and must ensure that its Personnel and Subcontractors are aware of and acknowledge, that the giving of false or misleading information to the Commonwealth is a serious criminal offence under section 137 of the *Criminal Code Act 1995* (Cth).
- 16.1.4 The Service Provider must, during the Head Agreement Period and any Order Term, and to the extent permitted by Law, notify Finance immediately on becoming aware of:
- (a) any adverse comments or findings made by a court, commission, tribunal, or other statutory or professional body:
 - (i) regarding the conduct or performance of the Service Provider; or
 - (ii) impacting on the professional capacity or capability of its Personnel to deliver the Services;
 - (b) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Service Provider's Personnel, agents or Subcontractors that impacts or could be

reasonably perceived to impact on the Service Provider's professional capacity, capability, fitness or reputation;

- (c) any unsettled judicial decisions against it relating to unpaid employee entitlements;
- (d) any other significant matters, including the commencement of legal or regulatory action, disciplinary action by an independent person or disciplinary action internal to the Service Provider, involving the Service Provider or its Personnel, agents or Subcontractors that may adversely impact on:
 - (i) the Service Provider's compliance with Australian Government policy or legislation; or
 - (ii) Finance's or an Entity's compliance with Australian Government policy or legislation; or
 - (iii) the Commonwealth's reputation; or
 - (iv) the professional capacity or capability of the Service Provider or its Personnel to deliver the Services; and
- (e) any non-compliance by:
 - (i) the Service Provider or its Personnel; or
 - (ii) to the extent that information is known by or reasonably available to the Service Provider, the Service Provider's agents or Subcontractors, with any judgment against the Service Provider, its Personnel, agents or Subcontractors (as relevant) from any court or tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law,

each a **Significant Event**.

- 16.1.5 A notice issued under **clause 16.1.4** must provide, to the extent that information is known by or reasonably available to the Service Provider at the time of giving the notice, a summary of the Significant Event, including the date that it occurred and whether any Personnel, agents or Subcontractors engaged in connection with the Services were involved.
- 16.1.6 If, prior to the Service Provider providing a notice under **clause 16.1.4** in respect of an event, Finance notifies the Service Provider in writing that an event is to be considered a Significant Event for the purposes of **clause 16.1.4**, the Service Provider must issue a notice under **clause 16.1.4** in relation to the event within five Business Days of being notified by Finance, unless a different timeframe is agreed in writing with Finance.
- 16.1.7 Where reasonably requested by Finance, the Service Provider must provide Finance with any additional information regarding the Significant Event (to the extent that information is known or reasonably available to the Service Provider at the time that Finance makes a request) within five Business Days of the request, unless a different timeframe is agreed in writing with Finance.
- 16.1.8 If Finance is notified of a Significant Event in accordance with **clause 16.1.4**, or notifies the Service Provider of an event under **clause 16.1.6**, then Finance may:

- (a) notify the Service Provider that no further action in relation to the Significant Event is required;
- (b) notify the Service Provider that a remediation plan is required; or
- (c) acting reasonably, determine that the Significant Event is of such a serious or significant nature that it is not appropriate in the circumstances for the Service Provider to continue as a Service Provider on the People Panel, in which case Finance will notify the Service Provider of that and the occurrence of the Significant Event will be deemed to be a breach of this **clause 16**, including for the purposes of **clause 27.1.2**.

Remediation Plan

- 16.1.9 If Finance notifies the Service Provider under **clause 16.1.8(b)** that a remediation plan is required, the Service Provider must prepare a draft remediation plan and submit that draft plan to the Panel Manager for approval within ten Business Days of the request, unless a different timeframe is agreed in writing by Finance.
- 16.1.10 A draft remediation plan prepared by the Service Provider in accordance with **clause 16.1.9** must include the following information:
 - (a) how the Service Provider will address the Significant Event in the context of the Services, including confirmation that the implementation of the remediation plan will not:
 - (i) impact on the delivery of the Services; or
 - (ii) impact on compliance by the Service Provider with its other obligations under the Head Agreement or a Contract;
 - (b) how the Service Provider will ensure events similar to the Significant Event do not occur again; and
 - (c) any other information reasonably requested by Finance.
- 16.1.11 Finance must review the draft remediation plan and may:
 - (a) approve the draft remediation plan;
 - (b) notify the Service Provider of the details of any changes that Finance, acting reasonably, considers are required to the draft remediation plan; or
 - (c) notify the Service Provider that Finance considers that the draft remediation plan is unsatisfactory having regard to the nature of the Significant Event and the likelihood that the draft remediation plan addresses the matters raised by the Significant Event, in which case Finance will request that the Service Provider give, in writing, and within five Business Days of the request, reasons explaining how the draft remediation plan sufficiently addresses the Significant Event and propose any further amendments that would assist further with this.

Changes to the Remediation Plan

- 16.1.12 The Service Provider must make any changes to the draft remediation plan reasonably requested by Finance under **clause 16.1.11(b)** and resubmit the draft remediation plan to Finance for approval within five Business Days of the notice unless a different timeframe is agreed in writing by Finance.
- 16.1.13 Finance may:

- (a) approve the resubmitted draft remediation plan; or
 - (b) notify the Service Provider that Finance considers that the resubmitted draft remediation plan is unsatisfactory because it has not sufficiently addressed the changes reasonably requested by Finance under **clause 16.1.11(b)**, in which case Finance will request that the Service Provider give, in writing, and within five Business Days of the request, reasons explaining how the resubmitted draft remediation plan sufficiently addresses the changes request by Finance, and propose any further amendments that would assist further.
- 16.1.14 If the Service Provider provides a response as requested by **clause 16.1.13(b)** within five Business Days of the request, Finance must review the response and may:
- (a) approve the Service Provider's reasons and if applicable the further proposed amendments, in which case Finance will approve the resubmitted draft remediation plan (resubmitted again if relevant); or
 - (b) reject the resubmitted draft remediation plan (resubmitted again if relevant) if Finance determines, acting reasonably, that the Service Provider's reasons and if applicable the further proposed amendments do not sufficiently address the changes requested by Finance, in which case Finance will notify the Service Provider of that, and the failure to provide a satisfactory remediation plan will be deemed to be a breach of this **clause 16**, including for the purposes of **clause 27.1.2**.
- 16.1.15 If the Service Provider does not provide a response as requested by **clause 16.1.13(b)** within five Business Days of the request, then the Service Provider will be deemed to be in breach of this **clause 16**, including for the purposes of **clause 27.1.2**.

Service Provider Response

- 16.1.16 If the Service Provider provides a response as requested by **clause 16.1.11(c)** within five Business Days of the request, Finance must review that response and may:
- (a) approve the Service Provider's reasons and if applicable the further proposed amendments, in which case Finance will approve the draft remediation plan (as resubmitted if relevant); or
 - (b) reject the draft remediation plan (as resubmitted if relevant) if Finance determines, acting reasonably, that Finance is not satisfied with the Service Provider's reasons and if applicable the further proposed amendments, in which case Finance will notify the Service Provider of that, and the failure to provide a satisfactory remediation plan will be deemed to be a breach of this **clause 16**, including for the purposes of **clause 27.1.2**.
- 16.1.17 If the Service Provider does not provide a response as requested by **clause 16.1.11(c)** within five Business Days of the request, then the Service Provider will be deemed to be in breach of this **clause 16**, including for the purposes of **clause 27.1.2**.

Other Obligations regarding Remediation Plans

- 16.1.18 Without limiting its other obligations under the Head Agreement or a Contract, the Service Provider must comply with the remediation plan as approved by Finance in accordance with **clauses 16.1.11(a), 16.1.13(a), 16.1.14(a) or 16.1.16(a)**.

- 16.1.19 The Service Provider must provide reports and other information about the Service Provider's progress in implementing any remediation plan as reasonably requested by Finance.
- 16.1.20 Finance's rights under this clause are in addition to and do not otherwise limit any other rights either Finance or an Entity may have under this Head Agreement or a Contract. The performance by the Service Provider of its obligations under this clause will be at no additional cost to Finance or an Entity.
- 16.1.21 The performance by the Service Provider of its obligations under **clauses 16.1.4 to 16.1.19** (both inclusive) will be at no additional cost to Finance or any Entity.

16.2 Workplace Gender Equality Act 2012 (Cth)

- 16.2.1 This **clause 16.2** applies only to the extent that the Service Provider is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012 (Cth)* (**WGE Act**).
- 16.2.2 If the Service Provider or any of its Personnel or Subcontractors becomes non-compliant with the WGE Act during the Head Agreement Period, such non-compliance will constitute a material breach of a provision of this Head Agreement for the purposes of **clause 27.1.1**, and the Service Provider must promptly notify the Panel Manager.
- 16.2.3 The Service Provider must provide a current letter of compliance from the Workplace Gender Equality Agency within 18 months from the Head Agreement Commencement Date and, following this, annually to the Panel Manager.
- 16.2.4 Compliance with the WGE Act does not relieve the Service Provider from its responsibility to comply with its other obligations under this Head Agreement or any Contract.

16.3 Modern Slavery

- 16.3.1 The Service Provider must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of Services.
- 16.3.2 If at any time the Service Provider becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Head Agreement or a Contract, the Service Provider must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

16.4 Indigenous Procurement Policy

- 16.4.1 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy for further information).
- 16.4.2 The Service Provider must use its reasonable endeavours to increase its:
- (a) purchasing from Indigenous Enterprises; and

- (b) employment of Indigenous Australians,
in the delivery of the Services.

16.4.3 In addition to the requirements in this **clause 16.4**, for any RFQ or Order valued at \$7.5 million or more the Mandatory Minimum Requirements of the Indigenous Procurement Policy apply.

16.5 Fraud

16.5.1 For the purposes of this clause, 'Fraud' means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means.

16.5.2 The Service Provider must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Head Agreement or a Contract. The Service Provider acknowledges the occurrence of Fraud by the Service Provider or its Personnel or Subcontractors will constitute a breach of this Head Agreement and any relevant Contract.

16.5.3 If the Service Provider or any of its Personnel or Subcontractors have committed Fraud, or the Service Provider has failed to take reasonable steps to prevent Fraud by its Personnel or Subcontractors, the Service Provider must reimburse Finance or the relevant Entity for the reasonable costs it incurs as a result of the Fraud.

16.6 Payment Times for Subcontractors

16.6.1 The Service Provider must comply with the 'Payment Times Procurement Connected Policy' (**PT PCP**), currently available at: <https://treasury.gov.au/publication/p2021-183909>

16.6.2 If the Service Provider enters into a PT PCP Subcontract, the Service Provider must include in that subcontract:

- (a) a requirement for the Service Provider to pay the PT PCP Subcontractor:

- (i) subject to **clause 16.6.4**, within 20 calendar days after the acknowledgement of the satisfactory delivery of the Services and receipt of a correctly rendered Tax Invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day; and
 - (ii) subject to **clause 16.6.5**, for payments made by the Service Provider after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with **clause 16.6.6**;

- (b) a statement that the PT PCP applies to that subcontract; and

- (c) a statement that the subcontractor may make a complaint to the PT PCP Policy Team or to an Entity in accordance with the PT PCP if there has been non-compliance with the requirements of this **clause 16.6.2**.

16.6.3 If the Service Provider enters into a Reporting Entity Subcontract in anticipation of (or after) entering the Contract, the Service Provider must use reasonable endeavours to include in that subcontract:

- (a) obligations equivalent to those in **clause 16.6.2**; and

- (b) a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract will include:
 - (i) obligations equivalent to those in **clause 16.6.2**; and
 - (ii) obligations equivalent to this **clause 16.6.3(b)** (such that the obligations in this **clause 16.6.3(b)** to continue to be flowed down the supply chain to all Reporting Entity Subcontractors).
- 16.6.4 **Clause 16.6.2(a)(i)** does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period in **clause 16.6.2(a)(i)**.
- 16.6.5 The Service Provider is not required to pay interest in accordance with **clause 16.6.2(a)(ii)** if either:
 - (a) an Entity has failed to pay the Service Provider in accordance with the timeframes and requirements under a Contract; or
 - (b) the amount of the interest payable is less than \$100 (GST inclusive).
- 16.6.6 Interest payable under **clause 16.6.2** will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Service Provider effects payment as represented by the following formula:

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

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

D = the number of days from the day after payment was due up to and including the day that payment is made.

PT PCP Evaluation Questionnaire

- 16.6.7 If requested in writing by an Entity, the Service Provider must complete and return a PT PCP Evaluation Questionnaire within 30 calendar days of the request.

Non Compliance and Remediation

- 16.6.8 If an Entity considers or becomes aware that the Service Provider has not or may not have complied with:
 - (a) the requirements of **clause 16.6**; or
 - (b) the payment requirements of a PT PCP Subcontract,
the Entity may direct the Service Provider to provide to the Entity either or both of the following within the timeframes specified by the Entity:
 - (c) information to enable the Entity to review the Service Provider's compliance; or
 - (d) a properly completed PT PCP Remediation Plan.

- 16.6.9 The Service Provider must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under **clause 16.6.8**.
- 16.6.10 If an Entity considers that the Service Provider has failed to comply with any of its obligations under this **clause 16.6**, without limiting the Entity's rights and remedies at law or otherwise under the Contract, the Entity may do either or both of the following:
- (a) take the failure or non-compliance into account as part of the Entity's monitoring of the Service Provider's performance under the Contract; or
 - (b) report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the PT PCP Policy Team.
- 16.6.11 The Service Provider agrees that if it is the subject of a complaint in relation to its compliance with **clause 16.6** or the associated payment provisions of a PT PCP Subcontract:
- (a) it will not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
 - (b) it will cooperate in good faith with the Entity in connection with any investigation or inquiry and any attempt to resolve the complaint.

Consent

- 16.6.12 For any PT PCP purpose, the Service Provider consents to an Entity:
- (a) using and sharing with any other Entity the information provided by the Service Provider as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan, or otherwise received or obtained by the Entity in connection with this Contract or a PT PCP Subcontract; and
 - (b) receiving information obtained under, or in accordance with, the PTR Act (**PTR Protected Information**) from an Entrusted Person and using such PTR Protected Information.
- 16.6.13 By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the PT PCP that includes any personal information within the meaning of Privacy Act 1988 (Cth), the Service Provider warrants and represents that it has obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of such information in the manner contemplated by **clauses 16.6.12** and **16.6.13**. The Service Provider will provide evidence of such consents to an Entity on request.

Interpretation

- 16.6.14 In this **clause 16.6**, capitalised terms not defined in this Head Agreement have the meanings in the PTR Act or PT PCP Policy, as applicable:

16.7 Shadow Economy Policy

- 16.7.1 In this **clause 16.7**, capitalised terms used in this clause that are not defined in **clause 1.1** have the meanings given in the Shadow Economy Procurement Connected Policy.

- 16.7.2 The Service Provider must hold a Valid and Satisfactory Statement of Tax Record at all times during the Head Agreement Period and, on request by Finance or an Entity, provide to Finance or an Entity a copy of any such Statement of Tax Record.
- 16.7.3 If the total value of a Contract is over \$4 million (GST inclusive), the Service Provider must ensure that any first tier subcontractor engaged under that Contract holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant Contract.
- 16.7.4 The Service Provider must, on request by Finance or an Entity, provide to Finance or an Entity a copy of any Statement of Tax Record referred to in this **clause 16.7**.

16.8 Australian Industry Participation

- 16.8.1 For any Contract with a value of \$20 million or more, the Australian Industry Participation (AIP) National Framework principles will apply, including the requirement to submit an Industry Participation Plan. More information on AIP plan requirements can be found at www.industry.gov.au/aip.

16.9 Illegal Workers

- 16.9.1 The Service Provider must ensure that, in connection with any Services performed in Australia, its Personnel are at all times:
- (a) Australian citizens; or
 - (b) in the case of persons who are not Australian citizens, entitled to work in Australia.

16.10 Work Health and Safety

- 16.10.1 The Service Provider must ensure that its obligations under this Head Agreement, and any Contract are performed in a manner that does not pose any avoidable health or safety risk to the Service Provider's Personnel, to an Entity's Personnel or to any other person.
- 16.10.2 The Service Provider must, if specified in a Contract, provide a plan containing the procedures it will implement to ensure compliance with this **clause 16.10 (WHS Plan)**, and implement the WHS Plan.
- 16.10.3 During the term of this Head Agreement, the Service Provider must give Finance, on request, all necessary documentation to verify that its work health and safety systems comply with WHS Law.
- 16.10.4 Without limiting in any way the work health and safety obligations that the Service Provider has under this Head Agreement or any Contract, or in relation to any Services, or due to the operation of Commonwealth and State or Territory Laws, the Service Provider must:
- (a) ensure that any person conducting a business or undertaking involved in the performance of this Head Agreement, any Contract or the provision of any Services meets the primary duty of care requirements of the *Work Health and Safety Act 2011* (Cth) (the **WHS Act**) or corresponding State or Territory legislation;

- (b) ensure the regulator is notified immediately after a notifiable incident has occurred in accordance with section 38 of the WHS Act or corresponding State or Territory legislation; and
 - (c) notify the relevant Entity representative within one Business Day of any work related injury that causes death or serious personal injury, any notifiable incident as defined at section 35, 36 and 37 of the WHS Act so far as it relates to any Services under this Head Agreement or a Contract, and each occasion that the Service Provider reports to or notifies a regulatory authority under WHS Law.
- 16.10.5 At Finance or an Entity's request, the Service Provider must provide reasonable assistance to the Commonwealth or Comcare (including giving the Commonwealth, Comcare and their nominees access to the Service Provider's premises, files, ICT systems and Personnel) in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the performance of this Head Agreement or any Contract.
- 16.10.6 The Service Provider must perform its obligations under this Head Agreement and any Contract in such a way that Finance and any Entity is able to participate in any necessary inspections, and is able to obtain the full benefit of Services for the purposes for which they are delivered, without being in breach of any WHS Law.
- 16.11 Change of Control**
- 16.11.1 If the Service Provider undergoes a Change of Control, the Service Provider must notify Finance, and any Entity with which the Service Provider has a Contract, within 14 days of that Change of Control occurring.
- 16.11.2 The Service Provider must promptly provide Finance with any further information reasonably requested by Finance or an Entity in relation to any such Change of Control or proposed Change of Control.
- 16.12 National Anti-Corruption Commission Act 2022 (Cth)**
- 16.12.1 The Service Provider acknowledges that it is a 'contracted service provider' for the purposes of the NACC Act as a result of this Head Agreement and any Contract.
- 16.12.2 The Service Provider must comply with any reasonable request, policy or direction issued by Finance or an Entity, and must otherwise cooperate with Finance or the Entity in relation to any action taken by Finance or the Entity required or authorised by the NACC Act.
- 16.12.3 The performance by the Service Provider of its obligations under **clause 16.12.2** will be at no additional cost to Finance or an Entity.
- 16.13 Compliance with the Commonwealth Supplier Code of Conduct**
- 16.13.1 For the purposes of this **clause 16.13**, 'Commonwealth Supplier Code of Conduct' or 'Code' means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024, as updated from time to time.
- 16.13.2 The Service Provider must comply with, and ensure that its officers, employees, agents and Subcontractors comply with, the Code in connection with the performance of this Head Agreement and each Contract.

- 16.13.3 The Service Provider must:
- (a) periodically monitor and assess its, and its Personnel's compliance with the Code; and
 - (b) on request from Finance or an Entity, promptly provide information regarding:
 - (i) the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
 - (ii) the Service Provider's compliance with **clause 16.13.2**.
- 16.13.4 The Service Provider must immediately issue Finance or an Entity a notice on becoming aware of any breach of **clause 16.13.2**. The notice must include a summary of the breach, the date that the breach occurred, and details of the personnel involved.
- 16.13.5 Where Finance or an Entity identifies a possible breach of **clause 16.13.2**, it may issue the Service Provider a notice, and the Service Provider must, within three Business Days of receiving the notice, either:
- (a) where the Service Provider considers a breach has not occurred: advise Finance or the Entity that there has not been a breach and provide information supporting that determination; or
 - (b) where the Service Provider considers that a breach has occurred: issue a notice under **clause 16.13.4** and otherwise comply with its obligations under this **clause 16.13**.
- 16.13.6 Notwithstanding **clause 16.13.5**, Finance or an Entity may notify the Service Provider in writing that it considers that the Service Provider has breached **clause 16.13.2**, in which case the Service Provider must issue a notice under **clause 16.13.4** and otherwise comply with its obligations under this **clause 16.13**.
- 16.13.7 A failure by the Service Provider to comply with its obligations under any part of this clause will be a material breach for the purposes of **clause 27.1.1** of this Head Agreement.
- 16.13.8 Nothing in this **clause 16.13** or the Code limits, reduces, or derogates from the Service Provider's other obligations under this Head Agreement or a Contract. Finance's and an Entity's rights under this clause are in addition to and do not otherwise limit any other rights either Finance or an Entity may have under this Head Agreement or a Contract. The performance by the Service Provider of its obligations under this clause will be at no additional cost to Finance or an Entity.
- 16.13.9 The Service Provider agrees that Finance or an Entity or any other Commonwealth agency may take into account the Service Provider's compliance with the Code in any future approach to market or procurement process.

17 Service Provider's warranties

- 17.1.1 The Service Provider warrants on the Head Agreement Commencement Date and each Order Commencement Date that:
- (a) it has the full power and authority to enter into, perform and observe its obligations under this Deed;

- (b) it has all necessary licences and authorisations required to operate and provide the Ordered Services to an Entity under a Contract, including any applicable Statutory Licence;
 - (c) it complies, and will comply at all times during the Head Agreement Period and each Order Term, with any Statutory Licence and the Integrity Requirements;
 - (d) none of its directors, shareholders or management personnel has been convicted of an offence relating to fraud, dishonesty or drug trafficking;
 - (e) the warranties and representations made in the Tenderer's Declaration are true and correct, and remain true and correct at all times during the Head Agreement Period and each Order Term;
 - (f) it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
 - (g) it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid the judgment amount;
 - (h) it is not on the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies and none of its Personnel or Subcontractors are on, or are a member of an entity on, that list;
 - (i) it is financially viable; and
 - (j) it and its personnel have the necessary experience, qualifications, skills, knowledge and competence to perform the Services or the position under that Contract, as applicable.
- 17.1.2 The Service Provider warrants that it will promptly notify and fully disclose to Finance any breach of any of the warranties in this **clause 17**, or any event or occurrence actual or threatened during the Head Agreement Period or any Order Term that would materially affect the Service Provider's or any Subcontractor's ability to perform any of its obligations under this Head Agreement or any Contract to perform the position under that Contract.
- 17.1.3 The Service Provider warrants that the information provided to Finance prior to entering into this Head Agreement regarding:
- (a) its country of tax residency;
 - (b) if the Service Provider has a parent entity, the parent entity's country of tax residency; and
 - (c) if the Service Provider has multiple tax residencies (i.e. it is a dual resident), each of those countries of which it is a tax resident,
- is true and correct on the Head Agreement Commencement Date.
- 17.1.4 If there are any changes to the details referred to in **clause 17.1.3**, the Service Provider must notify Finance immediately of those changes.
- 17.1.5 The Service Provider acknowledges that Finance and Entities may at any time conduct their own integrity checks on the Service Provider's compliance with this **clause 17**.

18 Insurance

18.1 Obligations to hold insurance

- 18.1.1 The Service Provider must hold the following insurance for the duration of each Contract, in addition to any insurance required in a Contract:
- (a) public liability insurance for an amount of not less than \$10 million per occurrence, unless specified otherwise in an Order. An Order may also specify an aggregate limit on public liability insurance;
 - (b) professional indemnity insurance for an amount of not less than \$2 million per occurrence and \$10 million in the aggregate, unless specified otherwise in an Order; and
 - (c) workers compensation insurance as required by law.
- 18.1.2 Professional indemnity insurance must additionally be held for a period of 3 years following the end of a Contract, or such other longer period specified in the Order.
- 18.1.3 On request from Finance or an Entity, the Service Provider must provide evidence of the insurance described in **clause 18.1.1** (such as a certificate of currency) within 30 calendar days.

19 Liability

19.1 Liability cap

- 19.1.1 Subject to **clause 19.1.2**, the Service Provider's liability arising out of or in connection with a Contract, whether for breach of contract, tort (including negligence) or for any other common law or equitable cause of action (including under an indemnity), is limited to the greater of:
- (a) \$250,000;
 - (b) an amount equal to three times the total amount paid or payable to the Service Provider under the Contract; and
 - (c) any higher liability cap amount specified in the relevant Order.
- 19.1.2 Any limitation of liability does not apply to any loss arising out of:
- (a) personal injury (including sickness or death of a person);
 - (b) loss of, or damage to, tangible property;
 - (c) any infringement of Intellectual Property rights;
 - (d) any breach of confidentiality, privacy or security obligations in the Contract or at Law; or
 - (e) any breach of any Law, fraud or any unlawful act or omission.
- 19.1.3 The limitation on liability referred to in **clause 19.1** also covers (and limits) any resulting liability of the Service Provider under this Head Agreement arising out of the performance (or non-performance) of the relevant Contract (including under an indemnity).

19.1.4 The Commonwealth's liability arising out of or in connection with this Head Agreement for any breach of confidentiality obligations in the Head Agreement or at Law is limited to \$100,000.

19.1.5 An Entity's liability arising out of or in connection with a Contract for any breach of confidentiality obligations in the Contract or at Law is limited to the amount specified in the relevant Order.

19.2 Consequential loss

19.2.1 To the extent permitted by Law, but subject to **clause 19.1.2**, neither party is liable to the other for breach of contract, in tort (including negligence), or for any other common law, equitable or statutory cause of action arising out of, or in connection with, the operation of this Head Agreement or a Contract (including under an indemnity) for any loss recoverable in respect of the following categories of loss:

- (a) loss of income, revenue or profits;
- (b) loss of opportunity or goodwill;
- (c) loss of anticipated savings or business; or
- (d) consequential losses, being such losses as may reasonably be supposed to have been in the contemplation of the parties, at the time they entered into this Head Agreement or a Contract, as the probable result of breach of this Head Agreement or the Contract, other than losses such as may fairly and reasonably be considered as arising naturally from the relevant breach.

19.2.2 For the avoidance of doubt, **clause 19.2.1** does not apply to, and is not intended to apply to, Fees payable for Services provided by the Service Provider under the terms of the Head Agreement or a Contract.

19.3 Indemnity

19.3.1 Subject to **clause 19.5.1**, the Service Provider must indemnify an Entity from and against any:

- (a) cost or liability incurred by the Entity;
- (b) loss of or damage to property of the Entity; or
- (c) loss or expense incurred by the Entity in dealing with any claim against it including reasonable legal costs and expenses and the cost of time spent, resources used or disbursements paid by the Entity,

arising from either:

- (d) a breach by the Service Provider of an obligation of confidentiality, privacy or security under this Head Agreement or a Contract;
- (e) an unlawful or negligent act or omission of the Service Provider or its Personnel or Subcontractors in connection with a Contract; or
- (f) an allegation by a third party that any Ordered Services or use of the Ordered Services infringes the Intellectual Property rights or Moral Rights of the third party.

- 19.3.2 For the purposes of **clause 19.3.1**, 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 100 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.
- 19.3.3 The right of an Entity to be indemnified under this **clause 19.3** is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Entity is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.
- 19.3.4 This **clause 19.3** survives the expiration or termination of this Head Agreement or a Contract.

19.4 Management of claims

- 19.4.1 If an Entity wishes to enforce an indemnity under this **clause 19**, it must:
- (a) give written notice to the Service Provider and Finance as soon as practicable;
 - (b) in the case of a claim by a third party, permit the Service Provider, at the Service Provider'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
 - (c) provide all reasonable assistance to the Service Provider in the handling of any such negotiations and litigation.
- 19.4.2 If the Service Provider is to handle negotiations or conduct litigation on behalf of the Entity, the Service Provider must:
- (a) comply with applicable government policy and obligations relevant to the conduct of the litigation and any settlement negotiations as if the Service Provider was the Entity (including the Commonwealth's Legal Services Directions and any direction issued by the Attorney-General);
 - (b) keep the Entity and Finance informed of any significant developments relating to the conduct of the defence or settlement of any claim;
 - (c) give the Entity all information and documents reasonably requested by the Entity (with the exception of information or documents that are protected by legal professional privilege), to enable the Entity to determine whether the defence or settlement by the Service Provider of any claim is being conducted in accordance with applicable government policy and obligations (including any requirements relating to legal professional privilege and confidentiality); and
 - (d) comply with any reasonable conditions imposed by the Entity.

19.5 Contribution and mitigation

- 19.5.1 The Service Provider's liability under or in connection with this Head Agreement or a Contract (including under the indemnity in **clause 19.3.1**) will be reduced:
- (a) proportionately to the extent that any act or omission of the Entity or its Personnel contributed to the relevant cost, liability, loss, damage or expense; and
 - (b) in accordance with any applicable legislative proportionate liability provision.

- 19.5.2 Each party must use all reasonable endeavours to mitigate its losses and expenses arising under or in connection with a breach of this Head Agreement or a Contract.

20 Intellectual Property rights

20.1 Rights in Contract Material

- 20.1.1 Subject to **clause 20.1.3**, and except to the extent stated otherwise in an Order, Intellectual Property in all Contract Material vests or will vest in the Service Provider.
- 20.1.2 **Clause 20.1.1** does not affect the ownership of Intellectual Property in any Existing Material of the Service Provider or a third party.
- 20.1.3 The Service Provider grants to the Entity a permanent, irrevocable, world-wide, royalty-free, fully paid-up, transferable, non-exclusive licence (including a right of sub-licence), to use, reproduce, adapt, modify, distribute and communicate the Contract Material, and any Existing Material incorporated into the Contract Material, for any Commonwealth purpose (other than for commercial exploitation) and provided that the Entity may only use the Existing Material in conjunction with the Contract Material.
- 20.1.4 The Service Provider agrees to ensure any Entity Material provided to the Service Provider is used only for the purpose of providing the Services, and strictly in accordance with any conditions or restrictions specified in an Order and any direction from the Entity.
- 20.1.5 The Service Provider warrants that:
- (a) it is entitled; or
 - (b) it will be entitled at the relevant time,
- to deal with the Intellectual Property in the Existing Material and Contract Material in the manner provided for in this **clause 20.1**.

21 Moral Rights

21.1 General

- 21.1.1 Where the Service Provider is a natural person and the author of the Contract Material, the Service Provider consents to the performance of the Permitted Acts by the Entity or any person claiming under or through the Entity.
- 21.1.2 If **clause 21.1.1** does not apply, the Service Provider must ensure that each author of the Contract Material (including the Personnel or a Subcontractor used by the Service Provider in the provision of the Services) consents in writing to the use of the Contract Material by the Entity for the Permitted Acts, even if such use would otherwise be an infringement of their Moral Rights.
- 21.1.3 This **clause 21** does not apply to any Entity Material incorporated in the Contract Material.

21.2 Permitted Acts

21.2.1 In this **clause 21**, '**Permitted Acts**' means:

- (a) not 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));
- (b) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
- (c) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
- (d) adding any additional content or information to the Contract Material.

22 Confidentiality

22.1 Disclosure and use of Confidential Information

22.1.1 Subject to **clause 22.2**, 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.

22.1.2 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.

22.1.3 Subject to **clause 22.2**, a party must not use any Confidential Information of the other party other than for the purposes for which the Confidential Information was provided.

22.2 Exceptions to obligations

22.2.1 The obligations of each party under **clause 22.1** will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its Personnel or Subcontractors, or used by a party solely in order to comply with obligations, or to exercise rights, under this Head Agreement or any Contract;
- (b) is disclosed to or used by a party's internal management or internal business services Personnel, solely to enable effective management or auditing of Head Agreement-related or Contract-related activities;
- (c) is used by Finance to create Non-identifying Aggregated Information or where Non-identifying Aggregated Information is disclosed by Finance for any purpose;
- (d) is disclosed to advisers for advice in connection with this Head Agreement or a Contract, or to a party's insurers and their advisers in connection with any claim or apprehended claim against a party;
- (e) is shared within Finance, or between Finance and an Entity, if this serves the Commonwealth's legitimate interests;
- (f) is used by Finance or an Entity, if this serves the Commonwealth's legitimate interests;

- (g) is disclosed by Finance or an Entity to a Commonwealth Minister and his or her advisers;
- (h) is disclosed by Finance or an Entity to third party advisers, or used by Finance or an Entity, for the purposes of Finance or that Entity preparing for an approach to market, provided that in the case of disclosure to advisers, they are subject to confidentiality obligations no less stringent than the obligations imposed on Finance or an Entity by this **clause 22**;
- (i) is disclosed by Finance or an Entity in response to a request from a House or a Committee of the Parliament of the Commonwealth, or from a State or Territory Parliament or Assembly if the relevant Entity is a State or Territory Entity;
- (j) is disclosed or used in circumstances where disclosure or use is authorised or required by Law, including under this Head Agreement or any Contract, under a licence or otherwise, to be disclosed or used; or
- (k) is in the public domain otherwise than due to a breach of this **clause 22**.

22.3 Obligations on disclosure

- 22.3.1 Where a party discloses Confidential Information to another person pursuant to **clauses 22.2.1(a), (b), (d), (e) or (g)**, the party will notify the receiving person that the information is confidential.
- 22.3.2 To avoid doubt, **clause 22.2.1(e)** includes the sharing of performance information between Entities as envisaged by **clause 8** and disclosure of information in order to administer and meet the objectives of the Panel. Entities will be informed that such information is Confidential Information. Finance will not be liable for any breach of confidentiality obligations by Entities (but this does not limit the Service Provider's right to make a claim against the relevant Entity for such a breach).

22.4 No reduction in privacy obligations

- 22.4.1 Nothing in this **clause 22** limits any obligation which either party may have under Law including the Privacy Act, any applicable State or Territory privacy legislation, or under a Contract, in relation to the protection of Personal Information.

22.5 Written undertaking

- 22.5.1 The Service Provider agrees, on request by an Entity at any time, to arrange for its Personnel and Subcontractors who will have access to Confidential Information, to give a written undertaking in a form acceptable to the Entity relating to the use and non-disclosure of Confidential Information.

22.6 Entity Confidential Information

- 22.6.1 The Service Provider agrees to secure all Entity Confidential Information in its possession or control against loss and unauthorised access, use, modification or disclosure.
- 22.6.2 At the expiry or early termination of a Contract, unless instructed otherwise by the Entity and subject to **clause 22.6.3**, the Service Provider must immediately return all Entity Confidential Information in its possession or control to the Entity.

- 22.6.3 Unless otherwise specified in a Contract, the Service Provider may retain one copy of Entity Confidential Information to the extent included in the Contract Material for its professional record keeping obligations, for insurance purposes or as otherwise required by Law.

23 Security

23.1 General

- 23.1.1 The Service Provider agrees to comply with any applicable security requirements specified in the Protective Security Policy Framework (including those provisions relevant to Commonwealth contracted service providers).
- 23.1.2 An Order may include Additional Requirements for security.
- 23.1.3 Without limiting its obligations under this **clause 23**, the Service Provider must comply with any additional security requirements that have been notified to it by Finance or an Entity from time to time, within a reasonable time of receipt of notice from Finance or the Entity.
- 23.1.4 If the Service Provider will incur material external costs as a result of the imposition of an additional security requirement under **clause 23.1.3**, the Service Provider may seek reimbursement from Finance or the Entity (as relevant) for those costs provided they are reasonable in amount, substantiated to the reasonable satisfaction of Finance or the Entity and have been notified to Finance or the Entity prior to those costs being incurred.
- 23.1.5 The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this **clause 23** and will provide reasonable details of these procedures to an Entity on request.
- 23.1.6 The Service Provider must take all necessary steps, and implement all necessary measures, to ensure that any Entity Material, which is accessed, transmitted or stored using or on the Service Provider's or a Subcontractor's information systems is:
- (a) not accessed from or stored outside Australia (unless specified in an Order); and
 - (b) protected at all times from:
 - (i) unauthorised access or use by a third party; and
 - (ii) misuse, loss, damage, destruction, alteration or corruption by any person.

23.2 Use of generative Artificial Intelligence

- 23.2.1 The Service Provider must:
- (a) only use generative Artificial Intelligence program(s) specified in an Order to deliver Services under the relevant Contract;
 - (b) comply with any conditions imposed by an Entity relating to the use of the generative Artificial Intelligence program(s) set out in the relevant Order or as directed from time to time; and

- (c) without limitation, comply with its obligations in **clause 24** in relation to the use of any generative Artificial Intelligence program(s) in delivering the Services.
- 23.2.2 Finance may issue directions to the Service Provider relating to the use of generative Artificial Intelligence program(s) which the Service Provider agrees to comply with.
- 23.2.3 The Service Provider must immediately notify Finance and any relevant Entity if there is a breach of the Service Provider's obligations under this **clause 23**, by the Service Provider or any of its Personnel or Subcontractors.

24 Privacy

24.1 Personal Information

- 24.1.1 The Service Provider acknowledges that it is or may be considered to be a 'contracted service provider' within the meaning of the Privacy Act, and agrees in respect of any Personal Information obtained as a result of this Head Agreement or during the course of performing the Services under a Contract:
 - (a) to use or disclose that Personal Information only for the purposes of this Head Agreement or that Contract;
 - (b) to comply with the obligations contained in the Australian Privacy Principles (**APPs**) as if it were an 'agency' under the Privacy Act;
 - (c) not to do any act, or engage in any practice that would breach an Australian Privacy Principle, or which if done or engaged in by Finance or the relevant Entity, as the case may be, would be a breach of that APP by Finance or that Entity; and
 - (d) to ensure that any Service Provider Personnel and Subcontractors who are required to deal with Personal Information for the purposes of this Head Agreement or a Contract, are made aware of the obligations of the Service Provider as set out in this **clause 24**.
- 24.1.2 The Service Provider must promptly notify the Panel Manager in respect of this Head Agreement, and the Entity Representative in respect of a Contract, and the Information Commissioner where required, if the Service Provider:
 - (a) becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this **clause 24**, whether by the Service Provider or a Subcontractor;
 - (b) becomes aware that a disclosure of Personal Information may be required by Law; or
 - (c) receives a request or an inquiry from the Information Commissioner, or from any individual to whom any Personal Information held by the Service Provider or a Subcontractor relates, in respect of Personal Information.
- 24.1.3 The Service Provider's obligations in this **clause 24** are in addition to, and do not restrict, any obligations it may have under the Privacy Act or the APPs including any privacy codes or principles that would apply to the Service Provider but for the application of the other provisions of this **clause 24**.
- 24.1.4 Nothing in this **clause 24** derogates from **clauses 22** or **23**.

25 Notifiable Data Breach

- 25.1.1 If the Service Provider has reasonable grounds to suspect there may have been an event which amounts to an Eligible Data Breach, the Service Provider must:
- (a) as soon as possible, but within two Business Days, notify Finance and the relevant Entity;
 - (b) comply with its obligations under the Privacy Act in relation to that event;
 - (c) provide Finance and the relevant Entity with all information requested by Finance or the Entity about the event;
 - (d) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates; and
 - (e) if requested, allow Finance and the relevant Entity to participate in the assessment of the event and whether it amounts to an Eligible Data Breach, provided that Finance's or the Entity's participation will be in accordance with the Service Provider's reasonable security and confidentiality requirements.
- 25.1.2 If the Service Provider, after complying with **clause 25.1.1**, determines that an Eligible Data Breach has occurred and notification of that Eligible Data Breach is required under the Privacy Act:
- (a) the parties must meet to discuss and endeavour to agree who will issue the notification (but if the parties are unable to agree, then Finance will, acting reasonably, decide which party will issue that notification);
 - (b) if the Service Provider is to issue the notification, then the Service Provider must:
 - (i) as soon as possible provide Finance with a draft of the notification;
 - (ii) make any changes to the draft notification that are reasonably required by Finance; and
 - (iii) issue the notification in accordance with the requirements of the Privacy Act (including any applicable time periods);
 - (c) if Finance is to issue the notification, then Finance must:
 - (i) as soon as possible notify the Service Provider and provide a draft of the notification;
 - (ii) make any changes to the notification that are reasonably required by the Service Provider for consistency with the Privacy Act; and
 - (iii) issue the notification in accordance with the requirements of the Privacy Act (including any applicable time periods); and
 - (d) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates.
- 25.1.3 The Service Provider must ensure that:
- (a) Finance is promptly notified of any investigation or other action taken by the Privacy Commissioner in connection with any actual or suspected Eligible Data Breach, or notification in relation to that matter; and
 - (b) Finance is kept informed in relation to that investigation or other action.
- 25.1.4 The parties acknowledge and agree that nothing in this **clause 25** affects their obligations under the *Privacy Act*.

26 Suspension from Panel

26.1 Suspension due to non-compliance

26.1.1 Finance may suspend the Service Provider from providing Services under the Panel, by written notice to the Service Provider, if:

- (a) the Service Provider has materially breached this Head Agreement (including a breach of a provision referenced in **clause 27.1.2**) or Finance has a right to terminate this Head Agreement;
- (b) the Service Provider has breached any of the Integrity Requirements;
- (c) Finance has received substantiated evidence of continuous or substantial negative feedback from one or more Entities in respect of the performance of the Service Provider in connection with the Panel;
- (d) Finance reasonably considers that the Service Provider is not providing the Ordered Services to Entities in accordance with this Head Agreement; or
- (e) the Service Provider fails to use or participate in the Panel Administration Platform as required under **clause 5.5.3** and fails to remedy this within 20 Business Days of notification by Finance.

26.1.2 Any suspension of the Service Provider may apply to any one or more Service Categories and may be for any period of time.

26.1.3 Before Finance suspends the Service Provider, Finance will:

- (a) provide the Service Provider with the reasons for any proposed suspension;
- (b) consider any feedback provided by the Service Provider within the timeframes reasonably required by Finance; and
- (c) allow the Service Provider a reasonable opportunity to rectify the issues that would entitle Finance to suspend the Service Provider, within the timeframes reasonably required by Finance.

26.1.4 If the Service Provider is suspended:

- (a) the Service Provider must not enter into any further Contracts in respect of the suspended Service Categories;
- (b) the Service Provider must immediately notify Finance if it receives any request to enter into a Contract or any Request for Quotation in respect of the suspended Service Categories;
- (c) must not respond to the request to enter into a Contract or Request for Quotation (other than to inform the requesting party that the Service Provider is not able to respond to that request); and
- (d) all other provisions of this Head Agreement and any existing Contracts not affected by the suspension continue.

26.1.5 Finance may at any time lift a suspension by notifying the Service Provider. Finance must lift the suspension promptly after the Service Provider demonstrates to Finance's reasonable satisfaction that the Service Provider has rectified the issues that caused the suspension.

- 26.1.6 If:
- (a) any suspension is not lifted within three calendar months;
 - (b) Finance has reasonable grounds to believe that the Service Provider no longer supplies Services that meet the requirements for a particular Service Category; or
 - (c) the Service Provider requests,

then Finance may un-approve the Service Provider in respect of any or all of the suspended or removed Service Categories by written notice to the Service Provider, this Head Agreement is taken to be varied with effect from the date specified in the notice from Finance.

27 Termination

27.1 Termination of Head Agreement for default

27.1.1 Finance may, with immediate effect, terminate this Head Agreement for default by written notice to the Service Provider, if the Service Provider:

- (a) commits a material breach of a provision of this Head Agreement which is not capable of remedy;
- (b) commits a material breach of a provision of this Head Agreement which is capable of remedy, but where the Service Provider fails to remedy the breach within 10 Business Days, unless otherwise agreed by Finance, after being given written notice by Finance to remedy the breach;
- (c) commits a breach of a provision of this Head Agreement which is capable of remedy, but where the Service Provider fails to remedy the breach within 30 days after being given written notice by Finance to remedy the breach;
- (d) becomes aware that Personnel or Subcontractors of the Service Provider have committed a breach of national security or without written authorisation released Commonwealth Confidential Information to a third party;
- (e) is found to have provided false or misleading information to Finance or an Entity in respect of any aspect of their participation on the Panel;
- (f) being a corporation, subject to Finance complying with any requirements under the Corporations Act, comes under one of the forms of external administration referred to in chapter 5 of the Corporations Act, or has an order made against it for the purpose of placing it under external administration;
- (g) being an individual or partnership, becomes bankrupt or enters into a scheme of arrangement with creditors;
- (h) fails to notify Finance of a Change of Control in accordance with **clause 16.11.1**;
or
- (i) in Finance's reasonable opinion, no longer has the capacity and capability to provide the Services in accordance with this Head Agreement.

27.1.2 For the purposes of **clause 27.1.1**, a breach of the following clauses will constitute a material breach not capable of remedy:

- (a) **clause 16** (Commonwealth Laws and policy requirements);
- (b) **clause 20** (Intellectual Property);
- (c) **clause 21** (Moral Rights);
- (d) **clause 22** (Confidentiality);
- (e) **clause 23** (Security);
- (f) **clause 24** (Privacy); and
- (g) a warranty provided for in **clause 17**.

27.1.3 If this Head Agreement is terminated for default:

- (a) the Service Provider may no longer participate, from the date of the termination, in the Panel with respect to entering any new Contract to provide Services to Entities; and
- (b) an Entity which is a party to an existing Contract with the Service Provider under the Panel may, at its discretion, terminate that Contract for default.

27.2 Termination of Contract for default

27.2.1 If the Service Provider fails to satisfy any of its obligations under a Contract, and the failure is:

- (a) not capable of remedy, the Entity may, by notice terminate the Contract immediately; or
- (b) a failure to comply with any of the Integrity Requirements (whether or not capable of remedy), the Entity may, by notice terminate the Contract immediately; or
- (c) capable of remedy, the Entity may, by notice require that the failure be remedied within a reasonable time as specified in the notice and, if not remedied within that time, may terminate the Contract immediately by giving a second notice. For the avoidance of doubt, an Entity may (but is not required to) give the Service Provider an opportunity to remedy a failure to comply with an Integrity Requirement under this **clause 27.2.1(c)**.

27.2.2 The Entity may also by notice, terminate a Contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:

- (a) fails to notify the Entity of a Change of Control in accordance with **clause 16.11.1**;
- (b) being a corporation, subject to the Entity complying with any requirements under the *Corporations Act 2001* (Cth), comes under one of the forms of external administration referred to in chapter 5 of the Corporations Act, or has an order made against it for the purpose of placing it under external administration;
- (c) being an individual or partnership, becomes bankrupt or enters into a scheme of arrangement with creditors;
- (d) commits any breach for which a Contract provides that a notice of termination for default may be given;
- (e) has their Head Agreement terminated for default under **clause 27.1**; or
- (f) has any other Contract terminated for default under **clause 27.2**.

- 27.2.3 The Service Provider may only terminate a Contract by issuing a notice to terminate if:
- (a) the Entity has not paid a correctly rendered Tax Invoice that is not disputed by the Entity within 40 Business Days after payment was due (the date that the payment was due, being the **Payment Due Date**) provided that the Service Provider has:
 - (i) notified the Entity in writing of its claim for payment within 20 Business Days after the Payment Due Date (or such other period specified in the Order); and
 - (ii) subsequently notified the Entity of nonpayment within 40 Business Days after the Payment Due Date (and at least 10 Business Days has elapsed since the first notice was provided) (or such other periods specified in the Order); or
 - (b) the Entity breaches a material provision and has failed to remedy the breach within 40 Business Days or such other period agreed by the parties after receiving a notice requiring it to remedy the breach.

27.3 Service Provider must notify breaches and change in circumstances

- 27.3.1 The Service Provider must immediately notify Finance if there is a breach of this Head Agreement, and must immediately notify the Entity if there is a breach of any Contract, by the Service Provider or any of its Personnel or Subcontractors.
- 27.3.2 The Service Provider must immediately notify Finance if any of the events referred to in **clauses 27.1** or **27.2** occurs or is likely to occur, and provide reasonable details of the circumstances of the event as soon as reasonably practicable after notification.
- 27.3.3 The Service Provider must promptly provide Finance with any further information reasonably requested by Finance in relation to any such event.
- 27.3.4 Nothing in this **clause 27.3** limits Finance's or an Entity's rights under this Head Agreement or a Contract in relation to any such event.

27.4 Termination or reduction of Head Agreement for convenience

- 27.4.1 Finance may terminate this Head Agreement, or reduce the scope of Services provided on the Panel, for any reason on 30 days' prior written notice to the Service Provider, including without limitation if the Service Provider undergoes a Change of Control.

27.5 Termination or reduction of Contract for convenience

- 27.5.1 An Entity may by 30 days' notice, at any time and in its absolute discretion terminate a Contract, or reduce the scope of any Ordered Services, including without limitation if the Service Provider undergoes a Change of Control.
- 27.5.2 The Service Provider agrees, on receipt of a notice of termination or reduction, to:
- (a) stop or reduce work as specified in the notice;
 - (b) use all reasonable endeavours to mitigate its costs incurred as a result of such termination or reduction; and
 - (c) continue work on any part of any Ordered Services not affected by the notice.
- 27.5.3 In the event of termination under **clause 27.5.1**, the Entity will be liable only:

- (a) to pay any Fees due under a Contract relating to Ordered Services completed before the date of termination. Where:
 - (i) Fees in an Order are calculated on a milestone basis;
 - (ii) the event of termination occurs before the relevant milestone is reached; and
 - (iii) the Service Provider is able to substantiate the level of effort and time it has spent providing the Ordered Services to the reasonable satisfaction of the Entity,
 then the Entity will pay Fees for Ordered Service completed before the date of termination calculated as the Fees that would have been payable on a time and materials basis to perform the relevant Services; and
- (b) to the extent not recovered under **clause 27.5.3(a)**, the costs properly, unavoidably and directly incurred as a result of such termination or reduction (excluding: (i) the cost of redundancies, redeployment or other costs associated with employment actions taken as a result of the termination or reduction (ii) the costs of termination of subcontractors; and (iii) costs relating to premises) and which can be substantiated to the Entity's reasonable satisfaction.

27.5.4 The Entity will not be liable to pay amounts under **clause 27.5.3(a)** and **27.5.3(b)** which would, added to any Fees already paid to the Service Provider under a Contract, together exceed the Fees specified in an Order.

27.5.5 In the event of a reduction in the scope of any Ordered Services, the Entity's liability to pay Fees, allowances or costs under any relevant Contract will reduce in accordance with the reduction in the Ordered Services.

27.5.6 The Service Provider will not be entitled to compensation for loss of prospective profits.

27.6 Effect of expiry, termination, or reduction

27.6.1 The expiry, termination, or reduction in scope of this Head Agreement does not automatically terminate or otherwise affect the operation of any Contract entered into with an Entity pursuant to this Head Agreement prior to the date of expiration, termination or reduction.

27.6.2 Where this Head Agreement has been:

- (a) terminated or has expired in accordance with this **clause 27**, the Service Provider must not accept a new Order or an extension of an existing Order entered into with an Entity prior to the date of termination or expiration; or
- (b) reduced in scope in accordance with **clause 27.4**, the Service Provider must not accept a new Order or an extension of an existing Order entered into with an Entity prior to the date of reduction where such Order relates to Services under a Service Category from which the Service Provider has been removed.

27.6.3 Upon notice of:

- (a) termination, Finance will promptly remove the Service Provider from the Panel; or

- (b) reduction in scope, Finance will promptly remove the Service Provider from one or more Service Categories under which the Service Provider has been appointed to provide Services under the Panel.

28 Issue and dispute resolution

28.1 Interpretation

- 28.1.1 In this **clause 28**, a reference to a 'party' is a reference to the Service Provider, Finance or an Entity, as the case may be.

28.2 Escalation of issues to Finance

- 28.2.1 Where the Service Provider is unable to resolve a complaint or issue with an Entity, the Service Provider, or the Entity, may request that Finance intervenes to assist in resolving the issue. Finance will not be the independent third person referred to in **clause 28.3.1**.

28.3 Procedure for dispute resolution

- 28.3.1 The parties agree that a dispute arising under this Head Agreement or a Contract will be dealt with as follows:

- (a) the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- (b) each party will use genuine steps to resolve any dispute by direct negotiation in the first instance;
- (c) if the dispute cannot be resolved, each party will nominate a representative not having any prior involvement in the dispute;
- (d) the representatives will use genuine steps to try to settle the dispute by direct negotiation between them;
- (e) failing settlement within 10 Business Days after the nomination of a representative in accordance with **clause 28.3.1(c)**, the parties may agree to refer the dispute to an independent third person with power:
 - (i) to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - (ii) to mediate or otherwise assist the parties reach a resolution, in which case the role of the third person will be non-binding;
- (f) the parties will cooperate fully with any process instigated under **clause 28.3.1(e)** in order to achieve a speedy resolution; and
- (g) if:
 - (i) a resolution is not reached within 20 Business Days after the dispute is referred to an independent third person in accordance with **clause 28.3.1(e)**; or
 - (ii) if no agreement as to an independent third person or resolution of dispute is reached following 30 Business Days commencing on the nomination of a representative in accordance with **clause 28.3.1(c)**,

either party may commence legal proceedings.

28.4 Costs

- 28.4.1 Each party will bear its own costs of complying with this **clause 28** and the parties will bear equally the cost of any third person engaged under **clause 28.3.1(e)**.

28.5 Continued performance

- 28.5.1 Despite the existence of a dispute, the Service Provider must (unless requested in writing by an Entity not to do so) continue to perform any Ordered Services.

28.6 Exemption

- 28.6.1 This **clause 28** does not apply to:
- (a) action by an Entity under or purportedly under any clause relating to termination, whether for convenience or for default; or
 - (b) legal proceedings by either party seeking urgent interlocutory relief.

29 Books and records

- 29.1.1 The Service Provider must keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable the amounts payable by an Entity under a Contract to be determined.
- 29.1.2 The Service Provider must, in the performance of its obligations under this Head Agreement, and any Contract, at all times comply with any applicable requirements of the *Archives Act 1983* (Cth) and any Records Disposal Authority issued under that Act in respect of Commonwealth or Entity records which are under the custody or control of the Service Provider.

30 Audit and access

30.1 Right to conduct audit

- 30.1.1 Upon reasonable notice, the Service Provider agrees to provide access to the Service Provider's premises to conduct audits relevant to the performance of the Service Provider for:
- (a) this Head Agreement, to Finance or a person or organisation nominated by Finance; or
 - (b) a Contract, to the Entity's Representative or a person or organisation nominated by the Entity.
- 30.1.2 Audits may be conducted of:
- (a) the Service Provider's operational practices and procedures as they relate to this Head Agreement and any Contract (including security procedures);
 - (b) the Fees and the accuracy of the Service Provider's invoices and reports in relation to the provision of Services under this Head Agreement and any Contract;
 - (c) the Service Provider's compliance with its confidentiality, privacy, security and other obligations under this Head Agreement and any Contract;

- (d) the Service Provider's obligation to supply the Ordered Services as detailed in the Order in accordance with relevant Australian Standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines as required under **clause 13.1.1(c)**; and
 - (e) Material (including accounts and records) in the possession of the Service Provider relevant to the Services or this Head Agreement or any Contract.
- 30.1.3 The rights referred to in **clause 30.1.1** are subject to:
 - (a) Finance or an Entity providing reasonable prior notice;
 - (b) compliance with reasonable security procedures in place at the premises;
 - (c) restrictions on access under applicable Laws; and
 - (d) if reasonably required by the Service Provider, execution of a deed of confidentiality by the persons to whom access is given.
- 30.1.4 The Auditor-General, the Information Commissioner, and their delegates are persons authorised for the purposes of this **clause 30**.
- 30.1.5 Despite any other clause in this Head Agreement, the Service Provider is not required to disclose to an auditor any Service Provider Proprietary Information or any other information which, if disclosed, would cause the Service Provider to breach any mandatory regulations or applicable Laws.
- 30.1.6 This **clause 30** does not detract from the statutory powers of the Auditor-General, the Information Commissioner and their delegates.

30.2 Access to documents

- 30.2.1 In this **clause 30.2**, 'document' and 'Commonwealth contract' have the same meaning as in the FOI Act.
- 30.2.2 This **clause 30.2** only applies to the extent that the arrangements between the Service Provider and:
 - (a) Finance under this Deed; or
 - (b) an Entity under any Contract,
 meet the definition of a Commonwealth contract under the FOI Act.
- 30.2.3 Where Finance or an Entity receives a request under the FOI Act for access to a document that:
 - (a) was created by or is in the possession of the Service Provider, its Personnel or any Subcontractor; and
 - (b) relates to the performance of this Deed or any Contract under it,
 then Finance or the Entity (as relevant) may at any time by written notice require the Service Provider to provide that document and the Service Provider must, at no additional cost to Finance or the Entity (as relevant), promptly comply with the notice.

31 Conflict of Interest

- 31.1.1 The Service Provider warrants to Finance and each Entity that, to the best of its knowledge after making diligent inquiry at each Order Commencement Date, no Conflict of Interest except as disclosed in writing to the relevant Entity, exists or is likely to arise in the performance of the Ordered Services.
- 31.1.2 The Service Provider must use its best endeavours (including making all appropriate enquiries) to ensure that:
- (a) a situation does not arise which may result in a Conflict of Interest; and
 - (b) any Personnel and Subcontractors of the Service Provider do not engage in any activity or obtain any interests likely to conflict with or restrict the Service Provider in providing the Ordered Services to an Entity fairly and independently.
- 31.1.3 If a Conflict of Interest arises, or appears likely to arise, the Service Provider agrees:
- (a) to notify the relevant Entity immediately;
 - (b) to the extent possible, make full disclosure of all relevant information relating to the Conflict of Interest; and
 - (c) to take any steps the relevant Entity reasonably requires to resolve or otherwise deal with the Conflict of Interest.
- 31.1.4 If the Service Provider fails to notify an Entity in accordance with **clause 31.1.3(a)** or does not comply with the Entity's reasonable requirements to resolve or otherwise deal with the Conflict of Interest, the Entity may terminate the relevant Contract or Contracts in accordance with **clause 27.2** (Termination of Contract for Default).

32 Notices and other communications

32.1 Service of notices

- 32.1.1 A notice must be in writing and is deemed to have been given if:
- (a) it is delivered by hand, on the date on which it is delivered;
 - (b) it is sent by post, on the day upon which it would be delivered in the normal course of post; or
 - (c) transmitted electronically, with proof of a successful transmission (provided that the sender does not receive subsequent notification that the notice failed to transmit).
- 32.1.2 The address for service of notice of each party of this Head Agreement is set out in **Item 7 of Schedule 1 (Head Agreement Details)**, or such other address as is notified by the party from time to time.
- 32.1.3 The address for notices for an Entity will be set out in an Order issued by the Entity to the Service Provider.

32.2 Variations

- 32.2.1 Finance can propose a variation to this Head Agreement by issuing a Deed of Variation in the format provided in **Schedule 9 (Deed of Variation)**.
- 32.2.2 The Service Provider can propose a variation to this Head Agreement by issuing a Deed of Variation in the format provided in **Schedule 9 (Deed of Variation)**,
- 32.2.3 No variation to this Head Agreement will be effective unless the Deed of Variation is signed by the First Finance Senior Executive and the Service Provider's Senior Executive.
- 32.2.4 A Contract may not be varied unless the Entity and the Service Provider have agreed to the variation in writing, which may be in the format provided in **Schedule 6A (Order Variation Template)**.

33 Miscellaneous

33.1 Entire Agreement

- 33.1.1 This Head Agreement and each 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.

33.2 Survival

- 33.2.1 The following clauses survive the expiry or termination of this Head Agreement or any Contract:
 - (a) any clause expressly stated to survive, or which by its nature or operation survives, the expiry or termination of this Head Agreement or any Contract, in accordance with that clause;
 - (b) any provision relating to liability or indemnity;
 - (c) **13.2** (Inquiries);
 - (d) **18** (Insurance);
 - (e) **19** (Liability);
 - (f) **20** (Intellectual Property Rights);
 - (g) **22** (Confidentiality);
 - (h) **23** (Security);
 - (i) **24** (Privacy);
 - (j) **27** (Termination);
 - (k) **29** (Books and records);
 - (l) **30** (Audit and access);
 - (m) **33** (Miscellaneous); and
 - (n) any other provision which expressly or by implication from its nature is intended to continue.

33.3 Approvals and consents

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

33.4 Assignment and novation

- 33.4.1 The Service Provider must not assign or novate its rights or obligations:
- (a) under this Head Agreement, without the prior written consent of Finance; or
 - (b) under a Contract, without the prior written consent of the relevant Entity.
- 33.4.2 Where the Service Provider wishes to assign or novate its rights or obligations under this Head Agreement, the Service Provider must provide the Panel Manager with a completed deed of novation in the form provided at **Schedule 10 (Deed of Novation)** required by Finance.
- 33.4.3 Finance or an Entity will conduct due diligence on any new entity proposed for an assignment or novation, including in respect of their compliance with Integrity Requirements.

33.5 Waiver

- 33.5.1 A failure or delay by a party to exercise any right or remedy it holds under this Head Agreement, any Contract or at Law does not operate as a waiver of that right.
- 33.5.2 A single or partial exercise by a party of any right or remedy it holds under this Head Agreement, any Contract or at Law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

33.6 Announcements

- 33.6.1 The Service Provider must, before making a public announcement in connection with this Head Agreement or any Contract, or any transaction contemplated by this Head Agreement or any Contract, obtain Finance's, or in the case of a Contract, Finance's and the relevant Entity's written agreement to the public announcement, except to the extent the announcement is required under the rules of a stock exchange.

33.7 Governing Law and jurisdiction

- 33.7.1 This Head Agreement, and any Contract, is to be construed in accordance with, and any matter related to it is to be governed by, the Laws of the Australian Capital Territory, or any other Australian jurisdiction specified in the Order.

33.8 Costs, duties and taxes

- 33.8.1 Each party must pay its own costs of negotiating, preparing and executing this Head Agreement and any Order.

33.9 Counterparts

33.9.1 This Head Agreement and any Contract may be executed in counterparts. All executed counterparts constitute one document.

Schedule 1 – Head Agreement Details

Item 1 (clause 1.1)	Panel Manager Director People Panel Contract Management Strategic Contracting Branch Department of Finance
Item 2 (clause 1.1)	First Finance Senior Executive Assistant Secretary, Strategic Contracting Branch Department of Finance
Item 3 (clause 1.1)	Second Finance Senior Executive First Assistant Secretary, Procurement Division Deputy Secretary, Commercial Department of Finance
Item 4 (clause 1.1)	Service Provider's Representative <Name> <Position> <Contact number> <Email address>
Item 5 (clause 1.1)	Service Provider's Senior Executive <Name> <Position> <Contact number> <Email address>
Item 6 (clause 1.1)	Service Provider's Entity Contact <Name> <Position> <Contact number> <Email address 1> <Email address 2>
Item 7 (clause 32)	Address for notices (a) Finance Director, People Panel Contract Management Department of Finance

One Canberra Avenue
Forrest ACT 2603
Email: peoplepanelcontract@finance.gov.au

(b) Service Provider

<Name>
<Position>
<Physical address>
<Email address>

Item 8 (clause 2.1.2)	Service Provider's Approved Service Categories [insert]
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Item 9 (clause 1.1)	Service Provider's Panel Administration Platform Representative <Name> <Position> <Contact number> <Email address 1> <Email address 2>
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Schedule 2 – Services

1. Introduction

- 1.1. This **Schedule 2** sets out the Services (including Service Categories within the Services).
- 1.2. The Services comprise recruitment of suitably qualified and appropriately skilled candidates at locations across Australia, and related services, within the Service Categories specified in **clause 2** below (it is not required for the Service Provider to have a physical presence nationally).

2. Service Categories

- 2.1. The Service Categories are:

#	Service Category	Summary
1A	General Recruitment Services	<p>Recruitment of the following ongoing and non-ongoing (including casual) types of personnel:</p> <ul style="list-style-type: none"> Australian Public Service - APS1 to EL2, or Entity equivalent <p>Note: Includes entry level programs e.g. interns, school leavers, graduates and trainees (or Entity equivalent programs).</p> <p>The requirements for General Recruitment Services are detailed in clause 5</p>
1B	Executive Recruitment Services	<p>Recruitment of the following ongoing and non-ongoing types of personnel:</p> <ul style="list-style-type: none"> SES Band 1 to SES Band 3, or Entity equivalent Statutory appointments <p>The requirements for Executive Recruitment Services are detailed in clause 5</p>
2	Expert/Specialised Role Recruitment Services	<p>Recruitment of the following ongoing or non-ongoing types of personnel:</p> <ul style="list-style-type: none"> personnel required to fill a role that the Entity considers specialised due to the expert nature of the role personnel who are experts with extensive knowledge, experience, and advanced education in their field personnel not generally available in the Australian Public Service

#	Service Category	Summary
		<p>This Service Category is not to be used for the recruitment of personnel simply because a certain job sector is experiencing labour market shortages.</p> <p>The requirements for Expert/Specialised Role Recruitment Services are detailed in clause 6</p>
3	Candidate Sourcing Services	<p>Identification and sourcing of highly skilled candidates for an advertised vacancy (at any level)</p> <p>The requirements for Candidate Sourcing Services are detailed in clause 7</p>
4	Board Search Services	<p>Search activities for potential board positions</p> <p>The requirements for Board Search Services are detailed in clause 8</p>

3. Out of scope

- 3.1. The services that are out of scope for the Services are set out in **clause 2.2** of the Head Agreement.

4. General obligations for Services

- 4.1. When providing the Services, the Service Provider must:

- 4.1.1. ensure recruitment and selection processes meet industry standards and comply in all respects with the principles of merit (including the APS Merit Principle) and equity, Recruitability and Affirmative Measures including any meritorious selection process requirements;
- 4.1.2. provide all necessary administrative support (e.g. scribing and minute-taking) in respect of each activity, at no additional cost to the Entity;
- 4.1.3. where an Entity specifies a particular software system, platform or solution in a Contract, use that software system, platform or solution in relation to the provision of the Services, at no additional cost to the Entity; and
- 4.1.4. comply with its obligations under **clause 23.2** of the Head Agreement relating to the use of generative Artificial Intelligence program(s).

For avoidance of doubt, the creation of a merit list or merit pool as a result of a recruitment activity, and/or the selection of a candidate from a merit list or merit pool from a recruitment activity is not a chargeable event under a contract.

5. Categories 1A and 1B: General Recruitment and Executive Recruitment Services

- 5.1. Service Providers must have a sound understanding of Australian Public Service (APS) \ recruiting principles, specifically the APS Merit Principle, as well as an appreciation for the type of contemporary workforce required to enable the ongoing delivery of services to the Australian community.

- 5.2. Where the Service Provider is providing General Recruitment Services and/or Executive Recruitment Services, an Entity may require the Service Provider to provide:
- 5.2.1. an 'end-to-end' recruitment process ('Process') in which case the Service Provider must provide all of the Bundled Activities (to the extent requested by the Entity) in respect of that Process, and the applicable Bundled Fee in **Schedule 3 (Pricing)** will apply in respect of that Process; or
 - 5.2.2. a process that is not 'end-to-end' or which comprises only certain Bundled Activities or Unbundled Activities, in which case the relevant Unbundled Fee in **Schedule 3 (Pricing)** will apply to those activities.
- 5.3. A Contract may include both Bundled Activities and Unbundled Activities for different aspects of the Entity's requirements.
- 5.4. For the purposes of this Head Agreement, the Bundled Activities are:
- 5.4.1. **Screening and Shortlisting** – assisting with preparatory activities for recruitment processes, receiving and acknowledging receipt of applications, utilising the Entity recruitment management system (if any), responding to enquiries from candidates in a sensitive manner, managing candidate experience and expectations throughout the process, preparing summaries of candidate responses, providing pre-employment screening of references, qualifications, and skills, undertaking preliminary screening interviews/phone calls, consulting with Entity decision makers to determine a shortlist of candidates, providing a summary of shortlisted candidates;
 - 5.4.2. **Interview and Verification** – preparing suitable questions for interviews, coordinating interviews with candidates and selection panels, coordinating assessments for assessment centres, designing assessment centres, providing observers, facilitating interviews, providing reasonable adjustments for eligible candidates, providing assistance with interviewing (including providing scribes and participating in interviews where required), providing advice to selection panels, providing ongoing candidate management, undertaking and documenting detailed reference checks, validation of claims by candidates and verification of candidates' qualifications;
 - 5.4.3. **Selection Reporting** – preparing a final selection report for review and approval by Entity decision makers (which may include e.g. a summary of candidates and an initial assessment of each candidate's claims against the position requirements), briefing Entity decision makers on the outcome of earlier stages in the recruitment process (e.g. screening, assessments and/or interviews);
 - 5.4.4. **Notify and Debrief** – communicating with successful and unsuccessful candidates in a timely manner, negotiating terms of engagement, coordinating notification of outcomes to candidates, providing timely and constructive feedback to candidates on their performance throughout the process.

5.5. For clarity, an Entity obtaining Bundled Activities under a Contract may, at its discretion, not require all of the individual activities listed within any of the subsections of **clause 5.4** above.

5.6. For the purposes of this Head Agreement, the Unbundled Activities are:

5.6.1. Any one or more of the Bundled Activities described at **clause 5.4**, when requested by an Entity other than as part of a Process;

5.6.2. **Formulating Position Requirements** – drafting and/or reviewing candidate information packs including position description, requirements, selection criteria and expectations of the role; designing an assessment methodology that aligns with the capabilities required;

5.6.3. **Preparation for advertising** – assisting with preparing advertisements for positions in accordance with the Entity's instructions, the Australian Government's Recruitment Advertising Policy (RMG 408) available at <https://www.finance.gov.au/government/advertising/recruitment-advertising-policy-rmg-408>, and relevant legislation, including preparing advertising and marketing approach and strategies, and developing appropriate advertising documentation and text;

Note: this 'Preparation for advertising' Unbundled Activity cannot be provided as a standalone Unbundled Activity, but may be provided together with one or more Bundled Activities or Unbundled Activities.

5.6.4. **Assessment Testing** – undertaking or facilitating the following types of testing of candidates (including recommending and providing contemporary assessment tools and technical support for testing tools);

5.6.4.1. **Cognitive Testing** – may include abstract reasoning, numerical skills, written case studies, language proficiency, aptitude tests

5.6.4.2. **Psychometric Testing** – may include face to face testing at professional suites or virtual platform to assess emotional intelligence, cognitive or analytical profile

5.6.4.3. **Behavioural Testing** – may include personality profiling, behavioural interviewing, situational judgement assessments, strengths, cognitive functioning

5.6.5. **Additional Recruitment Activities** – any additional activities related to General Recruitment Services and/or Executive Recruitment Services that are specified in a Contract. For example, this may include the provision of neurodiversity-focused recruitment activities, such as activities focussing on candidates with neurodiversity (including candidates on the autism spectrum), and the provision of 'market intelligence' such as informing the Entity about candidate demand and providing market data and insights (e.g. market availability/maturity for specific recruitment categories).

6. Category 2: Expert/Specialised Role Recruitment Services

6.1. Where the Service Provider is providing Expert/Specialised Role Recruitment Services an Entity may require the Service Provider to undertake:

6.1.1. an 'end-to-end' specialist search process, in which case the Service Provider must provide all of the Expert/Specialised Role Search Activities; or

6.1.2. a process that comprises one or more (but not all) of the Expert/Specialised Role Search Activities,

and in either case, the Expert/Specialised Role Search Fee in **Schedule 3 (Pricing)** will apply.

6.2. In addition to the Expert/Specialised Role Search Activities, an Entity may require the Service Provider to provide Additional Expert/Specialised Role Search Activities, in which case the Additional Expert/Specialised Role Search Fees in **Schedule 3 (Pricing)** will apply to those activities.

6.3. For the purposes of this Head Agreement, the Expert/Specialised Role Search Activities are:

6.3.1. **Maintaining a Candidate Pool** – maintaining, and providing the Entity with access to information from, a database of candidates who could fill expert/specialised roles which includes the following information for each candidate: personal information (e.g. name, address etc), verified education and professional qualifications (verification achieved by sighting copies of relevant documents), work history of the candidate, summaries of candidates' referee comments, details and results of assessments undertaken by the candidates, and where applicable candidate responses to selection criteria;

6.3.2. **Screening and Shortlisting** – receiving and acknowledging receipt of applications, utilising the Entity recruitment management system (if any), responding to enquiries from candidates in a sensitive manner, managing candidate experience and expectations throughout the process, preparing summaries of candidate responses, providing pre-employment screening of references, qualifications, and skills, undertaking preliminary screening interviews/phone calls, consulting with Entity decision makers to determine a shortlist of candidates, providing a summary of shortlisted candidates;

6.3.3. **Interview and Verification** – preparing suitable questions for interviews, coordinating interviews with candidates and selection panels, coordinating assessments for assessment centres, designing assessment centres, providing observers, facilitating interviews, providing reasonable adjustments for eligible candidates, providing assistance with interviewing (including providing scribes and participating in interviews where required), providing advice to selection panels, providing ongoing candidate management, undertaking and documenting detailed reference checks, validation of claims by candidates and verification of candidates' qualifications;

- 6.3.4. **Selection Reporting** – preparing a final selection report for review and approval by Entity decision makers (which may include, for example, a summary of candidates and an initial assessment of each candidate's claims against the position requirements), briefing Entity decision makers on the outcome of earlier stages in the recruitment process (e.g. screening, assessments and/or interviews);
- 6.3.5. **Notify and Debrief** – communicating with successful and unsuccessful candidates in a timely manner, negotiating terms of engagement, coordinating notification of outcomes to candidates, providing timely and constructive feedback to candidates on their performance throughout the process.
- 6.4. For the purposes of this Head Agreement, the Additional Expert/Specialised Role Search Activities are:
- 6.4.1. **Formulating Position Requirements** – drafting and/or reviewing specialist candidate information packs including position description, requirements, selection criteria and expectations of the role, designing an assessment methodology that aligns with the capabilities required;
- 6.4.2. **Preparation for advertising** – assisting with preparing advertisements for specialist positions in accordance with the Entity's instructions, RMG 408 and relevant legislation, including preparing advertising and marketing approach and strategies, and developing appropriate advertising documentation and text;
- Note:** this 'Preparation for advertising' Unbundled Activity cannot be provided as a standalone Unbundled Activity, but may be provided together with one or more Bundled Activities or Unbundled Activities.
- 6.4.3. **Assessment Testing** – undertaking or facilitating the following types of testing of candidates (including recommending and providing contemporary assessment tools and technical support for testing tools);
- 6.4.3.1. **Cognitive Testing** – may include abstract reasoning, numerical skills, written case studies, language proficiency, aptitude tests etc
- 6.4.3.2. **Psychometric Testing** – may include face to face testing at professional suites or virtual platform to assess emotional intelligence, cognitive or analytical profile
- 6.4.3.3. **Behavioural Testing** – may include personality profiling, behavioural interviewing, situational judgement assessments, strengths, cognitive functioning
- 6.4.4. any additional activities related to Expert/Specialised Role Recruitment Services that are specified in a Contract.

7. Category 3: Candidate Sourcing Services

- 7.1. Where the Service Provider is providing Candidate Sourcing Services, the Service Provider must:
- 7.1.1. identify and source highly skilled potential candidates for an advertised vacancy;
 - 7.1.2. seek express agreement from a candidate for that candidate to be represented by the Service Provider, and present that candidate to the Entity; and
 - 7.1.3. maintain suitable systems and processes for validating particular qualifications (e.g. educational and professional) and personal skills of candidates, and validate those skills and qualifications before offering the relevant candidate to the Entity.
- (the **Candidate Sourcing Services**).
- 7.2. The Candidate Sourcing Fees will apply in respect of the Candidate Sourcing Services, as described in **Schedule 3 (Pricing)**.
- 7.3. Where a Service Provider is providing General, Executive or Expert/Specialised Role Recruitment Services in respect of one or more vacancies:
- 7.3.1. the Service Provider must not provide Candidate Sourcing Services in respect of those same vacancies; and
 - 7.3.2. the Entity will not be liable to pay any Candidate Sourcing Fees to the Service Provider in relation to vacancies filled, regardless of whether candidates engaged by the Entity to fill the vacancies are 'on the books' of the Service Provider.

8. Category 4: Board Search Services

- 8.1. Where the Service Provider is providing Board Search Services, an Entity:
- 8.1.1. may require the Service Provider to provide Board Search (being an 'end-to-end' board search process), in which case the Service Provider must provide all of the Board Search Activities in respect of that Board Search, and the Board Search Fee in **Schedule 3 (Pricing)** will apply; and
 - 8.1.2. may require the Service Provider to provide Additional Board Activities, in which case the Additional Board Fees in **Schedule 3 (Pricing)** will apply to those activities.
- 8.2. For the purposes of this Head Agreement, the Board Search Activities are:
- 8.2.1. **Initial candidate search** – undertake a search against an Entity skills and requirements matrix to identify and form a 'candidate pool' of suitable candidates for specific board or committee positions, or statutory appointments, that may need to be filled over a 12-month period;
 - 8.2.2. **Candidate screening** – screen candidates by undertaking referee checks and discreet background checks including for personal qualities, character, reputation, knowledge, skills and specialist expertise, corporate history and any actual or potential Conflicts of Interest, national police checks and criminal history checks, or other matters that may be of interest to, or cause embarrassment for Government;

- 8.2.3. **Provision of Search report** – provide a report that has been developed to a high professional standard and which contains a list of candidates, brief biographies, any Conflicts of Interest, and any potential concerns;
 - 8.2.4. **Consultation** – consult with other key stakeholders, including attending and participating in meetings where required;
 - 8.2.5. **One off viability check** – within 12 months of the Order Commencement Date for each Contract, undertake a viability check for a candidate proposed in initial search to check availability and changes to any Conflicts of Interest.
- 8.3. When the Service Provider is providing Board Search Services:
- 8.3.1. the maximum number of vacancies that an Entity may include in one Board Search is 20 vacancies; and
 - 8.3.2. the minimum number of candidates that the Service Provider must put forward for each vacancy is five candidates (or such other number as agreed in a Contract).
- 8.4. For the purposes of this Head Agreement, the Additional Board Activities are any additional activities related to Board Search Services that are specified in a Contract.

Schedule 3 – Pricing

1. General Recruitment and Executive Recruitment Fees

- 1.1 The Fees payable by an Entity for General Recruitment Services and Executive Recruitment Services are as set out in **clauses 2 and 3 of this Schedule 3 (Pricing)**.

2. Bundled Fees

- 2.1 Where an Entity requires the Service Provider to provide General Recruitment Services and/or Executive Recruitment Services:

2.1.1 the Bundled Fees in **Table 1A** and **Table 1B**, are the all-inclusive maximum fees that the Service Provider may charge the Entity per Process;

2.1.2 the applicable Bundled Fees that will apply pursuant to **Table 1A** and **Table 1B** are determined by reference to the number of applications in the relevant Process. For each Process, the Bundled Fees under **Table 1A** and **Table 1B** will comprise a fixed fee component depending on the number of applications in that process; and

2.1.3 the Bundled Fees will become payable by the Entity:

(i) on completion of the Process; or

(ii) if a milestone-based payment schedule is specified by an Entity in an Order, in accordance with milestones (e.g. on completion of one or more of the Bundled Activities forming part of the Process) specified by the Entity in that Order,

subject to performance of the Services by the Service Provider to the Entity's reasonable satisfaction

Table 1A - Bundled Fees (per Process) for General Recruitment Services

Process	Fixed Fees for Application Numbers (per Process) (inc.GST)										
	1 – 40	41 – 80	81 – 120	121 – 160	161 – 200	201 – 240	241 – 280	281 – 320	321 – 360	361 – 400	401+
Recruitment of APS1- EL2 (or equivalent personnel)	Fixed Price for 1 to 40 applications received \$TBC	Fixed Price for 41 - 80 applications received \$TBC	Fixed Price for 81-120 applications received \$TBC	Fixed Price for 121-160 applications received \$TBC	Fixed Price for 161-200 applications received \$TBC	Fixed Price for 201-240 applications received \$TBC	Fixed Price for 241-280 applications received \$TBC	Fixed Price for 281-320 applications received \$TBC	Fixed Price for 321-360 applications received \$TBC	Fixed Price for 361-400 applications received \$TBC	Fixed Price for each application received from 401+ \$TBC

Table 1B - Bundled Fees (per Process) for Executive Recruitment Services

Process	Fixed Fees for Application Numbers (per Process) (inc.GST)										
	1 – 40	41 – 80	81 – 120	121 – 160	161 – 200	201 – 240	241 – 280	281 – 320	321 – 360	361 – 400	401+
Recruitment of SES Band 1 level (or equivalent personnel)	Fixed Price for 1 to 40 applications received \$TBC	Fixed Price for 41 - 80 applications received \$TBC	Fixed Price for 81-120 applications received \$TBC	Fixed Price for 121-160 applications received \$TBC	Fixed Price for 161-200 applications received \$TBC	Fixed Price for 201-240 applications received \$TBC	Fixed Price for 241-280 applications received \$TBC	Fixed Price for 281-320 applications received \$TBC	Fixed Price for 321-360 applications received \$TBC	Fixed Price for 361-400 applications received \$TBC	Fixed Price for each application received from 401+ \$TBC
Recruitment of SES Band 2 level (or equivalent personnel)	Fixed Price for 1 to 40 applications received \$TBC	Fixed Price for 41 - 80 applications received \$TBC	Fixed Price for 81-120 applications received \$TBC	Fixed Price for 121-160 applications received \$TBC	Fixed Price for 161-200 applications received \$TBC	Fixed Price for 201-240 applications received \$TBC	Fixed Price for 241-280 applications received \$TBC	Fixed Price for 281-320 applications received \$TBC	Fixed Price for 321-360 applications received \$TBC	Fixed Price for 361-400 applications received \$TBC	Fixed Price for each application received from 401+ \$TBC
Process	Fixed Fees for Application Numbers (per Process) (inc.GST)										
	1 – 10	11 – 20	21 – 30	31 – 40	41 – 50	51 – 60	61 – 70	71 – 80	81 – 90	91 – 100	101+
Recruitment of SES Band 3 level and above (or equivalent personnel)	Fixed Price for 1 to 10 applications received \$TBC	Fixed Price for 11 - 20 applications received \$TBC	Fixed Price for 21-30 applications received \$TBC	Fixed Price for 31-40 applications received \$TBC	Fixed Price for 41-50 applications received \$TBC	Fixed Price for 51-60 applications received \$TBC	Fixed Price for 61-70 applications received \$TBC	Fixed Price for 71-80 applications received \$TBC	Fixed Price for 81-90 applications received \$TBC	Fixed Price for 91-100 applications received \$TBC	Fixed Price for each application received from 101+ \$TBC

3. Unbundled Fees

3.1 Where an Entity requires the Service Provider to provide Unbundled Activities, then:

3.1.1 for all Unbundled Activities except Assessment Testing, the Entity will specify the Service Provider Personnel classification level at which the Unbundled Activities must be performed (determined in accordance with **Annex A** to this **Schedule 3 (Pricing)**), and the applicable hourly rate Unbundled Fee for the relevant classification level will apply as set out in **Table 2** up to the cap on Unbundled Fees (if any) specified in a Contract; and

3.1.2 for Assessment Testing, the Fees in **Table 3** will apply on a per-candidate basis.

Table 2– Unbundled Fees – General and Executive Recruitment Services

Service Provider Personnel Classification Level (per Annex A)	Unbundled Hourly Rate for General or Executive Recruitment Services (inc. GST)
Level 1	[\$TBC]
Level 2	[\$TBC]
Level 3	[\$TBC]

Table 3 Assessment Testing Fees

Candidate Level	Psychometric Testing Fee per candidate (inc. GST)	Cognitive Testing Fee per candidate (inc. GST)	Behavioural Testing Fee per candidate (inc. GST)
APS1-6	[\$TBC]	[\$TBC]	[\$TBC]
EL1-2	[\$TBC]	[\$TBC]	[\$TBC]
SES Level Personnel	[\$TBC]	[\$TBC]	[\$TBC]

4. Expert/Specialised Role Search Fees

4.1 The Fees payable by an Entity for Expert/Specialised Role Recruitment Services are as set out in this **clause 4**.

4.2 Where an Entity requires the Service Provider to provide Expert/Specialised Role Recruitment Services, the Expert/Specialised Role Search Fee in **Table 4** is the all-inclusive, per vacancy, maximum fee that the Service Provider may charge the Entity.

Table 4 – Expert/Specialised Role Search Fees

Activity	Maximum Fee (per vacancy) (GST Inclusive)
Expert/Specialised Role Recruitment Services	[\$TBC]

4.3 Where an Entity requires the Service Provider to undertake Additional Expert/Specialised Role Search Activities, then:

4.3.1 for all Additional Expert/Specialised Role Search Activities except Assessment Testing, the Entity will specify the Service Provider Personnel classification level at which the Additional Expert/Specialised Role Search Activities must be performed (determined in accordance with **Annex A** to this **Schedule 3 (Pricing)**), and the applicable hourly rate for the relevant classification level will apply as set out in **Table 5** up to the cap on Additional Expert/Specialised Role Search Fees (if any) specified in a Contract; and

4.3.2 for Assessment Testing, the Fees in **Table 3** (above) will apply on a per-candidate basis.

Table 5 – Additional Expert/Specialised Role Search Fees

Service Provider Personnel Classification Level (per Annex A)	Hourly Rate for Additional Expert/Specialised Role Search Activities (inc. GST)
Level 1	[\$TBC]
Level 2	[\$TBC]
Level 3	[\$TBC]

5. Candidate Sourcing Fees

5.1 The Fees payable by an Entity for Candidate Sourcing Services are as set out in this **clause 5**.

5.2 Subject to **clause 5.3**, where an Entity requires the Service Provider to provide Candidate Sourcing Services, the Candidate Sourcing Fees in **Table 6** are the all-inclusive, maximum fee that the Service Provider may charge the Entity in respect of each candidate that is sourced by the Service Provider and engaged by the Entity.

Table 6 – Candidate Sourcing Fees

Level of Service Provider sourced candidate	Flat Fee per candidate (inc. GST)
Recruitment of APS1 (or equivalent) personnel	[\$TBC]
Recruitment of APS2 (or equivalent) personnel	[\$TBC]
Recruitment of APS3 (or equivalent) personnel	[\$TBC]
Recruitment of APS4 (or equivalent) personnel	[\$TBC]

Recruitment of APS5 (or equivalent) personnel	[\$TBC]
Recruitment of APS6 (or equivalent) personnel	[\$TBC]
Recruitment of EL1 (or equivalent) personnel	[\$TBC]
Recruitment of EL2 (or equivalent) personnel	[\$TBC]
Recruitment of SES level 1 personnel	[\$TBC]
Recruitment of SES level 2 personnel	[\$TBC]
Recruitment of SES level 3 personnel	[\$TBC]

- 5.3 The Candidate Sourcing Fees in **Table 6** will become payable by the Entity in instalments, with a percentage of the relevant Candidate Sourcing Fee in **Table 6** payable on achievement of the relevant milestone, as shown in **Table 7**, below.

Table 7 – Retainer Model for Payment of Candidate Sourcing Fees

Milestone	Percentage of Fees
For candidates engaged for <u>less than six months</u>	
Commencement of Service Provider sourced candidate in role at the Entity	[80%] of the applicable Flat Fee per candidate (as shown in Table 6) determined by reference to the level of the candidate engaged.
Service Provider sourced candidate concludes engagement with the Entity	[20%] of the applicable Flat Fee per candidate (as shown in Table 6) determined by reference to the level of the candidate engaged.
For candidates engaged for <u>six months or longer</u>	
Commencement of Service Provider sourced candidate in role at the Entity	[80%] of the applicable Flat Fee per candidate (as shown in Table 6) determined by reference to the level of the candidate engaged.
Service Provider sourced candidate completes six months of service at the Entity	[20%] of the applicable Flat Fee per candidate (as shown in Table 6) determined by reference to the level of the candidate engaged.

- 5.4 To avoid doubt, where a milestone is not achieved, the Entity will not be liable to pay, and the Service Provider must not seek to recover, the applicable percentage amount of Candidate Sourcing Fee for the relevant milestone.
- 5.5 The Candidate Sourcing Fees in **Table 6** will only apply where an Entity has engaged the Service Provider to provide Candidate Sourcing Services, and will not apply in respect of:
- 5.5.1 unsolicited candidate sourcing activities by the Service Provider; or
 - 5.5.2 labour hire (or other) personnel provided by the Service Provider to the Entity who are engaged or 'convert' to ongoing positions at the Entity.

6. Board Search Fee

- 6.1 The Fees payable by an Entity for Board Search Services are as set out in this **clause 6**.
- 6.2 Where an Entity requires the Service Provider to undertake a Board Search, the applicable Board Search Fee in **Table 8**:
- 6.2.1 is the all-inclusive maximum fee that the Service Provider may charge the Entity for a Board Search (per vacancy) depending on the level of the relevant Board vacancy; and
- 6.2.2 includes the costs of one availability and reverification of Conflict of Interest check per candidate by the Service Provider, within 12 months of the Contract date.

Table 8 – Board Search Fee

Board Search Candidate Level	Maximum Fee (per vacancy) (GST Inclusive)
Board Member	[\$TBC]
Board Chair	[\$TBC]

- 6.3 where an Entity requires the Service Provider to undertake Additional Board Activities, the Entity will specify the Service Provider Personnel classification level at which the Additional Board Activities must be performed (determined in accordance with **Annex A** to this **Schedule 3 (Pricing)**), and the applicable hourly rate for the relevant classification level will apply as set out in **Table 9** up to the cap on Additional Board Fees (if any) specified in a Contract.

Table 9 – Additional Board Fees

Service Provider Personnel Classification Level (per Annex A)	Hourly Rate for Additional Board Activities (inc. GST)
Level 1	[\$TBC]
Level 2	[\$TBC]
Level 3	[\$TBC]

7. No liability for candidates' costs or expenses

- 8.1 The Service Provider must not charge the Entity for, and the Entity will not be liable to pay, any costs or expenses incurred by a candidate, including where a candidate:
- 8.1.1 provides documents or other information to the Service Provider or an Entity, including to verify personal details, educational qualifications or refereed details; or
- 8.1.2 undergoes an assessment of skills, qualifications, suitability for the position or experience, including attending interviews, or undertaking literacy, numeracy or psychometric assessments.

- 7.1 For the avoidance of doubt, **clause 8.1** above does not prevent the Service Provider from charging for the assessment of a candidate as provided elsewhere in this **Schedule 3 (Pricing)**.

8. General

- 9.1 The Fees set out in this **Schedule 3 (Pricing)** are the only amounts payable by the Entity to the Service Provider in respect of the Services. The Service Provider will not in any circumstances be entitled, and the Entity will not be liable to pay, any additional fees in respect of the Services.

- 9.2 Where the Entity ceases a Process, an 'end-to-end' specialist search process, or Board Search prior to completion:

9.2.1 the Service Provider will not be entitled to the Bundled Fees, Expert/Specialised Role Search Fees, or Board Search Fees;

9.2.2 the Entity will pay for the activities that have been completed prior to cessation by calculating the applicable fees that would have applied if the completed activities were carried out on a time and materials basis at the applicable hourly rate for the relevant Service Category (provided that such fees must not exceed the relevant maximum Bundled Fees, Expert/Specialised Role Search Fees, or Board Search Fee that would have applied if the Process, an 'end-to-end' specialist search process, or Board Search was completed); and

- 9.3 such cessation does not constitute a termination or reduction in scope for convenience for the purposes of **clause 27.5** of the Head Agreement.

9. Recipient Created Tax Invoices

- 10.1 A Contract may specify that an Entity can issue a Recipient Created Tax Invoice (**RCTI**) in respect of the supply of the Services, in which case:

10.1.1 the Entity will issue the original or a copy of the RCTI in respect of the supply of the Services to the Service Provider under a Contract within 28 days of the making, or determining the value, of the taxable supply, and will retain the original or a copy;

10.1.2 the Entity will issue the original or a copy of an adjustment note to the Service Provider within 28 days of any adjustment, and will retain the original or a copy;

10.1.3 the Service Provider will not issue tax invoices in respect of the supply of the Services under the Contract;

10.1.4 each party acknowledges and warrants that it is registered for GST when it enters into the Contract;

- 10.1.5 each party will notify the other in writing within five Business Days if it ceases to be registered for GST, or ceases to comply with any requirements of any taxation ruling issued by the Australian Taxation Office relating to RCTIs; and
- 10.1.6 if the RCTI arrangement is unable to be implemented or ceases, the Service Provider will issue Tax Invoices in respect of the supply the Services to the under the Contract.

Annex A to Schedule 3 – Service Provider Personnel Classifications and Expected Work Level Standards

Classification	Expected work level standard
Level 3	<p>(a) A Level 3 classification is fully responsible for the Service Provider's delivery of all aspects of the Services.</p> <p>(b) A Level 3 is fully accountable for actions taken and decisions made, both by themselves and other Service Provider Personnel assigned work in connection with the Services.</p> <p>(c) A Level 3 will have a broad and deep knowledge of the Service Category under which the Services relate.</p> <p>(d) It is expected that a Level 3 would hold, as a minimum, undergraduate and post graduate degrees relevant to the area(s) of specialisation or similarly regarded qualification or have extensive relevant experience. A Level 3 may hold professional body senior membership, and professional body certifications.</p>
Level 2	<p>(a) A Level 2 works under broad direction and is responsible for meeting allocated tasks and managing small recruitment projects relating to the Services. A Level 2 will oversee the work of a Level 1.</p> <p>(b) A Level 2 performs a range and variety of work activities within their own area(s) of specialisation in the delivery of the Services.</p> <p>(c) It is expected that a Level 2 would hold an undergraduate degree relevant to the area(s) of specialisation or similarly regarded qualification or substantial relevant experience. A Level 2 may be a member of a professional body in area(s) of specialisation.</p>
Level 1	<p>(a) A Level 1 will typically do work to support Level 2 and/or Level 3 in administrative capacities such as updating databases, and co-ordinating recruitment activities.</p> <p>(b) A Level 1 has a sound generic, domain and specialist knowledge and performs work under supervision of a Level 2 or Level 3.</p> <p>(c) It is expected that a Level 1 would hold an undergraduate degree or similarly regarded qualification or adequate relevant experience.</p>

Schedule 4 – Reporting

1. Reporting in relation to the Head Agreement

- 1.1. This **clause 1** details the mandatory reporting requirements to Finance under the Head Agreement.

File Naming Convention

- 1.2. Service Providers must ensure reports are clearly labelled, with the following file naming convention to be applied:

ABN_Name_Date

Where:

ABN is the Service Provider's ABN, with no spaces

Name the Report Name is 'Recruit'.

Date is the date of the report using a YYYY_MM format, i.e. for 22 May 2021, the date would be 2021_05.

The file name would be ABN_Recruit_2021_05

Formatting Standards

- 1.3. Formatting standards for reporting the Services to Finance are detailed in the Services Report Specifications (**Table 2**, below) with the following additional formatting standards to apply:

1.3.1. case sensitivity, where values that are intended to be the same are truly identical and do not differ in case sensitivity or through abbreviation;

1.3.2. the letter 'A' in the 'Format' column of a Report Specification indicates the field is text field, the letter 'N' in the 'Format' column of a Report Specification indicates the field is number field and the letters 'AN' in the 'Format' column of a Report Specification indicates the field is text and number field;

1.3.3. files are to be provided as comma-separated values (CSV) using semi-colon text delimited format, or any other format reasonably requested by Finance;

1.3.4. files must be compatible with Microsoft Excel 2007, and later versions, unless otherwise advised by Finance; and

1.3.5. reports must not be locked in a manner that prevents Finance from reviewing or analysing raw information in a report, or the information used to generate a report.

- 1.4. Where agreed by Finance, reports may be password protected for confidentiality or security purposes. Where Finance has agreed to a report being password protected the Service Provider must provide all relevant report passwords to Finance.

Report Timing Requirements

- 1.5. The Service Provider must provide reports in accordance with the reporting schedule in **Table 1**, below:

Table 1: Service Provider Reporting Schedule

Report	Reporting Period	Report Due Date
Services Report	New Orders and variations executed each calendar month.	Within 10 Business Days of the end of each month.

- 1.6. The Service Provider is not required to submit a report if there have been no new contracts or variations.

File Transfer Requirements and Security

- 1.7. Reports are to be transferred (submitted) to Finance electronically or as otherwise notified by Finance.
- 1.8. The Service Provider warrants that all transferred files are free of harmful code.

Services Report

- 1.9. The Service Provider must provide to Finance the Services Report in the format detailed in the Services Report Specification in **Table 2** below.
- 1.10. The Services Report is to be provided at the times specified in the reporting schedule in **Table 1** of this **Schedule 4 (Reporting)**.

Table 2 – Services Report Specification

Position	Format	Header Name	Purpose	Reference Table	Due By	Notes
A	A	ABN	To uniquely identify the Service Provider.		Initial Order lodgement	11-digit number with no spaces
B	AN	SRVC_PRVDR	To uniquely identify the Service Provider.		Initial Order lodgement	This is a short name agreed with Finance to uniquely identify the Service Provider and cannot be varied without approval from Finance.
C	AN	ORDER_NO	To identify the Entity Order number.		Initial Order lodgement	The Order number must be the Order number specified in an Order
D	N	ENTITY_ABN	To provide the ABN for the relevant Entity		Initial Order lodgement	11-digit number with no spaces
E	A	ENTITY	To identify the relevant Entity		Initial Order lodgement	Entity name listed on the Order
F	A	CN_TYPE	To identify if the reporting reflects a new order, an extension option being exercised or if the item being reported has been varied through an Order variation		Initial Order lodgement	New Contracts = N Variation = V
G	N	CN_START	To identify the Contract start date	DD/MM/YY	Initial Order lodgement	Contract commencement date as listed on the Order
H	N	CN_END	To identify the Contract end date	DD/MM/YY	Initial Order lodgement	Contract end date as listed on the Order
I	N	CN_EXT_END	To identify the end date of any extension options		Initial Order lodgement	If multiple extensions options apply, the date should reflect the last extension option end date identified in the Order.
J	N	CN_NO_EXT	To identify the number of extension options		Initial Order lodgement	This is the total number of extension options identified in the Order.

K	A	SRVC_CAT	To identify the Service Category the role maps to	General Executive Specialist Candidate Sourcing Board Scribes	Initial Order lodgement	To align with the Service Category as stated in a Contract. Include all Service Categories in an Order, if there is more than one. The text for the relevant Recruitment Area must match the reference table exactly.
L	A	BUNDLED_UNBUNDLED	To identify whether the work is on the basis of bundled or unbundled	Bundled Unbundled	Initial Order lodgement	General or executive recruitment only
M	A	ASSESS_TEST	To identify assessment testing type	Assessment Testing – Psychometric Assessment Testing – Cognitive Assessment Testing - Behavioural	Initial Order lodgement	Applicable to General Recruitment, Executive Recruitment and Expert/Specialised Recruitment

N	AN	FEE_TYPE	To identify the basis of the fees charged relevant to the Order	Number of vacancies Number of applications Number of successful candidates	Within 5 business days of close of applications for General and Executive Recruitment Within 5 business days of candidate appointment for Candidate Sourcing Services Initial Order lodgement for Expert/Specialised Recruitment and Board Search	Number of applications for General and Executive Recruitment Number of vacancies maps for Expert/Specialised Recruitment and Board Search Number of candidates maps to Candidate Sourcing Services
O	AN	PERSONNEL	To identify the level of service provider personnel engaged, if applicable	Level 1 Level 2 Level 3	Initial Order lodgement	Include all levels engage under the Order, if there is more than one.
P	AN	APS_LEVEL	To identify the level of APS personnel (or equivalent) relevant to the Order	APS1 APS2 APS3 APS4 APS5 APS6 EL1 EL2 SES1 SES2 SES3	Initial Order lodgement	Include all levels engage under the Order, if there is more than one.

Q	AN	TOTAL_PAYABLE	Total fees payable under this Order, ex GST		<p>Within 5 business days of close of applications for General and Executive Recruitment</p> <p>Within 5 business days of candidate appointment for Candidate Sourcing Services</p> <p>Initial Order lodgement for remaining service categories</p>	Numeric value in Australian \$ to two decimal points. This may include negative amounts.
R	AN	ENTITY_CONTACT	To identify Entity contact point name		Initial Order lodgement	The Entity Representative's name identified in the Order.
S	AN	ENTITY_EMAIL	To identify Entity contact point email address		Initial Order lodgement	The Entity Representative's email address identified in the Order.
T	N	COST_CENTRE	To assist with Finance administration fee recovery by Finance		Initial Order lodgement	Entity cost centre code identified in the Order.

Schedule 5 – Request for Quotation Template

Note to Service Provider:

This **Schedule 5 (Request for Quotation Template)** provides a Request for Quotation (RFQ) template that includes the typical information that an Entity will provide to the Service Provider to request a quotation for the provision of Services to an Entity, as detailed in **clause 11.2** of the Head Agreement. It is intended that the RFQ will be provided as a smart form. The intent of this template and any smart form is to achieve a high level of standardisation and consistency in Entity RFQs to provide efficiencies to Entities and Service Providers, however, it will not be mandatory that Entities use this RFQ Template or any resulting smart form to request quotes from Service Providers.

1. Introduction

- 1.1. This RFQ is issued under **clause 11.2** of the Head Agreement between the Service Provider and the Department of Finance.

<u>Request For Quotation for Services</u>	
<i>Entity Information</i>	
Entity	[Insert Entity name]
Entity File Reference	[Insert Entity file reference number]
RFQ Reference	[Insert Entity RFQ reference number]
Entity Representative	Name: [Insert contact name] Position: [Insert title] Address: [Insert address, including postcode] Email: [Insert email address] Contact number: [Insert contact number, including area code]
<i>RFQ and Proposed Order Details</i>	
RFQ Release Date	[insert date the RFQ is released]
RFQ Closing Date	[insert date and time the RFQ closes]
Proposed Order Commencement Date	[insert date the Services will commence]
Proposed Order Term and/or Completion Date	[insert the order term and/or completion date]
Options to extend	The Entity may extend the Contract for [insert time period] by providing written notice to the Service Provider prior to the Order Completion Date.

<u>Request For Quotation for Services</u>									
Milestones	[Insert proposed milestones for the delivery of the Services]								
<i>Statement of Work</i>									
Service Category	[Insert the relevant Service Category that the services relate to]								
Statement of Work	[Insert a detailed description of the Services required. A separate Statement of Work may be referenced and attached]								
Deliverables / Milestones	[include details of any deliverables and milestones required under a resulting Contract]								
Location	[Insert the required work location/site, or insert 'Not Applicable']								
Fees	[Insert details of fee structure e.g. hourly/daily rates, fixed fee]								
Payment Terms	<p>[Select the relevant payment terms]</p> <p>[For Non-corporate Commonwealth entities:</p> <p>Five calendar days for eInvoices through the PEPPOL network</p> <p>OR</p> <p>20 calendar days]</p> <p>[For Entities other than Non-corporate Commonwealth entities:</p> <p>[insert payment terms]]</p>								
Travel	[Insert details of any travel that may be required and whether the Service Provider will be reimbursed for travel costs or if travel will be paid for by the Entity, or insert Not Applicable].								
Entity Material	[List any documents attached to the RFQ]								
Confidential Information	<p>[Include details in table below or insert Not Applicable]</p> <table border="1"> <thead> <tr> <th>Entity Confidential information (for example)</th> <th>Period of Confidentiality</th> </tr> </thead> <tbody> <tr> <td>Entity data</td> <td>Indefinitely</td> </tr> <tr> <td>Any Personal Information held by the Entity</td> <td>Indefinitely</td> </tr> <tr> <td>Security Classified Information</td> <td>Indefinitely</td> </tr> </tbody> </table>	Entity Confidential information (for example)	Period of Confidentiality	Entity data	Indefinitely	Any Personal Information held by the Entity	Indefinitely	Security Classified Information	Indefinitely
Entity Confidential information (for example)	Period of Confidentiality								
Entity data	Indefinitely								
Any Personal Information held by the Entity	Indefinitely								
Security Classified Information	Indefinitely								
<i>Additional Requirements</i>									
Entity Security Requirements	[State any additional security requirements to the requirements contained in the Head Agreement, or that apply to particular aspects of work, or insert 'Not Applicable'].								
Security Clearance Requirements	[Include requirements for security clearances or insert 'Not Applicable']								

<u>Request For Quotation for Services</u>	
Personnel Requirements	<p>Personnel performing the Services may be required to sign a Deed and acknowledgements relating to confidentiality, security, moral rights, intellectual property and other relevant matters as required by the Entity. Any Contract will be conditional on this occurring.</p> <p>[Insert any other personnel requirements]</p>
Liability	<p>[Specify whether, in respect of the Service Provider's liability: (a) the default liability cap under clause 19.1.1 applies, or (b) a higher, Contract-specific liability cap will apply]</p> <p>[Also specify the liability cap for an Entity's liability arising out of or in connection with the Contract for any breach of confidentiality obligations in the Contract or at Law]</p>
Entity software system, platform or solution (clause 4.1.3 of Schedule 2 (Services))	<p>[Insert if the Service Provider is required to use a specific software system platform or solution in relation to the provision of Services in accordance with clause 4.1.3 of Schedule 2 (Services), or if a specific software system, platform or solution is not required, insert 'Specific software system, platform or solution is not required']</p>
Entity Insurance Requirements	<p>[Insert any additional requirements (if any) for relevant insurances where these differ from the insurance amounts in the Head Agreement.]</p>
Entity Service Levels	<p>[Insert any additional or changed service levels that apply to the delivery of the Services. Note there are default service levels in Schedule 7 (Performance Management Framework and Service Levels).]</p>
Other Additional Requirements	<p>[Include any other additional requirements, if applicable]</p>
<i>Commonwealth Policy Requirements</i>	
Shadow Economy Policy	<p>[For procurements valued at \$4 million or more the Shadow Economy Policy applies. Entities must obtain a Valid and Satisfactory Statement of Tax Record for any Service Provider (and any first-tier subcontractors of that Service Provider) that will be involved in the delivery of the Services]</p>
Indigenous Procurement Policy	<p>[For procurements valued at \$7.5 million or more, insert that clause 16.4.3 of the Head Agreement applies]</p>
Australian Industry Participation Plan	<p>[For procurement valued at \$20 million or more, the Australian Industry Participation policy may apply]</p>
<i>Evaluation Criteria</i>	
<p>Responses to this RFQ will be evaluated against the following criteria: [Entities should be able to select the evaluation criteria they wish to apply and/or include their own criteria].</p> <ul style="list-style-type: none"> • The Service Provider's demonstrated understanding of the Services required, including the identification of any key challenges and the management of risk. • The Service Provider's demonstrated capability and capacity to provide the services described in the Statement of Work to a very high standard and within the specified timeframes. • The Service Provider's demonstrated organisational experience in providing the similar services to 	

Request For Quotation for Services

the services described in the Statement of Work.

- The relevant experience of Personnel in providing the similar services to the services described in the Statement of Work [include any relevant qualifications, certifications, etc. required].
- The professional and other standards that your organisation would apply to the Services and the measures your organisation proposes to ensure that standards are maintained for the term of the Contract.

The extent to which the level and structure of fees proposed provides value for money for the Australian Government.

Responding to this RFQ

The Service Provider is required to complete the following information:

[Service Provider's Representative]

[Service Provider's Name]

[Service Provider's Address]

[Service Provider's ABN]

[Service Provider's email address]

[Entities will select from the requirements below and/or include their own requirements]

In responding to this RFQ, the Service Provider should:

- describe its understanding of the Services required,
- detail its capability and capacity to provide the Services described in the detailed Statement of Work]

The Service Provider is also required to:

- identify any Subcontractors nominated to provide the Services and their role in the delivery of the Services
- declare applicable jurisdictional licencing
- identify whether it proposes to use any generative Artificial Intelligence program(s) in delivering the Services required. If the Service Provider does propose to use any generative Artificial Intelligence program(s) in delivering the Services, the Service Provider must also identify:
 - the generative Artificial Intelligence program(s) it intends on using; and
 - what part or parts of the Services the generative Artificial Intelligence program(s) will be used to deliver
- disclose any conflicts of interest it would have with the delivery of the Services
- include any information in its response that it requests to remain confidential.

Schedule 6 – Order Template

Note to Service Provider:

This **Schedule 6 (Order Template)** provides an Order Template for the provision of Services to an Entity, as detailed in **clause 11.3** of the Head Agreement. It is intended that the Order Template will be provided as a smart form. The intent of this template and any smart form is to achieve a high level of standardisation and consistency in Entity Orders to provide efficiencies to Entities and Service Providers, however, it will not be mandatory that Entities use this Order Template or any equivalent smart form to order Services from Service Providers.

1. Introduction

1.1. This Order is issued in accordance with **clause 11.3** of the Head Agreement.

<u>Order for Services</u>	
[Service Provider's Representative]	
[Service Provider's Name]	
[Service Provider's Address]	
[Service Provider's ABN or ACN]	
Sent via: [email]: [Service Provider's email address]	
Entity Order Information	
Entity	[Insert Entity name]
Entity File Reference	[Insert Entity File Reference]
Order Number	[Insert Entity's reference number for this Order for Services]
Cost Centre	[Insert Entity's cost centre]
Order Commencement Date and Term	
Order Commencement Date	[insert date the Order commences]
Order Term and Extensions	<p>[The Order expires on [insert date] (Initial Term).</p> <p>The Entity may in its sole discretion extend the Initial Term of this Order for a further period or periods, up to [XX months/years], on the same terms and conditions of this Order, by giving written notice to the Service Provider, prior to end of the Initial Term of this Order (Extension Period/s).]</p>
Statement of Work	
Service Category	[Insert the relevant Service Category that the services relate to]

Order for Services															
Statement of Work	[Insert a detailed description of the Services required. A separate Statement of Work may be referenced and attached]														
Deliverables / Milestones	[Insert proposed deliverables and milestones for Services and link to payment]														
Location	[Insert the required work location/site, or insert 'Not Applicable']														
Fees	[Insert details of fee structure e.g. fixed fee and any approved disbursement e.g. accommodation and travel (if applicable)]														
Payment Terms	<p>[Select the relevant payment terms]</p> <p>[For Non-corporate Commonwealth entities:</p> <p>Five calendar days for eInvoices through the PEPPOL network</p> <p>OR</p> <p>20 calendar days]</p> <p>[For Entities other than Non-corporate Commonwealth entities:</p> <p>[insert payment terms]</p>														
Invoicing	[the Entity will include any invoicing requirements]														
Travel	[the Entity will select the relevant travel clauses].														
Confidential Information	<p>[Include details in table below or insert Not Applicable. If approved by the Entity, relevant sections of the Service Provider's internal working papers may be specified as Service Provider Confidential information]</p> <table border="1"> <thead> <tr> <th>Entity Confidential information <i>(for example)</i></th> <th>Period of Confidentiality</th> </tr> </thead> <tbody> <tr> <td>Entity data</td> <td>Indefinitely</td> </tr> <tr> <td>Any Personal Information held by the Entity</td> <td>Indefinitely</td> </tr> <tr> <td>Security Classified Information</td> <td>Indefinitely</td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th>The Service Provider Confidential information</th> <th>Period of Confidentiality</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> </tbody> </table>	Entity Confidential information <i>(for example)</i>	Period of Confidentiality	Entity data	Indefinitely	Any Personal Information held by the Entity	Indefinitely	Security Classified Information	Indefinitely	The Service Provider Confidential information	Period of Confidentiality				
Entity Confidential information <i>(for example)</i>	Period of Confidentiality														
Entity data	Indefinitely														
Any Personal Information held by the Entity	Indefinitely														
Security Classified Information	Indefinitely														
The Service Provider Confidential information	Period of Confidentiality														

<u>Order for Services</u>	
<i>Additional requirements</i>	
Security	[State any additional security requirements to the requirements contained in the Head Agreement, or that apply to particular aspects of work or insert 'Not Applicable']
Security Clearance Requirements	[Include requirements for security clearances or insert 'Not Applicable']
Personnel Requirements	<p>Personnel performing the Services may be required to sign a Deed and acknowledgements relating to confidentiality, security, moral rights, intellectual property and other relevant matters as required by the Entity. Any Contract will be conditional on this occurring.</p> <p>[Insert any other personnel requirements from the RFQ]</p>
Liability	<p>[Specify whether, in respect of the Service Provider's liability:</p> <p>(a) the default liability cap under clause 19.1.1 applies, or</p> <p>(b) a higher, Contract-specific liability cap will apply]</p> <p>[Also specify the liability cap for an Entity's liability arising out of or in connection with the Contract for any breach of confidentiality obligations in the Contract or at Law]</p>
Insurance	[Insert any additional or varied requirements for insurance where these differ from the insurance amounts in the Head Agreement.]
Entity Service Levels	[Insert any additional or changed Entity Service Levels that apply to the Order. Note there are default service levels in Schedule 7 (Performance Management Framework and Service Levels) .]
Entity Software System Platform or Solution	[Insert if the Service Provider is required to use a specific software system platform or solution in relation to the provision of Services in accordance with clause 4.1.3 of Schedule 2 (Services) , or if a specific software system, platform or solution is not required, insert 'Specific software system, platform or solution is not required']
Generative Artificial Intelligence	[insert any generative Artificial Intelligence program(s) the Service Provider will use to deliver the Services and any additional conditions on the use of those generative Artificial Intelligence program(s)]
Other	[Insert any other specific Entity requirements.]
<i>Commonwealth Procurement Connected Policy Requirements</i>	
Shadow Economy Policy	[For procurements valued at \$4 million or more the Shadow Economy Policy applies. Entities must obtain a Valid and Satisfactory Statement of Tax Record any Service Provider (and any first-tier subcontractors of that Service Provider) that will be involved in the delivery of the Services]
Indigenous Procurement Policy	[For procurements valued at \$7.5 million or more, insert that clause 16.4.3 of the Head Agreement applies]
Australian Industry Participation Plan	[For procurement valued at \$20 million or more, the Australian Industry Participation policy may apply]
<i>Entity Information</i>	

<u>Order for Services</u>	
Entity Representative	Name: [Insert contact name] Position: [Insert title] Address: [Insert address, including postcode] Email: [Insert email address] Contact number: [Insert contact number, including area code]
Entity Address for Notices	Physical Address: [Insert physical address for the Entity] Postal Address: [Insert the postal address for notices, if different to the physical address] Email: [Insert the email address for notices]
Entity Address for Invoices	Invoices must be submitted to [insert email address for invoices] and must contain [include any other requirements for the invoice e.g. that the purchase order no. must be quoted in the invoice]
Service Provider Information	
Service Provider Representative	Name: [Insert contact name] Position: [Insert title] Address: [Insert address, including postcode] Email: [Insert email address] Contact number: [Insert contact number, including area code]
Service Provider Address for Notices	Physical Address: [Insert physical address for the Service Provider] Postal Address: [Insert the postal address for notices, if different to the physical address] Email: [Insert the email address for notices]

Signed for and on behalf of
Commonwealth of Australia
as represented by the [insert Entity
name] [insert Entity ABN]

name of authorised officer

title of authorised officer

Date:

Signature of authorised officer

Order for Services

Signed for and on behalf of
[insert Service Provider's name], [insert
Service Provider's ABN]

*name of Service Provider's authorised
representative*

*title of Service Provider's authorised
representative*

Date:

*Signature of Service Provider's authorised
representative*

Schedule 6A – Order Variation Template

Parties

- A. Commonwealth of Australia as represented by [insert Entity name and ABN] (**Entity**); and
- B. [Name and ABN of Service Provider] (**Service Provider**)

Recitals

- A. The Entity and the Service Provider are party to an Order dated [insert date] for the provision of [include description of the services].
- B. The parties wish to vary the Order as provided by this Order Variation.

The parties agree as follows:

The Order is varied in accordance with the terms set out below.

Unless specifically stated in this Order Variation, all terms and conditions of the Order continue unaffected.

1.	Order Variation number	
2.	Raised by	
3.	Details of change (use attachments if required)	
4.	Implementation date of variation	
5.	Effect on services	
6.	Plan for implementing the change [if any]	
7.	Effect on price [if any]	
8.	Effect on service levels [if any]	
9.	Other relevant matters (e.g. transitional impacts)	

Executed as an Order Variation

Signed for and on behalf of:

Entity	
Name (print)	
Position	
Signature	
Date	

Service Provider	
Name (print)	
Position	
Signature	
Date	

Schedule 7 – Performance Management Framework and Service Levels

1. Introduction

- 1.1. The purpose of this **Schedule 7 (Performance Management Framework and Service Levels)** is to outline the Performance Management Framework for the Head Agreement, and the agreed service standards and performance measures that are to be used in managing the contractual arrangement and relationship between Finance, Entities and the Service Provider responsible for the provision of the Services.
- 1.2. The Service Levels specify the minimum expected performance and operation of the Services and will be used to measure the performance of the Service Provider, and the satisfaction of Entities in regard to the delivery of the Services.
- 1.3. The Service Provider acknowledges that copies of this **Schedule 7 (Performance Management Framework and Service Levels)**, and any performance management and service level analyses prepared by Finance, may be made available to Entities who are the recipient of Services provided under the Head Agreement.
- 1.4. Where an Entity specifies performance management requirements and Service Levels in an Order, these are in addition to, and do not replace the Performance Management Framework and Service Levels in this **Schedule 7 (Performance Management Framework and Service Levels)**.

2. Performance Management Framework

2.1. Overview

- 2.1.1 The Service Provider acknowledges that:
 - (a) its performance will be measured against the performance measures in **clauses 2.2, 2.3 and 2.4** of this **Schedule 7 (Performance Management Framework and Service Levels)**; and
 - (b) Entities will provide to Finance reporting on the Service Provider's performance.

2.2. Quality

- 2.2.1 The following Quality performance measures apply to the Head Agreement:
 - (a) the capability and availability of Personnel;
 - (b) documentation provided to high standard; and
 - (c) the Services provided met the Entity needs, and requirements of the Order.

2.3. Communication

2.3.1. The following communication performance measures apply to the Head Agreement:

- (a) proactive and effective communication with the Entity;
- (b) responsiveness; and
- (c) Entity reference numbers included in all correspondence.

2.4. **Contract performance**

2.4.1. The following contract performance measures apply to the Head Agreement:

- (a) understanding of the Entity's needs;
- (b) effective management of timelines;
- (c) effective budget management;
- (d) service provision managed diligently; and
- (e) reasonable assistance provided in respect of any inquiry concerning the Service Provider's performance of Ordered Services.

3. **Service Levels**

3.1 The Service Levels and minimum expected performance for:

- (a) the Head Agreement are outlined as SLA 1, SLA 2 and SLA 3 (**Head Agreement Service Levels**); and
- (b) a Contract are outlined as SLA 4 and SLA 5 (**Contract Service Levels**),

in **Table 1** of this **Schedule 7 (Performance Management Framework and Service Levels)**.

3.3. **Responsibilities of the Service Provider**

3.3.1. The Service Provider will use its best endeavours to meet or exceed the Service Levels during the Head Agreement Period.

3.3.2. The Service Provider will make all relevant Personnel and Subcontractors aware of the Service Levels.

3.4. **Adjustments to the Service Levels**

3.4.1. The Service Provider and Finance, both acting reasonably, may from time to time agree to adjust, remove or include new Service Levels, if:

- (a) Service Levels require adjustment through the Head Agreement Period;
- (b) additional Service Levels are required; or
- (c) a Service Level is no longer considered appropriate.

This is in addition to any reviews described in the Service Levels.

- 3.4.2. Any changes to the Service Levels must be made in accordance with **clause 32.2** of the Head Agreement.

3.5. **Assessing Service Levels**

- 3.5.1. Finance will assess the Service Provider's compliance with the Head Agreement Service Levels in accordance with this **Schedule 7 (Performance Management Framework and Service Levels)** and may:
- (a) consider the Service Provider's performance against the Performance Management Framework, including performance trends;
 - (b) request and consider additional information from Entities;
 - (c) use the results from any Entity satisfaction survey;
 - (d) consider any information provided by the Service Provider at a contract management meeting; and
 - (i) consider information obtained through an audit conducted under **clause 30** of the Head Agreement.

3.6. **Process for determining a Service Level Failure**

- 3.6.1. A Service Level Failure is recorded for each occasion the Service Provider does not comply with, or maintain the minimum expected performance of a Service Level.
- 3.6.2. Where a Service Level has a minimum expected performance, availability or operation of 100%, if there is a single occasion where the performance of that Service Level is not satisfactory or maintained in accordance with the Service Level then it will constitute a Service Level Failure.
- 3.6.3. **Clauses 3.6.1 and 3.6.2** of this **Schedule 7 (Performance Management Framework and Service Levels)** do not apply to the extent that a failure is caused by an event outside the reasonable control of the Service Provider or is significantly contributed to by an act or omission by Finance or an Entity.

3.7. **Service Provider's responsibility to correct a Service Level Failure under the Head Agreement**

- 3.7.1. In the event of a Service Level Failure in relation to the Head Agreement Service Levels, Finance may request via notice that the Service Provider provide Finance with a plan to remedy the failure, including a due date for correcting the failure.
- 3.7.2. If the failure is not possible to rectify, the plan must describe how the Service Provider will ensure the failure does not happen again.
- 3.7.3. The Service Provider must make any changes to the plan required by Finance, and implement the plan once approved by Finance.
- 3.7.4. Finance may communicate the Service Level Failure in relation to the Head Agreement Service Levels and any established interim processes or procedures with Entities.

- 3.7.5. The Service Provider must give notice to Finance when any Service Level Failure in relation to the Head Agreement Service Levels has been corrected and where relevant, outline the corrective action taken and steps developed to prevent future failures of a similar nature.
- 3.7.6. Failure to achieve one or more of the Head Agreement Service Levels, or a trend of Service Level Failure may result in Finance enforcing its rights in relation to underperformance including but not limited to:
- (i) requiring the Service Provider to remedy a Service Level Failure in accordance with **clause 3.7** of this **Schedule 7 (Performance Management Framework and Service Levels)**; and
 - (ii) enforcing its rights in **clause 26** of the Head Agreement (or other rights under the Head Agreement).
- 3.8. **Service Provider's responsibility to correct a Service Level Failure under an Order**
- 3.8.1. Unless specified otherwise in a Contract, the Contract Service Levels will apply in respect of each Contract. In addition, an Entity may include additional service levels in a Contract, which will also constitute Contract Service Levels.
- 3.8.2. In the event of a Service Level Failure with respect to Contract Service Levels, the Entity may request that the Service Provider provide the Entity with a plan to remedy the failure, including a due date for correcting the failure.
- 3.8.3. If the failure is not possible to rectify, the plan must describe how the Service Provider will ensure the failure does not happen again.
- 3.8.4. The Service Provider must make any changes to the plan required by the Entity, and implement the plan once approved by the Entity.
- 3.8.5. The Service Provider must give notice to the Entity when any Service Level Failure for Contract Service Levels has been corrected and where relevant, outline the corrective action taken and steps developed to prevent future failures of a similar nature.
- 3.8.6. An Entity may report a Service Level Failure for Contract Service Levels to Finance and request that Finance escalate the issue for mediation between the Service Provider's Senior Executive and First Finance Senior Executive.

Table 1 – Service Levels

Service Level No	Service Level	Performance Measures	Calculation Method
Head Agreement Service Levels			
<u>SL1</u>	<u>Reporting - Quality</u> (In accordance with the reporting specifications in Schedule 4 (Reporting))	<ul style="list-style-type: none"> 98% accuracy of the reporting data provided to Finance. 	Each instance where reporting is not compliant with the reporting specifications in Schedule 4 (Reporting) , and Finance requests missing data or seeks corrections on reports submitted by the Service Provider is a service failure.

Service Level No	Service Level	Performance Measures	Calculation Method
<u>SL2</u>	<u>Reporting – On Time</u>	98% of reports and data files are provided to Finance within the timing specified in the reporting specifications in Schedule 4 (Reporting) .	Each instance where reporting is not provided to Finance within the timing specified in the reporting specifications in Schedule 4 (Reporting) is a service failure.
<u>SL3</u>	<u>Service Delivery</u> (In accordance with the Performance Management Framework of this Schedule 7 (Performance Management Framework and Service Levels))	The Service Provider's provision of the Services as detailed in an Order to the satisfaction of the Entity.	Finance will determine the level of compliance with this Service Level by analysing Entity reports on the Service Provider's performance against the Performance Management Framework.
Contract Service Levels			
<u>SL4</u>	<u>Responsiveness to requests</u>	<ul style="list-style-type: none"> 98% of Requests for Quote, Orders, inquiries, and requests for Services are responded to and actioned within agreed timeframes via the correct communication method 	An Entity will determine the level of compliance with this Service Level by analysing the Service Provider's responsiveness to requests against contractual timeframes for response in the Head Agreement and any Contract.
<u>SL5</u>	<u>Governance</u>	<ul style="list-style-type: none"> 100% attendance at contract management / governance meetings, and proactive participation in contract management activities 	An Entity will determine the level of compliance with this Service Level by analysing the Service Provider's attendance at, and participating in, required governance meetings.

Schedule 8 – Service Provider’s Confidential Information

The following information is confidential to the Service Provider:

Item	Description of Information	Reason for confidentiality	Period of confidentiality
1			
2			

OR

The Service Provider did not identify any Service Provider’s Confidential Information.

Schedule 9 – Deed of Variation

Parties

- A Commonwealth of Australia as represented by the Department of Finance ABN 61 970 632 495 (**Finance**); and
- B [Name and ABN of Service Provider] (**Service Provider**)

Recitals

- A Finance and the Service Provider are party to the Head Agreement dated [insert date] for the provision of Services.
- B The parties wish to vary the Head Agreement as provided by this Deed of Variation.

1. Effect

- a) This Deed of Variation varies the Head Agreement in accordance with the terms set out below.
- b) This Deed of Variation will take effect on and from the date in **Item 4** under 'Details' below.
- c) This Deed of Variation amends the Head Agreement as outlined under 'Variation to Head Agreement' below.

2. Miscellaneous

- a) The Head Agreement, as varied by this Deed of Variation, constitutes the entire agreement between the parties. Unless specifically stated in this Deed of Variation, all terms and conditions of the Head Agreement continue unaffected.
- b) This Deed of Variation is to be read subject to and interpreted in accordance with the provisions of the Head Agreement.
- c) On and from the date of this Deed of Variation, the expression 'this Head Agreement' whenever appearing in the Head Agreement is to be interpreted as a reference to the Head Agreement as amended by this Deed of Variation.
- d) In the event of an inconsistency between this Deed of Variation and the Head Agreement, the provisions of this Deed of Variation will prevail.
- e) This Deed of Variation may be executed in any number of counterparts. All counterparts together will be taken to constitute one document.
- f) Counterparts may be exchanged by each party sending (electronically or otherwise) a PDF copy of the full executed counterpart to the other party.
- g) The governing law that applies to the Head Agreement applies to this Deed of Variation.

Details

1.	Deed of Variation number	
2.	Raised by	
3.	Details of change (use attachments if required)	<p>Example:</p> <p>Old Text: Clause XXX</p> <p>New Text XXXXX</p>
4.	Implementation date of variation	
5.	Effect on services	
6.	Plan for implementing the change [if any]	
7.	Effect on price [if any]	<p>Example:</p> <p>Old Text: Clause XXX</p> <p>New Text XXXXX</p>
8.	Effect on service levels [if any]	
9.	Other relevant matters (e.g. transitional impacts)	

Variation to Head Agreement:

[Insert description of variation]

Signed as a Deed on _____ (insert date of this deed).

SIGNED, SEALED AND DELIVERED for
and on behalf of the Commonwealth of
Australia, represented by the Department of
Finance ABN 61 970 632 495 by:

Signature of Signatory

Signature of Witness

Full name of Signatory

Full name of Witness

Date:

SIGNED, SEALED AND DELIVERED by
[insert Service Provider's name and ABN] by
the following persons in accordance with
section 127 of the *Corporations Act 2001*
(Cth):

Signature of Director

Signature of Director/Company Secretary

Full name of Director (print)

Full name of Director/Company Secretary

Date:

Schedule 10 – Deed of Novation



Australian Government

Department of Finance

Deed of Novation

Between

**the Commonwealth of Australia as represented by
the Department of Finance**

and

[insert name]

and

[insert name]

**For the Provision of Phase 1 Recruitment and Search Services
to the Australian Government**

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Parties

The **COMMONWEALTH OF AUSTRALIA** as represented by the Department of Finance
ABN 61 970 632 495 (**Finance**);

and

[Insert name, ABN and address of Service Provider] (**Outgoing Service Provider**);

and

[Insert name, ABN and address of Service Provider] (**Incoming Service Provider**);

Background

- A Finance has established a People Panel for the Australian Government to which the Outgoing Service Provider has been appointed.
- B The People Panel arrangement for the Outgoing Service Provider is reflected in a Head Agreement between Finance and the Outgoing Service Provider.
- C The Outgoing Service Provider desires to be released and discharged from the People Panel arrangement and Finance has agreed to release and discharge the Outgoing Service Provider upon the Incoming Service Provider assuming the obligations of the Outgoing Service Provider under the Head Agreement as a party in lieu of the Outgoing Service Provider.
- D The parties have agreed to novate the Head Agreement on the terms and conditions contained in this Deed.

Operative provisions

1 Definitions and interpretation

1.1 Definitions

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

ABN	the Australian Business Number issued by the Australian Taxation Office.
Commonwealth	the Commonwealth of Australia.
Date of this Deed	the date this Deed is signed by Finance.
Deed	this Deed of Novation between Finance, the Outgoing Service Provider and the Incoming Service Provider.
Entity	<p>(a) the following entities, organisations or persons authorised by Finance to obtain Services from the Service Provider under the Head Agreement:</p> <p>(i) a Non-corporate Commonwealth entity;</p> <p>(ii) a corporate Commonwealth entity as defined by the PGPA Act; and</p> <p>(b) any other entities authorised by Finance and advised in writing to the Service Provider from time to time.</p>
Head Agreement	the head agreement between Finance and the Outgoing Service Provider for Recruitment and Search Services for the Australian Government.
People Panel	the Whole of Australian Government Recruitment and Search Services Panel established by Finance as a coordinated procurement.

All other capitalised terms used in this Deed have the same definition as in the Head Agreement.

1.2 Interpretation

1.1.2. In this Deed, except where the contrary intention is expressed:

- (a) a reference to Finance means Finance as a party to this Deed;
- (b) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- (c) a reference to a clause, section or paragraph includes a reference to a subclause of that clause, subsection of that section or subparagraph of that paragraph;
- (d) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to time is to the time in the place where the obligation is to be performed unless otherwise expressly stated;
- (f) another grammatical form of a defined word or expression has a corresponding meaning;
- (g) the singular includes the plural and vice versa, and a gender includes other genders;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) 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 assigns and substitutes;
- (j) headings are for ease of reference only and do not affect interpretation;
- (k) a reference to a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after proper inquiry including inquiry which a reasonable person would be prompted to make by reason of knowledge of a fact;
- (l) a reference to A\$, \$A, AUD, dollar or \$ is to Australian currency unless stated otherwise; and
- (m) this Deed must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

2 Novation of the Head Agreement

2.1 Rights and obligations of the Incoming Service Provider

With effect from the Date of this Deed, the Incoming Service Provider:

- (a) is entitled to all rights and benefits under the Head Agreement to which, but for this Deed, the Outgoing Service Provider would have been entitled at and after the Date of this Deed;
- (b) must perform all obligations and discharge all liabilities under the Head Agreement which, but for this Deed, the Outgoing Service Provider would have been required to perform or discharge at and after the Date of this Deed; and
- (c) is bound by and must comply with all other provisions of the Head Agreement by which, but for this Deed, the Outgoing Service Provider would have been bound at and after the Date of this Deed,

as if the Incoming Service Provider had been a party to the Head Agreement instead of the Outgoing Service Provider.

2.2 Release of the Outgoing Service Provider

With effect from the Date of this Deed, Finance releases the Outgoing Service Provider from all obligations and liabilities under the Head Agreement to be performed or discharged at or after the Date of this Deed.

2.3 Release of Finance

With effect from the Date of this Deed, the Outgoing Service Provider releases Finance from all obligations and liabilities under the Head Agreement to be performed or discharged at or after the Date of this Deed.

2.4 Obligations and liabilities arising before the Date of this Deed

Nothing in this Deed releases the Outgoing Service Provider, or Finance, from any obligation or liability under the Head Agreement arising before the Date of this Deed and the Incoming Service Provider does not assume any such obligation or liability.

3 Warranties

3.1 Authority and capacity

The Incoming Service Provider warrants to Finance that, as at the Date of this Deed:

- (a) it is a company properly incorporated and validly existing under the Laws of Australia, has the legal right and full corporate power and capacity to execute, deliver and perform its obligations under the Head Agreement and this Deed and has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so;
- (b) this Deed constitutes valid legal and binding obligations of the Incoming Service Provider in accordance with its terms; and
- (c) the execution, delivery and performance of this Deed by the Incoming Service Provider does not and will not result in a breach of or constitute a default under:
 - (i) any agreement to which it is party;
 - (ii) any provision of its constitution; or
 - (iii) any Law or regulation or any order or judgment of any court or regulatory authority to which it is a party or by which it is bound.

3.2 Reliance

The Incoming Service Provider acknowledges that in entering into this Deed, Finance has relied on the warranties in **clause 3.1**.

4 General

4.1 Amendments

This Deed may only be varied by a deed executed by or on behalf of each party.

4.2 Counterparts

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

4.3 Costs

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

4.4 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this Deed.

5 Governing law and jurisdiction

5.1 Governing law

This Deed is to be construed in accordance with, and any matter related to it is to be governed by, the Law of the Australian Capital Territory, unless otherwise specified.

5.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory, Commonwealth courts having jurisdiction in that Territory and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed; and
- (b) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within **clause 5.2(a)**.

Deed of Novation

Signing Page

Signed as a Deed on _____ *(insert date of this deed).*

SIGNED, SEALED AND DELIVERED for
and on behalf of the Commonwealth of
Australia, represented by the Department of
Finance ABN 61 970 632 495 by:

Signature of Signatory

Signature of Witness

Full name of Signatory

Full name of Witness

Date:

SIGNED, SEALED AND DELIVERED by
[insert Outgoing Service Provider's name
and ABN] by the following persons in
accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of Director

Signature of Director/Company Secretary

Full name of Director (print)

Full name of Director/Company Secretary

Date:

SIGNED, SEALED AND DELIVERED by
[insert Incoming Service Provider's name
and ABN] by the following persons in
accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of Director

Signature of Director/Company Secretary

Full name of Director (print)

Full name of Director/Company Secretary

Date:

Signing Page

Executed as a Deed

SIGNED, SEALED AND DELIVERED for
and on behalf of the Commonwealth of
Australia, represented by the Department
of Finance ABN 61 970 632 495 by:

Signature

Name of signatory

Date

In the presence of:

Name of witness

Signature of witness

SIGNED, SEALED AND DELIVERED by
[insert Service Provider's name and ABN] by
the following persons in accordance with
section 127 of the *Corporations Act 2001*
(Cth):

Signature of Director

Signature of Director/Company Secretary

Name of Director (print)

Name of Director/Company Secretary (print)

Date

OR

SIGNED, SEALED AND DELIVERED for and
on behalf of **[insert Service Provider's name
and ABN]** under power of attorney dated
[INSERT date of power of attorney]:

In the presence of:

Signature of Attorney

Signature of witness

Name of Attorney (print)

Name of witness (print)

Date