



**Australian Government**  

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**Department of Finance**  
**Draft Head Agreement**

**Between**

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

**And**

**[insert company name]**

**To Join a Panel for the Provision of ICT  
Deliverables**

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## Parties

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

and

**company name (ABN ...)** (**Contractor**).

## Recitals

- A Finance has been tasked by the Australian Government to put in place a panel for the provision to Agencies of Deliverables.
- B The Contractor acknowledges and agrees that Finance will administer this Head Agreement for the benefit of all Agencies, including Finance. The Contractor has fully informed itself on all aspects of the requirements and has offered to enter into this Head Agreement under which Agencies, and in certain cases Approved Third Party Providers, can enter Contracts for the provision of Deliverables.
- C The Contractor has represented to Finance in respect of this Head Agreement, and represents to each Agency and Finance in respect of any Module and Contract, that it has the ability to provide the Deliverables for each Module to which it has been enrolled under this Head Agreement.
- D Finance has agreed to enter into this Head Agreement with the Contractor, and the Contractor has agreed to enter into this Head Agreement with Finance, by which the Contractor offers to provide Deliverables on the terms and conditions contained in this Head Agreement (and the Module for the relevant Deliverables) and any Contract formed under this Head Agreement.

## Operative Provisions

### 1 Definitions and Interpretation

#### Definitions

- 1.1 In this Head Agreement, except where the contrary intention is expressed, the definitions in **Schedule 1 - Attachment 1 (Head Agreement Glossary)** apply.

#### Interpretation

- 1.2 In this Head Agreement except where the contrary intention is expressed:
- 1.2.1 a reference to this Head Agreement is to **clauses 1 to 30**, and includes the Schedules (and any Attachments to the Schedules) as the context requires;
- 1.2.2 a reference to a Module is to a Module to which the Contractor is subscribed as set out in **Schedule 2 (List of Enrolled Modules)** and **Schedule 3 (Modules)**;

**Note: Schedule 2 (List of Enrolled Modules)** will also specify the Initial and Option Terms for the relevant Module.

- 1.2.3 the singular includes the plural and vice versa, and a gender includes other genders;
- 1.2.4 another grammatical form of a defined word or expression has a corresponding meaning;

- 1.2.5 a reference to a clause, paragraph, Schedule or Attachment is to a clause or paragraph of, or Schedule or Attachment to this Head Agreement and a reference to this Head Agreement includes any Schedule or Attachment to this Head Agreement;
- 1.2.6 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;
- 1.2.7 a reference to a Document, publication, Standard, Commonwealth policy or instrument is a reference to the Document, publication, Standard, Commonwealth policy or instrument as altered, supplemented or replaced from time to time;
- 1.2.8 a reference to A\$, \$A, AUD, dollar or \$ is to Australian currency unless stated otherwise;
- 1.2.9 a reference to time is to the time in the place where the obligation is to be performed;
- 1.2.10 a reference to a party is to a party to this Head Agreement 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;
- 1.2.11 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- 1.2.12 if the Contractor is a trustee, the Contractor enters this Head Agreement personally and in its capacity as trustee and warrants that it has the power to perform its obligations under this Head Agreement;
- 1.2.13 a reference to a Statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- 1.2.14 a word or expression defined in the Corporations Act or GST Law has the meaning given to it in the Corporations Act or GST Law, as applicable;
- 1.2.15 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.16 any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.17 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;
- 1.2.18 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 or any part of those Documents;
- 1.2.19 if a day on or by which an obligation must be performed or an event must occur is not a Business Day in the relevant location, the obligation must be performed or the event must occur on or by the next Business Day in that location;
- 1.2.20 headings are for ease of reference only and do not affect interpretation; and

- 1.2.21 a reference to a matter being to the knowledge of a person means that the matter is 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.
- 1.3 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.

### Order of precedence

- 1.4 For the Head Agreement, to the extent of any conflict between the provisions contained in the body of this Head Agreement any provisions in the Schedules or Documents incorporated by reference, the following order of precedence will apply (with higher listed Documents taking precedence over lower listed Documents):
- 1.4.1 the body of this Head Agreement; then
- 1.4.2 **Schedule 1 - Attachment 1 (Head Agreement Glossary)**; then
- 1.4.3 **Schedule 2 (List of Enrolled Modules)**; then
- 1.4.4 **Schedule 3 (Modules)**; then
- 1.4.5 the other Schedules; then
- 1.4.6 the Attachments; then
- 1.4.7 the Annexures (if any); and then
- 1.4.8 Documents incorporated by reference.
- 1.5 For each Contract, subject to **clauses 4.12 and 4.13**, to the extent of any conflict between this Head Agreement (including Schedules and Documents incorporated by reference), and the Contract the following order of precedence will apply (with higher listed Documents taking precedence over lower listed Documents):
- 1.5.1 the Head Agreement (including Schedules and Documents); and then
- 1.5.2 the Standard Contract Terms for each Module at **Schedule 3 (Modules)** (including Documents incorporated by reference),
- as relevant to that Contract only.

**Note:** The Agency may want to specify an order of precedence between the Schedules to the Contract.

## 2 Scope of Head Agreement

- 2.1 This Head Agreement is a standing offer between Finance (representing all Agencies) and the Contractor under which, on an as-required and non-exclusive basis, any Agency (or group of Agencies or Approved Third Party Provider(s)) may enter into a Contract with the Contractor for the provision of Deliverables.
- 2.2 This Head Agreement does not:
- 2.2.1 give the Contractor the right to be the sole Contractor of any Deliverables to any Agency;
- 2.2.2 oblige Finance or any Agency to acquire any, or any particular quantity of, Deliverables, from the Contractor; or
- 2.2.3 prevent Finance or an Agency from obtaining Deliverables that are the same as, or similar to, the Deliverables from other contractors (including

contractors that were not selected as part of the Request for Tender process that ultimately resulted in Finance entering this Head Agreement with the Contractor).

- 2.3 The Contractor acknowledges that:
- 2.3.1 the Deliverables the Contractor offers to provide are set out in the Module or Modules to which the Contractor is enrolled as set out in **Schedule 2 (List of Enrolled Modules)**; and enrolment under one Module does not entitle enrolment under any other Module.
- 2.4 Finance reserves the right to:
- 2.4.1 enter into Head Agreements with additional contractors at any time; and / or
- 2.4.2 enrol any Contractor to one or more Modules at any time.

### 3 Role of Finance

- 3.1 Finance's role is to do (either directly or through a representative) each of the following:
- 3.1.1 administer this Head Agreement (including the Module(s)), including approving or rejecting any proposal from the Contractor to vary its Charges set out in **Schedule 3 - Attachment 2 (Deliverables and Pricing)**;
- 3.1.2 approve any change to the Module Standard Contract Terms in **Schedule 3 (Modules)**;
- 3.1.3 monitor the performance of Contracts (if any) to ensure that Agencies obtain the benefits to which they are entitled under the Contracts;
- 3.1.4 collect data from Panellists (including the Contractor); and
- 3.1.5 monitor and report on the operation of the Panel (including at the Module level), including its operation, viability and cost savings (if any).

#### Protections apply to Agencies

- 3.2 The rights and the benefits provided to Finance pursuant to this Head Agreement also apply for the benefit of Agencies. Finance holds those rights and benefits on trust for Agencies and those rights may be enforced by Finance as trustee or by an Agency as beneficiary.

### 4 Formation of Contracts

#### Quotations

- 4.1 Finance or an Agency may, at any time, issue the Contractor and other contractors enrolled under the relevant Module(s) with a request for quotation (**RFQ**) for the provision of Deliverables under any one or more Module.
- 4.2 Upon receipt of a RFQ, if the Contractor wishes to submit a quotation for provision of the Deliverables, it may submit a quotation in writing to Finance or the Agency (as the case may be) by the date specified in the RFQ.
- 4.3 Finance or the Agency (as the case may be) may negotiate Charges lower than those set out in **Schedule 3 - Attachment 2 (Deliverables and Pricing)** for the Contractor's provision of the Deliverables, but the Charges must not be higher than the Charges set out in **Schedule 3 - Attachment 2 (Deliverables and Pricing)** for the relevant Deliverables. If Charges lower than those set out in **Schedule 3 -**

**Attachment 2 (Deliverables and Pricing)** are negotiated for any Contract, **Schedule 3 - Attachment 2 (Deliverables and Pricing)** will be deemed amended to reflect the lower Charges.

- 4.4 Finance requires that all draft Contracts be provided to Finance, prior to execution, for Finance's review and confirmation that the Contracts are formed in accordance with this Head Agreement and are suitable for execution.

#### **Best and Final Offers**

- 4.5 After receiving a quotation under **clause 4.2**, Finance or the relevant Agency (as the case may be) may invite the Contractor to provide a best and final offer (**BAFO**) in respect of the Deliverables which are the subject of the quotation. Finance or the relevant Agency (as the case may be) may specify terms and conditions that apply to the BAFO process.
- 4.6 Upon receipt of an invitation to provide a BAFO, the Contractor must:
- 4.6.1 provide a BAFO to Finance or the relevant Agency (as the case may be) in accordance with any applicable terms and conditions that apply to the BAFO process; or
- 4.6.2 reaffirm its quotation submitted under **clause 4.2** as being its BAFO.

#### **Placing Contract Order Forms**

- 4.7 Finance or an Agency may place a Contract Order Form with the Contractor for the provision of Deliverables at any time during the Term of the relevant Module. Contract Order Forms may encompass Deliverables from multiple Modules.

**Note:** It is intended that except for Module specific terms the Standard Contract Terms will be the same across all Modules.

- 4.8 Finance or an Agency may place a Contract Order Form with the Contractor for provision of Deliverables to one or more Agency (including Finance) at any time during the Term of the relevant Module by specifying more than one Agency in the Contract Order Form as the Agency. If a consolidated Contract Order Form is placed under this **clause 4.8**, Finance or the Agency (as relevant) may elect that the consolidated Contract Order Form result in the formation of:
- 4.8.1 a single Contract (with multiple Agencies); or
- 4.8.2 separate Contracts per Agency.

#### **Formation of a Contract**

- 4.9 Subject to **clause 4.8**, a separate Contract will be formed between an Agency or Approved Third Party Provider on the Contract Start Date.
- 4.10 To avoid doubt, if the parties cannot agree the terms of a Contract Order Form, no Contract will be formed between the parties.

#### **Terms of a Contract**

- 4.11 The terms and conditions of each Contract will be:
- 4.11.1 the Contract Order Form including any Additional Terms;
- 4.11.2 the Module Standard Contract Terms and any Module-specific terms as set out in **Schedule 3 (Modules)** for the relevant Deliverables; and
- 4.11.3 any other Documents specified as being part of, incorporated into, or otherwise applicable to, the Contract (including relevant Attachments and attached Documents).

- 4.12 Where a Contract Order Form seeks to modify the Standard Contract Terms through Additional Terms or otherwise, the terms that seek to modify the Standard Contract Terms have no legal effect, irrespective of whether or not the Contract Order Form has been executed by an Agency and the Contractor unless the relevant terms:
- 4.12.1 are specified in the applicable Contract Order Form; and
  - 4.12.2 have been approved in writing by Finance prior to execution of the Contract. Where Finance approves the execution of the Contract, the Standard Contract Terms are deemed to be amended for that Contract without the need to amend the Head Agreement.

#### **Deliverables for FMA Agencies**

- 4.13 Except where the Contractor is a panellist for a co-ordinated procurement panel or Finance otherwise grants approval, the Contractor must not enter an agreement for the provision of deliverables similar to the Deliverables (including deliverables that are the subject of a Module to which the Contractor is not enrolled) to an FMA Agency and, after 1 July 2014, Commonwealth entities that were previously FMA Agencies, by any means other than in accordance with the terms of this Head Agreement through the placement of a Contract Order Form pursuant to this **clause 4**, unless the Contractor or an Agency has obtained the prior written approval of Finance or the deliverables to be provided are wholly unrelated to the Deliverables specified under a Module (including deliverables that are the subject of a Module to which the Contractor is not enrolled). Any Contract created that does not accord with **clause 4.12** and this **clause 4.13** is null and void and the Contractor waives all its rights (if any) to claim any Losses from Finance or the Agency concerned.

#### **Deliverables to Approved Third Party Providers**

- 4.14 An Approved Third Party Provider may issue the Contractor with a Contract Order Form under this Head Agreement for the provision of the Deliverables specified in that Contract Order Form only as part of the Approved Third Party Provider's provision of information technology services to an Agency (or group of Agencies).
- 4.15 If an Approved Third Party Provider issues the Contractor with a Contract Order Form under **clause 4.14**, the process reflected in this **clause 4** will apply for the formation of the Contract, and references to "Agency" will be assumed to be references to "Approved Third Party Provider" throughout this Head Agreement and the resultant Contract. To avoid doubt, the placement of a Contract Order Form under this Head Agreement by an Approved Third Party Provider does not diminish any of Finance's rights or the Contractor's obligations under this Head Agreement.

**Note:** This allows an ICT contractor to an Agency (which would become an Approved Third Party Provider once approved by Finance/Agency) to provide end to end services to an Agency or group of Agencies under a services contract.

#### **Contract Period**

- 4.16 Subject to **clause 4.7**, a Contract formed under this **clause 4** before the expiration or termination of the relevant Module continues for the Contract Period, notwithstanding the expiration or termination of the relevant Module. The terms of this Head Agreement (including the relevant Module) continue to apply to the Contract for the entire Contract Period.

## 5 Term

### Head Agreement Term

- 5.1 This Head Agreement begins on the Head Agreement Commencement Date and continues until it is terminated in accordance with **clause 28** or the last Module under this Head Agreement expires.

### Module Period

- 5.2 Each Module begins on the relevant Module Commencement Date and continues for the Initial Module Period, unless it is terminated earlier in accordance with **clause 28**.
- 5.3 Finance may extend the Initial Module Period by a further period (**Module Option Period**) as specified in the relevant Module (if any) on the terms and conditions then in effect (subject to **clause 5.4**), by giving written Notice to the Contractor. Such Notice must be provided:
- 5.3.1 at least 20 Business Days before the end of the then current Module Period; or
- 5.3.2 within another period agreed in writing between the parties.
- 5.4 Where an extension is exercised in accordance with **clause 5.3**, the Charges for the relevant Module in the Module Option Period will be the Charges applicable immediately before the extension of the Initial Module Period unless otherwise agreed in accordance with **clause 22** of this Head Agreement or **clause Error! Reference source not found.** of the relevant Module .
- 5.5 An extension exercised in accordance with **clause 5.3** takes effect from the end of the then current Module Period.

## 6 Relationship

### General obligations of the parties

- 6.1 Each party must:
- 6.1.1 diligently perform its obligations under this Head Agreement and any Contract; and
- 6.1.2 work together in a collaborative manner in good faith.
- 6.2 The Contractor must:
- 6.2.1 comply with any reasonable directions given by Finance in respect of this Head Agreement;
- 6.2.2 provide all reasonable assistance required by Finance provided that the assistance requested is consistent with the Contractor's obligations under this Head Agreement; and
- 6.2.3 communicate with Agencies in the manner specified in this Head Agreement and any Contract or as otherwise directed by Finance from time to time,
- and is responsible for all aspects of the provision of Deliverables under a Contract, irrespective of whether it is a reseller or engages Subcontractors for its provision of the Deliverables.
- 6.3 If requested by Finance, the Contractor must participate in any forums or meetings, at the Contractor's own expense, in relation to the operation of this Head Agreement

and any Contract (including forums or meetings with other Panellists or with Agencies).

- 6.4 The Contractor must clearly identify itself as a contractor when communicating through telephone, facsimile, email or any other method in relation to this Head Agreement and in the course of performing a Contract.

#### **Limitation of relationship**

- 6.5 This Head Agreement does not create a relationship of employment, agency or partnership between the parties or their respective Personnel.
- 6.6 The parties must not represent themselves, and must ensure that their Personnel do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

## **7 Charges and GST**

### **Charges**

- 7.1 Charges for the Deliverables are specified in **Schedule 3 - Attachment 2 (Deliverables and Pricing)**.
- 7.2 The Charges applicable to any Contract (including the total price payable in respect of a Contract) will be calculated in accordance with **Schedule 3 - Attachment 2 (Deliverables and Pricing)** and specified in a Contract and may be subject to a quote by the Contractor in accordance with **clause 4**. Charges payable in respect of a Contract will be payable by the Agency subject to the Contractor performing the Contract, including meeting any Milestones and achieving Acceptance of Deliverables by the applicable Agency, which are specified in that Contract.

### **GST**

- 7.3 All consideration provided under a Contract (if any) and any money payable (if any) under this Head Agreement is exclusive of GST, unless it is expressed to be GST inclusive.
- 7.4 Where a party (**Supplier**) makes a taxable supply to another party (**Recipient**) under or in connection with this Head Agreement or a Contract, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for that taxable supply is expressed to include GST). The additional amount must be paid by the Recipient at the later of the following:
- 7.4.1 the date when any consideration for the taxable supply is first paid or provided; and
- 7.4.2 the date when the Supplier issues a tax invoice to the Recipient.
- 7.5 If, under or in connection with this Head Agreement or a Contract, the Supplier has an adjustment for a supply under the GST Law which varies the amount of GST payable by the Supplier, the Supplier will adjust the amount payable by the Recipient to take account of the varied GST amount. The Supplier must issue an adjustment note to the Recipient within 20 Business Days after becoming aware of the adjustment.

### **Other GST Matters**

- 7.6 If a party is entitled to be reimbursed or indemnified under a Contract, the amount to be reimbursed or indemnified is reduced by the amount of GST for which there is an entitlement to claim an input tax credit on an acquisition associated with the reimbursement or indemnity. The reduction is to be made before any increase under **clause 7.4**. An entity is assumed to be entitled to a full input tax credit on an

acquisition associated with the reimbursement or indemnity unless it demonstrates otherwise before the date the reimbursement or indemnity is made.

- 7.7 Any reference in this Head Agreement or in a Contract to cost, expense, liability or similar amount (**Expense**) is a reference to that Expense exclusive of GST (unless that Expense is expressed to be GST inclusive).

### **Changes in Government Taxes**

- 7.8 Subject to **clause 7.12**, if any new or existing government Tax (**Changed Tax**) levied in Australia in connection with the provision of the Deliverables is introduced, increases, decreases or is removed in its entirety and this affects:
- 7.8.1 the cost of an item included in the Charges; or
  - 7.8.2 the cost to the Contractor of providing the Deliverables,  
the Contractor:
  - 7.8.3 in the case of an increase or introduction of a Tax, may apply to vary **Schedule 3 - Attachment 2 (Deliverables and Pricing)** to take account of the net effect of the change in the Changed Tax; or
  - 7.8.4 in the case of a decrease or a removal of a Tax, must give Finance written Notice of the decrease or removal together with evidence of the net effect of the decrease or removal on the Charges as soon as practicable after the change in the Changed Tax is announced or the Contractor becomes aware of the decrease or removal, and **Schedule 3 - Attachment 2 (Deliverables and Pricing)** will be varied to take account of the effect of such decrease or removal.
- 7.9 The increase in the Charges under **clause 7.8** will not take effect, and Finance is not obliged to approve any variation to **Schedule 3 - Attachment 2 (Deliverables and Pricing)** attributable to the Changed Tax, unless and until the Contractor provides Finance with evidence of the net effect of the Changed Tax on the cost of an item or the costs of supplying the Deliverables and Finance is satisfied that:
- 7.9.1 the claimed increase is actually attributable to that Tax and takes into account reductions in any other government Tax; and
  - 7.9.2 the change in the Changed Tax has affected the Charges,  
and the increase will take effect from the date on which the Changed Tax became effective.
- 7.10 A decrease in the Charges under **clause 7.8** will take effect from the date on which the change in the Changed Tax becomes effective.
- 7.11 To avoid doubt, any change to **Schedule 3 - Attachment 2 (Deliverables and Pricing)** will automatically apply to all current Contracts without the need to formally amend or vary those Contracts.
- 7.12 **Clauses 7.8 to 7.10** do not apply to income Tax, Taxes on turnover or revenue or similar Taxes imposed on or in respect of income, turnover or revenue, any employment-related Taxes (including, without limitation any Tax on or in respect of superannuation) or capital gains Taxes

## 8 Confidentiality

### Disclosure of Confidential Information

- 8.1 Subject to **clause 8.6**, a party must not, without the prior consent of the other party, disclose any Confidential Information of the other party to a third party.
- 8.2 In giving consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party must comply with those conditions if it proceeds to make the disclosure.

### Written undertakings

- 8.3 Each party must take all reasonable steps to ensure that, subject to **clause 8.6**, its Personnel engaged to perform work under this Head Agreement do not disclose Confidential Information of the other party obtained during the course of performing such work.
- 8.4 A party may at any time request the other party to arrange for any of its Personnel to whom information may be disclosed pursuant to **clauses 8.6.1, 8.6.2 or 8.6.3** (other than an employee of Finance) to give a written undertaking in the form set out at **Schedule 1 - Attachment 2 (Deed of Confidentiality)**.
- 8.5 If a party receives a request under **clause 8.4**, it must promptly arrange for all such undertakings to be given and must provide copies to the other party.

### Exceptions to obligations

- 8.6 The obligations of each party under this **clause 8** will not be taken to have been breached to the extent that Confidential Information:
- 8.6.1 is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Head Agreement or any Contract;
  - 8.6.2 is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Head Agreement-related or Contract-related activities;
  - 8.6.3 is shared by Finance within Finance, or with another Agency, if this serves the Commonwealth's or an Agency's legitimate interests;
  - 8.6.4 is disclosed by Finance to a Commonwealth minister and his or her advisers;
  - 8.6.5 is disclosed by Finance 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 Agency is a State or Territory Agency;
  - 8.6.6 disclosure is authorised or required by Law, including under this Head Agreement or any Contract, under a licence or otherwise, to be disclosed; or
  - 8.6.7 is in the public domain otherwise than due to a breach of this **clause 8**.

### Obligations on disclosure

- 8.7 A party that discloses Confidential Information to another person must:
- 8.7.1 if the disclosure is pursuant to **clauses 8.6.1, 8.6.2 or 8.6.3**:
    - (a) inform the receiving person that the information is Confidential Information; and

- (b) not provide the information unless the receiving person agrees to keep the information confidential and agrees, if requested, to provide a written confidentiality undertaking; or
- 8.7.2 if the disclosure is pursuant to **clauses 8.6.4, 8.6.5 or 8.6.6**, inform the receiving party that the information is Confidential Information.

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

- 8.8 Nothing in **clauses 8.1 to 8.7** limits any obligation which either party may have under Statute including the Privacy Act, Part 13 of the *Telecommunications Act 1997* (Cth), any applicable State or Territory privacy legislation, or under a Contract, in relation to the protection of personal information.

### **Announcements**

- 8.9 Subject to **clause 8.10**, the Contractor must not make a Public Announcement unless it has Finance's written agreement about this Head Agreement or the Deliverables.
- 8.10 The Contractor is not required to obtain Finance's written consent to make a Public Announcement if the Public Announcement is required by Law or a regulatory body (including a relevant stock exchange).
- 8.11 If the Contractor is required by Law or a regulatory body to make a Public Announcement, the Contractor must:
- 8.11.1 limit the Public Announcement to the extent required by the relevant Law or regulatory body; and
  - 8.11.2 to the extent practicable, first consult with and take into account the reasonable requirements of Finance if the Public Announcement relates to this Head Agreement.

## **9 Privacy**

### **Personal Information**

- 9.1 This **clause 9** applies only where the Contractor deals with Personal Information for the purpose of, providing the Deliverables in accordance with this Head Agreement. Nothing in this **clause 9** derogates from **clause 8**.
- 9.2 The Contractor acknowledges that it is or will be considered to be a "contracted service provider" within the meaning of section 6 of the Privacy Act, and agrees in respect of the provision of the Deliverables:
- 9.2.1 to use or disclose Personal Information obtained during the course of providing the Deliverables, only for the purposes of this Head Agreement;
  - 9.2.2 not to do any act or engage in any practice that would breach a Privacy Principle, which if done or engaged in by Finance, would be a breach of that Privacy Principle;
  - 9.2.3 to carry out and discharge the obligations contained in the Privacy Principles as if it were an Agency under the Privacy Act;
  - 9.2.4 to immediately notify Finance if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this **clause 9**; and
  - 9.2.5 to ensure that any Contractor Personnel who is required to deal with Personal Information for the purposes of this Head Agreement is made aware of the obligations of the Contractor set out in this **clause 9**.

- 9.3 The Contractor's obligations in this **clause 9** are in addition to, and do not restrict, any obligations it may have under the Privacy Act or the APPs contained in, authorised by or registered under any Law including any such privacy codes or principles that would apply to the Contractor but for the application of the other provisions of this **clause 9**.
- 9.4 In this **clause 9**, the term 'Agency' has the same meaning as they have in section 6 of the Privacy Act.

## 10 Head Agreement Warranties

### Application of general warranties

- 10.1 The general warranties provided under this **clause 10**:
- 10.1.1 will survive the termination or expiry of this Head Agreement; and
- 10.1.2 are in addition to, do not limit and are not limited by:
- (a) any warranties specific to any Contract;
  - (b) warranties associated with Intellectual Property Rights;
  - (c) any other warranties provided by either party under this Head Agreement; and
  - (d) the warranties referred to in **clause 10**.

### Contractor warranty - Contractor has informed itself

- 10.2 The Contractor warrants, on the Head Agreement Commencement Date, each Module Commencement Date and the Contract Start Date (if any), that:
- 10.2.1 it has and will be deemed to have done everything possible to inform itself fully and completely as to:
- (a) the requirements in this Head Agreement;
  - (b) the Law and the conditions, risks, contingencies and all other factors which may affect the timing, scope, cost or effectiveness of performing this Head Agreement; and
  - (c) all things necessary for delivery and management of this Head Agreement and the performance of the Contractor's obligations under this Head Agreement;
- 10.2.2 it enters into this Head Agreement based on its own investigations, interpretations, deductions, information and determinations;
- 10.2.3 without limiting **clause 10**, it does not rely on any representation, warranty, condition or other conduct, information, statement or Document which may have been made by Finance or any person purporting to act on behalf of Finance in entering into this Head Agreement, other than an express warranty contained in this Head Agreement;
- 10.2.4 it has:
- (a) the right to enter into this Head Agreement;
  - (b) full corporate power and authority; and
  - (c) all rights, title, licences, interests and property necessary,
- to lawfully enter into, perform and observe its obligations under this Head Agreement and to enter into any Contract;

- 10.2.5 the execution, delivery and performance of this Head Agreement has been duly and validly authorised by all necessary corporate action;
- 10.2.6 the Contractor's signing, delivery and performance of this Head Agreement does not constitute:
- (a) a violation of any judgment, order or decree; or
  - (b) a material default under any agreement which relates in any way to the provision of Deliverables; or
  - (c) an event that would, with notice or lapse of time, constitute such a default; and
- 10.2.7 to the best of its knowledge no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Head Agreement or any Contract.

#### **Contractor warranty - disclosure of proceedings and matters**

- 10.3 The Contractor warrants that it has disclosed in writing to Finance prior to the Head Agreement Commencement Date and will disclose prior to each Module Commencement Date and Contract Start Date any matter that may affect the Contractor's reputation or the Contractor's capacity or ability to perform and fulfil its obligations under this Head Agreement, including:
- 10.3.1 any relevant litigation, arbitration, mediation, conciliation, proceeding or investigation that is taking place, pending or threatened (either in Australia or overseas); and
- 10.3.2 any relevant matters relating to the commercial, technical or financial capacity of the Contractor or of any Subcontractor proposed to be engaged in respect of any Contract, including the existence of any breach, default or alleged breach or default of any agreement, order or award that is binding upon the Contractor.

#### **Contractor warranty - Australian Government policy**

- 10.4 The Contractor warrants on the Head Agreement Commencement Date, the Commencement Date of each Module and on the Contract Start Date that:
- 10.4.1 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);
- 10.4.2 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;
- 10.4.3 it is not on the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies and none of its Personnel are on, or a member of an entity on, that list; and
- 10.4.4 it will comply with the Australian Government's Indigenous Opportunities Policy to the extent that policy applies to this Head Agreement, and any Contract.
- 10.5 The Contractor warrants that it will promptly notify and fully disclose to Finance any event or occurrence actual or threatened during the Term that would materially affect the Contractor's ability to perform any of its obligations under this Head Agreement.

**Finance warranty - right to enter this Head Agreement**

10.6 Finance warrants that it has the right and authority to enter into this Head Agreement.

**Trustee Contractor**

10.7 If the Contractor acts as trustee of a trust, in relation to this Head Agreement and any Contract:

- 10.7.1 it is liable both personally, and in its capacity as trustee of that trust;
- 10.7.2 it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but retain and apply such indemnity only towards meeting its obligations under this Head Agreement or any Contract;
- 10.7.3 it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and
- 10.7.4 it represents and warrants that:
  - (a) such trust has been duly established and currently exists;
  - (b) it is the duly appointed, current and only trustee of that trust;
  - (c) as such trustee it has the power to enter into and perform its obligations under this Head Agreement and any Contract;
  - (d) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
  - (e) conflict of interest and duty affecting it as such trustee (and/or its directors, if any) does not arise, or otherwise is overcome by the terms of the relevant trust deed; and
  - (f) no breach of the relevant trust deed exists or would arise.

**Effect of warranties**

10.8 Nothing in this **clause 10**:

- 10.8.1 restricts the effect of any guarantees, conditions or warranties which may be implied by the *Competition and Consumer Act 2010* (Cth) or any sale of goods or fair trading legislation; or
- 10.8.2 limits Finance's right to take action on the basis of:
  - (a) the Law that would be applied by the High Court of Australia in respect of a breach of this Head Agreement, or any Contract;
  - (b) tort; or
  - (c) any Statutory cause of action.

10.9 The Contractor acknowledges that Finance is entering into this Head Agreement in reliance on the warranties given by the Contractor in this **clause 10**.

**11 Insurance****Obligation to maintain insurance**

11.1 The Contractor must have and maintain valid and enforceable insurance policies (with reputable insurance companies that do not contain any unusual exclusions) to the following levels:

- 11.1.1 for the Term of the Head Agreement and any Contract which survives the expiry or termination of the Head Agreement:
- (a) minimum \$20,000,000.00 per claim for public liability;
  - (b) minimum \$2,000,000.00 per claim for either professional indemnity or errors and omissions;
  - (c) minimum \$10,000,000.00 per claim for product liability;
  - (d) workers' compensation as required by law; and
  - (e) any other, or increased, insurance specified in a Contract; and
- 11.1.2 for seven years following the expiry or termination of the later of the Head Agreement or any Contract, \$2,000,000.00 per claim either professional indemnity or errors and omissions.

- 11.2 Finance will annually review the amounts of insurance to ensure that they are sufficient and may require the Contractor to adjust the insurance amounts accordingly subject to agreement between Finance and the Contractor.

### **Insurance documentation**

- 11.3 The Contractor must, on request by Finance, provide to Finance within five Business Days proof of the currency of the required insurances including:
- 11.3.1 an insurance certificate certifying that the insurance required by this **clause 11** is in force; and/or
  - 11.3.2 copies of the policies of insurance; and/or
  - 11.3.3 other proof of the currency of the required insurances, to the satisfaction of Finance.

## **12 Guarantees**

- 12.1 If required by Finance, the Contractor must provide Finance within the timeframe specified by Finance with an executed:
- 12.1.1 Performance Guarantee in the form of **Schedule 1 - Attachment 3 (Performance Guarantee and Indemnity)**; and / or
  - 12.1.2 Unconditional Financial Undertaking in the form of **Schedule 1 - Attachment 4 (Unconditional Financial Undertaking)**,
- for the benefit of Finance and any Agency under a Contract.

**Note:** Finance will manage Performance Guarantees and Unconditional Financial Undertakings at a Whole of Government level. An Agency may only require the Contractor to provide a Performance Guarantee and / or Unconditional Financial Undertaking for a Contract if Finance has provided its prior written approval to the Agency to do so. Normally all Performance Guarantee and Unconditional Financial Undertakings will be taken out at the Head Agreement rather than Contract level.

- 12.2 Finance may require the Contractor to increase or reduce the amount of the Performance Guarantee and Unconditional Financial Undertaking (as applicable) from time to time, including to reflect the Contractor's enrolment on, or removal from enrolment from, a Module or entry into of any Contract.
- 12.3 If the Contractor does not comply with any of its obligations under this Head Agreement or any Contract, Finance may call on either or both the Performance

Guarantee and/or Unconditional Financial Undertaking (at Finance's absolute discretion) without notice to the Contractor.

- 12.4 If Finance calls on an Unconditional Financial Undertaking under **clause 12.3**, Finance may, by written Notice to the Contractor, require the Contractor to provide a replacement or additional Unconditional Financial Undertaking and the Contractor must provide such replacement or additional Unconditional Financial Undertaking to Finance within five (5) Business Days after the date of the Notice.
- 12.5 All costs incurred in obtaining and maintaining the required security will be met by the Contractor.

## 13 Liability

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

## 14 Indemnity

### Contractor's Indemnity

- 14.1 The Contractor indemnifies Finance and Finance Personnel (**Indemnified Persons**) in respect of any direct Loss suffered or incurred by an Indemnified Person which is caused by or arises from:
- 14.1.1 any breach of the Head Agreement by the Contractor or Contractor Personnel, including a breach in respect of which Finance exercises an express right to terminate the Head Agreement;
  - 14.1.2 without limiting **clause 14.1.1**, any breach of any of the obligations of the Contractor or a Subcontractor under or in respect of **clauses 8 and 9**;
  - 14.1.3 any breach of any Statute by the Contractor or Subcontractor in the performance of this Head Agreement; or
  - 14.1.4 any negligent or unlawful act or omission of the Contractor or Contractor Personnel in relation to this Head Agreement; or
  - 14.1.5 a claim made by a third party arising out of or in connection with an allegation that any Deliverables (including the use of any Deliverables by the Indemnified Persons) infringes the Intellectual Property Rights or Moral Rights of the third party.
- 14.2 The right to the indemnity is reduced to the extent that an unlawful or negligent act or omission of the Indemnified Persons caused the relevant Loss.
- 14.3 For the purposes of **clause 14.1.5**, 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.

### Rights not exclusive

- 14.4 The rights of the Indemnified Persons pursuant to the indemnity in this **clause 14** are in addition to, and not exclusive of, any other right, power, or remedy provided by Law, but the Indemnified Persons are not entitled to be compensated in excess of the amount of the relevant Loss they have incurred.

**Indemnified Person's obligations**

- 14.5 If an Indemnified Person wishes to enforce an indemnity under **clause 14.1**, it must:
- 14.5.1 give written Notice to the Contractor promptly;
  - 14.5.2 subject to the Contractor agreeing to comply at all times with **clause 14.6**, if the Indemnified Person is subject to the Legal Services Directions, permit the Contractor, at the Contractor'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
  - 14.5.3 in the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of an Indemnified Person, under **clause 14.5.2** and at the Contractor's cost, provide all reasonable assistance to the Contractor in the handling of any negotiations and litigation.

**Contractor's obligations**

- 14.6 If the Contractor is permitted to handle negotiations or conduct litigation on behalf of an Indemnified Person that is subject to the Legal Services Directions, the Contractor must:
- 14.6.1 comply with applicable government policy and obligations relevant to the conduct of the litigation and any settlement negotiation (including the Legal Services Directions) and any direction issued by the Attorney-General to the Commonwealth or delegate;
  - 14.6.2 keep the Indemnified Person informed of any significant developments relating to the conduct of the defence or settlement of any claim;
  - 14.6.3 provide to the Indemnified Person all information and Documents reasonably requested by the Indemnified Person, to enable the Indemnified Person to ascertain whether the defence or settlement by the Contractor of any claim is being conducted in accordance with applicable government policy and obligations including the Legal Services Directions (including any requirements relating to legal professional privilege and confidentiality); and
  - 14.6.4 comply with any conditions imposed by the Indemnified Person (including any condition requiring the provision of an Unconditional Financial Undertaking or other guarantee).

**Disputes regarding Intellectual Property Rights**

- 14.7 The Contractor is not required to comply with the Legal Services Directions if it is in dispute with a person other than an Indemnified Person concerning the Intellectual Property Rights subsisting in the Deliverables provided that:
- 14.7.1 the claim affects customers of the Contractor other than any Agency; and
  - 14.7.2 there is no current Dispute with an Indemnified Person in respect of the same subject matter.

**Rights held on trust**

- 14.8 Where an indemnity in this **clause 14** provides a benefit to a person who is not a party to this Head Agreement or any Contract, that benefit will be held on trust for that person by Finance through whom those rights are obtained and that benefit may be exercised by the person as beneficiary under the trust or on their behalf by the Agency as trustee.

## Mitigation

- 14.9 Each party will use all reasonable endeavours to mitigate its Loss, arising under or in connection with a breach of this Head Agreement and any Contract.

## 15 Continuous Improvements and Efficiencies

- 15.1 The Contractor must provide continuous quality assurance and quality improvement relevant to its Enrolled Modules Deliverables during the relevant Module Period, including by:
- 15.1.1 identifying and applying proven techniques and tools utilised by the Contractor or industry that would benefit Agencies either operationally or financially; and
  - 15.1.2 implementing programs, practices and measures designed to improve the Contractor's levels of performance, including any programs, practices and measures as specified in a Contract.
- 15.2 Without limiting **clauses 15.1** and **16**, the Contractor must:
- 15.2.1 proactively and promptly advise Finance of all new trends in methodology related to the Deliverables; and
  - 15.2.2 continually plan for the evolution of the Deliverables and modify the manner in which the Deliverables are supplied (subject to any variations to a Contract required to implement any change) to improve the quality, effectiveness and efficiency of the Deliverables and their delivery, without increasing the Charges.
- 15.3 The Contractor must not charge Finance or any Agency any Charges to modify the manner in which the Deliverables are supplied unless the modification and any Charges are approved by Finance prior to the work being undertaken.
- 15.4 Nothing in this **clause 15** requires Finance to:
- 15.4.1 request; or
  - 15.4.2 approve; or
  - 15.4.3 unless the modification is approved, to fund, modifications to the manner in which the Deliverables are provided.

## 16 Reporting

### Reporting to Finance

- 16.1 At no cost to Finance or any other Agency, the Contractor must provide Finance with the reports for each Module to which it is enrolled, as set out in **Schedule 3 (Modules)**.
- 16.2 The Contractor must promptly provide additional information in respect of this Head Agreement (including any Module) and any Contract as Finance may reasonably request from time to time.
- 16.3 Except for Intellectual Property Rights that have vested in an Agency under a Contract, Intellectual Property Rights in all reports provided under this Head Agreement (including any Module) will vest in Finance absolutely upon creation.
- 16.4 Subject to the Contractor complying with confidentiality obligations to Finance and any Agency, Finance grants to the Contractor an irrevocable, non-exclusive, world-

wide, paid-up licence to hold, use, reproduce, modify, display and sublicense the Intellectual Property Rights in the reports for its own purposes at the Contractor's own risk. Finance and each Agency are not liable in respect of any Loss caused by the Contractor's exercise of the licence in this **clause 16.4** and the Contractor releases and indemnifies Finance and each Agency in respect of any such Loss.

## **17 Conflict of Interest**

### **Notification of a Conflict of Interest**

- 17.1 If, during the performance of this Head Agreement or any Contract a Conflict of Interest arises, or appears likely to arise, the Contractor must:
- 17.1.1 notify Finance immediately in writing;
  - 17.1.2 make full disclosure of all relevant information relating to the Conflict of Interest; and
  - 17.1.3 take all steps that Finance reasonably requires the Contractor to take in order to resolve or otherwise deal with the Conflict of Interest.

## **18 Annual Review**

### **Conducting Annual Reviews**

- 18.1 The parties will, following each anniversary of the Commencement Date of this Head Agreement, conduct an Annual Review to comprehensively review the operation of this Head Agreement and all Contracts (if any).
- 18.2 The Contractor must participate in the Annual Review as required by Finance. This may include provision of data and participation in meetings.

### **Cost of Annual Reviews**

- 18.3 Each party must bear its own costs of any Annual Review conducted under this **clause 18**.

## **19 Benchmarking**

### **Benchmarking**

- 19.1 From time to time during the Term, Finance may:
- 19.1.1 test the market for any or all of the Deliverables; or
  - 19.1.2 undertake benchmarking of some or all of the Deliverables where Finance intends to refresh the Panel (at the Head Agreement or Module level); or
- 19.1.3 utilise the services of a Benchmarker to undertake benchmarking to measure the standards of delivery and cost of the Deliverables in part or in the aggregate to determine if the performance of the Contractor matches and the Charges are competitive with, then current market prices and standards of delivery for Similar Deliverables.
- 19.2 Benchmarking will be conducted in accordance with the timing and procedures as determined by Finance. Finance will consult the Contractor on these matters and benchmarking will not occur more than once every twelve months.
- 19.3 Without limiting the rights of Finance, Finance may release benchmarking results to:
- 19.3.1 other Agencies;

- 19.3.2 Ministers and their advisors;
  - 19.3.3 Parliament or Parliamentary Committees; and
  - 19.3.4 advisers to Finance who have executed a confidentiality undertaking substantially in the form of **Schedule 1 - Attachment 2 (Deed of Confidentiality)**.
- 19.4 If the benchmarking shows that the Charges are not priced competitively for Similar Deliverables, unless the Contractor satisfies Finance that the difference in price is due to the relevant Contract's unique requirements and not due to the Contractor's performance:
- 19.4.1 the Contractor agrees to assist Finance for a three month period to determine the causes of the Benchmarker's findings and proactively seek resolution within 60 Business Days;
  - 19.4.2 if no resolution is reached within 60 Business Days, the Charges (including the Charges payable under any Contract) will be deemed to be reduced by the amount of the excess determined in the manner described in this **clause 19.4** from the end of that period;
  - 19.4.3 **Schedule 3 - Attachment 2 (Deliverables and Pricing)** must be updated to reflect the reduced Charges; and
  - 19.4.4 the reduced Charges must be reflected in subsequent invoices or may be set-off by an Agency against any invoice received under a Contract.
- 19.5 A Dispute in relation to benchmarking will be resolved in accordance with **clause 25**.

### **Cost of Benchmarking**

- 19.6 Each party must bear its own costs of any benchmarking conducted under this **clause 19**.

## **20 Books and Records**

### **Maintenance of records**

- 20.1 The Contractor must at all times maintain full, true, accurate and up-to-date accounts and records relating to this Head Agreement. Such accounts and records must:
- 20.1.1 include appropriate audit trails for transactions performed, including details of Contracts entered into (if any);
  - 20.1.2 record all receipts and expenses in relation to the provision of Deliverables under a Contract;
  - 20.1.3 record all other matters on which the Contractor is required to report by this Head Agreement;
  - 20.1.4 be kept in a manner that permits them to be conveniently and properly audited, and enables the Charges and Approved Pass-Through Expenses to be determined;
  - 20.1.5 comply at an individual, corporation, or group level with any applicable Australian Accounting Standards; and
  - 20.1.6 be made available to Finance as required for monitoring and reviewing the performance of the Contractor's obligations under this Head Agreement or any Contract including being available for audit and access in accordance with **clause 21**.

## Survival

- 20.2 This **clause 20** applies for the Term and for a period of seven years after the termination or expiry of the last Module under this Head Agreement or all Contracts, whichever is later.

## Archival requirements

- 20.3 The Contractor agrees to comply with any reasonable directions from Finance with respect to any applicable Commonwealth, State or Territory Laws relating to archival requirements.

## Costs

- 20.4 The Contractor must bear its own costs of complying with **clauses 20.1 to 20.3**.

## 21 Audit and Access

### Right to conduct audits

- 21.1 Finance, or a person or organisation nominated by Finance (**Authorised Investigator**), may during Business Hours, on reasonable notice, conduct audits relevant to the performance of the Contractor's obligations under this Head Agreement and any Contract. Audits may be conducted of:
- 21.1.1 the Contractor's operational practices and procedures as they relate to this Head Agreement and any Contract (including security procedures);
  - 21.1.2 the Charges and the accuracy of the Contractor's invoices and reports in relation to the provision of Deliverables under this Head Agreement and any Contract;
  - 21.1.3 the Contractor's compliance with its confidentiality, privacy and security and other obligations under this Head Agreement and any Contract;
  - 21.1.4 Material (including accounts and records) in the possession of the Contractor relevant to the Deliverables or this Head Agreement or any Contract; and
  - 21.1.5 any other matters determined by Finance to be relevant to the operations and the performance of the Deliverables or this Head Agreement or any Contract.
- 21.2 Relevant Agencies with Contracts with the Contractor may participate in the audits and it is not intended that Agencies conduct audits separate to Finance audits.

### Access by Finance

- 21.3 An Authorised Investigator may during Business Hours and on giving reasonable Notice to the Contractor:
- 21.3.1 access the premises of the Contractor from which Deliverables are provided; and
  - 21.3.2 inspect and copy relevant Documents, books and records, however stored, in the possession, custody or control of the Contractor or its Personnel,
- for the purposes of this **clause 21**.
- 21.4 An Authorised Investigator must comply with the Contractor's security requirements whilst on the Contractor's premises. This includes for an Authorised Investigator who is not employed under the *Public Service Act 1999* entering into a confidentiality agreement in the form of **Schedule 1 - Attachment 2 (Deed of Confidentiality)**.

- 21.5 The Contractor must comply with any request from Finance, as applicable, for the Contractor to:
- 21.5.1 give the Authorised Investigator copies of records and information in a data format and storage medium accessible by the Authorised Investigator; and
  - 21.5.2 provide assistance in respect of any inquiry into or concerning this Head Agreement or any Contract. For this purpose, an inquiry includes any administrative or Statutory review, audit or inquiry (whether within or external to Finance organisation), any request for information directed to Finance, and any inquiry conducted by Parliament or any Parliamentary Committee, the Australian Information Commissioner, Freedom of Information Commissioner or the Privacy Commissioner.

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

- 21.6 The Contractor must provide:
- 21.6.1 access to its computer hardware and software used in providing the Deliverables under Contracts or on which it stores information about the performance of Contracts to the extent necessary for the Authorised Investigator to exercise its rights under this **clause 21**; and
  - 21.6.2 the Authorised Investigator with any reasonable assistance requested by the Authorised Investigator or to use that hardware and software.
- 21.7 The Authorised Investigator must use reasonable endeavours to ensure that:
- 21.7.1 audits performed pursuant to **clause 21.1**; and
  - 21.7.2 the exercise of the rights granted by this **clause 21**,
- do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under this Head Agreement or any Contract.

### **Costs**

- 21.8 Subject to **clause 21.9**, each party must bear its own costs of all inspections, access and audits.
- 21.9 If the Contractor is able to substantiate that it has incurred direct expenses in the exercise by Finance of the rights granted under this **clause 21** which, having regard to the value of this Head Agreement and any Contract, are substantial, Finance and the Contractor will negotiate an appropriate and reasonable reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated, and will not be payable if the audit reveals failures by the Contractor to comply with this Head Agreement or any Contract.

### **Auditor-General, Australian Information Commissioner, Privacy Commissioner and Ombudsman**

- 21.10 The rights of Finance under this **clause 21** apply equally to the Auditor-General, the Australian Information Commissioner, the Freedom of Information Commissioner, the Privacy Commissioner and the Ombudsman or a delegate of any of the above-listed persons for the purpose of performing the Auditor-General's, the Australian Information Commissioner's, the Freedom of Information Commissioner's, the Privacy Commissioner's or Ombudsman's Statutory functions or powers (each being an Authorised Investigator).

**Contractor to comply with Authorised Investigator's requirements**

21.11 The Contractor must do all things necessary to comply with the requirements of an Authorised Investigator, notified under **clause 21.3**, provided such requirements are legally enforceable and within the power of the Authorised Investigator.

**No restriction**

21.12 Nothing in this Head Agreement or any Contract reduces, limits or restricts in any way any Statutory function, power, right or entitlement of an Authorised Investigator. The rights of Finance under this **clause 21** are in addition to any other Statutory power, right or entitlement of an Authorised Investigator.

**No reduction in responsibility**

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

**Consequences of audit**

21.14 The Contractor must promptly take, at no additional cost to Finance or an Agency, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit relating to the way the Contractor has performed its obligations under this Head Agreement or any Contract.

21.15 If an audit reveals any overcharging, the Contractor must:

21.15.1 refund any amounts overcharged to the relevant Agency; and

21.15.2 pay to Finance the cost of any auditor fees that Finance or an Agency has incurred.

**Survival**

21.16 This **clause 21** applies for the Term and for a period of seven years after the termination or expiry of the last Module under this Head Agreement or all Contracts, whichever is the later.

**22 Variation****Variation to Head Agreement**

22.1 Only the Finance Representative can agree to make variations to this Head Agreement.

22.2 Subject to **clause 22.6**, if Finance seeks to vary this Head Agreement:

22.2.1 the Finance Representative will request a variation by providing to the Contractor a draft Change Order (using the Change Order Form) setting out the proposed variations;

22.2.2 within 10 Business Days after receiving Finance's draft Change Order, or within another period agreed by the parties, the Contractor must respond in writing to Finance specifying what impact those variations will have on:

(a) the Charges;

(b) the Deliverables;

(c) the Contractor's ability to perform its obligations under this Head Agreement or any Contract; and

(d) this Head Agreement and any Contract;

- 22.2.3 within 10 Business Days after receiving the Contractor's response under **clause 22.2.2**, or within another period agreed by the parties, Finance will approve or reject the response in writing; and
- 22.2.4 if Finance approves the response, the parties must promptly execute the Change Order.
- 22.3 If the Contractor seeks to vary this Head Agreement, including to seek a change in the Charges set out in **Schedule 3 - Attachment 2 (Deliverables and Pricing)** as a result of increases in the Contractor's costs of providing the Deliverables:
- 22.3.1 the Contractor must request a variation by providing to Finance a draft Change Order (using the Change Order Form) setting out the proposed variations and specifying what impact those variations will have on:
- (a) the Charges;
  - (b) the Deliverables;
  - (c) the Contractor's ability to perform its obligations under this Head Agreement or any Contract; and
  - (d) this Head Agreement and any Contract;
- 22.3.2 within 10 Business Days after receiving the draft Change Order under **clause 22.3.1** or within another period agreed by the parties, Finance will give the Contractor a written Notice approving or rejecting the Contractor's request; and
- 22.3.3 if Finance approves the request, the parties must promptly execute the Change Order.
- 22.4 Any variation to this Head Agreement takes effect from the date on which the parties execute a Change Order, unless otherwise agreed in writing by the parties, and binds the Contractor and Finance.
- 22.5 If this Head Agreement is varied, that variation (including any changes to the Charges) will apply to all future Contracts and to Contracts in effect (but only to undelivered Deliverables) at the time of the variation, unless agreed otherwise in writing between the parties.

#### **Adding new Modules**

- 22.6 Finance may, at any time during the Term, enrol the Contractor under a new or additional Module by issuing the Contractor with a draft Change Order.
- 22.7 A draft Change Order issued under **clause 22.6** will:
- 22.7.1 vary the table of Enrolled Modules at **Schedule 2 (List of Enrolled Modules)** by listing the new or additional Module;
- 22.7.2 include the new or additional Module for inclusion in **Schedule 3 (Modules)**; and
- 22.7.3 include the Charges for the new or additional Module for inclusion in **Schedule 3 - Attachment 2 (Deliverables and Pricing)**.
- 22.8 The Contractor must respond in writing:
- 22.8.1 with details of any proposed amendments to the draft Change Order issued under **clause 22.6**; or
- 22.8.2 confirming the draft Change Order as not requiring any amendments,

within 10 Business Days (or such other period as agreed by the parties) after receipt of the draft Change Order.

- 22.9 Finance will approve or reject the Contractor's proposed amendments to the draft Change Order (if any) within 10 Business Days (or such other period as agreed by the parties) after receipt of the response under **clause 22.8.1**.
- 22.10 If Finance approves the response, the parties must promptly execute the Change Order.

## 23 Head Agreement Administration

### Representatives

- 23.1 The Contractor Representative is responsible for administration of this Head Agreement on behalf of the Contractor and must:
- 23.1.1 be able to answer enquiries, queries or requests for quotation for Deliverables;
  - 23.1.2 be contactable by the Finance Representative and the Agency Representative within Business Hours; and
  - 23.1.3 ensure that his or her contact details are accurate and up to date at all times.
- 23.2 The Contractor Representative must have sufficient authority to be able to resolve any issues that arise, in a prompt and effective manner. **[Note to Tenderer: There may be different Contractor Representatives for each Module.]**
- 23.3 The Contractor Representative is:
- [Insert position]**
  - [Insert email]**
  - [Insert Contractor Name]**
  - [Insert address]**
- 23.4 The Finance Representative is responsible for administration of this Head Agreement on behalf of Finance. The Finance Representative is the only person authorised to agree to changes to this Head Agreement.
- 23.5 The Finance Representative will be nominated by Notice to the Contractor from time to time and at the Commencement Date is:
- Assistant Secretary, ICT Procurement Branch
  - Department of Finance
  - John Gorton Building
  - King Edward Terrace
  - Parkes ACT 2600
- Email: ICTprocurement@finance.gov.au

### Delegation

- 23.6 The Contractor Representative and the Finance Representative may each delegate their functions, or authorise that their functions be carried out on their behalf (including by a third party). The Contractor or Finance, as appropriate, will notify the other party of any such delegation or authorisation.

**E-commerce**

- 23.7 The parties will cooperate in performing their respective obligations under the Head Agreement in an electronic environment.

**24 Notices and other Communications****Service of Notices**

- 24.1 A Notice must be in written English and signed by:
- 24.1.1 in the case of a Notice from the Contractor, the Contractor Representative; and
  - 24.1.2 in the case of a Notice from Finance, the Finance Representative.
- 24.2 A Notice relating to:
- 24.2.1 notification of change of its address or any delivery instructions for the issue of Notices under **clause 24.6**;
  - 24.2.2 extension of a Module Period under **clause 5.3**;
  - 24.2.3 increase, decrease or a removal of a Tax under **clauses 7.8 to 7.12**;
  - 24.2.4 additional, replacement or amended Unconditional Financial Undertaking or Performance Guarantee under **clause 12**;
  - 24.2.5 enforcement of an indemnity under **clause 14**
  - 24.2.6 a Conflict of Interest under **clause 17**;
  - 24.2.7 the conduct of an audit under **clause 21**;
  - 24.2.8 a dispute under **clause 25.2**;
  - 24.2.9 circumstances beyond control under **clause 26**; or
  - 24.2.10 a suspension under **clause 27**;
  - 24.2.11 termination of this Head Agreement under **clause 28**;
  - 24.2.12 breach of this Head Agreement;
  - 24.2.13 assignment, novation or waiver under **clauses 30.4 to 30.6**,
- is properly given or served by a party if that party:
- 24.2.14 delivers it by hand; or
  - 24.2.15 posts it by registered post,
- to the recipient's address for Notices in accordance with any delivery instructions specified in **clauses 24.4 or 24.5** (as updated in accordance with **clause 24.6**) and marked for the attention of the person who at that time is the Representative, in accordance with the Contract, of the party intended to receive it. A PDF copy of the communications referenced in this **clause 24.2** may be sent by email as an informal notification of the Notice (in addition to the formal communication sent in accordance with this **clause 24.2**).
- 24.3 All Notices issued under a Contract must be copied to the Finance Representative.

**Address for Notices**

- 24.4 Finance's address for Notices is:
- Assistant Secretary, ICT Procurement Branch

Department of Finance  
 John Gorton Building  
 King Edward Terrace  
 Parkes ACT 2600

24.5 The Contractor's address for Notices is:

Method	Address	Delivery Instructions
By hand or registered post	[INSERT physical address]	[INSERT any delivery instructions]

### Change of address

24.6 Each party must notify the other of any change in its address or any delivery instructions for Notices, or in the identity of its Representative, including through delegation or authorisation under **clause 23.6**.

### Deemed receipt

24.7 A Notice or other communication is deemed to be received:

- 24.7.1 if delivered by hand, when the party which sent the Notice or other communication holds a receipt for it, signed by a person employed by the intended recipient at the physical address for Notices; or
- 24.7.2 if delivered by registered post, when the party who sent the Notice or other communication holds a receipt for it, signed by a person employed at the physical address for the Notices (referred to by Australia Post as 'Domestic Delivery Confirmation').

### Formal and informal communications

24.8 The parties wish to distinguish formal communications and informal communications.

24.9 A formal communication is one which complies with the requirements of **clauses 24.1 to 24.7**.

24.10 An informal communication is one which does not comply with the requirements of **clauses 24.1 to 24.7**. Examples of informal communications include:

- 24.10.1 oral communications, whether made during meetings, discussions, over the phone or otherwise; and
- 24.10.2 communications sent by email.

24.11 Formal communications will have effect as communications under or in connection with this Head Agreement.

24.12 Informal communications will not:

- 24.12.1 be treated as formal communications under or in connection with this Head Agreement; or
- 24.12.2 affect the parties' rights or obligations under or in connection with this Head Agreement,

and do not vary this Head Agreement and cannot be relied upon.

24.13 Communications not referenced in **clause 24.2** may be effected by email. A PDF copy of the communications referenced in **clause 24.2** may be sent by email as an informal notification of the Notice in addition to the formal communication sent in accordance with **clause 24.2**.

24.14 The parties' email addresses for information communications are:

Party	Email address
Finance	ICTprocurement@finance.gov.au
Contractor	<b>[INSERT email address]</b>

## 25 Dispute resolution

### No arbitration or court proceedings

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

### Dispute Notice

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

### Parties to resolve Dispute

25.3 During the 10 Business Days after a Notice is given under **clause 25.2** (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable endeavours through a meeting of CEOs or equivalent (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator at the request of one of the parties to the Dispute.

### Appointment of mediator

25.4 If the parties to the Dispute cannot agree on a mediator within five (5) Business Days after a request under **clause 25.3**, the parties must request the chairperson of LEADR or the chairperson's nominee to appoint a mediator.

### Role of mediator and obligations of parties

25.5 The role of the mediator will be to assist in negotiating a resolution of the Dispute. The mediator may not make a decision which is binding on a party to the Dispute unless the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 15 Business Days of the request for mediation in **clause 25.3**. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

### Confidentiality

25.6 Any information or Documents disclosed by a party under this **clause 25**:

25.6.1 must be kept confidential and are subject to **clause 8**; and

25.6.2 may only be used to attempt to resolve the Dispute.

### Costs

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

### Termination of process

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

### Breach of this clause

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

## 26 Circumstances Beyond Control

- 26.1 If the Contractor is prevented from performing its obligations under this Head Agreement due to circumstances beyond the Contractor's reasonable control (for example acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation), the Contractor must give Notice of such circumstances to the Finance Representative (and providing a copy to any Agencies affected) as soon as possible, identifying the specific effect those circumstances will have on its performance of this Head Agreement.
- 26.2 The Contractor must make all reasonable efforts to minimise the effects on this Head Agreement of circumstances beyond the Contractor's reasonable control.
- 26.3 If the Contractor is prevented from performing its obligations under this Head Agreement due to circumstances beyond the Contractor's reasonable control, the Finance Representative may approve an extension of time for the Contractor to perform the affected obligations, provided that the Contractor has given the Finance Representative all information or evidence required to demonstrate that the Contractor's performance under this Head Agreement is affected and the Contractor has otherwise complied with this **clause 26**.

## 27 Suspension of a Module

- 27.1 Without limiting any other rights or remedies Finance may have against the Contractor arising out of or in connection with this Head Agreement, Finance may, by giving Notice to the Contractor, impose a suspension in respect of any one or more Modules (or part of any one or more Modules) to which the Contractor is enrolled if one or more of the following occurs:
- 27.1.1 Finance has received substantiated negative feedback from an Agency in respect of the performance of the Contractor which Finance reasonably determines is materially adverse to the Contractor's obligations under this Head Agreement or a Contract;
- 27.1.2 Finance considers that the Contractor is not providing Deliverables in accordance with a Contract and **Schedule 3 (Modules)**; or
- 27.1.3 Finance has a right to terminate this Head Agreement in accordance with **clause 28**.
- 27.2 If Finance imposes a suspension in accordance with **clause 27.1**:
- 27.2.1 Finance must notify the Contractor of the reason for imposing the suspension; and

- 27.2.2 the following apply until the suspension is lifted in accordance with **clause 27.3**:
- (a) Agencies must not issue a Contract Order Form to the Contractor for the provision of the Deliverables;
  - (b) the Contractor must promptly notify Finance if it receives a Contract Order Form for the provision of the Deliverables;
  - (c) the Contractor must not enter a Contract with an Agency; and
  - (d) each party must continue to perform all of its other obligations under this Head Agreement and all existing Contracts. To avoid doubt, Agency rights and obligations also continue under existing Contracts.

27.3 Finance may at any time lift a suspension that it has imposed in accordance with **clause 27.1** by issuing a Notice to the Contractor that the suspension is lifted. Finance must lift the suspension promptly after the Contractor demonstrates to Finance's satisfaction that the Contractor has rectified the issue that caused the suspension.

## 28 Termination

### Termination by Finance for default

- 28.1 Without limiting any other rights or remedies Finance or an Agency may have against the Contractor arising out of or in connection with this Head Agreement or a Contract as the case may be, Finance may terminate this Head Agreement in whole or in part (including by removing one or more Modules from the scope of this Head Agreement) effective immediately, by giving Notice to the Contractor if:
- 28.1.1 the Contractor breaches a material provision of this Head Agreement, where that breach is not capable of remedy;
  - 28.1.2 the Contractor breaches any provision of this Head Agreement that is capable of remedy, and fails to remedy the breach within 20 Business Days, or such other timeframe as is agreed in writing between the parties, after receiving Notice requiring it to remedy the breach;
  - 28.1.3 an event listed in **clause 28.3** happens to the Contractor and Finance reasonably considers that such an event will adversely impact on the Contractor's ability to provide Deliverables; or
  - 28.1.4 the Contractor breaches a material provision of a Contract and fails to remedy the breach in accordance with the Contract.
- 28.2 Without limitation, for the purposes of **clause 28.1.1**, each of the following constitutes a breach of a material provision:
- 28.2.1 breach of a warranty in **clause 10** except **clauses 10.2.2** and **10.2.3** (Head Agreement Warranties);
  - 28.2.2 a failure to comply with **clause 8** (Confidentiality); and
  - 28.2.3 a failure to notify Finance of a Conflict of Interest under **clause 17** (Conflict of Interest) or an inability to resolve a Conflict of Interest to the reasonable satisfaction of Finance.

- 28.3 The Contractor must notify Finance in writing immediately if one or more of the following occurs:
- 28.3.1 the Contractor disposes of the whole or any substantial part of its assets, operations or business other than in the ordinary course of business;
  - 28.3.2 the Contractor ceases to carry on business;
  - 28.3.3 the Contractor ceases to be able to pay its debts as they become due;
  - 28.3.4 if the Contractor is a corporation, there is any change in the direct or indirect beneficial ownership or control of the Contractor which may have an adverse effect on the ability of the Contractor to perform its obligations under this Head Agreement or a Contract;
  - 28.3.5 is the subject of Insolvency Proceedings;
  - 28.3.6 becomes an Insolvent Under Management; or
  - 28.3.7 if the Contractor is a trustee, the trust is terminated or an event occurs for vesting the trust property.
- 28.4 Without limiting **clause 28.1**, Finance may terminate this Head Agreement (or remove any Module from the scope of this Head Agreement) at any time if, in its absolute discretion, it considers that:
- 28.4.1 the Contractor's enrolment under a Module does not provide demonstrable value for money to Finance or any Agency; or
  - 28.4.2 the Contractor has failed to maintain a high standard of quality in its provision of Deliverables it has been contracted to provide (based on information considered as part of the Annual Review).

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

- 28.5 Finance may by Notice, at its absolute discretion, terminate or reduce the scope of this Head Agreement (including to remove any Module from this Head Agreement), for any reason including as a result of a machinery of government change.
- 28.6 If this Head Agreement is terminated or reduced in scope pursuant to **clause 28.5**, the Contractor is not entitled to compensation for any Loss.

#### **After termination**

- 28.7 On termination (in whole or part) of this Head Agreement, the Contractor must:
- 28.7.1 except in respect of Contracts that have been formed prior to the termination of the Head Agreement (or removal of a Module from the scope of this Head Agreement), stop offering the relevant Deliverables to Agencies under this Head Agreement or Module (as the case may be);
  - 28.7.2 take all available steps to protect Material in which Intellectual Property Rights, Confidential Information or Personal Information subsists;
  - 28.7.3 return to Finance all of Finance's Confidential Information except in respect of Contracts that have been formed prior to the termination of the Head Agreement and which have not been terminated or expired;
  - 28.7.4 follow any reasonable direction of Finance; and
  - 28.7.5 continue to perform any part of this Head Agreement (and any Contract) not affected by the Notice.

## Consequences of termination

- 28.8 If this Head Agreement is terminated in whole or in part under this **clause 28**:
- 28.8.1 subject to the terms of this Head Agreement, the parties are relieved from future performance of the terminated Head Agreement or relevant part of it;
  - 28.8.2 subject to this Head Agreement, all licences and authorisations relating to or concerning this Head Agreement granted to the Contractor by Finance terminate immediately despite anything to the contrary contained in the licence or authorisation;
  - 28.8.3 each party must comply with all surviving terms of this Head Agreement; and
  - 28.8.4 Contracts placed before termination of this Head Agreement remain on foot unless an Agency terminates the Contract in accordance with the terms of the Contract.
- 28.9 Unless specifically stated in the Notice of termination, termination of this Head Agreement does not automatically terminate Contracts current at that time. However, no new Contract may be formed after termination of this Head Agreement.

## 29 Knowledge Transfer and Transition Out

### Knowledge transfer

- 29.1 The Contractor must, at no additional cost to Finance or an Agency (or any person nominated by Finance), after receipt of a request by the Finance (which may be provided at any time during the Term or Module Period), provide all reasonable assistance, information, data and Documents (excluding Contractor Proprietary Information) relating to the Contractor's provision of Deliverables under a Contract which may be required by Finance to undertake a procurement process related to the Head Agreement or any Module (including any refresh of the Head Agreement or any Module).

### Transition out

- 29.2 Without limiting **clause 29.1**, the Contractor must, at no additional cost to Finance or any Agency provide the following assistance to Finance on termination or expiration of a Module:
- 29.2.1 transferring or providing access to Finance to all information, stored by whatever means, held by the Contractor or under the control of the Contractor in connection with the relevant Module excluding Contractor Personnel Information; and
  - 29.2.2 making Contractor Personnel involved in the Contractor's provision of Deliverables under the terminating or expiring Module available for discussions with Finance in relation to those Deliverables as required.

## 30 General

### Approvals and consents

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

**Costs**

30.2 Each party must pay its own costs of negotiating, preparing and executing this Head Agreement.

**Further action**

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

**Assignment and novation**

30.4 A party may only assign its rights or novate its rights and obligations under this Head Agreement (in whole or part) with the prior written consent of the other party, and this consent must not be unreasonably withheld, except that Finance may assign its rights or novate its rights and obligations under this Head Agreement to another Agency without obtaining the Contractor's consent if all, or substantially all, of its functions are transferred to another Agency as part of a machinery of government change.

**Waiver**

30.5 Waiver of any provision of, or right under, this Head Agreement:

30.5.1 must be by Notice from the party entitled to the benefit of that provision or right; and

30.5.2 is effective only to the extent set out in such Notice.

30.6 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Head Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, the other party.

**Severability**

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

**Entire agreement**

30.8 This Head Agreement 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.

**Note:** This Head Agreement does not have any legal effect on any arrangement the Contractor may have in place with Finance under the Data Centre Facilities Panel (Panel 1) or any leases executed under Panel 1 (any amendments to Panel 1 will be agreed separately between Finance and the Contractor and any relevant Agencies).

**Rights are cumulative**

30.9 The rights, powers and remedies provided in this Head Agreement are cumulative and are not exclusive of the rights, powers or remedies provided by Law independently of this Head Agreement.

**No merger**

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

**Survival**

- 30.11 The following clauses survive the termination and expiry of this Head Agreement:
- 30.11.1 **clause 8** (Confidentiality);
  - 30.11.2 **clause 9** (Privacy);
  - 30.11.3 **clause 10** (Head Agreement Warranties);
  - 30.11.4 **clause 12** (Guarantees);
  - 30.11.5 **clause 16** (Reporting to Finance);
  - 30.11.6 **clause 20** (Books and Records);
  - 30.11.7 **clause 21** (Audit and Access);
  - 30.11.8 **clause 28** (Termination) in respect of the rights and obligations arising on termination;
  - 30.11.9 Performance Guarantee and Indemnity;
  - 30.11.10 Unconditional Financial Undertaking;
  - 30.11.11 any clauses that are expressed to or which by their nature survive termination or expiry; and
  - 30.11.12 all clauses required to give effect to this **clause 30.11** including definitions and interpretation.

**Note to Tenderers:** To be updated before execution.

**Counterparts**

- 30.12 This Head Agreement may be executed in counterparts. All executed counterparts constitute one Document.

**Governing Law and jurisdiction**

- 30.13 This Head Agreement is governed by the Laws of the Australian Capital Territory.
- 30.14 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

**Australian Industry Participation Plan**

- 30.15 The Contractor must comply with its AIP Plan.

**Fraud Control Guidelines**

- 30.16 The Contractor must comply with the Commonwealth Fraud Control Guidelines (2002) (or any applicable State or Territory fraud control guidelines or policies if it is providing Deliverables to an Agency that is a State or Territory Agency).
- 30.17 The Contractor must notify Finance immediately if it knows or has reason to suspect that any fraud has occurred or is occurring or is likely to occur in relation to the Head Agreement or a Contract (including by the Contractor, Contractor Personnel, Subcontractors and suppliers).

**Compliance with Laws**

- 30.18 Each party must in carrying out its obligations under this Head Agreement comply with all applicable Laws.
- 30.19 The Contractor must, in carrying out its obligations under this Head Agreement and any Contract, comply with publicly available policies and standards and other policies and standards as notified by Finance from time to time.

**Execution**

**Note:** This will become the last page of the Head Agreement.

**Executed as a deed** for and on behalf of the **Commonwealth of Australia** as represented by the **Department of Finance** (ABN 61 970 632 495) by its duly authorised delegate:

In the presence of:

.....  
Signature of delegate

.....  
Signature of witness

.....  
Name of delegate (print)

.....  
Name of witness (print)

.....  
Date

.....  
Date

**Executed as a deed** by [**INSERT NAME of Contractor**] (ABN [**INSERT ABN of Contractor**]) in accordance with Section 127 of the *Corporations Act 2001* (Cth):

In the presence of:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Name of Director (print)

.....  
Name of Director/Company Secretary (print)

.....  
Date

.....  
Date

**OR**

**Executed as a deed** for and on behalf of [**INSERT NAME of Contractor**] (ABN [**INSERT ABN of Contractor**]) 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 in Full (print)

.....  
Date

.....  
Date

**Note to Tenderers:** A copy of the Power of Attorney pursuant to which this Head Agreement will be executed will need to be provided to Finance.

## **Schedule 1 - Head Agreement Glossary and Forms**

## Schedule 1 - Attachment 1 (Head Agreement Glossary)

TERM	DEFINITION
Additional Deliverables	Any additional Deliverables requested by Finance or an Agency from time to time in accordance with the provisions of the Head Agreement or a Contract that do not, at the time of the request, form part of the Deliverables. <b><i>[Note: Over time Finance may add new Modules to the Head Agreement (subject to Finance being satisfied that the addition of one or more new Module represents value for money to the Commonwealth).]</i></b>
Additional Terms	The additional terms (if any) that apply to a Contract, as specified in a Contract Order Form.
Agency	<p>Any one or more of the following as the context requires:</p> <ul style="list-style-type: none"> <li>(a) all agencies subject to the <i>Financial Management and Accountability Act 1997</i> (Cth) and on and from 1 July 2014 entities that are subject to the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth);</li> <li>(b) all bodies subject to the <i>Commonwealth Authorities and Companies Act 1997</i> (Cth) and on and from 1 July 2014 entities that are subject to the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth);</li> <li>(c) all other bodies governed by the Governor-General or a Minister of the Commonwealth or over which the Commonwealth exercises control; and</li> <li>(d) all bodies governed by a State Governor or by a Minister of a State or Territory or over which a State or Territory exercises control (including departments in State or Territory Governments).</li> </ul> <p>In the case of a Contract, means the Agency that enters into that Contract.</p>
Agency Confidential Information	<p>In relation to an Agency, means information that:</p> <ul style="list-style-type: none"> <li>(a) is by its nature confidential; or</li> <li>(b) is designated by an Agency as confidential; or</li> <li>(c) the Contractor knows or ought to know is confidential, including: <ul style="list-style-type: none"> <li>(i) information comprised in or relating to any of an Agency's Intellectual Property Rights;</li> <li>(ii) information relating to the policies, strategies, practices and procedures of an Agency and any information in the Contractor's possession relating to an Agency;</li> <li>(iii) information relating to other contractors of</li> </ul> </li> </ul>

	<p>an Agency; and</p> <p>(iv) Security Classified Information; or</p> <p>(d) is Agency Material and data, but does not include information which:</p> <p>(e) is or becomes public knowledge other than by breach of any confidentiality obligation; or</p> <p>(f) has been independently developed or acquired by the Contractor as established by written evidence.</p>
Agency Representative	The person identified as such in a Contract Order Form.
AIP Plan User Guide for Tenderers	Refers to the Australian Industry Participation Plans in Commonwealth Government Procurement User Guide for Tenderers published by the Department of Industry. A copy can be obtained from <a href="http://www.aip.gov.au">http://www.aip.gov.au</a> .
ANAO	Australian National Audit Office.
Annual Review	An annual review conducted in accordance with <b>clause 18</b> of the Head Agreement.
Approval	<p>(a) Any approval, authorisation, consent, declaration, exemption, permit, notarisation, licence, certificate, registration, filing, agreement, notification, permission or waiver however described including any condition attached to it required under the Head Agreement or for the purposes of providing the Deliverables; and</p> <p>(b) in relation to anything that could be prohibited or restricted by Law if an Authority acts in a way within a specified period, the expiry of that period without that action being taken,</p> <p>including any renewal or amendment.</p>
Approved Australian Industry Participation Plan or AIP Plan	An Australian Industry Participation (AIP) Plan that has been approved by the Department of Industry in accordance with the AIP Plan User Guide for Tenderers.
Approved Pass-Through Expense	An expense the Contractor incurs in providing the Deliverables for which the Agency has agreed in writing it will reimburse (without application of any margin) the Contractor, as specified in a Contract Order Form.
Approved Privacy Principle or APP	The Australian Privacy Principles as set out under the Privacy Act.
Approved Third Party Provider	<p>A third party ICT provider that has been:</p> <p>(a) contracted by an Agency (or group of Agencies) to provide ICT services to that Agency (or group of Agencies); and</p>

	(b) approved in writing by Finance and that Agency to enter into a Contract under the Head Agreement with the Contractor for the provision of Deliverables as part of the third party ICT provider's provision of ICT services to that Agency (or group of Agencies).
Archives Act	<i>Archives Act 1983 (Cth).</i>
Auditor-General	Auditor-General for the Commonwealth or an equivalent State or Territory office holder.
Australian Information Commissioner	Commonwealth Australian Information Commissioner or, if the Agency is a State or Territory Agency, an equivalent State or Territory office holder with jurisdiction over the Agency.
Authorised Investigator	Has the meaning given in <b>clause 21.1</b> of the Head Agreement and <b>clause 16.1</b> of the Standard Contract Terms.
Authority	Any legal entity with legislative authority including any ministry, department, government, governmental or semi-governmental authority, agency, instrumentality, council or corporation.
Benchmarker	An independent third party engaged by Finance to perform benchmarking.
Business Day	(a) For receiving a Notice under <b>clause 24</b> of the Head Agreement and <b>clause 28</b> of a Contract, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the Notice is to be received; and  (b) for all other purposes, any day that is not a Saturday or Sunday or a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.
Change Order	A Document in the form of <b>Schedule 1 - Attachment 5 (Change Order Form)</b> which is used to implement and record changes to the Head Agreement and any Contract.
Charges	The amount or amounts (excluding GST) payable by the Agency to the Contractor for the Deliverables in accordance with a Contract (as set out in <b>Schedule 3 - Attachment 2 (Deliverables and Pricing)</b> to the Head Agreement).
Commencement Date	(a) For the Head Agreement, the Head Agreement Commencement Date is the date on which the Head Agreement is executed by both parties (or if executed on different days, the date on which it has been executed by both parties).  (b) For a Module, the Module Commencement Date is the date set out in <b>Schedule 2 (List of Enrolled Modules)</b> .  <b>[Note: For a Contract, the Contract Period commences on the Contract Start Date.]</b>

Commonwealth	Commonwealth of Australia.
Commonwealth entity	Has the meaning given to it in the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
Commonwealth Record	Has the meaning given to it in the Archives Act and includes Material developed under the Head Agreement or any Contract.
Confidential Information	Agency Confidential Information or Contractor Confidential Information or Finance Confidential Information.
Contractor Confidential Information	<p>In relation to the Contractor:</p> <p>(a) information specified in <b>Schedule 1 - Attachment 6 (Contractor Confidential Information)</b> to the Head Agreement; or</p> <p>(b) information agreed and specified in the Contract that is confidential,</p> <p>but does not include information which:</p> <p>(c) is or becomes public knowledge other than by breach of any confidentiality obligation; or</p> <p>(d) has been independently developed or acquired by Finance or by the Agency as established by written evidence.</p>
Contractor Proprietary Information	<p>means the Contractor's:</p> <p>(a) cost models;</p> <p>(b) information relating to other customers of the Contractor;</p> <p>(c) Contractor Confidential Information relating to the Contractor's employees; and</p> <p>(d) profit margin information.</p>
Conflict of Interest	<p>Any known actual, potential or perceived conflict between:</p> <p>(a) the duty that the Contractor, Contractor Personnel and any Related Body Corporate will have to Finance or an Agency under the proposed contractual arrangements; and</p> <p>(b) either:</p> <p>(i) the personal interests of the Contractor, Contractor Personnel or a Related Body Corporate; or</p> <p>(ii) the duty of the Contractor, Contractor Personnel or a Related Body Corporate to another person or entity.</p> <p>A Conflict of Interest includes a financial or corporate relationship between a Contractor, Contractor Personnel or a Related Body Corporate which may influence or appear to influence, a decision</p>

	made by a Contractor, or their capacity to make independent decisions, in the best interest of Finance, the Commonwealth or the Agency.
Contract	A contract entered into under a Head Agreement for the provision of Deliverables and includes all schedules, attachments and plans to that Contract and Documents incorporated into that Contract.
Contract Order Form	An order in the form of <b>Schedule 3 - Attachment 3 (Contract Order Form)</b> of the Head Agreement that may be agreed by an Agency or an Approved Third Party Provider pursuant to <b>clause 4</b> of the Head Agreement and the Contractor.
Contract Period	The Initial Contract Period for a Contract plus any extension in accordance with the relevant Contract.
Contract Start Date	The date: (a) on which a Contract Order Form is agreed by the parties; or (b) a date agreed by the parties and included in the Contract Order Form. The Contract Period commences on the Contract Start Date.
Contractor	The organisation that entered into the Head Agreement to provide the Deliverables/supplied details in the relevant Module.
Contractor Personnel	Any individual who is employee, director, officer, agent, professional adviser of the: (a) Contractor; or (b) a Subcontractor.
Contractor Representative	The person identified in <b>clause 23.3</b> of the Head Agreement or in a Contract.
Corporations Act	<i>Corporations Act 2001 (Cth).</i>
Criminal Code	<i>Criminal Code Act 1995 (Cth).</i>
Customer	Department of Finance or an Agency
Deliverables or Supplies	For the purposes of the Head Agreement, the products and services or any part of them described in an Enrolled Module in <b>Schedule 3 (Modules)</b> or a Contract.
Delivery Date	The date for delivery of the Deliverables specified in a Contract Order Form.
Dispute	Has the meaning given in <b>clause 25.1</b> of the Head Agreement and <b>clause 29.1</b> of the Standard Contract Terms.
Document	Includes: (a) any paper or other Material on which there is words,

	<p>figures, symbols or perforations having a meaning for persons qualified to interpret them; and</p> <p>(b) any article or Material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device.</p>
Documentation	The Documents to be provided by the Contractor under the Head Agreement or any Contract.
Existing Material	<p>Material that:</p> <p>(a) is in existence prior to the relevant Module Commencement Date or the relevant Contract Start Date; or</p> <p>(b) is brought into existence after the relevant Module Commencement Date or the relevant Contract Start Date other than as a result of the performance of obligations under the Head Agreement or any Contract,</p> <p>and is related to the provision of the Deliverables and includes Material that is a modification of Existing Material.</p>
Finance	Commonwealth of Australia represented by the Department of Finance.
Finance Confidential Information	<p>In relation to Finance, information that:</p> <p>(a) is by its nature confidential; or</p> <p>(b) is designated by Finance as confidential; or</p> <p>(c) the Contractor knows or ought to know is confidential, including:</p> <p>(i) information comprised in or relating to any of Finance's Intellectual Property Rights;</p> <p>(ii) information relating to the policies, strategies, practices and procedures of Finance and any information in the Contractor's possession relating to Finance;</p> <p>(iii) information relating to other contractors of Finance; and</p> <p>(iv) Security Classified Information; or</p> <p>(d) is Agency Material and data,</p> <p>but does not include information which:</p> <p>(e) is or becomes public knowledge other than by breach of any confidentiality obligation; or</p> <p>(f) has been independently developed or acquired by the Contractor as established by written evidence.</p>
Finance Personnel	Any natural person who is an employee, director, officer, agent or professional adviser of Finance (not including Contractor

	<p>Personnel) and includes:</p> <p>(a) the Ministers having responsibility for Finance, and all staff of such Minister's offices;</p> <p>(b) officers and employees within Finance, including public servants at all levels employed on a full-time, part-time, permanent, casual or temporary basis;</p> <p>(c) contractors (including contractors providing outsourcing services to Finance) and agents which perform services for or on behalf of Finance; and</p> <p>(d) other personnel as agreed between Finance and the Contractor.</p>
Finance Representative	The person nominated by Finance in accordance with <b>clause 23.5</b> of the Head Agreement.
FMA Agencies	All agencies subject to the <i>Financial Management and Accountability Act 1997</i> (Cth) or, on and from 1 July 2014 relevant entities (that would previously be categorised as an FMA Agency) that are subject to the <i>Public Governance, Performance and Accountability Act 1997</i> (Cth).
FOI Act	<i>Freedom of Information Act 1982</i> (Cth).
Head Agreement	Head Agreement between Finance and the Contractor.
GST	Has the meaning defined in the GST Act.
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
ICT	Information and Communication Technology.
ICT Review	The <i>Review of the Australian Government's Use of Information and Communication Technology</i> conducted by Sir Peter Gershon.
Illegal Worker	<p>A person who:</p> <p>(a) has unlawfully entered and remains in Australia;</p> <p>(b) has lawfully entered Australia, but remains in Australia after his/her visa has expired; or</p> <p>(c) is working in breach of his/her visa conditions.</p> <p><b>[Note: For more information refer to 'Australian Immigration Guide to Work Entitlements' available at <a href="http://www.immi.gov.au/managing-australias-borders/compliance/employer-obligations/">http://www.immi.gov.au/managing-australias-borders/compliance/employer-obligations/</a>].</b></p>
Initial Contract Period	The period specified as such in the Contract Order Form and which commences on the Contract Start Date.
Initial Module Period	The initial period of time for which a Module is intended to continue, as specified in <b>Schedule 2 (List of Enrolled Modules)</b> .

Insolvency Proceeding	Any application or proceedings before a court or tribunal, or an action by a creditor or other person, in Australia or overseas which may result in the Contractor becoming Insolvent Under Management.
Insolvent Under Management	<p>Any of the following circumstances, where the Contractor:</p> <ul style="list-style-type: none"> <li>(a) becomes bankrupt or insolvent;</li> <li>(b) becomes subject to one of the forms of external administration provided for in Chapter 5 of the <i>Corporations Act 2001</i> (Cth);</li> <li>(c) the appointment of a person to administer a scheme or compromise in relation to the body in accordance with Part 5.1 of the <i>Corporations Act 2001</i> (Cth);</li> <li>(d) the appointment of a controller or managing controller to the whole or any part of its assets or undertakings in accordance with Part 5.2 of the <i>Corporations Act 2001</i> (Cth);</li> <li>(e) the appointment of an administrator under Part 5.3A of the <i>Corporations Act 2001</i> (Cth);</li> <li>(f) the appointment of a liquidator in relation to the body;</li> <li>(g) is wound up by resolution or an order of the court;</li> <li>(h) suffers execution against any of its assets which has an adverse effect on the Contractor's ability to perform its obligations under the Head Agreement or Contract;</li> <li>(i) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors;</li> <li>(j) becomes insolvent under administration; or</li> <li>(k) becomes subject to any form of administration under the Laws of a non-Australian jurisdiction, which is the same as, or substantially equivalent to, one of those referred to in paragraphs (a) to (j) above.</li> </ul>
Intellectual Property Rights	<ul style="list-style-type: none"> <li>(a) All rights in respect of Intellectual Property, whether or not such rights are registered or capable of being registered;</li> <li>(b) any application or right to apply for registration of any Intellectual Property; and</li> <li>(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.</li> </ul>
ISM	Australian Government Information Security Manual.
Law	Any applicable law, without limitation, including 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).
LEADR	The Association of Dispute Resolvers, Australia.
Legal Services Directions	The Legal Services Directions made under section 55ZF of the <i>Judiciary Act 1903</i> (Cth).
Loss or Losses	All losses, liabilities, damages, fines, costs and expenses (including reasonable legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).
Material	Any tangible thing in which Intellectual Property Rights can subsist, including without limitation software, firmware, Documents, reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions or other material.
Milestone	The event or series of events for which the Contractor is responsible and for which Charges are payable as specified in the Contract that is to be achieved to the satisfaction of the Agency Representative and Accepted by the Agency.
Module or Enrolled Module	A Module of ICT Deliverables available for provision under the Head Agreement.
Module Commencement Date	The date specified in <b>Schedule 2 (List of Enrolled Modules)</b> of the Head Agreement.
Module Option Period	The Module Option Period, if any, for a Module as set out in <b>Schedule 2 (List of Enrolled Modules)</b> .
Module Period	The Initial Module Period for a Module plus any extension in accordance with <b>clause 5</b> of the Head Agreement and <b>Schedule 2 (List of Enrolled Modules)</b> .
Moral Rights	The right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
New Material	Material created by the Contractor on or after the Commencement Date, for the purpose of or as a result of performing its obligations under the Head Agreement or any Contract other than reports for Finance or an Agency, and includes any modifications that may be required for that purpose but excludes any Finance or Agency Confidential Information.
Normal Business Hours	Has the meaning set out in the Contract.
Notice	(a) A Notice under the Head Agreement that is sent in accordance with <b>clause 24</b> of the Head Agreement. (b) A Notice under the Contract that is sent in accordance

	with <b>clause 29</b> of the Contract.
Ombudsman	The Commonwealth Ombudsman or, if the Agency is a State or Territory Agency, an equivalent State or Territory office holder with jurisdiction over the Agency.
Panellist	A contractor who has entered into a Head Agreement with Finance.
Performance Guarantee	A deed of performance in the form of <b>Schedule 1 - Attachment 3 (Performance Guarantee and Indemnity)</b> of the Head Agreement that is provided by the Contractor pursuant to <b>clause 12</b> of the Head Agreement.
Personal Information	Has the meaning given to it in the Privacy Act.
Personnel	(a) In relation to Finance, means Finance Personnel. (b) In relation to the Agency, means Agency Personnel. (c) In relation to the Contractor, means Contractor Personnel.
Policies and Procedures Manual	The manual of that name to be provided by the Contractor under <b>clause 12</b> of a Contract.
Pricing Model	The pricing model offered by the Contractor as set out in the Pricing Schedule which reflects the maximum amounts that the Contractor can charge under a Contract.
Privacy Act	<i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	Privacy Commissioner for the Commonwealth or, if the Agency is a State or Territory Agency, an equivalent State or Territory office holder (if any) with jurisdiction over the Agency.
Proceedings	Any litigation, arbitration, mediation, conciliation or proceeding, including any investigations and any Insolvency Proceedings.
PSPF	<i>Australian Government Protective Security Policy Framework</i> (PSPF) which, amongst other things, directs Commonwealth Agencies to consider the security implications of their electronic information systems and to devise policy and plans to ensure the systems are appropriately protected.
Public Announcement	A public announcement in connection with the Head Agreement or any Contract or any transaction contemplated by those Documents.
Rebate Point	See definition for Service Credit.
Records Disposal Authority	The authority issued by the National Archives of Australia in accordance with the Archives Act.
Regulatory Agency	Any government or any public, Statutory, governmental, semi-

	governmental, local governmental or judicial body, entity, ombudsman or authority that has a regulatory, supervisory or prudential power or function under any Statute, or can issue any licence or permit or authorise or approve or forbid any act or conduct or other matter or impose conditions in respect of any act or conduct or other matter, or that has a power to investigate, review, make any determination or finding, or prosecute, or commence or recommend any civil, criminal or administrative proceeding or process.
Related Body Corporate	In relation to the Contractor, any person which is a related body corporate of the Contractor (as defined in section 50 of the Corporations Act).
Request for Quotation (RFQ)	A request for quotation for the provision of Deliverables under any one or more Modules issued under <b>clause 4</b> of the Head Agreement.
Schedule	Each of the schedules to the Head Agreement.
Security Classified Information	Information defined as Security Classified Information in accordance with the ISM and PSPF.
Service Credit or Rebate Point	An amount (if any) credited to an Agency as a result of a failure to achieve a Service Level as specified in <b>clause 5</b> of the Standard Contract Terms.
Service Level	A metric used to measure and report performance of the Deliverables as specified in a Contract Order Form.
Similar Deliverables	Products and services supplied by the Contractor: <ul style="list-style-type: none"> <li>(a) having substantially similar functional and performance outcomes as the Deliverables;</li> <li>(b) having comparable scope and scale; and</li> <li>(c) being provided by IT service providers.</li> </ul>
Specifications	(a) The Specifications in <b>Schedule 3 (Modules)</b> (if any); and (b) the Agency's functional and technical requirements for the Deliverables as described or incorporated by reference in the Contract Order Form.
Specified Acts	Has the meaning given in <b>clause 17</b> of the Standard Contract Terms.
Standard	Any standard that applies to a Module, as advised in writing by Finance from time to time.
Standard Contract Terms	The contract terms and conditions set out at <b>Schedule 3 (Modules)</b> of the Head Agreement.
State or Territory	All bodies governed by a State Governor or by a Minister of a

Agencies	State or Territory or over which a State or Territory exercises control (including departments in State or Territory governments).
Statute	Includes any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia or overseas (whether made by a State, Territory, the Commonwealth, or a local government).
Subcontractor	An entity engaged under a subcontract to perform any part of the work under the Head Agreement or any Contract and that entity's directors, officers, employees, subcontractors, agents and consultants (as relevant).
Supplies	See definition for Deliverables.
Tax	A tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by a Regulatory Agency, together with any related interest, penalty, fine or other charge.
Tax Invoice	A tax invoice as defined in the GST Act.
Term	The term of the Head Agreement (see <b>clause 5</b> of the Head Agreement).

## Schedule 1 - Attachment 2 (Deed of Confidentiality)

THIS DEED OF CONFIDENTIALITY MADE ON THE            DAY OF            2014

### BETWEEN

[Insert Name of Customer] ACN [Insert ACN] of [Insert Address]  
(‘Customer’)

and

[Insert Name of Confidant] ACN [Insert ACN] of [Insert Address]  
(‘Confidant’)

### BACKGROUND

- A.        The Confidant provides the undertakings set out below in respect of work to be performed, and information to be acquired, directly or indirectly in connection with the Contract.
- B.        The Contract is the Contract between [Insert Name of Contract Date of Contract and Parties to the Contract].

### TERMS AND CONDITIONS

#### 1. Interpretation

##### Definition

‘Information’ means information, documents and data stored by any means and any information made available to me in the course of my dealings with the Beneficiary and includes information relating to:

- (a) any intellectual property rights of the Customer;
- (b) to the financial position or reputation of the Customer;
- (c) the internal management and structure of the Customer;
- (d) the personnel, policies and strategies of the Customer;
- (e) the Customer’s clients or suppliers;

and information of the Customer that has any actual or potential commercial value to the Beneficiary or to the person or corporation which supplied that information.

#### 2. Non-disclosure

- 2.1 I will treat as secret and confidential all Information to which I have access or which is disclosed to me.
- 2.2 If the Customer grants its consent for me to disclose information, it may impose conditions on that consent. In particular, the Customer may require that I obtain the execution of a Deed in these terms by the person to whom I propose to disclose the Information.
- 2.3 My obligations under this Deed will not be taken to have been breached where I am legally required to disclose the Information.

**3. Restriction on use**

- 3.1 I will use the Information only for the purpose of my dealings with the Customer (whether directly or indirectly).
- 3.2 I will not copy or reproduce the Information without the approval of the Customer, will not allow any other person outside the Customer access to the Information and will take all necessary precautions to prevent unauthorised access to or copying of the Information in my control.

**4. Survival**

This Deed will survive the termination or expiry of any contract between the Customer and me providing for the performance of services or the provision of goods by me (whether directly or indirectly).

**5. Powers of the Customer**

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

**6. Applicable law**

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

**EXECUTED AS A DEED**

**CUSTOMER**

**Executed** as a deed by **[Company Name]**  
**ACN [ACN NUMBER]** in accordance with  
Section 127(1)-(3) of the *Corporations Act*  
*2001*:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Name of Director (print)

.....  
Name of Director/Company Secretary (print)

.....  
Date

.....  
Date

**CONFIDANT**

**Executed** as a deed by **[Company Name]**  
**ACN [ACN NUMBER]** in accordance with  
Section 127(1)-(3) of the *Corporations Act*  
*2001*:

.....  
Signature of Director

.....  
Signature of Director./Company Secretary

.....  
Name of Director

.....  
Name of Director./Company Secretary

.....  
Date

.....  
Date



Date:

**Executed** as a deed by **[INSERT NAME]**  
(ABN **[INSERT]**) 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

.....  
Date

Executed by **the Commonwealth of  
Australia represented by [insert]** (ABN  
[insert]) by its duly authorised delegate:

.....  
Signature of witness

.....  
Signature of delegate

.....  
Name of witness (print)

.....  
Name of delegate (print)

.....  
Position of delegate (print)



10. A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party must confirm receipt by any other means.

10.1 A notice or other communication is deemed to be received if:

- (a) sent by post from and to an address within Australia, after three (3) Business Days;
- (b) sent by post from or to an address outside Australia, after ten (10) Business Days;
- (c) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
- (d) sent by electronic mail, only in the event that the other party acknowledges receipt by any means;
- (e) sent by any other electronic means, only in the event that the other party acknowledges receipt by any means; or
- (f) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service.

10.2 Address of the Customer

Physical address:  
Postal address:  
Phone number:  
Fax number:  
Email address:

10.3 Address of the Guarantor

Physical address:  
Postal address:  
Phone number:  
Fax number:  
Email address:

10.4 Address of the Contractor

Physical address:  
Postal address:  
Phone number:  
Fax number:  
Email address:

**EXECUTED AS AN AGREEMENT**

**AGENCY**

**Executed** by and on behalf of the )  
**Commonwealth of Australia** )  
represented by the [Agency] **ABN** )  
**[ABN Number]** by a duly authorised )  
representative in the presence of: )  
)  
)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**GUARANTOR**

**Executed** by [Company Name] **ACN** )  
**[ACN Number]** in accordance with )  
Section 127(1)-(3) of the Corporations )  
Act 2001: )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Company Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**CONTRACTOR**

**Executed** by **[Company Name] ACN** )  
**[ACN Number]** in accordance with )  
Section 127(1)-(3) of the Corporations )  
Act 2001: )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Company Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Schedule 1 - Attachment 5 (Change Order Form)

**Note:** This Change Order template will be used for all changes proposed to the Head Agreement and any Contract, which must be made in accordance with **clause 22** of the Head Agreement and the equivalent clause of the relevant Module terms (subject to **clause 4.12** of the Head Agreement).

This Change Proposal Deed (including its attachments, if any) serves to vary the [Head Agreement / Contract] executed on [insert], in accordance with the terms set out below. Unless specifically stated in this Change Proposal Deed, all terms and conditions of the [Head Agreement / Contract] continue unaffected.

<b>Change Order number</b>	
<b>Date proposed</b>	
<b>Name of party instigating the change</b>	
<b>Implementation date of change</b>	
<b>Details of change proposal</b>	
<b>Clauses affected by the proposal are as follows</b>	
<b>New charges payable to the Contractor or Customer affected by this change proposal</b>	
<b>Plan for implementing the change</b>	
<b>The responsibilities of the parties for implementing the change</b>	
<b>The new date for the acceptance testing of the system</b>	
<b>Effect of change on performance</b>	
<b>Effect on documentation</b>	
<b>Effect on training</b>	
<b>Effect on the users of the system</b>	
<b>Any other matters which the parties consider are important</b>	

**EXECUTED AS A DEED**

**AGENCY**

**Executed as a deed** by and on behalf )  
of the **Commonwealth of Australia** )  
represented by the **[Agency] ABN** )  
**[ABN Number]** by a duly authorised )  
representative in the presence of: )  
) )  
)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Executed as a deed** by **[INSERT Provider's name]** (ABN **[INSERT ABN]**) 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

.....  
Date

**Note:** Section 127 of the Corporations Act provides as follows:

**127 Execution of documents (including deeds) by the company itself**

(1) A company may execute a document without using a common seal if the document is signed by:

- (a) 2 directors of the company; or
- (b) a director and a company secretary of the company; or
- (c) for a proprietary company that has a sole director who is also the sole company secretary – that director.

*Note: If a company executes a document in this way, people will be able to rely on the assumptions in subsection 129(5) for dealings in relation to the company.*

(2) A company with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

- (a) 2 directors of the company; or
- (b) a director and a company secretary of the company; or

(c) for a proprietary company that has a sole director who is also the sole company secretary—that director.

*Note: If a company executes a document in this way, people will be able to rely on the assumptions in subsection 129(6) for dealings in relation to the company.*

(3) A company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with subsection (1) or (2).

(4) This section does not limit the ways in which a company may execute a document (including a deed).

**Executed as a deed** for and on behalf of  
[**INSERT NAME of Contractor**] (ABN  
[**INSERT ABN of Contractor**]) 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 in Full (print)

.....  
Date

.....  
Date

**Note:** A copy of the Power of Attorney pursuant to which this Head Agreement will be executed will need to be provided to Finance.

**Schedule 1 - Attachment 6 (Contractor Confidential Information)**

The following information is confidential to the Contractor:

Item	Description of Information	Reason for confidentiality (having regard to Finance/ANAO Guidelines)
1	Nil	N/A
2	<i>[Insert]</i>	[Commercially sensitive information the disclosure of which would cause unreasonable detriment to the Contractor or a third party and damage commercial interests.]

## Schedule 2 - List of Enrolled Modules

The Contractor has been enrolled to provide Deliverables in respect of each of the following Modules:

Name of Module	Module Commencement Date	Module Initial Period	Module Option Period (if any)
Module 2: ICT Hardware and Associated Services Panel		Three years	Three years; and then 12 months; and then 12 months; and then 12 months. (each and collectively are Module Option Periods)
XXXX			

### **Schedule 3 - Modules**

This Schedule contains details of Deliverables available under each Module, as well as Module-specific terms which apply to each Contract placed in respect of that Module.