



**Australian Government**  

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**Department of Finance**

**HEAD AGREEMENT**

relating to

**Whole-of-Government Cloud Services Panel  
Standing Offer Number (SON2914302)**

**(1) COMMONWEALTH OF AUSTRALIA REPRESENTED BY THE DEPARTMENT OF FINANCE  
(ABN 61 970 632 495)**

**- and -**

**(2) [INSERT COMPANY NAME] (ABN [INSERT ABN])**

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**BETWEEN:**

- (1) **THE COMMONWEALTH OF AUSTRALIA** as represented by the Department of Finance ('Finance')
- (2) **The party specified in Item 1 of the Head Agreement Details ('Contractor')**

**BACKGROUND:**

- A Finance has offered to include the Contractor on its Panel for the supply of Cloud Services, and include the Contractor's Cloud Services in the Service Catalogue.
- B The Contractor has accepted the offer and agreed to the terms and conditions of this Head Agreement.
- C The Contractor acknowledges and agrees that any Agency may enter into a Contract under this Head Agreement with the Contractor to source Cloud Services.

**AGREED TERMS:**

**PART 1 - GENERAL PROVISIONS**

**1. OPERATIVE PROVISIONS**

- 1.1 This Head Agreement is intended to operate, and is executed, as a deed.
- 1.2 In this Head Agreement, the definitions and interpretations in Schedule 1 SCHEDULE 1: apply.
- 1.3 References to 'Head Agreement', are to be read as referring to both the Head Agreement and any Contract, as the context requires.
- 1.4 Finance may exercise any rights of a Customer in connection with a Contract. Rights expressed to be for Finance can be exercised by a Customer in respect of a Contract.

**2. HEAD AGREEMENT TERM**

- 2.1 This Head Agreement constitutes a standing offer for the Head Agreement Term during which an Agency may require the Contractor to supply Cloud Services.
- 2.2 This Head Agreement commences on the Commencement Date and (unless otherwise lawfully terminated) will continue until the expiry of the Head Agreement Term as specified in Item 4 of Head Agreement Details.
- 2.3 The Head Agreement Term may be extended by Finance as specified in Item 5 of the Head Agreement Details, on the terms and conditions then in effect, by giving written Notice to the Contractor before the end of the current term.

**3. PRIORITY OF DOCUMENTS**

- 3.1 If there is inconsistency between any of the documents forming part of this Head Agreement or a Contract, those documents must be interpreted in the following order of priority to the extent of any inconsistency:

- 3.1.1 Schedule 1 SCHEDULE 1: ;
- 3.1.2 Schedule 4 SCHEDULE 4: ;
- 3.1.3 Agreed Terms;
- 3.1.4 All Schedules except Schedules 1 SCHEDULE 1: , 3 and 4 SCHEDULE 4: ;
- 3.1.5 any attachments to the Schedules (except Schedule 3);
- 3.1.6 Schedule 3 - Contract; and
- 3.1.7 other documents mentioned or incorporated by reference in this Head Agreement or a Contract, including additional Terms and Conditions provided by the Contractor.

#### **4. ROLE OF FINANCE**

- 4.1 Finance's role is to do (either directly or through a representative) each of the following:
  - 4.1.1 administer the Panel and this Head Agreement, including approving or rejecting any proposal from the Contractor to vary its Fees or Cloud Services;
  - 4.1.2 maintain the Service Catalogue;
  - 4.1.3 approve/deny any changes to the Head Agreement;
  - 4.1.4 monitor the performance of Contracts (if any), including to ensure that Customers obtain the benefits to which they are entitled under the Contracts;
  - 4.1.5 collect data from the Contractor; and
  - 4.1.6 monitor and report on the operation of the Panel, including its operation, viability and usage.

#### **5. ROLE OF CONTRACTOR AND RELATIONSHIP BETWEEN THE PARTIES**

- 5.1 The Contractor must:
  - 5.1.1 comply with its obligations in the Head Agreement in respect of making Cloud Services available to Customers;
  - 5.1.2 provide Cloud Services in accordance with any Contract under the Cloud Services Panel;
  - 5.1.3 work together with Finance and Agencies in a collaborative manner and in good faith;
  - 5.1.4 comply with any reasonable directions given by Finance in respect of this Head Agreement;
  - 5.1.5 provide all reasonable assistance required by Finance; and
  - 5.1.6 communicate with Agencies in the manner specified in this Head Agreement and any Contract or as otherwise directed by Finance from time to time.

- 5.2 The Contractor must participate in any forums or meetings, as reasonably requested by Finance, at the Contractor's own expense, in relation to the operation of this Head Agreement and any Contract (including forums or meetings with other contractors or with Agencies).
- 5.3 The Contractor must clearly identify itself as a member of the Panel when communicating through telephone, facsimile, email or any other method in relation to this Head Agreement and in the course of performing a Contract.
- 5.4 This Head Agreement does not create a relationship of employment, agency or partnership between the parties or their respective Personnel.
- 5.5 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.

## **PART 2 - PROVISION OF CLOUD SERVICES**

### **6. SERVICE CATALOGUE**

- 6.1 The Contractor acknowledges that Finance has created, or will create, and maintain a Service Catalogue which sets out the available Cloud Services. The Contractor is entitled to offer to supply Agencies their Cloud Services pursuant to this Head Agreement. The Service Catalogue may include the following information about each of the Cloud Services listed in the Service Catalogue:
  - 6.1.1 Cloud Service specifications;
  - 6.1.2 Service Levels and other performance measures;
  - 6.1.3 warranties and defect rectification requirements;
  - 6.1.4 warranty period;
  - 6.1.5 reporting requirements; and
  - 6.1.6 applicable Fees.
- 6.2 The Contractor grants to Finance a licence to include information about its Cloud Services, including Fees, specifications, logos and any relevant material provided to Finance, in the Service Catalogue.
- 6.3 Finance may as required:
  - 6.3.1 invite the Contractor (and other panellists on the Panel) to propose updates or additions to the Service Catalogue;
  - 6.3.2 conduct evaluation of any updates or additions to the Service Catalogue proposed by the Contractor (and other panellists on the Panel); and
  - 6.3.3 issue a revised Service Catalogue containing such updates (including deletion or addition of Cloud Services) as Finance determines, in its absolute discretion, to be appropriate.

- 6.4 Upon receipt of an invitation from Finance pursuant to clause 6.3.1, the Contractor (and other panellists on the Panel) may:
- 6.4.1 propose a price variation of any of the Fees included in the Service Catalogue;  
or
  - 6.4.2 propose an update or addition to the Cloud Services included in the Service Catalogue, or to the applicable specifications (subject to any restrictions included in the Service Catalogue in respect of maintaining the availability of Cloud Services for a particular period).
- 6.5 If, pursuant to clause 6.4, Finance receives a proposal from the Contractor to decrease any of the Fees included in the Service Catalogue, Finance will amend the Service Catalogue accordingly.
- 6.6 If, pursuant to clause 6.4, Finance receives a proposal from the Contractor to increase any of the Fees included in the Service Catalogue, it will assess that proposal and may:
- 6.6.1 decline to amend the Service Catalogue;
  - 6.6.2 amend the Service Catalogue as requested; or
  - 6.6.3 remove the relevant Cloud Service(s) to which the Fees relate from the Service Catalogue.
- 6.7 If, pursuant to clause 6.4, Finance receives a proposal from the Contractor to update or add to the Cloud Services or amend the specifications included in the Service Catalogue, it will assess that proposal and may:
- 6.7.1 agree to amend the Service Catalogue entirely or partly as requested; or
  - 6.7.2 decline to amend the Service Catalogue.
- 6.8 The Contractor may submit a proposal to vary the Service Catalogue at any time, but any such proposal will only be considered in accordance with clauses 6.4 to 6.7 and the Service Catalogue will be varied six monthly unless otherwise determined by Finance in its absolute discretion. Administration Fees will apply to new Cloud Services in accordance with clause 23.
- 6.9 The Contractor must, in response to any request from Finance or the Customer, identify any additional requirements such as other hardware, software, firmware, cables, manuals, accessories, training, or any other items that Customers would need to purchase to achieve full functionality of the Cloud Services referred to in the Service Catalogue and the Fees associated with those additional requirements.

## **7. SPECIALIST CLOUD SERVICES**

- 7.1 Without limiting specific provisions of this Head Agreement or a Contract, if Specialist Cloud Services are included in a Contract the Contractor must:
- 7.1.1 perform the Specialist Cloud Services to a high professional standard, in accordance with relevant best practice, including any Commonwealth, State and Territory and industry standards and guidelines specified in the Service Catalogue;

- 7.1.2 perform the Specialist Cloud Services to the satisfaction of the Customer and (if applicable) in a manner that meets or exceeds the Service Levels and other performance measures specified in the Service Catalogue or the Contract; and
- 7.1.3 comply with all Laws and industry codes relevant to the performance of the Specialist Cloud Services.
- 7.2 Where the Contract specifies particular Personnel, the Contractor agrees that those Personnel will undertake work in respect of the Specialist Cloud Services as set out in the Service Catalogue and in accordance with the terms of this Head Agreement and the Contract.
- 7.3 If the Personnel specified in the Contract are unable to perform the Specialist Cloud Services, the Contractor must Notify the Customer immediately.
- 7.4 The Customer may, at its absolute discretion, give Notice requiring the Contractor to remove Personnel from work in respect of the provision of the Specialist Cloud Services.
- 7.5 If clause 7.3 or 7.4 applies, the Contractor must provide replacement Personnel acceptable to the Customer at no additional cost and at the earliest opportunity.
- 7.6 If the Contractor is unable to provide acceptable replacement Personnel, the Customer may terminate the Contract.
- 8. ACCEPTANCE**
- 8.1 Each of the Cloud Services, including the Specialist Cloud Services and any hardware or software provided with the Cloud Services, is subject to Acceptance by the Customer.
- 8.2 The Contractor must promptly Notify the Customer when the Services are ready for Acceptance testing. The testing will be conducted by the Customer unless otherwise specified in a Contract. The Contractor must provide assistance with testing, at no cost, as reasonably requested by the Customer.
- 8.3 In the event that the Cloud Services which have been delivered do not conform to the Contract, or do not operate correctly in accordance with the applicable specifications in the Service Catalogue when delivered:
  - 8.3.1 the Customer may Notify the Contractor that some or all of the Cloud Services are not Accepted (along with the reasons for its rejection);
  - 8.3.2 the Contractor must, at its own cost, remedy the non Accepted Cloud Services to meet the requirements of the Contract and the Service Catalogue within 5 Business Days after the date of the rejection Notice (or such other time as agreed between the parties in writing); and
  - 8.3.3 allow the Customer to repeat the Acceptance tests for all or part of the Cloud Services.
- 8.4 If any part of the Cloud Services fails an Acceptance test on two or more occasions, the Customer may (in addition to its other remedies) terminate the Contract immediately by giving the Contractor written Notice.



## **9. REPORTING**

- 9.1 At no cost to Finance or any other Agency, the Contractor must provide Finance with the reports for each Cloud Service for which it is enrolled as set out in the Service Catalogue, in a format or via a tool as specified by Finance or the Customer, or as set out in a Contract, within 5 Business Days of the beginning of each month.
- 9.2 At a minimum, the reports must be provided monthly and include:
- 9.2.1 Tracking Number, details of the Customer Contracts for Cloud Services in the preceding calendar month, including Customer name, date of Contract and Fees;
  - 9.2.2 date of provision of access to Cloud Services, including any delays;
  - 9.2.3 status of outstanding Service Level issues for any Contract, including expected time to resolve; and
  - 9.2.4 if no actual consumption of services is made, a nil response will be required.
- 9.3 Copies of invoices and Contracts must be provided to Finance upon request to support the Contractor's reports.
- 9.4 The Contractor must promptly provide additional information in respect of this Head Agreement and any Contract as may reasonably be requested from time to time at no additional cost.
- 9.5 For bespoke reports specific to Finance's requirements, Intellectual Property Rights in reports provided under this Head Agreement will vest in Finance upon creation. Finance grants to the Contractor, perpetual, royalty free licence to use the Contractor Reports.

## **10. CONTRACT**

- 10.1 Finance makes no representations about whether any Contracts will be placed for Cloud Services and the Contractor is not appointed as the sole provider of the Cloud Services to any Agency.
- 10.2 An Agency or Finance may, by issuing to the Contractor a Request for Quote, invite the Contractor to submit a Quotation for specified Cloud Services.

The Contractor must obtain a Tracking Number from Finance and display this number in its response to a Quotation and any subsequent Contract.

- 10.3 The Contractor must provide a Quotation by the date that the Quotation is required as specified in the Request for Quote.
- 10.4 Fees quoted must not exceed the applicable Fee amounts specified in the Service Catalogue.
- 10.5 The Agency may accept or reject a Quotation in its absolute discretion and in accordance with the Commonwealth Procurement Rules.
- 10.6 If the Agency accepts a Quotation, the Agency may enter into a Contract with the Contractor for the supply of Cloud Services.

- 10.7 Each Contract forms a separate contract between the Customer and the Contractor and will take effect from the later of:
- 10.7.1 if the Customer wishes the Contract to be signed, the date of execution of the Contract by both parties; or
  - 10.7.2 for another date stipulated in the Contract.
- 10.8 Finance reserves the right to introduce electronic contracts at its absolute discretion.
- 10.9 The terms of each Contract include the terms of this Head Agreement.
- 10.10 Any changes to, or inconsistencies with, the Head Agreement in a Contract have no effect unless they:
- 10.10.1 are expressly included in the Contract; and
  - 10.10.2 are recorded as having been agreed by Finance.
- 10.11 The Customer is not liable to pay any amount for Cloud Services provided unless a Contract has been entered into by the Customer for those Cloud Services in accordance with this clause 10.
- 10.12 Unless a Contract is terminated earlier in accordance with this Head Agreement, the term of a Contract may continue beyond the expiry of this Head Agreement.
- 10.13 Despite the termination or expiry of this Head Agreement, the terms of the Head Agreement continue to apply to a Contract.

## **11. RESELLERS**

- 11.1 The Contractor is responsible for all aspects of the provision of Cloud Services under a Contract, irrespective of whether it is a reseller or an original owner or supplier of the Cloud Services.
- 11.2 The Contractor must ensure that the Customer (or any of its users) is not required to accept or comply with any usage or other terms in respect of the Cloud Services originating from any other owner or supplier of the Cloud Services.

## **12. CLOUD SERVICES**

- 12.1 The Contractor must only provide Cloud Services under the categories as specified in item 8 of Schedule 2 Head Agreement Details.
- 12.2 The Contractor must provide the Cloud Services in accordance with the terms of this Head Agreement for the period specified in a Contract.
- 12.3 The Contractor must ensure that the Cloud Services:
- 12.3.1 are provided in accordance with the Service Catalogue and the Contract;
  - 12.3.2 comply with any industry standards or international standards represented by the Contractor;
  - 12.3.3 meet or exceed the applicable Service Levels; and

- 12.3.4 are provided in accordance with any reasonable directions given by Finance or the Customer from time to time.
- 12.4 When providing development or design of Cloud Services, including templates and websites, the Contractor must liaise and cooperate with the Customer, including by performing such tests as the Customer may reasonably require, ensuring the Cloud Services meet the Customer's requirements.

### **13. RIGHTS IN CUSTOMER MATERIAL**

- 13.1 Except as provided for in the Service Catalogue or a Contract, the Customer is not required to provide any Customer Material to the Contractor to assist it to provide the Cloud Services. The Contractor is required to provide all resources or information needed to comply with a Contract.
- 13.2 To the extent that the Contractor needs to use or may access any of the Customer Material, for the purpose of performing its obligations under this Head Agreement, the Customer grants to the Contractor a world-wide, royalty-free, non-exclusive, non-transferable licence to use and communicate such Material solely for the purpose of providing the Cloud Services and subject to any restrictions notified by the Customer.
- 13.3 The Contractor must ensure that Customer Material supplied to it or hosted by it is used and hosted only for the purposes of performing its obligations under this Head Agreement and in accordance with any direction by the Customer.
- 13.4 Customer Material remains, at all times, the property of the Customer.
- 13.5 If a Customer provides the Contractor with Customer Material, the Contractor must not without the prior written approval of the Customer:
  - 13.5.1 modify that Customer Material other than for the purposes of the Contract; or
  - 13.5.2 destroy, or cause to be destroyed, any Customer Material in the care, custody or control of the Contractor.
- 13.6 The Contractor must:
  - 13.6.1 comply with the Customer's requirements for security;
  - 13.6.2 remove all Customer Material from the Cloud that is not required by the Contractor for the purpose of performing the Contractor's obligations under this Head Agreement; and
  - 13.6.3 at the Customer's request at any time, promptly return all Customer Material held or accessed by it, to the Customer, in a non-proprietary format that is readily usable by the Customer, or otherwise treat it as directed by the Customer.

### **14. SECURITY, DATA PROTECTION AND DATA MINING**

- 14.1 The Contractor must:
  - 14.1.1 ensure that Customer Material, in respect of which the Contractor has custody or control for purposes connected with a Contract, or which is accessed,

transmitted or stored using or on the Contractor's information systems or equipment under a Contract:

- 14.1.1.1 is protected at all times from unauthorised access, use or by a third party, and from misuse, damage or destruction by any person; and
- 14.1.1.2 has protective measures, including but not limited to administrative, physical, and technical safeguards, that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Customer Material;
- 14.1.2 maintain and provide to Finance and the Customer on request an audit log of access to Customer Material;
- 14.1.3 ensure that Finance and Customers are advised of remote access to Finance's or a Customer's systems and that remote access is strictly limited to access:
  - 14.1.3.1 approved by Finance or the Customer; and
  - 14.1.3.2 in accordance with this Head Agreement;
- 14.1.4 ensure that remote access does not damage, alter or destroy Finance or a Customer's systems;
- 14.1.5 ensure that Customer Material is not accessed from or stored outside Australia unless expressly permitted by the Customer;
- 14.1.6 ensure that if Customer Material is stored in or transferred to any location outside of Australia (including through the remote access or control of any server or other hardware or software) access is restricted to those Contractor Personnel with the appropriate authorisations who have a need for such access, and that access is limited to the minimum access necessary to enable the Contractor to comply with its obligations under a Contract;
- 14.1.7 comply with the Protective Security Policy Framework and any other reasonable security requirements set out in a Contract or given by the Customer from time to time regarding any aspect of security of, or access to, the Customer's information, material or premises;
- 14.1.8 when using or accessing Finance or Customer supplied premises or facilities comply with (and ensure its Personnel are aware of and comply with) all reasonable directions of Finance and the Customer and any security and safety requirements notified to the Contractor by Finance and the Customer;
- 14.1.9 Notify Finance and the Customer immediately (or as soon as practicable in the circumstances) in the event of any requests from foreign governments or agencies for access to any Customer Material (unless such notification is prohibited by law) and attempt to redirect any foreign government or agency requesting access to Customer Material to request the access directly from Finance and the Customer; and
- 14.1.10 inform the Customer, and when required, Finance, by telephone as soon as possible after it becomes aware of any Security Incident, and as soon as practicable (and at least within 5 Business Days) confirm the details by Notice

in writing. In the event of any Security Incident, the Contractor must comply with all directions of the Customer to resolve the incident, including in relation to:

- 14.1.10.1 Notifying the Australian Cyber Security Centre, or any other relevant body, as required by the Customer;
  - 14.1.10.2 obtaining evidence about how, when and by whom the Contractor's information system and/or the Customer Material has or may have been compromised, providing it to the Customer on request, and preserving and protecting that evidence for a period of up to 12 months;
  - 14.1.10.3 implementing any mitigation strategies to reduce the impact of the Security Incident or the likelihood or impact of any future similar incident; and
  - 14.1.10.4 preserving and protecting Customer Material (including as necessary reverting to any backup or alternative site or taking other action to recover Customer Material).
- 14.2 Unless authorised in writing by the Finance Representative or Customer Representative, the Contractor must not at any time conduct Data Mining activities in respect of the Cloud Services or any Customer Material, user material or information uploaded, accessed or manipulated in the Cloud Services by Finance or the Customer or its authorised users.
- 14.3 The prohibition on Data Mining applies even if a user is required to click through and accept the Contractor terms permitting the Contractor to conduct Data Mining on a user, or a collection of user accounts. Such terms have no effect whatsoever.
- 14.4 Subject to clause 14.2, if Data Mining is ordinarily conducted by the Contractor by means of an automated process the Contractor must disable it for the Cloud Services.
- 14.5 For the purposes of this clause 14, '**Data Mining**' means analysing or searching for patterns in data sets to extract information and transform it into an understandable structure, whether through automated or human means, and includes data dredging, data fishing and data snooping or similar methods.

**15. NOT USED**

**16. USAGE RIGHTS**

- 16.1 Subject to this clause 16, the Contractor grants to the Customer for the term of a Contract, in respect of the Cloud Services, an irrevocable right to:
- 16.1.1 use and access the Cloud Services:
    - 16.1.1.1 from the Customer's environment or Customer's system; and
    - 16.1.1.2 by any users (including employees, agents and contractors) authorised by the Customer;
  - 16.1.2 permit adaptation and configuration of the Cloud Services to the extent necessary to enable them to be used on the Customer's system;

- 16.1.3 test, evaluate and confirm the suitability (acceptance), compliance with Service Levels and operation of the Cloud Services; and
  - 16.1.4 assign the rights in clause 16.1 to other Agencies where those Agencies require the Cloud Services as a result of an Administrative Arrangements Order.
- 16.2 The usage rights in clause 16.1 apply to and for the term of any Contract created in accordance with this Head Agreement and continue for that term regardless of the expiry of this Head Agreement.
- 16.3 The rights in this clause 16 apply to the Customer's (and its users') use of the Cloud Services to the exclusion of any terms of conditions of use, restrictions or additional charges set out in any:
- 16.3.1 licensing or usage statement;
  - 16.3.2 shrink wrap arrangements;
  - 16.3.3 hyperlink terms; or
  - 16.3.4 click-wrap arrangements,
- wherever appearing, and whether or not user 'acceptance' is required or provided.
- 16.4 Where user 'acceptance' of such terms is necessary in order to access Cloud Services, such acceptance is deemed to be acceptance of the terms of the Contract, to the exclusion of all other terms, and does not create a separate contract with users or impose terms and conditions that are not included in the Contract.

## **17. INTELLECTUAL PROPERTY RIGHTS**

- 17.1 The Contractor grants the Customer all Intellectual Property Rights it needs to use the Cloud Services in accordance with a Contract (whether the Contractor or a third party owns those Intellectual Property Rights).
- 17.2 The Customer retains Intellectual Property Rights in data and Customer Material stored in the Cloud Services.
- 17.3 The Customer owns Intellectual Property Rights in any new Material developed for a Contract, from the date of creation, unless otherwise specified in a Contract.

## **18. CONTRACTOR REPRESENTATIONS AND AGREEMENTS**

- 18.1 The Contractor represents and agrees that:
  - 18.1.1 the Cloud Services will operate in accordance with the requirements of the Head Agreement, the Contract and the Service Catalogue, including any specifications and representations in those documents, and will be, under normal use, free from defects in design and workmanship;
  - 18.1.2 the use of any Material provided under this Head Agreement in accordance with this Head Agreement will not infringe any third party's Intellectual Property Rights or other third party restrictions on use;

- 18.1.3 there are no provisions in the Contractor's own contracts with its Key Service Partners, that if observed, would cause the Contractor not to comply, or be able to comply, with any requirement under this Head Agreement; and
- 18.1.4 none of its Personnel:
  - 18.1.4.1 have unlawfully entered or remain in Australia; or
  - 18.1.4.2 are working in Australia in breach of their visa conditions.
- 18.2 If, during the duration of this Head Agreement a representation and agreement in clause 18.1 is breached the Contractor must promptly:
  - 18.2.1 Notify Finance in writing of all details relating to why the representation and agreement is no longer accurate; and
  - 18.2.2 remedy the defect at the Contractor's cost or take any other action as directed by Finance.

## **19. PERFORMANCE ASSESSMENT AND MANAGEMENT**

- 19.1 The Contractor must implement and comply with its obligations in the performance management framework set out in the Head Agreement, Contracts and the Service Catalogue.
- 19.2 Finance may assess any Cloud Services specified in the Service Catalogue to verify that the Cloud Services are consistent with the Head Agreement or that they have been provided in accordance with any Contract.
- 19.3 Finance or a Customer may Notify the Contractor if it assesses the Contractor's performance of Cloud Services as not meeting the Service Levels or other requirements under this Head Agreement.
- 19.4 The Contractor must:
  - 19.4.1 cooperate with and facilitate (by providing access to the Cloud Services) any performance assessment conducted by Finance; and
  - 19.4.2 provide to Finance performance reports in accordance with the requirements of clause 9, a Contract or as reasonably requested by Finance.
- 19.5 The Contractor is not relieved of responsibility for the Cloud Services because of any approval or other comment on performance given by Finance under this Head Agreement.
- 19.6 When advised by Finance or a Customer or otherwise becoming aware of an error or a defect in the Cloud Services including any failure to meet a Service Level, the Contractor must promptly do all that is required, within 5 Business Days to ensure the Cloud Services meet the requirements of the Head Agreement or Contract including investigating the cause of the error or defect, minimising the impact on the performance of the Cloud Services and preventing the fault from recurring. The Contractor must Notify the Customer and Finance of the action taken by it under this clause including the outcome of any investigation.
- 19.7 If Finance or the Customer is not satisfied with the Contractor Representative's response to a failure to meet the Service Levels, the issue will be escalated to the Contractor Representative's Manager.

- 19.8 Finance reserves the right to suspend the Contractor from a category of Cloud Services or the Panel for a period of time, determined by Finance, if the performance of any Cloud Services does not meet the Service Levels or other requirements of this Head Agreement or a Contract.
- 19.9 Finance reserves the right to request a new Contractor Representative or Account Manager if the current incumbent's performance has not met any requirements of this Head Agreement or a Contract, including the Service Levels.

## **20. KEY SERVICE PARTNERS**

- 20.1 The Contractor must not enter into a Contract in relation to Cloud Services to be provided pursuant to this Head Agreement or Contract, during the Head Agreement Term with a proposed Key Service Partner that was not disclosed to Finance as a Key Service Partner prior to the Commencement Date unless the following conditions are satisfied:
- 20.1.1 the Contractor must give Finance at least 20 days prior written Notice of the proposed engagement of the Key Service Partner with details of the purpose of the proposed engagement;
  - 20.1.2 the Contract must only be entered into after Finance gives its written approval of the proposed engagement of the Key Service Partner, which will not be unreasonably withheld or delayed; and
  - 20.1.3 the Key Service Partner must not be named by the Workplace Gender Equality Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012* (Cth).
- 20.2 The Contractor must:
- 20.2.1 ensure that it has written consent of each Key Service Partner to the disclosure of the Key Service Partner's identity and Contract details as required for government purposes; and
  - 20.2.2 if requested by Finance, ensure that any Key Service Partner that is a subcontractor executes and delivers a Confidentiality Undertaking in favour of Finance or the nominated Customer.

## **21. CHANGES TO THE CLOUD SERVICES**

- 21.1 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 change or a suspension in respect of any one or more Cloud Services (or part of any one or more Cloud Services) to which the Contractor is enrolled if one or more of the following occurs:
- 21.1.1 Finance decides to add additional categories of Cloud Services to the Panel based on new technology offerings in the marketplace;
  - 21.1.2 Finance has received substantiated negative feedback from a Customer in respect of the performance of the Contractor; or
  - 21.1.3 Finance considers that the Contractor is not providing Cloud Services in accordance with any Contract and the Service Catalogue.



- 21.2 Finance has a right to terminate this Head Agreement in accordance with clause 37.
- 21.3 If Finance imposes a change or suspension in accordance with clause 21.1:
  - 21.3.1 Finance must Notify the Contractor of the reason for imposing the change or suspension;
  - 21.3.2 for a suspension, the following apply until the suspension is lifted in accordance with clause 21.4:
    - 21.3.2.1 the Contractor must promptly Notify Finance if it receives any Contract for the provision of the suspended Cloud Services;
    - 21.3.2.2 the Contractor must not enter a Contract with an Agency for the suspended Cloud Services;
    - 21.3.2.3 if the Contractor does enter into a Contract, it has no right to require payment from the Customer; and
    - 21.3.2.4 each party must continue to perform all of its other obligations under this Head Agreement and all existing Contracts. To avoid doubt, Agencies rights and obligations continue under existing Contracts.
- 21.4 Finance may at any time lift a suspension that it has imposed in accordance with clause 21.1 by issuing a Notice to the Contractor that the change 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.

## **22. DISENGAGEMENT**

- 22.1 The Contractor must take all actions that are reasonably necessary to ensure there is an efficient and effective disengagement from the Cloud Services and/or transfer to the Customer or its nominee when the provision of Cloud Services ends under a Contract, so as to cause minimum disruption and inconvenience to the Customer. Without prejudice to the generality of that obligation, the Contractor must:
  - 22.1.1 liaise with the Customer to plan and implement all necessary actions;
  - 22.1.2 comply with its security and data protection obligations in this Head Agreement and the Contract;
  - 22.1.3 transfer to the Customer or its nominee all Customer Material in a non-proprietary format that is readily usable by the Customer or its nominee and sufficient information to allow reading of, searching of, interpretation and processing of the Material by the Customer or its nominee; and
  - 22.1.4 remove from the Cloud Services all backed-up versions of the Customer Material.
- 22.2 If required, the Contractor must provide to the Customer such verification that the Customer or its nominee reasonably requires, verifying the Contractor's performance of its obligations under clause 22.1.

- 22.3 The Contractor must not destroy any Customer Material unless it has prior written approval of the Customer.

### **PART 3 - FINANCIAL PROVISIONS**

#### **23. ADMINISTRATION FEE**

- 23.1 The Contractor agrees to pay Finance a non-refundable fixed annual Administration Fee of A\$250 (GST exclusive) for each of the Contractor's Cloud Services which are included by Finance in the Service Catalogue. The Administration Fees will be charged with the applicable GST.

- 23.2 The annual Administration Fees will apply for each 12 month period of the Head Agreement Term, or part thereof, commencing on 1 April 2015. Each 12 month period commencing on 1 April is an **Administration Fee Period**.

- 23.3 Finance reserves the right to decide when to invoice the Administration Fees. Finance will calculate the Administration Fees based on the number of Cloud Services included in the Service Catalogue at the time of issue of the invoice, but:

23.3.1 Finance will also include Administration Fees for any Cloud Services which were previously included in the Service Catalogue during the Administration Fee Period but which were removed before issue of the invoice; and

23.3.2 if the number of Cloud Services included in the Service Catalogue increases during the Administration Fee Period, Finance may issue an additional invoice for Administration Fees for the additional Cloud Services; and

23.3.3 for clarity:

23.3.3.1 Administration Fees are not refundable if the number of Cloud Services included in the Service Catalogue decreases during the Administration Fee Period; and

23.3.3.2 the full amount of the Administration Fees are payable for each Administration Fee Period, even if this period is not a full 12 month period (that is, the amount of the Administration Fees will not be charged or refunded on a pro-rata basis).

- 23.4 The Contractor must pay any invoice issued by Finance in accordance with this clause 23 by the date specified on the invoice.

- 23.5 If the Contractor does not pay any invoice issued by Finance under this clause 23, Finance reserves the right to remove the Contractor's Cloud Service(s) from the Service Catalogue.

- 23.6 To the extent that the Contractor described any Cloud Service to broadly cover a number of individual services, Finance reserves the right to invoice the Contractor for Administration Fees for each of the individual services.

#### **24. PAYMENT FOR DELIVERABLES**

- 24.1 Subject to clause 8 of Schedule 4 SCHEDULE 4: and the Contractor meeting its obligations under a Contract, the Customer must pay the Contractor the Fees.

- 24.2 The Fees are payable on receipt of a correctly rendered invoice, 30 days in arrears, unless the Customer and the Contractor agree to alternative terms in a Contract.
- 24.3 The Contractor must not:
- 24.3.1 charge Fees or seek any other compensation for the development of Material if it has previously charged Fees under a Contract for the development of the same Material;
  - 24.3.2 charge Fees or obtain other compensation under this Head Agreement to develop Cloud Services (such as a template) if the Contractor has previously charged Fees under a Contract for the same task; or
  - 24.3.3 charge the Customer for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Fees.
- 24.4 The Contractor is entitled to charge Fees for any additional development work required to address the specific requirements of an Agency that are not met by the previous work, provided those Fees are specified in a Contract.
- 24.5 The Customer may, in respect of any amounts owing to it under clauses 23.4 and 24.9:
- 24.5.1 require the Contractor to pay the amount (and the Contractor must comply with the request);
  - 24.5.2 require the Contractor to adjust the next invoice; or
  - 24.5.3 set-off the amount against any amounts owing to the Contractor.
- 24.6 The Contractor must provide correctly rendered GST invoices to the Customer that includes the following details:
- 24.6.1 Contract number, name of the Customer, a description of the Cloud Services provided including the fees, for the relevant period or the achievement of the event to which the invoice relates; and
  - 24.6.2 any further information required by the Contract or reasonably requested by the Customer.
- 24.7 For the purposes of clause 24.6, an invoice is correctly rendered if:
- 24.7.1 It includes the relevant Tracking Number;
  - 24.7.2 it is correctly addressed and calculated in accordance with the applicable Contract;
  - 24.7.3 it relates only to Cloud Services that have been delivered in accordance with the applicable Contract; and
  - 24.7.4 it is a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

24.8 A Customer may withhold from any payment due to the Contractor, such amounts that the Customer deems reasonable or appropriate to protect it from loss because of any failure by the Contractor, in any material respect, to perform its obligations under the Contract, until such time as the Customer is satisfied that those obligations have been completed.

24.9 If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and may be offset against any amount subsequently due by the Customer to the Contractor. The Customer may at its sole discretion require that interest at the general interest rate charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) be paid on the overpaid amount until the amount is repaid to the Customer in full.

## 25. GST

25.1 In this clause 25, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ('**GST Act**') has the meaning given to it in that Act.

25.2 If a party (Contractor) makes a delivery under or in connection with a Contract in respect of which GST is payable, the Customer of the Cloud Services must pay to the Contractor, an additional amount equal to the GST payable on the Cloud Services ('**GST Amount**').

25.3 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 25.5.

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

25.5 If the GST payable by a Contractor on any supply made under or in connection with a Contract varies from the GST Amount paid or payable by the Customer under clause 25.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the Cloud Services, then the Contractor must provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Customer.

25.6 Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 25.2.

25.7 If an adjustment event occurs in relation to the Cloud Services, the Contractor must issue an adjustment note to the Customer in relation to that supply within 10 Business Days after becoming aware of the adjustment.

25.8 A party need not make a payment for a taxable supply made under or in connection with a Contract:

25.8.1 until it receives a tax invoice for the Cloud Services to which the payment relates; and

25.8.2 in the case of a tax invoice issued by the Contractor, the tax invoice complies with clause 24, unless any requirement of that clause is inconsistent with the GST Act.

## **26. TAXES, DUTIES AND GOVERNMENT CHARGES**

- 26.1 Except as expressly provided in this Head Agreement all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Head Agreement are to be borne by the Contractor.

## **PART 4 - INFORMATION MANAGEMENT**

### **27. CONFIDENTIALITY**

- 27.1 A party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party, unless the Confidential Information:
- 27.1.1 is disclosed to its Personnel only to the extent strictly necessary in order for it to manage and perform its obligations or to exercise or enforce its rights under this Head Agreement or a Contract;
  - 27.1.2 is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of activities related to the Head Agreement or a Contract;
  - 27.1.3 is disclosed within an Agency or to Finance (or another Agency), if this serves the Commonwealth's or the Agency's legitimate interests;
  - 27.1.4 is disclosed by an Agency to the responsible minister and his or her advisers;
  - 27.1.5 is disclosed by an Agency 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 Agency is a State or Territory Agency, or otherwise to meet public accountability obligations;
  - 27.1.6 disclosure is authorised or required by Law, including under this Contract, under a licence or otherwise, to be disclosed; or
  - 27.1.7 is in the public domain other than as a result of a breach of this clause 27.
- 27.2 Where a party discloses Confidential Information to another person:
- 27.2.1 if the disclosure is under clause 27.1.1 or 27.1.2, the party making the disclosure must, if required by the other party, obtain from the recipient a properly executed Confidentiality Undertaking (subject to clause 27.3); and
  - 27.2.2 if the disclosure is under clauses 27.1.3, 27.1.4, 27.1.5 or 27.1.6, the party making the disclosure must inform the recipient of the confidential nature of the information.
- 27.3 A Confidentiality Undertaking will not be required under clause 27.2.1 if the party making the disclosure confirms to the other party in writing that the recipient is an individual who is bound by obligations in their employment or services contract not to disclose the Confidential Information. The party making the disclosure must use all reasonable endeavours to enforce those obligations.

- 27.4 The Contractor must not make a public announcement about the Head Agreement or a Contract, or any transaction contemplated by the Head Agreement or a Contract, unless it has:
- 27.4.1 Finance's written agreement if the announcement concerns the Head Agreement; and
  - 27.4.2 the Customer's written agreement if the announcement concerns a Contract,
- except if the public announcement is required by Law or a regulatory body (including a relevant stock exchange).
- 27.5 If the Contractor is required by Law or a regulatory body to make a public announcement in connection with:
- 27.5.1 the Head Agreement or any Contract; or
  - 27.5.2 any transaction contemplated by the Head Agreement or a Contract,
- the Contractor must:
- 27.5.3 limit the public announcement to the extent required by the relevant Law or regulatory body;
  - 27.5.4 to the extent practicable, first consult with and take into account the reasonable requirements of Finance and the Customer (as applicable); and
  - 27.5.5 not include or disclose the Customer's name, logo or identify any information, including in any list of the Contractor's customers, online or informational materials unless otherwise authorised in writing by the Customer.
- 27.6 Nothing in clauses 27.4 to 27.5 prohibits Finance or a Customer from disclosing to Finance Personnel or Customer Personnel, or the Contractor from disclosing to Contractor Personnel, the fact of the Head Agreement or any Contract and the subject matter of those agreements, provided that the confidentiality obligations set out in this clause 27 are complied with.

## **28. PROTECTION OF PERSONAL INFORMATION**

- 28.1 This clause 28 applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Cloud Services. In this clause 28, **'Personal Information'**, **'Approved Privacy Code'** and **'Australian Privacy Principles'** have the meaning given to those terms in the *Privacy Act 1988* (Cth).
- 28.2 The Contractor must:
- 28.2.1 not breach any privacy laws in its collection, use, storage or disclosure of data;
  - 28.2.2 use or disclose Personal Information obtained during the course of performing this Head Agreement and any Contract only for the purposes of this Head Agreement and the Contract;
  - 28.2.3 carry out and discharge the obligations contained in the Australian Privacy Principles as if it were an agency under the *Privacy Act 1988* (Cth);

- 28.2.4 not use or disclose Personal Information or engage in an act or practice that would breach a registered Approved Privacy Code that is applicable to the Contractor; and
- 28.2.5 assist the Commonwealth to meet its obligations in relation to Personal Information collected, used or disclosed in connection with the Cloud Services.

## **PART 5 - RISK MANAGEMENT**

### **29. INDEMNITIES**

- 29.1 The Contractor indemnifies Finance, any Customer and their Personnel ('**Indemnified Parties**') in respect of any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment (including legal expenses on a solicitor own client basis) which any of the Indemnified Parties pays, suffers, incurs or for which it is liable in connection with:
  - 29.1.1 any breach of this Head Agreement or a Contract by the Contractor;
  - 29.1.2 any infringement by the Contractor of the Intellectual Property Rights of, or usage restrictions imposed by, a third party; and
  - 29.1.3 any negligent, unlawful, illegal, fraudulent or dishonest act, error or omission of the Contractor and its Personnel in the provision of the Cloud Services.
- 29.2 The indemnity in clause 29.1 will be reduced proportionally to the extent that the Indemnified Parties caused or contributed to the breach, error or omission, or improperly and unnecessarily incurred any such claims, actions, damages, losses, liabilities, costs, charges, expenses, outgoings or payments.
- 29.3 The Indemnified Parties must take all reasonable steps to mitigate their losses which may be subject to a claim for payment under clause 29.1.
- 29.4 Finance or a Customer may enforce on behalf of its Personnel the indemnity in clause 29.1.
- 29.5 In the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of Finance, it must comply at all times with government policy and obligations relevant to the conduct of the litigation as notified by Finance.

### **30. LIMITATIONS OF LIABILITY**

- 30.1 The parties agree that the Contractor's maximum liability to Finance and Customers under each Contract entered into under this Head Agreement is limited to the amount set out in the applicable Contract.
- 30.2 The limit on liability under clause 30.1 does not apply in relation to liability for:
  - 30.2.1 personal injury (including sickness or death);
  - 30.2.2 loss, or damage to tangible property;
  - 30.2.3 an infringement of third party Intellectual Property Rights;
  - 30.2.4 a breach of any obligation of confidentiality, the security obligation in clause 14 or privacy;

- 30.2.5 malicious, unlawful or illegal acts or conduct; or
- 30.2.6 any conduct that would amount to repudiation.

### **31. CONFLICT OF INTEREST**

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

### **32. INSURANCE**

- 32.1 For every Contract, the Contractor must at all times have and maintain valid and enforceable insurance policies in any one or more of the following categories, and for the amounts per occurrence, as specified in the Contract:
  - 32.1.1 property and public liability insurance;
  - 32.1.2 either professional indemnity or (if approved by the Customer) errors and omissions;
  - 32.1.3 product liability insurance;
  - 32.1.4 workers' compensation as required by law; and
  - 32.1.5 special risks insurance.
- 32.2 The insurance in clause 32.1.2 must either:
  - 32.2.1 be held for 7 years following the expiry or termination of the Contract; or
  - 32.2.2 be held for the term of the Contract, but only if the insurance policy also covers any claim made up to 7 years after the expiry or termination of the Contract which arises from or relates to events that occurred during the Contract term (even if the insurance policy has expired or been terminated when the claim is made).
- 32.3 The Contractor must, on request by Finance or the Customer, provide to Finance or the Customer, within 5 Business Days, proof of the currency of the required insurances including:
  - 32.3.1 an insurance certificate certifying that the insurance required by this clause 32 is in force; and
  - 32.3.2 copies of the policies of insurance or at a minimum, details of any exclusions and other information about the required insurances as reasonably requested by Finance or a Customer.



### **33. GUARANTEES**

33.1 If required by Finance, the Contractor must provide Finance within the timeframe specified by Finance with an executed:

33.1.1 Performance Guarantee in a form acceptable to Finance; and/or

33.1.2 Unconditional Financial Undertaking in a form acceptable to Finance,  
for the benefit of Finance and any Customer 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 Performance Guarantees and Unconditional Financial Undertakings will be taken out at the Head Agreement rather than Contract level.

33.2 Finance may require the Contractor to increase or reduce the amount of the Unconditional Financial Undertaking from time to time. The Contractor must comply with any such request.

33.3 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 of any Performance Guarantee and/or Unconditional Financial Undertaking (at Finance's absolute discretion) without Notice to the Contractor.

33.4 If Finance calls on an Unconditional Financial Undertaking under clause 33.3, 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 5 Business Days after the date of the Notice.

33.5 All costs incurred in obtaining and maintaining the required security will be met by the Contractor.

### **34. ACCOUNTS, BOOKS AND RECORDS**

34.1 The Contractor must keep, maintain and audit adequate accounts, books and records, in sufficient detail to enable the amounts payable by the Customer under this Head Agreement to be determined.

### **35. AUDIT AND ACCESS**

35.1 Finance in respect of the Head Agreement or Contract, and the Customer in respect of the Contract to which it is a party, or a person or organisation nominated by Finance or the Customer, as applicable, may conduct audits relevant to the performance of the Contractor's obligations under the Head Agreement or Contract at any time.

35.2 Audits may be conducted if they relate to this Head Agreement or Contract of:

35.2.1 the Contractor's operational practices and procedures as they relate, including security procedures;

- 35.2.2 the accuracy of the Contractor's invoices and reports in relation to the provision of Cloud Services;
  - 35.2.3 the Contractor's compliance with its confidentiality, privacy and security and other obligations;
  - 35.2.4 Material (including books and records) in the possession of the Contractor relevant to the Cloud Services; and
  - 35.2.5 any other matters reasonably determined by Finance or the Customer to be relevant to the Cloud Services.
- 35.3 Finance in respect of the Head Agreement or Contract, and the Customer in respect of a Contract to which it is a party, or a person nominated by Finance or the Customer, as applicable, may, at reasonable times and on giving reasonable Notice to the Contractor:
- 35.3.1 access the premises of the Contractor to the extent relevant to the performance of the Contract;
  - 35.3.2 require the Contractor to produce for access by the Customer in Australia; and
  - 35.3.3 inspect and copy relevant documents, books and records, however stored, in the possession, custody or control of the Contractor or its Personnel.
- 35.4 The Contractor must comply with any request from Finance or the Customer, as applicable, for the Contractor to:
- 35.4.1 give Finance or the Customer, or their nominee, copies of records and information in a data format and storage medium accessible by Finance or the Customer by use of the Customer's existing computer hardware and software or other facilities; and
  - 35.4.2 provide assistance in respect of any inquiry into or concerning the Head Agreement or Contract. For this purpose, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to Finance or the Customer's organisation), any request for information directed to Finance or the Customer, and any inquiry conducted by Parliament or any Parliamentary committee.
- 35.5 The Contractor must provide access to its computer hardware and software in Australia to the extent necessary for Finance or the Customer to exercise its rights under this clause 35, and provide Finance or the Customer, or their nominee, with any reasonable assistance requested by Finance or the Customer to access that hardware and software.
- 35.6 Finance and the Customer must use reasonable endeavours to ensure that:
- 35.6.1 audits are performed pursuant to clause 35.1;
  - 35.6.2 they exercise the general rights granted by clauses 35.1, 35.2 and 35.3; and
  - 35.6.3 they do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under the Head Agreement or Contract.
- 35.7 Each party must bear its own costs of all inspections, access and audits.

- 35.8 The rights of Finance and the Customer under clauses 35.3 and 35.4 apply equally to the Auditor-General or a delegate of the Auditor-General, the Information Commissioner or a delegate of the Information Commissioner, the Privacy Commissioner or a delegate of the Privacy Commissioner and the Ombudsman or a delegate of the Ombudsman for the purpose of performing the Auditor-General's, the Information Commissioner's, the Privacy Commissioner's or Ombudsman's statutory functions or powers or, if the Customer is a State or Territory Agency, to the equivalent office holders in that State or Territory (each an '**Authorised Investigator**').
- 35.9 The Contractor must do all things necessary to comply with the requirements of an Authorised Investigator, notified under clauses 35.1 and 35.2, provided such requirements are legally enforceable and within the power of the Authorised Investigator.
- 35.10 Nothing in the Head Agreement or any Contract reduces, limits or restricts in any way any function, power, right or entitlement of an Authorised Investigator. The rights of Finance and the Customer under this clause 35 are in addition to any other power, right or entitlement of an Authorised Investigator.
- 35.11 The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with the Head Agreement or Contract.
- 35.12 The Contractor must ensure that any subcontract entered into for the purpose of the Head Agreement or Contract contains an equivalent clause granting the rights specified in this clause 35.
- 35.13 The Contractor must promptly take, at no additional cost to Finance or the Customer, 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 the Head Agreement or Contract, including the way the Contractor has:
- 35.13.1 supplied any Cloud Service; or
  - 35.13.2 calculated Fees, or any other amounts or fees billed to the Customer.

## **36. DISPUTE RESOLUTION**

- 36.1 If a dispute ('**Dispute**'), arises in relation to the conduct of this Head Agreement or any Contract a party must comply with this clause 36, before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). If a party has sought or obtained any urgent interlocutory relief that party must then follow this clause 36.
- 36.2 A Party claiming a Dispute has arisen must give the other parties to the Dispute Notice setting out details of the Dispute.
- 36.3 During the 10 Business Days after a Notice is given under clause 36.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute. If the parties cannot resolve the Dispute within that period or such longer period that they may agree to, they must refer the Dispute to a mediator (or if the dispute is solely in relation to a factual issue and not, for example, to the interpretation of this Head Agreement or a Contract, to an expert) if one of them requests.

- 36.4 Despite the existence of a Dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform their obligations under this Head Agreement and any Contracts.
- 36.5 If the Parties to the Dispute cannot agree on an expert or mediator within 5 Business Days after a request under clause 36.3, Finance will appoint an expert or mediator, as applicable.
- 36.6 The Parties agree to be bound by the determinations of the expert appointed under clauses 36.3 and 36.4 or 36.5.
- 36.7 The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 15 Business Days of the request for mediation in clause 36.3. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.
- 36.8 Any information or documents disclosed by a party under this clause 36:
- 36.8.1 must be kept confidential; and
  - 36.8.2 may only be used to attempt to resolve the Dispute.
- 36.9 Each Party to a Dispute must pay its own costs of complying with this clause 36. The parties to the Dispute must equally pay the costs of any expert or mediator.
- 36.10 A party to a Dispute may terminate the dispute resolution process by giving Notice to the other party after it has complied with clauses 36.1 to 36.7. Clauses 36.8 and 36.9 survive termination of the dispute resolution process.
- 36.11 If a party to a Dispute breaches clauses 36.1 to 36.10, the other party does not have to comply with those clauses in relation to the Dispute.
- 36.12 This clause 36 does not apply to any action undertaken by either party under, or purportedly under clause 37.

## **37. TERMINATION**

- 37.1 Finance or a Customer may, at any time, by giving not less than 7 Business Days Notice to the Contractor, terminate this Head Agreement or a Contract or reduce the scope of the Cloud Services.
- 37.2 If this Head Agreement or a Contract is terminated under clause 37.1, Finance or the Customer is not liable for any costs incurred by the Contractor and which are directly attributable to the termination. No sum in respect of loss of profit is payable under this clause.
- 37.3 Finance is not liable for any costs whatsoever in respect of a Contract(s) between a Contractor and a Customer if a Customer chooses to terminate a Contract(s) (for whatever reason) before or after Finance terminates the Head Agreement for convenience.
- 37.4 Without limiting any other rights or remedies Finance or a Customer may have against the Contractor arising out of or in connection with this Head Agreement or a Contract, Finance may terminate this Head Agreement or a Customer may terminate a Contract effective immediately by giving Notice to the Contractor if:

- 37.4.1 the Contractor breaches a material provision where that breach is not capable of remedy;
  - 37.4.2 the Contractor does not comply with an obligation in clause 18.2.1 or clause 18.2.2;
  - 37.4.3 the Contractor breaches any provision and fails to remedy the breach within 10 Business Days or such longer period as may be specified in the Notice after receiving Notice requiring it to do so;
  - 37.4.4 the Contractor would incur liability which but for clause 30 would exceed the limitation amount set out in this Head Agreement or the Contract; or
  - 37.4.5 an event specified in clause 37.5 happens to the Contractor.
- 37.5 The Contractor must Notify Finance and any Customers promptly if:
- 37.5.1 there is a change in Control of the Contractor;
  - 37.5.2 the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
  - 37.5.3 the Contractor ceases to carry on business;
  - 37.5.4 the Contractor ceases to be able to pay its debts as they become due;
  - 37.5.5 the Contractor being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed under *Corporations Act 2001* (Cth);
  - 37.5.6 the Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
  - 37.5.7 where the Contractor is a partnership, any step is taken to dissolve that partnership.
- 37.6 The following clauses survive the expiry or termination of the Head Agreement or any Contract: 14 (Security, Data Protection and Data Mining), 17 (Intellectual Property Rights), 18 (Contractor Representations and Agreements), 22 (Disengagement), 27 (Confidentiality), 29 (Indemnities), 30 (Limitations of Liability), 32 (Insurance), 34 (Accounts, Books and Records), 35 (Audit and Access) and Schedule 4SCHEDULE 4: – Commonwealth Policy
- 37.7 Expiry or termination of the Head Agreement, or a Contract, does not affect any accrued rights or remedies of a party.

## **PART 6 - LAW AND POLICY**

### **38. LAWS AND POLICIES**

- 38.1 The Contractor must, in performing its obligations under this Head Agreement, comply with all applicable Laws and Commonwealth policy, including but not limited to those set out in Schedule 4SCHEDULE 4: and as notified to the Contractor by Finance or the Customer from time to time.

## **PART 7 - MISCELLANEOUS**

### **39. HEAD AGREEMENT ADMINISTRATION**

39.1 The Contractor Representative is responsible for administration of this Head Agreement on behalf of the Contractor and must:

39.1.1 assign to Finance an Account Manager, listed in the Head Agreement Details, to assist with day to day activities in relation to the management of the Head Agreement and any Contracts;

39.1.2 be able to answer enquiries, queries or requests for quotation for Cloud Services;

39.1.3 be contactable within Business Hours; and

39.1.4 ensure that their contact details are accurate and up to date at all times.

39.2 The Contractor Representative must have sufficient authority within the Contractor's organisation to be able to resolve any issues that arise, in a prompt and effective manner.

39.3 The Contractor Representative is the person identified in Item 2 of Schedule 2 SCHEDULE 2: or, for particular Cloud Services, in a Contract, or their nominee.

39.4 Finance or the applicable Customer may request an alternate Account Manager and the Contractor must nominate an alternative Contractor Representative when requested.

39.5 The Customer Representative is responsible for administration of any Contract to which the Customer is a party on behalf of the Customer. The Customer Representative is the only person authorised to agree to changes to a Contract.

39.6 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.

39.7 The Finance Representative will be nominated by Notice to the Contractor from time to time and at the Commencement Date:

Director, ICT Strategic Sourcing Branch  
Department of Finance  
One Canberra Avenue  
Forrest ACT 2603

Email: [ICTProcurement@finance.gov.au](mailto:ICTProcurement@finance.gov.au)

39.8 The Customer Representative will be identified in the relevant Contract.

39.9 The Contractor Representative, the Customer Representative and the Finance Representative may each delegate their functions, or authorise that their functions be carried out on their behalf. The Contractor, Customer or Finance, as appropriate, must Notify the other party of any such delegation or authorisation.

- 39.10 Any oral directions given by a party that, in the other party's opinion will have an impact on scope, costs, timing or resources relevant to the Head Agreement or a Contract, must be confirmed by Notice from the party's Representative in accordance with the Head Agreement or a Contract, within a reasonable period.
- 39.11 Finance may need to escalate issues where there is an insufficient response from the Account Manager or Contractor Representative. In this case, Finance may escalate to the Contractor Representative's Manager.
- 39.12 The Finance Representative for escalation is:

Assistant Secretary, ICT Strategic Sourcing Branch  
Department of Finance  
One Canberra Avenue  
Forrest ACT 2603

Email: [ICTProcurement@finance.gov.au](mailto:ICTProcurement@finance.gov.au)

- 39.13 The parties must cooperate in performing their respective obligations under the Head Agreement in an electronic environment. If Finance implements electronic systems to manage processes and procedures for quoting, Contracts and invoicing, the Contractor must utilise that electronic system as directed.

#### **40. NOTICES**

- 40.1 A Notice must be:

- 40.1.1 in writing, in English, and signed by a person duly authorised by the sender; and
- 40.1.2 hand delivered or sent by prepaid post or facsimile or electronic mail to the recipient's address for Notices specified in Head Agreement Details to this Head Agreement.

- 40.2 A Notice given in accordance with this clause 40 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- 40.2.1 if hand delivered, on delivery;
- 40.2.2 if sent by prepaid post, on the second Business Day after the date of posting (or on the 7th Business Day after the date of posting if posted to or from a place outside Australia);
- 40.2.3 if sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; and
- 40.2.4 if sent by electronic mail, on the day of dispatch providing the sender receives an acknowledgement or read receipt to the correct email address from the sender's machine.

- 40.3 If any Notice is received on a day that is not a Business Day, or if on a Business Day, after 5pm on that day, it is to be treated as having been given or made at the beginning of the next Business Day.

- 40.4 Clause 40.1 applies without limitation to establishment and variation of a Contract.

## **41. VARIATIONS**

- 41.1 No variation of this Head Agreement will be binding on the parties unless it is in writing and signed by both the Contractor and Finance.
- 41.2 If the Contractor proposes to vary this Head Agreement it must provide Finance with a draft Change Proposal Deed setting out the detail of the proposed changes and specifying the reasons for the proposed variation and its likely effect on the Head Agreement.
- 41.3 If Finance proposes to vary this Head Agreement it may:
  - 41.3.1 request the Contractor to complete a Change Proposal Deed and the Contractor must promptly do so; or
  - 41.3.2 provide the Contractor with a Change Proposal Deed setting out the detail of the proposed changes and the reasons for the proposed variation.
- 41.4 Finance must consider, but may in its sole and absolute discretion execute or refuse to execute, any Change Proposal Deed provided by the Contractor pursuant to clauses 41.2 and 41.3.1.
- 41.5 Variations to the Head Agreement do not affect Contracts existing at the time of the variation, and will only affect future Contracts, unless otherwise agreed by the Customer and the Contractor.
- 41.6 No variation of a Contract will be binding on the parties unless it is in writing and signed by both the Contractor and the Customer.
- 41.7 If the Contractor proposes to vary a Contract it must provide the Customer with a draft Change Proposal Deed setting out the detail of the proposed changes and specifying the reasons for the proposed variation and its likely effect on the Contract.
- 41.8 If the Customer proposes to vary the Contract it may:
  - 41.8.1 request the Contractor to complete a Change Proposal Deed and the Contractor must promptly do so; or
  - 41.8.2 provide the Contractor with a Change Proposal Deed setting out the detail of the proposed changes and the reasons for the proposed variation.
- 41.9 Variations to a Contract that affect the terms of the Head Agreement, as included in the Contract, are subject to clause 10.10.
- 41.10 The Customer must consider, but may in its sole and absolute discretion execute or refuse to execute, any Change Proposal Deed provided by the Contractor pursuant to clauses 41.7 and 41.8.1.
- 41.11 Finance or the Customer (as relevant) is not liable for the cost of any additional work undertaken or expenditure incurred by the Contractor pursuant to a variation of this Head Agreement or any Contract unless such variation has been effected in accordance with this clause 41.



## **42. OTHER MISCELLANEOUS**

- 42.1 This Head Agreement records the entire agreement between the parties in relation to its subject matter and supersedes any prior negotiations and communications between the parties in connection with its subject matter, whether written or oral.
- 42.2 Except where this Head Agreement expressly states otherwise, Finance or a Customer may, in its discretion, give conditionally or unconditionally or withhold any approval or consent.
- 42.3 A Contractor may only assign its rights or novate its rights and obligations under this Head Agreement or a Contract with the prior written consent of Finance or the Customer.
- 42.4 This Head Agreement may be executed in counterparts. All executed counterparts constitute one document.
- 42.5 Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Head Agreement and any transaction contemplated by it.
- 42.6 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 this Head Agreement continue in force.
- 42.7 Waiver of any provision of or right under this Head Agreement:
- 42.7.1 must be in writing signed by the party entitled to the benefit of that provision or right; and
- 42.7.2 is effective only to the extent set out in any written waiver.
- 42.8 This Head Agreement is governed by the Law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

**EXECUTED AND DELIVERED AS A DEED:**

**DATE:**

Executed and delivered as a deed for and on behalf of the **Department of Finance representing the Commonwealth of Australia 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 and delivered as a deed by **[INSERT COMPANY NAME] ABN [INSERT]** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the *Corporations Act 2001*:

In the presence of:

.....  
Signature of director/company secretary

.....  
Signature of director

.....  
Name of director/company secretary (print)

.....  
Name of director (print)

.....  
Date

.....  
Date

**[OR]**

Executed and delivered as a deed for and on behalf of **[INSERT COMPANY NAME] ABN [INSERT]** by its duly authorised representative:

In the presence of:

.....  
Signature of authorised representative

.....  
Signature of witness

.....  
Name and position of authorised representative (print)

.....  
Name of witness (print)

.....  
Date

.....  
Date

## SCHEDULE 1: HEAD AGREEMENT GLOSSARY

### 1. HEAD AGREEMENT GLOSSARY

1.1 In this Head Agreement, except where the contrary intention is expressed, the following provisions apply:

1.1.1 the singular includes the plural and vice versa, and a gender includes other genders;

1.1.2 another grammatical form of a defined word or expression has a corresponding meaning;

1.1.3 a reference to a document or instrument including any referred to by a web address includes the document or instrument as novated, altered, supplemented or replaced including at a new web address from time to time;

1.1.4 a reference to A\$, \$A, AUD, dollar or \$ is to Australian currency;

1.1.5 a reference to time is to the time in the place where the obligation is to be performed;

1.1.6 a reference to a party is to a party to this Head Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;

1.1.7 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;

1.1.8 the meaning of general words is not limited by specific examples and the word 'includes' in any form is not a word of limitation;

1.1.9 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 it; and

1.1.10 if a day on or by which an obligation must be performed is not a Business Day, the obligation must be performed on or by the next Business Day.

1.2 In this Head Agreement, the following definitions apply:

**'Acceptance'** means signification by the Customer that, to the extent it can be reasonably determined at that time by the conduct of Acceptance testing, the specified Cloud Service(s) provided by the Contractor meet the applicable Acceptance criteria. **'Accept'** and **'Accepted'** have corresponding meanings;

**'Account Manager'** means the person identified in Item 7 of Head Agreement Details to assist with the administration of this Head Agreement in consultation with the Contractor Representative;

**'Administrative Arrangements Order'** means a ministerial order that administrative functions be allocated or reallocated between various Agencies as specified in the order, or any replacement order;

**'Administrator'** means a person responsible for carrying out the administration of a business or organisation;

**'Administration Fee Period'** means each 12 month period commencing on 1 April;

**'Agency'** means:

- (a) all entities or bodies described in the *Public Governance Performance and Accountability Act 2013* (Cth);
- (b) any other body governed by the Governor-General or State Governor or by a Minister of State of the Commonwealth or a State or Territory including departments of State or Territory Governments; and
- (c) any other body over which the Commonwealth or a State or Territory exercises control.

Where the context requires, a reference to an Agency is a reference to the Commonwealth, State or Territory (as applicable) as represented by that Agency;

**'Agreed Terms'** means clauses 1 to 42 of this Head Agreement;

**'Application Deployment'** means a Category under PaaS which includes development and testing of services where no applications are provided as part of the Service;

**'Associate Consultant'** means a consultant at the beginning of their consulting career who will typically do work to support the Consultants and Senior Consultants. Associate Consultants may perform work which is sometimes complex and non-routine; however this is generally performed under supervision. It is expected that an associate consultant will need to seek guidance when any unforeseen problems arise;

**'Authorised Personnel'** means the office holders and their delegates who have a legislative responsibility to investigate, monitor or audit the affairs of Agencies, including the Commonwealth Ombudsman, Auditor-General and Privacy Commissioner and their equivalent State and Territory office holders;

**'Broad Network Access'** means capabilities which are available over the network and accessed through standard mechanisms that promote use by heterogeneous thin or thick client platforms (e.g., mobile phones, tablets, laptops, and workstations);

**'Business Day'** means any day that is not a Saturday, Sunday, public holiday in the Australian Capital Territory or a national public holiday where a 'national public holiday' is a public service holiday throughout Australia promulgated in the Commonwealth of Australia Gazette;

**'Business Hours'** means from 8.00am to 6.00pm on a Business Day at the place where the Cloud Services are to be provided (which will be deemed to be the place where the Customer accesses the Cloud Services);

**'Category (or Categories)'** means the division of Cloud Services into classes with particular shared characteristics. Categories include, but are not limited to Compute, Storage, Web Hosting and Application Deployment;

**'Change Proposal Deed'** means the deed for varying the Head Agreement or a Contract, as set out in Schedule 5 to this Head Agreement;

**'Cloud'** means a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g. networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction. Cloud should exhibit the five Essential Characteristics as per the NIST Special Publication 800-145;

**'Cloud Services'** means any services, Material or other item to be supplied by the Contractor under the Contract;

**'Commencement Date'** means as the context requires, either the date on which this Head Agreement or a Contract is signed by the parties, or if signed on separate days, the date of the last signature;

**'Commonwealth'** means the Commonwealth of Australia;

**'Community Cloud'** refers to cloud infrastructure provisioned for exclusive use by a specific community of consumers from organisations that have shared concerns (e.g. mission, security requirements, policy, and compliance considerations). It may be owned, managed, and operated by one or more of the organisations in the community, a third party, or some combination of them, and it may exist on or off premises;

**'Compute'** means a Category under IaaS which includes:

- Virtual machines; and
- CPU and memory resources;

**'Confidential Information'** means information that is by its nature confidential and:

- (a) a party knows or ought to know is confidential; or
- (b) is designated by the Commonwealth as confidential,

but does not include information that:

- (c) is or becomes public knowledge other than by breach of this Head Agreement or by any other unlawful means;
- (d) is in the possession of that person without restriction in relation to disclosure before the date of receipt; or
- (e) has been independently developed or acquired by that person;

**'Confidentiality Undertaking'** means a properly executed deed in a form acceptable to Finance or the Customer, as applicable (or, for the purposes of clause 27.2.1, in a form acceptable to the Contractor);

**'Conflict of Interest'** means any actual or perceived conflict between the duty of the Contractor to Finance or a Customer and either:

- (a) the Contractor's own interests; or
- (b) the Contractor's duty to another entity;

**'Consultant'** refers to Personnel possessing a specific domain of expertise. A Consultant may perform both routine and non-routine tasks.

'**Contract**' means a contract entered into under this Head Agreement between the Customer and the Contractor in the form of Schedule 3;

'**Contractor**' means the party specified in Item 1 of the Head Agreement Details;

'**Contractor Representative**' means the person identified in Item 2 of the Head Agreement Details or, for particular Cloud Services, in a Contract, or their nominee;

'**Control**' of a corporation or other body means the power to determine the outcome of decisions about the financial and operating policies of that corporation or body or the membership of the majority of the board of directors (or members of a governing body having functions similar to a board of directors) of that corporation or body;

'**Controller**' means a person or thing that directs or regulates something;

'**Customer**' means any Agency that has entered into a Contract under this Head Agreement with a Contractor;

'**Customer Material**' means any Material provided to or developed, accessible, stored or hosted by the Contractor in connection with this Head Agreement or a Contract;

'**Customer Relationship Management**' refers to a Category under SaaS which includes:

- Accounts management;
- Contract management;
- Customer service (e.g. help desk, satisfaction survey);
- Sales planning (e.g. sales goals setting, forecasting);
- Sales quotations (e.g. quote generation); and
- Task and activity management (e.g. to-do-list, follow-up activities);

'**Customer Representative**' means the person identified as such in the Contract;

'**Dispute**' means a disagreement between parties.

'**Enterprise Resource Planning (ERP)**' refers to a Category under SaaS which includes:

- Accounting;
- Human resources management;
- Procurement processing;
- Supply chain management;
- Project management;
- Inventory management; and
- Contract management.

'**Essential Characteristics of Cloud Services**' include:

- On-demand Self-Service;
- Broad Network Access;
- Resource Pooling;
- Rapid Elasticity; and
- Measured Service;

'**Fees**' means the fees payable (in AUD) to the Contractor under this Head Agreement as set out in the Service Catalogue;

**'Finance'** means the Australian Government Department of Finance (ABN 61 970 632 495) or such other Agency to which responsibility for the operations of this Head Agreement is transferred through machinery of government changes from time to time;

**'Finance Representative'** means the person identified in Item 3 of the Head Agreement Details or (for a particular Contract) the Contract, or their nominee;

**'GST'** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**'Head Agreement'** means this deed between Finance and the Contractor, as amended from time to time, and includes its Schedules and any attachments;

**'Head Agreement Details'** means the details set out in Schedule 2 SCHEDULE 2: of this Head Agreement;

**'Head Agreement Term'** means the period specified in Item 4 of the Head Agreement Details or if the term is extended under clause 2.3, the extended term;

**'Hybrid Cloud'** refers to cloud infrastructure which is a composition of two or more distinct cloud infrastructures (private, community, or public) that remain unique entities, but are bound together by standardised or proprietary technology that enables data and application portability (e.g. cloud bursting for load balancing between clouds);

**'Information Security Manual'** means the Australian Government Information Security Manual;

**'Information Security Registered Assessors Program or IRAP'** is an Australian Signals Directorate initiative to certify assessors for the purposes of providing cyber security assessment services to the Australian Government;

**'Information Technology Service Management or IT Service Management'** means a Category under SaaS which includes:

- Incident and problem management;
- Service continuity and availability management;
- Change and release management;
- Configuration management;
- Service catalogue;
- Asset management;
- Cost management; and/or
- Reporting;

**'Infrastructure as a Service or IaaS'** means the capability provided to the consumer to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, and deployed applications; and possibly limited control of select networking components (e.g. firewalls);

**'Intellectual Property Rights'** means all intellectual property rights including the following rights:

- (a) all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and



unregistered designs, domain names, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered;

**'Key Service Partner'** means a third party with which the Contractor has a contract for using or accessing Cloud infrastructure used for the Cloud Services or a subcontractor of the Contractor;

**'Law'** means all obligations under, and rules of, law, including common law, as well as any other applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time;

**'Legal Services Directions'** means the Commonwealth Attorney-General's Legal Services Directions issued under section 55ZF of the *Judiciary Act 1903* (Cth);

**'Liability'** means the state of being legally responsible for something;

**'Limiting'** means a point or level beyond which something does not or may not extend or pass;

**'Liquidation'** means the process of liquidating a business;

**'Liquidator'** means a person appointed to wind up the affairs of a company or firm;

**'Material'** means any software, firmware, data, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, facilities, systems, Software or information, and the subject matter of any category of Intellectual Property Rights;

**'Malicious'** means characterised by malice; intending or intended to do harm;

**'Measured Service'** means cloud systems that automatically control and optimise resource use by leveraging a metering capability at some level of abstraction appropriate to the type of service (e.g. storage, processing, bandwidth, and active user accounts). Resource usage can be monitored, controlled, and reported, providing transparency for both the provider and consumer of the utilised service;

**'Mediator'** means a person who attempts to make people involved in a conflict come to an agreement;

**'National Institute of Standards and Technology or NIST'** refers to a non-regulatory federal agency within the U.S. Department of Commerce;

**'Notice'** means a Notice under the Head Agreement or any Contract that is set in accordance clause 40 of the Head Agreement or Contract; **'Notify'** and **'Notification'** have a corresponding meaning;

**'On-demand Self-Service'** means a consumer can unilaterally provide computing capabilities, such as server time and network storage, as needed automatically without requiring human interaction with each service provider;

**'Panel'** means Finance's whole-of-government cloud services panel;

**'Performance Guarantee'** means a performance guarantee from a guarantor approved by Finance or the Customer to ensure the due performance on the Contract by the Contractor;

**'Personnel'** means in relation to a party, any natural person who is an employee, officer, agent or professional adviser of that party and, in the case of the Contractor, of a Key Service Partner;

**'Personal Information'** has the meaning given in clause 28 in this Head Agreement;

**'Platform as a Service or PaaS'** means the capability provided to the consumer to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages, libraries, services, and tools supported by the provider. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly configuration settings for the application-hosting environment;

**'Principal Consultant'** means a Principal Consultant who has a strong business impact and is often part of the company's leadership. A Principal Consultant is capable of shaping a piece of business being the leader in a specific domain. A Principal Consultant develops high-level business relations and high-impact projects. A Principal Consultant is capable of leading large teams;

**'Private Cloud'** means the cloud infrastructure is provisioned for exclusive use by a single organisation comprising multiple consumers (e.g. business units). It may be owned, managed, and operated by the organisation, a third party, or some combination of them, and it may exist on or off premises;

**'Productivity Solutions'** means a Category under SaaS which includes:

- Email and productivity;
- Communication and collaboration;
- Word processing, desktop publishing and document conversion;
- Spreadsheets;
- Presentations;
- Graphics suite; and/or
- Data collection.

**'Protective Security Policy Framework'** means the Australian Government Protective Security Policy Framework;

**'Public Cloud'** means the cloud infrastructure is provisioned for open use by the general public. It may be owned, managed, and operated by a business, academic, or government organisation, or some combination of them. It exists on the premises of the cloud provider;

**'Quotation'** means a quotation to provide Cloud Services given in response to a Request for Quote;

**'Rapid Elasticity'** means capabilities that can be elastically provisioned and released, in some cases automatically, to scale rapidly outward and inward commensurate with demand.

To the consumer, the capabilities available for provisioning often appear to be unlimited and can be appropriated in any quantity at any time;

**'Resolution'** means the action of solving a problem or contentious matter;

**'Resource Pooling'** means the provider's computing resources are pooled to serve multiple consumers using a multi-tenant model, with different physical and virtual resources dynamically assigned and reassigned according to consumer demand. There is a sense of location independence in that the customer generally has no control or knowledge over the exact location of the provided resources but may be able to specify location at a higher level of abstraction (e.g., country, state, or data centre). Examples of resources include storage, processing, memory, and network bandwidth;

**'Request for Quote'** means a request given under clauses 10.2 to 10.5;

**'Restriction'** means a limiting condition or measure, especially a legal one;

**'Schedule'** means each of the schedules to this Head Agreement.

**'Security Incident'** means security breach, violation, contact or approach from those seeking unauthorised access to Material relating to the Cloud Services, including

- (a) action taken through the use of computer networks that result in an actual or potentially adverse effect on the Contractor's information system and/or Customer Material residing on that system; or
- (b) any other unauthorised access or use by a third party or misuse, damage or destruction by any person,

**'Senior Consultant'** means a Senior Consultant who has developed a specialisation within a specific domain of expertise. A Senior Consultant is capable of working independently as well as in teams. A Senior Consultant is often responsible for the completion of a part of a project or activities for which he/she leads a small team. A Senior Consultant is more client oriented and explores sales activities;

**'Service Levels'** means the performance levels the Contractor is required to maintain or exceed, as set out in the Head Agreement, Contract or Service Catalogue;

**'Service Catalogue'** has the meaning in clause 6;

**'Service Model(s)'** means the division of Categories into classes with particular shared characteristics and consists of Software as a Service, Platform as a Service, Infrastructure as a Service and Specialist Cloud Services;

**'Software as a Service or SaaS'** means the capability provided to the consumer to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through either a thin client interface, such as a web browser (e.g. web-based email), or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings;

**'Specialist Cloud Services or SCS'** means support services associated with the different Service Models. These may include services to transfer data/configuration between service providers, management and support of applications (workloads) operating on Cloud Services Panel services, multi supplier service integration services and cloud strategy and implementation services;

**'State'** means a State of the Commonwealth;

**'Termination'** means the action of terminating something or the fact of being terminated;

**'Territory'** means a Territory of the Commonwealth;

**'Tracking Number'** means a numerical/alphabetical number that has been provided by Finance and assigned to a Request for Quote;

**'Unconditional Financial Undertaking'** means a financial undertaking approved by Finance or the Customer, whereby the guarantor undertakes to pay to Finance or the Customer on demand without reference to the Contractor; and

**'Web Hosting'** means a Category under PaaS which includes web server installation, configuring and administration.

**SCHEDULE 2: HEAD AGREEMENT DETAILS**

<b>Item Number</b>	<b>Description</b>	<b>Clause Reference</b>	<b>Details</b>
<b>Item 1</b>	<b>Contractor</b>	39.1	[INSERT COMPANY NAME] ABN [INSERT]
<b>Item 2</b>	<b>Contractor Representative</b>	39.1	The Contractor Representative is:  Name: Position: Address: Email:  The Contractor Representative's Manager for escalation is:  Name: Position: Address: Email:
<b>Item 3</b>	<b>Finance Representative</b>	39.7  39.12	The Finance Representative is:  Director, ICT Strategic Sourcing Branch Department of Finance One Canberra Avenue Forrest ACT 2603  The Finance Representative's Manager for escalation is:  Assistant Secretary, ICT Strategic Sourcing Branch Department of Finance One Canberra Avenue Forrest ACT 2603
<b>Item 4</b>	<b>Head Agreement Term</b>	2.2	The Head Agreement Term begins at the Commencement Date and will expire on 31 March 2017.
<b>Item 5</b>	<b>Extension of Head Agreement Term</b>	2.3	4 periods each of 12 months duration

Item Number	Description	Clause Reference	Details
Item 6	Address for Notices	40	<p><b>Finance:</b>  Address: One Canberra Avenue  Forrest ACT 2603</p> <p>Email: ICTProcurement@finance.gov.au</p> <p><b>Contractor:</b>  Address:  Email: [This should be the Contractor Representative or Manager for Escalation]</p>
Item 7	Account Manager	39.1.1	Information located in the ICT Procurement Portal
Item 8	Categories under which the Contractor can provide Cloud Services	11.1	<p>SCS - all Categories at the following maximum hourly rates (inclusive of GST):</p> <p>Principal Consultant at A\$;  Managing Consultant at A\$;  Senior Consultant at A\$;  Consultant at A\$; and  Associate Consultant at A\$.</p>

### SCHEDULE 3: CONTRACT

#### Contract

This Contract is made under a Head Agreement (SON2914302) dated *[insert date]* made between the Commonwealth of Australia represented by the Department of Finance and *[insert name of Contractor]*.

Description	Details
<b>Tracking Number</b>	<i>[Insert]</i>
<b>Commencement Date of Contract</b>	<i>[Insert]</i>
<b>Cloud Services Start Date</b>	<i>[Insert]</i>
<b>Cloud Services Period</b>	<i>[Insert]</i> duration from and including <i>[Insert]</i> .
<b>Cloud Services type, details and requirements</b>	<b>Cloud Services required:</b> <i>[Insert]</i> <b>Acceptance criteria:</b> <i>[insert]</i> <b>Description of other requirements/ deliverables:</b> <i>[insert]</i>
<b>Service Levels</b>	<i>[Insert]</i>
<b>Contractor Representative</b>	<i>[Name of Contractor's representative]</i>
<b>Customer Representative</b>	<i>[Name of Commonwealth's representative]</i>
<b>Address for Notices</b>	<b>Customer:</b> Address: <i>[Insert Address]</i> Email: <i>[Insert Email]</i>  <b>Contractor:</b> Address: <i>[Insert Address]</i> Email: <i>[Insert Email]</i>
<b>Fees</b>	<i>[Insert]</i>
<b>Limitation of liability amount</b>	<i>[Insert]</i>
<b>Insurance</b> (see clause 32)	<b>Property and Public Liability Insurance:</b> <i>[\$[Insert]</i> <b>Professional Indemnity Insurance:</b> <i>[\$[Insert]</i> <b>Product Liability Insurance:</b> <i>[\$[Insert]</i> <b>Workers Compensation Insurance:</b> <i>[\$[Insert amount required by law]</i> <b>Special Risks Insurance:</b> <i>[\$[Insert]</i>

Description	Details
<b>Reporting requirements</b> (see clause 9)	<i>[Insert]</i>
<b>Additional security requirements</b> (see clause 14.1.7)	<i>[Insert]</i>
<b>Additional archiving, audit and access requirements</b> (see clause 35)	<i>[Insert]</i>  <i>[Note: The paragraphs below set out Finance's intended approach to audits.</i>  (a) <i>Finance (or its nominee) intends to co-ordinate, on behalf of the Customer, the exercise of the Customer's right to conduct an audit in accordance with clause 35 of the Head Agreement.</i>  (b) <i>If practicable and reasonable in the circumstances to do so, prior to Finance exercising any of its rights in accordance with clause 35 of the Head Agreement, Finance shall first request the Contractor to provide Finance with such information as Finance requires in relation to the subject matter of the audit and/or access.]</i>
<b>Other requirements</b>	<i>[Insert]</i>
<b>Specified Personnel</b> (see clause 7)	<i>[insert]</i>

**Notice to Contractor in addition to Contract security obligations**

**Offences under Commonwealth crime legislation**

The Contractor acknowledges and agrees that:

(a) any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of data held in any computer (or, in some cases, any storage device) in the course of performing the Cloud Services may be an offence under Part 10.7 of the *Criminal Code 1995* (Cth) for which there are a range of penalties, including a maximum of 10 years imprisonment;

(b) the giving of false and misleading information to the Commonwealth or its Personnel is a serious offence under Division 137 of the *Criminal Code 1995* (Cth); and

(c) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Head Agreement (other than to a person to whom the Contractor is authorised to publish or disclose the fact or document) may be an offence under sections 70 and 79 of the *Crimes Act 1914* (Cth), the maximum penalty for which is 7 years imprisonment.



**EXECUTED AS A CONTRACT:**

**DATE:**

Executed as a contract for and on behalf of  
**[insert Agency name] ABN [insert ABN]** by its  
duly authorised delegate:

In the presence of:

.....  
Signature of delegate

.....  
Signature of witness

.....  
Full name and position of delegate (print)

.....  
Name of witness (print)

Executed as a contract by **[insert Contractor name] ABN [insert ABN]** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the *Corporations Act 2001*:

In the presence of:

.....  
Signature of director/company secretary

.....  
Signature of director

.....  
Name of director/company secretary (print)

.....  
Name of director (print)

[OR]

Executed as a contract for and on behalf of  
**[insert Contractor name] ABN [insert ABN]** by  
its duly authorised representative:

In the presence of:

.....  
Signature of authorised representative

.....  
Signature of witness

.....  
Name of authorised representative (print)

.....  
Name of witness (print)

.....  
Date

.....  
Date

## SCHEDULE 4: COMMONWEALTH POLICY

In performing its obligations under the Head Agreement, and any Contract entered into under this Head Agreement, the Contractor must comply with all applicable Laws and Commonwealth policies including as set out in this Schedule 4 SCHEDULE 4: .

### 2. ARCHIVES ACT REQUIREMENTS

2.1 The Contractor acknowledges that:

2.1.1 the Cloud Services may be used to store Commonwealth Records and that the requirements of the *Archives Act 1983* (Cth) apply to Commonwealth Records; and

2.1.2 the Contractor has an obligation under this Head Agreement not to dispose of any Finance or Customer data (either of which may include Commonwealth Records) unless directed in writing to do so by Finance or the Customer.

2.2 The Contractor must:

2.2.1 comply with, and follow any reasonable directions by Finance or the Customer which are relevant to, any applicable Commonwealth, State or Territory legislation relating to archival requirements; and

2.2.2 ensure that it implements minimum metadata requirements in providing the Services that comply with the *Australian Government Recordkeeping Metadata Standard* (AGRkMS) available at:  
[http://www.naa.gov.au/Images/AGRkMS\\_Final%20Edit\\_16%2007%2008\\_Revised\\_tcm16-47131.pdf](http://www.naa.gov.au/Images/AGRkMS_Final%20Edit_16%2007%2008_Revised_tcm16-47131.pdf).

2.3 For the purposes of clauses 2.1 and 2.3, '**Commonwealth Record**' has the meaning given under clause 3 of the *Archives Act 1983*.

### 3. ANTI-DISCRIMINATION

3.1 The Contractor must comply with all Commonwealth, State or Territory Laws relevant to anti-discrimination as may be relevant to the Head Agreement or the Contract, including but not limited to:

3.1.1 the *Disability Discrimination Act 1992* (Cth);

3.1.2 the *Racial Discrimination Act 1975* (Cth);

3.1.3 the *Sex Discrimination Act 1984* (Cth); and

3.1.4 the *Age Discrimination Act 2004* (Cth).

#### APS Values

3.2 The Contractor must ensure that all of its Personnel engaged in providing the Cloud Services comply with the APS Values and Code of Conduct while at the Customer's premises and while liaising with the Customer Personnel or members of the public in connection with the provision of the Cloud Services. In these clauses 3.2 and 3.3 '**APS Values**' and '**Code of Conduct**' have the same meaning as they have in the *Public Service Act 1999* (Cth).

- 3.3 The Contractor must provide all reasonable assistance to Finance and the Customer with any investigation of a report of a breach of the APS Code of Conduct.

#### **4. FREEDOM OF INFORMATION**

- 4.1 If an application is made to Finance under the *Freedom of Information Act 1982* (Cth) for access to documents concerning the Contractor, Finance or the Customer:
- 4.1.1 may, before making a decision, consult with the Contractor, without prejudice to any decision to release the information; and
- 4.1.2 must determine the application in accordance with the requirements of the *Freedom of Information Act 1982* (Cth).

#### **5. FRAUD**

- 5.1 The Contractor must comply with the Commonwealth Fraud Control Guidelines, as amended from time to time at:  
<http://www.ag.gov.au/CrimeAndCorruption/FraudControl/Pages/default.aspx>.
- 5.2 The Contractor must Notify Finance or the Customer, as relevant, 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 this Head Agreement or a Contract (including by the Contractor or its Personnel).

#### **6. ILLEGAL WORKERS**

- 6.1 In clauses 6.2 to 6.4:
- 6.1.1 **'Illegal Worker'** means a person who:
- 6.1.1.1 has unlawfully entered and remains in Australia;
- 6.1.1.2 has lawfully entered Australia, but remains in Australia after his or her visa has expired; or
- 6.1.1.3 is working in breach of his or her visa conditions.

For more information refer to the **Australian Immigration Guide to Work Entitlements** available at: <http://www.immi.gov.au/employers>.

- 6.2 The Contractor must not engage Illegal Workers in any capacity to carry out any work under or in connection with this Head Agreement or the Contract.
- 6.3 Upon becoming aware of the involvement of an Illegal Worker, the Contractor must:
- 6.3.1 Promptly Notify Finance, or the Customer as relevant; and
- 6.3.2 remove, or cause to be removed, the Illegal Worker and arrange for their replacement at no cost to Finance or the Customer immediately.
- 6.4 If requested in writing by Finance or the Customer, the Contractor must provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations in respect of Illegal Workers.

**7. INDIGENOUS OPPORTUNITIES POLICY**

- 7.1 The Contractor must comply with the Australian Government's Indigenous Opportunities Policy to the extent that policy applies to this Head Agreement.
- 7.2 Without limiting clause 7.1, the Contractor must use its reasonable endeavours to provide employment opportunities to Aboriginal and Torres Strait Islander people where there are positions available and there are Aboriginal or Torres Strait Islander people available with suitable qualifications, experience and expertise.

**8. PROCUREMENT ON-TIME PAYMENT POLICY FOR SMALL BUSINESS**

- 8.1 For the purposes of clauses 8.2 to 8.4:
  - 8.1.1 **'General Interest Charge Rate'** means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day *payment* is due, expressed as a decimal rate per day; and
  - 8.1.2 **'Small Business'** means an enterprise that employs less than the full time *equivalent* of 20 persons on the day that the Head Agreement or a Contract is entered into. If the enterprise is an associated entity as defined in section 50AAA of the Corporations Act, this test is applied to the group of associated entities as a whole.
- 8.2 Clauses 8.2 to 8.4 only apply where:
  - 8.2.1 the Contractor is a Small Business;
  - 8.2.2 the value of this Head Agreement or a Contract is not more than A\$1 million (GST inclusive); and
  - 8.2.3 the amount of the interest payable exceeds A\$10.
- 8.3 Finance, or the Customer as relevant, will pay interest on late payments to the Contractor as follows:
  - 8.3.1 for payments made by Finance, or the Customer as relevant, 30 days and up to 60 days after the amount became due and payable, only where the Contractor issues a correctly rendered invoice for the interest; or
  - 8.3.2 for payments made by Finance, or the Customer as relevant, more than 60 days after the amount became due and payable, Finance, or the Customer as relevant, will pay the interest accrued together with the payment.
- 8.4 Interest payable under clause 8.3 will be simple interest on the unpaid amount at the General Interest Charge Rate, calculated in respect of each day from the day after the amount was due and payable, up to and including the day that Finance, or the Customer as relevant, effects payment as represented by the following formula:

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

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

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

8.5 In clauses 8.1 to 8.4, 'General Interest Charge Rate' means the general interest charge rate determined under section 8AAD of the Taxation Administration Act 1953 on the day payment is due, expressed as a decimal rate per day.

## 9. SECURITY

9.1 The Contractor must comply with all relevant requirements of the Commonwealth Protective Security Policy Framework at <http://www.protectivesecurity.gov.au>, as amended or replaced from time to time and its Protective Security Protocols, including the Protective Security Governance Guidelines - Security of outsourced services and functions and the Information Security Manual at <http://www.asd.gov.au/infosec/ism/index.htm>.

## 10. WORK HEALTH AND SAFETY

10.1 In clauses 10.2 to 10.4 below:

10.1.1 'Act' means the *Work Health and Safety Act 2011* (Cth).

10.1.2 'Person Conducting a Business or Undertaking (PCBU)' as defined by the Act means a person conducting a business or undertaking:

10.1.2.1 whether the person conducts the business or undertaking alone or with others; and

10.1.2.2 whether or not the business or undertaking is conducted for profit or gain.

10.2 The Contractor must ensure that the Cloud Services are provided in a manner that does not pose any avoidable health or safety risk to the Contractor's Personnel, to Finance's Personnel, to a Customer's Personnel or to any other person.

10.3 Without limiting in any way the work health and safety obligations that the Contractor has under this Head Agreement or the Contract, including those that apply due to the operation of Commonwealth and State or Territory Laws, the Contractor must:

10.3.1 ensure that a PCBU meets the primary duty of care requirements of section 19 of the Act or corresponding State or Territory legislation;

10.3.2 ensure the regulator is notified immediately after a notifiable incident has occurred in accordance with section 38 of the Act or corresponding State or Territory legislation; and

10.3.3 Notify Finance, or the Customer as relevant, of:

10.3.3.1 any work related injury that causes death or serious personal injury;

10.3.3.2 any notifiable incident as defined at sections 35, 36 and 37 of the Act, or corresponding State or Territory legislation; and

10.3.3.3 each occasion it reports to, or notifies, a regulatory authority of a notifiable incident authority under the Act, or the relevant work health and safety legislation in that jurisdiction,

within 1 Business Day after the incident has occurred or within 2 hours if the injury causes death.

10.4 At Finance's request, or at the Customer's request as relevant, the Contractor must provide reasonable assistance to Finance, the Customer, or Comcare (including giving Finance, the Customer, Comcare and their agents access to the Contractor's premises, files, information technology systems and Personnel) in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the provision of the Cloud Services.

## **11. WORKPLACE GENDER EQUALITY ACT 2012 (CTH)**

11.1 Clauses 11.1 to 11.2 apply only to the extent that the Contractor is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the '**WGE Act**').

11.2 The Contractor must comply with its obligations, if any, under the WGE Act.

11.3 If the Contractor becomes non-compliant with the WGE Act, the Contractor must Notify the Representative for Finance, or the Customer as relevant.

11.4 If the Head Agreement Term exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the Commencement Date and following this, annually, to the Representative for Finance or the Customer as relevant.

11.5 Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Head Agreement and the Contract.

## SCHEDULE 5: CHANGE PROPOSAL DEED

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

1	<b>Change Proposal number</b>	
2	<b>Raised by</b>	
3	<b>Details of change (use attachments if required)</b>	
4	<b>Implementation date of variation</b>	
5	<b>Effect on Cloud Services or their specifications</b>	
6	<b>Plan for implementing the change</b>	
7	<b>Effect on Fees</b>	
8	<b>Effect on Service Level requirements</b>	
9	<b>Effect on documentation / Reporting</b>	
10	<b>Other relevant matters (e.g. Acceptance criteria etc)</b>	



Executed and delivered as a deed for and on behalf of *[insert Finance or Agency name]* (ABN *[insert ABN]*) representing the **Commonwealth of Australia** by its duly authorised delegate:

In the presence of:

.....  
Signature of delegate

.....  
Signature of witness

.....  
Name and position of delegate (print)

.....  
Name of witness

.....  
Date

.....  
Date

Executed and delivered as a deed by *insert Contractor's name* (ABN *[insert ABN]*) acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the *Corporations Act 2001*:

In the presence of:

.....  
Signature of director/company secretary

.....  
Signature of director

.....  
Name of director/company secretary (print)

.....  
Name of director (print)

.....  
Date

.....  
Date

**[OR]**

Executed and delivered as a deed for and on behalf of *[insert Contractor's name]* (ABN *[insert ABN]*) by its duly authorised representative:

In the presence of:

.....  
Signature of authorised representative

.....  
Signature of witness

.....  
Name and position of authorised representative (print)

.....  
Name of witness (print)

.....  
Date

.....  
Date