



Australian Government

Department of Finance

Panel Head Agreement

A Deed

between

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

and

[insert name]

**for the Provision of Phase 2 – Labour Hire Services
to the Australian Government**

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Parties

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

and

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

Recitals

- A Finance has established a Panel for the provision of Labour Hire Services to the Australian Government to which the Service Provider has been appointed.
- B The Service Provider has represented to the Commonwealth in respect of this Head Agreement that it has the ability to provide the Services set out in **Schedule 2 (Labour Hire Services)** to Entities and acknowledges that it can only provide Services that substantially relate to the Services in **Schedule 2 (Labour Hire Services)**.
- C The Service Provider acknowledges and agrees that Finance will administer this Head Agreement and the Panel for the benefit of all Entities.
- D The Service Provider offers to provide Services on the terms and conditions contained in this Head Agreement and any Contract formed under this Head Agreement.
- E An Entity may acquire Services from the Service Provider by issuing the Service Provider with an Order .

Operative Provisions

1 Definitions and interpretation

1.1 Definitions

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

ABN	the Australian Business Number issued by the Australian Taxation Office.
Accounting Standards	the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)); or other accounting standards which are generally accepted and consistently applied in Australia.
Additional Requirements	requirements or terms and conditions, such as additional insurance, which are additional to the obligations of the Service Provider under this Head Agreement.
APS Code of Conduct	the code of conduct set out in section 13 of the <i>Public Service Act 1999</i> .
APS Values	the values set out in section 10 of the <i>Public Service Act 1999</i> .
Australian Standard	a standard published by Standards Australia Limited at the applicable Order Commencement Date.
Business Day	a day not being a Saturday, Sunday or a public holiday in the location where the Services are being provided, or if no such location is specified, in Canberra.
Change of Control	(a) if the Service Provider is listed on a stock exchange - a change in 20% or more of the direct or indirect beneficial ownership or control of the Service Provider; or (b) if the Service Provider is not listed on a stock exchange a change in any of the direct or indirect beneficial ownership or control of the Service Provider.
Commonwealth	the Commonwealth of Australia.
Confidential Information	information that is protected by privacy, secrecy and non-disclosure provisions or by its nature confidential, and (a) in the case of Finance or an Entity is: (i) Contract Material, not including Existing Material; or (ii) Entity Material; and (b) in the case of the Service Provider is listed at Schedule 9 (Service Provider's Confidential Information) and/or described in an Order,

	but does not include information which is or becomes public knowledge other than by a breach of this Head Agreement, any Contract, or Law.
Conflict of Interest	any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or Subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to an Entity fairly and independently.
Consultancy Services	has the meaning given in clause 2.2.
Contract	a contract for the provision of Services formed between the Service Provider in accordance with clause 11 of this Head Agreement.
Contract Material	any Material: (a) created by the Service Provider for the purposes of a Contract; (b) provided or required to be provided to the Entity as part of the Ordered Services; or (c) derived at any time from the Material referred to in (a) and/or (b) above, but which excludes the Service Provider's internal working papers.
Conversion	has the meaning given in Schedule 2 (Labour Hire Services) and "Converted" has a corresponding meaning.
Conversion Fee	means the Fee payable for Conversion of a Labour Hire Worker in accordance with Schedule 3 (Pricing) .
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Eligible Data Breach	has the meaning it has in the Privacy Act.
Entity	(a) a Non-corporate Commonwealth entity; (b) a corporate Commonwealth entity as defined by the PGPA Act; and (c) any other government entities authorised by Finance and advised in writing to the Service Provider from time to time. To avoid doubt, a reference to an Entity does not include Finance unless Finance issues an Order to the Service Provider.
Entity Equipment	any equipment (e.g. laptop, monitor, headset) provided by an Entity to Service Provider Personnel under a Contract.
Entity Material	any Material provided by an Entity to the Service Provider for the purposes of an RFQ or a Contract, or derived at any time from that Material.
Entity Representative	the person nominated by an Entity to represent the Entity as identified in an Order.

Existing Material	(a) any pre-existing Material including any improvements, modifications or enhancements to such pre-existing Material in performing the Services; and (b) any other Material, created independently of an Order after the Order Commencement Date, which is made available to the Entity by the Service Provider for the purpose of a Contract, but excluding any tools or methodologies of the Service Provider.
Extension Period	has the meaning given in clause 3.3.2.
Fees	the Service Provider's fees listed in Schedule 3 (Pricing) in an Order or RFQ as the context requires.
Finance	the Commonwealth represented by the Department of Finance as a party to this Head Agreement and which is responsible for administering the Panel.
Finance Senior Executive	the position identified in Item 2 of Schedule 1 (Head Agreement Details) , or as otherwise advised by Finance from time to time.
General Interest Charge Rate	the general interest charge rate determined under section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth) on the day payment is due, expressed as a decimal rate per day.
FOI Act	the <i>Freedom of Information Act 1982</i> (Cth).
GST	has the meaning it has in the GST Act.
GST Act	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Harmful Code	any virus, disabling or malicious device or code, worm, trojan, time bomb or other harmful or destructive code.
Head Agreement	clauses 1 to 33 of this head agreement between Finance and the Service Provider, and includes the Schedules (and any Attachments to the Schedules) as the context requires.
Head Agreement Commencement Date	the date of execution of this Head Agreement or, if executed on different dates, the date of last execution.
Head Agreement Period	the period referred to in clause 3.3 and any Extension Periods
Host Organisation	means the Entity that engages a Labour Hire Supplier via an Order to provide it with one or more Labour Hire Workers.
Indigenous Enterprises	as defined in the Indigenous Procurement Policy.

Indigenous Procurement Policy	the policy of that name, as amended from time to time, available at https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp
Initial Head Agreement Period	the period referred to in clause 3.3.
Integrity Requirements	compliance with: (a) the Commonwealth policies referred to in clause 16 (being the Workplace Gender Equality, Indigenous Procurement, Payment Times for Subcontractors, Modern Slavery, Fraud, Illegal Workers, Work Health and Safety, Shadow Economy and Australian Industry Participation Policies); (b) the warranties in clauses 17.1.1(b) and (c) (relating to Statutory Licences); (c) the warranties in clauses 17.1.1(d) and (e) (relating to offences by directors and shareholders, and ongoing compliance with the Respondent's Declaration); (d) the warranties in clauses 17.1.1(f), (g) and (h) (relating to Workplace Gender Equality, unpaid judicial decisions regarding employee entitlements and terrorism); (e) Laws relating to taxation and superannuation; (f) Laws relating to employee entitlements; and if the Service Provider is approved to provide any Category of Labour Hire Services: (g) Laws relating to the labour hire industry; (h) Laws relating to work health and safety; (i) Laws relating to workers compensation; (j) Laws relating to migration; and (k) applicable minimum accommodation standards; and (l) any other Laws or requirements notified by Finance from time to time, or specified in an Order, for the purposes of this definition.
Intellectual Property	(a) all rights in respect of intellectual property, whether or not such rights are registered or capable of being registered; (b) any application or right to apply for registration of any intellectual property; and

	(c) all rights of a similar nature to any of the rights referred to in paragraphs (a) and (b) which may subsist in Australia or elsewhere.
Introduction	has the meaning given in Schedule 2 (Labour Hire Services) .
Introduction Fee	means the Fee payable for an Introduction in accordance with Schedule 3 (Pricing) .
Job Family	The first tier of the Australian Public Service Commission's Job Families Framework which is a high-level grouping of roles that carry out similar types of work and hence would require similar skills, capabilities and job-related knowledge to be proficiently performed. The relevant Job Families in this Head Agreement are as outlined in Schedule 2 (Labour Hire Services) . For the avoidance of doubt, each Job Role can only fall under one specific Job Family.
Job Function	The second tier of the Australian Public Service Commission's Job Families Framework which represents a subgroup of roles (described at https://www.apsc.gov.au/initiatives-and-programs/aps-workforce-strategy-2025/workforce-planning-resources/aps-job-family-framework) that perform similar routine sets of tasks or activities. The relevant Job Function for a Labour Hire Worker under this Head Agreement will be specified in the Order.
Job Role	The third tier of the Australian Public Service Commissioner's Job Families Framework which represents a specific occupation belonging to a particular Job Function (described at https://www.apsc.gov.au/initiatives-and-programs/aps-workforce-strategy-2025/workforce-planning-resources/aps-job-family-framework). The relevant Job Role for a Labour Hire Worker under this Head Agreement will be specified in the Order. Any Job Role can only fall under one specific Job Function.
Labour Hire Engagement Report	is the report required in the format detailed in Table 2 of clause 1.6 of Schedule 8 (Reporting) .
Labour Hire Supplier	an arrangement under which a Host Organisation engages a Labour Hire Supplier to provide the Host Organisation with a Labour Hire Worker who is the employee of the Labour Hire Supplier (or otherwise engaged by the Labour Hire Supplier).
Labour Hire Services	subject to clause 2.2, the provision of one or more Labour Hire Workers, pursuant to a Labour Hire Arrangement, to undertake work in the roles specified in Schedule 2 and Conversion, Introduction and Placement Services.
Labour Hire Worker	the employee of a Labour Hire Supplier (or a person otherwise engaged by a Labour Hire Supplier). The Labour Hire Worker is not an employee of the Host Organisation.

Labour Hire Worker Time Sheet Report	is the report required in the format detailed in Table 2 of clause 1.6 of Schedule 8 (Reporting) .
Law	any applicable law, without limitation, including Commonwealth, State and Territory law, common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-laws, ordinances or any other legislative or regulatory measures (including any amendment, modification or re-enactment of them).
Mandatory Minimum Requirements	as defined in the Indigenous Procurement Policy.
Material	anything in relation to which Intellectual Property rights arise.
Modern Slavery	has the meaning it has in the Modern Slavery Act 2018 (Cth).
Moral Rights	the following non-proprietary rights of authors of copyright Material: (a) the right of attribution of authorship; (b) the right of integrity of authorship; and (c) the right not to have authorship falsely attributed.
Non-corporate Commonwealth entity	a non-corporate Commonwealth entity as defined by the PGPA Act.
Non-Referred	means a Labour Hire Worker has not been Referred by an Entity to the Service Provider
Non-Referred Service Fee	has the meaning given in Schedule 3 (Pricing)
Official Resources	has the meaning it has in the <i>Protective Security Policy Framework</i> .
Order	an order in the form of Schedule 6 (Order Template) , or in another form issued by an Entity, to the Service Provider for the provision of Services. Where the context permits, a reference to an Order includes a Contract.
Order Commencement Date	the date specified in an Order that the Order is to commence.
Order Term	the term of an Order, as specified in the Order.
Ordered Services	the services described in an Order to be provided by the Service Provider under a Contract.
Pan-European Public Procurement On-Line Framework	a network for the exchange of electronic business documents relating to e-commerce and e-procurement, primarily between public sector organisations and their suppliers.

Panel	the Whole of Australian Government (WoAG) Labour Hire Services Panel to which the Service Provider has been appointed, as updated by Finance from time to time.
Panel Administration Platform	has the meaning given to it in clause 5.5.
Panel Manager	the position identified in Item 1 of Schedule 1 (Head Agreement Details) , or as otherwise advised by Finance from time to time.
Panellists	members of the Panel, as appointed by Finance from time to time.
Performance Management Framework	the framework described in Schedule 7 (Performance Management Framework and Service Levels) .
Personnel	in relation to: (a) the Service Provider, any natural person who is a partner, officer, employee or other personnel (including a Labour Hire Worker) of the Service Provider or of a Subcontractor (and, in the case of clauses 22 and 24 only, or an agent or professional adviser of the Service Provider); and (b) Finance or an Entity, any natural person, other than a person referred to in paragraph (a), who is an officer, employee, agent or professional advisor or other personnel of Finance or an Entity. To avoid doubt, a Labour Hire Worker is not personnel of Finance or an Entity.
Personal Information	has the meaning it has in the Privacy Act.
PGPA Act	the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
Placement	has the meaning given in Schedule 2 (Labour Hire Services) .
Placement Fee	means the Fee payable for a Placement in accordance with Schedule 3 (Pricing) .
Privacy Act	the <i>Privacy Act 1988</i> (Cth).
Privacy Commissioner	the Privacy Commissioner of the Commonwealth.
Protected Information	information protected by statutory secrecy or confidentiality provisions (such as information held in the records of an Entity)
Protective Security Policy Framework	the Commonwealth's <i>Protective Security Policy Framework</i> outlined at www.protectivesecurity.gov.au , including the Australian Government Information Security Manual outlined at https://acsc.gov.au/infosec/ism/index.htm .

PTR Act	means the <i>Payment Times Reporting Act 2020</i> (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the Act.
Quotation	a submission made by the Service Provider in response to an RFQ.
Referred	means a Labour Hire Worker has been sourced by the Entity and referred to the Service Provider for the Service Provider to employ as a Labour Hire Worker for the Entity (or otherwise engaged by the Service Provider). In the case of a Referred Labour Hire Worker, the Service Provider does not bear all the overhead costs of attracting that Labour Hire Worker as some of these costs are borne by the Entity.
Referred Service Fee	has the meaning given in Schedule 3 (Pricing)
Reporting Entity	as defined in the PTR Act.
Request for Quotation or RFQ	a request by an Entity to the Service Provider to provide a Quotation for Services.
Respondent's Declaration	the declaration made by the Service Provider in the request for tender process for the establishment of the Panel.
RFQ Closing Date	the date and time specified by an Entity in an RFQ that a Quotation is to be submitted by.
Security Incident	a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources and Information.
Security Classified Resources	Official Resources and Information protected under the Protective Security Policy Framework which, if compromised, could have adverse consequences for the Entity.
Services	(a) for the purposes of this Head Agreement: (i) services provided to Finance in relation to the administration of this Head Agreement; or (ii) any part of the Services described Schedule 2 (Labour Hire Services), including Conversion Services, Introduction Services and Placement Services) for which the Service Provider is approved to provide; and/or (b) for the purposes of a Contract, the Ordered Services provided, or to be provided, by the Service Provider.
Service Category/ies	the Service Categories specified in Schedule 2 (Labour Hire Services) for which the Service Provider is approved to provide, as amended from time to time in accordance with clause 5.4 of this Head Agreement.
Services Commencement Date	means [1 July 2023]
Service Level	has the meaning given in clause 3.6 of Schedule 7 (Performance

Failure	Management Framework and Service Levels).
Service Levels	the service levels contained in Schedule 7 (Performance Management Framework and Service Levels) and in an Order.
Service Provider	a party to this Head Agreement.
Service Provider Proprietary Information	means: (a) the Service Provider's cost models, profit margin information and cost plus information (being the separate disclosure of both direct and indirect costs from the profit margin); and (b) information relating to other customers of the Service Provider.
Service Provider's Entity Contact	the person identified in Item 5 of Schedule 1 (Head Agreement Details) , or as otherwise advised by the Service Provider from time to time.
Service Provider's Representative	the person identified as holding this role in Item 3 of Schedule 1 (Head Agreement Details) , or as otherwise advised by the Service Provider from time to time.
Service Provider's Senior Executive	the person identified as holding this role in Item 4 of Schedule 1 (Head Agreement Details) , or as otherwise advised by the Service Provider from time to time.
Shadow Economy Procurement Connected Policy	means the Shadow Economy Procurement Connected Policy guidelines March 2019 available at https://treasury.gov.au/publication/p2019-t369466
Statement of Work	the section of a Request for Quotation or an Order, describing the Ordered Services required by an Entity
Statutory Licence	means any licence or authorisation required to operate a labour hire or recruitment business under State or Territory Law, or under any national licensing regime introduced during the Head Agreement Period.
Subcontractor	a party engaged by the Service Provider to perform any part of the Services under a Contract, and that party's directors, officers, employees, agents and consultants (as relevant), however, a Labour Hire Worker is not a Subcontractor.
Tax Invoice	has the meaning given under the <i>A New Tax System (Goods and Services Tax) Act 1999</i> .
Timesheet	a record of the hours worked in a specified period by a Labour Hire Worker.
Transition Out Period	the period prior to termination or expiry of a Contract during which a Service Provider must undertake certain transition activities
Valid and Satisfactory	is an STR that is valid and satisfactory in accordance with the Shadow Economy Procurement Connected Policy.

**Statement of Tax
Record**

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

1.2 Interpretation

1.2.1 In this Head Agreement and any Contract, except where the contrary intention is expressed:

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

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

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

Part A – Overview and Objectives

2 Scope of the Services

2.1 Overview

2.1.1 The Services required under the Panel are for commonly used Labour Hire Services.

2.1.2 Entities may at any time during the Head Agreement Period engage the Service Provider, through the processes set out in clause 11 of this Head Agreement, to provide any of the Services, provided that Service Provider is approved by Finance to provide the relevant Service Category (as set out in Item 7 of **Schedule 1 (Head Agreement Details)**).

2.2 Out of scope

2.2.1 The Services required under the Panel do not include:

- (a) provision of Labour Hire Workers for information, communication and technology services roles (roles commonly listed in the ICT and Digital Solutions Job Family);
- (b) provision of Labour Hire Workers for resource and construction roles (including industrial, agricultural, infrastructure, mining, forestry, fisheries, maritime, meatworkers, manufacturing, textiles, building);
- (c) provision of Labour Hire Workers for military engineering roles;
- (d) provision of Labour Hire Workers for statutory appointments;
- (e) provision of Labour Hire Workers for non-statutory appointments (for example to Audit committee and consultative committees);
- (f) provision of Labour Hire Workers for learning and development services roles;
- (g) Services provided under other Whole of Australian Government coordinated procurements such as legal services and property services roles;
- (h) the provision of consultancy services as defined in the Australian Government's guide on *Procurement Publishing and Reporting Obligations* (RMG423) available at <https://www.finance.gov.au/publications/resource-management-guides/procurement-publishing-and-reporting-obligations-rmg-423>; and
- (i) recruitment of Australian Public Service employees, other than the provision of Introduction and Placement Services as described in **Schedule 2 (Labour Hire Services)**.

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

3 Structure of this Head Agreement

3.1 Overview

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

3.2 Order of precedence

- 3.2.1 If there is inconsistency between any of the documents forming part of this Head Agreement, those documents will be interpreted in the following (descending) order of priority to the extent of any inconsistency:
 - (a) the terms of this Head Agreement;
 - (b) the Schedules;
 - (c) the Attachments (if any);
 - (d) documents incorporated by reference.

3.3 Head Agreement Period

- 3.3.1 This Head Agreement begins on the Head Agreement Commencement Date and continues until **[30 June 2027]** (**Initial Head Agreement Period**), unless terminated earlier in accordance with clause 26.
- 3.3.2 The Initial Head Agreement Period may be extended by Finance (at its sole discretion) by providing written notice to the Service Provider, for a further period (or periods) of up to four years in total, which may be taken in whole or in part, and in any number or combination of time periods (each an **Extension Period**).
- 3.3.3 Entities may place Orders for Services under this Head Agreement from the later of the Services Commencement Date, or the Head Agreement Commencement Date.

4 Panel structure

4.1 Objectives of the Panel

- 4.1.1 The objectives of the Panel are to:
 - (a) provide Entities with consistent and efficient processes to engage Service Providers;
 - (b) deliver high quality Services that represent value for money;

- (c) ensure Services are provided by reputable organisations that adhere to the highest integrity standards (including the Integrity Requirements); and
- (d) provide increased transparency through improved data and reporting.

5 Scope of this Head Agreement

5.1 Overview

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

5.2 Role of Finance

- 5.2.1 Finance will manage the Panel and this Head Agreement for the benefit of all Entities.
- 5.2.2 Finance's role is to do each of the following:
 - (a) administer this Head Agreement;
 - (b) approve any change to this Head Agreement;
 - (c) monitor the Panellists' performance against **Schedule 7 (Performance Management Framework and Service Levels)**;
 - (d) collect data from the Service Provider through the reporting framework set out in **Schedule 8 (Reporting)**; and
 - (e) monitor and report on the operation of the Panel, including its operation, viability and expenditure.

5.3 No guarantee

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

5.4 Panel review and refresh

- 5.4.1 Finance reserves the right to, at any time during the Head Agreement Period, review the operation of the Panel and do any one or more of the following:
 - (a) add to or remove Service Categories or Job Families over the Head Agreement Period;
 - (b) suspend or remove the Service Provider or other Panellists from the Panel for noncompliance with this Head Agreement as further described in clause 26;

- (c) approach the market to:
 - (i) add suppliers to the Panel in one or more Service Category or Job Family; or
 - (ii) add additional Service Categories and Job Families to the Panel (for which the Service Provider and other suppliers may tender to provide).

5.5 New Finance Panel Administration Platform

- 5.5.1 Finance reserves the right to, at any time during the Head Agreement Period, establish for use under the Head Agreement and under any Contract under the Head Agreement a technology solution to support the administration of the Panel (**Panel Administration Platform**).
- 5.5.2 If introduced, the Panel Administration Platform will assist Finance in administering various activities under the Panel. These activities are likely to include, but are not limited to:
 - (a) the registration and creation of system profiles for potential Labour Hire Workers by the Service Provider;
 - (b) the submission of reports by the Service Provider as required under **Schedule 8 (Reporting)**; and
 - (c) the updating and maintaining of the profiles of Labour Hire Workers by Labour Hire Workers.
- 5.5.3 If Finance establishes the Panel Administration Platform contemplated by clause 5.5.1, the Service Provider agrees it will:
 - (a) use and participate in that platform under this Head Agreement or any Contract at its own cost, subject to clause 1.1.1; and
 - (b) ensure that the Labour Hire Worker uses and participates in the platform directly, including as required for reporting purposes, as required by Finance.
- 5.5.4 Finance will provide all reasonable information and assistance to the Service Provider to assist in its use of and participation in the Panel Administration Platform.

6 Party representatives

6.1 Panel Manager

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

6.2 Finance Senior Executive

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

6.3 Service Provider's Representative

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

6.4 Service Provider's Senior Executive

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

6.5 Service Provider's Entity Contact

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

6.6 Service Provider Personnel contact details

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

7 Service Provider Personnel

7.1 General

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

7.2 Subcontracting

- 7.2.1 The Service Provider must not subcontract any aspect of the Ordered Services without the prior written approval of the relevant Entity (such approval may be subject to conditions). Subcontractors specified in an Order are considered to have been approved by the Entity for the purposes of the relevant Contract.
- 7.2.2 The Service Provider must comply with any other requirements for subcontracting specified in **Schedule 2 (Labour Hire Services)**.
- 7.2.3 The Service Provider must not subcontract with an entity that:
- (a) has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid any judgment amount; or
 - (b) is on, or which has one or more employees that are on, or which is a member of an entity that is on, the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies; or
 - (c) is named by the Workplace Gender Equality Agency as a supplier that has not complied with the *Workplace Gender Equality Act 2012* (Cth); or
 - (d) is non-compliant with any of the Integrity Requirements.
- 7.2.4 The Service provider must inform its Subcontractors that the Subcontractor's provision of any Services under this Head Agreement or a Contract may be disclosed publicly.
- 7.2.5 The Service Provider must ensure that each agreement with a Subcontractor includes provisions to ensure the Subcontractor must comply with the requirements on the Service Provider set out in clause 23 of this Head Agreement.
- 7.2.6 The Service Provider is fully responsible for the performance of the Services, even if the Service Provider subcontracts any aspect of the provision of the Services.

8 Performance Management Framework and Service Levels

8.1 Performance Management Framework

- 8.1.1 In supplying the Services, the Service Provider acknowledges that it must comply with the Performance Management Framework in **Schedule 7 (Performance Management Framework and Service Levels)**.
- 8.1.2 The Service Provider acknowledges and agrees that its performance in providing Services to Entities will be:
- (a) assessed and reported on by Entities in accordance with the Performance Management Framework in **Schedule 7 (Performance Management Framework and Service Levels)**; and
 - (b) collected and used by Finance and shared with Entities on a confidential basis for the purpose of achieving the objectives of the Panel.

8.2 Service Levels

- 8.2.1 The Service Provider must provide the Services so as to meet or exceed the Service Levels described in **Schedule 2 (Labour Hire Services)**, **Schedule 7 (Performance Management Framework and Service Levels)**, and any additional Service Levels specified in an Order.
- 8.2.2 If requested, the Service Provider must provide all necessary information and assistance to enable Finance or an Entity to verify the Service Provider's performance of the Services against the Service Levels.

8.3 Consequences of a Service Level Failure

- 8.3.1 Without limiting any other rights of Finance or an Entity under this Head Agreement or a Contract, the Service Provider agrees and acknowledges that:
- (a) an Entity may reduce the volume of the request for Services issued to the Service Provider for an ongoing failure of the Service Provider to meet the agreed Service Levels.
 - (b) any serious or ongoing failure to achieve the agreed Service Levels may result in the Service Provider being removed from the Panel for a period of time or indefinitely; and
 - (c) the Service Provider must, at its cost, participate in regular performance meetings with an Entity as requested by the Entity.

9 Reporting

9.1 Reporting to Finance

- 9.1.1 The Service Provider must, at its own expense, provide Finance with reports in accordance with the mandatory reporting requirements under **Schedule 8 (Reporting)**, and any additional reports reasonably requested by Finance.
- 9.1.2 The Service Provider must, if requested by Finance, provide written verification of the accuracy of any reports delivered.
- 9.1.3 On expiry of this Head Agreement, the Service Provider must continue to provide, at no cost, reports in accordance with **Schedule 8 (Reporting)** in relation to any existing Contract until all invoices are paid and all Orders are completed and reported to Finance.

9.2 Reporting to Entities

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

10 Relationships

10.1 General obligations of the parties

- 10.1.1 Each party must:

- (a) diligently perform its obligations under this Head Agreement and any Contract;
and
- (b) work together in a collaborative manner in good faith.

10.1.2 If requested by Finance, the Service Provider must participate in any meetings (which may be by virtual attendance), in relation to the operation of this Head Agreement at the Service Provider's own expense. If the Service Provider will incur material external costs as a result of participation in such a meeting, the Service Provider may seek reimbursement from Finance or the Entity (as relevant) for those costs provided they are reasonable in amount, substantiated to the reasonable satisfaction of Finance or the Entity and have been notified to Finance or the Entity prior to those costs being incurred.

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Part B – Ordered Services

11 Ordering Services

11.1 Overview

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

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

11.2 Request for Quotations

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

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

11.2.3 In seeking a Quotation, an Entity may request Fees lower than those set out in **Schedule 3 (Pricing)** however, the Quotation provided by the Service Provider must be on a fixed price basis and must not be expressed as a percentage or use a harmonised methodology.

11.2.4 In an RFQ, an Entity may also:

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

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

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

11.2.6 When responding to an RFQ the Service Provider may:

- (a) offer Fees that are lower than the Fees set out in **Schedule 3 (Pricing)**; and

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

11.2.7 Quotations must remain open for acceptance by the Entity for a minimum of 30 days after the RFQ Closing Date, or for such time as specified by the Entity in an RFQ.

11.2.8 By issuing an RFQ, there is no obligation on the Entity to issue an Order.

11.3 Forming a Contract

11.3.1 A separate Contract will be formed between the Service Provider and an Entity when an Entity issues an Order to the Service Provider and the Order is signed by both parties.

11.3.2 An Entity may issue an Order to the Service Provider in the format provided in **Schedule 6 (Order Template)**, or similar format, at any time during the Head Agreement Period. Finance may update the Request for Quotation Template from time to time by notice to the Service Provider.

11.4 Modifications to Head Agreement

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

12 Terms of a Contract

12.1 Terms and conditions

12.1.1 The terms and conditions of each Contract will be:

- (a) the relevant terms and conditions of this Head Agreement;
- (b) the terms and conditions of the Order; and
- (c) any other documents specified as being part of, incorporated into, or otherwise applicable to, the Contract (including relevant attachments and attached documents).

12.1.2 For a Contract, to the extent of any conflict between any of the provisions referred to in clause 12.1.1, the descending order of precedence set out in that clause will apply.

12.2 Contract period

12.2.1 A Contract begins on the Order Commencement Date and continues for the Order Term, as specified in the Order, unless the Contract is terminated in accordance with clause 26.

12.2.2 Where an Order Term extends beyond the Head Agreement Period or termination of this Head Agreement, the Order Term cannot be extended, unless otherwise agreed by Finance.

- 12.2.3 Where a Contract formed under clause 11.3 before the expiration or termination of this Head Agreement continues for the Order Term, notwithstanding the expiration or termination of this Head Agreement, the terms of this Head Agreement continue to apply to the Contract for the entire Order Term.

13 Provision of Services under a Contract

13.1 Service Provider obligations

- 13.1.1 Upon entering into a Contract, the Service Provider must provide the Ordered Services as detailed in the Contract:

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

13.2 Inquiries

- 13.2.1 The Service Provider agrees to provide, all reasonable assistance requested by an Entity in respect of any inquiry concerning the Service Provider's performance of the Ordered Services. If the Service Provider will incur material external costs as a result of provision of such assistance, the Service Provider may seek reimbursement from the Entity for those costs provided they are reasonable in amount, substantiated to the reasonable satisfaction of the Entity and have been notified to the Entity prior to those costs being incurred.

- 13.2.2 Without limitation to the generality of clause 13.2.1:

- (a) the assistance to be provided by the Service Provider under clause 13.2.1 will include, as appropriate, the preparation of reports, the provision of documents or other Material, and making available relevant Service Provider Personnel and Subcontractors to provide information or answer questions on any matters relevant to or arising from an Order which might reasonably be expected to be within the knowledge of the Service Provider. To avoid doubt, this assistance will not include the provision of any legally privileged information; and
- (b) an inquiry referred to in clause 13.2.1 will include any administrative or statutory review, audit or inquiry (whether within or external to the Entity), any requests for information or documents directed to the Entity and any inquiry conducted by Parliament or any Parliamentary committee.

- 13.2.3 The Entity Representative will endeavour to notify the Service Provider as early as possible of any assistance required under clause 13.2.1, and the Service Provider acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.

13.2.4 This clause 13.2 survives expiry or termination of this Head Agreement.

13.3 Relationship of parties

13.3.1 The Service Provider is not by virtue of this Head Agreement or a Contract an officer, employee, partner or agent of the Commonwealth, Finance or an Entity, nor does the Service Provider have any power or authority to bind or represent the Commonwealth, Finance or an Entity, unless specifically authorised in writing.

13.3.2 The Service Provider or any officer, employee, partner or agent must not:

- (a) misrepresent its relationship with the Commonwealth, Finance or an Entity;
- (b) engage in any misleading or deceptive conduct in relation to the Services; or
- (c) represent itself as an employee of the Commonwealth, Finance or an Entity.

14 Fees and payment

14.1 Fees

14.1.1 All Fees are inclusive of GST.

14.1.2 The total invoiced amount for a Contract must not exceed the amount in the Contract unless the parties vary, in advance and in writing, the total Fees payable under the Contract.

14.1.3 Subject to clause 11.2.6, the Fees specified in **Schedule 3 (Pricing)** are the maximum Fees that may be charged unless adjusted in accordance with clause 14.2.1.

14.2 Fee adjustment

14.2.1 At least three months prior to 1 July 2024, and at least three months prior to each subsequent 1 July during the Head Agreement period, the Service Provider may apply for an increase of the Referred Gross Profit Margin, Non-Referred Gross Profit Margin, and any applicable Introduction Fee and Placement Fee in **Schedule 3 (Pricing)**. The Fee increase requested may not be more than the change in the Consumer Price Index (All Groups weighted average for the eight capital cities) for the preceding 12 months, as published by the Australian Bureau of Statistics.

14.2.2 Where the Service Provider applies for an increase to Fees pursuant to clause 14.2.1, the Service Provider's Fees will be adjusted following the request from 1 July of that year, and will apply to Contracts entered into after that date.

14.3 Set Off

14.3.1 An Entity may, in addition and without prejudice to any other right it may have, deduct from the payment of any Fee, or other money due to the Service Provider, any money owed by the Service Provider to the Entity as a debt immediately due to the Commonwealth.

14.4 Invoicing

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

14.4.2 Tax Invoices must include:

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

14.5 Payment terms

14.5.1 Unless the Contract states otherwise, the Entity will pay the Service Provider in accordance with the timeframes described in the Australian Government's *Supplier Pay on-Time or Pay Interest Policy* available at <https://www.finance.gov.au/publications/resource-management-guides/supplier-pay-time-or-pay-interest-policy-rmg-417/part-1-policy-and-practice>.

15 GST and taxes

15.1 GST

15.1.1 Words or expressions used in this clause 15 which are defined in the GST Act have the same meaning in this clause 15.

15.1.2 Unless described as 'GST exclusive' in this Head Agreement or an Order, any consideration to be paid for a supply made under or in connection with this Head Agreement or a Contract is 'GST inclusive'.

15.1.3 Despite any other provision in this Head Agreement or an Order, if a party (Supplier) makes a supply under or in connection with this Head Agreement on which GST is imposed (not being a supply described in this Head Agreement as 'GST inclusive', including as a result of the application of clause 15.1.2):

- (a) the consideration payable or to be provided for that supply under this Head Agreement but for the application of this clause 15.1.3 (GST exclusive consideration) is increased by, and the recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST payable on the supply (GST Amount); and
- (b) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

- 15.1.4 The Recipient need not make a payment for a taxable supply made under or in connection with this Head Agreement until the Supplier has given the Recipient a Tax Invoice for the supply to which the payment relates.

15.2 **Other taxes**

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

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Part C – General Terms and Conditions

16 Commonwealth Laws and policy requirements

16.1 Compliance with Laws and policies

16.1.1 The Service Provider must comply with, and ensure its Personnel and Subcontractors comply with all Laws and Commonwealth policies applicable to the provision of Services under this Head Agreement and any Contract, and any Entity-specific policies referred to in this Head Agreement or specified in an Order.

16.1.2 Without limiting this clause 16, the Service Provider must comply with, and ensure its Personnel and Subcontractors comply with the following Laws:

- (a) *Crimes Act 1914* (Cth);
- (b) *Criminal Code Act 1995* (Cth);
- (c) *Privacy Act 1988* (Cth);
- (d) *Copyright Act 1968* (Cth);
- (e) *Workplace Gender Equality Act 2012* (Cth);
- (f) *Work Health and Safety Act 2011* (Cth);
- (g) *Auditor-General Act 1997* (Cth);
- (h) Part 4 of the *Charter of the United Nations Act 1945* (Cth);
- (i) *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Cth);
- (j) *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);
- (k) *Modern Slavery Act 2018* (Cth); and
- (l) all applicable laws relating to taxation.

16.1.3 The Service Provider acknowledges, and must ensure that its Personnel and Subcontractors are aware of and acknowledge, that the giving of false or misleading information to the Commonwealth is a serious criminal offence under section 137 of the *Criminal Code Act 1995* (Cth).

16.1.4 The Service Provider must notify Finance immediately on becoming aware of:

- (a) any adverse comments or findings made by a court, commission, tribunal, or other statutory or professional body regarding the conduct or performance of the Service Provider or impacting on the professional capacity or capability of its Personnel or Subcontractors to deliver the Services;
- (b) any unsettled judicial decisions against it relating to unpaid employee entitlements;

- (c) any other significant matters, including the commencement of legal action, involving the Service Provider or its Personnel or Subcontractors that may adversely impact on an Entity's compliance with Australian Government policy and legislation or the Commonwealth's reputation; and
- (d) any non-compliance by the Service Provider or its Personnel or Subcontractors with any judgment against it from any court or tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations Law, work health and safety Law or workers' compensation Law.

16.2 Workplace Gender Equality Act 2012 (Cth)

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

16.3 Modern Slavery

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

16.4 Indigenous Procurement Policy

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

- 16.4.3 In addition to the requirements in this clause 16.3, for any RFQ or Order valued at \$7.5 million or more the Mandatory Minimum Requirements of the [Indigenous Procurement Policy](#) apply.

16.5 Fraud

- 16.5.1 For the purposes of this clause, 'Fraud' means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means.
- 16.5.2 The Service Provider must take all reasonable steps to prevent and detect Fraud in relation to the performance of this Head Agreement or a Contract. The Service Provider acknowledges the occurrence of Fraud by the Service Provider or its Personnel or Subcontractors will constitute a breach of this Head Agreement and any relevant Contract.
- 16.5.3 If the Service Provider or its Personnel or Subcontractors have committed Fraud, or the Service Provider has failed to take reasonable steps to prevent Fraud by its Personnel or Subcontractors, the Service Provider must reimburse Finance or the relevant Entity for the reasonable costs it incurs as a result of the Fraud.

16.6 Payment Times for Subcontractors

- 16.6.1 The Service Provider must comply with the 'Payment Times Procurement Connected Policy' (PT PCP), currently available at: <https://treasury.gov.au/publication/p2021-183909>
- 16.6.2 If the Service Provider enters into a PT PCP Subcontract, the Service Provider must include in that subcontract:
- (a) a requirement for the Service Provider to pay the PT PCP Subcontractor:
 - (i) subject to clause 16.6.4, within 20 calendar days after the Acknowledgement of the satisfactory delivery of the goods or Services and receipt of a correctly rendered Tax Invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day; and
 - (ii) subject to clause 16.6.5, for payments made by the Service Provider after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with clause 16.6.6;
 - (b) a statement that the PT PCP applies to that subcontract; and
 - (c) a statement that the Subcontractor may make a complaint to the PT PCP Policy Team or to an Entity in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 16.6.2.
- 16.6.3 If the Service Provider enters into a Reporting Entity Subcontract in anticipation of (or after) entering the Contract, the Service Provider must use reasonable endeavours to include in that subcontract:
- (a) obligations equivalent to those in clause 16.6.2; and

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

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

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

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

PT PCP Evaluation Questionnaire

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

Non Compliance and Remediation

- 16.6.8 If an Entity considers or becomes aware that the Service Provider has not or may not have complied with:
 - (a) the requirements of clause this clause 16.6; or
 - (b) the payment requirements of a PT PCP Subcontract,
 the Entity may direct the Service Provider to provide to the Entity either or both of the following within the timeframes specified by the Entity:

- (c) information to enable the Entity to review the Service Provider's compliance; or
 - (d) a properly completed PT PCP Remediation Plan.
- 16.6.9 The Service Provider must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 16.6.8(d).
- 16.6.10 If an Entity considers that the Service Provider has failed to comply with any of its obligations under this clause 16, without limiting the Entity's rights and remedies at Law or otherwise under the Contract, the Entity may do either or both of the following:
- (a) take the failure or non compliance into account as part of the Entity's monitoring of the Service Provider's performance under the Contract; or
 - (b) report the non compliance (and provide a copy of the completed PT PCP Remediation Plan) to the Policy Team.
- 16.6.11 The Service Provider agrees that if it is the subject of a complaint in relation to its compliance with clause 16.6 or the associated payment provisions of a PT PCP Subcontract:
- (a) it will not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
 - (b) it will cooperate in good faith with the Entity in connection with any investigation or inquiry and any attempt to resolve the complaint.

Consent

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

Interpretation

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

16.7 Shadow Economy Procurement Connected Policy

- 16.7.1 In this clause 16.7 capitalised terms used in this clause that are not defined in clause 1.1 have the meanings given in the Shadow Economy Procurement Connected Policy.
- 16.7.2 The Service Provider must hold a Valid and Satisfactory Statement of Tax Record at all times during the Head Agreement Period and, on request by Finance or an Entity, provide to Finance or an Entity a copy of any such Statement of Tax Record.
- 16.7.3 If the total value of a Contract is over \$4 million (GST inclusive), the Service Provider must ensure that any first tier Subcontractor engaged under that Contract holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant Contract.
- 16.7.4 The Service Provider must on request by Finance or an Entity, provide to Finance or an Entity a copy of any Statement of Tax Record referred to in this clause 16.7.

16.8 Australian Industry Participation

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

16.9 Illegal Workers

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

16.10 Work Health and Safety

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

- (a) ensure that any person conducting a business or undertaking involved in the performance of this Head Agreement, any Contract or the provision of any Services meets the primary duty of care requirements of the *Work Health and Safety Act 2011* (Cth) (the **WHS Act**) or corresponding State or Territory legislation;
 - (b) ensure the regulator is notified immediately after a notifiable incident has occurred in accordance with section 38 of the WHS Act or corresponding State or Territory legislation;
 - (c) Notify the relevant Entity representative within one Business Day of any work related injury that causes death or serious personal injury, any notifiable incident as defined at section 35, 36 and 37 of the WHS Act so far as it relates to any Services under this Head Agreement or a Contract, and each occasion that the Service Provider reports to or notifies a regulatory authority under WHS Law;
 - (d) ensure that its Personnel are properly inducted where the Services are to be provided and also ensure that all those persons are provided with information, instruction, training or supervision to ensure their own health and safety and that their acts or omissions do not adversely affect the health and safety of other persons whilst at a place where Services are provided;
 - (e) comply, with any direction given by the Entity that the Entity considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons;
 - (f) promptly provide to the Entity, upon request, information or documentation to assist the Entity comply with its duties under WHS Law; and
 - (g) co-operate fully with any investigation by any government agency, parliamentary inquiry, board of inquiry or coronial inquiry with respect to work health and safety.
- 16.10.5 At Finance or an Entity's request, the Service Provider must provide reasonable assistance to the Commonwealth or Comcare (including giving the Commonwealth, Comcare and their nominees access to the Service Provider's premises, files, ICT systems and Personnel) in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the performance of this Head Agreement or any Contract.
- 16.10.6 The Service Provider must perform its obligations under this Head Agreement and any Contract in such a way that Finance and any Entity is able to participate in any necessary inspections, and is able to obtain the full benefit of Services for the purposes for which they are delivered, without being in breach of any WHS Law.
- 16.10.7 The Service Provider must provide reasonable assistance to the Entity, or Comcare if requested (including giving access to the Service Provider'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 Services.
- 16.10.8 The Service Provider must ensure that each subcontract imposes obligations on the Subcontractor equivalent to the obligations under this clause 16.10.

16.11 Change of Control

- 16.11.1 If the Service Provider undergoes a Change of Control, the Service Provider must notify Finance, and any Entity with which the Service Provider has a Contract, within 14 days of that Change of Control occurring.
- 16.11.2 The Service Provider must promptly provide Finance with any further information reasonably requested by Finance or an Entity in relation to any such Change of Control or proposed Change of Control.

17 Service Provider's warranties

- 17.1.1 The Service Provider warrants on the Head Agreement Commencement Date and each Order Commencement Date that:
- (a) it has the full power and authority to enter into, perform and observe its obligations under this Head Agreement;
 - (b) it has all necessary licences and authorisations required to operate and provide the Ordered Services to an Entity under a Contract, including any applicable Statutory Licence;
 - (c) it complies, and will comply at all times during the Head Agreement Period and each Order Term, with any Statutory Licence and the Integrity Requirements;
 - (d) none of its directors, shareholders or management personnel has been convicted of an offence relating to fraud, dishonesty or drug trafficking;
 - (e) the warranties and representations made in the Respondent's Declaration are true and correct, and remain true and correct at all times during the Head Agreement Period and each Order Term;
 - (f) it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
 - (g) it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid the judgment amount;
 - (h) it is not on the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies and none of its Personnel or Subcontractors are on, or are a member of an entity on, that list;
 - (i) it is financially viable; and
 - (j) it has, and any personnel it provides to an Entity under a Contract have, the necessary experience, qualifications, skills, knowledge and competence to perform the Services.
- 17.1.2 The Service Provider warrants that it will promptly notify and fully disclose to Finance any breach of any of the warranties in this clause 17, or any event or occurrence actual or threatened during the Head Agreement Period or any Order Term that would

materially affect the Service Provider's or any Subcontractor's ability to perform any of its obligations under this Head Agreement or any Contract.

- 17.1.3 The Service Provider acknowledges that Finance and Entities may at any time conduct their own integrity checks on the Service Provider's compliance with this clause 17.

18 Insurance

18.1 Obligations to hold insurance

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

19 Liability

19.1 Liability cap

- 19.1.1 Subject to clause 19.1.2, the Service Provider's liability arising out of or in connection with a Contract, whether for breach of contract, tort (including negligence) or for any other common law or equitable cause of action (including under an indemnity), is limited as specified in the relevant Order.
- 19.1.2 Any limitation of liability does not apply to any Loss arising out of:
- (a) personal injury (including sickness or death of a person);
 - (b) loss of, or damage to, tangible property;
 - (c) any infringement of Intellectual Property rights;
 - (d) any breach of confidentiality, privacy or security obligations (including clauses 22.1, 22.3, 22.6, 23 24 and 25) in the Contract or at Law; or
 - (e) any breach of any Law, fraud or any unlawful act or omission.

- 19.1.3 The limitation on liability referred to in clause 19.1 also covers (and limits) any resulting liability of the Service Provider under this Head Agreement arising out of the performance (or non-performance) of the relevant Contract (including under an indemnity).

19.2 Consequential loss

- 19.2.1 To the extent permitted by Law, but subject to clause 19.1.2, neither party is liable to the other for breach of contract, in tort (including negligence), or for any other common law, equitable or statutory cause of action arising out of, or in connection with, the operation of this Head Agreement or a Contract (including under an indemnity) for any loss recoverable in respect of the following categories of loss:
- (a) loss of income, revenue or profits;
 - (b) loss of opportunity or goodwill;
 - (c) loss of anticipated savings or business; or
 - (d) consequential losses, being such losses as may reasonably be supposed to have been in the contemplation of the parties, at the time they entered into this Head Agreement or a Contract, as the probable result of breach of this Head Agreement or the Contract, other than losses such as may fairly and reasonably be considered as arising naturally from the relevant breach.

19.3 Indemnity

- 19.3.1 Subject to clause 19.5.1, the Service Provider must indemnify an Entity from and against any:
- (a) cost or liability incurred by the Entity;
 - (b) loss of or damage to property of the Entity; or
 - (c) loss or expense incurred by the Entity in dealing with any claim against it including reasonable legal costs and expenses and the cost of time spent, resources used or disbursements paid by the Entity,
- arising from either:
- (d) a breach by the Service Provider of an obligation of confidentiality, privacy or security under this Head Agreement or a Contract;
 - (e) an unlawful or negligent act or omission of the Service Provider or its Personnel or Subcontractors in connection with a Contract; or
 - (f) an allegation by a third party that any Ordered Services or use of the Ordered Services infringes the Intellectual Property rights or Moral Rights of the third party.
- 19.3.2 For the purposes of clause 19.3.1, an "infringement" of Intellectual Property rights includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 100 of the *Designs Act 2003* (Cth), section 183 of the

Copyright Act 1968 (Cth) and section 25 of the Circuit Layouts Act 1989 (Cth), constitute an infringement.

19.3.3 The right of an Entity to be indemnified under this clause 19.3 is in addition to, and not exclusive of, any other right, power or remedy provided by Law, but the Entity is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

19.3.4 This clause 19.3 survives the expiration or termination of this Head Agreement or a Contract.

19.4 **Management of claims**

19.4.1 If an Entity wishes to enforce an indemnity under this clause 19, it must:

- (a) give written notice to the Service Provider and Finance as soon as practicable;
- (b) in the case of a claim by a third party, permit the Service Provider, at the Service Provider's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and
- (c) provide all reasonable assistance to the Service Provider in the handling of any such negotiations and litigation.

19.4.2 If the Service Provider is to handle negotiations or conduct litigation on behalf of the Entity, the Service Provider must:

- (a) comply with applicable government policy and obligations relevant to the conduct of the litigation and any settlement negotiations as if the Service Provider was the Entity (including the Commonwealth's Legal Services Directions and any direction issued by the Attorney-General);
- (b) keep the Entity and Finance informed of any significant developments relating to the conduct of the defence or settlement of any claim;
- (c) give the Entity all information and documents reasonably requested by the Entity (with the exception of information or documents that are protected by legal professional privilege), to enable the Entity to determine whether the defence or settlement by the Service Provider of any claim is being conducted in accordance with applicable government policy and obligations (including any requirements relating to legal professional privilege and confidentiality); and
- (d) comply with any reasonable conditions imposed by the Entity.

19.5 **Contribution and mitigation**

19.5.1 The Service Provider's liability under or in connection with this Head Agreement or a Contract (including under the indemnity in clause 19.3.1) will be reduced:

- (a) proportionately to the extent that any act or omission of the Entity or its Personnel contributed to the relevant cost, liability, loss, damage or expense; and

(b) in accordance with any applicable legislative proportionate liability provision.

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

20 Intellectual Property rights

20.1 Rights in Contract Material

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

to deal with the Intellectual Property in the Existing Material and Contract Material in the manner provided for in this clause 20.1.

21 Moral Rights

21.1 General

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

21.2 Permitted Acts

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

- (a) not attributing the authorship of any Contract Material, or any content in the Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the Copyright Act 1968 (Cth));
- (b) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
- (c) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
- (d) adding any additional content or information to the Contract Material.

22 Confidentiality

22.1 Disclosure of Confidential Information

22.1.1 Subject to clause 22.2, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.

22.1.2 In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

22.2 Exceptions to obligations

22.2.1 The obligations of each party under this clause 22.2 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its Personnel or Subcontractors solely in order to comply with obligations, or to exercise rights, under this Head Agreement or any Contract;
- (b) is disclosed to a party's internal management or internal business services Personnel, solely to enable effective management or auditing of Head Agreement-related or Contract-related activities or to advisers for advice in connection with this Head Agreement or a Contract, or to a party's insurers and their advisers in connection with any claim or apprehended claim against a party;
- (c) is shared by Finance or an Entity, or with another Entity, if this serves the Commonwealth's or the Entity's legitimate interests;
- (d) is disclosed by Finance or an Entity to a Commonwealth Minister and his or her advisers;
- (e) is disclosed by Finance or an Entity to third party advisers for the purposes of Finance or that Entity preparing for an approach to market, provided that such advisers are subject to confidentiality obligations no less stringent than the obligations imposed on Finance or an Entity by this clause 22;

- (f) is disclosed by Finance or an Entity in response to a request from a House or a Committee of the Parliament of the Commonwealth, or from a State or Territory Parliament or Assembly if the relevant Entity is a State or Territory Entity;
- (g) is disclosed in circumstances where disclosure is authorised or required by Law, including under this Head Agreement or any Contract, under a licence or otherwise, to be disclosed; or
- (h) is in the public domain otherwise than due to a breach of this clause 22.

22.3 Obligations on disclosure

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

22.4 No reduction in privacy obligations

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

22.5 Written undertaking

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

22.6 Entity Confidential Information

- 22.6.1 The Service Provider agrees to secure all Entity Confidential Information in its possession or control against loss and unauthorised access, use, modification or disclosure.
- 22.6.2 At the expiry or early termination of a Contract, unless instructed otherwise by the Entity and subject to clause 22.6.3, the Service Provider must:
 - (a) immediately return all Entity Confidential Information in its possession or control to the Entity; and
 - (b) where Personal Information has been collected by the Service Provider for the purpose of performing Services under a Contract, destroy or deidentify that Personal Information.
- 22.6.3 Unless otherwise specified in a Contract, the Service Provider may retain one copy of Entity Confidential Information to the extent included in the Contract Material for its

professional record keeping obligations, for insurance purposes or as otherwise required by Law.

23 Security

23.1 General

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

24 Privacy

- 24.1 The Service Provider acknowledges that it is or may be considered to be a 'contracted service provider' within the meaning of section 6 of the Privacy Act, and agrees in respect of any Personal Information obtained as a result of this Head Agreement or during the course of performing the Services under a Contract:

- (a) to use or disclose that Personal Information only for the purposes of this Head Agreement or that Contract;
 - (b) to comply with the obligations contained in the Australian Privacy Principles (APPs) as if it were an 'agency' under the Privacy Act;
 - (c) not to do any act, or engage in any practice that would breach an Australian Privacy Principle, or which if done or engaged in by Finance or the relevant Entity, as the case may be, would be a breach of that APP by Finance or that Entity; and
 - (d) to ensure that any Service Provider Personnel and Subcontractors who are required to deal with Personal Information for the purposes of this Head Agreement or a Contract, are made aware of the obligations of the Service Provider as set out in this clause 24.
- 24.2 The Service Provider must ensure that the Labour Hire Worker is aware that the Labour Hire Worker's Personal Information will be disclosed to the relevant Entity and Finance and used by the relevant Entity and Finance in connection with the Labour Hire Services.
- (a) The Service Provider must promptly notify the Panel Manager in respect of this Head Agreement, and the Entity Representative in respect of a Contract, and the Information Commissioner where required, if the Service Provider:
 - (b) becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause 24, whether by the Service Provider or a Subcontractor;
 - (c) becomes aware that a disclosure of Personal Information may be required by Law; or
 - (d) receives a request or an inquiry from the Information Commissioner, or from any individual to whom any Personal Information held by the Service Provider or a Subcontractor relates, in respect of Personal Information.
- 24.3 If the Service Provider becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause 24, whether by the Service Provider or a Subcontractor, the Service Provider must:
- (a) provide Finance and the relevant Entity with all information requested by Finance or the relevant Entity about the event; and
 - (b) take all reasonable action to mitigate the risk of the breach or possible breach causing serious harm to any of the individuals to whom it relates.
- 24.4 The Service Provider's obligations in this clause 24 are in addition to, and do not restrict, any obligations it may have under the Privacy Act or the APPs including any privacy codes or principles that would apply to the Service Provider but for the application of the other provisions of this clause 24.
- 24.5 In the event of any breach of privacy, Finance's obligations are as set out in this clause 24 and clause 25.

- 24.6 Finance is only responsible for the handling of Personal Information that is collected for the purposes of clauses 5.2.2(a) and 5.2.2(e) and is not responsible for the Personal Information collected as part of each Contract between an Entity and the Service Provider and which is not collected by Finance under those clauses.
- 24.7 Nothing in this clause 24 derogates from clauses 22 or 23.

25 Notifiable Data Breach

- 25.1 If the Service Provider has reasonable grounds to suspect there may have been an event which amounts to an Eligible Data Breach, the Service Provider must:

- (a) as soon as possible, but within two Business Days, notify Finance and the relevant Entity;
- (b) comply with its obligations under the Privacy Act in relation to that event;
- (c) provide Finance and the relevant Entity with all information requested by Finance or the relevant Entity about the event;
- (d) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates; and
- (e) if requested, allow Finance or an Entity to participate in the Contractor's assessment of the event and whether it amounts to an Eligible Data Breach, provided that Finance's participation will be in accordance with the Service Provider's reasonable security and confidentiality requirements.

- 25.2 If the Service Provider, after complying with clause 25.1, determines that an Eligible Data Breach has occurred and notification of that Eligible Data Breach is required under the *Privacy Act*:

- (a) the parties must meet to discuss and endeavour to agree who will issue the notification (but if the parties are unable to agree, then Finance will, acting reasonably, decide which party will issue that notification);
- (b) if the Service Provider is to issue the notification, then the Service Provider must:
 - (i) as soon as possible provide Finance with a draft of the notification;
 - (ii) make any changes to the draft notification that are reasonably required by Finance; and
 - (iii) issue the notification in accordance with the requirements of the *Privacy Act* (including any applicable time periods);
- (c) if Finance is to issue the notification, then Finance must:
 - (i) as soon as possible notify the Service Provider and provide a draft of the notification;
 - (ii) make any changes to the notification that are reasonably required by the Service Provider for consistency with the Privacy Act; and

- (iii) issue the notification in accordance with the requirements of the *Privacy Act* (including any applicable time periods).

25.3 The Service Provider must ensure that:

- (a) Finance is promptly notified of any investigation or other action taken by the Privacy Commissioner in connection with any actual or suspected Eligible Data Breach, or notification in relation to that matter; and
- (b) Finance is kept informed in relation to that investigation or other action.

25.4 The parties acknowledge and agree that nothing in this clause 25 affects their obligations under the *Privacy Act*.

26 Suspension from Panel

26.1 Suspension due to non-compliance

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

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

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

26.1.3 Before Finance suspends the Service Provider, Finance will:

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

26.1.4 If the Service Provider is suspended:

- (a) the Service Provider must not enter into any further Contract in respect of the suspended Service Categories or Job Families;
 - (b) the Service Provider must immediately notify Finance if it receives any request to enter into a Contract or any Request for Quotation in respect of the suspended Service Categories or Job Families;
 - (c) must not respond to the request to enter into a Contract or Request for Quotation (other than to inform the requesting party that the Service Provider is not able to respond to that request); and
 - (d) all other provisions of this Head Agreement and any existing Contracts not affected by the suspension continue.
- 26.1.5 Finance may at any time lift a suspension by notifying the Service Provider. Finance must lift the suspension promptly after the Service Provider demonstrates to Finance's reasonable satisfaction that the Service Provider has rectified the issues that caused the suspension.
- 26.1.6 If:
- (a) any suspension is not lifted within three calendar months;
 - (b) Finance has reasonable grounds to believe that the Service Provider no longer supplies Services that meet the requirements under **Schedule 2 (Labour Hire Services)** or a particular Service Category; or
 - (c) the Service Provider requests,
- then Finance may un-approve the Service Provider in respect of any or all of the suspended or removed Service Categories or Job Families by written notification to the Service Provider, and this Head Agreement is taken to be varied with effect from the date specified in the notice from Finance.

27 Termination

27.1 Termination of Head Agreement for default

- 27.1.1 Finance may, with immediate effect, terminate this Head Agreement for default, by written notice to the Service Provider, if the Service Provider:
- (a) commits a material breach of a provision of this Head Agreement which is not capable of remedy;
 - (b) commits a material breach of a provision of this Head Agreement which is capable of remedy, but where the Service Provider fails to remedy the breach within 10 Business Days, unless otherwise agreed by Finance, after being given written notice by Finance to remedy the breach;
 - (c) commits a breach of a provision of this Head Agreement which is capable of remedy, but where the Service Provider fails to remedy the breach within 30 days after being given written notice by Finance to remedy the breach;

- (d) becomes aware that Personnel or Subcontractors of the Service Provider have committed a breach of national security or without written authorisation released Commonwealth Confidential Information to a third party;
 - (e) is found to have provided false or misleading information to Finance or an Entity in respect of any aspect of their participation on the Panel;
 - (f) being a corporation, subject to Finance complying with any requirements under the Corporations Act, comes under one of the forms of external administration referred to in chapter 5 of the Corporations Act, or has an order made against it for the purpose of placing it under external administration;
 - (g) being an individual or partnership, becomes bankrupt or enters into a scheme of arrangement with creditors;
 - (h) fails to notify Finance of a Change of Control in accordance with clause 16.11.1; or
 - (i) in Finance's reasonable opinion, no longer has the capacity and capability to provide the Services in accordance with this Head Agreement.
- 27.1.2 For the purposes of clause 27.1.1, a breach of the following clauses will constitute a material breach not capable of remedy:
- (a) clause 16 (Commonwealth Laws and policy requirements);
 - (b) clause 20 (Intellectual Property);
 - (c) clause 21 (Moral Rights);
 - (d) clause 22 (Confidentiality);
 - (e) clause 23 (Security);
 - (f) clause 24 (Privacy); and
 - (g) a warranty provided for in clause 17.
- 27.1.3 If this Head Agreement is terminated for default:
- (a) the Service Provider may no longer participate, from the date of the termination, in the Panel with respect to entering any new Contract to provide Services to Entities; and
 - (b) an Entity which is a party to an existing Contract with the Service Provider under the Panel may, at its discretion, terminate that Contract for default as well.

27.2 Termination of Contract for default

- 27.2.1 If the Service Provider fails to satisfy any of its obligations under a Contract and the failure is:
- (a) not capable of remedy, the Entity may, by notice terminate the Contract immediately; or

- (b) a failure to comply with any of the Integrity Requirements (whether or not capable of remedy), the Entity may, by notice terminate the Contract immediately; or
 - (c) capable of remedy, the Entity may, by notice require that the failure be remedied within a reasonable time as specified in the notice and, if not remedied within that time, may terminate the Contract immediately by giving a second notice. For the avoidance of doubt, an Entity may (but is not required to) give the Service Provider an opportunity to remedy a failure to comply with an Integrity Requirement under this clause 27.2(c).
- 27.2.2 The Entity may also by notice, terminate a Contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:
- (a) fails to notify the Entity of a Change of Control in accordance with clause 16.11.1;
 - (b) being a corporation, subject to the Entity complying with any requirements under the *Corporations Act 2001* (Cth), comes under one of the forms of external administration referred to in chapter 5 of the Corporations Act, or has an order made against it for the purpose of placing it under external administration;
 - (c) being an individual or partnership, becomes bankrupt or enters into a scheme of arrangement with creditors;
 - (d) commits any breach for which a Contract provides that a notice of termination for default may be given;
 - (e) has their Head Agreement terminated for default under clause 27.1; or
 - (f) has any other Contract terminated for default under clause 27.2.
- 27.2.3 The Service Provider may only terminate a Contract by issuing a notice to terminate if:
- (a) the Entity has not paid a correctly rendered Tax Invoice that is not disputed by the Entity within 40 Business Days after payment was due (**Payment Due Date**) provided that the Service Provider has:
 - (i) notified the Entity in writing of its claim for payment at least 20 Business Days after the Payment Due Date (or such other period specified in the Order); and
 - (ii) subsequently notified the Entity at least 40 Business Days after the Payment Due Date (and at least 10 Business Days has elapsed since this subsequent notice was provided) (or such other periods specified in the Order); or
 - (b) the Entity breaches a material provision and has failed to remedy the breach within 40 Business Days or such other period agreed by the parties after receiving a notice requiring it to remedy the breach.

27.3 Service Provider must notify breaches and change in circumstances

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

27.4 Termination or reduction of Head Agreement for convenience

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

27.5 Termination or reduction of Contract for convenience

- 27.5.1 An Entity may by 30 Business Days' notice, at any time and in its absolute discretion terminate a Contract, or reduce the scope of any Ordered Services.
- 27.5.2 The Service Provider agrees, on receipt of a notice of termination or reduction to:
- (a) stop or reduce work as specified in the notice;
 - (b) use all reasonable endeavours to mitigate its costs incurred as a result of such termination or reduction; and
 - (c) continue work on any part of any Ordered Services not affected by the notice.
- 27.5.3 In the event of termination under clause 27.5.1, the Entity will be liable only:
- (a) to pay any Fees due under a Contract relating to Ordered Services completed before the date of termination. Where:
 - (i) Fees in an Order are calculated on a milestone basis;
 - (ii) the event of termination occurs before the relevant milestone is reached; and
 - (iii) the Service Provider is able to substantiate the level of effort and time it has spent providing the Ordered Services to the reasonable satisfaction of the Entity,
- then the Entity will pay Fees for Ordered Service completed before the date of termination calculated as the Fees that would have been payable on a time and materials basis to perform the relevant Services; and

- (b) to the extent not recovered under clause 27.5.3(a), the costs properly, unavoidably and directly incurred as a result of such termination or reduction (excluding: (i) the cost of redundancies, redeployment or other costs associated with employment actions taken as a result of the termination or reduction (ii) the costs of termination of Subcontractors; and (iii) costs relating to premises) and which can be substantiated to the Entity's reasonable satisfaction.
- 27.5.4 The Entity will not be liable to pay amounts under clause 27.5.3(a) and 27.5.3(b) which would, added to any Fees already paid to the Service Provider under a Contract, together exceed the Fees specified in an Order.
- 27.5.5 In the event of a reduction in the scope of any Ordered Services, the Entity's liability to pay Fees, allowances or costs under any relevant Contract will reduce in accordance with the reduction in the Ordered Services.
- 27.5.6 The Service Provider will not be entitled to compensation for loss of prospective profits.
- 27.6 **Effect of expiry, termination, or reduction**
- 27.6.1 The expiry, termination, or reduction in scope of this Head Agreement does not automatically terminate or otherwise affect the operation of any Contract entered into with an Entity pursuant to this Head Agreement prior to the date of expiration, termination, or reduction.
- 27.6.2 Where this Head Agreement has been:
 - (a) terminated or has expired in accordance with this clause 27, the Service Provider must not accept a new Order or an extension of an existing Order entered into with an Entity prior to the date of termination or expiration; or
 - (b) reduced in scope in accordance with clause 27.3, the Service Provider must not accept a new Order or an extension of an existing Order entered into with an Entity prior to the date of reduction where such Order relates to Services under a Service Category from which the Service Provider has been removed.
- 27.6.3 Upon notice of:
 - (a) termination, Finance will promptly remove the Service Provider from the Panel; or
 - (b) reduction in scope, Finance will promptly remove the Service Provider from one or more Service Categories or Job Families under which the Service Provider has been appointed to provide Services under the Panel.

28 Issue and dispute resolution

28.1 Interpretation

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

28.2 Escalation of issues to Finance

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

28.3 Procedure for dispute resolution

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

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

either party may commence legal proceedings.

28.4 Costs

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

28.5 Continued performance

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

28.6 Exemption

28.6.1 This clause 28 does not apply to:

- (a) action by an Entity under or purportedly under any clause relating to termination, whether for convenience or for default; or
- (b) legal proceedings by either party seeking urgent interlocutory relief.

29 Books and records

29.1.1 The Service Provider must keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable the amounts payable by an Entity under a Contract to be determined.

29.1.2 The Service Provider must, in the performance of its obligations under this Head Agreement, and any Contract, at all times comply with any applicable requirements of the *Archives Act 1983* (Cth) and any Records Disposal Authority issued under that Act in respect of Commonwealth or Entity records which are under the custody or control of the Service Provider.

30 Audit and access

30.1 Right to conduct audit

30.1.1 Upon reasonable notice, the Service Provider agrees to provide access to the Service Provider's premises to conduct audits relevant to the performance of the Service Provider for:

- (a) this Head Agreement, to Finance, or a person or organisation nominated by Finance; or
- (b) a Contract, to the Entity's Representative or a person or organisation nominated by the Entity.

30.1.2 Audits may be conducted of:

- (a) the Service Provider's operational practices and procedures as they relate to this Head Agreement and any Contract (including security procedures);
- (b) the Fees and the accuracy of the Service Provider's invoices and reports in relation to the provision of Services under this Head Agreement and any Contract;
- (c) the Service Provider's compliance with its confidentiality, privacy, security and other obligations under this Head Agreement and any Contract;
- (d) the Service Provider's obligation to supply the Ordered Services as detailed in the Order in accordance with relevant Australian Standards, best practice and

guidelines or where none apply, relevant international industry standards, best practice and guidelines as required under clause 13.1.1(c); and

- (e) Material (including accounts and records) in the possession of the Service Provider relevant to the Services or this Head Agreement or any Contract.

30.1.3 The rights referred to in clause 30.1.1 are subject to:

- (a) Finance or an Entity providing reasonable prior notice;
- (b) compliance with reasonable security procedures in place at the premises;
- (c) restrictions on access under applicable Laws; and
- (d) if reasonably required by the Service Provider, execution of a deed of confidentiality by the persons to whom access is given.

30.1.4 The Auditor-General, the Information Commissioner, and their delegates are persons authorised for the purposes of this clause 30.

30.1.5 Despite any other clause in this Head Agreement, the Service Provider is not required to disclose to an auditor any Service Provider Proprietary Information or any other information which, if disclosed, would cause the Service Provider to breach any mandatory regulations or applicable Laws.

30.1.6 This clause 30 does not detract from the statutory powers of the Auditor-General, the Information Commissioner and their delegates.

30.2 Access to documents

30.2.1 In this clause 30.2, "document" and "Commonwealth contract" have the same meaning as in the FOI Act.

30.2.2 This clause 30.2 only applies to the extent that the arrangements between the Service Provider and:

- (a) Finance under this Head Agreement; or
- (b) an Entity under any Contract,

meet the definition of a Commonwealth contract under the FOI Act.

30.2.3 Where Finance or an Entity receives a request under the FOI Act for access to a document that:

- (a) was created by or is in the possession of the Service Provider, its Personnel or any Subcontractor; and
- (b) relates to the performance of this Head Agreement or any Contract under it,

then Finance or the Entity (as relevant) may at any time by written notice require the Service Provider to provide that document and the Service Provider must, at no additional cost to Finance or the Entity (as relevant), promptly comply with the notice.

31 Conflict of Interest

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

32 Notices and other communications

32.1 Service of notices

- 32.1.1 A notice must be in writing and is deemed to have been given if:
- (a) it is delivered by hand, on the date on which it is delivered;
 - (b) it is sent by post, on the day upon which it would be delivered in the normal course of post; or
 - (c) transmitted electronically, with proof of a successful transmission (provided that the sender does not receive subsequent notification that that the notice failed to transmit).
- 32.1.2 The address for service of notice of each party of this Head Agreement is set out in Item 6 of **Schedule 1 (Head Agreement Details)**, or such other address as is notified by the party from time to time.
- 32.1.3 The address for notices for an Entity will be set out in an Order issued by the Entity to the Service Provider.

32.2 Variations

- 32.2.1 Finance can propose a variation to this Head Agreement by issuing a Deed of Variation in the format provided in **Schedule 10 (Deed of Variation)**.
- 32.2.2 The Service Provider can propose a variation to this Head Agreement by issuing a Deed of Variation in the format provided in **Schedule 10 (Deed of Variation)**.
- 32.2.3 No variation to this Head Agreement will be effective unless the Deed of Variation is signed by the Finance Senior Executive and the Service Provider's Senior Executive.
- 32.2.4 Variations to this Head Agreement will become effective on the date the last party signs the Deed of Variation.
- 32.2.5 A Contract may not be varied unless the Entity and the Service Provider have agreed to that variation in writing, which may be in the format provided in **Schedule 6A (Order Variation Template)**.

33 Miscellaneous

33.1 Entire Agreement

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

Survival

- 33.1.2 The following clauses survive the expiry or termination of this Head Agreement or any Contract:
 - (a) any clause expressly stated to survive, or which by its nature or operation survives, the expiry or termination of this Head Agreement or any Contract, in accordance with that clause;
 - (b) any provision relating to liability or indemnity;
 - (c) 13.2 (Inquiries);
 - (d) 18 (Insurance);
 - (e) 19 (Liability);
 - (f) 20 (Intellectual Property rights);
 - (g) 22 (Confidentiality);
 - (h) 23 (Security);
 - (i) 24 (Privacy);
 - (j) 27 (Termination);

- (k) 29 (Books and records);
- (l) 30 (Audit and access);
- (m) 33 (Miscellaneous); and
- (n) any other provision which expressly or by implication from its nature is intended to continue.

33.2 Approvals and consents

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

33.3 Assignment and novation

- 33.3.1 The Service Provider must not assign or novate its rights or obligations:
- (a) under this Head Agreement without the prior written consent of Finance; or
 - (b) under a Contract without the prior written consent of the relevant Entity.
- 33.3.2 Where the Service Provider wishes to assign or novate its rights or obligations under this Head Agreement, the Service Provider must provide the Panel Manager with a completed Deed of Novation in the form provided at **Schedule 11 (Deed of Novation)**.
- 33.3.3 Finance or an Entity will conduct due diligence on any new entity proposed for an assignment or novation, including in respect of their compliance with Integrity Requirements.

33.4 Waiver

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

33.5 Announcements

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

33.6 Governing Law and jurisdiction

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

33.7 **Costs, duties and taxes**

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

33.8 **Counterparts**

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

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Schedule 1 Head Agreement Details

Item 1 (clause 1.1)	Panel Manager Director, People Panel Contract Management Strategic Contracting Branch Department of Finance
Item 2 (clause 1.1)	Finance Senior Executive Assistant Secretary, Strategic Contracting Branch Department of Finance
Item 3 (clause 1.1)	Service Provider's Representative <Name> <Position> <Contact number> <Email address>
Item 4 (clause 1.1)	Service Provider's Senior Executive <Name> <Position> <Contact number> <Email address>
Item 5 (clause 1.1)	Service Provider's Entity Contact <Name>

<Position>

<Contact number>

<Email address 1>

<Email address 2>

Item 6
(clause 32)

Address for notices

(a) Finance

Director, People Panel Contract Management Department of Finance

One Canberra Avenue

Forrest ACT 2603

Email: peoplepanelcontract@finance.gov.au

(b) Service Provider

<Name>

<Position>

<Physical address>

<Email address>

Item 7

Service Category/ies

[Indicate here which of the Service Categories for Labour Hire Services the Service Provider is eligible to provide]

	Service Category	Eligibility [tick relevant Service Category]
1	Corporate Services	

2	Policy and Program	
3	Data and Knowledge	
4	Compliance and Legal	
5	Other workers	

Item 8
clause 2.1 of
Schedule 2
(Labour
Hire
Services)

Service Category/ies Service Provider is eligible to provide

Note that all Service Providers may provide Conversion, Introduction and Placement Services.

Schedule 2 Labour Hire Services

PART A – SERVICES DESCRIPTION

1 Introduction

- 1.1 This **Schedule 2 (Labour Hire Services)** sets out all the available Services and Service Categories for the Labour Hire Services, however the Service Provider is only eligible to provide the Service Categories listed in Item 8 of **Schedule 1 (Head Agreement Details)**.
- 1.2 The Labour Hire Services comprise the provision of suitably qualified and appropriately skilled personnel to undertake work in the Service Categories and Relevant Job Families specified in clause 2 below, in the following situations:
- (a) where there are short-term absences;
 - (b) to meet urgent unforeseeable demands or peak workloads; or
 - (c) to meet specific budget allocation for particular projects,
 - (d) other than services which, under clause 2.2, are out-of-scope under this Head Agreement.

2 Service Categories

- 2.1 The Service Provider is approved to provide only those of the Service Categories specified below that are set out in Item 8 of **Schedule 1 (Head Agreement Details)**.

#	Service Category	Job Family
1	Corporate Services	- Accounting and Finance - Administration - Communications and Marketing - Human Resources
2	Policy and Program	- Service Delivery - Portfolio, Program and Project Management - Policy

#	Service Category	Job Family
3	Data and Knowledge	• ICT and Digital Solutions (roles commonly listed in the ICT and Digital Solutions Job Family) • Information and Knowledge Management • Data and Research
4	Compliance and Legal	• Compliance and Regulation • Legal and Parliamentary • Monitoring and Audit
5	Other workers	• Engineering and Technical • Intelligence • Senior Executive • Trades and Labour • Sciences and Health

3 General obligations in respect of Labour Hire Services

3.1 When providing Labour Hire Services, the Service Provider must:

- (a) except in the case of Referred workers, manage the entire process of advertising for, and sourcing candidates, including conducting interviews and any other recruitment processes;
- (b) if Finance introduces a Panel Administration Platform in accordance with clause 5.5 of the Head Agreement, ensure that the Labour Hire Worker is registered in the Panel Administration Platform and has a unique ID;
- (c) where an Entity specifies a particular software system, platform or solution in a Contract, use that software system, platform or solution in relation to the provision of the Services, at no additional cost to the Entity;
- (d) ensure that all people the Service Provider provides as Labour Hire Workers are suitably qualified and appropriately skilled for the role they will be undertaking, and specifically the Service Provider must ensure that:
 - (i) all Labour Hire Workers it supplies against an APS or EL level are capable of performing to the levels and capabilities outlined in the Integrated Leadership System (ILS) by the Australian Public Service Commission set out here: <https://www.apsc.gov.au/working-aps/aps-employees-and-managers/classifications/work-level-standards-senior-executive-service>; and
 - (ii) all Labour Hire Workers it supplies against a Senior Executive Service (SES) level are capable of performing to the levels and capabilities

outlined in the Work Level Standards for the Senior Executive Service by the Australian Public Service Commission set out here:

<https://www.apsc.gov.au/working-aps/aps-employees-and-managers/classifications/work-level-standards-senior-executive-service>;

- (e) ensure all candidates are appropriate for the role scope, key duties and responsibilities, candidate key attributes, capabilities and/or experience for the role as outlined by the Entity;
- (f) ensure that all Labour Hire Workers act at the direction of the Entity in relation to work to be performed, and any additional requirements the Entity may have (e.g. relating to security, access, hours of work, confidentiality and privacy);
- (g) maintain suitable systems and processes for identifying and validating particular qualifications (educational and professional) and personal skills of candidates and validating any candidate's skills and qualifications before offering them to the Entity;
- (h) undertake database searches and sourcing activities based on the requirements identified in any RFQ and position descriptions provided by the Entity;
- (i) ensure that all Labour Hire Workers are aware of, and comply with, all confidentiality, privacy and secrecy obligations required by an Entity (including as set out in any undertaking signed by a Labour Hire Worker) for the duration of their engagement and any relevant period thereafter;
- (j) provide Labour Hire Workers in the roles, for the duration of engagement, and at the times and location(s), specified by an Entity;
- (k) have the capacity and capability to manage the entire process of a continual supply of suitably qualified and appropriately skilled Labour Hire Workers, including replacement of a Labour Hire Worker;
- (l) create and manage an ongoing register of suitably qualified and appropriately skilled candidates to meet future Entity requests for Labour Hire Workers;
- (m) have appropriate administrative procedures in place to manage the Service Provider's relationship with Labour Hire Workers and to ensure that the Service Provider satisfies all of its legal obligations in respect of Labour Hire Worker entitlements, including as described in clause 17;
- (n) have the flexibility, capacity and expertise to meet varying Entity requirements in respect of Labour Hire Workers, including to provide a range of suitably qualified and appropriately skilled Labour Hire Workers for different periods, often at short notice;
- (o) maintain a single point of contact for Entities with nominated 'Account Managers' for each Entity.

- (p) attend and participate in governance meetings for the effective conduct and management of its responsibilities under a Contract, at the times specified in a Contract; and
- (q) create and maintain records of all Labour Hire Workers who are placed with an Entity.

3.2 The Service Provider must:

- (a) satisfy all legal obligations concerning the terms and conditions of employment or engagement for Labour Hire Workers, including under the *Fair Work Act 2009* (Cth), the National Employment Standards, and any applicable industrial award;
- (b) ensure that Labour Hire Workers are adequately informed about their pay rates and other conditions of employment or engagement; and
- (c) ensure that Labour Hire Workers are paid the Agreed Base Salary as specified in the relevant Order.

3.3 The parties acknowledge and agree that the Service Provider is responsible for making all required superannuation contributions in respect of Labour Hire Workers, and no Entity is required to make any superannuation contributions in respect of any Labour Hire Workers under any Contract.

PART B – ENGAGEMENT OF LABOUR HIRE WORKERS

4 Pre-engagement checks

4.1 Unless specified otherwise in a Contract, the Service Provider must, at the cost of the Service Provider, ensure that prior to commencing an engagement with an Entity, all Labour Hire Workers:

- (a) have undergone a criminal history assessment or police check;
- (b) have undergone a medical check or fitness assessment, in accordance with clause 27;
- (c) have obtained the specified security clearance by an Entity;
- (d) are Australian citizens, unless otherwise specified in an Order;
- (e) have obtained any other relevant clearances required by an Entity (e.g. Employment Suitability Clearance, working with children and/or vulnerable persons, disability services or in the aged care sector); and
- (f) have undertaken any additional checks and obtained any additional clearances required by a Contract.

- 4.2 Unless specified otherwise in a Contract, the Service Provider must, at the cost of the Service Provider, ensure that prior to commencing an engagement with an Entity, all Labour Hire Workers:
- (a) have had their skills and education claims verified; and
 - (b) obtained a minimum of two reference checks from employers within the past five years.
- 4.3 In respect of each of the pre-engagement checks and clearances specified 4.1, the Service Provider must:
- (a) obtain from the Labour Hire Worker all documentation necessary to complete the checks and clearances;
 - (b) ensure it has obtained the consent of the relevant Labour Hire Worker for the Entity to receive, read and retain copies of the checks and clearance documents (and related documents and Personal Information); and
 - (c) provide any other information reasonably required by an Entity to enable that Entity to establish, in its sole discretion, that a Labour Hire Worker is a suitable person to work in connection with the Labour Hire Services.

5 Process for engaging Labour Hire Workers

- 5.1 Unless specified otherwise in a Contract, prior to the engagement of a Labour Hire Worker:
- (a) the Service Provider must provide a list of proposed Labour Hire Workers being offered by the Service Provider for an engagement, which sets out in respect of each Labour Hire Worker:
 - (i) identity and contact information (e.g. full name, address, phone number(s), email address and date of birth);
 - (ii) if Finance introduces a Panel Administration Platform in accordance with clause 5.5 of the Head Agreement, the unique ID for the Labour Hire Worker as registered in the Panel Administration Platform;
 - (iii) relevant education, qualifications, training and licences;
 - (iv) relevant work history, including details of previous employers and reasons for termination of prior engagements (if any);
 - (v) relevant skills and abilities (e.g. computer skills, languages);

- (vi) relevant health particulars (e.g. any pre-existing injuries, any known allergies, or any other health conditions that may place them at risk during an engagement);
 - (vii) references;
 - (viii) the proposed start date and finish date (if known) for proposed Labour Hire Workers;
 - (ix) the Agreed Base Salary for each proposed Labour Hire Worker;
 - (x) confirmation that the proposed Labour Hire Worker has undergone the relevant pre-engagement checks, and the results of those checks;
 - (xi) the details of clearances held (e.g. security clearance);
 - (xii) where no clearance is held, details of whether the Labour Hire Worker is prepared to undergo a security assessment to meet the Entity's security guidelines should they be successful; and
 - (xiii) any other information specified by the Entity in a Contract;
- (b) the Service Provider must provide an Entity with information reasonably required by an Entity about the proposed Labour Hire Workers and the steps taken by the Service Provider to check or validate the information.
 - (c) the Service Provider must comply with any directions given by the Entity in respect of the proposed Labour Hire Workers; and
 - (d) the Entity will review the list of proposed Labour Hire Workers and has the right, in its absolute discretion, to approve or reject particular individuals offered by the Service Provider as Labour Hire Workers. Any decision by the Entity to approve or reject persons proposed as Labour Hire Workers will be final.
- 5.2** The Service Provider must conduct any pre-engagement checks, training or induction processes for Labour Hire Workers that are specified in a Contract.

6 Bulk engagement

- 6.1** Where permitted by a Contract, an Entity may use an 'express' method of engaging Labour Hire Workers, under which an Entity may specify:
- (a) the number and location of Labour Hire Workers to be provided; and
 - (b) the mandatory pre-engagement checks and clearances that are required for those Labour Hire Workers,

and the Service Provider must use best endeavours to provide such Labour Hire Workers to the Entity within the timeframe specified by the Entity.

7 Changes to numbers of Labour Hire Workers

7.1 Unless otherwise specified in a Contract, an Entity may at any time during the term of a Contract, change:

- (a) the number of Labour Hire Workers engaged by the Entity; or
- (b) the location of the workplace for the Labour Hire Workers engaged by the Entity,

by providing 10 Business Days written notice (or such other longer period of notice specified in a Contract) to the Service Provider.

7.2 To avoid doubt, where an Entity changes the number of Labour Hire Workers engaged pursuant to clause 7.1

- (a) such change does not constitute a termination or reduction in scope of the relevant Contract for convenience for the purposes of clause 27.5 of the Head Agreement; and
- (b) the Service Provider will not be entitled to any compensation or reimbursement of costs for ceased Labour Hire Workers under clause 27.5 of the Head Agreement, regardless of how many times the relevant right is exercised by the Entity.

8 On site requirements for Labour Hire Workers

Unless agreed by the Entity in writing, all Labour Hire Workers will be required to work on-site at an Entity facility.

9 Extension of engagement of Labour Hire Workers

9.1 An Entity may request to extend the engagement of a Labour Hire Worker by notifying the Service Provider in writing at least 10 Business Days prior to the end date of the Labour Hire Worker's engagement and, subject to the availability of the Labour Hire Worker, the Service Provider must make all reasonable efforts to grant such a request.

9.2 Where the Service Provider is unable to grant an extension request made by an Entity under clause 9.1, the Service Provider must notify the Entity within 5 Business Days of receiving the notice in clause 9.1.

Unsuitable Persons

9.3 If an Entity (in its sole discretion) forms the view that a Labour Hire Worker:

- (a) is incompetent, negligent or guilty of misconduct;

- (b) has disobeyed or disregarded a lawful direction given by the Entity or Entity Personnel;
- (c) has failed to comply with any relevant Law, or otherwise engaged in serious misconduct;
- (d) has failed to act in accordance with the standards and requirements of the APS Values, the APS Code of Conduct, an Entity's Work Health and Safety requirements, an Entity's social media policy, or any applicable Entity policies, procedures or guidelines specified in a Contract;
- (e) has engaged in conduct that brings the Entity into disrepute;
- (f) has misused, accessed without authorisation or improperly disclosed Protected Information or an Entity's Confidential Information, or has otherwise failed to comply with the requirements of any privacy, secrecy or confidentiality undertaking signed by the Labour Hire Worker;
- (g) has failed to comply with an Entity's security requirements (including information security requirements);
- (h) while accessing or using an Entity's premises, Entity provided materials, or Entity hardware, has failed to comply with the access and use requirements;
- (i) in the opinion of the Entity, the Labour Hire Worker is not performing (or has not performed) their role to the satisfaction of the Entity; or
- (j) is otherwise not suitable to work in connection with the Labour Hire Services;

then the Entity may, at any time, in its absolute discretion and without liability to the Service Provider or the relevant Labour Hire Worker:

- (k) undertake a process to ensure that the conduct or performance of the Labour Hire Worker is suitably managed to the reasonable satisfaction of the Entity; or
- (l) immediately on notice to the Service Provider, cease to engage the relevant Labour Hire Worker in connection with the Labour Hire Services under a Contract.

- 9.4 The Service Provider must notify an Entity immediately if it becomes aware of any information that may affect that Entity's acceptance of any Labour Hire Worker.
- 9.5 Without limiting clause 9.4, the Service Provider must immediately notify an Entity if a Labour Hire Worker is charged with a criminal offence for which there is or would (if admitted or proven) be a connection between the offending conduct and the duties, role or position of the Labour Hire Worker under a Contract.
- 9.6 Entities reserve their rights to refuse entry to Entity premises to any Labour Hire Worker.

10 Absences or unavailability of Labour Hire Workers

- 10.1 Where a Labour Hire Worker has been engaged by an Entity, that Labour Hire Worker may, with prior approval from the Entity, be absent from the engagement for a period of time approved by the Entity.
- 10.2 Where the Service Provider becomes aware that a Labour Hire Worker will be absent from the relevant workplace (e.g. due to illness), or otherwise unavailable or unable to carry out their role (e.g. due to resignation), then the Service Provider must notify the relevant Entity immediately.
- 10.3 The Service Provider must not seek to charge, and an Entity will not be liable to pay, any Fees in respect of a Labour Hire Worker for any period while they are absent from the workplace.
- 10.4 Where a Labour Hire Worker has been engaged by an Entity for a specific duration, then the Service Provider must not (except where entirely unavoidable e.g. due to genuine illness or resignation of the Labour Hire Worker) permit or facilitate the removal of that Labour Hire Worker prior to the end date of their engagement with the Entity.

11 Replacements and substitutes

11.1 Where a Labour Hire Worker:

- (a) is absent or otherwise unavailable, as referred to in clause 10.2; or
- (b) has their engagement with an Entity ceased pursuant to clause 9.3(l) or 16.1;

the Service Provider must, if required by the Entity, provide a replacement Labour Hire Worker (or, if applicable, temporary substitute personnel) who is suitably qualified and acceptable to the Entity, at no additional charge, and within 24 hours unless otherwise agreed by the Entity.

- 11.2 If the Service Provider is unable to provide a replacement Labour Hire Worker in accordance with clause 11.1, the Entity may, in addition to any rights it has under the Contract, terminate or reduce the scope of the Contract for default by giving 10 Business Days' written notice of termination.

12 Performance management of Labour Hire Workers

- 12.1 For the duration of the engagement of Labour Hire Workers under a Contract, the performance management of the Labour Hire Workers is the responsibility of the Service Provider, and the Service Provider must:
- (a) liaise with the relevant Entity throughout the duration of the engagement regarding the performance of the Labour Hire Worker; and

- (b) where an Entity advises that the performance of a Labour Hire Worker is not satisfactory, promptly:
 - (i) comply with any reasonable directions from the Entity; and
 - (ii) implement remedial action required by the Entity.
- 12.2 Nothing in clause 12.1 limits the Entity's rights under any other provision of this Schedule or elsewhere in this Head Agreement.
- 13 Conversion of a Labour Hire Worker to an Entity employee**
- 13.1 In certain circumstances an Entity may offer a Labour Hire Worker an opportunity to become a direct employee of the Entity. Conversion occurs where a Labour Hire Worker who is engaged by the Service Provider for the purpose of the Service Provider providing Labour Hire Services to an Entity under an Order accepts an offer of employment by the Entity ("**Conversion**").
- 13.2 Where a Conversion takes place, the Service Provider must provide a seamless transition of the Labour Hire Worker to the Entity.
- 13.3 If Conversion occurs in respect of a Labour Hire Worker:
 - (a) the Service Provider may be eligible for a Conversion Fee in respect of Conversion a Labour Hire Worker in accordance with the terms of **Schedule 3 (Pricing)**; and
 - (b) the Service Provider must immediately cease charging any Fees for that Labour Hire Worker other than any Conversion Fee that the Service Provider is entitled to charge pursuant to **Schedule 3 (Pricing)**.
- 13.4 The Service Provider acknowledges and agrees that any Labour Hire Worker who is engaged by an Entity under an Order is not guaranteed to be made an offer of employment with that Entity.
- 14 Introduction of an employee to an Entity resulting in a section 26 transfer**
- 14.1 An Entity may place an Order to request Introduction Services from the Service Provider as described in clause 14.2.
- 14.2 If a Service Provider facilitates an introduction between the Entity who has a Contract with the Service Provider and an APS employee from another entity, and the APS employee subsequently moves to the Entity as a result of the operation of section 26 of the Public Service Act 1999 (**Introduction**), the Service Provider will be entitled to an Introduction Fee in accordance with **Schedule 3 (Pricing)**.

15 Placement of a candidate as a non-ongoing APS employee

- 15.1 An Entity may place an Order to request Placement Services from the Service Provider as described in clause 15.2
- 15.2 If a Service Provider facilitates the sourcing of a candidate who an Entity considers for a non-ongoing APS position of employment, and the candidate is subsequently employed by the Entity for that non-ongoing APS position of employment (**Placement**), the Service Provider will be entitled to a Placement Fee in accordance with **Schedule 3 (Pricing)**.

16 Cessation of engagement

- 16.1 An Entity may cease the engagement of one or more Labour Hire Workers under a Contract:
- (a) by giving the Service Provider a minimum of 10 Business Days' notice, where the Labour Hire Worker is no longer required by the Entity;
 - (b) effective immediately upon notice from the Entity to the Service Provider:
 - (i) in accordance with clause (1); or
 - (ii) where permitted by a Contract.
- 16.2 Where an Entity ceases the engagement of Labour Hire Worker under clause 16.1, then on and from the date of cessation of the Labour Hire Worker, the Service Provider must:
- (a) immediately cease providing the relevant Labour Hire Worker to the Entity;
 - (b) comply with any relevant transition out directions given by the Entity in respect of the ceased Labour Hire Worker;
 - (c) except in the case of a cessation under clause 16.1(a), if required by the Entity, replace the ceased Labour Hire Worker with a suitable substitute Labour Hire Worker at no additional cost to the Entity and within any timeframe specified by the Entity; and
 - (d) not seek to charge the Entity any Fees for the Labour Hire Worker for any period after the date of cessation.
- 16.3 To avoid doubt, a cessation of a Labour Hire Worker by an Entity in accordance with clause 16.1 does not constitute a termination or reduction in scope of the relevant Contract for convenience for the purposes of clause 27.5, and the Service Provider will not be entitled to any compensation or reimbursement of costs for ceased Labour Hire Worker under clause 27.5.

17 Transition out

17.1 Where a Contract specifies a Transition Out Period, the Service Provider must, for the duration of that Transition Out Period:

- (a) comply with any approved transition out plan;
- (b) continue to provide the Labour Hire Services in accordance with the Contract, including ensuring the availability of sufficient Labour Hire Worker to meet an Entity's requirements for the duration of the Transition Out Period;
- (c) cooperate with, and provide all reasonably required assistance and information to the Entity and any new provider;
- (d) do all things necessary, and execute all documents as are reasonably required by an Entity in support of the transition out of the Service Provider and (if applicable) the transition in of a new provider; and
- (e) fulfil any reasonable request by an Entity in relation to the cessation or transition of the Labour Hire Services; and
- (f) must bear the cost of any steps, actions, obligations or activities required of the Service Provider arising from or in connection with transition out.

17.2 For the duration of any Transition Out Period:

- (a) the Fees for the Labour Hire Services provided will be payable in accordance with clause 31; and
- (b) the Service Provider is not otherwise entitled to any reimbursement of expenses, payment or compensation for transition out activities.

17.3 On the termination, expiry or reduction in scope of this Head Agreement or any Contract, the Service Provider must:

- (a) at its own cost, make its Personnel (including Labour Hire Workers) available, as Finance or an Entity reasonably requires, to provide any explanations or clarifications necessary to enable Finance or an Entity to have the complete benefit of the Services;
- (b) ensure that all Services are adequately documented, and appropriate records have been kept and are accessible to an Entity; and
- (c) take all available steps to protect Entity Equipment and deal with Entity Equipment as reasonably directed by the Entity.

PART C – LABOUR HIRE WORKER ENTITLEMENTS**18 Labour Hire Worker entitlements**

- 18.1 Each Contract between the Service Provider and an Entity is entered into on the understanding that the Entity is not required to make any superannuation, long service leave contributions or other statutory employment payments in connection with the Contract (other than as specified in Schedule 3 (Pricing), regardless of the arrangements between the Service Provider and its Labour Hire Workers and regardless of any legal structures adopted by those Personnel for their engagement.
- 18.2 The Service Provider is responsible for all wages, salaries and other payments and entitlements to its Personnel and must fully comply with all relevant Laws and other Commonwealth requirements in relation to Personnel including labour and industrial relations Laws and those relating to working conditions, salary, wages, leave, the payment of any relevant tax, superannuation, 'pay as you go' or other income tax remissions and any other amounts, remissions and allowances including those under any industrial awards or agreements relevant to a Contract.
- 18.3 Without limiting clause 18.2, the Service Provider must:
- (a) comply with all applicable Laws and other requirements relating to the security of payments that are due to persons;
 - (b) ensure that payments made by the Service Provider to its Personnel are made in a timely manner; and
 - (c) as far as practicable, ensure that disputes about any payments to its Personnel, are resolved in a reasonable, timely and cooperative way.
- 18.4 Upon request, the Service Provider must demonstrate that it has complied with the obligations referred to in this clause 18.

19 Labour Hire Workers not employees of an Entity

- 19.1 Labour Hire Workers are not by virtue of any Contract between the Service Provider and an Entity, an employee of that Entity or the Commonwealth, nor do Labour Hire Workers have any power or authority to bind or represent an Entity or the Commonwealth, unless specifically authorised in writing by an Entity.
- 19.2 The Service Provider must ensure that Labour Hire Workers do not:
- (a) misrepresent its relationship with an Entity or the Commonwealth;
 - (b) engage in any misleading or deceptive conduct in relation to the Services; or
 - (c) represent themselves as an employee of an Entity or the Commonwealth.

PART D – COMPLIANCE WITH LAWS AND POLICIES**20 Entity policies**

20.1 For the duration of any engagement of a Labour Hire Worker by an Entity, the Service Provider must ensure its Labour Hire Worker complies with:

- (a) all policies, procedures and guidelines of the Entity made available to the Labour Hire Worker; and
- (b) any direction given by Finance or an Entity, which Finance or the Entity (as relevant), considers reasonably necessary to ensure compliance with applicable Laws relating to work health and safety.

21 Security

21.1 The Service Provider must ensure that, for the duration of their engagement, a Labour Hire Worker complies with:

- (a) all relevant security and other requirements specified in the Protective Security Policy Framework that are communicated to the Labour Hire Worker; and
- (b) all relevant Entity policies, procedures and other requirements relating to security, as specified in a Contract or as communicated to the Labour Hire Worker in the course of their work for an Entity,

including any amendments to security policies or requirements communicated to the Labour Hire Worker from time to time.

21.2 Where a security clearance is required for a Labour Hire Worker under a Contract, the Service Provider must ensure that the Labour Hire Worker:

- (a) holds the appropriate security clearance for the duration of their engagement under that Contract;
- (b) complies with reporting requirements applicable to security clearance holders (e.g. regarding significant changes to personal circumstances, or Security Incidents); and
- (c) applies the "need-to-know" principle in respect of Security Classified Resources.

22 Subcontracting

22.1 Without limiting clause 7.2 of the Head Agreement, unless expressed otherwise in an Order, the Service Provider must:

- (a) not subcontract any aspect of the Ordered Services without the prior written approval of the relevant Entity (such approval may be subject to conditions);

- (b) not subcontract on terms that would permit the Subcontractor to do or omit to do something that would, if done or omitted to be done by the Service Provider, constitute a breach of this Head Agreement or a Contract;
- (c) ensure that any Subcontractor is bound by, and complies with, provisions to the effect of the following clauses of this Head Agreement, to the extent relevant to the services provided by the Subcontractor:
 - (i) clause 13.1.1(a) (Due skill and care);
 - (ii) clause 16 (Commonwealth Laws and policy requirements);
 - (iii) clause 18 (Insurance);
 - (iv) clause 22 (Confidentiality);
 - (v) clause 23 (Security);
 - (vi) clause 24 (Privacy);
 - (vii) clause 27 (Termination); and
 - (viii) clause 30 (Audit and access).

23 Working from Home

- 23.1 Service Provider is required to ensure that the Labour Hire Worker has the capability and capacity to work from home, i.e. ICT, telephony, and internet connectivity.
- 23.2 Labour Hire Workers may be required to perform the services as home based work during the period covering a declared pandemic, disaster, or as required by the Entity from time-to-time.
- 23.3 Service Provider will be notified in writing by the Entity should the Labour Hire Worker be required to work from home.
- 23.4 Service Provider will specify in the Notice, the period that the Labour Hire Worker is required to perform the services as home based work. Labour Hire Workers must perform the services from the Entity premises on expiration of the Notice period.
- 23.5 For the purpose of clarification, Labour Hire Workers are required to return to work to the Entity's place of work at the end of the Notice period.
- 23.6 Service Provider must provide the Entity an outline of its preparedness in response to a declared pandemic, or disaster within seven (7) calendar days of the Order/contract commencement date.

- 23.7 Nothing in this clause relieves the Service Provider from liability under any of the other provisions of this Head Agreement, including liability under clause 24 of this Schedule.

24 Entity Equipment

- (a) Under a Contract, an Entity may make Entity Equipment available to the Service Provider or its Personnel for the purposes of the Service Provider providing Services.
- (b) Where an Entity makes Entity Equipment available to the Service Provider or its Personnel under a Contract, then the Service Provider must not, and must ensure its Personnel do not:
 - (i) use any Entity Equipment for any purpose other than the purpose for which it was provided;
 - (ii) without the prior written approval of an Entity, transfer possession or control of the Entity Equipment to any other person;
 - (iii) create, or allow to be created any security interest over any Entity Equipment.
- (c) For any Entity Equipment provided under a Contract, the Service Provider must ensure that its Personnel:
 - (i) protect Entity Equipment from loss or damage;
 - (ii) maintain Entity Equipment in good working order;
 - (iii) promptly return the Entity Equipment to the Entity on request by the Entity or where the Entity Equipment is no longer required by the Service Provider or its Personnel for the performance of the Services.

25 Harmful Code

- 25.1 The Service Provider must, and must ensure its Personnel, undertake reasonable efforts to detect and prevent any:
- (a) unauthorised access to Confidential Information and Personal Information in Finance or Entity systems including the Panel Administration Platform (if introduced); and
 - (b) any Harmful Code from being introduced by the Service Provider, its Personnel or Subcontractors into the Entity's systems or Finance's systems or sent from the Entity's systems or Finance's systems by the Service Provider, its Personnel or Subcontractors, in the course of the Services, including by:

- (i) implementing practices and procedures that are consistent with industry best practice for an engagement similar to the Services;
- (ii) use of appropriate and up-to-date virus detection software for preventing and detecting Harmful Code; and
- (iii) without limiting paragraphs (i) or (ii), pro-actively informing itself of developments in threats of Harmful Code, and taking reasonable precautions against such known threats.

25.2 If the Service Provider, or any of its Personnel, becomes aware that any Harmful Code is found to have been detected, the Service Provider must (and must ensure its Personnel):

- (a) notify the Entity or Finance (as relevant) promptly and in any event within 24 hours of discovery;
- (b) provide all information known by the Service Provider and reasonably requested by the Entity or Finance (as relevant) in relation to the Harmful Code, its manner of introduction and the effect the Harmful Code has had or is likely to have.

26 Drug and alcohol testing

26.1 The Service Provider must ensure that Labour Hire Workers are aware that they have a responsibility to ensure the use of alcohol, drugs or other substances do not impact on safety in the work environment in which they carry out their duties.

26.2 If specified in a Contract, an Entity may require that the Labour Hire Worker be tested for alcohol or other drugs at any time (including prior to commencement, during an engagement, randomly, or as a result of an incident) and the Service Provider must ensure that the Labour Hire Worker submits to such testing.

26.3 Where drug or alcohol testing occurs in respect of a Labour Hire Worker:

- (a) the testing will be undertaken by a suitably trained, qualified collector who is authorised by the relevant Entity;
- (b) the testing itself, and the outcome of a test (including where a Labour Hire Worker refuses to submit to a test), will be undertaken in accordance with the relevant Entity's policies and procedures relating to drugs and/or alcohol; and
- (c) the Entity will notify the Service Provider of any issues or concerns as soon as reasonably practicable.

27 Medical checks and vaccinations

27.1 If specified in a Contract, an Entity may require that a Labour Hire Worker:

- (a) undergo a medical check prior to engagement to ensure their fitness to provide the services and undertake the activities required as part of their role; and/or
 - (b) have been vaccinated against specific diseases.
- 27.2 Where a Contract specifies a requirement for medical checks and/or vaccinations, the Service Provider must:
- (a) ensure that the Labour Hire Worker undertakes the medical checks and have received the vaccinations specified in a Contract prior to commencing an engagement with an Entity;
 - (b) if specified in the Contract, bear the costs of any medical checks and vaccinations of the Labour Hire Worker;
 - (c) maintain adequate records of all medical checks and vaccinations of Labour Hire Workers, and provide such records to the Entity upon request.

PART E – FINANCIAL AND LEGAL MATTERS

28 Timesheets

- 28.1 The Service Provider must maintain complete and accurate Timesheets for each Labour Hire Worker it provides to an Entity under a Contract.
- 28.2 Each Timesheet must comply with the form and substance requirements set out in a Contract (if any), and each Timesheet must include the following information as a minimum:
- (a) the name of the Entity to which the Labour Hire Workers are provided;
 - (b) the name and role of each Labour Hire Worker provided to the Entity;
 - (c) the time period covered by the Timesheet;
 - (d) an accurate record of the hours worked by each Labour Hire Worker, including any overtime (if applicable) during the Timesheet period;
 - (e) any absences by Labour Hire Workers during the Timesheet period;
 - (f) comments (if any) and a signature or approval from the relevant Entity delegate; and
 - (g) any other details as agreed between the parties.

- 28.3 The Service Provider must submit each Timesheet to the relevant Entity for approval in accordance with the approval processes set out in a Contract, or if no approval processes are set out in a Contract, in accordance with the following process:
- (a) the Service Provider must submit each Timesheet to the relevant Entity within 14 days of the end of the relevant Timesheet period, unless otherwise agreed in an Order;
 - (b) the Entity must approve or reject the relevant Timesheets within 10 Business Days of the Timesheet being submitted for approval by the Service Provider; and
 - (c) where the Entity rejects a Timesheet, the Entity will provide reasons for rejection (e.g. the Timesheet was incomplete or inaccurate) and the Service Provider must make any necessary changes and resubmit the Timesheet to the Entity for approval within 5 Business Days of receiving a notice of rejection.

- 28.4 The Service Provider must not invoice an Entity for, and an Entity will not be liable to pay, any amount to the Service Provider in respect of a Timesheet that has not been approved by the Entity.

29 Ordinary hours and overtime

- 29.1 Subject to the requirements of any relevant industrial instrument (which will take precedence), the work undertaken by a Labour Hire Worker for an Entity under a Contract must be performed during the standard working hour period(s) specified in the Contract. Where no standard working hour period is specified in a Contract, the standard working hour period will be between 7am to 7pm on Business Days.
- 29.2 Where permitted by the terms of a Contract an Entity may require Labour Hire Workers to work outside the standard working periods (determined in accordance with clause 29.1) or to otherwise work overtime, which may include weekends and public holidays, as specified in a Contract.
- 29.3 The Service Provider must ensure that no Labour Hire Worker undertakes overtime work unless instructed to do so by an Entity, and an Entity will not be liable to pay the Service Provider for any hours worked by a Labour Hire Worker outside of agreed or ordinary hours under a Contract without the prior written approval of the Entity.
- 29.4 Subject to clause 29 of **Schedule 2 (Labour Hire Services)**, the Fees payable for overtime work undertaken by Labour Hire Workers will be as specified in a Contract.

30 Travel and related expenses

- 30.1 Where an Entity requires the Labour Hire Worker to travel for official purposes, the Entity will either:
- (a) pay for the travel itself; or

- (b) reimburse the Service Provider in accordance with this clause 30 for reasonable travel, accommodation, and associated travel expenses,

if the relevant travel and/or accommodation (and the associated cost) is pre-approved in writing by the Entity before the travel takes place.

30.2 In order to be reimbursed for travel costs as described in clause 30.1, the Service Provider must submit a correctly rendered Tax Invoice, together with supporting receipts and other travel documents as required by the Entity. The Entity will then reimburse the Service Provider in accordance with this Head Agreement and the Entity's invoicing and payment procedures.

30.3 The Entity must ensure that all time spent by a Labour Hire Worker in transit en route between origin and destination, or between destinations if there is more than one, in respect of approved travel, is recorded by the Labour Hire Worker as work hours in their Timesheet. The amount of time ordinarily spent travelling to and from the usual place of work specified in the Order will be excluded from the travel time recorded unless otherwise agreed by the Entity.

30.4 This clause does not prevent the recovery of other expenses, where this is permitted in a Contract.

31 Fees

31.1 The Fees payable to the Service Provider in respect of Labour Hire Services and other Services will be as specified in a Contract based on the Fees outlined in **Schedule 3 (Pricing)** and where applicable, pursuant to:

- (a) clause 11.2.6(a) or (b) of this Head Agreement; and/or
- (b) the Fee adjustment mechanism in clause 14.2.1 of this Head Agreement.

31.2 The Service Provider must ensure that all hours worked by Labour Hire Workers are charged at the applicable rate in accordance with the Contract and this clause 31, and unless agreed otherwise in a Contract, no additional fees may be charged by the Service Provider for the provision of Labour Hire Workers.

32 Recipient Created Tax Invoices

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

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

- (b) the Entity will issue the original or a copy of an adjustment note to the Service Provider within 28 days of any adjustment, and will retain the original or a copy;
- (c) the Service Provider will not issue Tax Invoices in respect of the supply of Labour Hire Services to the Service Provider under the Contract;
- (d) each party acknowledges and warrants that it is registered for GST when it enters into the Contract;
- (e) each party will notify the other in writing within five Business Days if it ceases to be registered for GST, or ceases to comply with any requirements of any taxation ruling issued by the Australian Taxation Office relating to RCTIs; and
- (f) if the RCTI arrangement is unable to be implemented or ceases, the Service Provider will issue Tax Invoices in respect of the supply of Labour Hire Services to the Service Provider under the Contract;

33 Disputed Invoices

33.1 An Entity will notify the Service Provider if it determines that a Tax Invoice issued by the Service Provider does not appear to be correctly rendered or is otherwise disputed by the Entity (**Disputed Invoice**), after following the process in clause 14.4.1 and the Entity believing the resubmitted invoice is incorrect.

33.2 Where an Entity notifies the Service Provider that it has submitted a Disputed Invoice, the Service Provider must, within seven Business Days of receiving such notice provide:

- (a) any information; or
- (b) supporting evidence;

requested by the Entity to in respect of the Disputed Invoice to resolve the dispute.

33.3 Following the process in clause 33.2, an Entity may:

- (a) process the Disputed Invoice for payment, because the response provided by the Service Provider has resolved the disputed invoice (for example, if missing evidence is provided); or
- (b) require the Service Provider to correct and resubmit the Disputed Invoice.
- (c) If the dispute is not resolved as a result of the process in clause 33.2 above, the Entity may deem the invoice to be "incorrectly rendered" and the Service Provider must, within seven Business Days, cancel the original Disputed Invoice and submit a new Tax Invoice and supporting documentation.

Schedule 3 Pricing

1 Labour Hire Fees

1.1 The Fees payable by an Entity for Labour Hire Services under an Order are as set out in this Schedule 3 and the relevant Order.

1.2 The Service Provider warrants in respect of each Labour Hire Worker on each relevant Order Commencement Date:

- (a) that the relevant Agreed Base Salary is the amount the Service Provider has agreed to pay the Labour Hire Worker for the Order Term;
- (b) that within 10 Business Days of the end of each month during the Order Term, it will pay the Labour Hire Worker the Agreed Base Salary for the hours worked by the Labour Hire Worker in the relevant month; and
- (c) on each relevant Order Commencement Date, that the relevant Employment Oncosts is the amount the Service Provider will be required to pay in statutory amounts in respect of the Labour Hire Worker, assuming the Labour Hire Worker works the number of hours per day and number of days per week for the period specified in the Order.

1.3 The Fee for each Labour Hire Worker provided under an Order is determined as follows:

Contract Price x Hours Worked

where

Agreed Hourly Rate is the hourly amount agreed in the relevant Order which is calculated as: Agreed Base Salary plus Employment Oncosts (both as determined by reference to the applicable APS equivalent classification of the Labour Hire Worker, as described in the relevant Order, and the Service Category under which the Labour Hire Worker has been engaged)

Agreed Base Salary is the hourly amount (before tax, but excluding compulsory superannuation contributions which are dealt with as Employment Oncosts) paid by the Service Provider to the Labour Hire Worker plus casual loading (where a casual loading is required to be paid to the Labour Hire Worker under an industrial award or an enterprise agreement), as specified in the relevant Order

Contract Price is an hourly amount calculated by Agreed Hourly Rate plus Gross Profit Margin for the relevant Labour Hire Worker

Employment Oncosts means the following statutory employment on-costs:

- (a) the cost of worker's compensation insurance required by Law;
- (b) payroll tax as payable under any applicable State or Territory Law (excluding any penalty charge arising as a result of a failure to pay state payroll tax in accordance with any applicable State or Territory Law);
- (c) compulsory superannuation contributions as payable under any Commonwealth Law (excluding any superannuation guarantee charge or any other similar penalty charge arising as a result of a failure to pay superannuation in accordance with Commonwealth Law); and
- (d) other statutory charges applicable for that Labour Hire Worker required by Law and agreed by the Entity in an Order

that would be payable by the Service Provider in respect of the Labour Hire Worker assuming the Labour Hire Worker works the number of hours per day and number of days per week for the period specified in the Order and expressed as an hourly amount. The intention for Employment Oncosts is that the Service Provider be reimbursed these costs by the Entity as a pass-through. Therefore, the maximum hourly amount for Employment Oncosts will be specified in an Order, but if the actual Employment Oncosts required to be paid for a Labour Hire Worker are less than the amounts specified for Employment Oncosts in an Order (for example, due to the Labour Hire Worker working less hours than stated in the Order), then the Service Provider must, as soon as practicable, reimburse the Entity for the difference if the Entity has already paid the higher amount.

Gross Profit Margin is the Referred Gross Profit Margin or the Non-Referred Gross Profit Margin as applicable for the relevant Labour Hire Worker and expressed as an hourly amount

Hours Worked means the number of hours worked by the Labour Hire Worker as described Timesheets submitted to the Entity and accepted by the Entity as compliant with this Head Agreement

Non-Referred Gross Profit Margin means the hourly amount specified in Table 1 that applies where a Labour Hire Worker has not been Referred by the Entity to the Service Provider, determined by reference to the applicable APS equivalent classification of the Labour Hire Worker

Referred Gross Profit Margin means the hourly amount specified in Table 1 that applies where a Labour Hire Worker has been Referred by the Entity to the Service Provider, determined by reference to the applicable APS equivalent classification of the Labour Hire Worker

Table 1: Rate Card for Gross Profit Margin

Rate Card for all Service Categories (exclusive of GST)		
APS equivalent classification	Non-Referred Gross Profit Margin	Referred Gross Profit Margin
Level 1	\$[X] per hour	\$[X] per hour
Level 2	\$[X] per hour	\$[X] per hour
Level 3	\$[X] per hour	\$[X] per hour
Level 4	\$[X] per hour	\$[X] per hour
Levels 5	\$[X] per hour	\$[X] per hour
Level 6	\$[X] per hour	\$[X] per hour
Executive Level 1	\$[X] per hour	\$[X] per hour
Executive Level 2	\$[X] per hour	\$[X] per hour
SES	\$[X] per hour	\$[X] per hour

2 Conversion Fee

- 2.1 The Fees payable by an Entity where a Labour Hire Worker is Converted to an Entity employee apply and are calculated in accordance with this clause 2.
- 2.2 The Service Provider will only be eligible for a Conversion Fee in respect of Conversion of a Labour Hire Worker if:
- (a) at the time when the offer of employment is accepted by the relevant Labour Hire Worker, that Labour Hire Worker has been engaged to fill the relevant position for the Entity under an Order for a period less than 12 months in aggregate; and
 - (b) the relevant Labour Hire Worker is made an offer of employment by the Entity for the same position which the Labour Hire Worker has filled under the relevant Order immediately prior to accepting the offer.
- 2.3 The Service Provider will not be entitled to the Conversion Fee if:
- (a) the Labour Hire Worker has been engaged for a period of 12 months or more in aggregate by the Entity under an Order prior to accepting the offer of employment from the Entity; or
 - (b) the Labour Hire Worker is made an offer of employment by the Entity for a position other than the position which the Labour Hire Worker has filled under the relevant Order immediately prior to accepting the offer; or

- (c) the offer of employment to the Labour Hire Worker is made as a result of the Labour Hire Worker applying for any position (including any position the Labour Hire Worker has filled under the relevant Order) that is publicly advertised by the Entity; or
- (d) the Labour Hire Worker was at any time Referred by the Entity to the Service Provider.

2.4 The Conversion Fee for the Conversion of a Labour Hire Worker engaged on a full time basis will be calculated in accordance with the following formula:

((Applicable Non-Referred Service Fee x A) x B) x (48 weeks per annum minus Actual Number of Weeks Worked))

where

Applicable Non-Referred Service Fee is the applicable Gross Profit Margin for a Non-Referred Labour Hire Worker as set out in Table 1 in this Schedule 3.

A = for a full time worker means 7.5 hours

B = for a full time worker means 4.75 days

Actual Number of Weeks Worked = the number of weeks or part thereof the relevant Labour Hire Worker has worked in aggregate under an Order with the relevant Entity prior to the Labour Hire Worker accepting the offer of employment. Note that if the Labour Hire Worker has been engaged for a period in aggregate under the Order of 48 weeks or more, the Conversion Fee is not payable in accordance with this clause 2.3(d).

2.5 The Conversion Fee for the Conversion of a relevant Labour Hire Worker engaged on a part time basis will be 50% of the amount calculated in accordance with the formula in clause 2.4 of this Schedule 3 (Pricing).

3 Introduction Fee

3.1 A once off Introduction Fee described in Table 2 is payable for an Introduction depending on the APS equivalent classification of the employee by the Entity to which the employee has moved.

Table 2: Introduction Fee

APS equivalent classification	Introduction Fee (Fixed price) (Incl. GST)
Level 1	\$[tbc]
Level 2	\$[tbc]
Level 3	\$[tbc]
Level 4	\$[tbc]

Level 5	\$(tbc)
Level 6	\$(tbc)
Executive Level 1	\$(tbc)
Executive Level 2	\$(tbc)
SES	\$(tbc)

4 Placement Fee

- 4.1 A once off Placement Fee described in Table 3 is payable for a Placement depending on the APS equivalent classification of the position with the Entity by which the candidate has been employed.

Table 3: Placement Fee

APS equivalent classification	Placement Fee (Fixed price) (incl. GST)
Level 1	\$(tbc)
Level 2	\$(tbc)
Level 3	\$(tbc)
Level 4	\$(tbc)
Level 5	\$(tbc)
Level 6	\$(tbc)
Executive Level 1	\$(tbc)
Executive Level 2	\$(tbc)
SES	\$(tbc)

5 Order Value Discounts

- 5.1 The following definitions apply to this clause 5:

Order Value means the total value of all Orders placed by all Entities with the Service Provider under this Head Agreement excluding the value of any extension to those Order.

Order Value Discount means the discount applied to the value of an Order in accordance with this clause 5.

Order Value Threshold means the relevant Order Value which attracts a particular Order Value Discount as set out in clause 5.

- 5.2 The applicable Order Value Discount in clause 5.3 will apply to all new Orders placed under this Head Agreement on and from the date that the Order Value meets the relevant Order Value Threshold.
- 5.3 Where the Order Value meets the relevant Order Value Threshold in accordance with clause 5.2, the Order Value Discount will apply as a percentage discount to the Referred Gross Profit Margin and the Non-Referred Gross Profit Margin specified in **Schedule 3 (Pricing)**
- 5.4 If the Term of an Order is extended by exercise of an available extension option and a new Order Value Discount which did not apply at the time the Order was made applies to the extended term of the Order, the relevant Order Value Threshold will apply to all new Fees charged under that Order in accordance with clause 5.3.
- 5.5 The following Order Value Discounts apply:

Order Value Threshold	Discount applied to Referred and Non-Referred Gross Profit Margin
\$(Insert)	[Insert]
\$(Insert)	[Insert]
\$(Insert)	[Insert]
\$(Insert)	[Insert]

6 No liability for candidates' costs or expenses

- 6.1 The Service Provider must not charge the Entity for, and the Entity will not be liable to pay, any costs or expenses incurred by a candidate, including where a candidate:
- (a) provides documents or other information to the Service Provider or an Entity, including to verify personal details, educational qualifications or referee details; or
 - (b) undergoes an assessment of skills, qualifications, suitability for the position or experience, including attending interviews, or undertaking literacy, numeracy or psychometric assessments.
- 6.2 For the avoidance of doubt, clause 6.1 above does not prevent the Service Provider from charging for the assessment of a candidate as provided elsewhere in this Schedule 3.

Schedule 4 Not used

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Schedule 5 Request for Quotation Template

Note to Service Provider:

This Schedule 5 provides a Request for Quotation (RFQ) template that includes the typical information that an Entity will provide to the Service Provider to request a quotation for the provision of Services to an Entity, as detailed in clause 11.2 of the Head Agreement. It is intended that the RFQ will be provided as a smart form. The intent of this template and any smart form is to achieve a high level of standardisation and consistency in Entity RFQs to provide efficiencies to Entities and Service Providers. This RFQ template may be amended by Finance on written notice to the Service Provider

1 Introduction

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

<u>Request For Quotation for Services</u>	
<i>Entity Information</i>	
Entity	[Insert Entity name]
Entity File Reference	[Insert Entity file reference number]
RFQ Reference	[Insert Entity RFQ reference number]
Entity Representative	Name: [Insert contact name] Position: [Insert title] Address: [Insert address, including postcode] Email: [Insert email address] Contact number: [Insert contact number, including area code]
<i>RFQ and Proposed Order Details</i>	
RFQ Release Date	[Insert date the RFQ is released]
RFQ Closing Date	[Insert date and time the RFQ closes]
Proposed Order Commencement Date	[Insert date the Services will commence]

<u>Request For Quotation for Services</u>	
Proposed Order Term and/or Completion Date	[Insert the Order Term and/or completion date]
Options to extend	The Entity may extend the Contract for [insert time period] by providing written notice to the Service Provider prior to the Order Completion Date.
Transition Out Period and requirement for transition out plan	[if a transition out period is required, insert it here – i.e. where continuity/handover is required – see Schedule 2 for more details of Transition Out Period requirements. Also insert here any requirement for a transition out plan. Where there is a need to specify privacy obligations in any transition out plan, that requirement should be set out here]
<i>Statement of Work</i>	
Service Category/ies	[Insert the relevant Service Category/ies that the services relate to]
Job Family/ies	[Insert the relevant Job Family/ies that the services relate to]
Job Role/s	[Insert the relevant Job Role/s in accordance with the APSC Job Family Framework that the services relate to – see https://www.apsc.gov.au/initiatives-and-programs/aps-workforce-strategy-2025/workforce-planning-resources/aps-job-family-framework for list of relevant Job Roles]
APS Equivalent Classification and pay scale	[Insert APS equivalent classification and pay scale here. Only include an APS equivalent classification for which there is a Fee specified in Schedule 3 (Pricing) to the Head Agreement. Where an APS equivalent classification is listed as "N/A", that Service Provider is not approved to provide Labour Hire Workers at that APS equivalent classification.]
Statement of Work	[Insert a detailed description of the Services required, including relevant background material and whether any licences/authorisations are required to provide the services and any reporting that may be required. A separate Statement of Work may be referenced and attached]
Deliverables	[Include details of any deliverables required under a resulting Contract]
Location	[Insert the required work location/site, or insert 'Not Applicable']
Number of hours per week required	[Insert number of hours per week required]
Number of weeks required	[Insert number of weeks required]

Request For Quotation for Services																																											
Fees – calculation of Contract Price	The Service Provider is required to complete the following table of Fees and indicate the total Contract value for all Labour Hire Workers required by this Order. [Insert the table below for each Labour Hire Worker required] <table border="1"> <thead> <tr> <th colspan="2">APS equivalent classification:</th> </tr> <tr> <th>Item</th> <th>\$ per hour</th> </tr> </thead> <tbody> <tr> <td>Hourly amount paid to Labour Hire Worker (before tax, excluding compulsory superannuation contribution)</td> <td></td> </tr> <tr> <td>Casual loading (if applicable)</td> <td></td> </tr> <tr> <td><i>Agreed Base Salary - subtotal</i></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td>Workers compensation insurance</td> <td></td> </tr> <tr> <td>Payroll tax</td> <td></td> </tr> <tr> <td>Other statutory charges (specify what these are)</td> <td></td> </tr> <tr> <td>Compulsory superannuation contribution</td> <td></td> </tr> <tr> <td><i>Employment Oncosts - subtotal</i></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td><i>Agreed Hourly Rate (Agreed Base Salary + Employment Oncosts) subtotal</i></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td> Gross Profit Margin (Fixed price fee, exclusive of GST, based on Referred or Non-Referred Service Fee as applicable for the relevant Labour Hire Worker [This must be expressed in this row as a GST exclusive amount] </td> <td> [To be completed as per Head Agreement Schedule 3] </td> </tr> <tr> <td>Contract Price (exclusive GST)</td> <td></td> </tr> <tr> <td>GST</td> <td></td> </tr> <tr> <td colspan="2">Contract Price (hourly amount, inclusive GST)</td> </tr> <tr> <td colspan="2">Other employment costs (by negotiation specified as a fixed price, inclusive of GST)</td> </tr> <tr> <td colspan="2"> Total Fees payable under this Order (inclusive of GST): \$[insert] </td> </tr> <tr> <td>Payment Terms</td> <td> [Select the relevant payment terms] [For Non-corporate Commonwealth entities: (a) five calendar days where the Entity and the Service Provider both have the capability to deliver and receive e Invoices through the Pan-European Public Procurement On-Line Framework and have agreed to </td> </tr> </tbody> </table>	APS equivalent classification:		Item	\$ per hour	Hourly amount paid to Labour Hire Worker (before tax, excluding compulsory superannuation contribution)		Casual loading (if applicable)		<i>Agreed Base Salary - subtotal</i>				Workers compensation insurance		Payroll tax		Other statutory charges (specify what these are)		Compulsory superannuation contribution		<i>Employment Oncosts - subtotal</i>				<i>Agreed Hourly Rate (Agreed Base Salary + Employment Oncosts) subtotal</i>				Gross Profit Margin (Fixed price fee, exclusive of GST, based on Referred or Non-Referred Service Fee as applicable for the relevant Labour Hire Worker [This must be expressed in this row as a GST exclusive amount]	[To be completed as per Head Agreement Schedule 3]	Contract Price (exclusive GST)		GST		Contract Price (hourly amount, inclusive GST)		Other employment costs (by negotiation specified as a fixed price, inclusive of GST)		Total Fees payable under this Order (inclusive of GST): \$[insert]		Payment Terms	[Select the relevant payment terms] [For Non-corporate Commonwealth entities: (a) five calendar days where the Entity and the Service Provider both have the capability to deliver and receive e Invoices through the Pan-European Public Procurement On-Line Framework and have agreed to
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Request For Quotation for Services									
	use this method of invoicing: or (b) 20 calendar days] [For Entities other than Non-corporate Commonwealth entities: [insert payment terms]]								
Travel	[Specify any known travel that will be required]								
Entity Material	[List any documents attached to the RFQ]								
Confidential Information	[Include details in table below or insert Not Applicable] <table border="1"> <thead> <tr> <th>Entity Confidential information (for example)</th> <th>Period of Confidentiality</th> </tr> </thead> <tbody> <tr> <td>Entity data</td> <td>Indefinitely</td> </tr> <tr> <td>Any Personal Information held by the Entity</td> <td>Indefinitely</td> </tr> <tr> <td>Security Classified Resources</td> <td>Indefinitely</td> </tr> </tbody> </table>	Entity Confidential information (for example)	Period of Confidentiality	Entity data	Indefinitely	Any Personal Information held by the Entity	Indefinitely	Security Classified Resources	Indefinitely
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Additional Requirements									
Medical Checks and Vaccinations	[The Entity should specify here who should bear the costs of any medical checks and vaccinations of the Labour Hire Worker for the purposes of clause 27 of Schedule 2 (Labour Hire Services)]								
Bulk engagements	[Indicate here if the Entity requires an 'express' engagement of Labour Hire Workers in accordance with clause 6 of Schedule 2 (Labour Hire Services), in which case set out: (a) the number and location of Labour Hire Workers to be provided; and (b) the mandatory pre-engagement checks and clearances that are required for those Labour Hire Workers.]								
Overtime	[The Entity should specify here whether it is likely to require the Labour Hire Worker to undertake overtime hours in accordance with Schedule 2 (Labour Hire Services)]								
Entity Software Platform	[Insert if the Service Provider is required to use a specific software platform for interacting with the Entity.]								
Entity Data Storage Requirements	[Insert any Entity specific data storage requirement, for example whether data can or cannot be stored offshore]								
Security	The Service Provider must comply with any applicable security requirements specified in the Protective Security Policy Framework (including those provisions relevant to Commonwealth contracted service providers).								
Additional Requirements - Security	[State any additional security requirements to the requirements contained in the Head Agreement, or that apply to particular aspects of work, or insert 'Not Applicable']								
Security Clearance Requirements	[Include requirements for security clearances or insert 'Not Applicable']								

<u>Request For Quotation for Services</u>																				
Other Employment Costs	[Non-Statutory employment costs as specified by an Entity or negotiated]																			
Liability	[The liability cap that applies for the purposes of clause 19 needs to be specified here. State any amendments to the exclusions to the liability cap, or other liability positions required]																			
Entity Insurance Requirements	[Insert any additional requirements (if any) for relevant insurances where these differ from the insurance amounts in the Head Agreement]																			
Entity Service Levels	The Service Provider must comply with the following Entity Service Levels which are measured across all Orders the Entity has with the Service Provider. [Insert any Entity Service Levels that apply to all Orders. Examples of Service Levels Entities may wish to consider are: <table border="1"> <thead> <tr> <th>Service Level</th> <th>Performance Measures</th> <th>Calculation Method</th> </tr> </thead> <tbody> <tr> <td><u>Labour Hire Worker Suitability</u></td> <td>80% of Labour Hire Workers nominated by the Service Provider are rated by the Entity Hiring Manager as suitable for the role and engagement.</td> <td>As determined over [X] period by the Entity acting reasonably.</td> </tr> <tr> <td><u>Labour Hire Worker Retention</u></td> <td>90% of Labour Hire Workers complete the full term of their engagement for all accepted Contracts and Contract Variations.</td> <td>As determined over [X] period by the Entity acting reasonably.</td> </tr> <tr> <td><u>Labour Hire Worker Performance</u></td> <td>95% of Labour Hire Workers are achieving the expected performance standards.</td> <td>As determined over [X] period by the Entity acting reasonably.</td> </tr> <tr> <td><u>Labour Hire Worker Retention</u></td> <td>[tbc]</td> <td>[tbc]</td> </tr> <tr> <td><u>Labour Hire Worker Absences</u></td> <td>[tbc]</td> <td>[tbc]</td> </tr> </tbody> </table>		Service Level	Performance Measures	Calculation Method	<u>Labour Hire Worker Suitability</u>	80% of Labour Hire Workers nominated by the Service Provider are rated by the Entity Hiring Manager as suitable for the role and engagement.	As determined over [X] period by the Entity acting reasonably.	<u>Labour Hire Worker Retention</u>	90% of Labour Hire Workers complete the full term of their engagement for all accepted Contracts and Contract Variations.	As determined over [X] period by the Entity acting reasonably.	<u>Labour Hire Worker Performance</u>	95% of Labour Hire Workers are achieving the expected performance standards.	As determined over [X] period by the Entity acting reasonably.	<u>Labour Hire Worker Retention</u>	[tbc]	[tbc]	<u>Labour Hire Worker Absences</u>	[tbc]	[tbc]
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<u>Labour Hire Worker Retention</u>	[tbc]	[tbc]																		
<u>Labour Hire Worker Absences</u>	[tbc]	[tbc]																		

<u>Request For Quotation for Services</u>	
Other Additional Requirements	[Include any other additional requirements, if applicable]
<i>Commonwealth Policy Requirements</i>	
Shadow Economy Policy	[For procurements valued at \$4 million or more the Shadow Economy Policy applies. Entities must obtain a Valid and Satisfactory Statement of Tax Record for any Service Provider (and any first-tier subcontractors of that Service Provider) that will be involved in the delivery of the Services]
Indigenous Procurement Policy	[For procurements valued at \$7.5 million or more, insert that clause 16.4.3 of the Head Agreement applies]
Australian Industry Participation Plan	[For procurement valued at \$20 million or more, the Australian Industry Participation policy may apply]
<i>Evaluation Criteria</i>	
Responses to this RFQ will be evaluated against the following criteria: [Entities should be able to select the evaluation criteria they wish to apply and/or include their own criteria]. • The Service Provider's demonstrated understanding of the Services required; and • The Service Provider's demonstrated capability and capacity to provide the services. The extent to which the fees proposed provides value for money for the Australian Government.	
<i>Responding to this RFQ</i>	
[Entities will select from the requirements below and/or include their own requirements] The Service Provider is required to complete the following information: [Service Provider's Representative] [Service Provider's Name] [Service Provider's Address] [Service Provider's ABN] [Service Provider's email address] [The Entity may want to consider whether it is appropriate to include some or all of the following: In responding to this RFQ, the Service Provider should: • describe its understanding of the Services required, • detail its capability and capacity to provide the services described in the Detailed Statement of Work] The Service Provider is also required to: • Identify any Subcontractors nominated to provide the services and their role in the delivery of the services • Identify the Labour Hire Worker's unique identifier from the Panel Administration Platform, if the Panel Administration Platform is introduced by Finance	

<u>Request For Quotation for Services</u>	
- disclose any conflicts of interest it would have with the delivery of the Services - include any information in its respond that it requests to remain confidential.	
Service Provider Confidential information	Period of Confidentiality

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Schedule 6 Order Template

Note to Service Provider:

This Schedule 6 provides an Order Template for the provision of Services to an Entity, as detailed in clause 11.3 of the Head Agreement. It is intended that the Order Template will be provided as a smart form. The intent of this template and any smart form is to achieve a high level of standardisation and consistency in Entity Orders to provide efficiencies to Entities and Service Providers. This Order template may be amended by Finance on written notice to the Service Provider

1 Introduction

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

<u>Order for Services</u>	
[Service Provider's Representative]	
[Service Provider's Name]	
[Service Provider's Address]	
[Service Provider's ABN or ACN]	
Sent via: [email]: [Service Provider's email address]	
<i>Entity Order Information</i>	
Entity	[Insert Entity name]
Entity File Reference	[Insert Entity File Reference]
Order Number	[Insert Entity's reference number for this Order for Services]
Cost Centre	[Insert Entity's cost centre]
<i>Order Commencement Date and Term</i>	
Order Commencement Date	[Insert date the Order commences]
Order Term and Extensions	[The Order expires on [insert date] (Initial Term).] The Entity may in its sole discretion extend the Initial Term of this Order for a further period or periods, up to [12 months], on the same terms and conditions of this Order, by giving written notice to the Service Provider, prior to end of the Initial Term of this Order (Extension Period/s).]

Order for Services					
Transition Out Period and requirement for transition out plan		[If a transition out period is required, insert it here – i.e. where continuity/handover is required – see Schedule 2 for more details of Transition Out Period requirements. Also insert here any requirement for a transition out plan. Where there is a need to specify privacy obligations in any transition out plan, that requirement should be set out here]			
Statement of Work					
Service Category/ies		[Insert the relevant Service Category/ies that the services relate to]			
Job Family/ies		[Insert the relevant Job Family/ies that the services relate to]			
Job Role/s		[Insert the relevant Job Role/s in accordance with the APSC Job Family Framework that the services relate to – see https://www.apsc.gov.au/initiatives-and-programs/aps-workforce-strategy-2025/workforce-planning-resources/aps-job-family-framework]			
APS Equivalent Classification and pay scale		[Insert APS equivalent classification and pay scale here. Only include an APS equivalent classification for which there is a Fee specified in Schedule 3 (Pricing) to the Head Agreement. Where an APS equivalent classification is listed as "N/A", that Service Provider is not approved to provide Labour Hire Workers at that APS equivalent classification.]			
Statement of Work		[Insert a detailed description of the Services required, including relevant background material and whether any licences/authorisations are required to provide the services and any reporting that may be required. A separate Statement of Work may be referenced and attached]			
Deliverables		[Include details of any deliverables required]			
Details of the Labour Hire Worker/s)		[Insert details of Labour Hire Worker/s, including names, positions and work to be undertaken]			
		Name	Unique Identifier from the Panel Administration System	Position Title	Position Description
Subcontractors		[Insert details of approved Subcontractors for this Order, or insert 'Not Applicable']			
Location		[Insert the required work location/site, or insert 'Not Applicable']			
Number of hours per week required		[Insert numbers of hours per week required]			
Number of weeks required		[Insert numbers of weeks required]			

Order for Services		
Fees – calculation of Contract Price	[Insert table for each Labour Hire Worker being engaged under this Order]	
	APS equivalent classification:	
	Item	\$ per hour
	Hourly amount paid to Labour Hire Worker (before tax, excluding compulsory superannuation contribution)	
	Casual Loading (if applicable)	
	<i>Agreed Base Salary - subtotal</i>	
	Workers compensation insurance	
	Payroll tax	
	Other statutory charges (specify what these are, if any)	
	Compulsory superannuation contribution	
	<i>Employment Oncosts - subtotal</i>	
	<i>Agreed Hourly Rate (Agreed Base Salary plus Employment Oncosts) - subtotal</i>	
	Gross Profit Margin (Fixed price fee), exclusive of GST, based on Referred or Non-Referred Service Fee as applicable for the relevant Labour Hire Worker) [This must be expressed in this row as a GST exclusive amount]	[To be completed as per Head Agreement Schedule 3]
	Contract Price (exclusive GST)	
	GST	
Contract Price (Inclusive GST)		
Other Employment costs (Inclusive of GST specified as a fixed price)		
Total Fees Payable under this Order	[Insert the total amount of the Contract Price/s set out above plus any additional Fees agreed, inclusive of GST]	

Order for Services															
Payment Terms	[Select the relevant payment terms] [For Non-corporate Commonwealth entities: (a) five calendar days where the Entity and the Service Provider both have the capability to deliver and receive e Invoices through the Pan-European Public Procurement On-Line Framework and have agreed to use this method of invoicing; or (b) 20 calendar days] [For Entities other than Non-corporate Commonwealth entities: [Insert payment terms]]														
Invoicing	[the Entity will include any other information required in the invoice]														
Travel	[Specify any known travel that will be required, including approved costs if these will be paid by the Service Provider]														
Entity Material	[List any documents here or insert 'Not Applicable']														
Confidential Information	[Include details in table below or insert Not Applicable.] <table border="1"> <thead> <tr> <th>Entity Confidential information (for example)</th> <th>Period of Confidentiality</th> </tr> </thead> <tbody> <tr> <td>Entity data</td> <td>Indefinitely</td> </tr> <tr> <td>Any Personal Information held by the Entity</td> <td>Indefinitely</td> </tr> <tr> <td>Security Classified Resources</td> <td>Indefinitely</td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th>The Service Provider Confidential information</th> <th>Period of Confidentiality</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Entity Confidential information (for example)	Period of Confidentiality	Entity data	Indefinitely	Any Personal Information held by the Entity	Indefinitely	Security Classified Resources	Indefinitely	The Service Provider Confidential information	Period of Confidentiality				
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Additional Requirements															
Medical Checks and Vaccinations	[The Entity should specify here who should bear the costs of any medical checks and vaccinations of the Labour Hire Worker for the purposes of clause 27 of Schedule 2 (Labour Hire Services)]														

<u>Order for Services</u>	
Bulk engagements	[Indicate here if the Entity is engaging services on an 'express' basis in accordance with clause 6 of Schedule 2 (Labour Hire Services), in which case set out: (a) the number and location of Labour Hire Workers to be provided; and (b) the mandatory pre-engagement checks and clearances that are required for those Labour Hire Workers.]
Overtime	[The Entity should specify here whether it requires the Labour Hire Worker to undertake overtime hours in accordance with Schedule 2 (Labour Hire Services) . If overtime hours are permitted, specify what rates will apply]
Intellectual Property	[The Entity should specify here if it wants to change the default position in clause 20.1.1 – and instead have the Entity own the IP in Contract Material. The default licence the Entity gets under 20.1.3 for Contract Material includes a right to transfer and sub-license, so any alternative position to this should be specified]
Personnel Requirements	[Personnel performing the Services may be required to sign a Deed and acknowledgements relating to confidentiality, security, Moral Rights, intellectual property and other relevant matters as required by the Entity. Any Contract will be conditional on this occurring]
Return of confidential information	[The default position under clause 22.6.3 is that the Service Provider may retain one copy of Entity Confidential Information to the extent included in the Contract Material for its professional record keeping obligations, for insurance purposes or as otherwise required by Law. Specify if an alternate position is to apply]
Entity Software Platform	[Insert if the Service Provider is required to use a specific software platform for interacting with the Entity.]
Entity Data Storage Requirements	[Insert any Entity specific data storage requirement, for example whether data can or cannot be stored offshore]
Security	The Service Provider must comply with any applicable security requirements specified in the Protective Security Policy Framework (including those provisions relevant to Commonwealth contracted service providers).
Additional Requirements – Security	[State any additional security requirements to the requirements contained in the Head Agreement, or that apply to particular aspects of work or insert 'Not Applicable']
Security Clearance Requirements	[Include requirements for security clearance or insert 'Not Applicable']
Other Employment Costs	[Non-Statutory employment costs as specified by an Entity or negotiated. Specify here what those other employment costs are for and include the costs in the relevant row of the Fees table above]

Order for Services																				
Liability	[The liability cap that applies for the purposes of clause 19 needs to be specified here. State any amendments to the exclusions to the liability cap, or other liability positions required]																			
Entity Insurance Requirements	[Insert any additional requirements (if any) for relevant insurances where these differ from the insurance amounts in the Head Agreement]																			
Entity Service Levels	The Service Provider must comply with the following Entity Service Levels which are measured across all Orders the Entity has with the Service Provider. [Insert any Entity Service Levels that apply to all Order. Examples of Service Levels Entities may wish to consider are: <table border="1"> <thead> <tr> <th>Service Level</th> <th>Performance Measures</th> <th>Calculation Method</th> </tr> </thead> <tbody> <tr> <td><u>Labour Hire Worker Suitability</u></td> <td>80% of Labour Hire Workers nominated by the Service Provider are rated by the Entity Hiring Manager as suitable for the role and engagement.</td> <td>As determined over period by the Entity acting reasonably. [X]</td> </tr> <tr> <td><u>Labour Hire Worker Retention</u></td> <td>90% of Labour Hire Workers complete the full term of their engagement for all accepted Contracts and Contract Variations.</td> <td>As determined over period by the Entity acting reasonably. [X]</td> </tr> <tr> <td><u>Labour Hire Worker Performance</u></td> <td>95% of Labour Hire Workers are achieving the expected performance standards.</td> <td>As determined over period by the Entity acting reasonably. [X]</td> </tr> <tr> <td><u>Labour Hire Worker Retention</u></td> <td>[tbc]</td> <td>[tbc]</td> </tr> <tr> <td><u>Labour Hire Worker Absences</u></td> <td>[tbc]</td> <td>[tbc]</td> </tr> </tbody> </table>		Service Level	Performance Measures	Calculation Method	<u>Labour Hire Worker Suitability</u>	80% of Labour Hire Workers nominated by the Service Provider are rated by the Entity Hiring Manager as suitable for the role and engagement.	As determined over period by the Entity acting reasonably. [X]	<u>Labour Hire Worker Retention</u>	90% of Labour Hire Workers complete the full term of their engagement for all accepted Contracts and Contract Variations.	As determined over period by the Entity acting reasonably. [X]	<u>Labour Hire Worker Performance</u>	95% of Labour Hire Workers are achieving the expected performance standards.	As determined over period by the Entity acting reasonably. [X]	<u>Labour Hire Worker Retention</u>	[tbc]	[tbc]	<u>Labour Hire Worker Absences</u>	[tbc]	[tbc]
Service Level	Performance Measures	Calculation Method																		
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<u>Labour Hire Worker Retention</u>	90% of Labour Hire Workers complete the full term of their engagement for all accepted Contracts and Contract Variations.	As determined over period by the Entity acting reasonably. [X]																		
<u>Labour Hire Worker Performance</u>	95% of Labour Hire Workers are achieving the expected performance standards.	As determined over period by the Entity acting reasonably. [X]																		
<u>Labour Hire Worker Retention</u>	[tbc]	[tbc]																		
<u>Labour Hire Worker Absences</u>	[tbc]	[tbc]																		
Commonwealth Procurement Connected Policy Requirements																				
Include details of any Commonwealth procurement connected policy requirements that apply to the Order e.g. Shadow Economy Policy, Indigenous Procurement Policy, Australian Industry Participation Plan Policy.																				

<u>Order for Services</u>	
Shadow Economy Policy	[For procurements valued at \$4 million or more the Shadow Economy Policy applies. Entities must obtain a Valid and Satisfactory Statement of Tax Record for any Service Provider (and any first-tier subcontractors of that Service Provider) that will be involved in the delivery of the Services]
Indigenous Procurement Policy	[For procurements valued at \$7.5 million or more, insert that clause 16.4.3 of the Head Agreement applies]
Australian Industry Participation Plan	[For procurements valued at \$20 million or more, the Australian Industry Participation policy may apply]
Entity Information	
Entity Representative	Name: [Insert contact name] Position: [Insert title] Address: [Insert address, including postcode] Email: [Insert email address] Contact number: [Insert contact number, including area code]
Entity Address for Notices	Physical Address: [Insert physical address for the Entity] Postal Address: [Insert the postal address for notices, if different to the physical address] Email: [Insert the email address for notices]
Entity Address for Invoices	Invoices must be submitted to [insert email address for invoices] and must contain [include any other requirements for the invoice e.g. that the purchase order no. must be quoted in the invoice]
Service Provider Information	
Service Provider Representative	Name: [Insert contact name] Position: [Insert title] Address: [Insert address, including postcode] Email: [Insert email address] Contact number: [Insert contact number, including area code]
Service Provider Address for Notices	Physical Address: [Insert physical address for the Service Provider] Postal Address: [Insert the postal address for notices, if different to the physical address] Email: [Insert the email address for notices]

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

name of authorised officer

title of authorised officer

Signature of authorised officer

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

*name of Service Provider's authorised
representative*

*title of Service Provider's authorised
representative*

*Signature of Service Provider's authorised
representative*

Schedule 6A Order Variation Template

Parties

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

Recitals

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

The parties agree as follows:

The Order is varied in accordance with the terms set out below. Unless specifically stated in this Order Variation, all terms and conditions of the Order continue unaffected.

1.	Order Variation number	
2.	Raised by	
3.	Details of change (use attachments if required)	Example: Old Text: Clause XXX New Text XXXXX
4.	Implementation date of variation	
5.	Effect on services	
6.	Plan for implementing the change [if any]	
7.	Effect on price [if any]	Example: Old Price: Clause XXX New Price XXXXX
8.	Effect on service levels [if any]	As above

9.	Other relevant matters (e.g. transitional impacts)	
----	--	--

[Insert description of any other variation]

Executed as an agreement

Entity

Name
(print)

Position

Signature

Date

Service
Provider

Name
(print)

Position

Signature

Date

Schedule 7 Performance Management Framework and Service Levels

1 Introduction

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

2 Performance Management Framework

2.1 Overview

- (a) The Service Provider acknowledges that:
 - (i) its performance will be measured against the performance measures in clause 2.2, 2.3 and 2.4 of this Schedule 7; and
 - (ii) Entities will provide to Finance reporting on the Service Provider's performance.

2.2 Quality

- (a) The following Quality performance measures apply to the Head Agreement:
 - (i) the capability and availability of Personnel;
 - (ii) documentation provided to high standard; and

- (iii) the Services provided met the Entity needs, and requirements of the Order.

2.3 Communication

- (a) The following Communication performance measures apply to the Head Agreement:
 - (i) proactive and effective communication with the Entity;
 - (ii) responsiveness; and
 - (iii) Entity reference numbers included in all correspondence.

2.4 Contract Performance

- (a) The following Contract Performance measures apply to the Head Agreement:
 - (i) understanding of the Entity's needs;
 - (ii) effective management of timelines;
 - (iii) effective budget management;
 - (iv) service provision managed diligently; and
 - (v) reasonable assistance provided in respect of any inquiry concerning the Service Provider's performance of Ordered Services.

3 Service Levels

3.1 The Service Levels and minimum expected performance for:

- (a) the Head Agreement are outlined in Table 1 of this Schedule 7 (**Head Agreement Service Levels**); and
- (b) a Contract are as specified in an Order (**Contract Service Levels**)

3.2 The Service Levels apply from the Commencement Date.

3.3 Responsibilities of the Service Provider

- (a) The Service Provider will use its best endeavours to meet or exceed the Service Levels during the Head Agreement Period.

- (b) The Service Provider will make all relevant Personnel and Subcontractors aware of the Service Levels.

3.4 Adjustments to the Service Levels

- (a) The Service Provider and Finance, both acting reasonably, may from time to time agree to adjust, remove or include new Service Levels, if:
 - (i) Service Levels require adjustment through the Head Agreement Period;
 - (ii) additional Service Levels are required; or
 - (iii) a Service Level is no longer considered appropriate.

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

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

3.5 Assessing Service Levels

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

3.6 Process for determining a Service Level Failure

- (a) A Service Level Failure is recorded for each occasion the Service Provider does not comply with, or maintain the minimum expected performance of a Service Level.
- (b) Where a Service Level has a minimum expected performance, availability or operation of 100%, if there is a single occasion where the performance of that Service Level is not satisfactory or maintained in accordance with the Service Level then it will constitute a Service Level Failure.

- (c) Clauses (a) and (b) of this clause do not apply to the extent that a failure is caused by an event outside the reasonable control of the Service Provider or is significantly contributed to by an act or omission by Finance or an Entity.

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

- (a) In the event of a Service Level Failure in relation to the Head Agreement Service Levels, Finance may request via notice that the Service Provider provide Finance with a plan to remedy the failure, including a due date for correcting the failure.
- (b) If the failure is not possible to rectify, the plan must describe how the Service Provider will ensure the failure does not happen again.
- (c) The Service Provider must make any changes to the plan required by Finance, and implement the plan once approved by Finance.
- (d) Finance may communicate the Service Level Failure in relation to the Head Agreement Service Levels and any established interim processes or procedures with Entities.
- (e) The Service Provider must give notice to Finance when any Service Level Failure in relation to the Head Agreement Service Levels has been corrected and where relevant, outline the corrective action taken and steps developed to prevent future failures of a similar nature.
- (f) Failure to achieve one or more of the Service Levels, or a trend of Service Level Failure may result in Finance enforcing its rights in relation to underperformance including but not limited to:
 - (i) requiring the Service Provider to remedy a Service Level Failure in accordance with clause 3.7 of this Schedule 7; and
 - (ii) enforcing its rights in clauses 8 and 26 of the Head Agreement (or other rights under the Head Agreement).

3.8 Service Provider's responsibility to correct a Service Level Failure under an Order

- (a) Where an Order includes Entity Service Levels, in the event of a Service Level Failure, the Entity may request that the Service Provider provide the Entity with a plan to remedy the failure, including a due date for correcting the failure.
- (b) If the failure is not possible to rectify, the plan must describe how the Service Provider will ensure the failure does not happen again.
- (c) The Service Provider must make any changes to the plan required by the Entity, and implement the plan once approved by the Entity.

- (d) The Service Provider must give notice to the Entity when any Service Level Failure for a Contract Service Level has been corrected and where relevant, outline the corrective action taken and steps developed to prevent future failures of a similar nature.
- (e) An Entity may report a Service Level Failure for a Contract Service Level to Finance and request that Finance escalate the issue for mediation between the Service Provider's Senior Executive and Finance's Senior Executive.

Table 1 – Head Agreement Service Levels

Service Level No	Service Level	Performance Measures	Calculation Method
<u>SL1</u>	<u>Reporting - Quality</u> (In accordance with the Reporting Specifications in Schedule 8)	98% accuracy of the reporting data provided to Finance.	Each instance where reporting is not compliant with the reporting specifications in Schedule 8, and Finance requests missing data or seeks corrections on reports submitted by the Service Provider is a service failure.
<u>SL2</u>	<u>Reporting – On Time</u>	98% of reports and data files are provided to Finance within the timing specified in the reporting specifications in Schedule 8.	Each instance where reporting is not provided to Finance within the timing specified in the reporting specifications in Schedule 8 is a service failure.
<u>SL3</u>	<u>Service Delivery</u> (In accordance with the Performance Management Framework of this Schedule 7)	80% of Entities' surveyed on the Service Provider's provision of the Services as detailed in Orders confirm satisfactory performance. Note: This is the Service Provider performance not the Labour Hire Worker's performance against the specified duties.	Finance will determine the level of compliance with this Service Level by analysing Entity reports on the Service Provider's performance against the Performance Management Framework.

Schedule 8 Reporting

1 Reporting

1.1 File Naming Convention

- (a) Reports must be clearly labelled, with the following file naming convention to be applied:

ABN_Name_Date

Where:

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

Name the Report Name is '[Labour Hire]'.

Date is the date of the report using a YYYY_MM format, i.e. for May 2023, the date would be 2023_05.

The file name would be ABN_LabourHire_2023_05

1.2 Formatting Standards

- (a) Formatting standards for reporting Labour Hire Services to Finance are detailed in the Report Specifications in clause 1.5, with the following additional formatting standards to apply:
- (i) case sensitivity, where values that are intended to be the same are truly identical and do not differ in case sensitivity or through abbreviation;
 - (ii) the letter 'A' in the Format Column of a Report Specification indicates the field is text field, and the letters 'AN' in the Format Column of a Report Specification indicates the field is text and number field;
 - (iii) files are to be provided as comma-separated values (CSV) using semi-colon text delimited format, or any other format reasonably requested by Finance;
 - (iv) files must be compatible with Microsoft Excel 2007, and later versions, unless otherwise advised by Finance; and

- (v) reports must not be locked in a manner that prevents Finance from reviewing or analysing raw information in a report, or the information used to generate a report.
- (b) Where agreed by Finance, reports may be password protected for confidentiality or security purposes. Where Finance has agreed to a report being password protected the Service Provider must provide report passwords to Finance.

1.3 Report Timing Requirements

- (a) The Service Provider must provide reports in accordance with the applicable Reporting Schedule in Table 1 of this clause 1.3.

Table 1: Service Provider Reporting Schedule

Ref.	Report	Reporting Schedule
1	Labour Hire Engagement Report	Within 10 Business Days of execution of an Order or variation with a Commonwealth entity.
2	Labour Hire Worker Time Sheet Report	Within 5 Businesses Days of the end of each fortnight, where a fortnight begins on the Order Commencement Date.

- (b) The Service Provider must ensure a Labour Hire Worker Time Sheet Report is submitted for each Labour Hire Worker specified in an Order for each Entity they are engaged by, for the duration of the Order Term.
- (c) The Service Provider is not required to submit a Labour Hire Worker Time Sheet Report or a Labour Hire Engagement Report if there have been no new engagements or if there have been no Labour Hire Workers working during a particular period within the respective Reporting Schedules for each of those reports.
- (d) Where a Service Provider provides a Timesheet to an Entity, which the Entity does not accept, and is therefore amended (in accordance with clause 28.3(c) of **Schedule 2 (Labour Hire Services)**, the Service Provider must update and resubmit the previously provided Labour Hire Worker Time Sheet Report for the relevant period.

1.4 File Transfer Requirements and Security

- (a) Reports are to be transferred (submitted) to Finance electronically or as otherwise notified by Finance.
- (b) The Service Provider warrants that all transferred files are free of Harmful Code.

1.5 Reporting to Entities

- (a) An Entity will specify in a Contract the types and frequency of reports to be provided by the Service Provider in respect of Labour Hire Services, and the Service Provider must provide the reports specified in a Contract at the times required by the Entity. Without limitation, the Service Provider may be required by a Contract to report on:
- (i) attendance of Labour Hire Workers over specified periods;
 - (ii) attrition rates for Labour Hire Workers;
 - (iii) performance of the Labour Hire Workers, including against performance standards (if any);
 - (iv) compliance with Workplace Laws;
 - (v) compliance by the Service Provider with the Integrity Requirements; and
 - (vi) any other matters requested by the Entity.

1.6 Reporting to Finance

- (a) The Service Provider must provide to Finance the Labour Hire Engagement Report in the format detailed in the Labour Hire Engagement Report in Table 2 of this clause 1.6.
- (b) The Labour Hire Engagement Report is to be provided in accordance with the Reporting Schedule in Table 1 of clause 1.3 of this **Schedule 8 (Reporting)**.

Table 2: Labour Hire Engagement Report

Position	Format	Header Name	Purpose	Reference Table	Notes
A	N	SP_ABN	To uniquely identify the Service Provider.	12345678910	11-digit number with no spaces (Refer Schedule 6, Item (TBC))
B	AN	SRVC_PRVDR	To uniquely identify the Service Provider.		This is a short name agreed with Finance to uniquely identify the Service Provider and cannot be varied without approval from Finance.
C	AN	ORDER_NO	To identify the Entity Order number		The Order number must be the Order number specified by an Entity in an Order (Refer Schedule 6, Item (TBC))
D	N	ENTITY_ABN	To provide the ABN for the relevant Entity	12345678910	11-digit number with no spaces (Refer Schedule 6, Item (TBC))
E	AN	ENTITY	To identify the relevant Entity		Entity name listed on the Order (Refer Schedule 6, Item (TBC))
F	A	CN_TYPE	To identify if the reporting reflects a new Order, an extension option being exercised or if the item being reported has been varied through a Contract variation (add		New Contracts = N Variation = Y

Position	Format	Header Name	Purpose	Reference Table	Notes
			or remove labour hire resources)		
G	N	CN_START	To identify the Contract start date	DD/MM/YY	This is the date upon which the worker first attends the Entity's workplace in accordance with the work order. (Refer Schedule 6, Item [TBC])
H	N	CN_END	To identify the Contract end date	DD/MM/YY	This is the date upon which the worker last attends the Entity's workplace identified in the Order. (Refer Schedule 6, Item [TBC])
I	N	EXT_END	To identify the end date of any extension options		If multiple extensions options apply, the date should reflect the last extension option end date identified in the Order. (Refer Schedule 6, Item [TBC])
J	N	EXT_NU	To identify the number of extension options		This is the total number of extension options identified in the Order. (Refer Schedule 6, Item [TBC])
K	N	PST_CD	To identify the State or Territory that will be the primary work location		This is the postcode location at which the worker attends the Entity's workplace in identified in the Order. It may be a different location to the office issuing in the Order. (Refer Schedule 6, Item [TBC])
L	AN	APS_EQ	To identify the APS equivalent classification level		The equivalent APS classification by which the worker is engaged as identified in the Order. (Refer Schedule 6, Item [TBC])
M	A	JOB_FM	To identify the Job Family the role maps to		In accordance with the APSC Job Family Framework identified in the Order. (Refer Schedule 6, Item [TBC])
N	A	JOB_RL	To identify the Job Role the role maps to		In accordance with the APSC Job Family Framework identified in the Order. (Refer Schedule 6, Item [TBC])
Q*	A/N	LHW_ID	To identify the Labour Hire Worker assigned to the Order		This is the unique ID assigned to every registered Labour Hire Worker identified in this Order. (Refer Schedule 6, Item [TBC])
P*	A/N	LHW_RE	To identify the Labour Hire Worker removed from a current Order		This is the unique ID assigned to the Labour hire Worker that is removed from the Order via an Order Variation. (Refer Schedule 6, Item [TBC])
Q*	A/N	LHW_ADD	To identify the Labour Hire Worker added to a current Order		This is the unique ID assigned to the Labour hire Worker that is added to the Order via an Order Variation. (Refer Schedule 6, Item [TBC])
R	A/N	CESS-REASON	Reason for removing a Labour Hire Workers from an Order		The reason a Labour Hire Worker was ceased prior to the end date identified in the Order. This will be a Finance defined list
S	N	RTE	Agreed hourly rate, ex GST		Agreed hourly rate identified in the Order or Order Variation. (Refer Schedule 6 or 6A as applicable)
T	N	GPM	Gross Profit Margin, ex GST		Gross Profit Margin identified in the Order. (Refer Schedule 6, Item [TBC])
U	N	CON_FEE	Conversion Fee ex GST		Conversion Fee identified in the Order or Order Variation Refer Schedule 6, Item (Refer Schedule 6, Item [TBC])
V	N	INTRO_FEE	Introduction Fee ex GST		Introduction Fee identified in the Order or Order Variation Refer Schedule 6, Item [TBC])
W	N	PLAC_FEE	Placement Fee ex GST		Placement Fee identified in the Order or Order Variation Refer Schedule 6, Item [TBC])

Position	Format	Header Name	Purpose	Reference Table	Notes
X	N	GST	GST applicable to line item (total of fees and hourly rate)		GST applicable to the line item/worker identified in the Order. (Refer Schedule 6, Item (TBC))
Y	A	ENT_NAME	To identify Entity contact point name		The Entity Representative's name identified in the Order. (Refer Schedule 6, Item (TBC))
Z	N	ENT_NUM	To identify Entity contact point phone number		The Entity Representative's phone number identified in the Order. (Refer Schedule 6, Item (TBC))
AA	AN	ENT_EML	To identify Entity contact point email address		The Entity Representative's email address identified in the Order. (Refer Schedule 6, Item (TBC))
AB	N	COST_CNT	To assist with Finance administration fee recovery by Finance		Entity cost centre code identified in the Order. (Refer Schedule 6, Item (TBC))

*These items are only required to be included in the Labour Hire Engagement Report where Finance has introduced the Panel Administration Platform in accordance with clause 5.5.

- (c) The Service Provider must provide to Finance the Labour Hire Worker Time Sheet Report in the format detailed in Table 3 of this clause 1.6.
- (d) The Labour Hire Worker Time Sheet Report is to be provided in accordance with the Reporting Schedule in Table 1 of clause 1.3 of this **Schedule 8 (Reporting)**.

Table 3: Labour Hire Worker Time Sheet Report

Position	Format	Header Name	Purpose	Reference Table	Notes
A*	A/N	LHW_ID	To identify the Labour Hire Worker assigned to the Order		This is the unique ID assigned to every registered Labour Hire Worker identified in the Order. (Refer Schedule 6, Item (TBC))
B	N	LHW_NAME	Name of the Labour Hire Worker		
C	N	SP_ABN	To uniquely identify the Service Provider.	12345678910	11-digit number with no spaces (Refer Schedule 6, Item (TBC))
D	AN	SRVC_PRVDR	To uniquely identify the Service Provider.		This is a short name agreed with Finance to uniquely identify the Service Provider and cannot be varied without approval from Finance.
E	N	ENTITY_ABN	To provide the ABN for the relevant Entity	12345678910	11-digit number with no spaces (Refer Schedule 6, Item (TBC))
F	AN	ENTITY	To identify the relevant Entity		Entity name listed on the Order (Refer Schedule 6, Item (TBC))
G	AN	ORDER_NO	To identify the Entity Order number		The Order number must be the Order number specified by an Entity in an Order (Refer Schedule 6, Item (TBC))
H	N	TS_DATE	To capture the date worked	DD/MM/YY	This is the date upon which the worker has provided services in accordance with the work order.
I	N	TS_START	To record the start time	HH:MM	This is the time upon which the worker began providing services in accordance with the work order, on the date set out in TS Date.

Position	Format	Header Name	Purpose	Reference Table	Notes
J	N	TS_END	To record the end time	HH:MM	This is the time upon which the worker ceased providing services in accordance with the work order, on the date set out in TS_Date.
K	N	TS_TOTAL_HRS	To record the total time worked on that day	HH:MM	This is the total time for which the worker provided services in accordance with the work order, on the date set out in TS_Date, excluding breaks/hours not providing service.
L	AN	TS_PERIOD	To identify the specified Timesheet period		The reporting period specified by Finance or identified in the Order (Refer Schedule 6, Item <i>[TBC]</i>)
M	AN	APS_EQ	To identify the APS equivalent classification level		The equivalent APS classification by which the worker is engaged as identified in the Order. (Refer Schedule 6, Item <i>[TBC]</i>)

*These items are only required to be included in the Labour Hire Engagement Report where Finance has introduced the Panel Administration Platform in accordance with clause 5.5.

Schedule 9 Service Provider's Confidential Information

The following information is confidential to the Service Provider:

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

OR

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

Schedule 10 Deed of Variation

Parties

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

Recitals

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

The parties agree as follows:

The Head Agreement is varied in accordance with the terms set out below. Unless specifically stated in this Deed of Variation, all terms and conditions of the Head Agreement continue unaffected.

1.	Deed of Variation number	
2.	Raised by	
3.	Details of change (use attachments if required)	Example: Old Text: Clause XXX New Text XXXXX
4.	Implementation date of variation	
5.	Effect on services	
6.	Plan for implementing the change [if any]	
7.	Effect on price [if any]	Example: Old Text: Clause XXX New Text XXXXX

8.	Effect on service levels [if any]	
9.	Other relevant matters (e.g. transitional impacts)	

Variation to Head Agreement:

[Insert description of variation]

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

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

Signature of Signatory

Signature of Witness

Full name of Signatory

Full name of Witness

Date:

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

Signature of Director

Signature of Director/Company Secretary

Full name of Director (print)

Full name of Director/Company Secretary

Date:

Schedule 11 Deed of Novation

DRAFT



Australian Government

Department of Finance

Deed of Novation

Between

the Commonwealth of Australia as represented by
the Department of Finance

and

[insert name]

and

[insert name]

For the Provision of Phase 2 Labour Hire Services

to the Australian Government

Contents

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DRAFT

Parties

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

and

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

and

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

Background

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

Operative provisions

1. Definitions and interpretation

1.1. Definitions

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

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

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

1.2. Interpretation

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

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

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

2. Novation of the Head Agreement

2.1. Rights and obligations of the Incoming Service Provider

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

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

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

2.2. Release of the Outgoing Service Provider

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

2.3. Release of Finance

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

2.4. Obligations and liabilities arising before the Date of this Deed

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

3. Warranties

3.1. Authority and capacity

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

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

3.2. Reliance

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

4. General

4.1. Amendments

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

4.2. Counterparts

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

4.3. Costs

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

4.4. Further acts and documents

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

5. Governing law and jurisdiction**5.1. Governing law**

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

5.2. Jurisdiction

Each party irrevocably:

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

Deed of Novation

Signing Page

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

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

Signature of Signatory

Signature of Witness

Full name of Signatory

Full name of Witness

Date:

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

Signature of Director

Signature of Director/Company Secretary

Full name of Director (print)

Full name of Director/Company Secretary

Date:

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

Signature of Director

Signature of Director/Company Secretary

Full name of Director (print)

Full name of Director/Company Secretary

Date:

Signing Page

Executed as a Deed

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

)
)
)
)

Name of signatory

Signature

Date

In the presence of:

Name of witness

Signature of witness

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

Signature of Director

Signature of Director/Company Secretary

Name of Director (print)

Name of Director/Company Secretary (print)

Date

OR

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

In the presence of:

Signature of Attorney

Signature of witness

Name of Attorney (print)

Name of witness (print)

Date

DRAFT