



Commonwealth of Australia

**Commonwealth Contract – Assurance Reviewer Services**  
**Reference No:**

**Customer**

Customer Name Department of Finance  
Customer ABN 61 970 632 495  
Address One Canberra Avenue  
FORREST ACT 2603

**Supplier**

Supplier Name  
Supplier ABN  
Supplier ACN (if applicable)  
Supplier ARBN (if applicable)  
Address

## Statement of Work

### C.A.1 Key Events and Dates

This Contract commences on the Contract Start Date and continues for the Contract Term unless:

- (a) it is terminated earlier; or
- (b) if a Contract Extension Option is set out in the table, the Customer exercises the Contract Extension Option, in which case this Contract will continue until the end of the extended time (unless it is terminated earlier).

Event	Date
<b>Contract Start Date</b>	
<b>Contract Term</b>	This Contract will commence on the Contract Start Date or the date the Contract is executed, whichever is the latter, and will terminate on
<b>Contract Extension Option</b>	

### C.A.2 The Requirement

The Contract between the Customer and the Supplier is for the provision of Assurance Reviewer Services (Services) for:

<b>Review type</b>	
<b>Sponsoring Entity</b>	
<b>Project/Program Name</b>	

The purpose of the Review is to contribute to the assessment of the project/program's progress against its stated objectives at a particular point in time. The Services must be carried out in accordance with the Australian Government Assurance Reviews process described in the Assurance Reviews guidance<sup>1</sup> and other documentation provided to the Specified Personnel or the Supplier by the Customer. Specified Personnel responsibilities and tasks as Review Team Leader and Review Team Member are detailed in Contract Annex 1 – Supplementary Information.

#### C.A.2 (a) Standards

In conducting the Review, the Supplier must ensure that the Specified Personnel:

- (a) exercise professional standards of skill, care and diligence;
- (b) cooperate with, and act in, a respectful manner towards, the Review Team, Australian Government officials and others dealt with during the Review;
- (c) behave at all times in a way which upholds the Australian Public Service (APS) Values<sup>2</sup> and APS Code of Conduct<sup>3</sup>;
- (d) comply with any reasonable direction of the Customer; and
- (e) comply with all applicable legal, regulatory and contractual requirements.

#### C.A.2 (b) Security Requirements

Prior to undertaking any work in relation to the Services, the Supplier must ensure the Specified Personnel holds an Australian Government security clearance to the level specified in Clause C.A.5 [*Specified Personnel*]. The Supplier is responsible for the costs of obtaining and maintaining the security clearance.

<sup>1</sup> RMG 106 Guidance on the Assurance Reviews Process, available at: <http://finance.gov.au/assurance-reviews/guidance-on-assurance-reviews/>

<sup>2</sup> APS Values, available at: <http://www.apsc.gov.au/working-in-the-aps/your-rights-and-responsibilities-as-an-aps-employee/aps-values>

<sup>3</sup> APS Code of Conduct, available at: <http://www.apsc.gov.au/working-in-the-aps/your-rights-and-responsibilities-as-an-aps-employee/code-of-conduct>

### C.A.2 (c) Workplace Health and Safety

Throughout the Contract Term, the Customer and the Supplier will proactively identify and cooperate to manage any workplace health and safety issues that may arise.

### C.A.2 (d) Delivery and Acceptance

Where the Customer rejects any Services under Clause C.C.10 [*Delivery and Acceptance*] the Customer will specify a timeframe in which the Supplier is required to rectify deficiencies, at the Supplier's cost, so that the Services meet the requirements of the Contract. The Supplier must comply with any such requirement. Rectified Services are subject to acceptance under Clause C.C.10 [*Delivery and Acceptance*].

The Supplier will refund all payments related to the rejected Services unless the relevant Services are rectified and accepted by the Customer.

If the Supplier is unable to meet the Customer's timeframe, the Customer may terminate the Contract in accordance with Clause C.C.11 [*Termination for Cause*].

Milestone	Delivered To	Delivery Details	Delivery Date
1. Specified Personnel attend and participate in Planning Meeting	Assurance Reviews Unit, Department of Finance		
2. Specified Personnel attend and participate for the duration of the Review	Assurance Reviews Unit, Department of Finance		
3. Specified Personnel prepare the Review Report for comment	Senior Responsible Official (SRO),	Deliver completed Review report to SRO for discussion and comment prior to final delivery	
4. Specified Personnel sign and handover the final Review report	SRO,  Assurance Reviews Unit, Department of Finance	Deliver final Review report to SRO in hard copy signed by the Review Team.  Deliver final Review report to the Department of Finance in two formats: <ul style="list-style-type: none"> <li>• Hard copy signed by the Review Team</li> <li>• Soft copy on USB drive or by secure email.</li> </ul>	
5. Specified Personnel complete feedback forms	Assurance Reviews Unit, Department of Finance	Completed feedback forms submitted to the Department of Finance via email	Within five (5) business days of delivery of the Review report.

### C.A.2 (e) Facilities and Assistance Provided by the Customer

The Customer will liaise with the Sponsoring Entity to provide appropriate facilities during the Review. The Customer will provide the Review report template to the Specified Personnel prior to the Review.

### C.A.2 (f) Customer Material

Any Material issued by the Customer or the Sponsoring Entity to the Specified Personnel or the Supplier for use in performing the Services, including Review report templates and project/program documentation, remain the property of the Commonwealth unless otherwise specified. This Clause C.A.2 (f) [Customer Material] survives termination or expiry of the Contract.

### C.A.3 Contract Price

The maximum Contract Price inclusive of GST and all taxes and charges will not exceed **\$00,000.00** as set out below.

When returning the signed Contract, the Supplier must also return the completed and signed Authority for EFT Direct Credit Payment form (Attachment A to the Contract).

#### Fixed Price

Item Description	Quantity	Unit Price GST Exclusive	GST Component (Unit Price)	Total Price GST Inclusive
Daily rate – Assurance Reviewer Services  The Reviewer is authorised to spend X days on the Review	Maximum of X days	\$0,000.00	\$000.00	\$00,000.00

**Total Fixed Price for Services \$00,000.00**

#### Variable Fees and Charges

Expenses must be incurred in accordance with the Reasonable Expenses Guidance issued by the Customer and must not exceed the Maximum Estimated Variable Costs set out below:

Description / Comments	Cost GST Exclusive	GST Component	Total Cost GST Inclusive
Reimbursable expenses (for example, taxi fares or other appropriate ground transport, meals).	\$000.00	\$00.00	\$000.00
The Supplier acknowledges that the Customer will book and pay airfares and accommodation on behalf of Specified Personnel, where required to provide the Services.			

**Maximum Estimated Variable Costs (additional to above) \$000.00**

#### C.A.3 (a) Payment Schedule

The Total Fixed Fees and Charges will be made as a single payment on completion of contracted deliverables.

If the Supplier incurs any of the variable costs, the Customer will reimburse the Supplier at cost (exclusive of GST) on submission of a Correctly Rendered Invoice and production of satisfactory evidence in accordance with Clause C.C.17 [Payment].

**C.A.4 Contract Managers and Addresses for Notices**

Contract Managers are responsible for issuing or accepting any written Notices under the Contract and are the contact points for general liaison.

**C.A.4 (a) The Customer’s Contract Manager:**

The person occupying the position of: Review Coordinator  
 Currently:  
 Postal Address: One Canberra Avenue  
 FORREST ACT 2603  
 Telephone:  
 Mobile: Not applicable  
 Email Address: [assurancereviews@finance.gov.au](mailto:assurancereviews@finance.gov.au)

**C.A.4 (b) Address for Invoices:**

Addressee Name:  
 Position Title: Review Coordinator  
 Postal Address: One Canberra Avenue  
 FORREST ACT 2603  
 Email Address: [assurancereviews@finance.gov.au](mailto:assurancereviews@finance.gov.au)  
 Telephone:

**C.A.4 (c) The Supplier’s Contract Manager:**

Name:  
 Position Title:  
 Postal Address:  
 Telephone:  
 Mobile:  
 Email Address:

**C.A.5 Specified Personnel**

Position/Role	Name	Security Clearance Level
Review Team Member/ Review Team Leader (Reviewer)		

**C.A.6 Subcontractors**

None specified.

## Additional Contract Terms

### C.B.1 Intellectual Property

In this Clause C.B.1 [*Intellectual Property*]:

**C.B.1.1 Contract Material** means any material:

- (a) created for the purposes of the Contract;
- (b) provided or required to be provided to the Customer or the Sponsoring Entity as part of the Services; or
- (c) derived from the material identified in Clause C.B.1.1(a) or (b),  
but excludes material identified at item Clause C.A.2(f) [*Customer Material*].

**C.B.1.2 Existing Material** means any material, other than the Contract Material, which is made available by the Supplier or the Specified Personnel to the Customer or the Sponsoring Entity during the course of the Contract.

**C.B.1.3 Moral Rights** means 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.

**C.B.1.4 Permitted Acts** means any of the following classes or types of acts or omissions:

- (a) using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- (b) supplementing the Contract Material with any other Material; and
- (c) using the Contract Material in a different context to that originally envisaged;

but does not include false attribution of authorship.

The Customer representing the Commonwealth grants or will procure a royalty free non-exclusive licence for the Supplier (including the Specified Personnel) for the term of the Contract, to use and reproduce material identified at item Clause C.A.2(f) [*Customer Material*].

All Contract Material created by the Specified Personnel or the Supplier as part of, or for the purpose of, performing the Services, including any intellectual property rights in the Review report, vests in the Commonwealth immediately on creation.

The Supplier grants to or will procure for the Commonwealth a permanent, irrevocable, royalty free, world-wide, non-exclusive licence (including a right to sub-licence) to use, reproduce, adapt and exploit any Existing Material in conjunction with the Contract Material.

All project/program documentation supplied by the Sponsoring Entity during the Review, forming part of the Customer Material referred to in Clause C.A.2 (f), must be returned to the Sponsoring Entity at the conclusion of the Review. The Supplier must ensure that any notes (including electronic notes and records), draft reports and copies of the final Review report held by the Specified Personnel (or the Supplier) or created during the course of the Review, are to be destroyed on the final day of the Review.

Where the Supplier is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by the Customer or the Sponsoring Agency.

### C.B.2 Confidential Information of the Supplier

In addition to Clause C.C.20 [*Confidential Information*], the Supplier grants the Customer permission to disclose any Confidential Information of the Supplier under circumstances where that information:

- (a) is disclosed to internal personnel solely in order to comply with obligations, or to exercise rights, under this Contract;
- (b) is disclosed to internal management personnel, solely to enable effective management or auditing of contract-related activities;
- (c) is disclosed to the responsible Minister;
- (d) is disclosed in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;

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- (e) is shared by the Customer within its organisation, or with another Commonwealth entity for any purpose;
- (f) is authorised or required by law to be disclosed; or
- (g) is already in the public domain.

This Clause C.B.2 survives termination or expiry of the Contract.

### **C.B.3 Interest on Late Payments**

If the Customer fails to make a payment to the Supplier by the business day it is due and the amount of interest payable under this clause exceeds \$10, the Customer will pay the unpaid amount plus interest on the unpaid amount.

Interest payable under this clause 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 Customer effects payment, calculated using the General Interest Charge Rate formula available at the Australian Taxation Office website.

### **C.B.4 Insurance**

In connection with the provision of the Services the Supplier must effect and maintain, with a reputable insurance company, valid and enforceable insurance policies as set out below for the Contract Term (except in the case of professional indemnity insurance which must be maintained for a period of one year from the date of expiration or termination, whichever is the later, of this Contract). The Supplier will furnish the Customer with relevant proof of insurance upon request.

- (a) public liability policy of insurance for an amount not less than \$5 million per occurrence;
- (b) professional indemnity insurance for an amount not less than \$1 million per claim and in the aggregate in any twelve-month period; and
- (c) workers' compensation insurance as required by law.

This Clause C.B.4 survives termination or expiry of the Contract.

If the Supplier breaches this Clause C.B.4 [*Insurance*], the Customer may terminate the Contract for cause.

### **C.B.5 Conflict of Interest**

The Supplier warrants that, to the best of its knowledge after making diligent inquiry, at the Contract Start Date no conflict exists or is likely to arise in the performance of the Services except as disclosed in writing to the Customer. The Supplier must arrange for the Specified Personnel to sign and return to the Customer a Conflict of Interest Declaration (Attachment B to the Contract). The Specified Personnel must not perform any work in relation to the Services until the Customer has received the signed Conflict of Interest Declaration.

The Supplier acknowledges that the Customer may discuss the declaration with the Sponsoring Entity to clarify if there are actual or perceived conflicts of interests and if so, how best to manage them.

Where a conflict of interest, a risk of conflict of interest or a perceived conflict of interest arises in the performance of the Services, the Supplier must notify the Customer immediately of the situation and must ensure that the Specified Personnel follow all reasonable directions of the Customer about the method for handling any such conflict of interest.

The Supplier acknowledges that the active solicitation, by the Supplier or the Specified Personnel, of business in the course of providing the Services constitutes a breach of this Clause C.B.5 [*Conflict of Interest*] as it will compromise the independent nature of Assurance Reviews.

The Customer may terminate the Contract for cause if:

- (a) the Customer or the Sponsoring Entity conclude that an actual or perceived conflict of interest cannot be appropriately managed during the term of the Contract;
- (b) the Supplier or the Specified Personnel otherwise breach this Clause C.B.5 [*Conflict of Interest*] or Clause C.C.6 [*Conflict of Interest*], or

- (c) the Specified Personnel engage in conduct inconsistent with the Conflict of Interest Declaration (Attachment B to the Contract).

### **C.B.6 Confidentiality**

In the course of performing the Services, the Specified Personnel may have access to confidential or other sensitive material. By signing the Contract, the Supplier acknowledges its obligation to ensure that the confidentiality of that information is maintained. Assurance Reviews deal with many sensitive projects/programs and it is critical that confidentiality requirements are strictly adhered to.

The Supplier must not, and the Supplier must ensure that the Specified Personnel do not, discuss any details about an Assurance Review process with anyone outside of that Assurance Review process. For clarification, this includes Specified Personnel not discussing information outside the particular project/program being reviewed (rather than referring to the general Assurance Review environment). It is essential that the Sponsoring Entity undergoing an Assurance Review is confident that what is discussed in the review stays in the confines of that particular review and is not mentioned in any other forum (including Assurance Reviews concerning other entities). It is acceptable to mention as background, previous involvement in Assurance Reviews, the number of reviews and which Gates/Stages have been undertaken and a broad general description of the types of projects/programs reviewed (for example, large ICT projects, major construction projects).

The Supplier acknowledges that the Specified Personnel cannot start work on the Services until the Supplier provides the Customer with a Deed Poll of Confidentiality and Privacy Acknowledgement form (Attachment C to the Contract) and an Official Secrets Acknowledgement form (Attachment D to the Contract) signed by the Specified Personnel.

If the Specified Personnel engage in conduct inconsistent with the Deed Poll of Confidentiality and Privacy Acknowledgement (Attachment C to the Contract) or the Official Secrets Acknowledgement form (Attachment D to the Contract), the Customer may terminate the Contract for cause.

This Clause C.B.6 survives termination or expiry of the Contract.

### **C.B.7 Exclusive service provision - Specified Personnel**

The Supplier must ensure that the Services are performed exclusively by the person specified as the Reviewer at item C.A.5 [*specified personnel*].

The Supplier agrees to remove Specified Personnel where requested to do so by the Customer.

The Supplier must not engage subcontractors to perform the entire or any part of the Services.

The Supplier must provide the Customer with copies of police checks and security clearances for the Specified Personnel (and any replacement Specified Personnel agreed to by the Customer) where the Customer requires that information before Specified Personnel undertake work in connection with the Services.

The Customer may undertake any further security checks it considers appropriate of the Supplier, its employees, agents and subcontractors. The Supplier must notify the Customer immediately on becoming aware of any security incident or security breach.

Notwithstanding Clause C.C.14 [*Specified Personnel*], the Customer may terminate the Contract for cause if:

- (a) the Specified Personnel are not available to perform the Services;
- (b) the Specified Personnel loses their security clearance or causes a security breach;
- (c) the Customer has reasonably requested that the Specified Personnel be removed or replaced and the Supplier cannot provide replacement personnel acceptable to the Customer; or
- (d) the Supplier otherwise breaches this Clause C.B.7 [*Exclusive Service Provision*].

The Supplier must ensure that the Specified Personnel perform the Services in accordance with the Specified Personnel responsibilities described in the Contract Annex 1 – Supplementary Information.



### **C.B.8 Supplier obligation to notify**

The Supplier must notify the Customer on becoming aware of:

- (a) any disciplinary proceedings or orders made by a professional entity against the Supplier or the Specified Personnel;
- (b) any adverse comments or findings made by a court, tribunal, inquiry or professional entity about the conduct or performance of the Supplier or the Specified Personnel impacting on the capacity or capability to deliver the Services;
- (c) any other significant matter involving the Supplier or the Specified Personnel that may adversely impact on the Review or the provision of the Services.

If the Supplier breaches this Clause C.B.8 [*Supplier Obligation to Notify*], the Customer may terminate the Contract for cause.

### **C.B.9 Announcements**

The Supplier, before making any public announcement in connection with the Contract, the Services or the provision of Assurance Review services generally, must obtain the Customer's agreement to the announcement except where the announcement is required by law, in which case the Supplier must first consult with the Customer regarding the terms of the announcement.

This Clause C.B.9 survives termination or expiry of the Contract.

### **C.B.10 Trust**

This Clause C.B.10 applies where the Supplier enters into the Contract as a trustee for a trust.

The Supplier enters the Contract personally and in its capacity as trustee of the Trust and is liable under the Contract in both capacities.

The Supplier warrants that:

- (a) the Trust has been validly created and is in existence at the date of the Contract;
- (b) the Trust will continue to exist for the term of the Contract;
- (c) it has been validly appointed as the trustee of the Trust;
- (d) it has the power to enter into the Contract in its capacity as trustee for the Trust and the terms of the Trust do not, and will not at any time, prevent or in any way restrict the Supplier from performing the Services or fulfilling any of its obligations or meeting its liabilities that arise under or pursuant to the Contract;
- (e) it has the power to perform its obligations under the Contract; and
- (f) it has valid rights of indemnity and exoneration against the assets of the Trust, which rights are available for the satisfaction of all matters arising out of or in connection with all acts by, claims made against, liabilities and other obligations incurred by the Trustee under or pursuant to the Contract.

## Contract Annex 1 – Supplementary Information

### Specified Personnel responsibilities

Terms used in the below have the meaning given to them in RMG 106 Guidance on the Assurance Reviews Process, available at: <http://finance.gov.au/assurance-reviews/guidance-on-assurance-reviews/>

Responsibilities relate to the delivery milestones described under Clause C.A.2 (d) [*Delivery and Acceptance*].

#### Responsibilities as Review Team Leader

The Review Team Leader's role is essential to the success of an Assurance Review. In participating as a Review Team Leader, Specified Personnel are required to:

- conduct the Review in accordance with the relevant Assurance Review methodology described in the Assurance Reviews guidance (all milestones);
- contact the nominated Senior Responsible Official (SRO) prior to the Planning Meeting to establish the context and logistics of the Review and identify their concerns and expectations (milestone 1);
- contact each member of the Review Team prior to the Planning Meeting to introduce themselves and develop an understanding of the skill sets and strengths across the Review Team (milestone 1);
- facilitate communications and relationships with the SRO, the program/project team and other participants, including acting as chair during the Planning Meeting and interviews (milestones 1, 2 and 3);
- identify key stakeholders to be interviewed, relevant documentation needed for the Review and potential information access constraints (milestones 1 and 2);
- formulate the protocols and logistics for the Review, including ensuring all participants understand their responsibilities as well as the constructive purpose and structure of the interviews (milestones 1 and 2);
- examine relevant documentation and conduct interviews with stakeholders to identify key issues and assess delivery confidence of the project/program (milestone 2);
- facilitate the production of the Review report with input from the Review Team, in accordance with the report template provided by the Customer (milestones 3 and 4);
- present a draft report to the SRO and discuss the Review's conclusions and recommendations with the SRO prior to finalising the report (milestones 3 and 4);
- finalise and deliver the final Review report to the SRO and the Customer (milestone 4); and
- evaluate Review Team Member performance and provide feedback to the Customer (milestone 5).

#### Responsibilities as Review Team Member

Review Team Members are selected for the relevance of their skills and experience. In participating as a Review Team Member, Specified Personnel are required to:

- conduct the Review in accordance with the relevant Assurance Review methodology described in the Assurance Reviews guidance (all milestones);
- work cooperatively with all participants in the Review, including the Review Team, the Sponsoring Entity and the Customer (all milestones);
- identify relevant documentation for review and stakeholders for interview (milestones 1 and 2);
- examine relevant documentation and participate in interviews with stakeholders to identify key issues and assess delivery confidence of the project/program (milestone 2);
- participate in the discussion and assessment of the program/project under review in a professional and objective manner (milestone 2);
- contribute to the development and writing of the Review report, in accordance with the report template provided by the Customer (milestones 3 and 4);
- contribute to briefing the SRO on the Review's conclusions and recommendations prior to finalising the report (milestone 3); and
- at the completion of the Review, provide feedback on the Review Team Leader to the Customer (milestone 5).

**Commonwealth Contract Terms**

Some terms used in these Commonwealth Contract Terms have been given a special meaning.

Their meanings are set out either in the *Commonwealth Contracting Suite Glossary* or in the relevant *Commonwealth Contract*.

**Background**

The Customer requires the provision of certain Goods and/or Services.

The Supplier has fully informed itself on all aspects of the Customer's requirements and has responded representing that it is able to meet the Requirement.

**C.C.1 Relationship of the Parties:**

Neither party is the employee, agent or partner of the other party. Neither party, by virtue of this Contract, is authorised to bind or represent the other party.

In all dealings related to the Contract, the parties agree to:

- (a) communicate openly with each other and co-operate in achieving the contractual objectives; and
- (b) act honestly and ethically; and
- (c) comply with reasonable commercial standards of fair conduct; and
- (d) consult, co-operate and co-ordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health of workers and workplaces.

**C.C.2 Entire Agreement:**

The Contract represents the Parties' entire agreement in relation to the subject matter. Anything that occurred before the making of this Contract shall be disregarded (unless incorporated into the Contract in writing). However, the Supplier represents that the claims made in its Response to the ATM were correct when made and remain correct.

No agreement or understanding varying or extending the Contract is legally binding upon either Party unless in writing and agreed by both Parties.

If either Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay does not operate to prejudice those rights.

**C.C.3 Precedence of Documents:**

The Contract is comprised of:

- (a) *Additional Contract Terms* (if any);
- (b) *Statement of Work*;
- (c) *Commonwealth Contract Terms*;
- (d) *Commonwealth Contracting Suite Glossary*; and
- (e) *Contract Annex 1 – Supplementary information* (if any).

as at 9:00am, Canberra time, on the date of the Contract, unless otherwise agreed in writing between the parties.

If there is ambiguity or inconsistency between documents comprising the Contract, the document appearing higher in the list will have precedence.

**C.C.4 Survival:**

Clauses C.C.9 [*Liability of the Supplier*], C.C.18 [*Supplier not to make representations*], C.C.20 [*Compliance with Commonwealth Laws and policies*] and clause C.B.1 [*Intellectual Property*] (if included) survive termination or expiry of the Contract.

**C.C.5 Governing Law:**

The laws of the Australian Capital Territory apply to the Contract.

**C.C.6 Conflict of Interest:**

The Supplier has either declared any real or perceived conflicts of interest that might arise; or states that no conflicts of interest exist, or are anticipated, relevant to the performance of its obligations under the Contract.

If any conflict or potential conflict arises during the Contract Term, the Supplier will immediately notify the Customer and comply with any reasonable Notice given to the Supplier by the Customer in relation to the conflict.

**C.C.7 Assignment:**

The Supplier may not assign any rights under the Contract without the Customer's written consent. To seek consent, the Supplier must provide the Customer with a Notice, which includes full details of the proposed assignee and the rights the Supplier proposes to assign.

To decline consent, the Customer must provide a Notice to the Supplier, setting out its reasons, within twenty-eight (28) calendar days of receiving the Notice seeking consent. Otherwise, the Customer is taken to have consented.

**C.C.8 Subcontracting:**

Subcontracting any part of, or the entire Supplier's obligations under the Contract, will not relieve the Supplier from any of its obligations under the Contract.

The Supplier must ensure that Subcontractors specified in Item C.A.6 [*Subcontractors*] (if any) perform that part of the Services Specified in that item.

The Supplier must make available to the Customer the details of all subcontractors engaged to provide the Goods and/or Services under the Contract. The Supplier acknowledges that the Customer may be required to publicly disclose such information.

The Supplier must ensure that any subcontract entered into by the Supplier, for the purpose of fulfilling the Supplier's obligations under the Contract, imposes on the subcontractor the same obligations that the Supplier has under the Contract (including this requirement in relation to subcontracts).

**C.C.9 Liability of the Supplier:**

The Supplier will indemnify the Customer and its officials against any claim, loss or damage arising in connection with any breach of the Supplier's obligations or representations under the Contract.

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The Supplier's obligation to indemnify the Customer and its officials will reduce proportionally to the extent that any act or omission, on the part of the Customer or its officials contributed to the claim, loss or damage.

The Supplier will maintain adequate insurances for the Contract and provide the Customer with proof when reasonably requested.

**C.C.10 Delivery and Acceptance:**

The Supplier must provide the Goods and/or Services as specified in the *Statement of Work* and meet any requirements and standard specified in the *Statement of Work*.

The Supplier must promptly notify the Customer if the Supplier becomes aware that it will be unable to provide all or part of the Goods and/or Services specified in the *Statement of Work* and advise the Customer when it will be able to so.

Any Goods must be delivered free from any security interest. Unless otherwise stated, Goods must be new and unused. Any Services must be provided to the higher of the standard that would be expected of an experienced, professional supplier of similar services and any standard specified in the *Statement of Work*.

The Customer may reject the Goods and/or Services within fourteen (14) calendar days after delivery if the Goods and/or Services do not comply with the requirements of the Contract. If the Customer does not notify the Supplier of rejection within the fourteen (14) day period, the Customer will be taken to have accepted the Goods and/or Services, though the Customer may accept the Goods and/or Services sooner. Title to Goods transfers to the Customer only on acceptance.

If the Customer rejects the Goods and/or Services, the Customer must issue a Notice clearly stating the reason for rejection and the remedy the Customer requires. No payment will be due for rejected Goods and/or Services until their acceptance.

**C.C.11 Termination for Cause:**

The Customer may terminate the Contract in whole or in part if:

- (a) the Supplier does not deliver the Goods and/or Services as specified in the Contract, or notifies the Customer that the Supplier will be unable to deliver the Goods and/or Services as specified in the Contract;
- (b) the Customer rejects the Goods and/or Services in accordance with clause C.C.10 [*Delivery and Acceptance*] and the Goods and/or Services are not remedied as required by the Notice of rejection;
- (c) the Supplier breaches the Contract and the breach is not capable of remedy;
- (d) the Supplier does not remediate a breach of the Contract which is capable of remediation within the period specified by the Customer in a Notice of default issued to the Supplier; or
- (e) the Supplier:
  - (i) is unable to pay all its debts when they become due;

- (ii) if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001* ; or
- (iii) if an individual – becomes bankrupt or enters into an arrangement under *Part IX* or *Part X* of the *Bankruptcy Act 1966*.

Termination of a Contract under this clause, does not change the Customer's obligation to pay any Correctly Rendered Invoice.

**C.C.12 Termination or Reduction for Convenience:**

In addition to any other rights either party has under the Contract,

- (a) the Customer acting in good faith, may at any time; or
- (b) the Supplier, acting in good faith, may notify that it wishes to,

terminate the Contract or reduce the scope or quantity of the Goods and/or Services by providing a Notice to the other Party.

If the Supplier issues a Notice under this clause, the Supplier must comply with any reasonable directions given by the Customer. The Contract will terminate, or the scope will be reduced in accordance with the Notice, when the Supplier has complied with all of those directions.

If the Customer issues a Notice under this clause, the Supplier must stop or reduce work in accordance with the Notice and comply with any reasonable directions given by the Customer.

In either case, the Supplier must mitigate all loss and expenses in connection with the termination or reduction in scope (including the costs of its compliance with any directions). The Customer will pay the Supplier for Goods and/or Services accepted in accordance with the Acceptance clause of the Contract, before the effective date of termination or reduction.

If the Customer issues a Notice under this clause, the Customer will also pay the Supplier for any reasonable costs the Supplier incurs that are directly attributable to the termination or reduction, provided the Supplier substantiates these costs to the satisfaction of the Customer.

Under no circumstances will the total of all payments to the Supplier exceed the Contract Price. The Supplier will not be entitled to loss of anticipated profit for any part of the Contract not performed.

**C.C.13 Dispute Resolution:**

For any dispute arising under the Contract both the Supplier and the Customer agree to comply with (a) to (d) of this clause sequentially:

- (a) both Contract Managers will try to settle the dispute by direct negotiation;
- (b) if unresolved, the Contract Manager claiming that there is a dispute will give the other Contract Manager a Notice setting out details of the dispute and proposing a solution;

<b>Commonwealth Contract Terms</b>
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- (c) if the proposed solution is not accepted by the other Contract Manager within five (5) business days, each Contract Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation;
- (d) failing settlement within a further ten (10) business days, the Customer will, without delay, refer the dispute to a mediator selected by the Customer or, at the Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within fifteen (15) business days of the request.

Representatives for the Supplier and the Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant party and act in good faith to genuinely attempt to resolve the dispute.

The Customer and the Supplier will each bear their own costs for dispute resolution. The Customer will bear the costs of a mediator.

If the dispute is not resolved within thirty (30) business days after mediation commences, either the Supplier and the Customer may commence legal proceedings.

Despite the existence of a dispute, the Supplier will (unless requested in writing by the Customer not to do so) continue their performance under the Contract.

This procedure for dispute resolution does not apply to action relating to Termination for Cause under clause C.C.11 or to legal proceedings for urgent interlocutory relief.

#### **C.C.14 Specified Personnel:**

The Supplier must ensure that the Specified Personnel set out in Item C.A.5 [*Specified Personnel*] (if any) perform that part of the Services specified in that item. The Supplier must ensure that Specified Personnel (if any) are not replaced without the prior written consent of the Customer.

At the Customer's request, the Supplier, at no additional cost to the Customer, must promptly replace any Specified Personnel that the Customer reasonably considers should be replaced with personnel acceptable to the Customer.

#### **C.C.15 Licences Approvals and Warranties:**

The Supplier must obtain and maintain all licenses or other approvals required for the lawful provision of the Goods and/or Services and arrange any necessary customs entry for any Goods.

To the extent permitted by laws and for the benefit of the Customer, the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by the Customer of the Material, even if the use may otherwise be an infringement of their Moral Rights.

The Supplier must provide the Customer with all relevant third Party warranties in respect of Goods. If the Supplier is a manufacturer, the Supplier must provide the Customer with all standard manufacturer's warranties in respect of the Goods it has manufactured and supplied.

#### **C.C.16 Invoice:**

If the Supplier is required to submit an invoice to trigger payment, the invoice must be a Correctly Rendered Invoice.

The Supplier must promptly provide to the Customer such supporting documentation and other evidence reasonably required by the Customer to substantiate performance of the Contract by the Supplier.

Payment of any invoice is not evidence that the obligations under the Contract are accepted, evidence of the value of the obligations performed by the Supplier, or an admission of liability, but is payment on account only.

If the Supplier owes any amount to the Customer in connection with the Contract, the Customer may offset that amount, or part of it, against its obligation to pay any Correctly Rendered Invoice.

#### **C.C.17 Payment:**

The Customer must pay the amount of a Correctly Rendered Invoice to the Supplier within thirty (30) calendar days after receiving it, or if this day is not a business day, on the next business day.

#### **C.C.18 Supplier not to make representations:**

The Supplier must not represent itself, and must ensure that its officers, employees, agents or subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Customer, or as otherwise able to bind or represent the Customer.

#### **C.C.19 Compliance with Laws:**

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Contract is performed.

#### **C.C.20 Compliance with Commonwealth Laws and Policies:**

The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with all Commonwealth laws and policies relevant to the Goods and/or Services.

This general obligation is not limited by the following clauses A to G.

- A. Access to Supplier's Premises:** The Supplier agrees to give the Customer, or its nominee, all assistance reasonably requested for any purpose associated with the Contract or any review of the Supplier's performance under the Contract. This will include, but is not limited to, access to premises, material, records and personnel associated with the Goods and/or Services and the Contract.

<b>Commonwealth Contract Terms</b>
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- B. Confidential Information:** The Supplier agrees not to disclose to any person, other than the Customer, any confidential information relating to the Contract or the Goods and/or Services, without prior written approval from the Customer. This obligation will not be breached where the Supplier is required by law or a stock exchange to disclose the relevant information. If, at any time, the Customer requires, the Supplier is to arrange for its employees, agents or subcontractors to give a written undertaking relating to nondisclosure of the Customer's confidential information in a form acceptable to the Customer.

The Customer will keep any information in connection with the Contract confidential to the extent it has agreed in writing to keep specified information confidential. The Customer will not be in breach of any confidentiality agreement if the Customer is required to disclose the information.

- C. Privacy Act 1988 (Cth) Requirements:** In providing the Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988 (Cth)* and not to do anything, which if done by the Customer would breach an Australian Privacy Principle as defined in that Act.

The Supplier will immediately notify the Customer if the Supplier becomes aware of a breach or possible breach of any of its obligations under this clause C.C.20(C).

- D. Criminal Code:** The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995 (Cth)*. The Supplier must ensure that any subcontractor engaged in connection with the Contract acknowledges the information contained in this clause.
- E. Freedom of Information (Act 1982 (Cth)) ("FOI Act") Requirements:** Where the Customer has received an FOI request for access to a document created by, or in the possession of the Supplier or its subcontractors that relates to the Contract and is required to be provided under the FOI Act, the Supplier must promptly provide the document to the Customer, on request, at no cost.
- F. Record Keeping:** The Supplier must maintain proper business and accounting records relating to the supply of the Goods and/or Services and allow the Customer or its authorised representative to inspect those records when requested. The Supplier will provide any assistance and information required should the Australian National Audit Office wish to conduct an audit of the Supplier's accounts and records.

The Supplier must not transfer, or permit the transfer of, custody or the ownership of any Commonwealth record (as defined in the *Archives Act 1983 (Cth)*) without the prior written consent of the Customer. All Commonwealth records must be returned to the Customer at the conclusion of the Contract.

- G. Security and Safety:** When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Customer or of which the Supplier is, or should reasonably be, aware. The Supplier must ensure that its officers, employees, agents and subcontractors are aware of, and comply with, such security and safety requirements.

The Supplier must ensure that any material and property (including security-related devices and clearances) provided by the Customer for the purposes of the Contract is protected at all times from unauthorised access, use by a third Party, misuse, damage and destruction and is returned as directed by the Customer.

- H. Indigenous Procurement Policy:** In providing the Goods and/or Services, the Supplier agrees to use its reasonable efforts to comply with the Commonwealth's Indigenous Procurement Policy available at: <http://www.dpmc.gov.au/resource-centre/government/commonwealth-indigenous-procurement-policy>.

## Commonwealth Contracting Suite (CCS) Glossary

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### In the Commonwealth Contracting Suite:

A reference to:

- a) a clause in the form A.A.[x] – is a reference to a clause of the **Approach to Market**;
- b) a clause in the form A.B.[x] – is a reference to a clause of the **Commonwealth ATM Terms**;
- c) an item in the form C.A.[x] – is a reference to an item in the **Statement of Work**;
- d) a clause in the form C.B.[x] – is a reference to a clause in the **Additional Contract Terms**;
- e) a clause in the form C.C.[x] – is a reference to a clause of the **Commonwealth Contract Terms**;
- f) a clause in the form D.A.[x] – is a reference to a clause of the **CCS Standing Offer Deed**;
- g) a clause in the form D.B.[x] – is a reference to a clause of the **CCS Additional Deed Terms**; and
- h) a clause in the form D.C.[x] – is a reference to a clause of the **CCS Standing Offer Deed Terms**.

“**Additional Contract Terms**” means the terms and conditions set out in the section of the Contract with the heading ‘Additional Contract Terms’.

“**Additional Deed Terms**” means the terms and conditions set out in the section of the Deed with the heading ‘Additional Deed Terms’.

“**Approach to Market or ATM**” means the notice inviting potential suppliers to participate in the procurement.

“**Closing Time**” means the closing time specified in clause A.A.1 [*Key Events and Dates*].

“**Contract**” means either the documentation specified in clause C.C.3 [*Precedence of Documents*] or, where a contract is created by the issue of an Order under a Deed, the documentation specified on the Contract Signing Page of the Order.

“**Contract Extension Option**” means an option of a Customer to extend a Contract for one or more additional time periods.

“**Contract Manager**” means the contract manager for the Customer and/or Supplier (as relevant) specified in item C.A.4 [*Contract Managers and Addresses for Notices*].

“**Contract Price**” means the total contract price specified in item C.A.3 [*Contract Price*], including any GST component payable, but does not include any simple interest payable on late payments.

“**Correctly Rendered Invoice**” means an invoice that:

- a) is correctly addressed and calculated in accordance with the Contract;
- b) relates only to Goods and/or Services that have been accepted by the Customer in accordance with the Contract;
- c) includes any purchase order number, and the name and phone number of the Customer’s Contract Manager;
- d) is for an amount which, together with all previously Correctly Rendered Invoices, does not exceed the Contract Price; and
- e) is a valid tax invoice in accordance with the GST Act.

“**Customer**” means a party specified in a Contract or a Deed as a Customer.

“**Deed**” means the documentation specified in clause D.C.3 [*Precedence of Documents*].

“**Deed Extension Option**” means an option of a Panel Owner to extend a Contract for one or more additional time periods.

“**Deed Manager**” means the deed manager for the Customer and/or Supplier (as relevant) specified in item D.A.4 [*Deed Managers and Addresses for Notices*].

“**Deed Statement of Work**” means the section of the CCS Standing Offer Deed with the heading “Deed Statement of Work”.

“**Delivery and Acceptance**” means the process in which Goods and/or Services are delivered to a Customer and accepted by the Customer as meeting the terms specified in the Contract.

**Commonwealth Contracting Suite (CCS) Glossary**

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**“General Interest Charge Rate”** means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day.

**“Goods and/or Services”** means:

- a) the Goods, Services, or Goods and Services and any Material specified in the Contract; and
- b) all such incidental Goods and Services that are reasonably required to achieve the purposes of the Customer as specified in the Contract.

**“GST Act”** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**“GST”** means a Commonwealth goods and services tax imposed by the GST Act.

**“Intellectual Property Rights”** means all intellectual property rights which may subsist in Australia or elsewhere, whether or not they are registered or capable of being registered.

**“Material”** means any material brought into existence as a part of, or for the purpose of producing the Goods and/or Services, and includes but is not limited to documents, equipment, information or data stored by any means.

**“Moral Rights”** means right of attribution of authorship of work, right not to have authorship of work falsely attributed and right of integrity of authorship as defined in the *Copyright Act 1968* (Cth).

**“Notice”** means an official notice or communication under the Contract in writing, from one Contract Manager and delivered to the other Contract Manager, at the postal address, or email address, or facsimile number set out in the Statement of Work or as notified from time to time.

**“Order”** means any order issued under a Deed.

**“Panel Owner”** means the party specified in a Deed as the Panel Owner.

**“Quote”** means a price submitted by the Supplier for the provision of particular Goods and/or Services.

**“Requirement”** means the description of the Goods and Services described in:

- a) for the purposes of the Commonwealth ATM Terms the section of the Approach to Market with the heading ‘Requirement’;
- b) for the purposes of the CCS Standing Offer Terms the section of the CCS Standing Offer Deed with the heading ‘Requirement’; or
- c) for the purposes of the Commonwealth Contract Terms the section of the Statement of Work with the heading ‘Requirement’.

**“Specified Personnel”** means the personnel specified in item C.A.5 or such other personnel who are accepted by the Customer in accordance with clause C.C.14 [*Specified Personnel*].

**“Statement of Requirement”** means the section of the Approach to Market with the heading ‘Statement of Requirement’.

**“Statement of Work”** means the section of the Contract or the Order, as the case may be, with the heading ‘Statement of Work’.

**“Supplier”** means a party specified in a Contract or a Deed as a Supplier.



## Contract Signing Page

The Parties agree that by signing this Commonwealth Contract – Assurance Review Services, they enter into a Contract comprising:

- (a) Additional Contract Terms (if any);
- (b) Statement of Work;
- (c) Commonwealth Contract Terms;
- (d) Commonwealth Contracting Suite Glossary; and
- (e) Contract Annex 1 – Supplementary information (if any).

**EXECUTED** as an Agreement

**Signed** for and on behalf of the **Commonwealth of Australia** as represented by Department of Finance  
**ABN 61 970 632 495** by its duly authorised delegate in the presence of

Signature of witness

Signature of delegate

Name of witness (*print*)

Name of delegate (*print*)

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Position of delegate (*print*)

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On:

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**Executed** by Insert Supplier name and Supplier ABN/ACN: in accordance with Section 127 of the  
*Corporations Act 2001*

Signature of director

Signature of director/company secretary  
(Please delete as applicable)

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Name of director (*print*)

Name of director/company secretary (*print*)

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On:

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**Australian Government**

**Department of Finance**

### Authority for EFT Direct Credit Payment

VENDOR DETAILS											
<b>Business Trading Name</b>											
<b>ABN</b>											
<b>Business Address</b>											
<b>Contact Person</b>											
<b>Telephone Number</b>											
<b>Email Address</b>											
Remittances to be sent via: <input type="checkbox"/> Email <input type="checkbox"/> Fax											
<ul style="list-style-type: none"> <li>• No. of Employees in your Business: <input type="checkbox"/> 1-20 <input type="checkbox"/> 21-99 <input type="checkbox"/> &gt;100</li> <li>• Does your business have at least 50 percent Indigenous ownership? <input type="checkbox"/> Yes <input type="checkbox"/> No</li> </ul> <p><i>Note: This data is collected to assist in meeting Government reporting requirements.</i></p>											
FINANCIAL INSTITUTION DETAILS											
<p>Conditions of this agreement:</p> <ol style="list-style-type: none"> <li>1. The Vendor is responsible for a) the accuracy of the above details b) advising the Department in writing of any changes relating to the above particulars. Upon receipt of such notification the Department shall process all payments in accordance with the details provided.</li> <li>2. The Vendor warrants that the bank account details provided are not false and comply with all applicable laws.</li> <li>3. The Department has the right to accept the authority of the Authorised Representative as conclusive evidence of that person's authority to execute this agreement on behalf of the Vendor. The Department is under no obligation to verify that authority of the Authorised Representative or the bank account details.</li> <li>4. The Department will use all reasonable measures to maintain confidentiality; both the Authorised Representative and the Vendor acknowledge that it may not be practical for the Department to keep these accounts details confidential in the circumstances. These details will be available to the Department staff in carrying out their normal duties in paying invoices.</li> <li>5. Payment will be deemed to have been when the Department has instructed its bank to credit the account. The Department will not be responsible for any delays in payment or errors due to factors outside the reasonable control of the Department, including but not limited to delays or errors in the banking system.</li> <li>6. The Vendor acknowledges that the Department, by accepting the authority, does not promise to remit payments by EFT to the Vendor by may do so if it should choose to do so.</li> <li>7. The Authorised Representative warrants in his/her own right that a) he/she has the authority to bond the Vendor to the conditions of this payment b) the banking details provided are accurate c) by signing this form, that the Vendor is aware of its responsibilities under this agreement.</li> <li>8. The Authorised Representative indemnifies the Department in relation to any loss or damage (including consequent loss) which the Department may suffer due to any breach of the Vendor's warranties at clauses 1 and 2 respectively.</li> </ol> <p>I, _____ (Name) in my capacity as            _____ (Job Title) hereby authorise the            Department to direct payments of goods and/or services to the following account:</p> <p><b>BSB Code:</b> _____</p> <p><b>Bank Account Number:</b> _____</p> <table border="1"> <tbody> <tr> <td><b>Account Name</b></td> <td></td> </tr> <tr> <td><b>Bank Name</b></td> <td></td> </tr> <tr> <td><b>Bank Branch</b></td> <td></td> </tr> <tr> <td><b>Signature of Authorised Representative</b></td> <td></td> </tr> <tr> <td><b>Date</b></td> <td></td> </tr> </tbody> </table>		<b>Account Name</b>		<b>Bank Name</b>		<b>Bank Branch</b>		<b>Signature of Authorised Representative</b>		<b>Date</b>	
<b>Account Name</b>											
<b>Bank Name</b>											
<b>Bank Branch</b>											
<b>Signature of Authorised Representative</b>											
<b>Date</b>											



**Australian Government**  
**Department of Finance**

### **Conflict of Interest Declaration**

I have been selected to participate in an Assurance Review as a Review Team Leader/Review Team Member for the Sponsoring Entity Project/Program.

I acknowledge that "Conflict" means any matter, circumstance, interest, or activity affecting me which may or may appear to impair my ability to participate in the Assurance Review diligently and independently.

I acknowledge that I am required to give immediate notice of any conflict of interest, a risk of conflict of interest or a perceived conflict of interest that relates to or arises out of the Project/Program or my performance of work in relation to the Assurance Review. I acknowledge that the Department of Finance may discuss this declaration with any Sponsoring Entity in order to clarify if there are any further actual or perceived conflicts of interests and if so, how best to manage them. I agree that I must follow all reasonable directions of the Department about the method for handling any conflict of interest.

I acknowledge that the conflict of interest, risk of conflict of interest or perception of conflict of interest need not relate to my material personal interest and may not be financial in nature, for example, a business partner or spouse may benefit from a decision in which I am involved or which I may influence.

I declare *(strike out whichever of the following alternatives does not apply to you)*:

- (a) that neither I, my business, nor my family have any interests in any entity involved in or with the Project/Program; or
- (b) the following interests: *(give details below)*

I will retain a copy of this declaration and review it regularly to ensure that it is up to date at all times. I will notify the Assurance Reviews Unit within the Department immediately of any material change in the facts set out above.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_



**Australian Government**  
**Department of Finance**

## Deed Poll of Confidentiality and Privacy Acknowledgement

This Deed Poll is made on \_\_\_\_\_ (Date)

By \_\_\_\_\_ (Full name) (Confidant)

of \_\_\_\_\_ (Address)

in favour of

The Commonwealth of Australia represented by the Department of Finance (ABN 61 970 632 495).

### BACKGROUND

- A. The Confidant is a Specified Person named in the Contract between the Department of Finance (referred to in that Contract as 'Customer') and ('Supplier'), to provide Assurance Reviewer Services ('Services') to the Customer.
- B. While performing work in relation to the Services, information of a confidential nature concerning the Commonwealth may be provided to or otherwise become known to the Confidant. This Deed Poll formally sets out the obligations of the Confidant relating to that information.
- C. The Confidant is required to maintain the confidentiality of the Confidential Information and the privacy of the Personal Information in accordance with this Deed Poll, noting that any breach of the obligations set out in this Deed Poll may cause the Commonwealth of Australia, the Customer and others significant damage.
- D. The Confidant acknowledges that information covered by this Deed Poll includes Cabinet Information.

### OPERATIVE PROVISIONS

#### DEFINITIONS

In this Deed Poll:

**Business Day** means a day which is not a Saturday, Sunday or public or bank holiday in Canberra.

**Commonwealth** means the Crown in right of the Commonwealth of Australia, all emanations of the Crown in right of the Commonwealth and all Commonwealth agencies involved in the Assurance Reviews Process.

**Cabinet** means the Cabinet of the current and previous Australian Governments, including any committees of the Cabinet.

**Cabinet document** means a document (including, but not limited to, business lists, minutes, submissions, memoranda and matters without submission):

- (a) submitted, or proposed to be submitted, to a Cabinet, or
- (b) official records of a Cabinet.

**Cabinet Information** means a Cabinet document, or any other information that would reveal:

Reference No:

- (a) the deliberations or decisions of a Cabinet; or
- (b) matters submitted, or proposed to be submitted, to a Cabinet.

**Cabinet Handbook** means the document by that name published from time to time by the Department of the Prime Minister and Cabinet.

**Confidential Information** means all information that:

- (a) the Confidant becomes aware of because of the Services or creates in the course of providing the Services; and
- (b) is confidential to any person, including the Commonwealth, or any of its suppliers, clients, tenderers or contractors; and
- (c) includes any notes or copies based on or arising out of the information referred to in paragraph (a).

**Personal Information** means information or an opinion:

- (a) about a natural person whose identity is apparent, or can be reasonably ascertained, from the information or opinion; and
- (b) of which the Confidant becomes aware because of the Services.

**Sponsoring Entity** means the Commonwealth entity sponsoring the project/program being reviewed.

## **OBLIGATION OF CONFIDENTIALITY**

- (a) The Confidant will protect all Confidential Information from unauthorised access or use, and will take and enforce proper and adequate precautions at all times to preserve the confidentiality of all confidential information.
- (b) The Confidant will only disclose, use, or copy the Personal Information and the Confidential Information as strictly necessary for the Services.
- (c) If the Confidant breaches or is likely to breach any obligation or confidentiality arising under this Deed Poll, the Confidant will take reasonable steps to limit the consequences of that breach and to prevent any further breach.

## **LIMITATION ON DISCUSSIONS ABOUT THE ASSURANCE REVIEW**

The Confidant acknowledges that:

- (a) it is essential that the Sponsoring Entity undergoing an Assurance Review is confident that what is discussed in the Assurance Review stays in the confines of that particular review and is not mentioned in any other forum (including during Assurance Reviews in other Entities).
- (b) If the requirement in (a) is not adhered to, confidence in the confidentiality of the Assurance Review is compromised.

The Confidant acknowledges and agrees that they will not discuss any details about the Assurance Review with anyone outside the particular Assurance Review being undertaken.

The Confidant acknowledges that any specific reference must be avoided, but that it is acceptable to mention as background, previous involvement in unnamed Assurance Reviews, the number of Assurance Reviews that they have involved in and a broad generic description of the types of programs reviewed (e.g. large IT program/project, major construction program/project).

## **LIMITATIONS ON DISTRIBUTION**

Except as otherwise provided in this Deed Poll, or agreed beforehand in writing by the Customer, the Confidant will not:

- (a) distribute or cause or allow to be available to any person Confidential Information;
- (b) disclose to any person that it has the Confidential Information or the terms on which it has access to or has been supplied with Confidential Information; or
- (c) use the Confidential Information for its own purposes, or for the purposes of any other person.

## **LIMITATIONS ON RETENTION**

Reference No:

Upon request, or if the Confidant is performing the Services as Specified Personnel of the Supplier, upon termination or completion of the Services, the Confidant will:

- (a) deliver to the Sponsoring Entity all Confidential Information in its possession that is capable of being delivered;
- (b) delete, erase, or otherwise destroy all Confidential Information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of delivery to the Sponsoring Entity;
- (c) not retain in any form any note, report, summary, memorandum or other document containing or referring to Confidential Information; and
- (d) use its best endeavours to institute and use a system to enable all copies, notes, reports, summaries, memoranda and other documents containing or pertaining to or referring to Confidential Information to be traced and returned.

## **PUBLIC INFORMATION**

The obligation of confidentiality does not apply to information that:

- (a) is in the public domain at the date on which it is provided to the Confidant (unless it is in the public domain because of a breach of confidence by any person);
- (b) becomes available to the public after the date on which it is provided to the Confidant (unless it is in the public domain because of a breach of confidence by any person); or
- (c) is required to be disclosed by law, to the extent that such disclosure is required.

## **NON DISCLOSURE OF CABINET INFORMATION**

- (a) The Confidant must treat as confidential all Cabinet Information to which the Confidant has access or which is disclosed to the Confidant in connection with the Confidant's role as a member of the Review Team.
- (b) The Confidant must comply with the requirements of the Cabinet Handbook when dealing with Cabinet Information in connection with the Confidant's role as a member of the Review Team. The Confidant will be entitled to view parts of the Protective Security Policy Framework which pertain to the provisions of the Cabinet Handbook dealing with the handling of Cabinet documents.
- (c) The confidentiality obligations under this clause are consistent with the Cabinet Handbook and the *Archives Act 1983* (Cth).

## **RESTRICTION ON USE OR DISCLOSURE OF CABINET INFORMATION**

- (a) The Confidant may use the Cabinet Information only for the purpose of the Confidant's role as a member of the Review Team and only in accordance with the Cabinet Handbook.
- (b) The Confidant must not disclose the Cabinet Information to any person, except in accordance with the Cabinet Handbook or the written directions of a delegate.
- (c) The Confidant must not copy or reproduce any Cabinet Information and must take all necessary precautions to prevent unauthorised access to or copying of the Cabinet Information.
- (d) The Cabinet Information remains the property of the Commonwealth at all times.

## **PRIVACY ACT**

In respect of Personal Information, the Confidant must also comply with the relevant provisions of the *Privacy Act 1988* (Cth).

## **BREACH OF THIS DEED**

If:

- (a) the Confidant breaches any provision of this Deed Poll;
- (b) the Services end; or
- (c) for any reason, the Customer asks the Confidant to return or destroy the Personal Information or Confidential Information;

then the Confidant must immediately:

- i). stop using, copying and disclosing the Personal Information and the Confidential Information; and
  - ii). return or destroy all copies and other forms of the Personal Information and the Confidential Information in the Confidant possession or control as directed by the Customer;
- (c) otherwise the Customer reserves the right to take appropriate action including termination of the Contract with the Supplier or court proceedings.

## **APPLICABLE LAW**

This Deed Poll is governed by the laws applicable in the Australian Capital Territory.

## **TERMINATION OF CONTRACT**

If the Confidant breaches this Deed Poll, the Customer may terminate the Contract with the Supplier.

## **OBLIGATION OF CONFIDENTIALITY CONTINUES**

The Confidant acknowledges that the undertakings given in relation to the Confidential Information and the Cabinet Information continue in force indefinitely, including after the expiration or termination of the Contract with the Supplier.

## **NOTICES**

### **General**

Any notice, demand, certification or other communication in this Deed Poll:

- (a) must be given in writing and in the English language; and
- (b) may be given by an authorised representative of the sender.

### **Communication Generally**

In addition to any means authorised by law any communication may be given by:

- (a) being personally served on a party;
- (b) being left at the party's current address for service;
- (c) being sent to the party's current address for service by pre-paid ordinary mail or if the address is outside Australia, by pre-paid airmail; or
- (d) by facsimile to the party's current numbers for service.

## **MISCELLANEOUS**

### **Legal costs**

Subject to any express provision in this Deed Poll to the contrary, the Confidant must bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under this Deed Poll.

### **Amendment**

This Deed Poll may only be varied or replaced if prior agreement to the variation is obtained from the Customer.

**Entire understanding**

- (a) This Deed Poll embodies the entire understanding and agreement of the Confidant as to the subject matter of this Deed Poll.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Deed Poll are merged in and superseded by this Deed Poll and shall be of no force or effect whatever.

**EXECUTED as a Deed Poll**

**SIGNED SEALED AND DELIVERED** by  
**(the Confidant):**

In the presence of:

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Signature of Confidant

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Signature of Witness

---

Name of Confidant (BLOCK LETTERS)

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Name of Witness (BLOCK LETTERS)





Australian Government  
Department of Finance

**Official Secrets Acknowledgement**

This acknowledgment is to be completed by all persons performing services for or on behalf of the Commonwealth of Australia represented by the Department of Finance including those on a temporary or consultancy basis, who will have access to, or association with, material, documents, software, data (stored by any means), information or goods and equipment of an official, commercial-in-confidence and/or classified nature ("official information").

I, .....  
(Full name in BLOCK LETTERS)

of .....  
(Address)

understand that all official information that will be or has been acquired by me in the course of performing my services for or on behalf of the Commonwealth of Australia is the property of the Commonwealth and any such official information is not to be published or communicated to any unauthorised person in any form either during or after my performance of services for or on behalf of the Commonwealth.

I understand and acknowledge that by performing services for or on behalf of the Commonwealth, I will be a Commonwealth officer for the purposes of the *Crimes Act 1914*, and that I am therefore subject to section 70 of the Crimes Act, relating to the disclosure of facts and documents by Commonwealth officers, and to the applicable penalty.

I also acknowledge that I am subject to the *Criminal Code Act 1995*, including, but not limited to, those provisions set out in the attachment.

I have read and understood the attachment to this Acknowledgment.

Dated this ..... day of ..... **201**

Signature .....

Witnessed by .....  
(Signature)

.....  
(Name in BLOCK LETTERS of Witness)

## Attachment to Official Secrets Acknowledgement

Under subsection 3[1] of the *Crimes Act 1914*, a "Commonwealth Officer" **includes**:

- (a) a person appointed or engaged under the *Public Service Act 1999*; and
- (b) for the purpose of section 70, a person who, although not holding office under, or employed by, the Commonwealth, a Territory or a public authority under the Commonwealth, performs services for or on behalf of the Commonwealth, a Territory or public authority under the authority of the Commonwealth.

The following is a summary of some relevant *Crimes Act 1914* offences and penalties:

<b>Section 70 of the Crimes Act 1914</b>	Unauthorised disclosure of information	<b>Penalty – imprisonment for 2 years</b>
<b>Section 79 of the Crimes Act 1914</b>	Unauthorised communication of official secrets	<b>Penalty - imprisonment for 7 years</b>

The following is a summary of some relevant offences and penalties under the Criminal Code [see the *Criminal Code Act 1995*]:

<b>Section 91.1 of the Criminal Code</b>	Espionage and similar activities	<b>Penalty – imprisonment for 25 years</b>
<b>Section 131.1 of the Criminal Code</b>	Theft	<b>Penalty – imprisonment for 10 years</b>
<b>Section 132.1 of the Criminal Code</b>	Receiving stolen property	<b>Penalty – imprisonment for 10 years</b>
<b>Section 132.6 of the Criminal Code</b>	Making off without payment	<b>Penalty – imprisonment for 2 years</b>
<b>Section 132.7 of the Criminal Code</b>	Going equipped for theft or a property offence	<b>Penalty – imprisonment for 3 years</b>
<b>Section 134.1 of the Criminal Code</b>	Obtaining property by deception	<b>Penalty – imprisonment for 10 years</b>
<b>Section 134.2 of the Criminal Code</b>	Obtaining a financial advantage by deception	<b>Penalty – imprisonment for 10 years</b>
<b>Section 135.1 of the Criminal Code</b>	General dishonesty, obtaining a gain, causing a loss or influencing a Commonwealth public official	<b>Penalty – imprisonment for 5 years</b>
<b>Section 135.2 of the Criminal Code</b>	Obtaining a financial advantage	<b>Penalty – imprisonment for 12 months</b>
<b>Section 145.4 of the Criminal Code</b>	Falsification of documents	<b>Penalty – imprisonment for 7 years</b>
<b>Section 145.5 of the Criminal Code</b>	Giving information derived from false or misleading documents	<b>Penalty – imprisonment for 7 years</b>