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| *Drafter’s Note: This Deed is for Corporate Commonwealth entities or Commonwealth Companies that have elected to participate in / utilise the Whole of Australian Government Management Advisory Services Arrangement. It is not appropriate for Non-Corporate Commonwealth entities that are required to participate in the Arrangement.* |

**Deed of Participation  
in the Whole of Australian Government  
Management Advisory Services Panel**

**Between**

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

**And**

**[Agency name]**

**This Deed of Participation is made between:**

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

ABN 61 970 632 495 (**Finance**)

and

**[Agency name]** ABN [Agency ABN] (**Participant**)

collectively, the **parties**.

**RECITALS**

1. Finance is responsible for managing the Whole of Australian Government Management Advisory Services Panel arrangement (the Arrangement).
2. The Arrangement consists of Head Agreements between Finance and a number of Services Providers appointed to the Management Advisory Services Panel (the Panel).
3. Use of the Arrangement is mandatory for non-Corporate Commonwealth Entities. Any other Government entity authorised by Finance may elect to participate in the Arrangement.
4. The Participant has elected to participate in the Arrangement. That participation is subject to the terms of this Deed.

**Agreed terms**

* 1. Definitions
     1. In this Deed, the following definitions apply:

**Commonwealth Company** has the meaning given in the *Public Governance, Performance and Accountability Act 2013* (Cth).

**Confidential Information** means all information, documents and data in any form provided or made available to, or accessed by, the Participant in relation to the Arrangement, and includes Services Provider pricing information.

**Conflict of Interest** means any matter, circumstance, interest or activity (financial, political or otherwise) affecting the Participant or its Personnel who have access to the Confidential Information, which may impair, or be perceived to impair, the ability of the Participant or those Personnel to deal with the Confidential Information in accordance with this Deed.

**Corporate Commonwealth Entity** has the meaning given in the *Public Governance, Performance and Accountability Act 2013* (Cth).

**Deed** means this document and includes any Schedules.

**Deed Commencement Date** means the Deed Commencement Date in Schedule 1.

**Head Agreements** means the deeds of standing offer between the Commonwealth of Australia as represented by Finance and the Service Providers appointed to the Panel, as amended from time to time.

**Panel** means the whole of Australian Government Management Advisory Services Panel established by Finance as a coordinated procurement.

**Panel Fee** means the fee set by Finance, as specified in the Panel Guidance Material, and payable by the Participant, which is calculated on actual Participant expenditure under the Panel, excluding GST.

**Panel Guidance Material** means any guidance material or policy published by Finance in relation to the Arrangement, as amended or replaced from time to time.

**Permitted Purpose** means thepurpose(s) of this Deed or the Arrangement, including obtaining Services under the Panel.

**Personnel** means the employees, contractors, officers and agents of the Participant.

**Schedule** means a schedule to this Deed.

**Services** means the Management Advisory Services available under the Arrangement that a Service Provider(s) is approved to provide.

**Service Provider** means a party that has been appointed to the Panel.

**Term** means the term of this Deed as described in clause 4.1.

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

* 1. Management Advisory Services Arrangement
     1. The Participant has elected to participate in the Arrangement in accordance with this Deed for the Term.
     2. In participating in the Arrangement, the Participant:
        + 1. must comply with the Panel Guidance Material; and
          2. must comply with all the obligations imposed on the Participant, and may exercise any rights available to the Participant, under the Head Agreements.
     3. During the Term, the Participant must not, except with Finance’s prior written consent, enter any other agreement for services which are the same as the Services under the Arrangement, except as provided for in the Panel Guidance Material.
     4. The Participant acknowledges that it can only obtain Services from a Service Provider where that Service Provider is approved to provide Services under Schedule 2, 3 or 4 of the Service Provider’s Head Agreement.
     5. The Participant must comply with all ‘Special Conditions’ (if any) set out in Schedule 1 regarding the Arrangement or this Deed.
  2. Head Agreements
     1. Finance will provide the Participant with access to copies of the Head Agreements.
     2. Finance will notify the Participant as soon as practicable of any material changes to a Head Agreement(s).
  3. Term of this Deed
     1. This Deed will come into effect on the Deed Commencement Date and, subject to clause 4.2, shall continue in force while any Head Agreement is in force, unless this Deed is terminated earlier by either party with three months’ written notice (Term).
     2. If a Head Agreement expires or is terminated prior to its expiry, from the date of that expiry or termination, this Deed will no longer extend to Services under that Head Agreement.
     3. Finance will use reasonable efforts to notify the Participant in advance of pending expiry or termination of a Head Agreement.
     4. Neither party will be liable to the other for any compensation as a result of the termination of this Deed or a Head Agreement.
  4. Panel Fee
     1. The Participant is required to pay the Panel Fee, unless agreed otherwise by Finance as consideration for Finance working to establish the Panel and authorising the Participant to obtain Services from a Service Provider.
     2. If this Deed is terminated or expires, any Panel Fee which was payable as at the date of termination or expiry remains payable.
  5. GST, taxes and other charges
     1. Subject to the rest of this clause, the Participant agrees to pay all taxes which arise because of this agreement where applicable.
     2. Unless otherwise indicated, all consideration for any supply made under this Deed is exclusive of any GST imposed on the supply.
     3. If one party (supplier) makes a taxable supply to the other party (recipient) under this Deed, the recipient on receipt of a tax invoice from the supplier must pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
     4. The Participant acknowledges that the Panel Fee is consideration for a taxable supply if it is not covered by a Parliamentary appropriation from the Commonwealth’s Consolidated Revenue Fund. The Participant:
        + 1. must set out in the Schedule whether the Panel Fee will be covered by Parliamentary appropriation from the Commonwealth’s Consolidated Revenue Fund; and
          2. must notify Finance in writing if the status of whether it will pay the Panel Fee from the Commonwealth’s Consolidated Revenue Fund changes during the Term of the Deed.
  6. Conflict of Interest
     1. The Participant:
        + 1. agrees that no Conflict of Interest exists or is likely to arise;
          2. must use its best endeavours to not permit any situation to arise, or engage in any activity, which may result in a Conflict of Interest; and
          3. must notify Finance immediately in writing if a Conflict of Interest does arise, or appears likely to arise, and take such steps as Finance may reasonably require to resolve or to otherwise deal with the Conflict of Interest.
  7. Confidentiality
     1. The Participant must treat as confidential all Confidential Information and, subject to clause 8.2, must only:
        + 1. use the Confidential Information for the Permitted Purpose; and
          2. unless this Deed provides otherwise, disclose the Confidential Information only to its Personnel who have a need to know the Confidential Information for the Permitted Purpose.
     2. The Participant’s obligations under clause 8.1 will not be taken to have been breached to the extent that Confidential Information:
        + 1. is authorised by Finance to be disclosed;
          2. is authorised or required by law to be disclosed;
          3. is disclosed to the Auditor-General, the Australian Information Commissioner or either of their delegate;
          4. is disclosed to another Commonwealth Agency if this serves the Participant’s, the Commonwealth’s or the Agency’s legitimate interests;
          5. is disclosed to a responsible Minister in response to a request;
          6. is disclosed to the Participant's internal management Personnel, solely to enable effective management or auditing of activities related to this Deed or the Management Advisory Services Panel;
          7. is disclosed for the purpose of seeking to recover costs from another party;
          8. was in the Participant’s possession or known by the Participant without restriction prior to receipt from Finance; or
          9. is in the public domain otherwise than due to a breach of law or of this Deed.
     3. Where the Participant discloses Confidential Information to another person pursuant to clauses 8.1 and 8.2, the Participant will notify the receiving person that the information is confidential.
     4. In authorising the Participant to disclose Confidential Information as described in clause 8.2.a, Finance may impose such conditions on that disclosure as it thinks fit. In particular, Finance may require that the Participant obtains the execution of a binding document in the same terms as this Deed in favour of Finance by the person to whom the Participant proposes to disclose the Confidential Information.
     5. The Participant is responsible for the conduct of its Personnel who have been authorised by Finance to access the Confidential Information for the Permitted Purpose.
     6. The Participant must take all necessary precautions to prevent unauthorised access to or copying of the Confidential Information in its control.
     7. This clause 8 applies to any Confidential Information in the possession of the Participant, including Confidential Information received prior to the Deed Commencement Date.
     8. Nothing in this Deed derogates from any obligation which either party may have under the *Privacy Act 1988* (Cth) as amended from time to time, or any other laws in relation to the protection of information which apply to that party.
  8. Breach
     1. The Participant must immediately notify Finance in writing if it becomes aware that it has or may have breached this Deed.
     2. The Participant must comply with all reasonable directions from Finance regarding the management of any breach of this Deed by the Participant.
  9. General
     1. This agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Deed.
     2. No variation to this Deed will be effective unless agreed in writing by both parties.
     3. This Deed is governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory.
        1. Clauses 8 and 9 survive the termination or expiry of this Deed. The termination or expiry of this Deed does not affect any obligation to keep the Confidential Information confidential, which obligation continues indefinitely.

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| **Signed** on behalf of the **Commonwealth of Australia** by a duly authorised representative of the Department of Finance in the presence of: |  |  |  |
|  | ← |  | ← |
| Signature of authorised representative |  | Signature of witness |  |
|  | ← |  | ← |
| Name of authorised representative (print) |  | Name of witness (print) |  |
|  | ← |  |  |
| on (DD/MM/YYYY) |  |  |  |

SIGNED, SEALED and DELIVERED by:

|  |  |  |  |
| --- | --- | --- | --- |
| **[insert Agency name in bold text]** by a duly authorised representative in the presence of: |  |  |  |
|  | ← |  | ← |
| Signature of authorised representative |  | Signature of witness |  |
|  | ← |  | ← |
| Name of authorised representative (print) |  | Name of witness (print) |  |
|  | ← |  |  |
| on (DD/MM/YYYY) |  |  |  |

**SCHEDULE 1**

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| **Whole of Australian Government Management Advisory Services Arrangement** | |
| **Deed Commencement Date** | *[Date of commencement of Deed]* |
| **Finance address for notices** | Email: MASPanel@finance.gov.au  Postal:  Panel Manager  Management Advisory Services Panel  Procurement Management Branch  One Canberra Avenue  FORREST ACT 2603  or such other details notified by Finance to the Participant from time to time. |
| **Participant address for notices** | Email: *[insert email]*  Postal:  *[insert contact name/position and physical address details]*  or such other details notified by the Participant to Finance from time to time. |
| **Will the Panel Fee be covered by a Parliamentary appropriation?** | Yes  No  The Participant must notify Finance if this changes during the Term of this Deed in accordance with clause 6.4 (b). |
| **Special Conditions** | [insert any Special Conditions] |