



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 Management Advisory 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 Management Advisory 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 the Relevant Schedule(s) to Agencies and acknowledges that it can only provide Services that substantially relate to the Services in the Relevant Schedules.
- C The Service Provider acknowledges and agrees that Finance will administer this Head Agreement and the Panel for the benefit of all Agencies.
- 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 Agency may acquire Services from the Service Provider by issuing the Service Provider with an Order for Services (**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.
ACT Statutory Liability Scheme	means the <i>Civil Law (Wrongs) Chartered Accountants Australia and New Zealand Professional Standards Scheme 2019 (No 1)</i> approved under the <i>Civil Law (Wrongs) Act 2002</i> (ACT).
Additional Requirements	requirements or terms and conditions, such as extra security or insurance, which are additional to the obligations of the Service Provider under this Head Agreement.
Agency	<p>(a) the following entities, organisations or persons authorised by Finance to obtain Services from the Service Provider under this Head Agreement:</p> <ul style="list-style-type: none">(i) a Non-corporate Commonwealth entity;(ii) a corporate Commonwealth entity as defined by the PGPA Act; and <p>(b) any other government entities authorised by Finance and advised in writing to the Service Provider from time to time.</p> <p>To avoid doubt, a reference to an Agency does not include Finance unless Finance issues an Order to the Service Provider.</p>
Agency Material	any Material provided by an Agency to the Service Provider for the purposes of an RFQ or a Contract, or derived at any time from that Material.
Agency Representative	the person nominated by an Agency to represent the Agency as identified in an Order.
Associated Output	the delivery of services that are (in the view of the Agency) consequential to and/or necessary for facilitating the Management Advisory Services required by an Agency in a Contract, and where these services are described in a Contract.

Audit Working Papers	<p>means (where a component of the Services includes audit services):</p> <ul style="list-style-type: none"> (a) any audit evidence obtained by the Service Provider from the Agency; (b) the Service Provider's analysis of that evidence; (c) the record of audit procedures performed by the Service Provider; (d) correspondence about issues relevant to the audit, including issues of interpretation or materiality; (e) the audit reports prepared by the Service Provider; and <p>all other documents necessary to provide a complete record and explanation of progress with the Services.</p>
Australian Standard	a standard published by Standards Australia Limited at the applicable Order Commencement Date.
Best Industry Practice	the most up-to-date Australian practices as would be used by leading, highly skilled and experienced suppliers of services similar to the Management Advisory Services.
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.
Commonwealth	the Commonwealth of Australia.
Confidential Information	<p>information that is protected by privacy, secrecy and non-disclosure provisions or by its nature confidential, and</p> <ul style="list-style-type: none"> (a) in the case of Finance or an Agency is: <ul style="list-style-type: none"> (i) (unless specified otherwise in an Order) Contract Material, not including Existing Material; or (ii) Agency 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, <p>but does not include information which is or becomes public knowledge other than by a breach of this Head Agreement, or any Contract, or law.</p>
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 Agency fairly and independently.
Contract	a contract for the provision of Services formed between the Service Provider and an Agency by the Agency issuing an Order to the Service Provider and the Service Provider accepting the Order in accordance with clause 11 of this Head Agreement, and includes the terms of this Head Agreement.

Contract Material	<p>any Material:</p> <ul style="list-style-type: none"> (a) created by the Service Provider for the purposes of a Contract; (b) provided or required to be provided to the Agency as part of the Ordered Services; or (c) derived at any time from the Material referred to in (a) and/or (b) above.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Cyber Incident	<ul style="list-style-type: none"> (a) any unwanted or unexpected Cyber Security Event or series of Cyber Security Events that is likely to compromise, or does compromise the business operations of the Service Provider or its Subcontractors; and (b) any action taken through the use of computer networks or any unauthorised access to or use of a computer system that is intended to have, is likely to have, or does have an adverse effect on the security or reliability of data on the systems of the Service Provider, or the systems of any of its Personnel or Subcontractors, or the accessibility of those systems, and includes denial of service attacks.
Cyber Incident Response Plan	a cyber incident response plan that provides details of the security measures the Service Provider or its Personnel or Subcontractors have in place to reduce the risk of Cyber Incidents and how each of them will respond to Cyber Incidents.
Cyber Security Event	<p>the occurrence of a system, service or network state arising from any actual or potential:</p> <ul style="list-style-type: none"> (a) breach of cyber security policy; (b) failure of cyber security safeguards; or (c) other situation which may be relevant to cyber security.
Data Breach Response Plan	a data breach response plan that sets out how the Service Provider will deal with a data breach in so far as it relates to any Ordered Services provided under a Contract, during the provision of the Ordered Services.
Direct Competitor	<p>means an entity of a similar size and competing in the same market that:</p> <ul style="list-style-type: none"> (a) Finance or the Agency (as applicable) has determined, acting reasonably; or (b) for the purposes of a Contract, the parties to the Contract have agreed in the Contract or otherwise in writing, <p>which competes directly with the Service Provider in providing goods and services which are materially the same as, or similar to, the Services provided by the Service Provider.</p>
Eligible Data Breach	has the meaning it has in the Privacy Act.
Existing Material	<ul style="list-style-type: none"> (a) any pre-existing Material including any improvements, modifications or enhancements to such pre-existing Material in performing the Services; and

	<p>(b) any other Material, created independently of an Order after the Order Commencement Date,</p> <p>which is made available to the Agency by the Service Provider for the purpose of a Contract, on or following the Order Commencement Date, including but not limited to the Service Provider's tools, methodologies and object libraries and any improvements, enhancements, alterations and modifications to such Material.</p>
Expert Personnel	<p>means Key Personnel that with regards to their experience and recognition are higher than "Level 6" as defined in Schedule 12 (Personnel Classifications and Expected Work Level Standards). Expert Personnel would be highly regarded experts with extensive knowledge and experience in the Service Subcategory under which the Services relate.</p>
Fees	<p>the Service Provider's fees listed in the Relevant Schedule and in an Order and applied in accordance with clause 14.1.</p>
Finance	<p>the Commonwealth Department of Finance as a party to this Head Agreement and which is responsible for administering the Panel.</p>
First Finance Senior Executive	<p>the position identified in Item 3 of Schedule 1 (Head Agreement Details), or as otherwise advised by Finance from time to time.</p>
GST	<p>has the meaning it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).</p>
Harmful Code	<p>any virus, disabling or malicious device or code, worm, trojan, time bomb or other harmful or destructive code.</p>
Head Agreement	<p>clauses 1 to 32 of this head agreement between Finance and the Service Provider, and includes the Schedules (and any Attachments to the Schedules) as the context requires.</p>
Head Agreement Commencement Date	<p>the date this Head Agreement is signed by Finance.</p>
Head Agreement Period	<p>the period referred to in clause 3.3 and any extension periods.</p>
Indigenous Enterprises	<p>as defined in the Indigenous Procurement Policy.</p>
Indigenous Procurement Policy	<p>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</p>
Intellectual Property	<p>(a) all rights in respect of intellectual property, whether or not such rights are registered or capable of being registered;</p> <p>(b) any application or right to apply for registration of any intellectual property; and</p>

	(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.
Key Personnel	the person or persons named in an Order to provide the Ordered Services to an Agency, and who may be Expert Personnel.
Law	any applicable law, without limitation, including common or customary law, equity, judgment, legislation, orders, regulations, Statutes, by-laws, ordinances or any other legislative or regulatory measures (including any amendment, modification or re-enactment of them).
Management Advisory Services	provision of professional, independent advice, and other strategic services that involve the development of an intellectual output which represents the independent view of the Service Provider and assists with entity decision-making. Services procured by an Agency must meet the definition of a consultancy as per Resource Management Guide No 423: Procurement Publishing and Reporting Obligations .
Mandatory Minimum Requirements	as defined in the Indigenous Procurement Policy.
Material	anything in relation to which Intellectual Property rights arise.
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.
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 Agency, 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 Ordered Services are to commence.
Order Term	the timeframe specified in an Order for the delivery of the Ordered Services.
Ordered Services	the services described in an Order to be provided by the Service Provider, including any Associated Outputs.
Pan-European Public	a network for the exchange of electronic business documents relating to e-commerce and e-procurement, primarily between public sector organisations and their suppliers.

Procurement On-Line Framework	
Panel	the Whole of Australian Government (WoAG) Management Advisory Services Panel to which the Service Provider has been appointed, as updated by Finance from time to time.
Panel Manager	the position identified in Item 2 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: <ul style="list-style-type: none"> (a) the Service Provider, any natural person who is a partner, officer, employee or other personnel (including Key Personnel) of the Service Provider or of a Subcontractor (and, in the case of clauses 16.10, 20.1, 22 and 24 only, or an agent or professional adviser of the Service Provider); and (b) Finance or an Agency, 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 Agency.
Personal Information	has the meaning it has in the Privacy Act.
PGPA Act	the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
Privacy Act	the <i>Privacy Act 1988</i> (Cth).
Protective Security Policy Framework	the <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 .
Quotation	a submission made by the Service Provider in response to an RFQ.
Relevant Schedule	each of Schedule 2 (Financial Management Advisory Services) , Schedule 3 (Corporate Management Advisory Services) and/or Schedule 4 (Commercial Management Advisory Services) , to the extent the Schedule is populated in this Head Agreement.
Request for Quotation or RFQ	a request by an Agency to the Service Provider to provide a Quotation for Services, in the format set out in Schedule 5 (Request for Quotation template) , or similar, or as otherwise agreed with the Agency.
RFQ Closing Date	the date and time specified by an Agency in an RFQ that a Quotation is to be submitted by.
Second Finance Senior Executive	the persons holding the positions in the Department of Finance of: <ul style="list-style-type: none"> (a) First Assistant Secretary, Procurement Division; or (b) Deputy Secretary, Commercial Group, or as otherwise notified by Finance from time to time.

Security Classified Resources	Official Resources and Information protected under the Protective Security Policy Framework which, if compromised, could have adverse consequences for the Agency.
Security Incident	a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources and Information.
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 Management Advisory Services described in the Relevant Schedule 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 the Relevant Schedule 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.
Service Subcategory/ies	a subset of a Service Category.
Services Commencement Date	the commencement date for each Service Category as stated in the Relevant Schedule.
Service Level Failure	has the meaning given in clause 3.6 of Schedule 7 (Performance 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 Agency Contact	the person identified in Item 6 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 4 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 5 of Schedule 1 (Head Agreement Details) , or as otherwise advised by the Service Provider from time to time.

Statement of Work	the Services required by an Agency as described in a Request for Quotation or an Order.
Statutory Liability Scheme	any statutory scheme in force from time to time that limits the liability of accounting firms for the provision of accounting and other services, including the ACT Statutory Liability Scheme.
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).
Tax Invoice	has the meaning given under the <i>A New Tax System (Goods and Services Tax) Act 1999</i> .
Total Contract Value	the total of all amounts payable under a Contract over the Order Term.
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. 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

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 is a reference to the document, publication, standard, Commonwealth policy or instrument 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 Management Advisory Services, commonly referred to as consultancy services.

2.1.2 At an Agency's discretion, the Services may also include the delivery of an Associated Output by a Service Provider where that Service Provider was engaged to provide Services under clause 2.1.1, and where this represents value for money.

2.1.3 Agencies 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 in a Service Category.

2.2 Out of scope

2.2.1 The Services required under the Panel do not include:

- (a) contractor (non-consultancy) services performed under the supervision of an Agency, except where this is an Associated Output;
- (b) recruitment or labour hire services;
- (c) services available under other Whole-of-Australian Government arrangements such as legal services,
- (d) services that are unique to information and communication technology, and property consultancy services;
- (e) environmental management and assessments;
- (f) delivery of training;
- (g) the engagement of an eminent person, a prominent individual appointed by an Agency to provide particular services; and
- (h) specialist consultancy services that are unique to Agencies that are not provided through the Service Categories.

2.2.2 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 Agency 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 Relevant Schedule;
- (c) the other Schedules;
- (d) the Attachments (if any);
- (e) documents incorporated by reference.

3.3 Head Agreement Period

3.3.1 This Head Agreement begins on the Commencement Date and continues until 30 September 2027 (**Initial Head Agreement Period**), unless terminated earlier in accordance with clause 25.

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 two 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**).

4 Panel structure

4.1 Objectives of the Panel

4.1.1 The objectives of the Panel are to:

- (a) provide Agencies with consistent and efficient processes to engage Service Providers;
- (b) deliver high quality Services that represent value for money; and
- (c) 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 Agency 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 Agencies.

- 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)**;
 - (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 amount of Services that will be ordered or required under this Head Agreement; and
 - (b) Finance or an Agency 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 Service Subcategories over the term of this Head Agreement;
 - (b) suspend or remove the Service Provider or other Panellists from the Panel for noncompliance with this Head Agreement as further described in clause 25;
 - (c) approach the market to:
 - i. add suppliers to the Panel in one or more Service Category or Service Subcategory; or
 - ii. add additional Service Categories and Service Subcategories to the Panel (for which the Service Provider and other suppliers may tender to provide).

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 Agency.
- 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 Executives

6.2.1 The First 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 or Service Level Failures) and any other matters requested by the Finance Representative in relation to this Head Agreement.

6.2.2 The Second Finance Senior Executive has authority to deal with any matter that has already been considered by the First Finance Senior Executive under clause 6.2.1 and which has subsequently been escalated by the Panel Manager or the First Finance Senior Executive for consideration by the Second Finance Senior Executive.

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 Finance including, for example, the resolution of disputes) and any other matters requested by Finance in relation to this Head Agreement.

6.5 Service Provider's Agency Contact

6.5.1 The Service Provider's Agency Contact will be the key point of contact for Agencies 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 Agency 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 Agency's premises or when accessing an Agency's facilities and information, comply as necessary with the reasonable requirements and directions of the Agency 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 Agency by Law.

7.2 Subcontracting

7.2.1 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 Agency (such approval may be subject to conditions). This restriction does not apply to a subcontract which is in respect of its ordinary course of business rather than specifically for an Agency, unless the Subcontractor will have access to Agency Material or Agency Confidential Information (in which case the Service Provider will require prior written approval for subcontracting those services);
- (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) not subcontract with an entity that:
 - i. 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
 - ii. 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
 - iii. is named by the Workplace Gender Equality Agency as a supplier that has not complied with the *Workplace Gender Equality Act 2012* (Cth);
- (d) 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 26 (Termination); and
 - viii. clause 29 (Audit and access);
- (e) ensure that all subcontracts contain payment terms that are consistent with the payment terms in clause 14.5; and
- (f) inform its Subcontractors that the Subcontractor's provision of any Services under this Head Agreement or a Contract may be disclosed publicly.

7.2.2 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.

- 7.2.3 Any Subcontractors identified in an Order, are deemed to have been approved by an Agency in relation to the Ordered Services.
- 7.2.4 The Service Provider agrees that Finance or the Agency may publicly disclose the names of any Subcontractors engaged to perform Services under this Head Agreement or a Contract.

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 Agencies will be:
- (a) assessed and reported on by Agencies 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 Agencies 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 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 to verify the Service Provider's performance of the Services against the Service Levels.
- 8.2.3 The Service Provider acknowledges and agrees that:
- (a) an Agency may specify additional Service Levels and reporting requirements in an Order; and
 - (b) that information collected in relation to any Service Levels is Confidential Information of the Commonwealth and may be shared between Agencies on a confidential basis.
- 8.2.4 The Service Provider must comply with all other obligations imposed on it under **Schedule 7 (Performance Management Framework and Service Levels)**.

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 **Schedule 8 (Reporting)**.

- 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 reported to Finance.

9.2 Reporting to Agencies

- 9.2.1 The Service Provider agrees to provide an Agency with any other reporting Additional Requirements specified in an Order and any other reporting reasonably required by the Agency in association with 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.

10.2 Service Provider obligations

- 10.2.1 The Service Provider must:
- (a) comply with any reasonable written directions given by Finance in respect of this Head Agreement; and
 - (b) provide all reasonable assistance required by Finance provided that the assistance requested is consistent with the Service Provider's obligations under this Head Agreement.
- 10.2.2 In relation to any Ordered Services, the Service Provider must notify the relevant Agency immediately on becoming aware of the existence of a Conflict of Interest.
- 10.2.3 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.

Part B – Ordered Services

11 Ordering Services

11.1 Overview

11.1.1 An Agency may at any time during the Head Agreement Period, issue the Service Provider's Agency 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 Agency may issue an RFQ to the Service Provider's Agency Contact in the format provided in **Schedule 5 (Request for Quotation Template)**, or similar format, at any time during the Head Agreement Period.

11.2.2 The Service Provider acknowledges that an Agency is under no obligation to issue an RFQ to the Service Provider, and in deciding whether to issue an RFQ to the Service Provider, an Agency may take into account any factor that the Agency, acting in its complete and absolute discretion, considers relevant, including:

- (a) the objectives of the Panel;
- (b) the Service Provider's previous performance in delivering Services, whether to the Agency or any other Agency;
- (c) the Service Provider's compliance with the terms of this Head Agreement and any Contract; and
- (d) the existence and status of any Significant Event, and the status of any remediation plan Finance has requested in response to the Significant Event.

11.2.3 The RFQ will describe the scope of the Services required by the Agency.

11.2.4 In seeking a Quotation, an Agency may request Fees lower to those set out in the Relevant Schedule by seeking that quotes are given on a fixed price or other basis.

11.2.5 In an RFQ, an Agency may also:

- (a) require Additional Requirements; and
- (b) stipulate additional Service Levels.

11.2.6 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;
 - iii. the names of the Key Personnel (which may include any Expert Personnel) proposed to deliver the Services; and

- iv. any other information requested by the Agency in the RFQ; or
 - (b) advise the Agency in writing, 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.
- 11.2.7 When responding to an RFQ the Service Provider may:
- (a) offer Fees that are lower than the Fees set out in the Relevant Schedule;
 - (b) in respect of Expert Personnel only, offer fees that are higher than the Fees for personnel set out in the Relevant Schedule on the basis that the Agency will assess value for money of such fees in their evaluation of the Quotation provided for the particular RFQ; and
 - (c) 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 Agency will assess whether there is a reasonable basis for any such additional charges.
- 11.2.8 Quotations must remain open for acceptance by the Agency for a minimum of 30 days after the RFQ Closing Date, or for such time as specified by the Agency in an RFQ.
- 11.2.9 By issuing an RFQ, there is no obligation on the Agency to issue an Order.

11.3 Forming a Contract

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

11.4 Modifications to Head Agreement

- 11.4.1 Where an Order seeks to modify the terms of this Head Agreement to reduce the obligations on a Service Provider that would apply to a Contract, then unless the relevant provision of this Head Agreement expressly allows modification in an Order or Contract, the terms that seek to modify this Head Agreement have no legal effect, unless the relevant terms:
- (a) have been approved in writing by Finance prior forming a Contract; and
 - (b) are specified in the applicable Contract.
- 11.4.2 If Finance has approved the relevant terms, this Head Agreement is deemed to be amended solely for that Contract without the need to separately amend this Head Agreement.

12 Terms of a Contract

12.1 Terms and conditions

- 12.1.1 The terms and conditions of each Contract will be:

- (a) the terms and conditions of this Head Agreement, including any modifications approved by Finance under clause 11.4 and stipulated in the Order;
- (b) 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 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 25.

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 Key Personnel who have the qualifications, expertise, capacity and capability to provide the Ordered Services to a high standard, including any particular qualifications, expertise, capacity and capability set out in the Order;
- (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.

13.1.2 The Service Provider must undertake any necessary Services to correct any errors caused by the Service Provider, its Subcontractors or its Personnel which are identified in the Service Provider's work.

13.2 Key Personnel

13.2.1 The Service Provider must ensure that its Key Personnel:

- (a) undertake the Ordered Services described in a Contract; and

(b) have the requisite skills, qualifications and experience for the tasks they are given.

13.2.2 If the Service Provider becomes aware that a Key Person(s) will or may become unavailable for the performance of the Ordered Services, the Service Provider shall (without limiting its obligations or liabilities under this Head Agreement or a Contract):

(a) promptly notify the Agency of the impending unavailability; and

(b) as soon as practicable, nominate a replacement Key Person(s) with comparable experience, skills and expertise for approval by the Agency, which will not be unreasonably withheld.

13.2.3 The Service Provider must provide suitable replacement Key Personnel should an Agency, for security reasons, deny access to or request removal of any Specified Personnel who will have access to an Agency's premises or Agency Material.

13.2.4 The Service Provider must, at the request of the Agency, acting in its absolute discretion, remove Key Personnel from work in relation to the Ordered Services. The Service Provider shall nominate replacement Key Personnel for approval by the Agency, which will not be unreasonably withheld.

13.2.5 If clause 13.2.2, clause 13.2.3 or clause 13.2.4 applies, the Service Provider will provide replacement Key Personnel acceptable to the Agency at no additional cost and at the earliest opportunity.

13.3 Liaison with Agency's Personnel

13.3.1 In providing the Ordered Services, the Service Provider must, at no additional cost to the Agency:

(a) liaise with the Agency Representative, or other person nominated by the Agency, as reasonably required; and

(b) comply with all reasonable directions of the Agency Representative where these are not inconsistent with the terms of this Head Agreement or a Contract.

13.4 Inquiries

13.4.1 The Service Provider agrees to provide, at no additional cost, all reasonable assistance requested by an Agency in respect of any inquiry concerning the Service Provider's performance of the Ordered Services.

13.4.2 Without limitation to the generality of clause 13.4.1:

(a) the assistance to be provided by the Service Provider under clause 13.4.1 will include, as appropriate, the preparation of reports, the provision of documents or other Material, and making available relevant Service Provider Personnel 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 13.4.1 will include any administrative or statutory review, audit or inquiry (whether within or external to the Agency), any requests for information or documents directed to the Agency and any inquiry conducted by Parliament or any Parliamentary committee.

13.4.3 The Agency Representative will endeavour to notify the Service Provider as early as possible of any assistance required under clause 13.4.1, and the Service Provider acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.

13.4.4 This clause 13.4 survives expiration or termination of this Head Agreement.

13.5 Co-operation

13.5.1 The parties intend to conduct themselves for the purposes of the provision of the Ordered Services in the spirit of co-operation and good faith, however this does not override or limit the provisions of this Head Agreement or a Contract.

13.5.2 An Agency will co-operate with the Service Provider by:

- (a) making available, as reasonably requested by the Service Provider, management decisions and information that is necessary for the Service Provider to provide the Ordered Services, and
- (b) setting priorities for the Ordered Services.

13.5.3 The Service Provider must co-operate with, and provide such reasonable assistance to, any other service provider appointed by an Agency and the Agency, when the service provider and/or Agency is providing services similar to or related to the Services, at no additional cost to the Agency. This clause 13.5.3 does not require the Service Provider to provide any assistance to the extent this would cause a conflict of interest with its auditor independence obligations.

13.5.4 To ensure maximum efficiency in the delivery of Ordered Services, where an Agency provides services in-house, the Agency will co-operate with the Service Provider and where the Agency uses another service provider, the Agency will use its reasonable endeavours to ensure that other service providers co-operate with the Service Provider.

13.6 Relationship of parties

13.6.1 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 Agency, nor does the Service Provider have any power or authority to bind or represent the Commonwealth, Finance or an Agency, unless specifically authorised in writing by an Agency.

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

- (a) misrepresent its relationship with the Commonwealth, Finance or an Agency;
- (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 Agency.

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 clauses 11.2.7(b) and 11.2.7(c), the Fees specified in the Relevant Schedule are the maximum Fees that may be charged unless adjusted in accordance with clause 14.2.1.

14.2 Fee adjustment

14.2.1 Prior to 30 April 2025, but not before 31 March 2025, and for each subsequent year of the Head Agreement Period, the Service Provider may apply for an increase of the Fees in the Relevant Schedule. The Fee increase may not be more than the change in the Wage Price Index (the private sector seasonally adjusted index) for the preceding 12 months, as published by the Australian Bureau of Statistics. Fees will be adjusted from 1 July of that year and will apply to Contracts entered into after this date.

14.3 Travel and related expenses

14.3.1 The Service Provider may only seek reimbursement for travel and related expenses where these expenses are stipulated in a Contract.

14.3.2 The Service Provider must submit a Tax Invoice and accompanying receipts for travel and related expenses in accordance with the invoicing procedures set out in clause 14.4. The Service Provider will be reimbursed at no more than the face value of the receipts.

14.3.3 This clause 14.3 does not prevent the recovery of other expenses, where this is permitted in a Contract.

14.4 Invoicing

14.4.1 The Service Provider must submit a correctly rendered Tax Invoice to the Agency in accordance with the requirements in a Contract. If a Tax Invoice is not correctly rendered, the Agency 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 Agency in an Order.

14.5 Payment terms

14.5.1 Unless the Contract states otherwise, the Agency 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

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 otherwise 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'):
- (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.

Part C – General Terms and Conditions

16 Commonwealth Laws and policy requirements

16.1 Compliance with Laws

16.1.1 The Service Provider must comply with, and ensure its Personnel comply with all Laws applicable to the provision of Services under this Head Agreement and any Contract, in particular:

- (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);
- (l) *National Anti-Corruption Commission Act 2022* (Cth); and
- (m) all applicable laws relating to taxation.

16.2 Service Provider's obligations

16.2.1 The Service Provider is responsible for all wages, salaries and other payments 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, 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. Upon request, the Service Provider must demonstrate that it has complied with these obligations.

16.2.2 Without limiting clause 16.2.1, 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, including to Subcontractors, 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.

16.2.3 The Service Provider must:

- (a) ensure that, in connection with any Services performed in Australia, its Personnel are at all times:
 - i. Australian citizens; or
 - ii. in the case of persons who are not Australian citizens, entitled to work in Australia.
 - (b) during the Head Agreement Period and any Order Term, and to the extent permitted by Law, notify Finance immediately on becoming aware of
 - i. any adverse comments or findings made by a court, commission, tribunal, or other statutory or professional body:
 - A. regarding the conduct or performance of the Service Provider; or
 - B. impacting on the professional capacity or capability of its Personnel to deliver the Services;
 - ii. 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's Personnel, agents or Subcontractors that materially impacts or could be reasonably perceived to materially impact on the Service Provider's professional capacity, capability, fitness or reputation;
 - iii. any unsettled judicial decisions against it relating to unpaid employee entitlements;
 - iv. any other significant matters, including the commencement of legal or regulatory action, disciplinary action by an independent person or disciplinary action internal to the Service Provider, involving the Service Provider or its Personnel, agents or Subcontractors that may have a material adverse impact on:
 - A. the Service Provider's compliance with Australian Government policy or legislation; or
 - B. Finance's or an Agency's compliance with Australian Government policy or legislation; or
 - C. the Commonwealth's reputation; or
 - D. the professional capacity or capability of the Service Provider or its Personnel to deliver the Services; and
 - v. any non-compliance by:
 - A. the Service Provider or its Personnel; or
 - B. to the extent that information is known by or reasonably available to the Service Provider, the Service Provider's agents or Subcontractors,
- with any judgment against the Service Provider, its Personnel, agents or Subcontractors (as relevant) 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,

each a **Significant Event**.

- 16.2.4 A notice issued under clause 16.2.3(b) must provide, to the extent that information is known by or reasonably available to the Service Provider at the time of giving the notice, a summary of the Significant Event, including the date that it occurred and whether any Key Personnel or other Personnel, agents or Subcontractors engaged in connection with the Services were involved.
- 16.2.5 If, prior to the Service Provider providing a notice under clause 16.2.3(b) in respect of an event, Finance notifies the Service Provider in writing that an event is to be considered a Significant Event for the purposes of clause 16.2.3(b), the Service Provider must issue a notice under clause 16.2.3(b) in relation to the event within five (5) Business Days of being notified by Finance, unless a different timeframe is agreed in writing with Finance.
- 16.2.6 Where reasonably requested by Finance, the Service Provider must provide Finance with any additional information regarding the Significant Event (to the extent that information is known or reasonably available to the Service Provider at the time that Finance makes a request) within five (5) Business Days of the request, unless a different timeframe is agreed in writing with Finance.
- 16.2.7 If Finance is notified of a Significant Event in accordance with clause 16.2.3(b), or notifies the Service Provider of an event under clause 16.2.5, then Finance may:
- (a) notify the Service Provider that no further action in relation to the Significant Event is required;
 - (b) notify the Service Provider that a remediation plan is required; or
 - (c) acting reasonably, determine that the Significant Event is of such a serious or significant nature that it is not appropriate in the circumstances for the Service Provider to continue as a Service Provider on the Management Services Advisory Panel, in which case Finance will notify the Service Provider of that and the occurrence of the Significant Event will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2.
- 16.2.8 If Finance notifies the Service Provider under clause 16.2.7(b) that a remediation plan is required, the Service Provider must prepare a draft remediation plan and submit that draft plan to the Panel Manager for approval within ten (10) Business Days of the request, unless a different timeframe is agreed in writing by Finance.
- 16.2.9 A draft remediation plan prepared by the Service Provider in accordance with clause 16.2.8 must include the following information:
- (a) how the Service Provider will address the Significant Event in the context of the Services, including confirmation that the implementation of the remediation plan will not:
 - i. materially impact on the delivery of the Services; or
 - ii. impact on compliance by the Service Provider with its other obligations under the Head Agreement or a Contract;
 - (b) how the Service Provider will ensure events similar to the Significant Event do not occur again; and

(c) any other information reasonably requested by Finance.

16.2.10 Finance must review the draft remediation plan and may:

- (a) approve the draft remediation plan;
- (b) notify the Service Provider of the details of any changes that Finance, acting reasonably, considers are required to the draft remediation plan; or
- (c) notify the Service Provider that Finance considers that the draft remediation plan is unsatisfactory having regard to the nature of the Significant Event and the likelihood that the draft remediation plan addresses the matters raised by the Significant Event, in which case Finance will request that the Service Provider give, in writing, and within five (5) Business Days of the request, reasons explaining how the draft remediation plan sufficiently addresses the Significant Event and propose any further amendments that would assist further with this.

Changes to the Remediation Plan

16.2.11 The Service Provider must make any changes to the draft remediation plan reasonably requested by Finance under clause 16.2.10(b) and resubmit the draft remediation plan to Finance for approval within five (5) Business Days of the notice unless a different timeframe is agreed in writing by Finance.

16.2.12 Finance may:

- (a) approve the resubmitted draft remediation plan; or
- (b) notify the Service Provider that Finance considers that the resubmitted draft remediation plan is unsatisfactory because it has not sufficiently addressed the changes reasonably requested by Finance under clause 16.2.10(b), in which case Finance will request that the Service Provider give, in writing, and within five (5) Business Days of the request, reasons explaining how the resubmitted draft remediation plan sufficiently addresses the changes request by Finance, and propose any further amendments that would assist further.

16.2.13 If the Service Provider provides a response as requested by clause 16.2.12(b) within five (5) Business Days of the request, Finance must review the response and may:

- (a) approve the Service Provider's reasons and if applicable the further proposed amendments, in which case Finance will approve the resubmitted draft remediation plan (resubmitted again if relevant); or
- (b) reject the resubmitted draft remediation plan (resubmitted again if relevant) if Finance determines, acting reasonably, that the Service Provider's reasons and if applicable the further proposed amendments do not sufficiently address the changes requested by Finance, in which case Finance will notify the Service Provider of that, and the failure to provide a satisfactory remediation plan will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2.

16.2.14 If the Service Provider does not provide a response as requested by clause 16.2.12(b) within five (5) Business Days of the request, then the Service Provider will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2.

Service Provider Response

- 16.2.15 If the Service Provider provides a response as requested by clause 16.2.10(c) within five (5) Business Days of the request, Finance must review that response and may:
- (a) approve the Service Provider's reasons and if applicable the further proposed amendments, in which case Finance will approve the draft remediation plan (as resubmitted if relevant); or
 - (b) reject the draft remediation plan (as resubmitted if relevant) if Finance determines, acting reasonably, that Finance is not satisfied with the Service Provider's reasons and if applicable the further proposed amendments, in which case Finance will notify the Service Provider of that, and the failure to provide a satisfactory remediation plan will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2.
- 16.2.16 If the Service Provider does not provide a response as requested by clause 16.2.10(c) within five (5) Business Days of the request, then the Service Provider will be deemed to be in breach of this clause 16, including for the purposes of clause 26.1.2.

Other Obligations regarding Remediation Plans

- 16.2.17 Without limiting its other obligations under the Head Agreement or a Contract, the Service Provider must comply with the remediation plan as approved by Finance in accordance with clause 16.2.10(a), 16.2.12(a), 16.2.13(a) or 16.2.15(a).
- 16.2.18 The Service Provider must provide reports and other information about the Service Provider's progress in implementing any remediation plan as reasonably requested by Finance.
- 16.2.19 Finance's rights under clauses 16.2.3 to 16.2.18 (both inclusive) are in addition to and do not otherwise limit any other rights Finance may have under the Head Agreement or an Agency may have under a Contract.
- 16.2.20 The performance by the Service Provider of its obligations under clauses 16.2.3 to 16.2.18 (both inclusive) will be at no additional cost to Finance or any Agency.

16.3 Workplace Gender Equality Act 2012 (Cth)

- 16.3.1 This clause 16.3.1 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**).
- 16.3.2 If the Service Provider or its Personnel becomes non-compliant with the WGE Act during the Head Agreement Period, the Service Provider must notify the Panel Manager.
- 16.3.3 The Service Provider must provide a current letter of compliance within 18 months from the Head Agreement Commencement Date and following this, annually, to the Panel Manager.
- 16.3.4 Compliance with the WGE Act does not relieve the Service Provider from its responsibility to comply with its other obligations under this Head Agreement.

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 Purchases from Indigenous Enterprises may be in the form of engagement of an Indigenous Enterprise as a subcontractor, and the use of Indigenous suppliers in the Service Provider's supply chain.
- 16.4.4 For any RFQs or Orders 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 have committed Fraud, or the Service Provider has failed to take reasonable steps to prevent Fraud by its Personnel, the Service Provider must reimburse Finance or the relevant Agency for the reasonable costs it incurs as a result of the Fraud.

16.6 Shadow Economy Policy

- 16.6.1 In this clause 16.6:

Shadow Economy Policy means the *Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at <https://treasury.gov.au/publication/p2019-t369466>.

Satisfactory means meets the conditions set out in Part 6.b of the Shadow Economy Policy or, if the circumstances in Part 6.c of the Shadow Economy Policy apply, the conditions set out in Part 8.b of the Shadow Economy Policy.

Statement of Tax Record means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR.

Valid means valid in accordance with Part 7.e of the Shadow Economy Policy.

- 16.6.2 If the Service Provider is a partnership and the Service Provider's Representative or Service Provider's Senior Executive is a partner of the partnership, a Valid and Satisfactory Statement of Tax Record must be provided to Finance with a Deed of Variation that proposes a new person for these positions.
- 16.6.3 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 Agency, provide to Finance or an Agency a copy of any such Statement of Tax Record.
- 16.6.4 Without limiting its other rights under this Head Agreement or at law, any failure by the Service Provider to comply with the requirements outlined in clause 16.6.3 will be a breach of this Head Agreement.
- 16.6.5 The Service Provider must ensure that any partner of a partnership, and/or first tier Subcontractor engaged under a Contract, where the total value of the Contract is over \$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant Order.
- 16.6.6 The Service Provider must retain a copy of any Statement of Tax Record held by any partner of a partnership, and/or first tier Subcontractor in accordance with clause 16.6.5 and must, on request by Finance or an Agency, provide to Finance or an Agency a copy of any such Statement of Tax Record.

16.7 Australian Industry Participation

- 16.7.1 Clause 16.7 applies to any Contracts issued under this Head Agreement with a value of \$20 million or more.
- 16.7.2 Where stated in a Contract, the Australian Industry Participation (AIP) National Framework principles, including the requirement to submit an Industry Participation Plan will apply. More information on AIP plan requirements can be found at www.industry.gov.au/aip.

16.8 Payment Times Procurement Connected Policy

- 16.8.1 The Payment Times Procurement Connected Policy may apply to Contracts formed under this Head Agreement with a value of \$4 million (GST inclusive) or more and where stated in the Contract.
- 16.8.2 The Payment Times Procurement Connected Policy requires large businesses who enter into a Contract with the Commonwealth to match the Australian Government's payment times and pay their Subcontractors within 20 calendar days.
- 16.8.3 The Payment Times Procurement Connected Policy is complementary to the Payment Times Reporting Scheme and the Australian Government's Pay On-Time or Pay Interest Policy ([Resource Management Guide 417](#)).
- 16.8.4 For more information about the policy, refer to <https://treasury.gov.au/publication/p2021-183909>.

16.9 National Anti-Corruption Commission Act 2022 (Cth) Requirements

- 16.9.1 The Service Provider acknowledges that in providing the Services to Finance and any Agency under the Head Agreement, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022 (Cth)* (**NACC Act**).
- 16.9.2 The Service Provider must comply with any reasonable request, policy or direction issued by Finance or an Agency and otherwise cooperate with Finance or an Agency in relation to any action taken by Finance or an Agency required or authorised by the NACC Act.

16.10 Compliance with the Commonwealth Supplier Code of Conduct

- 16.10.1 For the purposes of this clause, 'Commonwealth Supplier Code of Conduct' or 'Code' means the Commonwealth Supplier Code of Conduct, as published on 1 July 2024, as updated from time to time.
- 16.10.2 The Service Provider must comply with, and ensure that its Personnel and Subcontractors comply with, the Code in connection with the performance of this Head Agreement and any Contract.
- 16.10.3 The Service Provider must:
- (a) periodically monitor and assess its, and its Personnel's compliance with the Code; and
 - (b) on request from Finance or an Agency, promptly provide information regarding:
 - i. the policies, frameworks, or systems it has established to monitor and assess compliance with the Code, and
 - ii. the Service Provider's compliance with clause 16.10.2.
- 16.10.4 The Service Provider must immediately issue Finance and any relevant Agency a notice on becoming aware of any breach of clause 16.10.2. The notice must include a summary of the breach, the date that the breach occurred, and details of the Personnel involved.
- 16.10.5 Where Finance or an Agency identifies a possible breach of clause 16.10.2, it may issue the Service Provider a notice, and the Service Provider must, within three (3) Business Days of receiving the notice, either:
- (a) where the Service Provider considers a breach has not occurred: advise Finance or the Agency that there has not been a breach and provide information supporting that determination; or
 - (b) where the Service Provider considers that a breach has occurred: issue a notice under clause 16.10.4 and otherwise comply with its obligations under this clause 16.10.
- 16.10.6 Notwithstanding clause 16.10.5, Finance or the relevant Agency may notify the Service Provider in writing that it considers that the Service Provider has breached 16.10.2, in which case the Service Provider must issue a notice under clause 16.10.4 and otherwise comply with its obligations under this clause 16.10.
- 16.10.7 A failure by the Service Provider to comply with its obligations under any part of this clause will be a material breach of the Head Agreement and any Contract.

- 16.10.8 Nothing in this clause or the Code limits, reduces, or derogates from the Service Provider's other obligations under the Head Agreement and any Contract. Finance's, and any relevant Agency's, rights under this clause are in addition to and do not otherwise limit any other rights Finance and the Agency may have under the Head Agreement or a Contract. The performance by the Service Provider of its obligations under this clause will be at no additional cost to Finance or any relevant Agency.
- 16.10.9 Without otherwise limiting Finance's and any relevant Agency's rights under the Head Agreement or a Contract, the Service Provider agrees that Finance, an Agency and any other Commonwealth agency may share information relating to the Service Provider's compliance with the Code in connection with the Head Agreement and any Contract. The Service Provider agrees that Finance, an Agency or any other Commonwealth agency may take into account the Service Provider's compliance with the Code in any future approach to market or procurement process.

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 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);
 - (b) 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;
 - (c) 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;
 - (d) it is financially viable;
 - (e) it has all necessary licences and authorisations required to operate and provide the Ordered Services to an Agency under a Contract; and
 - (f) unless notified in accordance with clause 16.2.3(b), no Significant Event exists in relation to the Service Provider.
- 17.1.2 The Service Provider warrants that it will promptly notify and fully disclose to Finance any event or occurrence actual or threatened during the Head Agreement Period or any Order Term that would materially affect the Service Provider's ability to perform any of its obligations under this Head Agreement or any Contract.

18 Insurance

18.1 Obligations to hold insurance

- 18.1.1 The Service Provider must, prior to the commencement of a Contract and for the duration of a Contract, hold:

- (a) professional indemnity insurance which is for an amount not less than \$2 million per occurrence and \$10 million in the aggregate, unless specified otherwise in an Order;
- (b) 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;
- (c) workers compensation insurance as required by law; and
- (d) any Additional Requirements for insurance specified in an Order.

18.1.2 A Service Provider may self-insure, where approved by Finance.

18.1.3 The professional indemnity insurance referred to in clause 18.1.1(a) (or in any Order), must additionally be held for a period of three years following the end of a Contract, or such other period specified in the Order.

18.1.4 On request from Finance or an Agency the Service Provider must provide evidence of the insurance described in clause 18.1.1 (such as a certificate of currency) within seven calendar days.

19 Liability

19.1 Liability cap

19.1.1 If the Service Provider does not participate in a Statutory Liability Scheme, then subject to clause 19.1.2, the Service Provider's liability arising out of or in connection with this Head Agreement or 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:

- (a) if no liability limitation is specified in the relevant Order - in accordance with the ACT Statutory Liability Scheme, as though that scheme applied to the Service Provider; or
- (b) otherwise - in the manner specified in the relevant Order.

19.1.2 Unless otherwise specified in an Order, 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 23.2 and 23.3) in the Contract or at Law; or
- (e) any breach of any Law, fraud or any unlawful act or omission.

19.2 Accountants liability scheme

19.2.1 If the Service Provider participates in a Statutory Liability Scheme, then:

- (a) the Service Provider's liability in relation to this Head Agreement or a Contract (including liability under an indemnity) is limited in accordance with that Statutory Liability Scheme; and

- (b) in respect of any types of liability that are not covered by the Statutory Liability Scheme, the Service Provider's liability is limited as described in clause 19.1.

19.3 Consequential loss

- 19.3.1 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.

19.4 Indemnity

- 19.4.1 In providing any Ordered Services, subject to clause 19.6.1, the Service Provider must indemnify an Agency from and against any:
- (a) cost or liability incurred by the Agency;
 - (b) loss of or damage to property of the Agency; or
 - (c) loss or expense incurred by the Agency 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 Agency,
- arising from either:
- (d) a breach by the Service Provider of an obligation of confidentiality, privacy or security under this Head Agreement or a relevant Contract;
 - (e) an unlawful or negligent act or omission of the Service Provider or its Personnel 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.
- 19.4.2 For the purposes of clause 19.4.1, 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.
- 19.4.3 The right of an Agency 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 Agency is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

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

19.5 Management of claims

19.5.1 If an Agency wishes to enforce an indemnity under this clause 19, it must:

- (a) give written notice to the Service Provider 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.

19.5.2 If the Service Provider is to handle negotiations or conduct litigation on behalf of the Agency, 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 Agency (including the Legal Services Directions and any direction issued by the Attorney-General);
- (b) keep the Agency informed of any significant developments relating to the conduct of the defence or settlement of any claim;
- (c) give the Agency all information and documents reasonably requested by the Agency, to enable the Agency 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 Agency.

19.6 Contribution and mitigation

19.6.1 The Service Provider's liability under or in connection with this Head Agreement or a Contract (including under the indemnity in clause 19.4.1) will be reduced:

- (a) proportionately to the extent that any act or omission of the Agency or its Personnel contributed to the relevant cost, liability, loss, damage or expense; and
- (b) in accordance with any applicable legislative proportionate liability provision.

19.6.2 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 Use of Agency Material

20.1.1 The Agency agrees to provide Agency Material to the Service Provider as specified in an Order or as otherwise agreed by the Agency.

- 20.1.2 The Agency grants (or will procure) a royalty-free, non-exclusive licence for the Service Provider and its Personnel and Subcontractors to use, reproduce and adapt Agency Material for the purposes of a Contract.
- 20.1.3 The Service Provider agrees to ensure Agency Material is used strictly in accordance with any conditions or restrictions specified in an Order and any direction from the Agency.

20.2 Rights in Contract Material

20.2.1 Subject to clause 20.2.2, and except to the extent stated otherwise in the Order, Intellectual Property in all Contract Material vests or will vest in the Service Provider.

20.2.2 Clause 20.2.1 does not affect the ownership of Intellectual Property in:

- (a) any Agency Material incorporated into Contract Material; or
- (b) any Existing Material.

20.2.3 The Service Provider grants to the Agency a permanent, irrevocable, world-wide, royalty-free, non-exclusive licence, to use, reproduce, adapt, modify, distribute and communicate:

- (a) the Contract Material; and
- (b) any Existing Material incorporated into the Contract Material, in conjunction with the Contract Material,

for any Commonwealth purpose (other than for commercial exploitation). Unless stated otherwise in an Order, the licence is transferable and includes a right of sublicense.

20.2.4 The Service Provider must not charge an Agency for Material developed for another Agency under the Panel.

20.2.5 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 20.2.

20.3 Restrictions on third party use of Contract Material

20.3.1 An Order may impose restrictions on third party use of Contract Material, where that is appropriate in the context of the Services. An Agency must comply with any such restrictions, where agreed in an Order.

20.3.2 An Agency's use of the name, trade name or logo of the Service Provider may be limited as set out in an Order.

20.4 Internal working papers

20.4.1 Unless otherwise specified in an Order, the Service Provider is not required to deliver internal working papers (including Audit Working Papers) to Finance or an Agency that are required to be retained by the Service Provider under applicable Laws or professional standards. However, such papers are subject to audit in accordance with clause 29.

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 Agency or any person claiming under or through the Agency.
- 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 Agency 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 Agency 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 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 Agency within Finance or that Agency, or with another Agency, if this serves the Commonwealth's or the Agency's legitimate interests;
- (d) is disclosed by Finance or an Agency to a Commonwealth Minister and his or her advisers;
- (e) is disclosed by Finance or an Agency in response to a request from a House or a Committee of the Parliament of the Commonwealth, or from a State or Territory Parliament or Assembly if the relevant Agency is a State or Territory Agency;
- (f) 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
- (g) 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 to 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 Agencies as envisaged by clause 8 and disclosure of information in order to administer and meet the objectives of the Panel. Agencies will be informed that such information is Confidential Information. Finance will not be liable for any breach of confidentiality obligations by Agencies (but this does not limit the Service Provider's right to make a claim against the relevant Agency 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 Statute 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 Agency at any time, to arrange for its Personnel who will have access to Confidential Information, to give a written undertaking in a form acceptable to the Agency relating to the use and non-disclosure of Confidential Information.

22.6 Agency Confidential Information

22.6.1 The Service Provider agrees to secure all Agency 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 Agency and subject to clause 22.6.3, the Service Provider must immediately return all Agency Confidential Information in its possession or control to the Agency.

22.6.3 Unless otherwise specified in a Contract, the Service Provider may retain one copy of Agency 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 Agency in an Order.

23.1.2 An Order may include Additional Requirements for security.

23.1.3 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 Agency on request.

23.2 Data security

23.2.1 The Service Provider must take all necessary steps, and implement all necessary measures, to ensure that any Agency 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 or in a standing written approval from the Agency;

(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;
and

(c) without limiting clauses 13.1.1(c) and 23.1.1, afforded protective measures (including but not limited to administrative, physical, and technical safeguards) that are consistent with Best Industry Practice for the Services provided.

23.2.2 In addition to clause 23.2.1, the Service Provider must comply with any data storage Additional Requirements specified by an Agency in an Order.

23.2.3 If required in an Order as an Additional Requirement, the Service Provider must provide the Agency with a Data Breach Response Plan.

23.2.4 Without limiting its obligations under this clause 23, the Service Provider must comply with any additional security requirements notified by Finance or an Agency from time to time.

23.2.5 The Service Provider must immediately notify Finance and any relevant Agency if there is a Security Incident or a breach of any of the Service Provider's obligations under this clause 23, by the Service Provider or any of its Personnel or Subcontractors.

23.3 Harmful Code

- 23.3.1 The Service Provider must undertake reasonable efforts to detect and prevent:
- (a) any unauthorised access to Confidential Information and Personal Information in its systems, and
 - (b) any Harmful Code from being introduced by the Service Provider, its Personnel or Subcontractors into Finance or the Agency's systems or sent from Finance or the Agency'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 (a) or (b), pro-actively informing itself of developments in threats of Harmful Code, and taking reasonable precautions against such known threats.
- 23.3.2 If the Service Provider becomes aware that any Harmful Code is found to have been detected the Service Provider must:
- (a) notify Finance or the Agency promptly and in any event within 24 hours of discovery;
 - (b) provide all information known by the Service Provider and reasonably requested by Finance or the Agency in relation to the Harmful Code, its manner of introduction and the effect the Harmful Code has had or is likely to have; and
 - (c) retain evidence and logs regarding the incident to help in determining the cause, damage and likely source.
- 23.3.3 The Service Provider must perform its obligations under this clause 23.3 at no additional cost to Finance or the Agency.

23.4 Cyber Security

- 23.4.1 At the request of Finance or an Agency by written notice, the Service Provider must provide details of its security measures in place to reduce the risk of Cyber Incidents.
- 23.4.2 Where the Service Provider becomes aware of, or becomes aware that there are reasonable grounds to suspect that there may have been, a Cyber Incident, the Service Provider must in addition to its other obligations under this clause 23 and if required by Finance or an Agency, advise the Australian Cyber Security Centre, the Department of Home Affairs' Cyber Security Response Coordination Unit and/or the Department of Home Affairs' National Cyber Security Coordinator.
- 23.4.3 If requested by Finance or an Agency by written notice, within 10 Business Days, the Service Provider must prepare and provide to Finance or the relevant Agency for approval a Cyber Incident Response Plan at no additional cost. If the requesting party does not approve the Cyber Incident Response Plan, it may by notice give reasonable directions to the Service Provider to modify the plan. The Service Provider, its Personnel and Subcontractors must comply with such directions and, within five (5) Business Days resubmit the Cyber Incident Response Plan to the requesting party for approval under this clause 23.4.3.

23.4.4 The Services Provider must comply with any cyber security plan approved by Finance or an Agency under this clause 23.4 and keep the plan up-to-date during the Head Agreement Period or the Order Term and submit the updated plan to Finance or the Agency as appropriate for approval under clause 23.4.3.

24 Privacy

24.1 Personal Information

24.1.1 Clauses 24.1.1 to 24.1.7 apply:

- (a) where the Service Provider deals with Personal Information for the purpose of providing the Services in accordance with this Head Agreement or any Contract; and
- (b) subject to any modifications or exclusions set out in an Order.

24.1.2 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 Agency, as the case may be, would be a breach of that APP by Finance or that Agency; 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.

24.1.3 If the Service Provider becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information obtained by the Service Provider as a result of this Head Agreement or during the course of performing the Services under a Contract, the Service Provider must:

- (a) notify Finance and the relevant Agency, as the case may be, in writing as soon as possible, which must be no later than within three days of becoming aware; and
- (b) unless otherwise directed by Finance or the Agency, carry out an assessment in accordance with the requirements of the Privacy Act.

24.1.4 Where Finance or an Agency notifies the Service Provider that there has been, an Eligible Data Breach in relation to any Personal Information obtained as a result of this Head Agreement or during the course of performing the Services under a Contract, the Service Provider must:

- (a) 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;

- (b) unless otherwise directed by Finance or the relevant Agency, as the case may be, take all other action necessary to comply with the requirements of the Privacy Act; and
 - (c) take any other action as reasonably directed by Finance or the Agency.
- 24.1.5 The Service Provider must promptly notify the Panel Manager in respect of this Head Agreement, and the Agency Representative in respect of a Contract, and the Information Commissioner where required, if the Service Provider:
- (a) 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;
 - (b) becomes aware that a disclosure of Personal Information may be required by Law; or
 - (c) 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.
- 24.1.6 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.
- 24.1.7 Nothing in this clause 24 derogates from clauses 22 or 23.

25 Suspension from Panel

25.1 Suspension due to non-compliance

- 25.1.1 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 26.1.1(a)) or Finance has a right to terminate this Head Agreement;
 - (b) Finance has received substantiated evidence of continuous or substantial negative feedback from one or more Agency in respect of the performance of the Service Provider in connection with the Panel;
 - (c) Finance reasonably considers that the Service Provider is not providing the Offered Services to Agencies in accordance with this Head Agreement; or
 - (d) Finance reasonably considers that the Service Provider is not exhibiting the behaviours required under clause 13.5.3.
- 25.1.2 Any suspension of the Service Provider may apply to any one or more Relevant Schedule or Service Categories or and Service Subcategories and may be for any period of time.
- 25.1.3 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.

25.1.4 If the Service Provider is suspended:

- (a) the Service Provider must not enter into any Contract in respect of the suspended Relevant Schedule or Service Categories or Service Subcategories;
- (b) the Service Provider must promptly notify Finance if it receives any request to enter into a Contract or any Request for Quotation in respect of the suspended Relevant Schedule or Service Categories or Service Subcategories;
- (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.

25.1.5 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.

25.1.6 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 for a particular Relevant Schedule or Service Category; or
- (c) the Service Provider requests,

then Finance may revoke its approval of the Service Provider in respect of any or all of the suspended or removed Relevant Schedules or Service Categories or Service Subcategories by written notification to the Service Provider, and the Service Provider agrees to promptly (and at its cost) enter into a variation to this Head Agreement to give effect to this.

26 Termination

26.1 Termination of Head Agreement for default

26.1.1 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 Agency 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; or
- (h) in Finance's reasonable opinion, no longer has the capacity and capability to provide the Services in accordance with this Head Agreement.

26.1.2 For the purposes of clause 26.1.1, 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);
- (g) clause 30 (Conflict of Interest); and
- (h) a warranty provided for in clause 17.

26.1.3 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 Agencies; and
- (b) an Agency 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.

26.2 Termination of Contract for default

26.2.1 If the Service Provider fails to satisfy any of its obligations under a Contract, and the Agency considers that the failure is:

- (a) not capable of remedy, the Agency may, by notice terminate the Contract immediately; or
- (b) capable of remedy, the Agency 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.

- 26.2.2 The Agency 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) being a corporation, subject to the Agency 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;
 - (b) being an individual or partnership, becomes bankrupt or enters into a scheme of arrangement with creditors; or
 - (c) is terminated for default under clause 26.1.

26.2.3 The Service Provider may only terminate a Contract by issuing a notice to terminate if:

- (a) the Agency has not paid a correctly rendered Tax Invoice that is not disputed by the Agency within 40 Business Days after payment was due (**Payment Due Date**) provided that the Service Provider has:
 - i. notified the Agency 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 Agency 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 Agency 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.

26.3 Termination or reduction of Head Agreement for convenience

26.3.1 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.

26.4 Termination or reduction of Contract for convenience

26.4.1 An Agency may by 10 Business Days' notice, at any time and in its absolute discretion terminate a Contract, or reduce the scope of any Ordered Services.

26.4.2 The Service Provider agrees, on receipt of a notice of termination or reduction:

- (a) to stop or reduce work as specified in the notice;
- (b) to use all reasonable endeavours to mitigate its costs incurred as a result of such termination or reduction; and
- (c) to continue work on any part of any Ordered Services not affected by the notice.

26.4.3 In the event of termination under clause 26.4.1, the Agency will be liable only:

- (a) to pay any Fees due under a Contract relating to Ordered Services completed before the date of termination. Unless otherwise specified in an Order, 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 Agency,

then the Agency 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 26.4.3(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 Agency's reasonable satisfaction.

26.4.4 The Agency will not be liable to pay amounts under clause 26.4.3 (a) and 26.4.3 (b) which would, added to any Fees already paid to the Service Provider under a Contract, together exceed the Fees specified in an Order.

26.4.5 In the event of a reduction in the scope of any Ordered Services, the Agency's liability to pay Fees, allowances or costs under any relevant Contract will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Ordered Services.

26.4.6 The Service Provider will not be entitled to compensation for loss of prospective profits.

26.5 Effect of expiration, termination, or reduction

26.5.1 The expiration, 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 Agency pursuant to this Head Agreement prior to the date of expiration, termination, or reduction.

26.5.2 Where this Head Agreement has been:

- (a) terminated or has expired in accordance with this clause 26, the Service Provider must not accept a new Order or an extension of an existing Order entered into with an Agency prior to the date of termination or expiration; or
- (b) reduced in scope in accordance with clause 26.3, the Service Provider must not accept a new Order or an extension of an existing Order entered into with an Agency prior to the date of reduction where such Order relates to Services under a Service Category from which the Service Provider has been removed.

26.5.3 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 Service Subcategories under which the Service Provider has been appointed to provide Services under the Panel.

27 Issue and dispute resolution

27.1 Interpretation

27.1.1 In this clause 27, a reference to a 'party' is a reference to the Service Provider, Finance or an Agency, as the case may be.

27.2 Escalation of issues to Finance

27.2.1 Where the Service Provider is unable to resolve a complaint or issue with an Agency, the Service Provider, or the Agency, may request that Finance intervenes to assist in resolving the issue. Finance will not be the independent third person referred to in clause 27.3.1.

27.3 Procedure for dispute resolution

27.3.1 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 27.3.1(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 and recommend some form of non-binding resolution;
- (f) the parties will cooperate fully with any process instigated under clause 27.3.1(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 27.3.1(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 27.3.1(c),

either party may commence legal proceedings.

27.4 Costs

27.4.1 Each party will bear its own costs of complying with this clause 27 and the parties will bear equally the cost of any third person engaged under clause 27.3.1(e).

27.5 Continued performance

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

27.6 Exemption

27.6.1 This clause 27 does not apply to:

- (a) action by an Agency 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.

28 Books and records

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

28.1.2 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 Agency records which are under the custody or control of the Service Provider.

29 Audit and access

29.1 Right to conduct audit

29.1.1 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 Agency's Representative or a person or organisation nominated by the Agency.

29.1.2 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.

- 29.1.3 The rights referred to in clause 29.1.1 are subject to:
- (a) Finance or an Agency providing reasonable prior notice;
 - (b) reasonable security procedures being 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.
- 29.1.4 The Auditor-General, the Information Commissioner, and their delegates are persons authorised for the purposes of this clause 29.
- 29.1.5 Finance and an Agency will not appoint a Direct Competitor of the Service Provider as an auditor under this clause 29.
- 29.1.6 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 Laws applicable to the Service Provider.
- 29.1.7 This clause 29 does not detract from the statutory powers of the Auditor-General, the Information Commissioner and their delegates.

30 Conflict of Interest

- 30.1.1 The Service Provider warrants that, to the best of its knowledge after making diligent inquiry at the Order Commencement Date, no Conflict of Interest except as disclosed in writing to the relevant Agency, exists or is likely to arise in the performance of the Ordered Services.
- 30.1.2 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 Agency fairly and independently.
- 30.1.3 If, a Conflict of Interest arises, or appears likely to arise, the Service Provider agrees:
- (a) to notify the relevant Agency 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 Agency reasonably requires to resolve or otherwise deal with the Conflict of Interest.
- 30.1.4 If the Service Provider fails to notify an Agency in accordance with clause 30.1.3(a) or does not comply with the Agency's reasonable requirements to resolve or otherwise deal with the Conflict of Interest, the Agency may terminate the relevant Contract or Contracts in accordance with clause 26.2 (Termination of Contract for Default).

31 Notices and other communications

31.1 Service of notices

- 31.1.1 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).
- 31.1.2 The address for service of notice of each party of this Head Agreement is set out in Item 7 of **Schedule 1 (Head Agreement Details)**, or such other address as is notified by the party from time to time.
- 31.1.3 The address for notices for an Agency will be set out in an Order issued by the Agency to the Service Provider.

31.2 Variations

- 31.2.1 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)**.
- 31.2.2 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)**.
- 31.2.3 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.
- 31.2.4 Variations to this Head Agreement will become effective on the date the last party signs the Deed of Variation.
- 31.2.5 A Contract may not be varied unless the Agency and the Service Provider have agreed to that variation in writing, which may be in the format provided in **Schedule 6A (Order Variation Template)**.

32 Miscellaneous

32.1 Entire Agreement

- 32.1.1 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.

32.2 Survival

- 32.2.1 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) 13.4 (Inquiries);
- (d) 18 (Insurance);
- (e) 20 (Intellectual Property Rights);
- (f) 22 (Confidentiality);
- (g) 23 (Security);
- (h) 24 (Privacy);
- (i) 26 (Termination);
- (j) 27 (Issue and dispute resolution);
- (k) 28 (Books and records);
- (l) 29 (Audit and access);
- (m) 32 (Miscellaneous); and
- (n) any other provision which expressly or by implication from its nature is intended to continue.

32.3 Approvals and consents

- 32.3.1 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.

32.4 Assignment and novation

- 32.4.1 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 Agency.
- 32.4.2 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)**.
- 32.4.3 Any consent given or withheld by Finance or the relevant Agency under clause 32.4.1 may given in Finance's or the Agency's sole discretion.

32.5 Waiver

- 32.5.1 A failure or delay by a party to exercise any right or remedy it holds under this Head Agreement, or any Contract, at law does not operate as a waiver of that right.
- 32.5.2 A single or partial exercise by a party of any right or remedy it holds under this Head Agreement, or 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.

32.6 Announcements

32.6.1 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 the relevant Agency's, written agreement to the public announcement.

32.7 Governing Law and jurisdiction

32.7.1 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 law of the Australian Capital Territory, or any other Australian jurisdiction specified in the Order.

32.8 Costs, duties and taxes

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

32.9 Capacity Warranties by the Service Provider

- 32.9.1 The Service Provider represents and warrants that:
- (a) it has the right to enter into this Head Agreement and any Contract;
 - (b) it has full power and authority to perform and observe its obligations under this Head Agreement and any Contract; and
 - (c) the execution and performance of this Head Agreement has been duly and validly authorised by the Services Provider.

32.10 Electronic Signatures and Acceptance

32.10.1 If a document is required to be signed or otherwise accepted in accordance with, or for purposes related to this Head Agreement, that document may be signed or otherwise accepted electronically, unless otherwise notified by Finance.

32.11 Counterparts

32.11.1 This Head Agreement may be executed in counterparts. All executed counterparts constitute one document.

Schedule 1 – Head Agreement Details

Item 1 (clause 1.1)	Head Agreement Commencement Date [insert date].
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Item 2 (clause 1.1)	Panel Manager Director, Management Advisory Services Panel Strategic Contracting Branch Department of Finance
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Item 3 (clause 1.1)	First Finance Senior Executive Assistant Secretary, Strategic Contracting Branch Department of Finance
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Item 4 (clause 1.1)	Service Provider’s Representative <Name> <Position> <Contact number> <Email address>
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Item 5 (clause 1.1)	Service Provider’s Senior Executive <Name> <Position> <Contact number> <Email address>
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Item 6 (clause 1.1)	Service Provider’s Agency Contact <Name> <Position> <Contact number> <Email address 1> <Email address 2>
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Item 7 (clause 31)	Address for notices (a) Finance Director, Management Advisory Services Panel Department of Finance One Canberra Avenue Forrest ACT 2603 Email: MASPanel@finance.gov.au
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(b) Service Provider

<Name>

<Position>

<Physical address>

<Email address>

Schedule 2 – Financial Management Advisory Services

This Schedule 2 will be populated if the Service Provider is approved to provide Financial Management Advisory Services to the Australian Government.

1. Services Commencement Date

1.1. The Services to be provided under this Schedule 2 commence on [insert date].

2. Introduction

- 2.1. The purpose of this Schedule 2 is to specify the Service Categories and Service Subcategories that the Service Provider is approved to provide under the Financial Management Advisory Services category.
- 2.2. The Services that can be provided under this Schedule 2 comprise of independent professional advice, research, assessments and other strategic services, commonly referred to as consultancy services.
- 2.3. At an Agency's discretion, the Services may also include the delivery of an Associated Output by the Service Provider where the Service Provider was engaged to provide Services under clause 2.2 of this Schedule 2, and where this represents value for money.

3. Service Categories

3.1. The Service Provider is approved to provide Services in the following Service Categories and Service Subcategories:

[This section will be completed to include the Service Categories and Service Subcategories the Service Provider is approved to provide]

4. Audit services

- 4.1. To the extent the Services described in clause 3 include audit services, the Service Provider will perform such audit services:
- 4.1.1. in accordance with the provisions relating to auditor appointment, independence and rotation in Part 2M.4 of the Corporations Act 2001 (if applicable); and
- 4.1.2. in accordance with the code of ethics for professional accountants issued by the Accounting Professional and Ethical Standards Board (or equivalent overseeing body) including, without limitation, the requirements of APES 110 Code of Ethics for Professional Accountants (as amended or replaced from time to time).

5. Fees

5.1. The Service Provider's Fees in this Schedule 2 are the maximum Fees that may be charged unless adjusted in accordance with:

5.1.1. the Request for Quotation process provided for in clause 11.2.4 of the Head Agreement, and agreed in a Contract;

5.1.2. clause 11.2.7 (a) or (b) of the Head Agreement; and/or

5.1.3. the Fee adjustment mechanism in clause 14.2.1 of the Head Agreement.

[This section will be completed based on the Service Providers response]

6. Order Value Discounts

[This section will be completed based on the Service Provider's response].

The following definitions apply to this section 6.

Order Value Discount means the discount applied to the Total Contract Value of an Order in accordance with this Schedule 2.

Order Value Threshold means the value range within which an Order Value Discount applies as set out in this Schedule 2.

6.1. Subject to clause 6.2, the Order Value Discounts in the table below apply to the Total Contract Value of an Order where the initial value of the Order falls within an Order Value Threshold.

6.2. If an Order with an initial Total Contract Value below an Order Value Threshold is varied over the term of the Order such that the Total Contract Value of the Order, as varied, falls within an Order Value Threshold, the Order Value Discounts in the table below only apply to the Total Contract Value of the varied Order that falls within the relevant Order Value Threshold.

For example, an Order Value Discount of 2% applies to an Order Value Threshold of between \$500,000 and \$1,000,000, and an initial Order with a Total Contract Value of \$450,000 is increased to \$550,000 by variation. In this case, the 2% discount will only be applied to the \$50,000 that falls within the Order Value Threshold, and the value up to \$500,000 will not be discounted.

Schedule 3 – Corporate Management Advisory Services

This Schedule 3 will be populated if the Service Provider is approved to provide Corporate Management Advisory Services to the Australian Government.

1. Services Commencement Date

1.1. The Services to be provided under this Schedule 3 commence on [insert date].

2. Introduction

- 2.1. The purpose of this Schedule 3 is to specify the Service Categories and Service Subcategories that the Service Provider is approved to provide under the Corporate Management Advisory Services category.
- 2.2. The Services that can be provided under this Schedule 3 comprise of independent professional advice, research, assessments and other strategic services, commonly referred to as consultancy services.
- 2.3. At an Agency's discretion, the Services may also include the delivery of an Associated Output by the Service Provider where the Service Provider was engaged to provide Services under clause 2.2 of this Schedule 3, and where this represents value for money.

3. Service Categories

3.1. The Service Provider is approved to provide Services in the following Service Categories and Service Subcategories:

[This section will be completed to include the Service Categories and Service Subcategories the Service Provider is approved to provide]

4. Audit services

- 4.1. To the extent the Services described in clause 3 include audit services, the Service Provider will perform such audit services:
- 4.1.1. in accordance with the provisions relating to auditor appointment, independence and rotation in Part 2M.4 of the Corporations Act 2001 (if applicable).

5. Fees

- 5.1. The Service Provider's Fees in this Schedule 3 are the maximum Fees that may be charged unless adjusted in accordance with:
- 5.1.1. the Request for Quotation process provided for in clause 11.2.4 of the Head Agreement, and agreed in a Contract;

5.1.2. clause 11.2.7 (a) or (b) of the Head Agreement; and/or

5.1.3. the Fee adjustment mechanism in clause 14.2.1 of the Head Agreement.

[This section will be completed based on the Service Provider's response].

6. Order Value Discounts

[This section will be completed based on the Service Provider's response]

The following definitions apply to this section 6.

Order Value Discount means the discount applied to the Total Contract Value of an Order in accordance with this Schedule 3.

Order Value Threshold means the value range within which an Order Value Discount applies as set out in this Schedule 3.

6.1. Subject to clause 6.2, the Order Value Discounts in the table below apply to the Total Contract Value of an Order where the initial value of the Order falls within an Order Value Threshold.

6.2. If an Order with an initial Total Contract Value below an Order Value Threshold is varied over the term of the Order such that the Total Contract Value of the Order, as varied, falls within an Order Value Threshold, the Order Value Discounts in the table below only apply to the Total Contract Value of the varied Order that falls within the relevant Order Value Threshold.

For example, an Order Value Discount of 2% applies to an Order Value Threshold of between \$500,000 and \$1,000,000, and an initial Order with a Total Contract Value of \$450,000 is increased to \$550,000 by variation. In this case, the 2% discount will only be applied to the \$50,000 that falls within the Order Value Threshold, and the value up to \$500,000 will not be discounted.

Schedule 4 – Commercial Management Advisory Services

This Schedule 4 will be populated if the Service Provider is approved to provide Commercial Management Advisory Services to the Australian Government.

1. Services Commencement Date

1.1. The Services to be provided under this Schedule 4 commence on [insert date]:

2. Introduction

- 2.1. The purpose of this Schedule 4 is to specify the Service Categories and Service Subcategories that the Service Provider is approved to provide under the Commercial Management Advisory Services category.
- 2.2. The Services that can be provided under this Schedule 4 comprise of independent professional advice, research, assessments and other strategic services, commonly referred to as consultancy services.
- 2.3. At an Agency's discretion, the Services may also include the delivery of an Associated Output by the Service Provider where the Service Provider was engaged to provide Services under clause 2.2 of this Schedule 4, and where this represents value for money.

3. Service Categories

3.1. The Service Provider is approved to provide Services in the following Service Categories and Service Subcategories:

[This section will be completed based on the Service Provider's response and the Service Subcategories the Service Provider is approved to provide]

4. Audit services

4.1. To the extent the Services described in clause 3 include audit services, the Service Provider will perform such audit services:

4.1.1 in accordance with the provisions relating to auditor appointment, independence and rotation in Part 2M.4 of the Corporations Act 2001 (if applicable).

5. Fees

5.1. The Service Provider's Fees in this Schedule 4 are the maximum Fees that may be charged unless adjusted in accordance with:

5.1.1. the Request for Quotation process provided for in clause 11.2.4 of the Head Agreement, and agreed in a Contract;

5.1.2. clause 11.2.7 (a) or (b) of the Head Agreement; and/or

5.1.3. the Fee adjustment mechanism in clause 14.2.1 of the Head Agreement.

[This section will be completed based on the Service Provider's response]

6. Order Value Discounts

[This section will be completed based on the Service Provider's response]

The following definitions apply to this section 5.

Order Value Discount means the discount applied to the Total Contract Value of an Order in accordance with this Schedule 4.

Order Value Threshold means the value range within which an Order Value Discount applies as set out in this Schedule 4.

6.1. Subject to clause 6.2, the Order Value Discounts in the table below apply to the Total Contract Value of an Order where the initial value of the Order falls within an Order Value Threshold.

6.2. If an Order with an initial Total Contract Value below an Order Value Threshold is varied over the term of the Order such that the Total Contract Value of the Order, as varied, falls within an Order Value Threshold, the Order Value Discounts in the table below only apply to the Total Contract Value of the varied Order that falls within the relevant Order Value Threshold.

For example, an Order Value Discount of 2% applies to an Order Value Threshold of between \$500,000 and \$1,000,000, and an initial Order with a Total Contract Value of \$450,000 is increased to \$550,000 by variation. In this case, the 2% discount will only be applied to the \$50,000 that falls within the Order Value Threshold, and the value up to \$500,000 will not be discounted.

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 Agency will provide to the Service Provider to request a quotation for the provision of Management Advisory Service to an Agency, 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 Agency RFQs to provide efficiencies to Agencies and Service Providers, however, it will not be mandatory that Agencies use this RFQ Template or any resulting smart form to request quotes from Service Providers.

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>Agency Information</i>	
Agency	[Insert Agency name]
Agency File Reference	[Insert Agency file reference number]
RFQ Reference	[Insert Agency RFQ reference number]
Agency 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]
Proposed Order Term and/or Completion Date	[insert the order term and/or completion date]
Options to extend	The Agency may extend the Contract for [insert time period] by providing written notice to the Service Provider prior to the Order Completion Date.

<u>Request For Quotation for Services</u>	
Milestones	[Insert proposed milestones for the delivery of the Services]
Statement of Work	
Service Area	[Insert which Service Category within a Service Area the Services required relate to (Financial/Corporate/Commercial)]
Service Category	[Insert the relevant Service Category that the services relate to]
Service Sub-category	[Insert the relevant Service Subcategory that the services relate to]
Detailed Statement of Work	[Insert a detailed description of the Services required and any Associated Outputs, 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]
Subcontractors	[Select one of the following statements: The Service Provider may nominate Subcontractors to provide some or all of the Services; or The Service Provider may not nominate Subcontractors to provide some or all of the Services.]
Location	[Insert the required work location/site, or insert 'Not Applicable']
Fees	[Insert details of fee structure e.g. hourly/daily rates, fixed fee]
Payment Terms	[Select the relevant payment terms] [For Non-corporate Commonwealth entities: (a) five calendar days where the Agency 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 Agencies other than Non-corporate Commonwealth entities: [insert payment terms]]
Travel	[Insert details of any travel that may be required and whether the Service Provider will be reimbursed for travel costs or if travel will be paid for by the Agency, or insert Not Applicable].
Agency Material	[List any documents attached to the RFQ]
Existing Material	[Insert details of any Existing Material or insert 'Not Applicable']
Contract Material	[Unless specified in the Statement of Work, insert details of any Contract Material]

Request For Quotation for Services

Confidential Information	<p>[Include details in table below or insert Not Applicable]</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Agency Confidential information (for example)</th> <th style="text-align: center;">Period of Confidentiality</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Agency data</td> <td style="text-align: center;">Indefinitely</td> </tr> <tr> <td style="text-align: center;">Any Personal Information held by the Agency</td> <td style="text-align: center;">Indefinitely</td> </tr> <tr> <td style="text-align: center;">Security Classified Information</td> <td style="text-align: center;">Indefinitely</td> </tr> </tbody> </table>	Agency Confidential information (for example)	Period of Confidentiality	Agency data	Indefinitely	Any Personal Information held by the Agency	Indefinitely	Security Classified Information	Indefinitely
Agency Confidential information (for example)	Period of Confidentiality								
Agency data	Indefinitely								
Any Personal Information held by the Agency	Indefinitely								
Security Classified Information	Indefinitely								
Key Personnel Requirements									
Required Qualifications and Experience	[Include details of mandatory/desired qualifications, expertise, capacity and capability of Key Personnel, and whether or not they must have a security clearance]								
Other Requirements for Key Personnel	[For example, proposed 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 Agency. Any Contract will be conditional on this occurring]								
Additional Requirements									
Agency Data Storage Requirements	[Insert any Agency specific data storage requirement, for example whether data can or cannot be stored offshore and if a data breach response plan will be required (see clause 23.2)]								
Agency Security Requirements	[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']								
Liability	[The default liability cap is set out in clause 19. Specify if an alternate liability cap should apply. State any amendments to the exclusions to the liability cap, or other liability positions required]								
Agency Insurance Requirements	<p>[Insert any additional requirements (if any) for relevant insurances where these differ from the insurance amounts in the Head Agreement e.g.</p> <ul style="list-style-type: none"> a) Professional indemnity insurance for an insured amount of [\$ insert amount] per occurrence and not less than [\$ insert amount] in the aggregate; b) Public liability insurance for an insured amount of [\$ insert amount] per occurrence and not less than [\$ insert amount] in aggregate; and c) Workers compensation insurance as required by law; or <p>insert 'Not Applicable'. Where 'Not Applicable' is specified, the insurance requirements under the Head Agreement will apply]</p>								
Agency Service Levels	[Insert any proposed service level that apply to the delivery of the Services]								

<u>Request For Quotation for Services</u>	
Conditions/Restrictions for Personal Information	[State any additional conditions/restrictions for Personal Information contained in the Head Agreement, or that apply to particular aspects of work or insert 'Not Applicable']
Other Additional Requirements	[Include any other additional requirements, if applicable]
<i>Commonwealth Policy Requirements</i>	
Country of Tax Residency Disclosure	[For all procurements valued at \$200,000 or more, Service Providers must declare their country of tax residency (including their ultimate parent entity's country of tax residence), as part of the general business identifier information required by government policy.]
Shadow Economy Policy	[For procurements valued at \$4 million or more the Shadow Economy Policy applies. Agencies must obtain a Valid and Satisfactory Statement of Tax Record for any Partner that will be involved in the delivery of the Services]
Indigenous Procurement Policy	[For procurements valued at \$7.5 million or more, clause 16.4.4 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>	
<p>Responses to this RFQ will be evaluated against the following criteria: [Agencies should be able to select the evaluation criteria they wish to apply and/or include their own criteria].</p> <ul style="list-style-type: none"> • The Service Provider's demonstrated understanding of the Services required, including the identification of any key challenges and the management of risk. • The Service Provider's demonstrated capability and capacity to provide the services described in the Detailed Statement of Work to a very high standard and within the specified timeframes. • The Service Provider's demonstrated organisational experience in providing the similar services to the services described in the Detailed Statement of Work. • The relevant experience of nominated Key Personnel in providing the similar services to the services described in the Detailed Statement of Work [include any relevant qualifications, certifications, etc. required]. • The professional and other standards that your organisation would apply to the Services and the measures your organisation proposes to ensure that standards are maintained for the term of the Contract. <p>The extent to which the level and structure of fees proposed provides value for money for the Australian Government.</p>	
<i>Responding to this RFQ</i>	
<p>[Agencies will select from the requirements below and/or include their own requirements]</p> <p>The Service Provider is required to complete the following information:</p> <p>[Service Provider's Representative]</p>	

Request For Quotation for Services

[Service Provider's Name]

[Service Provider's Address]

[Service Provider's ABN]

[Service Provider's email address]

In responding to this RFQ, the Service Provider should:

- describe its understanding of the Services required, including the identification of any key challenges and the management of risk
- detail its capability and capacity to provide the services described in the Detailed Statement of Work to a very high standard and within the specified timeframes
- detail its organisational experience in providing the similar services to the services described in the Detailed Statement of Work
- detail the relevant experience of nominated Key Personnel in providing the similar services to the services described in the Detailed Statement of Work including any qualifications, certifications, affiliations that the nominated Key Personnel have
- describe the professional and other standards that your organisation would apply to the Services and the measures your organisation proposes to ensure that standards are maintained for the term of the Contract.

The Service Provider is also required to:

- identify any Subcontractors nominated to provide the services and their role in the delivery of the services
- 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

Schedule 6 – Order Template

Note to Service Provider:

This Schedule 6 provides an Order Template for the provision of Management Advisory Service to an Agency, 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 Agency Orders to provide efficiencies to Agencies and Service Providers, however, it will not be mandatory that Agencies use this Order Template or any equivalent smart form to Order Services from Service Providers.

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>Agency Order Information</i>	
Agency	[Insert Agency name]
Agency File Reference	[Insert Agency File Reference]
Order Number	[Insert Agency's reference number for this Order for Services]
Cost Centre	[Insert Agency'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 Agency may in its sole discretion extend the Initial Term of this Order for a further period or periods, up to [XX months/years], 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).]
<i>Statement of Work</i>	
Service Area	[Insert which Service Category within a Service Area the Services required relate to (Financial/Corporate/Commercial)]
Service Category	[Insert the relevant Service Category that the services relate to]

Order for Services

Service Sub-category	[Insert the relevant Service Subcategory that the services relate to]
Detailed Statement of Work	[Insert a detailed description of the Services required and any Associated Outputs, 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]
Milestones	[Insert proposed milestones for Services and link to payment]
Key Personnel	[Insert name and role of the Key Personnel (which may include Expert Personnel) accepted by the Agency for this Order, including any particular qualifications, expertise, capacity and capability, and whether or not they must have a security clearance]
Subcontractors	[Insert details of approved Subcontractors for this Order, or insert 'Not Applicable']
Location	[Insert the required work location/site, or insert 'Not Applicable']
Fees	[Insert details of fee structure e.g. fixed fee and any approved disbursement e.g. accommodation and travel (if applicable)]
Payment Terms	<p>[Select the relevant payment terms]</p> <p>[For Non-corporate Commonwealth entities: (a) five calendar days where the Agency 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]</p> <p>[For Agencies other than Non-corporate Commonwealth entities: [insert payment terms]]</p>
Invoicing	[the Agency will include any invoicing requirements]
Travel	[the Agency will select the relevant travel clauses].
Agency Material	[List any documents attached to the Order or insert 'Not Applicable']
Existing Material	[Insert details of any Existing Material or insert 'Not Applicable']
Contract Material	[Unless specified in the Statement of Work, insert details of any Contract Material]
Restrictions on use of Contract Material	[Insert any restrictions on use of the Contract Material by the Agency, where appropriate to the nature of the Services being provided, eg audit opinions.]
Restrictions on use of Service Provider's name, trade name or logo	[Insert any reasonable restrictions on the Agency's use of the name, trade name or logo of the Service Provider]

Order for Services

Confidential Information

[Include details in table below or insert Not Applicable. If approved by the Agency, relevant sections of the Service Provider's internal working papers may be specified as Service Provider Confidential information]

Agency Confidential information <i>(for example)</i>	Period of Confidentiality
Agency data	Indefinitely
Any Personal Information held by the Agency	Indefinitely
Security Classified Information	Indefinitely

The Service Provider Confidential information	Period of Confidentiality

Additional requirements

Internal Working Papers

[The default position under clause 20.4 is that the Service Provider is not required to deliver internal working papers (including Audit Working Papers) that are required to be retained under applicable Laws or professional standards. Specify if an alternate position should apply]

Intellectual Property

[The Agency should specify here if it wants to change the default position in clause 20.2.1 – and instead have the Agency own the IP in Contract Material. The default licence the Agency gets under 20.2.3 for Contract Material includes a right to transfer and sub-license, so any alternative position to this should be specified]

Key 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 Agency. 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 Agency 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]

Agency Data Storage Requirements

[Insert any Agency specific data storage requirement, for example whether data can or cannot be stored offshore, and/or requirements for a data breach response plan]

Security

[insert what requirements in the PSPF should apply]

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']

Conditions/Restrictions for Personal Information

[State any additional conditions/restrictions for Personal Information contained in the Head Agreement, or that apply to particular aspects of work or insert 'Not Applicable']

Order for Services

Liability	[The default liability cap is set out in clause 19. Specify if an alternate liability cap should apply. State any amendments to the exclusions to the liability cap, or other liability positions required]
Additional or alternate Requirements – insurance	<p>[Insert any additional requirements (if any) for relevant insurances where these differ from the insurance amounts in the Head Agreement e.g.</p> <p>a) Professional indemnity insurance for an insured amount of [\$ insert amount] per occurrence and not less than [\$ insert amount] in the aggregate;</p> <p>b) Public liability insurance for an insured amount of [\$ insert amount] per occurrence and not less than [\$ insert amount] in aggregate; and</p> <p>c) Workers compensation insurance as required by law; or</p> <p>insert 'Not Applicable'. Where 'Not Applicable' is specified, the insurance requirements under the Head Agreement will apply]</p> <p>[Insert if the Service Provider may self-insure for certain insurance amounts where this is permitted by law]</p>
Agency Service Levels	[Insert any Agency Service Levels that apply to the Order]
Service Provider termination right	[The default position under clause 26.2.3 of the Head Agreement is that the Service Provider may terminate the Contract due to Agency non-payment of Fees, or if the Agency breaches a material provision and does not remedy this within 40 Business Days after receiving a notice to remedy. Insert whether this position or an alternative position applies (including if different timeframes should apply)]
Termination for convenience costs in relation to Fees for Services calculated on a milestone basis	[The default position under clause 26.4.3(a) of the Head Agreement is that where Fees in an Order are calculated on a milestone basis, the Agency will pay Fees for Ordered Services completed before the date of termination for convenience on a time and materials basis where the Service Provider can substantiate this. Insert whether this position or an alternative position applies]
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.	
Agency Information	
Agency Representative	<p>Name: [Insert contact name]</p> <p>Position: [Insert title]</p> <p>Address: [Insert address, including postcode]</p> <p>Email: [Insert email address]</p> <p>Contact number: [Insert contact number, including area code]</p>

<u>Order for Services</u>	
Agency Address for Notices	<p>Physical Address: [Insert physical address for the Agency]</p> <p>Postal Address: [Insert the postal address for notices, if different to the physical address]</p> <p>Email: [Insert the email address for notices]</p>
Agency 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	<p>Name: [Insert contact name]</p> <p>Position: [Insert title]</p> <p>Address: [Insert address, including postcode]</p> <p>Email: [Insert email address]</p> <p>Contact number: [Insert contact number, including area code]</p>
Service Provider Address for Notices	<p>Physical Address: [Insert physical address for the Service Provider]</p> <p>Postal Address: [Insert the postal address for notices, if different to the physical address]</p> <p>Email: [Insert the email address for notices]</p>

Signed for and on behalf of
Commonwealth of Australia
as represented by the [insert Agency
name] [insert Agency 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 Agency name and ABN] (**Agency**); and
- B. [Name and ABN of Service Provider] (**Service Provider**)

Recitals

- A. The Agency 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 Deed of 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)	
4.	Implementation date of variation	
5.	Effect on services	
6.	Plan for implementing the change [if any]	
7.	Effect on price [if any]	
8.	Effect on service levels [if any]	
9.	Other relevant matters (e.g. transitional impacts)	

Variation to Order:

[Insert description of variation]

Agency _____
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, Agencies 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 Agencies 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 Agencies who are the recipient of Services provided under the Head Agreement.
- 1.4. Where an Agency 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

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

2.2. Quality

- 2.2.1 The following Quality performance measures apply to the Head Agreement:
 - (a) the capability and availability of Key Personnel;
 - (b) documentation provided to high standard; and
 - (c) the Services provided met the Agency needs, and requirements of the Order.

2.3. Communication

- 2.3.1. The following Communication performance measures apply to the Head Agreement:
 - (a) proactive and effective communication with the Agency;
 - (b) responsiveness; and

- (c) Agency reference numbers included in all correspondence.

2.4. **Contract Performance**

2.4.1. The following Contract Performance measures apply to the Head Agreement:

- (a) understanding of the Agency's needs;
- (b) effective management of timelines;
- (c) effective budget management;
- (d) service provision managed diligently; and
- (e) 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 the Head Agreement are outlined in Table 1 of this Schedule 7.

3.2 The Service Levels apply from the Commencement Date.

3.3. **Responsibilities of the Service Provider**

3.3.1. The Service Provider will use its best endeavours to meet or exceed the Service Levels during the Head Agreement Period.

3.3.2. The Service Provider will make all relevant Key Personnel and Subcontractors aware of the Service Levels.

3.4. **Adjustments to the Service Levels**

3.4.1. The Service Provider and Finance, both acting reasonably, may from time to time agree to adjust, remove or include new Service Levels, if:

- (a) Service Levels require adjustment through the Head Agreement Period;
- (b) additional Service Levels are required; or
- (c) 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 by Deed of Variation in accordance with clause 31.2 of the Head Agreement.

3.5. **Assessing Service Levels**

3.5.1. Finance will assess the Service Provider's compliance with the Service Levels in accordance with this Schedule 7 and may:

- (a) consider the Service Provider's performance against the Performance Management Framework, including performance trends;

- (b) request and consider additional information from Agencies;
- (c) use the results from any Agency satisfaction survey;
- (d) consider any information provided by the Service Provider at a contract management meeting; and
- (e) consider information obtained through an audit conducted under clause 29 of the Head Agreement.

3.6. Process for determining a Service Level Failure

- 3.6.1. 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.
- 3.6.2. 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.
- 3.6.3. Clauses 3.6.1 and 3.6.2 of this Schedule 7 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 Agency.

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

- 3.7.1. In the event of a Service Level Failure, 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.
- 3.7.2. If the failure is not possible to rectify, the plan must describe how the Service Provider will ensure the failure does not happen again.
- 3.7.3. The Service Provider must make any changes to the plan required by Finance, and implement the plan once approved by Finance.
- 3.7.4. Finance may communicate the Service Level Failure and any established interim processes or procedures with Agencies.
- 3.7.5. The Service Provider must give notice to Finance when any Service Level Failure has been corrected and where relevant, outline the corrective action taken and steps developed to prevent future failures of a similar nature.
- 3.7.6. 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:
 - (a) requiring the Service Provider to remedy a Service Level Failure in accordance with clause 3.7 of this Schedule 7; and
 - (b) enforcing its rights in clause 25 of the Head Agreement.

- 3.8. Service Provider’s responsibility to correct a Service Level Failure under an Order**
- 3.8.1. Where an Order includes Agency Service Levels, in the event of a Service Level Failure, the Agency may request that the Service Provider provide the Agency with a plan to remedy the failure, including a due date for correcting the failure.
- 3.8.2. If the failure is not possible to rectify, the plan must describe how the Service Provider will ensure the failure does not happen again.
- 3.8.3. The Service Provider must make any changes to the plan required by the Agency, and implement the plan once approved by the Agency.
- 3.8.4. The Service Provider must give notice to the Agency when any Service Level Failure has been corrected and where relevant, outline the corrective action taken and steps developed to prevent future failures of a similar nature.
- 3.8.5. An Agency may report a Service Level Failure 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 – Service Levels and Minimum Expected Performance

Service Level No	Service Level & Minimum Expected Performance	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)	The Service Provider’s provision of the Services as detailed in an Order to the satisfaction of the Agency.	Finance will determine the level of compliance with this Service Level by analysing Agency reports on the Service Provider’s performance against the Performance Management Framework.
<u>SL4</u>	<u>Notification of security incident or breach</u> (In accordance with the requirement of clause 23)	100% compliance with the requirement to immediately notify Finance and any relevant Agency if there is a Security Incident or a breach of any of the Service Provider’s obligations under clause 23, by the Service Provider or any of its Personnel or Subcontractors.	Any instance where Finance and any relevant Agency are not immediately notified of a Security Incident or a breach of any of the Service Provider’s obligations under clause 23 is a service failure.

Schedule 8 – Reporting

1. Introduction

- 1.1. The purpose of this Schedule 8 is to outline the reporting requirements agreed between Finance and the Service Provider.

2. File Naming Convention

- 2.1. Reports are to 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 'servinv'.

Date is the date of the report using a YYYY_MM format, i.e. for May 2024, the date would be 2024_05.

The file name would be ABN_servinv_2024_05

3. Formatting Standards

- 3.1. Formatting standards for each report are detailed in the Report Specifications in Table 2, with following additional formatting standards to apply:
- (a) case sensitivity, where values that are intended to be the same are truly identical and do not differ in case sensitivity or through abbreviation;
 - (b) 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;
 - (c) files are to be provided as comma-separated values (CSV) using semi-colon text delimited format, or any other format reasonably requested by Finance;
 - (d) files must be compatible with Microsoft Excel 2007, and later versions, unless otherwise advised by Finance; and
 - (e) 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.
- 3.2. 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.

4. Report Timing Requirements

- 4.1. The Service Provider must provide reports in accordance with the reporting schedule presented in Table 1.

Table 1: Service Provider Reporting Schedule

Report	Schedule
Services Invoice Report	Within 15 Business Days of the end of each quarter, by the end of: <ul style="list-style-type: none">• September - quarter 1• December - quarter 2• March – quarter 3• June – quarter 4

- 4.2. The Service Provider must submit a Services Invoice Report, whether or not any Agency invoices have been paid in the reporting period.
- 4.3. In the case where no Agency invoices have been paid in the reporting period, the Service Provider is only required to complete positions A, B, C, D and E in Table 2 below to complete and submit a compliant Services Invoice Report for the reporting period.

5. File Transfer Requirements and Security

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

6. Report Specifications

- 6.1. The Service Provider agrees to provide the reports in the format specified in this clause.

6.2. Services Invoice Report

- 6.2.1. The Service Provider must provide to Finance the Services Invoice Report in the format detailed in the Services Invoice Report Specification in Table 2 of this clause 6.2.
- 6.2.2. The Services Invoice Report is to be provided at the times specified in the Reporting Schedule in Table 1 of clause 4 of this Schedule.
- 6.2.3. Only Services that have been invoiced and paid in full by an Agency within the reporting period are to be included in Services Invoice Report for the reporting period.

Table 2: Services Invoice Report Specification

Position	Format	Header Name	Purpose	Reference Table	Notes
A	N	ABN	To uniquely identify the Service Provider.		The Australian Business Number (ABN) of the Service Provider as stated in the Head Agreement
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	A	FY	To identify the financial year the invoice was paid.	2023 2024 2025 2026 2027	The main purpose of this field is to qualify which financial year an invoice relates to.
D	A	FY_QTR	To identify the reporting quarter the invoice was paid.	Q1 Q2 Q3 Q4	The main purpose of this field is to qualify which quarter within a financial year an invoice relates to.
E	A	INVS_PAID	To provide indication of invoices paid within the reporting period.	Yes No	The main purpose of this field is to provide a simple mechanism for Service providers that have not had any invoices paid within the reporting period to report to Finance.
F	N	AGENCY_ABN	To provide the ABN for the Agency that has paid the invoice.		The Agency ABN allows Finance to manage a range of administrative functions related to the Panel, which includes consolidated Panel reporting.
G	AN	AGENCY_CNT	To identify the Agency contact for the invoice paid.		This is to be the email address for the Agency contact from the Order. This information is to provide Finance with an Agency point of contact to resolve any incorrect reporting of invoices paid by an Agency.
H	AN	ORDER_NO	To identify the Agency Order number for the invoice paid.		The Order number must be the Order number specified by an Agency in an Order, and must relate to the invoice paid by the Agency. The Order number may be a purchase order or contract number or an Agency identifier.
I	AN	COST_CENTRE	To identify the Agency's cost centre		To be included if provided by the Agency
J	AN	INVOICE_NO	To provide a unique reference for any clarification on the Services provided by the Service Provider.		Note: Only invoices paid in full are to be included in this report. Unlimited format.
K	N	GST_EXCL	The GST exclusive amount for the invoice paid by the Agency.		Numeric value in AU\$ to two decimal points. The may include negative amounts.
L	N	GST_AMOUNT	The GST amount for the invoice paid by the Agency.		Numeric value in AU\$ to two decimal points.
M	N	INV_TOTAL	Total invoice amount (inclusive of GST) paid by the Agency.		Numeric value in AU\$ to two decimal points.
N	A	SRVC_AREA	To allow Finance to undertake analysis of expenditure by Service Area.	Financial Corporate Commercial	To align with the Service Area as stated in an Order. The text for the relevant Service Area must match the reference table exactly.
O	A	SRVC_CAT	To allow Finance to undertake analysis of expenditure by the Service Category.	<u>For the Financial Service Area</u> Accounting Financial Advisory Financial Audit Actuarial <u>For the Corporate Service Area</u> Organisational Planning & Development Human Resources Corporate Governance Internal Audit	To align with the Service Category for the Service Area as stated in an Order. The text for the relevant Service Category must match the reference table exactly.

Position	Format	Header Name	Purpose	Reference Table	Notes
				<u>For the Commercial Service Area</u> Government Policy Programs and Projects Procurement & Probity Risk Research	

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	Pricing in Schedule 4 – Commercial Management Advisory Services	Commercially sensitive	If a specified time, put that in. If something like ‘in perpetuity’ insert: For the Head Agreement Period plus an additional seven years
2			

Note that the Service Provider’s hourly rates are listed in the table above and, as such, are the Service Provider’s Confidential Information. However, in accordance with clause 22.2.1(c) of this Head Agreement, this does not prevent Finance disclosing the Service Provider’s hourly rates to other Agencies who may wish to acquire Services from the Panel.

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)	
4.	Implementation date of variation	
5.	Effect on services	
6.	Plan for implementing the change [if any]	
7.	Effect on price [if any]	
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



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 Management Advisory 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] (**Outgoing Service Provider**);

and

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

Background

- A. Finance has established a Management Advisory Services Panel for the Australian Government to which the Outgoing Service Provider has been appointed.
- B. The Management Advisory Services 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 Management Advisory Services 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.
Agency	(a) the following entities, organisations or persons authorised by Finance to obtain Services from the Service Provider under this Deed: (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.
Contract	a contract for the provision of Services formed between the Outgoing Service Provider and an Agency in accordance with the terms of the Head Agreement.
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 Management Advisory Services for the Australian Government.
Management Advisory Services Panel	the Whole of Australian Government Management Advisory Services 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 A\$, \$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 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:

Schedule 12 – Personnel Classifications and Expected Work Level Standards

Personnel classification	Expected work level standard
Level 6	<p>A Level 6 classification is fully responsible for the Service Provider's delivery of all aspects of the Ordered Services.</p> <p>A Level 6 is fully accountable for actions taken and decisions made, both by themselves and other Service Provider Personnel assigned work in connection with the Ordered Services.</p> <p>A Level 6 will have a broad and deep knowledge of the Service Category under which the Services relate.</p> <p>It is expected that a Level 6 would hold, as a minimum, undergraduate and post graduate degrees relevant to the area(s) of specialisation or similarly regarded qualification or have extensive relevant experience. A Level 6 may hold professional body senior membership, and professional body certifications.</p>
Level 5	<p>A Level 5 classification has authority and accountability for the delivery of the Ordered Services. A Level 5 will oversee the work of a Level 4 and Level 3.</p> <p>A Level 5 will have a deep understanding of their own specialisation(s) within a Service Category, and performs highly complex work activities.</p> <p>It is expected that a Level 5 would hold undergraduate and post graduate degrees relevant to the area(s) of specialisation or similarly regarded qualification or have extensive relevant experience. A Level 5 may hold professional body certification in area(s) of specialisation.</p>
Level 4	<p>A Level 4 is fully responsible for meeting allocated tasks and is responsible for the assignment of tasks and/or responsibilities in the delivery of the Ordered Services.</p> <p>A Level 4 performs an extensive range and variety of work activities within their own area(s) of specialisation in the delivery of the Ordered Services.</p> <p>It is expected that a Level 4 would hold an undergraduate degree relevant to the area(s) of specialisation or similarly regarded qualification or substantial relevant experience. A Level 4 may hold professional body certification in area(s) of specialisation.</p>
Level 3	<p>A Level 3 works under broad direction, often self-initiated, and is responsible for meeting allocated tasks relating to the Ordered Services. A Level 3 will oversee the work of a Level 2 and Level 1.</p> <p>A Level 3 performs a range and variety of work activities within their own area(s) of specialisation in the delivery of the Ordered Services.</p> <p>It is expected that a Level 3 would hold an undergraduate degree relevant to the area(s) of specialisation or similarly regarded qualification or substantial relevant experience. A Level 3 may be a member of a professional body in area(s) of specialisation.</p>

Level 2

A Level 2 works under general direction within a clear framework of accountability for their area of responsibility. A Level 2 uses their own discretion when resolving minor problems or external enquiries.

A Level 2 has a good understanding of their own specialisation(s) within a Service Category and performs routine work activities.

It is expected that a Level 2 would hold an undergraduate degree relevant to the area(s) of specialisation or similarly regarded qualification or have adequate relevant experience.

Level 1

A Level 1 may be at the beginning of their consulting career and will typically do work to support Level 2, Level 3 and Level 4 in data collection and analysis, workshop support, etc.

A Level 1 has a sound generic, domain and specialist knowledge and performs work under supervision.

It is expected that a Level 1 would hold an undergraduate degree or similarly regarded qualification or adequate relevant experience.

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