

Official Order No 1 for the Deed of Standing Offer in relation to Services for Health Data Analytics Panel
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- (f) allow any person who does not have the appropriate level of security clearance from gaining access to Health Data; or
- (g) commercially or otherwise exploit Health Data,
- without the Customer's prior written consent (from the Customer Contract Liaison Officer).
- 4.3 The Contractor must ensure that it has in place, at all times, safeguards for all matters within its control against the unauthorised access, misuse, damage, destruction, loss, alteration or corruption of Health Data (including by third parties) which is in the possession of the Contractor, its subcontractors or Contractor Personnel. The Parties agree:
- (a) the Contractor must ensure that such safeguards comply with any other security procedures or requirements specified by the Customer from time to time and all applicable Laws; and
- (b) because the Contractor will be accessing the Health Data at the Customer's premises, the Customer also has responsibility for ensuring the security of that Health Data, including an obligation to ensure those premises and the Health ICT Environment contain safeguards to prevent unauthorised access, misuse, damage, destruction, loss, alteration or corruption of Health Data (including by third parties). However, the Customer's obligations are impacted by the Contractor's access to the Health ICT Environment and the Customer's obligations must be read subject to the Contractor's access requirements.
5. **Compliance with Customer Security requirements**
- 5.1 The Contractor must, and must ensure that its subcontractors and Contractor Personnel, comply with all relevant security procedures and other security requirements:
- (a) as set out in **Attachment B - Statement of Requirement**; or
- (b) as otherwise specified by written notice from the Customer from time to time.
- 5.2 The Contractor must comply with any such security procedure or other security requirement immediately if directed by the Customer or, if no direction is given, within a reasonable time, having regard to the nature of the requirement.
- 5.3 The Contractor must send the Customer a notice identifying any potentially relevant security procedure or other security requirement of the Customer of which it is aware and which has not been otherwise specified in a notice in accordance with **clause 5.1**.
- 5.4 The Contractor acknowledges the Customer may undertake assessments from time to time to verify that the Contractor complies with the requirements set out in **clause 17** of the Terms and Conditions.
- 5.5 The Contractor must:
- (a) comply with all relevant requirements of the Commonwealth Protective Security Policy Framework at <http://www.protectivesecurity.gov.au>, as amended or replaced from time to time and its Protective Security Protocols, including the Protective Security Governance Guidelines - Security of outsourced services and functions and the Information Security Manual at <http://www.asd.gov.au/infosec/ism/index.htm>;
- (b) comply with the requirements of the Information Security Manual, as amended from time to time;

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- (c) ensure that Contractor Personnel and subcontractors undertake any security checks, clearances or accreditations as required by the Customer; and
- (d) notify the Customer of any changes to circumstances which may affect the Contractor's capacity to provide the Services in accordance with the Customer's security requirements.
- 5.6 Security Classified Information furnished or generated under this Contract, must not be released to a third party, including a representative of another country, without prior written acceptance of the originator through the Customer Contract Liaison Officer.
- 5.7 In giving any acceptance to the Contractor under **clause 5.6**, the Customer Contract Liaison Officer may impose such conditions as the Customer Contract Liaison Officer thinks fit, including conditions requiring any recipient of Security Classified Information to obtain a level of security clearance and to enter into a deed in a form acceptable to the Customer.
- 5.8 The Contractor must promptly report to the Customer Contract Liaison Officer any instance in which it is known or suspected that Security Classified Information furnished or generated under this Contract has been lost or disclosed to unauthorised persons, including a representative of another country.
- 5.9 The Contractor must not transit any Health Data outside the Customer's premises without the Customer's prior written approval, which approval may be given or not given at the Customer's absolute discretion.
- 5.10 If there has been a breach of **clause 5.9** by the Contractor, Contractor Personnel or a subcontractor, the Customer Contract Liaison Officer may give the Contractor a notice of immediate termination for default under **clause 21** of the Terms and Conditions.
- 5.11 The Contractor must ensure that the requirements of this **clause 5** are included in all subcontracts where the subcontractor requires access to any Commonwealth place, area or facility, or to Security Classified Information, in order to perform the obligations of the subcontract.
- 6. Commonwealth Data Protection Plan**
- 6.1 The Contractor must comply with the Commonwealth Data Protection Plan, as updated from time to time, in its provision of the Services. While the Contractor's cost of doing so is included in the fees charged by the Contractor, subject to this **clause 6**, the Contractor and the Contractor Personnel are not responsible for any failure, delay or defect in providing the Services due to compliance with the Commonwealth Data Protection Plan.
- 6.2 The Contractor must review the Commonwealth Data Protection Plan within 10 Business Days after receiving it and inform the Customer via the Steering Committee of any concern it has in relation to that Commonwealth Data Protection Plan in relation to that plan's impact on Service delivery.
- 6.3 The Parties will negotiate in good faith to determine whether any adjustments are required to Service delivery. Once agreed the Contractor must comply with the Commonwealth Data Protection Plan as adjusted and the relief in **clause 6.1** does not apply.
- 7. Return of Health Data**
- 7.1 Upon the Customer's request, or on expiry or termination of this Contract, the Contractor must:
- (a) promptly return all Health Data and all physical and written records containing any of the Customer's Confidential Information, and all Documentation relating to or concerning that Health Data and Customer Confidential Information (or the part the Customer requests) (including copies) to the Customer in a form reasonably

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requested by the Customer. Return will primarily occur by leaving the Health Data on site at the Customer's premises unless the Contractor has removed items in which case those items and copies must be returned; or

- (b) if requested by the Customer:
 - (i) destroy that Health Data and the Customer's Confidential Information (including copies) in the manner specified by the Customer or otherwise deal with these items in the manner specified by the Customer; and
 - (ii) promptly certify to the Customer in writing that it has done so.
- 7.2 Without limiting **clause 7.1**, upon the Customer's request, or on expiry or termination of this Contract, the Contractor must:
- (a) provide the Customer with access to, and the ability to retrieve any Health Data (at no additional charge);
 - (b) comply with any directions of the Customer in relation to the destruction or de-identification of Health Data;
 - (c) not destroy any Health Data unless it has the prior written approval of the Customer to do so; and
 - (d) return all Health Data in the format it is provided by the Customer unless amended by the Contractor in which case the latter must also be returned.

8. **Breaches of data security**

8.1 The Contractor must notify the Customer Contract Liaison Officer immediately and comply with all directions of the Customer if the Contractor becomes aware of:

- (a) any contravention of the Customer's data security requirements; and
- (b) any requests from foreign governments or agencies for access to any Health Data.

8.2 If the Contractor becomes aware of any actual or suspected:

- (a) action taken through the use of computer networks that result in an actual or potentially adverse effect on the Customer's systems (including those operated by the Contractor to provide the Services to the Customer) or any Health Data (**Cyber Incident**); or
- (b) any other unauthorised access, misuse, damage, destruction, loss, alteration or corruption of Health Data by any person (**Other Incident**),

the Contractor must:

- (c) notify the Customer in writing immediately (and no later than twelve (12) hours after becoming aware of the Cyber Incident or Other Incident); and
- (d) comply with any directions issued by the Customer in connection with the Cyber Incident or Other Incident, including in relation to:
 - (i) notifying CERT Australia, or any other relevant body, as required by the Customer;
 - (ii) obtaining evidence about how, when and by whom the Customer's systems (including those operated by the Contractor to provide the

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Services to the Customer) or Health Data has or may have been compromised, and preserving and protecting that evidence for no less than twelve (12) months;

- (iii) implementing any mitigation strategies to reduce the impact of the Cyber Incident or Other Incident or the likelihood or impact of any future similar incident; and
- (iv) preserving and protecting Health Data (including as necessary reverting to any backup or alternative site or taking other action to recover Health Data).

8.3 The Contractor must ensure that:

- (a) all subcontracts and other supply chain arrangements, which may allow or cause access to Health Data, contain no provisions that are inconsistent with **clauses 8.1** or **8.2**; and
- (b) all Contractor Personnel and any subcontractors who have access to Health Data act in a manner that is consistent with the Contractor's obligations under this **clause 8**.

9. Misuse of Health Data

9.1 The Contractor acknowledges and agrees that:

- (a) any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of information held in any computer (or, in some cases, any storage device) in the course of providing the Services may be an offence under Part 10.7 of the Criminal Code Act 1995 (Cth) of which there are a range of penalties, including a maximum of 10 years imprisonment;
- (b) the giving of false or misleading information to the Customer or Customer Personnel is a serious offence under Division 137 of the Crimes Act 1914 (Cth); and
- (c) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of this Contract (other than to whom the Contractor is authorised to publish or disclose the fact or document) may be an offence under sections 70 and 79 of the Crimes Act 1914 (Cth), the maximum penalty for which is seven (7) years imprisonment.

10. Warranty in respect of Health Data

10.1 Without limiting any other provision in this Contract, the Contractor represents and warrants that, except as otherwise directed in writing by or agreed in writing with the Customer:

- (a) no Health Data will be accessed without authorisation, misused, damaged, destroyed, lost, altered or corrupted in the course of the provision of the Services as a result of a breach by the Contractor or any of the Contractor Personnel or subcontractors of the obligations set out in this Contract; and
- (b) all Health Data required to be migrated or otherwise transferred between any component of the Health ICT Environment will retain at least the same degree of integrity, functionality and useability following any migration or transfer.

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11. **Contractor Material**

11.1 The Contractor will at all times own and retain all rights, title and interest (including Intellectual Property rights) in and to all Contractor Material (including Modifications of or to it) regardless of whether created before, during or after this Contract.

11.2 Subject to **clause 12**:

- (a) the Contractor grants to the Customer a royalty free, non-exclusive and world-wide licence (including a right to sublicense) to access, copy, reproduce and use for the duration of the Contract but not to commercialise, all Contractor Material (including Modifications of or made to Contractor Material in the performance of the Services) for the purposes of the Customer's data requirements; however
- (b) the Parties acknowledge and agree the licence referred to in **clause 11.2(a)** does not include any licence or right to use the Contractor's Platform or Implemented Contractor's Platform, the treatment of which is solely governed by the limited licence granted by the Contractor to the Customer in **paragraph 1.3 of Attachment B - Statement of Requirement**.

11.3 The licence granted by the Contractor to the Customer under **clause 11.2(a)** will take effect from the date on which Contractor Material is first used by the Contractor to perform the Services without the need for the Parties to effect any further Documentation. However, the Contractor agrees to execute any additional Documentation in a form reasonably required by the Customer that is necessary to give full effect to such licence upon the Customer's written request from time to time.

12. **Contract Material**

12.1 All rights (including Intellectual Property rights), title and interest in Contract Material (including any Modification of that Contract Material) are assigned to and vest in the Contractor at the time of their creation by virtue of this **clause 12**.

12.2 The Contractor:

- (a) grants to the Customer a perpetual, irrevocable, royalty free, non-exclusive and world-wide licence (including a right to sublicense) to copy, reproduce, Modify, communicate, distribute and use any Contract Material (including any Modification of that Contract Material) for any purpose; however
- (b) the Parties acknowledge and agree the licence referred to in **clause 12.2(a)** does not include any licence or right to use the Contractor's Platform or Implemented Contractor's Platform, the treatment of which is solely governed by **paragraph 1.3 of Attachment B - Statement of Requirement**.

12.3 The Contractor may exploit the Contract Material for any commercial purpose with the prior written approval of the Customer. The Customer may impose reasonable conditions on approval to protect Customer privacy, security and commercial interests.

12.4 If the Contractor embeds any Contractor Material or any other Existing Material, including Third Party Material, into Contract Material the licence in **clause 12.2** applies to that embedded material (**Embedded Material**), provided that the Embedded Material is used only in conjunction with the relevant Contract Material and not on a standalone basis.

12.5 On the expiration or termination of this Contract, the Contractor must promptly deliver to the Customer a copy of all Contract Material and any Embedded Material.

13. **Customer Material**

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- 13.1 Subject to **clause 13.5**, during the Term, the Customer grants to the Contractor for the duration of the Contract, a revocable, non-exclusive, royalty-free and licence-fee free licence to access, use, copy and reproduce any Customer Material to meet the requirements of this Contract (including the right to grant a sub-licence to subcontractors on the same terms for the sole purpose of meeting the requirements of this Contract).
- 13.2 The Contractor must not, and must ensure that its subcontractors and Contractor Personnel do not, Modify any Customer Material without the prior written consent of the Customer. The Customer hereby consents to Modifications necessary for the performance by the Contractor of its obligations under this Contract.
- 13.3 If the Contractor, its subcontractors or Contractor Personnel or any person on behalf of the Contractor or a subcontractor Modifies Customer Material, then the Contractor assigns or will ensure the assignment of (as the case may be) all title to and Intellectual Property rights, in the Modification and all Material created in designing and making the Modification to the Customer Material, to the Customer with effect on and from the date on which the Modification was made or the Material was created. Except for reports generated by the Contractor's Platform or the Health ICT Environment as a result of use of the Contractor's Platform, this **clause 13.3** does not apply to any Customer Material that is generated by software or equipment (including the Contractor's Platform or Implemented Contractor's Platform) as a consequence of its inherent operation and which does not allow identification of the Customer, its functions or any particular individual (including non-identifiable log files, software and equipment performance data or other system operating information).
- 13.4 The Contractor must do all things necessary (including, at the Customer's option, ensuring that a subcontractor, Contractor Personnel or other person enters into a deed of assignment of Intellectual Property rights with the Customer) to confirm that the ownership of that Modification and Material and those Intellectual Property rights referred to in **clause 13.3** passes to the Customer on the date of creation of the Modification and the Material.
- 13.5 The Customer will notify the Contractor of any third party terms and conditions that apply to the Customer Material and the Contractor must comply with those third party terms and conditions.
- 13.6 If in the Customer's opinion any third party terms and conditions notified under **clause 13.6** are inconsistent with the Customer's obligations under this Contract, or otherwise impose additional obligations or liability on the Contractor, the Contractor and the Customer will in good faith discuss any required amendments to those terms and conditions and, if agreed, seek those amendments from the relevant third party. Until such time as those amendments are agreed to by the relevant third party to the Parties' satisfaction, the relevant Customer Material will not be used in connection with the Services.

14. **Warranties**

- 14.1 The Contractor represents and warrants that:
- (a) it has or will have the necessary rights to vest the Intellectual Property rights and grant all necessary licences or sublicences under this Contract;
 - (b) it will not infringe any person's Intellectual Property rights and Moral Rights in performing the Services;
 - (c) it will not, nor will it suffer or permit Contractor Personnel or any third party under its direction or control to negligently or wilfully introduce into the Customer's systems or any software, any Harmful Code; and
 - (d) if any Harmful Code is introduced into the Customer's systems or any software, whether through breach of this Contract or otherwise, the Contractor must:
 - (i) immediately report that introduction to the Customer;

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- (ii) in consultation with the Customer take all necessary action to eliminate the Harmful Code; and
- (iii) promptly repair any harm or destruction caused by that Harmful Code, subject to any directions from the Customer.

15. **Personnel Security Clearances**

15.1 The Contractor must ensure that the Contractor Personnel that it utilises have the requisite skills, qualifications, experience and security clearances necessary to properly perform the Services in accordance with this Contract. The Contractor must obtain at its own cost any necessary security clearances required by this Contract, including as required in **paragraph 7 of Attachment B - Statement of Requirement**.

15.2 The Customer may, from time to time, notify the Contractor of additional or varied levels of security or access clearance required for Contractor Personnel, and the date from which, or the period during which, that clearance will be effective and the Contractor must comply with an ensure its subcontractors and Contractor Personnel act in accordance with that notice. The Contractor is entitled to recover its additional substantiated (to the Customer's satisfaction) costs (if any) of complying with the additional or varied requirements from the Customer.

16. **Restraints on Engagement of Commonwealth Personnel**

16.1 Subject to **clause 17.1**, the Contractor must not, and must ensure that its Contractor Personnel, subcontractors and any Related Body Corporate do not:

- (a) solicit, entice away or attempt to solicit or entice away any Key Commonwealth Personnel from continuing to be Engaged by the Customer or the Commonwealth (as applicable), either on behalf of the Contractor or any other person; or
- (b) Engage any Key Commonwealth Personnel,
during the period:
 - (c) commencing on the Contract Commencement Date and continuing for six (6) months after the date on which this Contract expires or is terminated;
 - (d) if the period mentioned in **clause 16.1(c)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing for three (3) months after the date on which this Contract expires or is terminated;
 - (e) if the period mentioned in **clause 16.1(d)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing for two (2) months after the date on which this Contract expires or is terminated;
 - (f) if the period mentioned in **clause 16.1(e)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing for one (1) month after the after the date on which this Contract expires or is terminated; or
 - (g) if the period mentioned in **clause 16.1(f)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing until the date this Contract expires or terminates.

16.2 Subject to **clause 17.2**, the Customer must not, and must ensure that its personnel do not:

- (a) solicit, entice away or attempt to solicit or entice away any Contractor Personnel from continuing to be Engaged by the Contractor, either on behalf of the Customer or any other person; or

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- (b) Engage any Contractor Personnel,
during the period:
- (c) commencing on the Contract Commencement Date and continuing for six (6) months after the date on which this Contract expires or is terminated;
- (d) if the period mentioned in **clause 16.2(c)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing for three (3) months after the date on which this Contract expires or is terminated;
- (e) if the period mentioned in **clause 16.2(d)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing for two (2) months after the date on which this Contract expires or is terminated;
- (f) if the period mentioned in **clause 16.2(e)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing for one (1) month after the date on which this Contract expires or is terminated; or
- (g) if the period mentioned in **clause 16.2(f)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing until the date this Contract expires or terminates.

17. **Enforceable restraint**

17.1 The Contractor will not be in breach of a restraint contained in **clause 16.1** if the Customer gives its prior written consent to the Contractor, Contractor Personnel, subcontractors or Related Body Corporate to:

- (a) solicit any Key Commonwealth Personnel; or
(b) Engage any Key Commonwealth Personnel,

who is specified by the Customer in giving such consent or is recruited by the Contractor as part of a public recruitment process.

17.2 The Customer will not be in breach of a restraint contained in **clause 16.2** if the Contractor gives its prior written consent to the Customer to:

- (a) solicit any Contractor Personnel; or
(b) Engage any Contractor Personnel,

who is specified by the Contractor in giving such consent or is recruited by the Customer as part of a public recruitment process.

17.3 The restraints contained in **clauses 16.1** and **16.2** will be regarded as separate, distinct and several as regards each time period so that the unenforceability of a restraint in respect of one time period will not affect the enforceability of the others.

17.4 For the purposes of **clauses 16.1, 16.2, 17.1** and **17.2**:

- (a) 'Key Commonwealth Personnel' means any Customer Personnel or other personnel of the Commonwealth who are or have been working in the Health Provider Compliance Division; and
(b) 'Engagement' means to engage in any capacity including without limitation as an employee, consultant, adviser, partner, contractor or agent, and 'Engage', 'Engaged' and 'Engaging' have a like meaning.

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18. **Waiver**

- 18.1 A waiver of any provision of, or right under this Contract:
- (a) must be by notice from the Party entitled to the benefit of that provision or right; and
 - (b) is effective only to the extent set out in such notice.
- 18.2 The fact that a Party fails to do (or delays in doing) something the Party is entitled to do under this Contract, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 18.3 The Contractor may request that the Customer waive some or all of the requirements under this Contract. The Customer will consider any such written request and may at its absolute discretion determine to waive any of the requirements of this Contract in accordance with **clause 18.1**.
- 18.4 In granting a waiver under **clause 18.1**, the Customer may impose such conditions that the Customer thinks fit at its absolute discretion, and the Contractor agrees to comply with these conditions, unless the Contractor declines the waiver.
- 18.5 Waivers will be recorded in a Waiver Manual that will be maintained by the Customer and which will be made available to the Contractor on request.

19. **Written undertakings**

- 19.1 The Customer may, at any time, require the Contractor to arrange for any of its Contractor Personnel (other than a person employed under the *Public Service Act 1999* (Cth)) to whom Confidential Information may be disclosed to give a written undertaking in the form set out at **Attachment D - Health Deed of Confidentiality** relating to the use and non-disclosure of the Customer's Confidential Information.
- 19.2 The Contractor must arrange for its Contractor Personnel to execute a deed in the form of **Attachment D - Health Deed of Confidentiality** before Health Data is given to those Contractor Personnel.
- 19.3 If the Contractor receives a request under **clause 19.1**, it must promptly arrange for all such undertakings to be given and must provide copies to the Customer.

20. **Performance Management**

- 20.1 The Contractor acknowledges and agrees that:
- (a) the Customer has relied on the Contractor's representations, as reflected in this Contract, and on the Contractor's ability to:
 - (i) meet the Objectives;
 - (ii) comply in full with the quality, architectural, functional and performance requirements for the Services; and
 - (iii) meet the performance management framework specified in this Contract;
 - (b) the Customer's value for money assessment of the Contractor's representations depends on the Contractor complying in full with this Contract; and
 - (c) the Objectives operate in addition to, and so as to supplement, the Contractor's obligation to provide the Services.

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- 20.2 The Parties agree that the fees may be adjusted to reflect the application of Rebates in accordance with the performance management framework specified in **Attachment C - Pricing**. The Parties acknowledge that any adjustment on this basis is reasonable and represents the level of value provided to the Customer.
- 20.3 The Parties will comply with the details in the performance management framework specified in **Attachment C - Pricing** including in relation to measuring and reporting on the Contractor's performance under this Contract.
21. **State and Territory Laws**
- 21.1 The Contractor must also comply with its obligations under any relevant State or Territory privacy Law in its provision of the Services.
22. **Liability Cap**
- 22.1 The liability of a Party for breach of this Contract, or in tort (including negligence), or for any other common law, equitable or Statutory or other cause of action arising out of, or in connection with the operation of this Contract, will be determined under the relevant Law in Australia that is recognised, and would be applied, by the High Court of Australia.
23. **Limitation of Liability - the Customer and the Contractor**
- 23.1 The liability of each of the Customer and the Contractor arising out of or in connection with a breach of this Contract, or in tort (including negligence) or for any other common law, equitable, Statutory or other cause of action arising out of, or in connection with the operation of this Contract (including under any indemnity) is, subject to **clause 22.1**, limited to an amount equal to \$13,476,420 (excluding GST) in the aggregate.
- 23.2 The limit on the liability of the Customer or the Contractor under **clause 23.1** does not apply in relation to liability relating to:
- (a) personal injury (including sickness and death);
 - (b) loss of or damage to, tangible property;
 - (c) an infringement of Intellectual Property rights;
 - (d) a breach of any obligation of confidentiality, security, privacy or data security obligations under this Contract or at Law;
 - (e) fraud, breach of Statute, any deliberately wrongful act or omission, or unlawful act or omission (including repudiation of this Contract); or
 - (f) the obligation on the Customer to pay the fees.
- 23.3 The limitation of liability specified in **clause 23.1** is an aggregate limit during the Contract Term.
- 23.4 The Parties acknowledge that the limitation of liability specified in **clause 23.1** will be subject to review in the event that this Contract is varied.
- 23.5 For the avoidance of doubt, a Party may require a review of the limitation of liability specified in **clause 23.1** as a condition of its acceptance to a variation request, but only for the purpose of achieving a proportionate adjustment to reflect any alteration to that Party's risk exposure arising out of that variation.
- 23.6 The limitations on liability specified in **clause 23.1** do not apply to a Party's liability to the extent that (ignoring the application of **clauses 23.1**) a Party is entitled to be indemnified for

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that liability under a policy of insurance or would have been entitled to be indemnified for that liability but for an act or omission of the Party.

24. **Mitigation**

24.1 Each Party must use all reasonable endeavours to mitigate its Loss arising out of or in connection with a breach of this Contract, or in tort (including negligence), or for any other common law, equitable or Statutory cause of action arising out of or in connection with this Contract.

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH AND AGED CARE

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Attachment B - Statement of Requirement

1. Overview of Services

1.1 The Contractor must provide the Services in accordance with the Contract, including this **Attachment B - Statement of Requirement**.

1.2 The Services that the Contractor must provide comprise the following:

(a) first, the following services (**Debt Services**)

- (i) identify, measure and track known Compliance Risks in the Customer's health system;
- (ii) developing rules, methodologies and algorithms for the Customer's Platform; and
- (iii) undertake open ended exploration of the Health Data to look for unknown areas of Compliance Risks in the Customer's health system; and

(b) second, the following services (**Implementation Services**)

- (i) on and from the Contract Commencement Date, the Contractor will develop an instance of the Contractor's platform that is designed to detect anomalies and patterns that might indicate fraud or misuse of funds (**Contractor's Platform**) that is capable of being installed on the Health ICT Environment on a 'proof of concept' basis. The Customer acknowledges that:
 - A. the Contractor's Platform will not be capable of being installed on the Health ICT Environment on the Contract Commencement Date, as the Contractor is required to undertake the development mentioned above from that date to do so; and
 - B. the Contractor's Platform will not, at the time of installation on the Health ICT Environment, have been in any way Modified or customised to meet the Customer's purposes including the Objective or otherwise; and

(ii) following installation of the Contractor's Platform on the Health ICT Environment, the Contractor will develop and Modify that Contractor's Platform on an iterative and incremental basis during the Contract Term;

- A. incorporate those of the Customer's requirements communicated to the Contractor Personnel (including in the course of performing the Debt Services), including the Customer's rules, methodologies and algorithms to detect anomalies and patterns that might indicate fraud or misuse of funds; and
- B. fully implement the Contractor's Platform into the Health ICT Environment,

and this Modified and fully implemented Contractor's Platform is the **Implemented Contractor's Platform**.

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1.3 The Customer acknowledges and agrees that:

- (a) subject to **paragraph 9** of this **Attachment B** the Contractor does not give any warranty or assurance that either the Contractor's Platform or the Implemented Contractor's Platform is or will be fit for the purposes of Customer, operate error or fault free or at all and the Customer agrees the Contractor's Platform and the Implemented Contractor's Platform may experience interruptions and access difficulties from time to time;
- (b) the Customer and the Contractor may separately agree including pursuant to an open procurement process (on terms to be agreed) under **paragraph 1.7** of this **Attachment B** below that the Customer will obtain the right to use and access Implemented Contractor's Platform;
- (c) accordingly, subject to **paragraph 1.3(d)** of this **Attachment B** and that separate agreement, the Customer:
- (i) has no licence or right to use or access either the Contractor's Platform or the Implemented Contractor's Platform or any of the underlying software code (including object code, intermediate code and source code);
- (ii) may not use or exploit any Intellectual Property rights in the Contractor's Platform or Implemented Contractor's Platform,
- either during or after the Contract Term, except for the sole purpose of hosting the Contractor's Platform or Implemented Contractor's Platform on the Health ICT Environment so as to allow the Contractor Personnel to perform the Debt Services and the Implementation Services;
- (d) Customer Personnel will be trained by the Contractor to use the Contractor's Platform and will be entitled to use the Contractor's Platform and Implemented Contractor's Platform on the Health ICT Environment under the Contractor's supervision during the Contract Term;
- (e) the limited right of access referred to in **paragraphs 1.3(c)** and **1.3(d)** of this **Attachment B** above ends immediately on termination or expiry of this Contract. In this case the Customer must immediately and permanently delete all copies and instances of the Contractor's Platform or Implemented Contractor's Platform on the Health ICT Environment and acknowledge this deletion in writing to the Contractor;
- (f) the Contractor's Platform and the Implemented Contractor's Platform (and all Intellectual Property rights in them) are confidential information of the Contractor (**Contractor's Confidential Information**) and, notwithstanding **clause 12** of the **Terms and Conditions**:
- (i) property in the Contractor's Confidential Information (including any copies) remains with the Contractor and does not vest in the Customer;
- (ii) the Customer agrees to treat the Contractor's Confidential Information as confidential and secure all copies of the Contractor's Confidential Information within its control against loss and unauthorised use or disclosure; and
- (iii) on the expiration or termination of this Contract, the Customer agrees to deliver to the Contractor or, in accordance with the Contractor's directions erase or otherwise deal with all such copies; and

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- (g) the Customer acknowledges and agrees that it must not, at any time:
- (i) use, license, copy, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Contractor's Platform, the Implemented Contractor's Platform or any Contractor's Confidential Information available to any person or deal with any Intellectual Property rights in the Contractor's Platform or Implemented Contractor's Platform;
 - (ii) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Contractor's Platform or Implemented Contractor's Platform in any form or media or by any means;
 - (iii) use any robot, spider, retrieval application, or other manual or automatic device or process to retrieve, index, data mine, harvest, scrape or in any way reproduce or circumvent the navigational structure or presentation of the Contractor's Platform or Implemented Contractor's Platform;
 - (iv) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Contractor's Platform or Implemented Contractor's Platform (including any Contractor's Platform or Implemented Contractor's Platform software); or
 - (v) access all or any part of the Contractor's Platform or Implemented Contractor's Platform in order to build or Modify a product or service which competes with the Contractor's Platform or Implemented Contractor's Platform.

1.4 The Contractor must provide:

- (a) the Contractor Personnel described in **Table 1** of the **Official Order** as Specified Personnel, and
- (b) other Contractor Personnel set out in **Table 1 Fees** in **Attachment C - Pricing**, in accordance with Full Time Equivalent (FTE) basis allocations as set out in **Table 1 Fees** in **Attachment C - Pricing**.

1.5 Contractor Personnel must work cooperatively with Customer Personnel to ensure delivery of the Services in accordance with this Contract. The Customer acknowledges and agrees:

- (a) in order for the Contractor to supply the Services, the Customer must:
 - (i) provide physical access at and facilities for the Contractor Personnel at the Customer's premises at [Elizabeth Street, Surry Hills, Sydney] and ensure those premises are safe, clean and fit for the purpose of the Contractor Personnel providing the Services;
 - (ii) provide access for those Contractor Personnel at those Customer's premises to the Customer's Health ICT Environment; and
 - (iii) provide orientation and training to those Contractor Personnel in the use and operation of the Customer's Platform and the Health ICT Environment during the period from the Contract Commencement Date until 1 July 2017 and thereafter as reasonably requested from time to time by the Contractor to provide the Services or required by the Customer;

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- (b) the Contractor is an independent contractor and it and the Contractor Personnel have skill and expertise in the provision of the Services. Accordingly, while Contractor Personnel will work as part of the overall Customer team while at the Customer's premises:
- (i) the Customer agrees it will have regard to and give due weight and consideration to recommendations from Contractor Personnel in the course of providing the Services; and
- (ii) not to unreasonably interfere with, impede or prevent the Contractor Personnel from performing the Services in the manner which the Contractor Personnel see fit;
- (c) subject to consultation with the Customer and provided the Contractor Personnel hold the relevant security clearance the Contractor may rotate the Contractor Personnel on a regular basis such that different Contractor Personnel will attend the Customer's premises; and
- (d) subject to consultation with the Customer, each of the Contractor Personnel will spend one (1) day each fortnight at the Contractor's premises and will therefore not be present at the Customer's premises on that day.
- 1.6 The Contractor acknowledges that the Customer may undertake a Privacy Impact Assessment in relation to health data analytics tasks (including the Services provided by the Contractor). In the event that a Privacy Impact Assessment is required the Parties agree:
- (a) the Contractor Personnel must cooperate and comply with any reasonable directions given by the Customer in connection with the implementation and outcomes of the Privacy Impact Assessment; and
- (b) while the Contractor's cost of doing so is included in the fees charged by the Contractor, subject to this **paragraph 1.6**, the Contractor and the Contractor Personnel are not responsible for any failure, delay or defect in providing the Services due to compliance with the Privacy Impact Assessment;
- (c) the Contractor must review the Privacy Impact Assessment within 10 Business Days after receiving it and inform the Customer via the Steering Committee of any concern it has in relation to that Privacy Impact Assessment in relation to that assessment's impact on Service delivery; and
- (d) that the Parties will negotiate in good faith to determine whether any **paragraph 1.6(b)** adjustments are required to Service delivery. Once agreed, the Contractor must comply with the Privacy Impact Assessment as adjusted and the relief in **paragraph 1.6(b)** does not apply.
- 1.7 The Customer may consider (without obligation) purchase of access to the Contractor software (including the Implemented Contractor's Platform), alongside those offered by other software vendors, in separate procurement processes to be conducted in accordance with the Commonwealth Procurement Rules. For the avoidance of doubt, the Services do not include the purchase of any existing Contractor software (including the Contractor's Platform or Implemented Contractor's Platform) by the Customer.
2. **Environment**
- 2.1 The Services must be provided within the Customer's premises using the Health ICT Environment.

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- 2.2 The Contractor must seek written approval from the Customer prior to introducing any of its software (including the Contractor's Platform or Implemented Contractor's Platform) or deploying any Third Party Software it wishes to use, including any Existing Material, into the Health ICT Environment.
- 2.3 The Services will be provided from a Customer data analytics laboratory located in [Elizabeth Street, Surry Hills, Sydney, New South Wales] or such other location as agreed by the Parties (**Customer Data Analytics Laboratory**).
- 2.4 The Customer will provide the following facilities and assistance in relation to the Customer Data Analytics Laboratory:
- (a) office space on the Customer's premises, including appropriate furniture and office equipment;
 - (b) IT access and equipment;
 - (c) access to Health ICT Environment on an "as is" basis through the premises referenced at **paragraph 2.3** of this **Attachment B** above; and
 - (d) otherwise ensure the Customer Data Analytics Laboratory complies with the requirements of **paragraph 1.5** of this **Attachment B** above.

3. Timeframes

- 3.1 The Contractor must have the capacity to provide the full complement of staff described in **paragraph 1.4** of this **Attachment B** by 1 July 2017.
- 3.2 The Contractor must commence:
- (a) orientation, planning work, training in the use of the Health ICT Environment;
 - (b) the Implementation Services referenced in **paragraph 1.2(b)** of this **Attachment B**; and
 - (c) Service provision,
- immediately on and from the Contract Commencement Date as described further below, but
- (d) the Contractor is not obliged to provide the full Services until 1 July 2017.

4. Implementation

- 4.1 The Implemented Customer's Platform must be implemented into the Health ICT Environment without any adverse impact or disruption to the Health ICT Environment.

The Contractor must liaise with the Customer's technical experts to clarify information and implementation requirements as required during the provision of the Implementation Services.

5. Non-Compliance Detection Systems

- 5.1 As part of the Debt Services, the Contractor must develop rules, methodologies, and algorithms to produce non-compliance detection systems on the Health ICT Environment that are able to perform the analysis of Health Data for Compliance Risk, including the detection of anomalies and patterns that might indicate fraud or misuse of funds (**Non-Compliance Detection Systems**). To avoid doubt, the Non-Compliance Detection Systems do not include the Contractor's Platform or the Implemented Contractor's Platform, which are provided as part of the Implementation Services.

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- 5.2 The Contractor must provide ongoing development services to maintain, optimise and fine tune the Non-Compliance Detection Systems, including services to ensure that the Non-Compliance Detection Systems continue to operate effectively within the requirements of this Contract.
6. **Orientation**
- 6.1 As soon as possible after the Contract Commencement Date, the Contractor must provide no fewer than 3.5 FTEs for orientation and planning purposes for a period of 10 Business Days .
- 6.2 The Contractor must ensure that Contractor Personnel and relevant Customer Personnel who are connected to the provision of the Services have adequate training in relation to analytics and data mining, including the use of the Non-Compliance Detection Systems.
7. **Security Checks**
- 7.1 All Contractor Personnel with access to Health Data must have undergone a criminal history check and received baseline vetting clearance from the Australian Government Security Vetting Agency.
- 7.2 The Contractor must notify the Customer immediately if any Contractor Personnel that are required to hold security clearances fail to meet, or fail to maintain for the duration of the Contract, the requirements for such clearance.
- 7.3 The Contractor must provide all necessary support required in relation to security reviews to verify compliance with the Customer's security-related policies, including those set out in **Attachment A - Special Conditions** and any changes to or new security-related Customer policies notified to the Contractor from time to time.
- 7.4 The Contractor must report to the Customer the outcome of any security reviews conducted in accordance with **paragraph 7.3** of this **Attachment B**.
8. **Governance**
- 8.1 The Parties agree to form a steering committee comprised of the following:
- (a) three (3) executives of the Customer; and
 - (b) two (2) executives of the Contractor,
- (Steering Committee)**, to oversee performance of the Contract.
- 8.2 The Contractor must also have in place governance arrangements which allow for the appropriate supervision and management of Contractor Personnel and performance of the work by the Contractor.
- 8.3 The Steering Committee must meet monthly for the first three (3) months after the Contract Commencement Date, and then at a frequency of every four (4) months unless otherwise agreed by the Parties.
- 8.4 In addition to the formal Steering Committee meetings in **paragraph 8.3** of this **Attachment B**, meetings may be requested by either Party, within reasonable notice, at other times on a needs basis.
9. **Contract Material and Approach**

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- 9.1 Noting the Services involve a proof of concept, the Contractor must use reasonable endeavours to ensure that the Implemented Contracted Platform is fit for purpose of detecting anomalies and patterns that might indicate fraud or other misuse of funds.
10. **Performance Management**
- 10.1 The Contractor must regularly evaluate the Non-Compliance Detection systems to ensure compliance with this Contract and to identify general opportunities for service improvement and individual Contractor Personnel and relevant Customer Personnel training needs.
- 10.2 The Contractor must undertake quality testing and auditing of the Non-Compliance Detection Systems and report outcomes to the Customer.
11. **Reporting**
- 11.1 The Contractor must provide accurate, timely and detailed reports in accordance with the Contract including this **Attachment B - Statement of Requirement**.
- 11.2 The Contractor must provide the following reports:
- (a) progress reports for each six (6) month period for the duration of the Contract, due at the end of June and at the end of December of each year (the first report must be provided to the Customer by 31 December 2017). Each progress report must include:
- (i) reporting against the Objectives;
 - (ii) reporting on any difficulties encountered in the delivery of the Services and if any, what action was undertaken to overcome and address these difficulties; and
 - (iii) reporting on the progress of development of the Non-Compliance Detection Systems and, once developed, its ongoing performance as a detection system; and
- (b) ad hoc reports as reasonably required by the Customer.

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Attachment C - Pricing

1. **Pricing**
- 1.1 Subject to **paragraph 1.3** of this **Attachment C - Pricing**, the fees included in this **Attachment C - Pricing** cover all the costs of implementing and providing the Services (including those set out in **Attachment B - Statement of Requirement**).
- 1.2 Subject to **paragraph 2.1** of this **Attachment C - Pricing** the fees for providing the Services are set out in **Table 1** and unless otherwise stated are GST inclusive.

Table 1 - Fees



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Attachment D - Health Deed of Confidentiality

Deed Poll made at _____ on _____

By _____

[Insert name and address of person] (Confidant)

In favour of

Commonwealth of Australia represented by the **Department of Health**
 ABN 83 605 426 759 of Sirius Building, 23 Furzer Street, Woden Town Centre, ACT
 (Health)

Recitals

- A. Health possesses valuable Confidential Information.
- B. The Confidant is currently in, or may in the future come into, possession of certain Confidential Information.
- C. By this Deed Poll, the Confidant agrees to certain restrictions on the use and disclosure of that Confidential Information by the Confidant.

Operative provisions**1. Definitions**

In the interpretation of this Deed Poll, unless the contrary intention appears or the context otherwise requires or admits, the following expressions will have the following meanings:

Commonwealth means the Commonwealth of Australia.

Commonwealth Record has the meaning in the *Archives Act 1983* (Cth).

Confidential Information means information that:

- (a) is by its nature confidential;
- (b) is designated by Health as confidential; or
- (c) the Confidant knows or ought to know is confidential;

and includes to the extent that it is confidential:

- (d) information comprised in or relating to any Intellectual Property Rights owned by Health, a State or Territory;
- (e) information relating to the internal management and structure of Health, a State or Territory;

- (f) information relating to other contractors or suppliers to Health, or its customers; and
 - (g) Health Data and information relating to Health Data,
- but does not include information which:
- (h) is or becomes public knowledge other than by breach of this Deed Poll or any confidentiality obligation; or
 - (i) has been independently developed or acquired by the Confidant as established by written evidence.

Contract means the Official Order and any Attachments to that document placed under the Deed in relation to supplementing Health's data analytics staffing and capabilities executed by Health and the Contractor on or about April 2017.

Contractor means Lorica Health Pty Limited ABN 50 107 188 974.

Contractor Personnel means the individuals who are officers, employees, agents, advisers, directors or subcontractors of the Contractor or of its subcontractors who are engaged in performing the services or activities associated with the provision of the services under the Deed and the Contract.

Deed means the Deed of Standing Offer (Head Agreement for Services) in relation to Services for Health Data Analytics Panel between Health and the Contractor dated 31 January 2017.

Deed Poll means this document.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of law,

and unless stated otherwise, includes Commonwealth, State and Territory Agencies.

Health means the Commonwealth of Australia acting through the Department of Health.

Health Data means all data (including MBS data and PBS data) and information (including Personal Information) relating to Health or a Government Agency and its or their respective functions (including data and information relating to Health's business operations, business assets, business programs, programmes and Health Personnel), facilities, customers, constituents, personnel, assets or programs, in whatever form that information may exist and whether or not it was generated by or processed by or on behalf of Health, or is stored in any Commonwealth Record.

Health Data does not include data or information that is generated by software or equipment as a consequence of its inherent operation and which does not allow identification of the Customer, its functions or any particular individual (including non-identifiable log files, software and equipment performance data or other system information).

Health Personnel means individuals who are officers, employees, agents, advisers,

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consultants, contractors and subcontractors and other personnel of Health (other than Contractor Personnel).

Intellectual Property Rights or IPR means all intellectual property, including:

- (a) rights in relation to inventions, patents, copyright, circuit layouts, registered designs, registered and unregistered trade marks (including service marks, goodwill in those marks), business, company and domain names and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- (b) any application or right to apply for registration of any of the rights referred to in clause (a); and
- (c) all rights of a similar nature to any of the rights in clauses (a) and (b) which may subsist in Australia or elsewhere,

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

Law means any applicable law in force from time to time anywhere including in Australia (whether made by the Commonwealth, a State, Territory, or a local government) or relevant overseas jurisdiction (if any), and includes the common law and equity as applicable from time to time.

Personal Information has the meaning in the *Privacy Act 1988* (Cth).

Notice means notice in Writing given in accordance with this Deed Poll.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Statute means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere including in Australia, whether made by a State, Territory, the Commonwealth or a local government.

Writing means any mode of representing or reproducing words, figures, drawings or symbols in a visible form delivered, posted, or transmitted electronically.

2. Interpretation

Unless the contrary intention appears:

- (a) monetary references are references to Australian currency;
- (b) the clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its sub-clauses;
- (d) words in the singular include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) words "includes" or "including" means without limitation;
- (g) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (h) a reference to a clause is a reference to a clause of this Deed Poll;

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- (i) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (j) a reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.

3. Confidentiality

3.1 Non disclosure

Subject to **clause 3.5**, the Confidant must not disclose Confidential Information or Personal Information to any person without the prior written consent of Health.

3.2 Consent

Health may grant or withhold its consent in its absolute and unfettered discretion.

3.3 Conditions on consent

If Health grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, Health may require that the Confidant procure the execution of a confidentiality undertaking in these terms and conditions by the person to whom the Confidant proposes to disclose the Confidential Information or Personal Information.

3.4 Complying with conditions

If Health grants consent subject to conditions, the Confidant must comply with those conditions.

3.5 Legal disclosure

The Confidant may only disclose Confidential Information and Personal Information:

- (a) to the extent required by Law or by a lawful requirement of any Government Agency having authority over the Confidant;
- (b) subject to any Law to the contrary, if required in connection with legal proceedings;
- (c) subject to any Law to the contrary, for governmental, reporting or public accountability reasons, including a request for information by parliament or a parliamentary committee;
- (d) to the extent necessary to obtain professional advice in relation to the Contractor's rights and obligations under the Deed; or
- (e) to its officers or employees to the extent reasonably necessary to exercise its rights or to perform its obligations under the Deed.

4. Restriction on use

The Confidant will use the Confidential Information and Personal Information provided by Health only for the purposes of its dealings with Health and, if necessary, for the purposes of the Confidant performing any part of the Deed.

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5. Uncertainty

In the event of uncertainty as to whether any information is Confidential Information, the information is deemed to be Confidential Information unless Health notifies the Confidant in Writing to the contrary.

6. Security

The Confidant will:

- (a) maintain proper and secure custody of all Confidential Information and Personal Information which is in its possession or under its control;
- (b) use its best endeavours to prevent the use or disclosure of the Confidential Information or Personal Information by third parties contrary to this Deed Poll;
- (c) immediately notify Health in Writing of any suspected, expected or actual unauthorised use, copying or disclosure of the Confidential Information or Personal Information contrary to this Deed Poll; and
- (d) give Health all reasonable assistance in connection with any action or proceeding which Health may institute against any person relating to any unauthorised use, copying or disclosure of the Confidential Information or Personal Information, and with any investigation Health may initiate into any suspected, expected or actual unauthorised use, copying or disclosure of the Confidential Information or Personal Information.

7. Disclaimer

7.1 No warranty

The Confidant acknowledges that Health does not make any representation or warranty as to the accuracy or completeness of any information which is provided to the Confidant.

7.2 No liability

Except as may otherwise be expressly agreed in Writing, Health is not liable to the Confidant in relation to the use of Confidential Information or Personal Information by the Confidant.

8. Powers of Health

8.1 Delivery and destruction of documents

The Confidant will:

- (a) immediately on the request of Health or a person authorised by Health (without needing to produce the demand in Writing) deliver up to Health:
 - (i) all of the Confidential Information and Personal Information;
 - (ii) all alterations, modifications, developments and enhancements to, copies of, extracts from or notes on, the Confidential Information and Personal Information in whatever form; and

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- (iii) all materials related to or in any way associated with the Confidential Information and Personal Information, in the Confidant's possession, power or control; or
- (b) immediately on the request of Health or a person authorised by Health:
 - (i) destroy the documents mentioned in **clause 8.1(a)**, and in the case of computer data, this must be done by a method of erasing it from the media on which it is stored so that it cannot in any way be recovered, reconstructed or reconstituted; or
 - (iv) otherwise deal with the document mentioned in **clause 8.1(a)** as Health directs,

and the Confidant will then promptly certify in Writing to Health that all of the documents mentioned in **clause 8.1(a)** have been delivered up, destroyed or dealt with as directed.

8.2 Confidential Information and Personal Information beyond possession or control

If Health makes a demand under this **clause 8**, and the Confidant has placed documents containing the Confidential Information or Personal Information, or is aware that documents containing the Confidential Information or Personal Information are, beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information or Personal Information, and the identity of the person in whose custody or control they lie.

8.3 Meaning of "documents"

In this **clause 8**, "documents" includes any form of storage of information, whether visible to the eye or not.

8.4 Legal proceedings

The Confidant acknowledges that Health may take legal proceedings against the Confidant if there is any actual, threatened or suspected breach of this Deed Poll, including proceedings for an injunction to restrain such breach.

9. Criminal liability

9.1 Criminal offences

The Confidant acknowledges that:

- (a) section 3(1) of the *Crimes Act 1914* (Cth) states that the term "Commonwealth officer" includes, for the purpose of section 70 of that Act, a person who "performs services for or on behalf of the Commonwealth";
- (b) the publication or communication by a Commonwealth officer of any fact or document which has come to its knowledge or into the person's possession or custody by virtue of the person's being a Commonwealth officer (other than to a person to whom the Commonwealth officer is authorised to publish or disclose the fact or document) may be an offence under section 70 or 79 of the *Crimes Act 1914* (Cth), punishment for which may be a maximum of two (2) (section 70) to seven (7) (section 79) years imprisonment;
- (c) any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of

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information held in any computer (or, in some cases, any storage device) in the course of performing any part of the Deed may be an offence under Part 10.7 of the *Criminal Code Act 1995* (Cth) of which there are a range of penalties, including a maximum of 10 years imprisonment; and

- (d) it is an offence under Division 137 of the *Criminal Code Act 1995* (Cth) to knowingly give false and misleading information (in a material particular) to the Commonwealth or its officers or agents.

10. No exclusion of Law

This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information or protect the Personal Information.

11. Waiver

11.1 Separate instances of waivers

No waiver by Health of any breach of any obligation or provision of this Deed Poll (expressed or implied) will operate as a waiver of another breach of the same or of any other obligation or provision of this Deed Poll (expressed or implied).

11.2 Consent in Writing

None of the provisions in this Deed Poll must be taken at Law (other than by Statute) to have been varied, waived, discharged or released by Health unless by its express consent in Writing.

12. Remedies cumulative

The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any rights or remedies provided by Law or any other such right or remedy.

13. Variations and amendments

No term or provision of this Deed Poll may be amended or varied unless such amendment or variation is in Writing and signed by the Confidant and Health.

14. Applicable Law

This Deed Poll is governed by and is to be construed in accordance with the Laws in force in the Australian Capital Territory (ACT). The Confidant and Health irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the ACT in respect of all matters arising from this Deed Poll.

15. Notices

15.1 Deemed service to the Confidant

A Notice or other communication which may be given to the Confidant under this Deed Poll will be deemed to have been duly given if it is in Writing, signed by Health, and is either delivered by hand, posted or sent by email in pdf to the Confidant at the address (as the case may be) set out in **Attachment A** to this Deed or such other address as may be notified in Writing to Health from time to time.

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15.2 Deemed service to Health

A Notice or other communication which may be given to or served on Health under this Deed Poll will be deemed to have been duly given or served if it is in Writing, signed by or on behalf of the Confidant and is either delivered by hand, posted or sent by email in pdf to Health at the address (as the case may be) set out in **Attachment A** to this Deed Poll or such other address as may be notified in Writing to the Confidant from time to time.

16. Survival of obligations

The obligations in this Deed Poll are perpetual.

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH AND AGED CARE

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Attachment A – Contact Details

Health

Contact: [insert]
Physical Address: [insert]
Postal Address: [insert]
Phone: [insert]
Email: [insert]

Confidant

Contact: [insert]
Physical Address: [insert]
Postal Address: [insert]
Phone: [insert]
Email: [insert]

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH AND AGED CARE

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EXECUTED as a deed poll.

SIGNED, SEALED AND DELIVERED by:

In the presence of:

Signature of Confidant

Signature of witness

Name

Name

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH AND AGED CARE

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Deed of Amendment No 1 - Lorica Health - Deed of Standing Offer (Head Agreement for Services)
in relation to Services for Health Data Analytics Panel
Execution Version - (ACW:NS:AB)

DEED OF AMENDMENT (No. 1)

between

**COMMONWEALTH OF AUSTRALIA as represented by the
Department of Health
ABN 83 605 426 759**

and

**LORICA HEALTH PTY LIMITED
ABN 50 107 188 974**

in relation to the

**Deed of Standing Offer (Head Agreement for Services) in relation to
Services for Health Data Analytics Panel**

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH AND AGED CARE

Deed of Amendment No 1 - Lorica Health - Deed of Standing Offer (Head Agreement for Services)
in relation to Services for Health Data Analytics Panel
Execution Version - (ACW:NS:AB)

This Deed of Amendment No 1 is made on _____ 2017

BETWEEN the

COMMONWEALTH OF AUSTRALIA, as represented by the Department of Health
ABN 83 605 426 759 of Level 8, Sirius Building, 23 Furzer Street, Woden ACT 2606
(Customer)

AND

LORICA HEALTH PTY LIMITED
ABN 50 107 188 974 of Level 3, 55 Harrington Street, The Rocks, NSW 2000
(Contractor)

RECITALS

- A. The Parties executed a Deed of Standing Offer (Head Agreement for Services) in relation to Services for Health Data Analytics Panel on 31 January 2017 (**Deed**).
- B. The Parties will or have entered into the first official order under the Deed in relation to Services supplementing the Customer's data analytics staffing and capabilities in order to deliver outcomes from data analytics projects in April 2017 (**First Contract**).
- C. The Parties now wish to vary the terms of the Deed, with respect to the First Contract only, under this Deed of Amendment No 1 to give effect to the First Contract between the Parties.
- D. Clause 1.5 of the Deed requires any variation to the Deed to be agreed in writing by Parties.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

- 1.1 In this Deed of Amendment No 1, defined terms have the same meaning as in the Deed unless indicated below:

Business Day means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place;

Deed has the meaning set out in Recital A;

Deed of Amendment No 1 means this deed of amendment document;

First Amendment Date means the date this Deed of Amendment No 1 is signed by the Parties, and if signed on different days, the date of the last Party to do so;

First Contract has the meaning as set out in Recital B;

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere including in Australia or overseas, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and equity as applicable from time to time; and

Parties means the Customer and the Contractor. A reference to a Party means either the Customer or the Contractor.

- 1.2 Headings are for convenience only, and do not affect interpretation. The following

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rules also apply in interpreting this Deed of Amendment No 1, except where the context makes it clear that a rule is not intended to apply:

- (a) a reference to:
- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a Party to this Deed of Amendment No 1 or to any other document or agreement includes a permitted substitute or a permitted assignment of that Party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) any thing (including a right, obligation or concept) includes each part of it;
 - (vi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax and email transmissions;
 - (vii) this Deed of Amendment No 1 includes all schedules and annexures to it;
 - (viii) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this Deed of Amendment No 1; and
 - (ix) 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;
- (b) a singular word includes the plural and vice versa;
- (c) the word "includes" in any form is not a word of limitation;
- (d) a word which suggests one gender includes the other genders;
- (e) if a word is defined, another part of speech has a corresponding meaning;
- (f) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing; and

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(g) a reference to "dollars" or "\$" is to an amount in Australian currency.

1.3 If the day on or by which a person must do something under this Deed of Amendment No 1 is not a Business Day the person must do it on or by the next Business Day.

2. Amendments to the Deed

2.1 The Parties agree to amend the Deed to apply to the First Contract only, with effect on and from the First Amendment Date, as follows:

(a) clause 1.3 is deleted and replaced with a new clause 1.3 as follows:

"If any conflict arises between the terms and conditions contained in this Deed and its schedules and the Official Order, then to the extent of the inconsistency the higher ranked document will prevail, namely:

- (a) the Official Order; then
- (b) the attachments to the Official Order; then
- (c) this Deed; then
- (d) the schedules to this Deed."; and

(b) clause 3.9 is deleted and replaced with the words "Not used".

2.2 The Parties agree to amend Schedule 2 to the Deed to apply to the First Contract only, with effect on and from the First Amendment Date as follows.

(a) in clause 1.1 the first reference to the word 'Deed' is deleted and replaced with the word 'Contract' as follows:

"1.1 In this Contract, unless the contrary intention appears, words will have the same meaning as in the Deed.";

(b) in clause 1.2 the word 'Deed' is deleted and replaced with the word 'Contract' as follows:

"1.2 In this Contract, unless the contrary intention appears:";

(c) in clause 1.2 the definition 'Deed' is deleted and replaced with a new definition 'Contract' as follows:

"**Contract** means the contract created as a result of the signing by both Parties of an Official Order in accordance with clause 3 of the Deed.";

(d) in clause 1.2 insert the definition of 'Deed' as follows:

"**Deed** means the Deed of Standing Offer (Head Agreement for Services) in relation to Services for Health Data Analytics Panel signed by the Parties on 31 January 2017 as amended by Deed of Amendment No 1.";

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- (e) in clause 1.2 the word 'Deed' found in the definition of 'Deed Liaison Officer' is deleted and replaced with the word 'Contract' so that it reads 'Contract Liaison Officer';
- (f) clauses 13.1 and 13.2 are deleted and replaced with new clauses 13.1 and 13.2 as follows:
- "13.1 In this clause 13, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982*.
- 13.2 This clause 13 only applies if this is a Contract which complies with the description of 'Commonwealth contract'.";
- (g) clauses 15.1(j) to (n) are deleted and replaced with new clauses 15.1(j) to (p) as follows:
- "(j) the *Health Insurance Act 1973*;
- (k) the *National Health Insurance Act*;
- (l) any occupational health and safety legislation applicable to the Contractor;
- (m) the Australian Government's *Lobbying Code of Conduct 2013*;
- (n) the *Protective Security Policy Framework* which is available at: Protective Security Policy Framework website;
- (o) any fraud control guidelines issued by the Department of Finance from time to time; and
- (p) any other policies notified to the Contractor in writing or listed in the Official Order."
- (h) in clause 20.2(b) the words 'Deed Material' are deleted and replaced with the words 'Contract Material';
- (i) clause 20.3(b) is deleted and replaced with a new clause 20.3(b) as follows:
- "(b) the amount of \$s47 (including GST). Subject to any amounts payable under clause 20.3(a), the Parties further agree that the Customer will not be liable for any other amount other than the amount stated in this clause 20.3(b) where there has been a termination under clause 20.1."
- (j) clauses 20.4 and 20.5 are deleted and replaced with the words "Not Applicable";
- (k) in clause 25.1 the words 'Deed Liaison Officer' are deleted and replaced with the words 'Contract Liaison Officer';
- (l) all other references to 'Deed' are deleted and replaced with the word

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'Contract', except in the following clauses:

- (i) clause 23.1(e)(iii);
 - (ii) clause 23.1(i); and
 - (iii) clause 23.1(j); and
 - (m) in clause 23.1(e)(iii), clause 23.1(i) and clause 23.1(j), replace the word 'Deed' with the word 'agreement'.
- 2.3 The Parties acknowledge and agree that this Deed of Amendment No 1 is binding on the Parties with respect to the First Contract.

3. Affirmation of the Deed

- 3.1 The Parties affirm in all other respects the terms and conditions in the Deed.
- 3.2 The Parties acknowledge and agree that the Deed as varied by this Deed of Amendment No 1 is and continues to be in full force and effect in relation to the First Contract only.
- 3.3 Nothing in this Deed of Amendment No 1 affects or reduces in any way any rights that the Customer may have in relation to the performance of the Deed prior to the First Amendment Date or in relation to any other Official Order placed after the First Amendment Date.

4. Notices

- 4.1 Except for informal or day to day notices, which must be delivered in accordance with **clause 4.4(b)**, a notice, consent or other communication under this Deed of Amendment No 1 is only effective if it is:
 - (a) in writing, signed by or on behalf of the person giving it;
 - (b) addressed to the person to whom it is to be given; and
 - (c) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) or email enclosing a pdf version of a written notice to that person's address.
- 4.2 A notice, consent or other communication that complies with this **clause 4** is regarded as given and received if it is sent by mail:
 - (a) within Australia – three (3) Business Days after posting; or
 - (b) to or from a place outside Australia – seven (7) Business Days after posting.
- 4.3 A person's address and email address are those set out below, or as the person notifies the sender:

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Customer

Address MDP 859
GPO Box 9848
Canberra, ACT 2601
Email simon.cotterell@health.gov.au

Attention Simon Cotterell
First Assistant Secretary
Health Compliance Division
Department of Health

Contractor

Address Level 3, 55 Harrington Street
The Rocks, NSW 2000
Email paul.nicolarakis@loricahealth.com
Attention Paul Nicolarakis
Chief Executive Officer & Managing
Director
Lorica Health

- 4.4 For the purposes of this **clause 4**:
- (a) a formal communication is one which complies with the requirements of **clause 4.1**.
 - (b) an informal communication is one which does not comply with the requirements of **clause 4.1**. Examples of informal communications include:
 - (i) oral communications, whether made during meetings, discussions, over the phone or otherwise; and
 - (ii) communications sent by email unless the email forwards a pdf version of a written notice or consent.
 - (c) Formal communications will have effect as communications under or in connection with this Deed of Amendment No 1. Informal communications, on the other hand, will not be treated as communications under or in connection with this Deed of Amendment No 1. Informal communications will not affect the Parties' rights or obligations under or in connection with this Deed of Amendment No 1, and cannot be relied upon.
- 4.5 The Parties may agree in writing a procedure for scanning and emailing formal communications.

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5. Costs

5.1 Each Party must pay their own legal and other costs and expenses of negotiating, preparing, executing and performing this Deed of Amendment No 1.

6. Variation

6.1 This Deed of Amendment No 1 may only be varied or replaced by a document executed by the Parties.

7. Governing law and jurisdiction

7.1 This Deed of Amendment No 1 is governed by the Law in force in the Australian Capital Territory.

7.2 Each Party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the Australian Capital Territory, and any court that may hear appeals from any of those courts, for any proceedings under or in connection with this Deed of Amendment No 1, and waives any right it might have to claim that those courts are an inconvenient forum.

8. Compliance with Law

8.1 Each Party must comply with all relevant Laws in performing this Deed of Amendment No 1.

9. Counterparts

9.1 This Deed of Amendment No 1 may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

10. Warranty

10.1 The Contractor represents and warrants that the persons who execute this Deed of Amendment No 1 for the Contractor have authority to do so.

11. Representations and Inducements

11.1 Each Party to this Deed of Amendment No 1 acknowledges that the other Party has not (nor has any person acting on its behalf) made any representation or other inducement to it to enter into this Deed of Amendment No 1 except for inducements expressly set out in this Deed of Amendment No 1.

12. Operation of this Deed of Amendment No 1

12.1 This Deed of Amendment No 1 contains the entire agreement between the Parties about its subject matter. Any previous understanding, agreement, representation or warranty, either oral or written, relating to that subject matter is replaced by this Deed of Amendment No 1 and has no further effect.

12.2 Unless stated otherwise in this Deed of Amendment No 1, any right that a person may have under this Deed of Amendment No 1 is in addition to, and does not replace or limit, any other right that the person may have.

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13. Severability

13.1 Any provision of this Deed of Amendment No 1 which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Deed of Amendment No 1 enforceable, unless this would materially change its intended effect.

14. Giving effect to this Deed of Amendment No 1

14.1 Each Party must do anything (including execute any document), and must ensure that its officers, employees and agents do anything (including execute any document), that the other Party may reasonably require to give full effect to this Deed of Amendment No 1 and the rights and obligations of the Party under it.

15. Contra proferentum

15.1 No rule of construction will apply in the interpretation of this Deed of Amendment No 1 to the disadvantage of one Party on the basis that that Party put forward or drafted this Deed of Amendment No 1 or any part of this Deed of Amendment No 1.

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH AND AGED CARE

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EXECUTED AS A DEED

SIGNED, SEALED and DELIVERED
as a deed for and on behalf of the
COMMONWEALTH OF AUSTRALIA
acting through the Department of Health
ABN 83 605 426 759 on:

In the presence of:

18 April 2017

Date

s22
[Redacted Signature]

Signature of signatory

s22
[Redacted Signature]

Signature of witness

SIMON COTTERELL

Full name of signatory

Chris Deacle

Full name of witness

SIGNED, SEALED AND DELIVERED
as a deed by **LORICA HEALTH PTY LIMITED** ABN 50 107 188 974 in accordance with section 127 of the Corporations Act 2001 (Cth) by or in the presence of:

13 APRIL 2017

Date

MICHAEL AITKEN

Signature of director

PAUL JOHN NICOLARAKIS

Full name of director

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[Redacted Signature]

s47F
[Redacted Signature]

THIS DOCUMENT HAS BEEN RELEASED UNDER THE FREEDOM OF INFORMATION ACT 1982 BY THE DEPARTMENT OF HEALTH AND AGED CARE