



# AFP

AUSTRALIAN FEDERAL POLICE

**Deed of Standing Offer for the  
supply, implementation and  
support of an Investigations,  
Intelligence and Incident  
Management Solution**

**Conditions of Deed  
Execution Version 1.0**

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THIS DOCUMENTS IS  
RELEASED BY THE  
AUSTRALIAN FEDERAL POLICE  
UNDER THE  
FREEDOM OF INFORMATION ACT 1982



**DATE**

THIS Deed of Standing Offer is made the \_\_\_\_\_ day of \_\_\_\_\_ 2013.

**PARTIES**

**BETWEEN:** **THE COMMONWEALTH OF AUSTRALIA** represented by the Australian Federal Police established under the *Australian Federal Police Act 1979* (ABN 17 864 931 143) (**AFP**)

**AND:** **ELBIT SYSTEMS OF AUSTRALIA PTY LTD** (ACN 143 526 229) (ABN 31 143 526 229) of 235 Ingles Street, Port Melbourne, Victoria, 3207 (**Contractor**)

**RECITALS**

- A. From time to time, the AFP may require services in relation to the supply, implementation and support of an investigations, intelligence and incident management solution and more specifically in relation to the Services.
- B. The AFP issued a request for tender to select a contractor to provide the Services and selected the Contractor as the successful tenderer.
- C. The Contractor offers to respond to the AFP's requirements for Services in accordance with the terms of the Deed.
- D. The terms of the Deed will apply to Contracts entered into between the AFP and the Contractor by way of Work Orders for the provision of the Services.
- E. The Commissioner of the AFP has engaged the Contractor to perform services under section 35(1) of the *Australian Federal Police Act 1979* (**AFP Act**).
- F. In signing the Deed, the Commissioner may determine under section 35(2) of the AFP Act the Contractor or Contractor Personnel to be AFP Appointees for the purposes of the AFP Act.

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

- (a) In the Deed, unless the contrary intention appears, words, abbreviations and acronyms have the meanings given to them in **Schedule 1 (Glossary)**.

**1.2 Interpretation**

- (a) In the Deed and in a Contract, unless the contrary intention appears or the context makes it clear that a different meaning is intended:
  - (i) headings are for the purpose of convenient reference only and do not form part of the Deed or a Contract;
  - (ii) the singular includes the plural and vice-versa;
  - (iii) a reference to one gender includes the other;

- (iv) if a word is defined, another part of speech has a corresponding meaning;
- (v) a reference to a person includes a body politic, body corporate or a partnership;
- (vi) where the last day of any period prescribed for the doing of an action falls on a day which is not a Business Day, the action must be done no later than the end of the next Business Day;
- (vii) a reference to an Act is a reference to an Act of the Commonwealth, State or Territory of Australia, as amended from time to time, and includes a reference to any subordinate legislation made under the Act;
- (viii) a reference to a clause includes a reference to a subclause of that clause;
- (ix) a reference to a "dollar", "\$", "\$A" or "AUD" means the Australian dollar;
- (x) a reference to a specification, publication, Australian Government policy or other document is a reference to that specification, publication, Australian Government policy or document, in effect on the Effective Date, or alternatively, a reference to another version of the document if notified by the AFP to the Contractor;
- (xi) the word "includes" in any form is not a word of limitation; and
- (xii) a reference to a Party includes that Party's administrators, successors, and permitted assigns, including any person to whom that Party novates any part of the Deed.

### 1.3 Priority of Deed Documents

- (a) If there is inconsistency between any of the documents forming part of the Deed, those documents will be interpreted in the following order of priority to the extent of any inconsistency:
  - (i) Conditions of Deed;
  - (ii) **Schedule 1 (Glossary);**
  - (iii) **Schedule 13 (Security Requirements);**
  - (iv) **Schedule 2 (Statement of Work);**
  - (v) **Schedule 3 (Support Services);**
  - (vi) **Schedule 4 (Service Fees);**
  - (vii) **Schedule 20 (Contractor Solution);**
  - (viii) **Schedule 21 (Draft Work Orders);**
  - (ix) the other Schedules; and
  - (x) any other document referred to or incorporated by reference in the Deed.

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**2. TERM OF APPOINTMENT**

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**2.1 Initial Deed Term**

- (a) The Deed commences on the Effective Date and will terminate five years after the Effective Date (**Initial Deed Term**) unless terminated earlier or extended in accordance with the Deed.

**2.2 Options to Extend**

- (a) The AFP may, at its discretion, extend the Initial Deed Term for up to two further periods, each of two years (each an **Extended Deed Term**) on the terms of the Deed then in effect, by giving written notice to the Contractor.

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**3. SCOPE OF APPOINTMENT**

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**3.1 Standing Offer**

- (a) The Contractor makes an irrevocable standing offer to supply the Services to the AFP in accordance with the Service Fees and on the terms set out in the Deed.

**3.2 Scope of the Appointment**

- (a) The Contractor must:
  - (i) comply with all of its obligations under the Deed;
  - (ii) comply with its obligations under any Contracts issued under the Deed;
  - (iii) perform the Services professionally, promptly, diligently and in accordance with any Contract and the practices and high professional standards used in well managed operations performing services similar to the Services;
  - (iv) use adequate numbers of Contractor Personnel who are qualified and have appropriate levels of training, education, experience and skill to perform the Services in an efficient, cost-effective and controlled manner consistent with the AFP's business needs; and
  - (v) provide reasonable assistance to the AFP with regard to disengagement or transfer of the Services (or part of the Services) to any other person, including other contractors, and where such assistance is significant it will be provided on a reasonable fee basis as agreed by the Parties.

**3.3 Guarantee of Work Orders**

47E(d) and 47G

47E(d) and 47G

**3.4 Timeframe for Issue of the Support Services Work Order**

- (a) If the AFP decides it requires Support Services, to assist the Contractor to recruit Contractor Personnel to provide the Support Services, including allowing sufficient time for those Contractor Personnel to obtain the required AFP security clearances, the AFP will sign and issue a Work Order in the form of Draft **Work Order 4** attached at **Schedule 21 (Draft Work Orders)** for the Support Services six months prior to the AFP's anticipated requirement for the Support Services.
- (b) If the AFP signs and issues Draft Work Order 4 under **clause 3.4(a)**, the Parties obligations under **Annexures A (Support Services)** and **Annexure B (Support Services Fees)** of Draft Work Order 4 will not commence until Acceptance of the IIIM Solution.

**3.5 Non-exclusivity of Services**

- (a) Subject to **clause 3.3(a)**:
  - (i) the Deed is a non-exclusive arrangement between the AFP and the Contractor in respect of the Services; and
  - (ii) the AFP may, at its discretion and at any time, engage any other contractor to provide any services of the kind set out in the Deed.

**4. FORMATION OF A CONTRACT**

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**4.1 Execution of Work Order**

- (a) The AFP may request the Contractor to provide Services by:
  - (i) consulting with the Contractor and agreeing to the terms of a Work Order in the form of **Schedule 12 (Template Work Order)** or a Draft Work Order; and
  - (ii) the AFP issuing the agreed Work Order to the Contractor.
- (b) A Contract is formed when both the Contractor and the AFP have signed the Work Order.
- (c) Each Contract will be entered into by the Parties for the purpose of the Contractor, in return for the Service Fees, achieving:
  - (i) the objectives, and performing the requirements, specified in the Contract; and
  - (ii) the broader objective of delivering and supporting the IIIM Solution as described in **Schedule 2 (Statement of Work)**, **Schedule 3 (Support Services)** and **Schedule 20 (Contractor Solution)**.

#### 4.2 Draft Work Orders Capable of Acceptance

- (a) The AFP may request the Contractor to provide Services by issuing a Work Order on the terms of any of the Draft Work Orders.
- (b) The Contractor offers to provide Services on the terms of any of the Draft Work Orders and accordingly will sign any Work Order issued by the AFP under **clause 4.1(a)(ii)** that is in the form of a Draft Work Order unless otherwise agreed by the Parties.

#### 4.3 Contract Terms

- (a) A Contract incorporates:
  - (i) **clause 1, clause 3.2 and clauses 4.3 to 35** of the Conditions of Deed;
  - (ii) **Schedule 1 (Glossary)**;
  - (iii) **Schedule 2 (Statement of Work)** to the extent relevant;
  - (iv) **Schedule 4 (Service Fees)**;
  - (v) **Schedule 20 (Contractor Solution)** to the extent relevant; and
  - (vi) the content of the Work Order, including any Special Conditions.
- (b) Where Special Conditions agreed in a specific Contract conflict with the terms of the Deed, it is agreed that those terms will only apply for that specific Contract and do not by their inclusion amend or change the Deed other than as the Deed applies to that Contract.
- (c) The AFP is not liable to the Contractor for any fees, charges or other expenses in relation to any work performed or actions undertaken by the Contractor unless and until a Contract is formed under **clause 4.1**.
- (d) The Contractor must fulfil the obligations of all Contracts entered into prior to the expiry of the Deed, notwithstanding that Contract completion may occur after the expiry of the Deed.

#### 4.4 Priority of Contract Documents

- (a) If there is an inconsistency between any of the documents forming part of a Contract, those documents will be interpreted in the following order of priority to the extent of any inconsistency:
  - (i) the Special Conditions, if any, set out in the Contract;
  - (ii) **clause 1, clause 3.2 and clauses 4.3 to 35** of the Conditions of Deed;
  - (iii) the terms of the relevant Contract (excluding any Special Conditions);
  - (iv) the other Schedules; and
  - (v) any document incorporated by express reference or otherwise referenced as part of a Contract.

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**5. SERVICES TO COMMONWEALTH AGENCIES AND NOMINATED AGENCIES**

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**5.1 Obligation to provide Services**

- (a) The Contractor offers to provide the Services to any Commonwealth Agency or Nominated Agency in accordance with the requirements set out in this **clause 5**.
- (b) The Contractor agrees that the AFP may, on behalf of the Commonwealth Agency or Nominated Agency, enforce the right of that Commonwealth Agency or Nominated Agency to obtain Services from the Contractor under this **clause 5**.

**5.2 Request**

- (a) A Commonwealth Agency or Nominated Agency may request the supply of Services in accordance with **clause 5.1**, by giving the Contractor written notice.
- (b) The Contractor agrees to enter into a deed of standing offer with the Commonwealth Agency on the same terms as the Deed.
- (c) The Contractor agrees to enter into a deed of standing offer with a Nominated Agency on the same terms of the Deed provided that:
  - (i) an appropriate export licence for the specific Nominated Agency is obtained, and
  - (ii) agreement between the Contractor and the Nominated Agency is reached with respect to:
    - (A) all associated fees under such deed of standing offer;
    - (B) Contractor's liability and insurance coverage;
    - (C) liquidated damages;
    - (D) guarantees, indemnities and warranties of the Contractor; and
    - (E) all schedules and contracts which are project specific.

**5.3 Separate contracts**

- (a) A deed of standing offer entered into between a Commonwealth Agency or Nominated Agency and the Contractor will create a separate agreement between the Contractor and the Commonwealth Agency or Nominated Agency for the supply by the Contractor of the requested Services to the Commonwealth Agency or Nominated Agency.

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**6. SERVICES**

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**6.1 Contractor Solution**

- (a) Unless otherwise specified in a Contract, the Contractor will perform all Contracts so as to implement the Contractor Solution and meet the requirements set out in **Schedule 2 (Statement of Work)**.

**6.2 Location of Services**

- (a) All work and other activities relating to the provision of all Services and the performance of all other obligations of the Contractor under the Deed and any

Contract must be performed in Australia, unless otherwise specified in a Contract or agreed in writing by the AFP.

**6.3 Extension of AFP Material Licence**

- (a) Where the Contractor is permitted to provide Services outside of Australia under **clause 6.2**, the licence to use AFP Material under **clause 23.2** will be extended, in respect of the Services for which that permission was given, to cover the location specified in the permission.

**6.4 Bill of Material (BOM)**

- (a) In order to develop and implement the IIIM Solution:
  - (i) the Contractor must provide the Materials listed in **Annexure B to Schedule 20 (Contractor Solution)**; and
  - (ii) the AFP must provide the Materials listed in **Annexure A to Schedule 20 (Contractor Solution)**.
- (b) The Contractor warrants that the BOM lists the Materials that are necessary to develop and implement the IIIM Solution in accordance with the AFP's requirements as at the Effective Date, subject to:
  - (i) minor amendments; or
  - (ii) necessary amendments directly relating to a SL-5 requirement that may be identified during the IIIM Solution design work to be performed under Work Order 1.
- (c) The Parties recognise that amendments to the BOM identified during the IIIM Solution design work under Work Order 1 will be affected in accordance with **clause 18**.

**7. ACCEPTANCE OF SERVICES**

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47E(d) and 47G

## 8. SERVICE LEVELS

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### 8.1 Service Levels

- (a) The Contractor must, if specified in a Contract that Services Levels apply, meet or exceed the Service Levels set out in:
  - (i) **Schedule 3 (Support Services)** (if applicable); or
  - (ii) that Contract.
- (b) The Contractor acknowledges and agrees that:
  - (i) the purpose of the Service Levels is to specify objective minimum standards of performance required of some Services; and
  - (ii) a failure to achieve the Service Levels will, unless otherwise specifically provided for in the Deed or a Contract, constitute a breach of the Contract and may result in the Service Fees being reduced in accordance with **Schedule 3 (Support Services)**.



- (c) The Contractor must:
- (i) perform the Services in a manner that ensures that each of the Service Levels is achieved or exceeded;
  - (ii) keep sufficient records to demonstrate its performance against the Service Levels and provide such records to the AFP Representative or an AFP Contract Manager if requested;
  - (iii) report on its performance against the Service Levels in accordance with **Schedule 3 (Support Services)**; and
  - (iv) participate in any reviews of its performance against the Service Levels that may be required by the AFP.
- (d) The AFP may exercise its right to reduce the Service Fees for a failure to meet the Service Levels in accordance with **Schedule 3 (Support Services)** at its discretion without limiting its rights under any other provision of the Deed or a Contract.
- (e) The Parties agree that the Service Level arrangements are intended as a mechanism to adjust the price payable for the Services based on the Contractor's achievement or non-achievement of Service Levels and does not constitute a penalty.

**9. LIQUIDATED DAMAGES AND OTHER COMPENSATION**

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47E(d) and 47G

47E(d) and 47G

## **10. SUPPLY AND DELIVERY OF CONTRACTOR PROVIDED HARDWARE**

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### **10.1 Supply of Contractor Provided Hardware**

- (a) The Contractor must supply to the AFP any Contractor Provided Hardware specified in a Contract.
- (b) The Contractor Provided Hardware must:
  - (i) be newly manufactured, unless specified otherwise in a Contract;
  - (ii) be free from defects in workmanship and materials; and
  - (iii) comply with the specifications for the Contractor Provided Hardware set out in a Contract.

### **10.2 No application to leasing**

- (a) The supply of the Contractor Provided Hardware to the AFP is by way of sale and the Deed has no application to leasing of Contractor Provided Hardware to the AFP.

### **10.3 Delivery Place**

- (a) The Contractor must supply and deliver the Contractor Provided Hardware to the delivery place set out in a Contract.

**10.4 Timetable for supply and installation**

- (a) The Contractor must supply the Contractor Provided Hardware in accordance with the delivery dates and the requirements set out in a Contract.
- (b) The Contractor must install the Contractor Provided Hardware in accordance with the installation dates, specifications and any other requirements set out in a Contract.
- (c) The Contractor must, on becoming aware that it will be unable to meet an installation date promptly notify the AFP and provide details of the cause of the delay.

**10.5 Removal of equipment**

- (a) The Contractor must not remove or arrange the removal of any equipment unless specified otherwise in a Contract or approved in writing by the AFP.
- (b) Where the Contractor, is required under a Contract, or has obtained AFP written approval, to remove or arrange the removal of equipment, the Contractor must remove the equipment specified in a Contract or in the AFP written approval:
  - (i) on or by the relevant installation date in respect of the Contractor Provided Hardware;
  - (ii) at such times and on such terms as is approved in writing by the AFP; and
  - (iii) in a way that causes the least possible disruption to the AFP's operations.

**10.6 Transfer of title and risk**

- (a) The AFP accepts risk for loss of or damage to the Contractor Provided Hardware from the time the AFP takes delivery of the Contractor Provided Hardware, except to the extent that the loss or damage is caused or contributed to by the Contractor during delivery or installation.
- (b) Title in the Contractor Provided Hardware passes to the AFP on payment.

**10.7 Contractor Provided Hardware environmental requirements**

- (a) The Contractor must:
  - (i) ensure that any Contractor Provided Hardware supplied complies with the current ENERGY STAR version for relevant ICT equipment;
  - (ii) implement take-back and appropriate reuse or resource recovery for:
    - (A) ICT equipment covered by the National Television and Computer Recycling Scheme under the National Waste Policy; and
    - (B) products and devices such as toner cartridges; and
  - (iii) adopt an environmental management system aligned to the ISO 14001 standard.

**10.8 Warranty Period**

- (a) During the Warranty Period, the Contractor must:

- (i) remedy all faults or failures in the relevant item of Contractor Provided Hardware (**Hardware Problems**) either by repair, replacement or modification; and
  - (ii) pay all costs in relation to performance of its obligations under the warranty including any packing, freighting, repair, modification, disassembly and reassembly costs, except if the Hardware Problem is due to negligence or misuse by the AFP or AFP Personnel.
- (b) Nothing in this **clause 10** limits the application of any indemnity provided under the Deed.

**10.9 Third party product warranties**

- (a) Without limiting any obligation of the Contractor under the Deed, the Contractor must, unless specified otherwise in a Contract:
- (i) ensure the AFP receives all standard manufacturer and other relevant third party warranties in respect of Contractor Provided Hardware provided under the Deed or a Contract; and
  - (ii) ensure the AFP receives a copy and is fully advised of and approves all such warranties prior to any order or commitment being made in respect of any Contractor Provided Hardware.

**10.10 Contractor Provided Hardware warranties**

- (a) Where the Contractor is supplying Contractor Provided Hardware, the Contractor represents and warrants that on the delivery date set out in the relevant Contract:
- (i) the Contractor Provided Hardware will:
    - (A) not introduce into the AFP's systems or any AFP Materials, any Harmful Code; and
    - (B) if any Harmful Code is introduced, the Contractor will:
      - (I) use all reasonable efforts promptly to report that introduction to the AFP;
      - (II) take all necessary action to eliminate the Harmful Code; and
      - (III) promptly, at its own cost, repair any harm or destruction caused by that Harmful Code;
    - (C) be newly manufactured, unless specified otherwise in a Contract;
    - (D) be free from any material defect in workmanship, design and materials;
    - (E) be free from any encumbrances;
    - (F) be fit for the purpose as set out in **Schedule 2 (Statement of Work)** or a Contract;
    - (G) be compliant with the specifications set out in **Schedule 2 (Statement of Work)** or a Contract; and
    - (H) be compliant with the Documentation; and

- (ii) the Documentation will be complete, accurate and free from material faults in design.

**10.11 Licence to use software subsisting in Contractor Provided Hardware**

- (a) The Contractor grants to the AFP (or must procure the grant to the AFP of) a non-exclusive, non-transferable licence to use the software (including operating software) installed on or provided with the Contractor Provided Hardware for all purposes related to the use of the Contractor Provided Hardware.

**10.12 Additional Contractor Provided Hardware Documentation required**

- (a) The Documentation provided with respect to Contractor Provided Hardware must:
  - (i) provide details of the operation of environmental management features to minimise the costs and environmental impacts of operating the Contractor Provided Hardware; and
  - (ii) include a Material Safety Data Sheet (MSDS) complying with the National Code of Practice for the Preparation of Material Safety Data Sheets 2nd Edition [NOHSC:2011(2003)] for any material incorporated into the Contractor Provided Hardware which may give rise to a health, safety or environmental effect.

**11. CONTRACTOR PROVIDED HARDWARE MAINTENANCE SERVICES**

**11.1 Contractor Provided Hardware Support Period**

- (a) Unless otherwise specified in a Contract:
  - (i) the support period for Contractor Provided Hardware will commence on the expiry of the Warranty Period and will continue until the end of the Term; and
  - (ii) the maintenance services for Contractor Provided Hardware must be provided to the AFP at no charge during the Warranty Period.

**11.2 Provision of Maintenance Services**

- (a) The Contractor must during the support period for Contractor Provided Hardware:
  - (i) provide maintenance services for Contractor Provided Hardware as set out in a Contract;
  - (ii) provide the maintenance services for Contractor Provided Hardware in accordance with **Schedule 3 (Support Services)** and so as to meet or exceed any Service Levels; and
  - (iii) provide the maintenance services for Contractor Provided Hardware at the times specified in a Contract or otherwise by prior arrangement with the AFP and at times likely to cause the least possible disruption to the AFP's operations.

**11.3 Replacement parts**

The Contractor must, for five years from the delivery date set out in a Contract, or such other period agreed by the Parties in writing, ensure that replacement parts for the

Contractor Provided Hardware are available so that the Contractor can meet its obligations under the Deed or a Contract.

#### 11.4 Preventative Maintenance

- (a) The Contractor must provide preventative maintenance for Contractor Provided Hardware as set out in a Contract.
- (b) Unless specified otherwise in a Contract, preventative maintenance includes, as a minimum:
  - (i) maintenance of the supported Contractor Provided Hardware in good operating condition;
  - (ii) Hardware Problem detection and resolution;
  - (iii) replacement of unserviceable or faulty parts;
  - (iv) cleaning and, where possible, lubrication; and
  - (v) adjustment of any mechanical or similar devices.
- (c) The AFP may postpone preventative maintenance on five Business Days notice to the Contractor at its discretion and reschedule the preventative maintenance to occur as soon as practicable.
- (d) No additional charge will be payable by the AFP in respect of postponement or rescheduling of preventative maintenance under **clause 11.4(c)**.

#### 11.5 Remedial Maintenance

- (a) The Contractor must provide remedial maintenance in relation to Contractor Provided Hardware as set out in **Schedule 3 (Support Services)** or a Contract.

#### 11.6 Technical support

- (a) Unless specified otherwise in a Contract, the Contractor must provide technical support to the AFP by:
  - (i) telephone, fax and email, the details of which will be set out in the relevant Contract; and
  - (ii) on-site contact, if necessary, to resolve a reported Hardware Problem.

#### 11.7 Reporting Hardware Problems

- (a) The AFP must report all Hardware Problems in accordance with the procedures and methods set out in the relevant Contract.

#### 11.8 Rectifying Hardware Problems

- (a) After being notified of a Hardware Problem, the Contractor must promptly:
  - (i) replace or repair parts as required to rectify a Hardware Problem;
  - (ii) comply with any response times specified in a Contract;
  - (iii) to the extent practicable, implement measures to minimise disruption to the AFP's operations during the provision of remedial maintenance, including taking any measures specified in a Contract;

- (iv) regularly keep the AFP informed as to the status of the rectification of the Hardware Problem;
- (v) where any part of the supported Contractor Provided Hardware is replaced and the part does or may contain AFP Data, take all practicable steps to remove and return to the AFP the AFP Data; and
- (vi) comply with any other requirements as specified in a Contract.

**11.9 Contractor tests**

- (a) At the discretion of the AFP, before completing remedial maintenance, the Contractor must either:
  - (i) test the Contractor Provided Hardware by running a diagnostic program and performing any other relevant tests necessary to show that the maintenance services have been successful; or
  - (ii) explain and demonstrate to the AFP, the effect of the maintenance services,

and if requested must provide written confirmation of the test results or explanation.

**11.10 Exclusions**

- (a) Unless specified otherwise in a Contract, the Contractor is not required to perform maintenance services in respect of:
  - (i) Contractor Provided Hardware that has been altered, damaged or modified by a person other than the Contractor;
  - (ii) Hardware Problems caused by the AFP's negligence, abuse or misapplication of the Contractor Provided Hardware or by failure to use the supported Contractor Provided Hardware as specified in the Documentation;
  - (iii) Hardware Problems caused by electrical failure, air conditioning or humidity control or any other environmental factor on the AFP's premises; or
  - (iv) accessories, attachments, supplies or items associated with the supported Contractor Provided Hardware other than those provided by the Contractor under the Deed or a Contract.

**11.11 Maintenance records**

- (a) The Contractor must keep full records of the maintenance services provided including records of all:
  - (i) Hardware Problems reported, including the time of each report;
  - (ii) Hardware Problems detected;
  - (iii) remedial action taken, including the time each action is taken;
  - (iv) parts replaced and repaired; and
  - (v) the time each Hardware Problem is resolved.

- (b) The Contractor must provide copies of records kept under this **clause 11.11** to the AFP within five Business Days of request or within any other period agreed in writing by the AFP.

#### **11.12 Engineering changes and upgrades**

- (a) Except to the extent specified in a Contract, maintenance services for Contractor Provided Hardware include implementation of all engineering changes and upgrades designed to improve the safety, performance and reliability of the supported Contractor Provided Hardware.
- (b) Except where the engineering change or upgrade is classified by the manufacturer as mandatory for safety reasons, the AFP may, at its discretion, determine not to proceed with any engineering change or upgrade.
- (c) To allow the AFP to evaluate proposed engineering changes and upgrades fully, the Contractor must use its reasonable endeavours to give the AFP at least 10 Business Days prior notification in writing of:
  - (i) the purpose of the change;
  - (ii) details of how the supported Contractor Provided Hardware will be affected;
  - (iii) proposed timing of introduction;
  - (iv) estimated time to complete testing requirements; and
  - (v) estimated time to remove such changes in the event of failure to allow the supported Contractor Provided Hardware to return to a satisfactory operating condition.
- (d) The Contractor must provide the AFP with other assistance and information as is reasonably required to enable the AFP to determine whether to proceed with the engineering change or upgrade.

#### **11.13 Testing**

- (a) The AFP may conduct Acceptance Tests in respect of any proposed engineering change or upgrade in accordance with the procedures set out in **clause 7**.
- (b) If an engineering change or upgrade which is Acceptance Tested under **clause 7** does not pass the Acceptance Tests, the AFP may determine not to proceed with the engineering change or upgrade.

#### **11.14 Continued support**

- (a) Unless specified otherwise in a Contract, refusal of an engineering change or upgrade will not affect the AFP's entitlement to ongoing maintenance services under a Contract.

### **12. DELIVERY AND INSTALLATION OF CONTRACTOR PROVIDED SOFTWARE**

#### **12.1 Obligations of Contractor**

- (a) The Contractor must supply to the AFP the Contractor Provided Software as specified in a Contract.
- (b) Unless otherwise specified in a Contract, the Contractor must:



- (i) deliver, install and implement the Contractor Provided Software in accordance with any relevant milestone dates and otherwise in accordance with **Schedule 2 (Statement of Work)** and the relevant Contract; and
- (ii) ensure that the Contractor Provided Software, when installed and implemented, and for so long as it is maintained under the Contract, provides the functions and meets the performance and other requirements of the relevant specifications and Documentation.

**12.2 Obligations of the AFP**

- (a) The AFP must comply with the latest relevant installation guides or Documentation provided to the AFP by the Contractor when installing Contractor Provided Software.

**12.3 Contractor Provided Software Warranty Period**

- (a) Unless otherwise specified in the Support Services Contract, during the Warranty Period, the Contractor must:
  - (i) remedy all faults or failures in the relevant item of Contractor Provided Software (**Software Problems**) either by fixes, replacement or modification; and
  - (ii) pay all costs in relation to performance of its obligations under the warranty including any packing, freighting, fixes and modification costs, except if the Software Problem is due to negligence or misuse of the AFP or AFP Personnel.
- (b) Nothing in this clause limits the application of any indemnity provided under the Deed.

**13. CONTRACTOR PROVIDED SOFTWARE LICENCE**

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#### **14. IIIM SOLUTION SUPPORT SERVICES**

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##### **14.1 IIIM Solution Support Work Order**

- (a) As at the Effective Date the Parties intend that during the Term a Contract will be formed under **clause 4** for Support Services for the IIIM Solution in accordance with Draft Work Order 4, although the Parties agree that there is no obligation on the AFP to issue Draft Work Order 4 or any other Work Order for Support Services for the IIIM Solution.
- (b) This **clause 14** applies only if a Contract is formed under **clause 4** for Support Services for the IIIM Solution.

##### **14.2 IIIM Solution Support Period**

Unless otherwise specified in a Contract, the IIIM Solution Support Period will commence on the date the IIIM Solution is Accepted and will continue until the end of the term of the Support Services Contract.

##### **14.3 Obligation to provide Support Services**

The Contractor must provide to the AFP the Support Services in accordance with **Schedule 3 (Support Services)** and any Contract. For the avoidance of doubt, the

Contractor is not required to provide the Support Services to the AFP if the Parties have not entered into a Contract for such services.

## 15. DOCUMENTATION

### 15.1 Provision of Documentation

The Contractor must provide the AFP with electronic access to up-to-date technical and operator Documentation containing sufficient information to enable the AFP to make full use of the Services at all times. The Documentation must be provided in accordance with **Schedule 2 (Statement of Work)**, **Schedule 3 (Support Services)** and any specifications set out in a Contract.

### 15.2 Documentation requirements

- (a) The Documentation must at the time of delivery:
  - (i) be current and accurate and consistent with **Schedule 2 (Statement of Work)** and any specifications set out in a Contract;
  - (ii) adequately explain key terms and symbols; and
  - (iii) unless specified otherwise in a Contract, be in English.

### 15.3 Updating Documentation

- (a) The Contractor must provide the AFP with all necessary amendments, revisions and updates of the Documentation.
- (b) The Contractor must amend or substitute the Documentation periodically in order to address and adequately explain the implications of:
  - (i) any Updates or New Releases;
  - (ii) any repair or replacement of the supported Contractor Provided Hardware if such repair or replacement is likely to result in varying operational procedures involving the use of the supported Contractor Provided Hardware; and
  - (iii) any engineering change or upgrade supplied pursuant to the Deed.
- (c) The Contractor must provide or make available Documentation updated in accordance with this **clause 15.3** to the AFP within five Business Days of delivery of the change or upgrade to which the updated Documentation relates.

### 15.4 Use of Documentation

- (a) AFP Personnel may use the Documentation for any use in conjunction with the use of the Services including undertaking other tender processes, maintenance and support activities, internal training activities associated with the Services and auditing or reviewing the Contractor's performance under the Contract.
- (b) The Contractor grants to the AFP the applicable licences in **clause 23** in respect of the Documentation.

## 16. CONTRACTOR REPRESENTATIONS AND WARRANTIES

### 16.1 Contractor Representations and Warranties

- (a) The Contractor warrants that it has the requisite power and authority to enter into the Deed and each Contract and to carry out the obligations contemplated by the Deed and any Contract.
- (b) The Contractor warrants that the Services provided under a Contract are fit for the purpose or purposes for which Services of that kind would be reasonably expected to be applied by the AFP.
- (c) The Contractor warrants that it has the necessary expertise, experience, capacity and capability required to perform the Services in a proper, professional manner consistent with best industry practice and that the Services will conform to the requirements of the Deed and any Contract.
- (d) The Contractor warrants that it is aware of and understands its obligations as an AFP Appointee under the AFP Act, should the Commissioner so determine the Contractor and or its Contractor Personnel to be an AFP Appointee under section 35(2) of the AFP Act.
- (e) The Contractor warrants that, to the best of its knowledge after making diligent inquiries before and up to the date of signing the Deed, no Conflict of Interest exists or is likely to arise in the performance of its obligations under the Deed or a Contract by itself or by any Contractor Personnel.
- (f) The Contractor warrants that it and its Subcontractors do not have any unpaid Claims in respect of judicial decisions made against them relating to employee entitlements, other than those for which the Contractor or Subcontractor has lodged a formal appeal that has not yet been determined.
- (g) The Contractor warrants that it has disclosed in writing to the AFP:
  - (i) any litigation or proceeding whatsoever, actual or threatened, against the Contractor, or any Subcontractor, that could adversely affect the Contractor's ability to perform any of its obligations under the Deed and any Contract;
  - (ii) the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon the Contractor, or upon any Subcontractor, that could adversely affect the Contractor's ability to perform any of its obligations under the Deed and any Contract; and
  - (iii) any matters relevant to the Contractor or any Subcontractor (including those relating to the commercial, technical or financial capacity) that could adversely affect the Contractor's ability to perform any of its obligations under the Deed and any Contract.

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### 16.2 Disclosure by Contractor

- (a) The Contractor must immediately give written notice to the AFP if it becomes aware of any of the following:

- (i) any litigation or proceeding whatsoever, actual or threatened, against the Contractor, or any Subcontractor, that could adversely affect the Contractor's ability to perform any of its obligations under the Deed or any Contract;
- (ii) the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon the Contractor, or upon any Subcontractor, that could adversely affect the Contractor's ability to perform any of its obligations under the Deed or any Contract; or
- (iii) any matter relevant to the Contractor or any Subcontractor (including those relating to the commercial, technical or financial capacity) that could adversely affect the Contractor's ability to perform any of its obligations under the Deed or any Contract.

## 17. CONTRACTOR PERSONNEL AND SUBCONTRACTORS

### 17.1 Subcontractors

- (a) The Contractor may supply Services through Subcontractors if:
  - (i) approved in writing by the AFP Representative; and
  - (ii) the Contractor has provided the AFP with the original declaration signed by the proposed Subcontractor (or its authorised representative) in the form set out in **Schedule 6 (Subcontractor Declaration)**.
- (b) **Schedule 5 (Approved Subcontractors)** includes a list of Subcontractors approved by the AFP as at the Effective Date.
- (c) The AFP may revoke its approval of a Subcontractor on reasonable grounds, in which case, the Contractor will promptly cease using that Subcontractor to perform or support the performance of Services or other obligations of the Contractor pursuant to the Deed and any Contract.
- (d) The Contractor acknowledges that the Commissioner may, from time to time, determine that a Subcontractor is an AFP Appointee under section 35(2) of the AFP Act.
- (e) The Contractor acknowledges its responsibility to inform those Subcontractors that are determined to be AFP Appointees that they are required to sign a Deed of Personal Obligation set out in **Schedule 8 (Deed of Personal Obligation)** and the Consent form to participate in testing for Prohibited Drugs set out in **Schedule 9 (Consent to Participate in Testing for Prohibited Drugs)**.
- (f) The Contractor acknowledges, and must inform all Subcontractors, that the AFP may publicly disclose the names of any Subcontractor.
- (g) The Contractor must not Subcontract the whole of the work under a Contract.
- (h) The Contractor, by subcontracting any of its obligations to provide Services for a Contract, is not relieved of its liabilities or obligations and continues to be responsible for all Subcontractors.
- (i) The Contractor must not enter into a Subcontract with a Subcontractor named by the Director of Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Workplace Gender Equality Act 2012*.

- (j) In accordance with **clause 28.3**, the Contractor must ensure as far as practicable its Subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at [www.deewr.gov.au/fairworkprinciples](http://www.deewr.gov.au/fairworkprinciples)).
- (k) If a Subcontract is terminated, repudiated or rescinded, whether in relation to its terms or as a result of any act relating to bankruptcy, liquidation or official management, the Contractor must promptly notify the AFP Representative and any relevant AFP Contract Manager and must complete the work under the Contract either itself or by another Subcontractor of the Contractor.
- (l) The Contractor, if requested by the AFP Representative or a relevant AFP Contract Manager, must provide a copy of any Subcontract, which copy need not contain prices.
- (m) The Contractor must ensure that any Subcontract, to the extent relevant to a Contract, can be novated or assigned to the AFP or its nominee.
- (n) The Contractor, in each Subcontract, must secure the right of termination and provisions for compensation functionally equivalent to that of the AFP under **clause 32.2**.

#### 17.2 Contractor Personnel

- (a) The Contractor must ensure that all Contractor Personnel engaged in the provision of the Services are competent and professional and have the skills, qualifications, and experience necessary to ensure full and proper provision of the Services in accordance with each Contract.
- (b) The Contractor acknowledges that the Commissioner may, from time to time, determine that a Contractor Personnel is an AFP Appointee under section 35(2) of the AFP Act and therefore subject to professional standards obligations under the AFP Act, the AFP Code of Conduct and the AFP Professional Standards framework, including testing for prohibited drugs.
- (c) The Contractor acknowledges its responsibility to inform those Contractor Personnel that are determined to be AFP Appointees that they are required to sign a Deed of Personal Obligation.
- (d) All Contractor Personnel must, where required by the AFP, prior to commencement of any work under a Contract, or such other time as required by the AFP:
  - (i) be approved by the AFP Contract Manager;
  - (ii) have signed a copy of the deed at **Schedule 7 (Deed of Confidentiality)**;
  - (iii) have signed a copy of the deed at **Schedule 8 (Deed of Personal Obligation)**; and/or
  - (iv) have signed a copy of the consent form to participate in testing for prohibited drugs at **Schedule 9 (Consent Form to Participate in Testing for Prohibited Drugs)**.
- (e) The Contractor must ensure that Contractor Personnel identified by the AFP as requiring security clearances, have been provided with AFP security clearances, at the level notified by the AFP, before they commence work under a Contract.

- (f) The AFP may, at its discretion, give written notice requiring the Contractor to immediately remove Contractor Personnel from work in respect of the Services. The Contractor must arrange for their replacement at the earliest opportunity with personnel of appropriate skills and experience.
- (g) Any requirement to replace any of the Contractor Personnel during the course of the Deed or a Contract, whether at the request of the AFP or not, will not constitute an act or event that is beyond the reasonable control of the Contractor in meeting the requirements of the Deed or that Contract.
- (h) If the Contractor does not comply with any request under **clause 17.2(f)**, the AFP may terminate the Deed or a Contract in accordance with the provisions of **clause 32.1**.

### 17.3 Specified Contractor Personnel

- (a) Where any Specified Contractor Personnel are identified to perform a role or Service, that role or Service must be performed exclusively by the relevant member or members of the Specified Contractor Personnel.
- (b) Notwithstanding **clause 17.3(a)**, the Contractor must at all times have in place contingency plans, succession plans, and other relevant plans, processes and procedures to minimise any potential adverse impact for the AFP if any member of the Specified Contractor Personnel should, for any reason, not be available.
- (c) If, despite the best efforts of the Contractor, any member of the Specified Contractor Personnel is unavailable for any reason, the Contractor must promptly notify the AFP Contract Manager and take all reasonable action to minimise any potential adverse impact for the AFP.
- (d) Where any Specified Contractor Personnel will be permanently unavailable or unavailable for a period not acceptable to the AFP, the Contractor must:
  - (i) as soon as possible identify suitably skilled, experienced and qualified potential replacements;
  - (ii) provide full details of the potential replacements to the AFP in writing;
  - (iii) where requested by the AFP, arrange for relevant potential replacements to attend interviews with the AFP or take such other action or provide such information as the AFP may require to assist in its consideration of the potential replacement; and
  - (iv) where the AFP confirms in writing that a relevant potential replacement is acceptable, immediately retain that person and provide them as the relevant substituted member of the Specified Contractor Personnel.

## 18. AMENDMENTS TO THE DEED AND CONTRACTS

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### 18.1 Change Control Process

- (a) Any proposed amendments to the Deed do not come into effect unless and until both Parties execute a deed of amendment which contains the approved amendments and is in the form set out in **Schedule 10 (Template Deed of Amendment)**. A deed of amendment may only be executed by:
  - (i) on behalf of the Contractor, the Contractor Representative; and



- (ii) on behalf of the AFP, the AFP Representative.
- (b) Any proposed amendment to a Contract does not come into effect unless and until it is in writing and signed by:
  - (i) on behalf of the Contractor, the Contractor Representative; and
  - (ii) on behalf of the AFP, the AFP Representative or the relevant AFP Contract Manager.

## **19. SERVICE FEES, PASS THROUGH EXPENSES, INVOICING AND PAYMENT**

### **19.1 Consideration for Performance of Services**

- (a) In consideration for the performance of the Services by the Contractor under a Contract, the AFP will pay the Service Fees and reimburse Pass Through Expenses in accordance with this **clause 19** and **Schedule 4 (Service Fees)**.

### **19.2 Payment and Invoicing**

- (a) Subject to the Deed and relevant Contract, the AFP must pay to the Contractor the undisputed Service Fees and, where applicable, reimburse approved Pass Through Expenses specified in properly rendered invoices issued under a valid Contract within 30 days after the AFP receives the invoice, unless the Parties agree in writing that the payment period is longer.
- (b) A properly rendered invoice means an invoice:
  - (i) rendered in arrears for amounts payable under the Contract;
  - (ii) that complies with the Deed, including the requirements specified in **Schedule 4 (Service Fees)** and as otherwise directed by the AFP; and
  - (iii) either in the form of a valid Tax Invoice or attaching a valid Tax Invoice.
- (c) The AFP is entitled, without derogating from any other right it may have, to defer payment of any part or all of the Service Fees until the Contractor has completed to the satisfaction of the AFP that part of the Services to which those Service Fees relate.

### **19.3 Disputed Fees**

- (a) The AFP may withhold payment of any portion of the Service Fees or Pass Through Expenses that the AFP, acting reasonably, disputes.
- (b) All payments of Service Fees under any Contract are subject to:
  - (i) satisfactory performance of the relevant part of the Services to which the payment relates;
  - (ii) Acceptance under **clause 7**, if applicable; and
  - (iii) receipt by the AFP of a properly rendered invoice.



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**19.5 Incorrect Invoices**

- (a) If a Claim for payment is found to have been rendered incorrectly:
  - (i) any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be; and
  - (ii) without limiting recourse to other available remedies, may be offset against any amount subsequently due from the AFP to the Contractor.

## 19.6 Taxes and Duties

- (a) Unless otherwise indicated, the Service Fees and Pass Through Expenses and all other consideration for any supply made to the AFP under a Contract is inclusive of any GST and any other Taxes, duties or government charges imposed or levied in Australia or overseas in connection with a Contract.
- (b) If one Party (the *supplier*) makes a Taxable Supply to the other Party (the *recipient*) under a Contract, the recipient must pay without set off an additional amount to the supplier equal to the GST imposed on the GST exclusive value of the supply in question as correctly detailed in a Tax Invoice provided by the supplier to the recipient.
- (c) No Party may claim from the other Party under a Contract any amount for which the first Party may claim an input tax credit (or would have been able to claim an input tax credit if it was registered for GST).
- (d) In this **clause 19.6** the terms "consideration", "GST", "input tax credit", "supply", "Taxable Supply" and "Tax Invoice" have the meanings respectively given to them in the GST Act.

## 20. DEED ADMINISTRATION

### 20.1 Deed Representatives

- (a) The Contractor appoints the person listed in **Schedule 11 (Deed Details)** as the Contractor Representative and warrants that this person has the authority to represent the Contractor on all matters related to the Deed, including:
  - (i) giving and receiving notices under the Deed; and
  - (ii) exercising any rights and granting any approvals under the Deed.
- (b) The AFP appoints the person listed in **Schedule 11 (Deed Details)** as the AFP Representative and warrants that this person has the authority to represent the AFP on all matters related to the Deed, including:
  - (i) give and receive notices that may be given by it under the Deed; and
  - (ii) exercise its rights and give approvals that may be given by it under the Deed.

### 20.2 Conflicts of Interest

- (a) The Contractor must:
  - (i) immediately notify the AFP if any actual or potential Conflict of Interest arises during the Term and fully disclose the nature of that conflict;
  - (ii) take all steps necessary to remove any Conflict of Interest that may arise during the Term;
  - (iii) not violate any Laws or any Australian Government policies regarding the offering of unlawful or improper inducements in connection with the Deed and any Contract; and
  - (iv) use reasonable endeavours to ensure that Contractor Personnel do not engage in any activity or obtain any interest likely to conflict with or

restrict the Contractor in performing its obligations under the Deed and any Contract fairly.

**20.3 Relationship of Parties and Publicity**

- (a) Unless otherwise provided for in a Contract, the Contractor must:
  - (i) not represent itself; and
  - (ii) ensure that Contractor Personnel do not represent themselves, as being an officer, employee, partner or agent of the AFP, or as otherwise able to bind or represent the AFP.
- (b) Except to the extent authorised by a Contract, the Contractor will not by virtue of the Deed or a Contract be an employee or agent of the AFP. No partnership will be deemed to arise between the Parties as a consequence of the Deed.
- (c) The Contractor must not, and must ensure that Related Entities must not, use the AFP name or logo, suggest any endorsement of the AFP, or make any public announcement or media release about any aspect of the Deed or a Contract, without the prior written consent of the AFP.
- (d) In addition to the Contractor's obligation under **clause 21.1** and section 60A of the AFP Act relating to non-disclosure of prescribed information, the Contractor must not, without the prior written consent of the AFP, publish or cause to be published any AFP Material, New Material and/or Confidential Information.

**20.4 Accounts and Records**

- (a) The Contractor must maintain proper accounts in relation to the Services and the Service Fees.
- (b) The Contractor must ensure that:
  - (i) all reports are accurate in all respects;
  - (ii) all accounts (and other data, information and records relating to the Deed and any Contract and the Contractor's performance) are at all times:
    - (A) full, complete and up-to-date;
    - (B) kept in a manner and in a form that permits them to be conveniently and properly audited (including to facilitate access and inspection under **clauses 20.5** and **20.6**);
    - (C) drawn in accordance with any applicable Australian Accounting Standards; and
    - (D) in a form that enables the extraction of all information relevant to the Deed and any Contract.
- (c) The accounts must be kept for at least seven years after the expiration or termination of the Deed or any Contract, whichever is the later.

**20.5 Audits**

- (a) The Contractor must assist in, and cooperate fully with, the conduct of any audit of the Deed (and any Contract), including by providing access under **clause 20.6**. Audits may consider all aspects of the Contractor's performance including:
  - (i) the Contractor's practices and procedures as they relate to the Deed and any Contract;
  - (ii) compliance of any invoices and reports required under the Deed and any Contract;
  - (iii) compliance with any Service Levels under the Deed and any Contract;
  - (iv) compliance with its confidentiality, privacy, security and policy obligations under the Deed and any Contract; and
  - (v) any other matters determined by the AFP to be relevant to the performance of the Contractor's obligations under the Deed and any Contract.
- (b) The AFP may appoint an independent person to assist in the conduct of any audit. That person must not be a commercial competitor of the Contractor or its Subcontractors.
- (c) Except for those circumstances in which notice is not practicable or appropriate (for example, caused by a regulatory request with shorter notice or investigation of theft or breach), and without limiting any other right, recourse or remedy the AFP may have, the AFP must give the Contractor 30 days' notice of an audit. Where reasonably practicable, the notice must include an indication of which documents and/or class of documents in the possession or control of the Contractor the auditor may wish to inspect or take possession of in the conduct of the audit.
- (d) Each Party must bear its own costs of any audits, except where:
  - (i) any such audit discloses a failure of the Contractor to comply with the Deed, in which case the substantiated costs will be borne by the Contractor; or
  - (ii) the AFP requires repeat audits (based on identical scope) more than once in any 12 month period, in which case the substantiated costs of any repeat audits in that 12 month period will be borne by the AFP (unless any such audit discloses a failure of the Contractor under **clause 20.5(d)(i)**).
- (e) The Contractor must promptly take, at no additional cost to the AFP, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Contractor has, under the Deed and any Contracts:
  - (i) supplied any Services; or
  - (ii) calculated any Services Fees or Pass Through Expenses in accordance with **Schedule 4 (Service Fees)**, or other amounts or charges billed to the AFP.
- (f) Subject to **clause 20.6(j)**, the requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with the Deed.

**20.6 Access to Contractor's Premises, Data and Records**

- (a) Subject to **clause 20.6(b)** and the provision of reasonable notice and subject to the Contractor's reasonable security requirements, the Contractor must, and must ensure that Subcontractors, grant to:
- (i) the AFP;
  - (ii) the Auditor-General; and
  - (iii) other persons nominated by the AFP,
- access as required by the AFP to the Contractor's premises, data, records, financial accounts, Contractor Material or other Material relevant to the performance of the Deed or any Contract, however and wherever stored or located, under the Contractor's or its Subcontractors' custody, possession or control, for inspection and/or copying.
- (b) The Contractor's obligations under this **clause 20.6** do not include providing access to:
- (i) information relating to other customers of the Contractor or its Subcontractors; and
  - (ii) subject to **clause 20.6(c)**, Confidential Information of the Contractor or its Subcontractors.
- (c) The Contractor must provide access to Confidential Information of the Contractor where that access is:
- (i) required by the AFP to ensure the continuity of the Services during and after the end of the Term, including in the event of the removal of any of the Services from scope;
  - (ii) required by the AFP to substantiate the Contractor's obligations under the Deed or a Contract, including information required to substantiate the Service Fees and other amounts payable by the AFP to the Contractor;
  - (iii) relevant to the amount of any debts the Contractor may owe to the AFP, including information necessary for the AFP to confirm or validate the amount of those debts; or
  - (iv) necessary for the AFP to meet its obligations of proper accountability for the use and management of public money, public property and other resources of the Commonwealth, including in responding to requests for information from the Parliament of Australia.
- (d) The Contractor is not required to provide access to Confidential Information of the Contractor under **clause 20.6(c)** to persons that the Contractor has notified to the AFP are direct competitors of the Contractor or its Subcontractors for the types of services being provided under the Deed and that the AFP at its discretion agrees are direct competitors.
- (e) In the case of documents or records stored on a medium other than in writing, the Contractor must make available on request, at no additional cost to the AFP, such reasonable facilities as may be necessary to enable a legible reproduction to be created.

- (f) Without limiting any other provision of the Deed, the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions and/or powers respectively, may, at reasonable times and subject to the Contractor's reasonable security requirements:
- (i) access the premises of the Contractor;
  - (ii) require the provision by the Contractor, or Contractor Personnel, of records and other information which are related to the Deed; and
  - (iii) access, inspect and copy documentation and records or any other matter relevant to the Contractor's obligations or performance of the Deed, however stored, in the custody or under the control of the Contractor or Contractor Personnel.
- (g) The Contractor must ensure that any Subcontract entered into for the purpose of the Deed or any Contract contains an equivalent clause granting the rights specified in this **clause 20.6** with respect to the Subcontractor's premises, data, records, accounts, financial material and information and those of its employees, agents or subcontractors.
- (h) This **clause 20.6** applies for the Term and for a period of seven years from the date of the Deed's expiration or termination.
- (i) In the exercise of the general rights granted under this **clause 20.6**, the AFP must use reasonable endeavours not to unreasonably interfere with the Contractor's performance under the Deed or any Contract in any material respect.
- (j) If in exercising the rights granted under **clause 20.6**, the AFP unreasonably interferes with the Contractor's performance of its obligations under the Deed in a material respect and that interference substantially delays the Contractor in performing its obligations, the Contractor may request an extension of time to perform its obligations.
- (k) The AFP must not unreasonably refuse a request pursuant to **clause 20.6(j)** where the Contractor substantiates the request, within a reasonable time, to the satisfaction of the AFP, provided that:
- (i) the Contractor advised the AFP of the delay within 10 Business Days of the exercise of the rights and the delay occurring;
  - (ii) the delay could not have been reasonably contemplated or allowed for by the Contractor before entering into the Deed; and
  - (iii) the Contractor has taken or takes all reasonable steps to minimise any delay.
- (l) In no circumstances will any extension of time pursuant to this **clause 20.6** exceed the amount of any delay directly arising from the exercise of the rights.
- (m) The Contractor will not be entitled to any delay costs or other costs or expenses of whatever nature relating in any way to the exercise of any rights under this **clause 20.6** other than to the extent expressly provided for under this **clause 20.6**.
- (n) Nothing in the Deed reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor-General, the Australian Information Commissioner or the Privacy Commissioner or their delegates. The rights of the AFP under the Deed are in addition to any other power, right or entitlement of the

Commonwealth Auditor-General, the Australian Information Commissioner, the Privacy Commissioner or their delegates.

- (o) If requested by the AFP in writing, the Contractor must, and must ensure that its Subcontractors, promptly provide information about its workplace practices, including but not limited to information about:
  - (i) the Contractor's compliance with awards, industrial agreements, industrial Laws, occupational health and safety Laws and workers' compensation Laws;
  - (ii) the provision of annual leave and long service leave entitlements to the Contractor's employees; and
  - (iii) the Contractor's capacity to meet the entitlements of its employees and make superannuation contributions that the Contractor is required by Law to make.
- (p) Without limiting any other provision of the Contract, AFP may disclose any information provided by the Contractor or a Subcontractor pursuant to **clause 20.6(o)** to the Department of Finance and Deregulation.

#### **20.7 Contractor Fees for Deed and Contract Administration**

- (a) The AFP will contribute an annual amount as specified in **Schedule 4 (Service Fees)** towards the Contractor's cost of administering the Deed and Contracts, including ensuring compliance with all of the Contractor's obligations (**Administration Fee**).
- (b) The Administration Fee is payable for the Initial Deed Term only.

### **21. CONFIDENTIALITY**

#### **21.1 Definition of Confidential Information**

- (a) Confidential Information means information that:
  - (i) is by its nature confidential;
  - (ii) is listed in **Schedule 14 (Confidential Information)** of the Deed;
  - (iii) the receiving Party knows or ought to know is confidential; and
  - (iv) for the AFP:
    - (A) is designated by the AFP as confidential;
    - (B) the Contractor knows or ought to know is confidential;
    - (C) is information comprised in or relating to any of the AFP's Intellectual Property;
    - (D) is information relating to the policies, strategies, practices and procedures of the AFP and any information in the Contractor's possession relating to the AFP;
    - (E) is information relating to other contractors of the AFP; or
    - (F) is AFP Material and AFP Data,