



Australian Government
Department of Finance

DEED OF STANDING OFFER

DEED OF STANDING OFFER IN RELATION TO BUSINESS ADVISORY
SERVICES

The Commonwealth of Australia, represented by the Department of Finance
ABN 61 970 632 495

Ernst & Young
ABN 75 288 172 749

Department of Finance
King Edward Terrace
Parkes ACT 2600

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Parties

This Deed of Standing Offer is made between and binds the following parties:

1. **The Commonwealth of Australia, represented by the Department of Finance** ABN 61 970 632 495, King Edward Terrace, Parkes ACT 2600 (Finance)
2. **Ernst & Young** ABN 75 288 172 749, 680 George Street Sydney NSW 2000 (the **Service Provider**)

Context

This Deed of Standing Offer is made in the following context:

- A. Finance has established a panel of suppliers to provide Business and Commercial Advisory Services to Finance (**Panel**). The Service Provider is one of the suppliers on the Panel.
- B. Finance may request the Service Provider to provide Services.
- C. The Service Provider offers to respond to requests by Finance for Services.
- D. Any Services to be provided by the Service Provider will be provided in accordance with a Contract entered into by Finance and the Service Provider under this Deed.

OPERATIVE PROVISIONS

1. Interpretation

1.1. Definitions

- 1.1.1. In this Deed, unless the context indicates otherwise:

Additional Agency	means all Commonwealth entities;
Business Day	means a day that is not a Saturday, a Sunday or a public holiday in the place concerned, or if no such location is specified or reasonably ascertainable, in Canberra;
Commencement Date	means 26 October 2015;
Commonwealth entity	has the meaning given in the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth);
Conflict of Interest	means any matter, circumstance, interest or activity (financial, political or otherwise) affecting the Service Provider (including Service Provider Personnel) or affecting any Related Entity, which may impair, or be perceived to impair, the ability of the Service Provider to provide the Services to Finance diligently and independently;

Contract	means a contract for particular Services formed between Finance and the Service Provider in accordance with clause 2;
End Date	means the later of the Initial End Date and the final day of any extension of the Term under clause 2.1.4;
Extension Date	means the date specified in Item 2.2 of Schedule 1;
Finance	means the Commonwealth of Australia as represented by Finance and includes any Commonwealth entity which is from time to time responsible for administering this Deed;
Finance's Representative	means the person specified by name or position in Item 5 of Schedule 1 or any substitute notified to the Service Provider;
Information Officer	means any of the information officers appointed under the <i>Australian Information Commissioner Act 2010</i> (Cth) when performing privacy functions as defined in that Act;
Initial End Date	means the date specified as such in Item 2.1 of Schedule 1;
Intellectual Property	means copyright (including future copyright), trade marks (registered and unregistered), industrial designs and patents (whether registered or registrable), semiconductor and circuit layout rights, trade, business and company names, trade secrets, or any other proprietary rights, and any rights to registration of those rights, whether created before or after the Commencement Date, and whether existing in Australia or elsewhere;
Material	means anything in relation to which Intellectual Property rights arise;
Notice of Inclusion	means the notice set out in Schedule 4;
Official Order	means an order, substantially in the form of Schedule 3;
Ordered Services	has the meaning given to it in Schedule 2;
Panel	means the panel of suppliers, which by virtue of this Deed includes the Service Provider, and which is created by Finance to obtain business and commercial advisory services;
Personnel	means: <ul style="list-style-type: none"> a. in relation to the Service Provider - any natural person who is an officer, partner, employee, agent, or professional advisor of the Service Provider, of its

	subcontractors, or of a Related Entity; and
	b. in relation to Finance - any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of Finance;
Project Proposal	means the Service Provider's written response to a Service Request by Finance;
Related Entity	has the meaning given in the <i>Corporations Act 2001</i> (Cth);
Services	means the services described in Item 1 of Schedule 1;
Service Request	means a request, issued by Finance in accordance with clause 2.3.2, for the Service Provider to provide a Project Proposal to Finance regarding the provision of particular Services to Finance;
Special Condition	means conditions agreed to be included in a specific Contract, which only apply to that specific Contract, and which have the effect of amending the terms of the Deed in respect of that Contract;
Specified Personnel	means the Personnel who are named in a Contract to perform Services under that Contract; and
Term	means the term of this Deed, being the period from the Commencement Date to the End Date.

1.2. Interpretation

1.2.1. In this Deed, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. a reference to dollars is a reference to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. a reference to an Item is a reference to an Item in Schedule 1;

- i. the Schedules and any attachments form part of this Deed;
- j. a reference to a Schedule (or an attachment) is a reference to that Schedule (or attachment) to this Deed, including as amended or replaced from time to time by agreement in writing between the parties;
- k. if any conflict arises between the terms and conditions contained in the clauses of this Deed and any part of a Schedule (and attachments if any), the terms and conditions of the clauses prevail;
- l. if any conflict arises between any part of a Schedule and any part of an attachment, the Schedule prevails;
- m. if any conflict arises between an Official Order (including any Special Conditions) agreed in a Contract and the Deed, the Official Order prevails; and
- n. where an Official Order (including any Special Conditions) agreed in a Contract conflict with the terms of the Deed, 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.

1.3. Guidance on construction

- 1.3.1. This Deed and each Contract record the entire agreement between the parties in relation to their subject matter.
- 1.3.2. As far as possible all provisions of this Deed and any Contract will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this Deed or any Contract is void or otherwise unenforceable then it will be severed and the rest of the Deed or Contract remains in force.
- 1.3.4. A provision of this Deed or any Contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

1.4. Commencement

- 1.4.1. The terms of this Deed apply on and from the Commencement Date.

2. Formation of Contracts

2.1. Offer to provide Services

- 2.1.1. The Service Provider irrevocably offers to provide Services to Finance in accordance with the terms and conditions set out in this Deed.
- 2.1.2. The Service Provider's standing offer in clause 2.1.1 will remain open for acceptance by Finance for the Term.
- 2.1.3. The Service Provider acknowledges that it is one of a number of suppliers on the Panel which may be requested by Finance to provide Services.

2.1.4. Finance may extend the Term for up to two further 12 month periods ending not later than the Extension Date by notice in writing delivered to the Service Provider not less than:

- a. 30 days before the Initial End Date; or
- b. 30 days before the end of the first 12 month extension, if applicable.

Any extension will be on the same terms and conditions, and cover the same Services, as set out in this Deed.

2.2. Official Orders

2.2.1. Finance may request the Service Provider to provide Services by:

- a. consulting with the Service Provider and agreeing to the terms of an Official Order; and
- b. issuing the agreed Official Order to the Service Provider.

A Contract is formed when both Finance and the Service Provider have signed the Official Order.

2.2.2. Each Official Order signed by Finance and the Service Provider pursuant to clause 2.1.1 will create a separate Contract between Finance and the Service Provider in relation to the provision of the Ordered Services specified in the Official Order.

2.2.3. The parties agree that the terms of each Contract will be those set out in:

- a. the Official Order, including any Special Conditions;
- b. clauses 3, 4, 5, 6, 7, 8 and 9 of this Deed; and
- c. Schedule 2,

which will be binding on the parties whether or not a copy of this Deed or Schedule 2 is attached to each Official Order.

2.3. Determining whether to place an Official Order

2.3.1. The Service Provider acknowledges that when Finance requires services of the kind covered by this Deed, Finance may seek competitive quotes from any one or more of the suppliers on the Panel.

2.3.2. Without limiting how Finance may give effect to clause 2.3.1, Finance may place a Service Request with the Service Provider and any other supplier(s) on the Panel. Placement of a Service Request does not commit Finance to obtaining services from any supplier on the Panel. A Service Request will contain the relevant specifications and work requirements identified by Finance.

2.3.3. Where a Service Request is issued to the Service Provider, the Service Provider may provide a Project Proposal within the time period specified in the Service Request. A Project Proposal should contain the information that is required in the Service Request including:

- a. a description of how the Service Provider would perform the requested Services and whether it could do so within the timeframe specified in the Service Request;
 - b. indicate the Personnel, if any, that would perform the requested Services;
 - c. indicate any Conflict of Interest the Service Provider may have in providing the requested Services; and
 - d. a quote for the performance of those Services calculated in accordance with Item 4 of Schedule 1.
- 2.3.4. If Finance seeks competitive quotes in the circumstance envisaged by clause 2.3.1, Finance may seek quotes on a fixed price or other basis.
- 2.4. Finance not bound to place Official Order with the Service Provider**
- 2.4.1. Finance:
 - a. is not obliged to place any Official Order with the Service Provider or to request any volume of Services from the Service Provider; and
 - b. may at any time purchase or acquire services the same as, or similar to, the Services from another supplier on the Panel or from any other person on such terms and conditions as Finance wishes.
- 2.5. Additional Agencies**
- 2.5.1. Except to the extent specifically agreed to the contrary by Finance, or as required by law, all information relating to this Deed or any related matter must only be made available to Additional Agencies by Finance.
- 2.5.2. Where an Additional Agency wishes to acquire any of the Services it will first issue a Notice of Inclusion to the Service Provider for its consideration.
- 2.5.3. If the Service Provider agrees to the Notice of Inclusion, a separate deed will be created between the Service Provider and the relevant Additional Agency upon the proper execution of the Notice of Inclusion by both the Service Provider and the Additional Agency. That deed will be on terms identical to the terms of this Deed with the exception that:
 - a. references to 'Commonwealth of Australia (as represented by Finance)' as the contracting party and 'Finance' will be references to the relevant Additional Agency as detailed in the Notice of Inclusion;
 - b. this clause 2.5 and the definitions of 'Additional Agency' and 'Notice of Inclusion' in clause 1.1.1 of this Deed will not apply; and
 - c. the amendments set out in Attachment A to the Notice of Inclusion will apply.
- 2.5.4. For the avoidance of doubt:

- a. any Official Order issued by Finance pursuant to this Deed will not form part of the deed formed pursuant to clause 2.5.3 (or any Contract formed pursuant to that deed);
- b. any Service Request, other request for proposal and quotation, or any Official Order or other action taken by the relevant Additional Agency will be pursuant to the deed between the Additional Agency and the Service Provider and not this Deed.

3. Fees, Subcontractors and Personnel

3.1. Fees, allowances and costs

- 3.1.1. The fees, allowances and costs due to the Service Provider for performing the Ordered Services will be specified in the Official Order and will, unless otherwise specified in the Official Order, be calculated in accordance with Item 4 of Schedule 1.
- 3.1.2. Only those fees, allowances and costs specified in the Official Order will be paid by Finance.

3.2. Superannuation

- 3.2.1. The Deed is entered into on the understanding that Finance is not required to make any superannuation contributions in connection with any Contract, unless stated to the contrary in Item 4 of Schedule 1.

3.3. Invoices and payment

- 3.3.1. Invoices for Ordered Services must be submitted, together with any supporting documentation, in the manner specified in Item 3 of Schedule 1.
- 3.3.2. Finance will make all payments in the manner specified in Item 3 of Schedule 1 unless otherwise specified in the Official Order.

3.4. Subcontractors

- 3.4.1. The Service Provider agrees to make available to Finance (if requested), details of all subcontractors engaged in the performance of the Ordered Services.
- 3.4.2. The Service Provider acknowledges, and must inform all subcontractors that, Finance may publicly disclose the names of any subcontractors engaged in the performance of the Ordered Services.

3.5. Personnel

- 3.5.1. Specified Personnel must be utilised by the Service Provider as specified in the Contract.
- 3.5.2. Personnel must be charged out at rates no higher than the rates that apply to those Personnel as specified in Item 4 of Schedule 1.

4. Dispute resolution

4.1. Procedure for dispute resolution

- 4.1.1. The parties agree that a dispute arising under this Deed or a Contract will be dealt with as follows:
- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - b. within 5 Business Days (or such other period as agreed by the parties in writing) each party will nominate a representative not having any prior involvement in the dispute;
 - c. the representatives will try to settle the dispute by direct negotiation between them;
 - d. failing settlement within a further 10 Business Days or such other period as agreed by the parties in writing (or failure of one or both parties to nominate a representative within the period set out in clause 4.1.1.b), the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
 - e. the parties will cooperate fully with any process instigated under clause 4.1.1.d in order to achieve a speedy resolution; and
 - f. if the parties have been unable to agree to refer the dispute to an independent third person, or they have agreed and a resolution is not reached within a further 20 Business Days (or such other period as agreed by the parties in writing), either party may commence legal proceedings.

4.2. Costs

- 4.2.1. Each party will bear its own costs of complying with this clause 4, and the parties will bear equally the cost of any third person engaged under clause 4.1.1.d.

4.3. Continued performance

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

4.4. Exemption

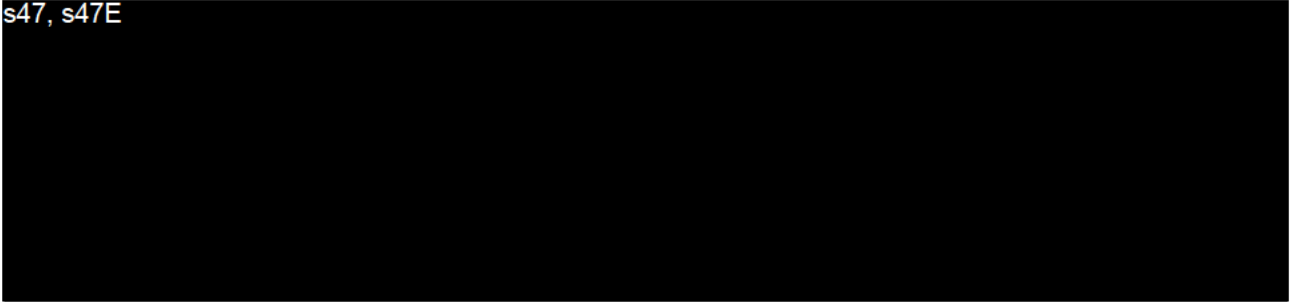
- 4.4.1. This clause 4 does not apply to:
- a. action by either party under or purportedly under any clause relating to termination, whether for convenience or for default; or
 - b. legal proceedings by either party seeking urgent interlocutory relief.

5. Liability

5.1. Proportionate liability regimes excluded

- 5.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Service Provider under or in connection with this Deed or any Contract.

s47, s47E



5.3. Indemnity

- 5.3.1. The Service Provider indemnifies Finance from and against any:
- a. cost or liability incurred by Finance;
 - b. loss of or damage to property of Finance; or
 - c. loss or expense incurred by Finance in dealing with any claim against it including legal costs and expenses on a solicitor and own client basis and the cost of time spent, resources used or disbursements paid by Finance, arising from either:
 - a. a breach by the Service Provider of this Deed or any Contract; or
 - b. an unlawful or negligent act or omission of the Service Provider or its Personnel in connection with this Deed or any Contract.
- 5.3.2. The Service Provider's liability to indemnify Finance under clause 5.3.1 will be reduced proportionately to the extent that any unlawful or negligent act or omission of Finance or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- 5.3.3. The right of Finance to be indemnified under this clause 5.3 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but Finance is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

6. Termination or reduction in scope of Ordered Services

6.1. Termination for convenience

- 6.1.1. Finance may by notice, at any time and in its absolute discretion, terminate this Deed or any Contract, or reduce the scope of any Ordered Services, immediately.
- 6.1.2. The Service Provider agrees, on receipt of a notice of termination or reduction:

- a. to stop or reduce work as specified in the notice;
 - b. to take all available steps to minimise loss resulting from that termination or reduction; and
 - c. to continue work on any part of any Ordered Services not affected by the notice.
- 6.1.3. In the event of termination under clause 6.1.1, Finance will be liable only:
 - a. to pay any fees due under a Contract relating to Ordered Services completed before the date of termination;
 - b. to reimburse any reasonable expenses the Service Provider incurs relating entirely to Ordered Services not covered under clause 6.1.3.a; and
 - c. to meet any reasonable costs incurred under a Contract before the effective date of termination.
- 6.1.4. Finance will not be liable to pay amounts under clause 6.1.3.a and 6.1.3.b which would, added to any fees already paid to the Service Provider under a Contract, together exceed the fees set out in the Official Order.
- 6.1.5. In the event of a reduction in the scope of any Ordered Services under clause 6.1.1, Finance's liability to pay fees, allowances or costs under any relevant Contract will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Ordered Services.
- 6.1.6. The Service Provider will not be entitled to compensation for loss of prospective profits.
- 6.2. Termination for fault**
- 6.2.1. If a party fails to satisfy any of its obligations under this Deed or any Contract, then the other party – if it considers that the failure is:
 - a. *not capable of remedy* – may, by notice, terminate this Deed or the Contract immediately; or
 - b. *capable of remedy* – may, by notice, require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Deed or the Contract immediately by giving a second notice.
- 6.2.2. Finance may also by notice terminate this Deed or any Contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:
 - a. *being a corporation* – comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration; or

- b. *being an individual* – becomes bankrupt or enters into a scheme of arrangement with creditors.

7. Notices

7.1. Format, addressing and delivery

7.1.1. A notice under this Deed or any Contract is only effective if it is in writing, and dealt with as follows:

- a. *if given by the Service Provider to Finance* – addressed to Finance's Representative at the address specified in Item 6 of Schedule 1 or as otherwise notified by Finance; or
- b. *if given by Finance to the Service Provider* – given by Finance's Representative (or any superior officer to Finance's Representative) and addressed (and marked for attention) as specified in Item 7 of Schedule 1 or as otherwise notified by the Service Provider.

7.1.2. A notice is to be:

- a. signed by the person giving the notice and delivered by hand;
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail.

7.2. When effective

7.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* – upon delivery to the relevant address;
- b. *if sent by post* – upon delivery to the relevant address; and
- c. *if transmitted electronically* – upon actual receipt by the addressee.

7.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

8. General provisions

8.1. Audit and access

8.1.1. For the purposes of this clause 8.1:

Official Resources means any Official Resources (as defined in Schedule 2) to which the Service Provider has access pursuant to any Contract or this Deed.

8.1.2. The Service Provider agrees:

- a. to give Finance's Representative, or any persons authorised in writing by Finance's Representative, access to premises where Services are being performed or where Official Resources are located; and

- b. to permit those persons to inspect and take copies of any Material relevant to the Services.
- 8.1.3. The rights referred to in clause 8.1.2 are subject to:
 - a. Finance providing reasonable prior notice;
 - b. reasonable security procedures in place at the premises; and
 - c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.
- 8.1.4. The Auditor-General and Information Officer (including their delegates) are persons authorised for the purposes of this clause 8.
- 8.1.5. This clause 8 does not detract from the statutory powers of the Auditor-General or Information Officer (including their delegates).
- 8.2. Insurance**
- 8.2.1. The Service Provider agrees:
 - a. to effect and maintain the insurance specified in s47, s47E and
 - b. on request, to provide proof of insurance acceptable to Finance.
- 8.2.2. This clause 8.2 continues in operation for so long as any obligations remain in connection with the Deed.
- 8.3. Conflict of Interest**
- 8.3.1. The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict of Interest exists or is likely to arise in the performance of the Services.
- 8.3.2. If, during the Term a Conflict of Interest arises, or appears likely to arise, the Service Provider agrees:
 - a. to notify Finance immediately;
 - b. to make full disclosure of the nature of the Conflict of Interest; and
 - c. to take any steps Finance reasonably requires to resolve or otherwise deal with the Conflict of Interest.
- 8.4. Relationship of parties**
- 8.4.1. The Service Provider is not by virtue of this Deed or any Contract an officer, employee, partner or agent of Finance, nor does the Service Provider have any power or authority to bind or represent Finance.
- 8.4.2. The Service Provider agrees:
 - a. not to misrepresent its relationship with Finance; and
 - b. not to engage in any misleading or deceptive conduct in relation to the Services.

8.5. Waiver

8.5.1. A failure or delay by a party to exercise any right or remedy it holds under this Deed or any Contract or at law does not operate as a waiver of that right.

8.5.2. A single or partial exercise by a party of any right or remedy it holds under this Deed or any Contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

8.6. Variation

8.6.1. A variation of this Deed or any Contract is binding only if agreed in writing and signed by the parties.

8.7. Assignment

8.7.1. The Service Provider cannot assign its obligations, and agrees not to assign its rights, under this Deed or any Contract without Finance's prior written approval.

8.8. Survival

8.8.1. Unless the contrary intention appears, the expiry or earlier termination of this Deed or any Contract will not affect the continued operation of any provision relating to:

- a. licensing of Intellectual Property;
- b. confidentiality;
- c. privacy;
- d. books and records;
- e. audit and access;
- f. security;
- g. an indemnity;

or any other provision which expressly or by implication from its nature is intended to continue.

8.9. Compliance with Legislation

8.9.1. In this clause 8.9:

Legislation	means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.
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8.9.2. The Service Provider agrees to comply with any Legislation applicable to its performance of this Deed or a Contract.

9. Applicable law

9.1. Applicable law

9.1.1. This Deed and each Contract are to be construed in accordance with, and any matter related to them is to be governed by, the law of the State or Territory specified in Item 9 of Schedule 1.

9.2. Jurisdiction of the courts

9.2.1. The parties submit to the jurisdiction of the courts of that State or Territory.

Executed as a Deed

SIGNED, SEALED AND DELIVERED
for and on behalf of the
Commonwealth of Australia
represented by the Department of
Finance by:

s47F

Name of signatory

s22

Signature

Date: 11/11/15

In the presence of:

s47F

Name of witness

s22

Signature of witness

Date: 11/11/15

SIGNED SEALED AND DELIVERED
by Ernst & Young, ABN 75 288 172
749, by an authorised representative
of the Australian Partnership of Ernst
& Young in the presence of:

s47F

^Name of Partner^

s22

Signature

Date: 9/11/2015

and by: s47F

^Name of Witness^

s22

Signature

Date: 9/11/15

SCHEDULE 1 ITEMS

1. Services

1.1. General description

The Services are a wide range of business advisory services in respect of scoping studies and reviews, commercial transactions and other commercial activities which include review based commercial and financial based advice. The Services are described in more detail below.

1.2. Scoping studies and other reviews

Business advisory services for scoping studies and other reviews including:

- project management of all aspects of the scoping study or review, including the development and management of a project schedule, risk management plan, issues management strategy, stakeholder management and consultation plan, and provision of regular progress reporting;
- providing commercial advice and analysis in respect of issues being considered by the scoping study or review, including:
 - capital, corporate and institutional structures including business models and capital management;
 - governance arrangements;
 - dividend policy;
 - business strategies and operations, including restructuring;
 - financial matters and arrangements including quantitative analysis, financial modelling and forecasts, assessment of debt and equity positions and instruments;
 - capital funding and other financing matters including different forms of securities such as hybrids, derivatives, bonds in general and bond-specific securities and trusts;
 - valuations; and
 - corporate planning, progress reporting or significant event notifications and other commercial issues;
- leading the development of the scoping study or review report (for consideration by the Australian Government in consultation with other advisers as appointed by Finance) which provides analysis and recommendations regarding ownership options, structural and functional matters as well as policy considerations of Commonwealth entities as necessary; and
- any other services as may be relevant for the type of scoping study or review under consideration.

1.3. Commercial transactions, outsourcing or other commercial activities

Business advisory services for commercial transactions, outsourcing or other commercial activities including:

- project management of the relevant transaction, which may include initial public offerings, trade sales or outsourcing, including developing and managing a

- schedule, a risk management plan, issues management strategies, stakeholder management and consultation plans, and provision of regular progress reports;
- commercial advice in respect of the relevant transaction; and
- any other such services as may be relevant for a transaction of the type being conducted.

1.4. Ad hoc commercial advice as required

In addition to the potential services outlined above, Finance may require Panel members to provide other commercial services.

2. Timeframe

(see clauses 1.1 and 2.1)

2.1. Initial End Date

Three years from the Commencement Date.

2.2. Extension Date

Two years after the Initial End Date.

3. Invoices and payment

3.1. Invoices

To be correctly rendered, a separate invoice must be submitted for each Contract. Invoices must include the following information:

- a. the words "tax invoice" stated prominently;
- b. the Service Provider's name;
- c. the Service Provider's ABN;
- d. Finance's ABN and address;
- e. the date of issue of the tax invoice;
- f. the title of this Deed and the Official Order number;
- g. details of fees, allowances and costs including the items to which they relate;
- h. the total amount payable (including GST); and
- i. the GST amount shown separately.

All claims for allowances or costs must be supported by receipts or other documentation which clearly substantiate the Service Provider's entitlement to those allowances or costs.

An invoice is not correctly rendered where:

- a. it includes amounts that are not properly payable under a Contract or are incorrectly calculated; or

- b. it relates to a payment in relation to which Finance has exercised its rights under clause 3.2 of Schedule 2.

All invoices must be addressed to Finance's Representative.

3.2. Payment

The due date for payment by Finance is 30 calendar days after delivery of a correctly rendered invoice. If this period ends on a day that is not a Business Day, the due date for payment is the next Business Day.

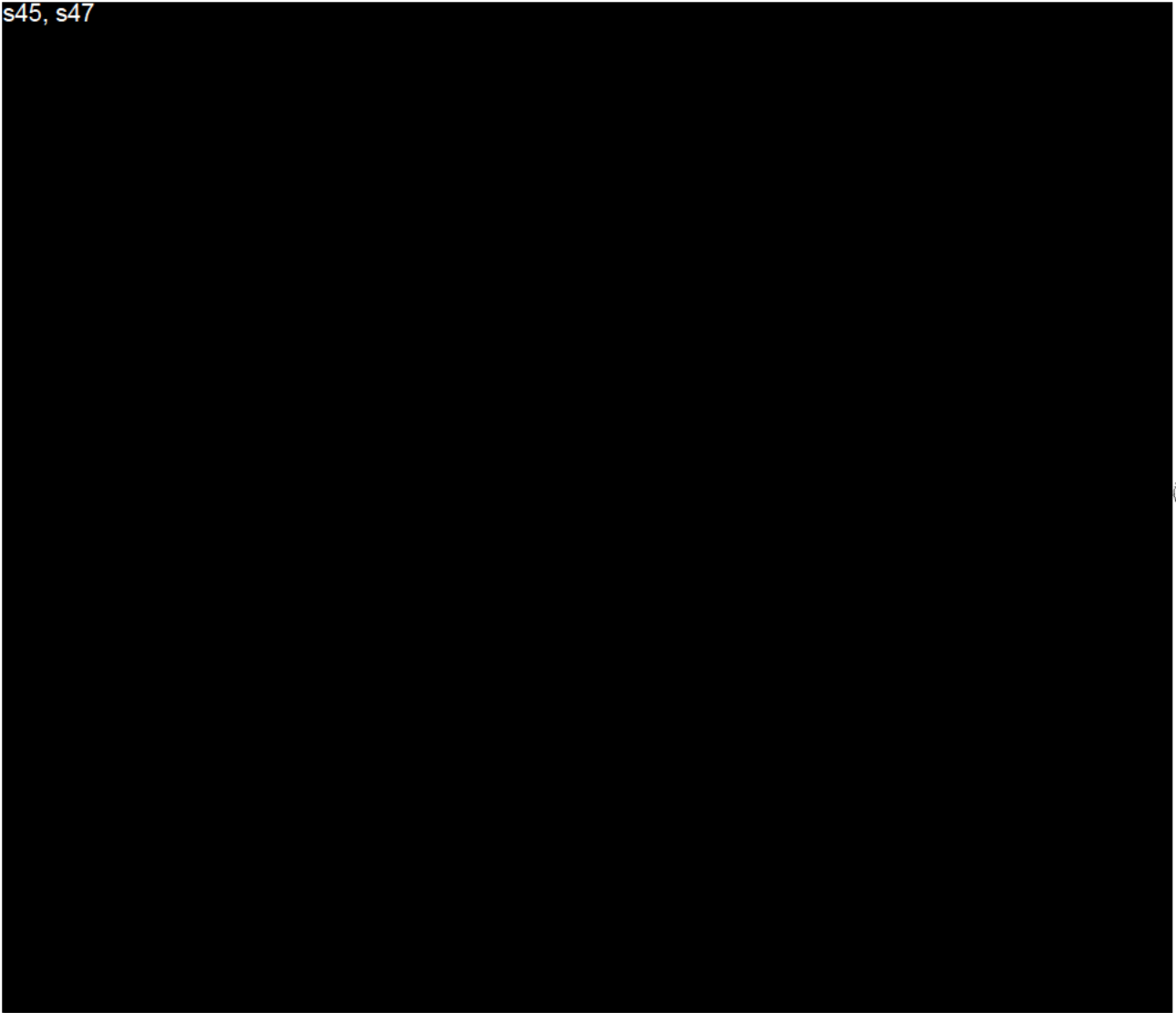
Payment will be effected by electronic funds transfer (EFT) to the following bank account of the Service Provider:

s47



4. Fees, allowances & costs

s45, s47



4.2. Fee Review - Consumer Price Index

For the purposes of this Item 4.2:

Consumer Price Index means the 'Consumer Price Index (All Groups, Weighted Average of Eight Capital Cities)' as published by the Australian Bureau of Statistics, or if that index is discontinued or materially altered, such substitute index (or adjustment to that Consumer Price Index) as may be agreed by the parties or, in the absence of such agreement, as may be determined by the President of the Law Society of the Australian Capital Territory or his or her nominee to be an appropriate index reflecting the general level of monetary inflation across Australia.

All fees are fixed for three years from the Commencement Date and are subject to a Consumer Price Index adjustment at the commencement of years 4 and 5 (option periods), based on the increase in the Consumer Price Index (All Groups) for the previous 12 month period.

4.3. Allowances and costs

Finance may cover travel or other expenses incurred by the Service Provider in the performance of the Ordered Services. This will be agreed to and specified in any Official Order.

5. Finance's Representative

Finance's Representative is the person for the time being holding, occupying or performing the duties of Contact Officer, Asset Management Taskforce.

6. Finance's address for notices

(see clause 7.1)

Physical address	The Treasury Building, Parkes Place West, Parkes ACT 2600
Postal address	John Gorton Building, King Edward Terrace, Parkes ACT 2600
Email	s22 [REDACTED]

7. Service Provider's address for notices

(see clause 7.1)

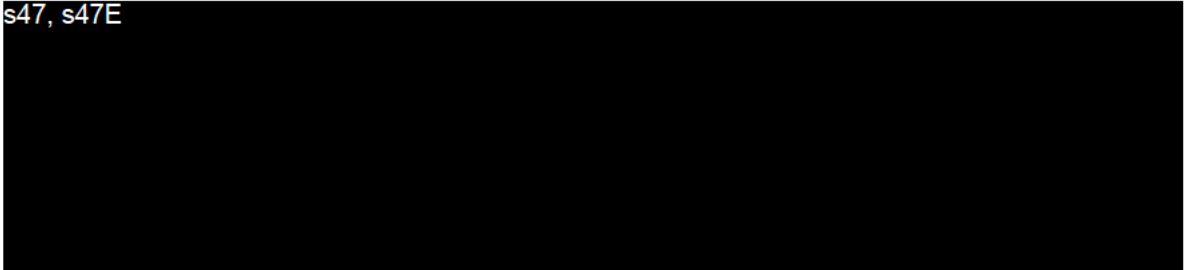
Physical address	Level 11, 121 Marcus Clarke Street Canberra ACT 2000
Postal address	GPO Box 281 Canberra ACT 2601

Email	s22
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8. Insurance

(see clause 8.2)

s47, s47E



9. Applicable law

(see clause 9.1)

Australian Capital Territory

SCHEDULE 2 CONTRACT TERMS AND CONDITIONS

OPERATIVE PROVISIONS

The following terms and conditions apply when a Contract is created in accordance with clause 2 of the Deed.

1. Interpretation

1.1. Definitions

1.1.1. In the Contract, unless the context indicates otherwise:

Australian Privacy Principle	has the same meaning as it has in the <i>Privacy Act 1988</i> (Cth);
Commonwealth Material	means any Material: <ul style="list-style-type: none">a. provided by Finance to the Service Provider for the purposes of the Contract; orb. derived at any time from the Material referred to in paragraph a;
Confidential Information (of the Service Provider)	means information that is by its nature confidential and is described in Item 11 of Schedule 3;
Contract Commencement Date	means the date specified in Item 5 of Schedule 3;
Contract Material	means any Material: <ul style="list-style-type: none">a. created for the purposes of the Contract;b. provided or required to be provided to Finance as part of the Ordered Services; orc. derived at any time from the Material referred to in paragraph a or b;
Deed	means this Deed of Standing Offer between Finance and the Service Provider in respect of the provision of Services;
Existing Material	means any Material in existence at the Contract Commencement Date and developed by the Service Provider independently of the performance of the Deed or any Contract and specified in Item 8 of Schedule 3;
Finance	means the party identified as such in the Deed;
Finance's Representative	has the meaning set out in clause 1.1 of the Deed;

GST	has the same meaning as it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Intellectual Property	means copyright (including future copyright), trade marks (registered and unregistered), industrial designs and patents (whether registered or registrable), semiconductor and circuit layout rights, trade, business and company names, trade secrets, or any other proprietary rights, and any rights to registration of those rights, whether created before or after the Contract Commencement Date, and whether existing in Australia or elsewhere;
Material	means anything in relation to which Intellectual Property rights arise;
Moral Rights	means the following non-proprietary rights of authors of copyright Material: <ul style="list-style-type: none"> a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed;
Official Information	means any information developed, received or collected by or on behalf of Finance to which the Service Provider gains access under or in connection with the Contract, and includes the Contract Material and the terms of the Contract;
Official Order	has the meaning set out in clause 1.1 of the Deed;
Open Access Licence	means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the Material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences);
Ordered Services	means the services specified in Item 2 of Schedule 3 and includes all: <ul style="list-style-type: none"> a. incidental services; b. functions required for the proper provision of those services; and c. the provision to Finance of the Material specified in Item 4 of Schedule 3;
Permitted Acts	means any of the following classes or types of acts or omissions:

- a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- b. supplementing the Contract Material with any other Material;
- c. using the Contract Material in a different context to that originally envisaged;
- d. releasing the Contract Material to the public under an Open Access Licence,

but does not include false attribution of authorship;
has the meaning set out in clause 1.1 of the Deed;

Personnel

Service Provider means the party identified as such in the Deed;

Special Condition has the meaning set out in clause 1.1 of the Deed; and

Specified Personnel has the meaning set out in clause 1.1 of the Deed.

1.2. Interpretation

1.2.1. In the Contract, unless the contrary intention appears:

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. all references to dollars are to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of such legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. reference to an Item is to an Item in the Official Order;
- i. any schedules or attachments form part of the Contract;
- j. if any conflict arises between the terms and conditions contained in the Official Order and these terms and conditions or the terms of the Deed the following order of priority will apply:

- i. the terms specified in the Official Order (including any Special Conditions);
 - ii. any attachments or schedules to the Official Order;
 - iii. these terms and conditions;
 - iv. the terms and conditions specified in the Deed; then
 - v. the other schedules to the Deed; and
- k. reference to a schedule (or an attachment) is a reference to a schedule (or an attachment) to the Contract, including as amended or replaced from time to time by agreement in writing between the parties.

1.3. Commencement

- 1.3.1. The terms of the Contract apply on and from the Contract Commencement Date.

2. Performance

2.1. Ordered Services

- 2.1.1. The Service Provider agrees to:
- a. perform the Ordered Services to a standard recognised as a high professional standard by the industry to which the Service Provider belongs;
 - b. adopt relevant best practice, including any Finance, Commonwealth or industry standards and guidelines specified in Item 3 of Schedule 3;
 - c. provide to Finance any Contract Material specified in Item 4 of Schedule 3;
 - d. comply with the requirements of the Deed to the extent they apply to the provision of the Ordered Services;
 - e. comply with the time frame for the performance of the Ordered Services specified in Item 5 of Schedule 3;
 - f. submit invoices and any required supporting documentation in the manner specified in clause 3.1; and
 - g. obtain all approvals and licences necessary to perform the Ordered Services in accordance with the Contract.
- 2.1.2. The Service Provider agrees to keep adequate books and records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable by Finance under a Contract to be determined.

2.2. Liaison with Finance's Representative

- 2.2.1. The Service Provider agrees:

- a. to liaise with Finance's Representative as reasonably required; and
- b. to comply with directions of Finance's Representative that are consistent with the Official Order, the Contract and the Deed.

2.3. Subcontractors

- 2.3.1. The Service Provider agrees not to subcontract the performance of any part of the Ordered Services without Finance's prior written approval.
- 2.3.2. Finance may impose any conditions it considers appropriate when giving its approval under clause 2.3.1.

2.4. Personnel

- 2.4.1. The Service Provider agrees that its Personnel will perform work in relation to the Ordered Services in accordance with the Contract.
- 2.4.2. If Specified Personnel are unable to perform the work as required under clause 2.4.1, the Service Provider agrees to notify Finance immediately.
- 2.4.3. The Service Provider agrees, at the request of Finance acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Ordered Services.
- 2.4.4. If clause 2.4.2 or clause 2.4.3 applies, the Service Provider will provide replacement Personnel acceptable to Finance at no additional cost and at the earliest opportunity.

2.5. Responsibility of Service Provider

- 2.5.1. The Service Provider is fully responsible for the performance of the Services and for ensuring compliance with the requirements of the Contract, and will not be relieved of that responsibility because of any:
 - a. involvement by Finance in the performance of the Services;
 - b. subcontracting of the Services;
 - c. acceptance by Finance of Specified Personnel; or
 - d. payment made to the Service Provider on account of the Services.

3. Fees

3.1. Payment

- 3.1.1. Finance will pay the Service Provider the fees, allowances and costs specified in Item 7 of Schedule 3 following receipt of a correctly rendered invoice.
- 3.1.2. Invoices must be submitted monthly in arrears unless otherwise specified in Item 7 of Schedule 3.
- 3.1.3. An invoice will be correctly rendered for the purposes of clause 3.1.1, if it complies with the invoicing requirements set out in the Deed.

- 3.1.4. Finance will make all payments in the manner set out in the Deed unless otherwise specified in Item 7 of Schedule 3.

3.2. Finance's right to defer payment

- 3.2.1. Finance will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any payment if and for so long as the Service Provider has not completed, to the satisfaction of Finance, acting reasonably, that part of the Ordered Services to which the payment relates.

3.3. Interest

- 3.3.1. For the purpose of this clause 3:

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

the day that payment is made is the day when Finance's system generates a payment request into the banking system for payment to the Service Provider.

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- 3.3.3. Interest will not be payable under clause 3.3.2 unless:
- a. the amount of interest exceeds A\$10; and
 - b. the Service Provider has issued a correctly rendered invoice to Finance in relation to the interest.

3.4. Taxes, duties and government charges

- 3.4.1. Unless otherwise indicated, the Service Provider must pay all taxes, duties and government charges imposed in Australia or overseas in connection with the performance of the Contract.

- 3.4.2. Unless otherwise indicated, any consideration for a supply under the Contract includes an amount for GST imposed on the supply on the basis that the supply is a taxable supply.
- 3.4.3. If an amount on account of GST has been included in the consideration for a supply under the Contract and the supply is not a taxable supply for any reason, the supplier must refund to the recipient on demand the amount paid on account of GST.
- 3.4.4. The Service Provider must give Finance a tax invoice for any taxable supply made under the Contract before any consideration for that supply is payable to the Service Provider, and the Service Provider must give Finance an adjustment note for any amount on account of GST refunded to Finance at the same time the amount is refunded.
- 3.4.5. No party may claim or retain from the other party any amount in relation to a supply made under the Contract for which the first party can obtain an input tax credit or decreasing adjustment.

4. Intellectual Property

4.1. Use of Commonwealth Material

- 4.1.1. Finance agrees to provide Commonwealth Material to the Service Provider as specified in Item 9 of Schedule 3.
- 4.1.2. Finance grants (or will procure) a royalty-free, non-exclusive licence for the Service Provider to use, reproduce and adapt Commonwealth Material for the purposes of the Contract.
- 4.1.3. The Service Provider agrees to use Commonwealth Material strictly in accordance with any conditions or restrictions set out in Item 9 of Schedule 3 and any direction from Finance.

4.2. Rights in Contract Material

- 4.2.1. Intellectual Property in all Contract Material vests or will vest in Finance.
- 4.2.2. Clause 4.2.1 does not affect the ownership of Intellectual Property in:
- a. any Commonwealth Material incorporated into Contract Material; or
 - b. any Existing Material.
- 4.2.3. The Service Provider grants to (or will procure for) Finance a perpetual, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, perform, distribute, communicate and exploit any Existing Material referred to in clause 4.2.2.b, in conjunction with the Contract Material, for any Finance purpose.
- 4.2.4. The Service Provider agrees that the licence granted in clause 4.2.3 includes a right for Finance to licence the Existing Material in conjunction with the Contract Material to the public under an Open Access Licence.

4.2.5. The Service Provider agrees, on request by Finance, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 4.2.

4.2.6. The Service Provider warrants that:

- a. it is entitled; or
- b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 4.2.

4.3. Moral Rights

4.3.1. In this clause 4.3:

Permitted Acts

means any of the following classes or types of acts or omissions:

- a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- b. supplementing the Contract Material with any other Material;
- c. using the Contract Material in a different context to that originally envisaged; and
- d. releasing the Contract Material to the public under an Open Access Licence,

but does not include false attribution of authorship.

4.3.2. Where the Service Provider is a natural person and the author of the Contract Material, he or she consents to the performance of the Permitted Acts by Finance or any person claiming under or through Finance.

4.3.3. If clause 4.3.2 does not apply, the Service Provider agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by Finance or any person claiming under or through Finance (whether occurring before or after the consent is given); and
- b. on request – to provide the executed original of any such consent to Finance.

4.3.4. This clause 4.3 does not apply to any Commonwealth Material incorporated in the Contract Material.

5. Confidentiality of Official Information and other security obligations

5.1. Interpretation

5.1.1. In this clause 5:

Official Resources	includes: <ul style="list-style-type: none">a. Official Information;b. people who work for or with Finance; andc. assets belonging to (even if in the possession of contracted providers) or in the possession of Finance.
Security Classified Resources	means Official Resources that, if compromised, could have adverse consequences for Finance; and
Security Incident	means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.

5.2. Confidentiality of Official Information

- 5.2.1. The Service Provider will not, without the prior written authorisation of Finance, disclose any Official Information to any person (unless required to do so by law).
- 5.2.2. The Service Provider is authorised, subject to clause 5.3.1.a to 5.3.1.f, to provide Official Information to those Personnel and subcontractors who require access for the purposes of the Contract.
- 5.2.3. The Service Provider agrees, on request by Finance at any time, to arrange for the Personnel and subcontractors referred to in clause 5.2.2 to give a written undertaking substantially in the form of Schedule 5.
- 5.2.4. The Service Provider agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

5.3. Other security obligations of Service Provider

- 5.3.1. The Service Provider agrees:
- a. to ensure that all Personnel that require access to Security Classified Resources have obtained the appropriate security clearance;
 - b. to make its Personnel available to attend any security training provided by Finance;
 - c. to notify Finance immediately if it becomes aware that a Security Incident has occurred and otherwise implement Finance's procedures for Security Incident reporting as advised by Finance from time to time;

- d. not to perform the Ordered Services outside Australia without Finance's prior written approval;
 - e. to comply with the Protective Security Policy Framework; and
 - f. to comply with the additional security requirements specified in Item 10 Schedule 3, if any, and any variations or additions to those requirements as notified by Finance from time to time.
- 5.3.2. The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 5 and will provide details of these procedures to Finance on request.

6. Dealing with Copies and Access to Documents

6.1. Interpretation

6.1.1. In clause 6.2:

Copy means any document, device, article or medium in which Commonwealth Material, Contract Material, or Official Information is embodied.

6.2. Actions at end of Contract

6.2.1. On expiration or termination of the Contract:

- a. the Service Provider must deal with all Copies as directed by Finance, subject to any requirement of law binding on the Service Provider;
- b. the Service Provider may, subject to clause 6.2.2, retain Copies solely for the purpose of complying with its professional record-keeping requirements or any requirement of law binding on the Service Provider.

6.2.2. Finance may, by written notice to the Service Provider, and subject to any requirement of law binding on the Service Provider, require that all Copies specified in the notice be returned to Finance. If this occurs, the Service Provider may, by written notice to Finance, request access to the Copies. Finance will permit the Service Provider to access the Copies if such access is required by the Service Provider for the purpose of responding to a dispute, or for complying with its professional or insurance-related obligations.

6.3. Access to documents

6.3.1. In this clause 6.3, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

6.3.2. The Service Provider acknowledges that this Contract is a Commonwealth contract.

6.3.3. Where Finance has received a request for access to a document created by, or in the possession of, the Service Provider or any subcontractor that relates to the performance of this Contract (and not to the entry into the Contract),

Finance may at any time by written notice require the Service Provider to provide the document to Finance and the Service Provider must, at no additional cost to Finance, promptly comply with the notice.

- 6.3.4. The Service Provider must include in any subcontract relating to the performance of this Contract provisions that will enable the Service Provider to comply with its obligations under this clause 6.3.

7. Confidential Information of the Service Provider

7.1. Confidential Information not to be disclosed

- 7.1.1. Subject to clause 7.2, Finance will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

7.2. Exceptions to obligations

- 7.2.1. The obligations of Finance under this clause 7 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by Finance to its Personnel solely in order to comply with obligations, or to exercise rights, under the Deed or the Contract;
 - b. is disclosed by Finance to its internal management Personnel, solely to enable effective management or auditing of contract related activities;
 - c. is disclosed by Finance to the responsible Minister;
 - d. is disclosed by Finance in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - e. is shared by Finance within Finance's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
 - f. is authorised or required by law to be disclosed; or
 - g. is in the public domain otherwise than due to a breach of this clause 7.
- 7.2.2. Where Finance discloses Confidential Information to another person pursuant to clauses 7.2.1.a - 7.2.1.e, Finance will notify the receiving person that the information is confidential.
- 7.2.3. In the circumstances referred to in clauses 7.2.1.a, 7.2.1.b and 7.2.1.e, Finance agrees not to provide the information unless the receiving person agrees to keep the information confidential.
- ### **7.3. Period of confidentiality**
- 7.3.1. The obligations under this clause 7 in relation to an item of Confidential Information of the Service Provider continue for the period set out in Item 11 of Schedule 3 in respect of that item.

8. General provisions

8.1. Work health and safety

- 8.1.1. The Service Provider agrees, in carrying out the Contract, to comply with:
- a. all relevant legislation, codes of practice and national standards relating to work health and safety; and
 - b. all applicable policies and procedures relating to work health and safety including those that apply to Finance's premises when using those premises.
- 8.1.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 8.1.1.b, the Service Provider will comply with those policies and procedures that produce the highest level of health and safety.

8.2. Obligations of Service Provider in relation to privacy

- 8.2.1. In providing the Ordered Services, the Service Provider – to the extent it deals with personal information when, and for the purpose of, providing the Services – is a 'contracted service provider' within the meaning of the *Privacy Act 1988* (Cth), and must:
- a. comply with the Australian Privacy Principles and with any registered APP Code or registered CR Code that is applicable to it (all within the meaning of that Act);
 - b. not to do any act or engage in any practice which, if done or engaged in by Finance, would be a breach of an Australian Privacy Principle; and
 - c. to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters set out in, Item 10 of Schedule 3, to the extent that they are consistent with the Australian Privacy Principles;
 - d. if it subcontracts the performance of any part of the Services, ensure the subcontractor has the same obligations that the Service Provider has under this clause (including this requirement as to subcontracting); and
 - e. cooperate with any reasonable request or direction of Finance in relation to an inquiry, audit or other exercise of powers or functions, by the Information Commissioner under that Act.
- 8.2.2. The Service Provider agrees to notify Finance immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 8.2.

8.3. Extension of provisions to subcontractors and Personnel

- 8.3.1. In this clause 8.3:

Requirement	means an obligation, condition, restriction or prohibition binding on the Service Provider under the Contract.
--------------------	--

- 8.3.2. The Service Provider agrees to ensure that:
- a. its subcontractors and Personnel comply with all relevant Requirements;
and
 - b. any contract entered into in connection with the Contract imposes all relevant Requirements on the other party.
- 8.3.3. The Service Provider agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by Finance.

SCHEDULE 3 OFFICIAL ORDER

Official Order number ^insert order number^

1. Context

This Official Order is issued and agreed pursuant to and subject to the terms and conditions of the Deed between Finance and ^insert name of Service Provider^ dated ^insert date of Deed^.

2. Ordered Services

^Insert description^

3. Policies, Standards and Guidelines

^Insert policies ^

4. Required Contract Material

^Insert description^

5. Commencement and Time frame

Contract Commencement Date:

^Insert date^

Time frame:

^Insert time frame^

6. Specified Personnel

^Insert details^

7. Fees, allowances and costs

An invoice must be submitted within 20 Business Days of completing the Ordered Services.

^Insert payment details^

8. Existing Material

^Insert pre-existing Material - if there is no Existing Material insert "None specified". Do not leave this item blank.^

9. Commonwealth Material

^Insert details - if Finance is not providing any Commonwealth Material insert "None specified". Do not leave this item blank.^

10. Security and privacy

^Insert details if any^

11. Service Provider's Confidential Information

(a) Contract Provisions/Schedules/Attachments

Item	Period of Confidentiality
^insert relevant items - or 'none specified'^	

(b) Contract-related material

Item	Period of Confidentiality
^insert relevant items - or 'none specified'^	

12. Special Conditions

Condition	Clause of Deed Affected (if any)
^insert relevant conditions - or 'none specified'^	

Signed for and on behalf of the Commonwealth of Australia, represented by
Finance by:

.....
^Name^
Finance's Representative

.....
Signature

.....
Date

Signed for and on behalf of the Service Provider by:

.....
^Name^
Service Provider's Representative

.....
Signature

.....
Date

SCHEDULE 4 NOTICE OF INCLUSION FORM

Deed of Standing Offer
between
[Additional Agency Full Name]
and
[Service Provider]

To:

[Name of Service Provider]

[Insert address for notices as per the Deed of Standing Offer]

Parties

1. *[Insert full name, ABN and address of Additional Agency]* (the Additional Agency)
2. *[Insert full name, ABN, ACN (if applicable) and address of Service Provider]* (the Service Provider)

Context

- A. The Department of Finance (the **Agency**) and the Service Provider entered into a Deed of Standing Offer dated ^insert date^ (**Original Deed of Standing Offer**) for the Service Provider to provide Services to the Agency.
- B. Under the Original Deed of Standing Offer, the Service Provider offers to provide Services to Additional Agencies.
- C. The Additional Agency wishes to acquire Services from the Service Provider as it requires from time to time on the same terms as the Original Deed of Standing Offer and this Notice of Inclusion.

Defined Terms

Terms that are used in this Notice of Inclusion that are defined in the Original Deed of Standing Offer have the meaning given in the Original Deed of Standing Offer.

Notice of Inclusion

The Additional Agency issues this Notice of Inclusion to the Service Provider pursuant to clause 2.5 of the Original Deed of Standing Offer.

Upon execution of this Notice of Inclusion by the Service Provider and the Additional Agency a separate Deed is created between the Additional Agency and the Service Provider which is on the same terms as the Original Deed of Standing Offer, as amended by:

- a. clause 2.5.3 of the Original Deed of Standing Offer; and
- b. attachment A to this Notice of Inclusion.

SIGNED, SEALED AND DELIVERED
for and on behalf of [insert full name
of Additional Agency] by:)
)
)

Name of signatory

Signature

In the presence of:

Name of witness

Signature of witness

SIGNED SEALED AND DELIVERED)
by ^Party 2 full registered name^)
^Party 2 ACN^ in accordance with the)
requirements of section 127 of the)
Corporations Act 2001 (Cth) in the
presence of:

^Name of Director^

Signature

and by:

^Name of Director/Secretary^

Signature

Attachment A to Notice of Inclusion

Schedule 1 of the Original Deed of Standing Offer is amended insofar as it is applicable to the Deed between the Additional Agency and the Service Provider formed by this Notice of Inclusion:

Items 3, 5 and 6 of Schedule 1 are replaced with the following:

3. Invoices and Payment

[The Additional Agency should specify its specific invoicing and payment requirements in this section. If the invoicing requirements are the same as the Agency's in Item 3.1 of Schedule 1 of the Original Deed of Standing Offer, the Additional Agency should delete this Invoices and Payment section.]

3.1 Invoices

[Additional Agency to insert requirements in same format as item 3.1 of Schedule 1 of the Original Deed of Standing Offer. If the Additional Agency wishes to include additional requirements that go further than those set out in Item 3.1 of Schedule 1 of the Original Deed of Standing Offer, it should seek legal advice as to how that will interact with the other provisions Original Deed of Standing Offer.]

3.2 Payment

[Additional Agency to insert requirements in same format as Item 3.2 of Schedule 1 of the Original Deed of Standing Offer. If the Additional Agency wishes to include additional requirements that go further than those set out in Item 3.2 of Schedule 1 of the Original Deed of Standing Offer, it should seek legal advice as to how that will interact with the other provisions of the Original Deed of Standing Offer.]

5. Additional Agency's Representative

The Additional Agency's Representative is the person for the time being holding, occupying or performing the duties of ^insert position^.

6. Additional Agency's Address for Notices

Physical address	^Insert address^
Postal address	^Insert address^
Email	^Insert email^

SCHEDULE 5 CONFIDENTIALITY AND PRIVACY UNDERTAKING

Date *[insert date]*

This DEED POLL is made in favour of

Name Commonwealth of Australia as represented by the
Department of Finance
ABN 61 970 632 495
Short form name **/Finance**
Notice details John Gorton Building, King Edward Terrace, Parkes ACT 2600/

by

Name *[insert name of Confidant and ABN]*
Short form name **Confidant, I, me and my**
Notice details *[insert]*

Background

- A. Finance requires the provision of certain services.
- B. *[Insert name of Service Provider]* (Service Provider) and Finance are parties to a Deed of Standing Offer dated *[insert date]* (Deed) in relation to the provision of business advisory services and the Service Provider may agree to provide services to Finance under a contract to be entered into under the Deed (Contract).
- C. The Confidant is an employee or is otherwise engaged by the Service Provider and may be involved in performing services under a Contract.
- D. The Confidant provides the undertakings set out below in respect of information that may be acquired, directly or indirectly in the course of the Service Provider performing its obligations under the Deed or a Contract.

Agreed terms

1. Definitions

Conflict of Interest means any matter, circumstance, interest or activity (financial, political or otherwise) affecting the Confidant, which may impair, or be perceived to impair, the ability of the Confidant to provide services to Finance diligently and independently.

Official Information means any information developed, received or collected by or on behalf of Finance to which the Service Provider or the Confidant gains access under or in connection with the Deed or a Contract, and includes the Contract Material and the terms of the Deed and each Contract.

Personal Information has the meaning it has in section 6 of the *Privacy Act 1988*.

2. Access

- 2.1.1. I understand that in the course of performing duties under the Deed or a Contract, I may have access to Official Information.

3. Non-disclosure

- 3.1.1. I will treat as secret and confidential all Official Information to which I have access or which is disclosed to me.
- 3.1.2. If Finance grants its consent for me to disclose Official Information, it may impose conditions on that consent. In particular, Finance may require that I obtain the execution of a deed in these terms by the person to whom I propose to disclose the Official Information.
- 3.1.3. My obligations under this deed will not be taken to have been breached where I am legally required to disclose the Official Information.

4. Restriction on use

- 4.1.1. I will use the Official Information only for the purpose of my dealings with Finance (whether directly or indirectly) in performing my duties under the Deed or a Contract.
- 4.1.2. I will not copy or reproduce the Official Information without the approval of Finance, will not allow any other person outside Finance access to the Official Information and will take all necessary precautions to prevent unauthorised access to or copying of the Official Information in my control.

5. Powers of Finance

- 5.1.1. Unless otherwise required by law, on request by Finance I must promptly deliver to Finance all documents in my possession or control containing Official Information.
- 5.1.2. If at the time of such a request I am aware that documents containing Official Information are beyond my possession or control, then I must provide full details of where I believe the documents containing the Official Information are, and the identity of the person who I believe has control of them.

6. *Privacy Act 1988* (Cth) obligations

- 6.1.1. I agree to abide by the provisions of the *Privacy Act 1988* in respect of Personal Information, whether or not I am legally bound to comply with that Act.

7. Conflict of interest

- 7.1.1. I warrant that while I am in receipt of Official Information and in respect of my performance of my duties under the Deed or a Contract:
- a. no Conflict of Interest exists or is likely to arise;

- b. I will use my best endeavours to not permit any situation to arise or engage in any activity which may result in a Conflict of Interest; and
- c. if a Conflict of Interest does arise, or appears likely to arise, I will notify Finance immediately in writing and take such steps as Finance may reasonably require to resolve or to otherwise deal with the conflict.

8. Survival

- 8.1.1. This deed will survive the termination or expiry of any contract between the Service Provider and me providing for the performance of services or the provision of goods by me (whether directly or indirectly).

9. Governing law and jurisdiction

- 9.1.1. This deed will be governed by, and construed in all respects in accordance with, the law of the Australian Capital Territory and I agree to submit to the applicable jurisdiction of the Australian Capital Territory in respect of all matters arising under, or in relation to, this deed.

10. Official Secrets

- 10.1.1. I acknowledge and agree that:
 - a. Official Information to which I may be given access directly or indirectly by Finance in the course of performing duties under the Deed or a Contract could constitute 'prescribed information' within the meaning of section 79 of the *Crimes Act 1914* (Cth); and
 - b. it is my personal duty:
 - i. to take reasonable care of all such 'prescribed information' to ensure that it is not communicated to a person not authorised to receive it (including through my conduct that may endanger its safety); and
 - ii. a breach of my personal duty constitutes an offence which attracts penalties of imprisonment for up to 7 years.
- 10.1.2. I agree to comply with and perform my personal duty in accordance with section 79 of the *Crimes Act*.

Executed as a Deed Poll

Signed sealed and delivered by [*name of signatory*] in the presence of

Signature of witness

[Signature]

Name of witness (print)

ON: [*insert date*]