

NDIA information on number of staff EL2 and above employed through Labour Hire as at 18 September 2020

Classification	Head count	Comment
EL2	127	Position titles for the roles are not recorded in the payroll system
EL2 (Professional)	87	Position titles for the roles are not recorded in the payroll system
SES Band 1	14	<ul style="list-style-type: none"> • BM Financial Sustainability • BM Actuarial Monitoring • BM ICT Projects • BM ICT Services • Chief Internal Auditor • BM Procurement & Corp. Services • BM Process Design • BM Strategy • BM Royal Commissions • BM ILC Programs • BM Workforce & Capability • BM Quality • BM Technical Advisory • BM Ops & Housing Support
SES Band 2	6	<ul style="list-style-type: none"> • Chief Information Officer • GM Partner & Contact Centre • Chief Counsel • GM Participant Experience Design • GM Strategy & Priorities • GM Digital
SES Band 3	1	• Deputy CEO Design, Digital & Strategy
Consultant	1	• Scheme Actuary
Total	236	Total number is for EL2 and above

Master Agreement

Introduction and scope

This agreement covers all your interactions in the Digital Marketplace, including selling to buyers. This agreement also forms part of the terms incorporated into every work order contract agreed to by you and a buyer.

Before you can join the Digital Marketplace as a registered seller and join the Digital Marketplace Panel as an approved seller, a person authorised to enter arrangements on behalf of your organisation must accept this agreement.

This agreement will be updated from time to time to reflect the evolution of the Digital Marketplace. If you choose not to accept an update you will lose seller status. Existing work orders awarded to you will remain in force until completed or terminated according to the terms of the work order.

The drafting principles we have used are:

- This agreement contains foundational terms which provide contractual protection for all purchases in the Digital Marketplace under work orders. It is designed to work with work orders to enable customisation of contracts between buyers and sellers for a particular opportunity.
- We do not restate any common law principles or existing legal requirements that apply to you (for example, privacy and workplace health and safety (WHS) obligations).
- Words have a special legal meaning outlined in the definitions section.
- Where possible, we explain terms as we go rather than relying on definitions.

Terms

1. General

This agreement is between you and the DTA.

This agreement begins on the commencement date and continues until terminated by either party.

We may invite other sellers to join and do business on the Digital Marketplace at any time.

We may add, remove or update areas of expertise at any time.

We may publish information relating to this agreement and work orders in line with the Open Contracting Data Standard (<http://standard.open-contracting.org/latest/en/>).

You agree that the inclusion of your details on the Digital Marketplace under this agreement is of value to you and sufficient consideration for this agreement to be binding.

You must not represent that you are an employee, partner, officer or agent of the DTA or a buyer.

2. Work orders

A work order is not effective until accepted by both the buyer and the seller.

Once effective, work orders create a separate contract on the terms of this agreement and any terms specified in the work order.

If a buyer considers that a work order requires a more comprehensive approach, the buyer may choose to incorporate the suite of terms. The [Comprehensive Terms](#) will apply in addition to this agreement and the work order.

Nothing in the Comprehensive Terms or a work order between you and a buyer can override the terms of this agreement between you and the DTA.

3. Priority of documents

There will be times when the nature of an opportunity means that you or the buyer need to add additional terms to your agreement. A buyer may highlight additional terms in their posted opportunity or subsequently. You and the buyer must agree on any additional terms and include them in the work order. If there is any inconsistency in the documents forming a work order between you and a buyer, those documents will be interpreted in the following order of priority:

1. Additional terms to this agreement included in the work order.
2. This Master Agreement.
3. The Comprehensive Terms (if applicable)
4. The other details contained in the work order.
5. Any attachments to the work order.
6. Any other document referred to in the work order.

4. Adding services and products

You may offer additional services or products for possible inclusion in the Digital Marketplace at any time by following the process in the Digital Marketplace.

5. Non-exclusive arrangement

This agreement is not exclusive and does not guarantee that you will receive opportunities or work orders and does not prevent buyers from buying services or products elsewhere.

6. Seller obligations

You must supply the deliverables specified in a work order:

- With due skill and care and to the best of your knowledge and expertise.
- In accordance with all applicable laws and the professional standards of conduct applying to the relevant industry.
- To the reasonable satisfaction of the buyer and to the standard set out in the work order.
- In accordance with any directions given by the buyer from time to time.

- In a manner that equals or exceeds the standard expected of a seller experienced and qualified in the provision of similar deliverables.
- As required by the buyer, by working closely with the buyer's personnel and enabling the buyer's personnel to observe and collaborate on any aspect of the work undertaken as part of providing the deliverables.
- At a price no less favourable than the pricing offered by you in your application to be a registered seller, unless the circumstances warrant alternative pricing and that alternative pricing can be justified. This obligation does not apply to additional costs specified in a work order (for example, travel).
- In accordance with the Digital Service Standard (if applicable) and any other relevant standards, industry better practice and guidelines, including any specified in the work order.
- In accordance with the buyer policies and specific terms or requirements, set out in a work order or notified to you in writing.

You must advise the buyer immediately if you become non-compliant with any of these requirements.

You must ensure:

- You have all rights, titles, licences, interests and property necessary to lawfully provide the deliverables.
- The deliverables will be fit for the purpose as set out in the applicable work order.
- You provide all resources and equipment necessary for the provision of the deliverables, except as otherwise provided in the work order.
- You will continue to hold all insurance policies specified in the work order or as are appropriate for the provision of the deliverables.
- You update your information provided to become a registered or approved seller by editing your Digital Marketplace seller profile if any of the information relating to your disclosures changes.

If you do not do these things DTA may terminate this agreement and a buyer may terminate any affected work order without liability to us or the buyer.

7. Licences, warranties and documentation

You must transfer to the buyer all licences and warranties for any deliverables and any documentation needed by the buyer to fully use the deliverables.

Unless otherwise set out in the work order, documentation must at all times:

- Be correct and up to date.
- Be fit for purpose.
- Be of a professional standard in terms of its presentation, accuracy and scope.
- Adequately explain key terms and symbols.
- Not contain any unusual omissions or exclusion.
- Be in correct English.

8. Intellectual property rights

General

You must ensure that the buyer's use of the order material will not infringe the intellectual property rights of any person.

You must obtain any moral rights consents in writing necessary for the buyer to use the order material.

If someone claims intellectual property rights over any material, you must, at your cost, either:

- Ensure that the buyer can continue to use the relevant material without liability or infringement; or
- Replace or modify the material so that it does not infringe the intellectual property rights of any other party, without degrading the performance or quality of the material.

Software and standard form documentation relating to software

Unless otherwise agreed in a work order:

- Intellectual property rights in order material that is software and associated standard form documentation shall vest in the seller but will be open source, or capable of being open source and licensed, or capable of being licensed, by the seller under a Creative Commons Attribution Licence 4.0 International CC-NC.
- Where a work order states that order material that is software is not open source, the intellectual property rights will vest in the seller and the seller grants the buyer a perpetual, irrevocable, fully paid up, royalty-free, worldwide, nonexclusive licence to reproduce, publish, use, modify, adapt, communicate and reproduce the software and standard form documentation relating to that software, including the right to engage third parties to modify or adapt the software, and the right to sublicense or transfer the licence to **the government's central pool of licences** for the relevant level of government, but not the right to commercially exploit the software.

Other order material

Intellectual property rights in any other order material hereby vest in the buyer from the date they come into existence. In this context, **"hereby" is a legal term meaning at this time, to the greatest extent possible, but without creating any additional documentation.**

Licence to material other than order material

You must ensure the buyer is provided with any intellectual property rights licence or usage rights it needs to use any material provided with (or needed for the use of) the order material.

Unless otherwise agreed in the work order, no other software terms (including your standard software licensing terms) apply to the work order.

Licence to order material owned by the buyer

To the extent that you need to use any of the order material owned by the buyer for the purpose of performing your obligations under the work order, subject to any conditions or restrictions specified in the work order and any direction given by the buyer, the buyer grants you a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate the relevant order material solely for the purpose of providing the deliverables.

On the expiry or termination of the work order (or any earlier date specified by the buyer), you must deliver all order material to the buyer's representative.

9. Delivery, assessment and acceptance

You must provide the deliverables by the milestone due date specified in the work order for the relevant deliverable, or otherwise in accordance with the work order or as agreed in writing by the buyer.

If you are unable to provide all or part of the deliverables specified in a work order by the due dates for delivery in the work order (or, if the work order does not specify a date for delivery, in a reasonable timeframe), you must notify the buyer immediately.

Unless the deliverables or documentation are subject to acceptance, delivery of a deliverable will be deemed to occur when the buyer confirms receipt of, or access to, the deliverable.

Each element of the deliverables is subject to assessment by the buyer. The buyer will assess all deliverables according to the requirements in a work order.

If, following assessment, any part of the services or products still do not meet the requirements set out in the work order, the buyer may (in addition to its other remedies) terminate the work order immediately under clause 22 of this agreement (Termination and suspension).

If the work order indicates that a deliverable is subject to acceptance, then, within a reasonable time after receipt of the deliverable, the buyer will assess the deliverable against the acceptance criteria in the work order (if any) and either:

- accept the deliverable; or
- reject the deliverable.

If any of the deliverables are rejected by the buyer, the buyer will, within 5 business days of delivery, notify the seller of the reasons for rejection, the action required to be taken by the seller to remedy the deliverable and the time-frame for resubmission. Upon receipt of this notice, the seller must remedy and re-submit the deliverable in accordance with any feedback and within the time-frame notified by the buyer (or such other timeframe as agreed by the parties). You must comply with any additional requirements related to the acceptance process specified in the work order. Where documentation is subject to acceptance, you must deliver the documentation sufficiently in advance of the date for acceptance so that the buyer has time to review it and you have time to rectify any issues prior to the date for acceptance.

For deliverables that are subject to acceptance, ownership and risk transfers on acceptance of the deliverable. For all other deliverables, ownership and risk transfers on delivery.

10. Specified personnel, security and safety

Where a work order specifies named personnel, you must only use the named personnel and not replace, reduce or supplement them without prior written approval from the buyer.

If you are required to obtain security clearances, you are responsible for any costs associated with doing so and any failure to obtain clearances or obtain them within any timeframe does not provide an excuse to the seller for failing to provide any deliverables on time.

You must comply with all security, health, workplace and safety and any other requirements set out in the work order or that are applicable to the work, premises or location at which the services or products are being delivered.

You must not copy, transmit or remove any data without prior written approval from the buyer.

11. Subcontracting

Except as set out in the work order, you must not subcontract any aspect of the deliverables without obtaining **the buyer's prior written consent**.

12. Payment and expenses

If the deliverables meet the requirements of the work order, the buyer will pay you.

Unless otherwise specified in the work order, you must provide a correctly rendered tax invoice to the buyer containing the information required by the buyer as specified in the work order. The buyer will pay you within 30 days of the buyer receiving a correct tax invoice or such other timeframe as agreed by the parties.

You must not charge the buyer for any cost not specified in the work order (for example, travel). Additional costs allowed by the work order may only be claimed if they:

- are reasonable and directly attributable to the provision of the services and products;
- are approved in writing by the buyer before any cost has been incurred;
- are substantiated by supporting documentation, such as receipts for accommodation costs, to verify the expenditure; and
- do not exceed the rates specified by the buyer or in the buyer's policies.

If a party must reimburse or indemnify another party for a loss, the amount to be reimbursed or indemnified must be reduced by any input tax credit the other party is entitled to before applying any GST.

The buyers' preferred method of payment is by electronic funds transfer direct to your bank account.

Unless the contrary is shown, payment will be deemed to have been made on the date the buyer instructs its bank that funds are to be transferred.

You must notify the buyer of any change of your bank account no later than 10 business days before a payment by the buyer is due. The buyer will not be liable to make any additional or interim payments when details of your bank account are incorrectly notified by you or are notified after the cut-off date for that payment.

13. Interest for late payment

Buyers will pay interest for late payments in accordance with the relevant government policy. At the Commonwealth level, the Supplier Pay On-Time or Pay Interest Policy applies.

14. Taxes

You must pay all taxes, duties and government charges that are due in Australia or overseas in connection with a work order.

Unless otherwise specified in the work order, prices in a work order are exclusive of GST. On receipt of a correctly rendered tax invoice, the buyer will pay you the GST exclusive amount plus any GST that applies.

15. Buyer material

The buyer will provide to you all assistance and material as specified in the work order. You must ensure these materials are used only as the buyer specifies and in the performance of your obligations under the work order.

Subject to any conditions or restrictions specified in the work order and any direction given by the buyer, the buyer grants you a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate this material solely for the purpose of providing the deliverables.

16. Confidentiality

Confidential information can only be disclosed if:

- It is disclosed to your personnel solely to comply with obligations, or to exercise rights, under this agreement or any work order.
- It is disclosed for government, administrative or accountability purposes, including making pricing available to buyers on the Digital Marketplace.
- It is authorised or required by law to be disclosed.

Confidential information cannot be disclosed in any other circumstances without prior consent from the owner of the confidential information.

Where specified in a work order or otherwise requested by a buyer, you must promptly arrange for your employees, agents, advisers or any other third party to give a written undertaking in the form attached to the work order or otherwise provided by the buyer relating to the use and disclosure of confidential information.

17. Privacy obligations

You agree, in providing the deliverables:

- Not to breach any requirement of the Privacy Act 1988 (Cth) that applies to you in the fulfilment of a work order.
- Not to do anything, that if done by the buyer, would be a breach of an Australian Privacy Principle under the Privacy Act 1988 (Cth).
- To comply with any directions, guidelines, determinations or recommendations referred to in the work order or made by the Australian Information Commissioner.
- To notify the buyer immediately if you become aware of a breach or possible breach of any of your privacy obligations.

18. Conflict of interest

You confirm that, to the best of your knowledge and belief after making reasonable inquiries, you have no conflict of interest.

If an actual or potential conflict of interest arises, you must notify us, and the buyer if relevant by email, and take all steps required to manage the conflict of interest as directed by us or the buyer.

19. Audit, access and review

To support buyers in meeting their governance requirements, on request you must promptly allow authorised representatives of the DTA or a buyer (including the Auditor-General or the Australian Information Commissioner or their delegates) access to, and permit copies to be made of, all material relating to the supply of the deliverables and assist with any audits.

The DTA or a buyer may at any time undertake, or appoint an external consultancy firm (referred to in this section as a Reviewer) to undertake, a review of your performance under this agreement or a work order and provide a report to the buyer and the DTA. You must provide all assistance reasonably requested by the buyer, DTA or the Reviewer in relation to the review.

The DTA or a buyer may, but is not required to, seek input from you on proposed appointee(s) prior to appointing the Reviewer. The Reviewer will be required by the buyer to comply with appropriate confidentiality obligations. To the extent the Reviewer conducts any activity at your premises, the Reviewer and its personnel will be required to comply with your reasonable access and security requirements.

The DTA or a buyer may, but is not required to, seek input from you with respect to the provision of the deliverables and the cooperation and assistance provided by you to, and to you by, other parties (including the buyer) in providing the deliverables.

20. Complaints

If you wish to make a complaint about a buyer or a procurement under the panel, you should attempt to resolve the complaint with the buyer first.

If you wish to make a complaint about this agreement or the Digital Marketplace Panel or you are unable to resolve a complaint with the buyer, you should email marketplace@digital.gov.au. We may either manage your complaint internally or refer your complaint to the relevant buyer to be managed within the buyer's organisation.

21. Alternative dispute resolution

If a dispute arises:

- Between you and us in relation to this agreement or the Digital Marketplace panel, or
- Between you and a buyer in relation to a work order,

then the following process must be followed before you can commence court proceedings:

- The party claiming that a dispute has arisen must give the other party an email dispute notice setting out the details of the dispute.
- You must attempt to settle the dispute by negotiating with us or the buyer (as applicable) as soon as practicably possible.
- If the dispute has not been settled within 10 business days of the negotiations, either party may refer the dispute to a mediator who has been agreed on by both parties. Alternatively, you can refer the dispute to the chairperson of an accredited mediation organisation to appoint a mediator. In either case, mediation must commence within 15 business days of the referral to mediation.
- Each party will bear their own costs for dispute resolution. The costs of a mediator will be split evenly between the parties to the dispute.

If the dispute is not resolved after mediation, either party to the dispute may seek a remedy through the Australian Capital Territory courts.

22. Termination and suspension of Digital Marketplace

We may, at any time, by prior written notice and without any liability to us:

- Terminate this agreement and remove you from the Digital Marketplace, for any reason; or
- Suspend you from the Digital Marketplace for a period of time that we reasonably consider necessary.

Circumstances in which we may remove you from the Digital Marketplace include:

- Your Digital Marketplace account has been inactive for at least 12 months; or
- You are subject to an insolvency event.

Circumstances in which we may suspend you from the Digital Marketplace include:

- We have received substantiated negative feedback; or
- You have failed to provide sufficient information to enable us to undertake a value for money assessment in relation to your areas of expertise.

Circumstances in which we may, at our discretion, remove or suspend you from the Digital Marketplace include:

- We consider that you are not providing the deliverables in accordance with this agreement, the Digital Marketplace Terms of Use, or the terms of a work order; or
- We have assessed you as not offering value for money in relation to your areas of expertise.

In case of your suspension from the Digital Marketplace, or the termination of this agreement, current work orders will continue unless terminated by the buyer.

You may terminate this agreement (but not any work orders) by email at any time by 20 business days' prior written notice to us.

23. Termination and suspension of work orders

Without limiting any other rights or remedies the buyer may have, the buyer may terminate all or part of a work order effective immediately by giving email notice to you if you are removed or suspended from the Digital Marketplace or you breach a provision of this agreement or a work order where:

- The breach is not capable of remedy; or
- You fail to remedy the breach within 10 business days of receiving email notice requiring you to remedy the breach.

Without limiting any other rights or remedies the buyer may have, the buyer may terminate all or part of a work order for any reason, by giving at least 5 business **days'** notice by email. Unless otherwise specified in a work order, the buyer must pay:

- For deliverables accepted before the date of termination; and
- Any reasonable costs you incur that are directly attributable to the termination, provided you substantiate these costs to the buyer's satisfaction.

The buyer will not be liable for consequential loss

On receipt of the notice, you must stop work on the affected deliverables and follow any reasonable directions given by the buyer.

Without limiting any other rights or remedies the buyer may have, the buyer may terminate a work order if you are subject to an insolvency event. You must notify the buyer immediately if you are subject to an insolvency event.

24. Variation

We may vary this agreement by giving you at least 20 business days' notice by email. You may terminate this agreement by written notice to us before the date when the variation is to come into effect if you do not wish to accept the variation.

The agreement applying to a work order is the agreement in place at the time the work order came into effect.

A buyer or seller cannot vary the terms of this agreement, however the terms applying to a work order will reflect the value, risk and complexity of the deliverables being delivered

and may be subject to additional terms agreed between the buyer and the seller in that work order.

Work orders can only be varied by written agreement between you and the buyer.

25. Waiver

Any waiver by a party under this agreement or work order must be given by email and is effective only for the particular circumstance for which it is granted.

26. Assignment and novation

You may not assign or novate your rights and obligations under this agreement without our prior email consent and in the case of any work order, the prior email consent of the buyer.

27. Survival

The termination or expiry of this agreement for any reason will not affect or extinguish the terms which are intended to survive termination or expiry.

The terms intended to survive termination are as follows:

- Clause 6 – Seller obligations.
- Clause 8 – Intellectual property rights.
- Clause 16 – Confidentiality.
- Clause 17 – Privacy obligations.
- Clause 19 – Audit and access.
- Clause 21 -Alternative dispute resolution.

28. Notices

A notice must be submitted by email and addressed to the recipient's contact person. You can change your contact person at any time by updating your seller profile on the Digital Marketplace, or for a work order, by giving email notice to the buyer.

29. Jurisdiction

This agreement and any work order is governed by the laws of the Australian Capital Territory. Any court proceedings are subject to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

30. Definitions

- "approved sellers" are members of the Digital Marketplace Panel.
- "agreement" means this Master Agreement.
- "area of expertise" means a defined set of skills, knowledge and experience which are the categories of the services you provide through the Digital Marketplace.
- "business day" means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where an act is to be performed or where a notice is received. If a day on or by which an obligation must be performed or an event must occur

(other than providing the deliverables) is not a business day, the obligation must be performed or the event must occur on or by the next business day.

- "buyer" means an entity, registered as a buyer on the Digital Marketplace.
- "buyer data" means any data and information relating to or concerning the buyer, and its operations, facilities, customers, personnel, assets and programs (including personal information) in whatever form that information may exist and whether or not it is entered into, stored in, generated by or processed through software or equipment by or on behalf of the buyer.
- "commencement date" means the date you become an approved seller.
- "confidential information" means information that is by its nature regarded in law as confidential, and which is either:
 - Designated by a party as confidential.
 - Described in the work order as confidential.
 - Agreed in writing by the parties as confidential.
 - Known to be, or ought to be known to be, confidential by a party.
 - It does not include information that is, or becomes, public knowledge other than by breach of this agreement or a work order or any other confidentiality obligation.
- "conflict of interest" means financial or non-financial interests, or relationships, that could affect or be perceived to affect any aspect of your participation in the Digital Marketplace.
- "consequential loss" means any loss recoverable at law (other than arising in the usual course of things) including:
 - A loss of income or revenue.
 - A loss of opportunity or goodwill.
 - A loss of profits.
 - A loss of anticipated savings or business.
 - A loss of value of any equipment.
- "deliverable" means the provision of the services, products and order material specified in the work order.
- "DTA" means the Commonwealth of Australia represented by the Digital Transformation Agency.
- "Digital Marketplace" means processes or resources made available by the DTA to facilitate buyers procuring digital products and services.
- "entity" means a person, partnership, organisation, or business that has a legal and separately identifiable existence.
- "infringe" includes an act or omission that would, apart from the operation of section 163 of the Patents Act 1990 (Cth), section 100 of the Designs Act 2003 (Cth), section 183 of the Copyright Act 1968 (Cth), or section 25 of the Circuit Layouts Act 1989 (Cth), constitute an infringement of the right.
- "insolvency event" means the happening of any one or more of the following:
 - You cease, or take steps to cease, to conduct your business in the normal manner.
 - You enter into or resolve to enter into any arrangement, composition or compromise with or assignment for the benefit of your creditors or any class of them.
 - You are unable to pay your debts when they are due or you are deemed under the Corporations Act 2001 (Cth) to be insolvent.
 - A liquidator or provisional liquidator is appointed to you or a receiver, receiver and manager, official manager, trustee or similar official is appointed over any of your assets or undertakings.

- An application or order is made or a resolution is passed for your winding up
- If you are an individual you are declared bankrupt, seek a composition of creditors, suspend payments or in any other way are deemed to be insolvent.
- Any act or event having a substantially similar effect to any of these events
- "intellectual property rights" means the rights of a creator or an owner relating to copyrights, trademarks, patents, know-how, models, drawings, designs, specifications, inventions, prototypes and software, whether or not in material form, and any application or right to apply for registration of any of these rights.
- "law" means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
- "loss" means loss, damage, cost or expense (to any person or property) including consequential loss or indirect loss or any loss of profits, data or revenue.
- "material" means any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of intellectual property rights.
- "moral rights consents" means written consent or waiver to another party that **would otherwise breach some or all of a creator's moral rights.**
- "opportunity" means a buyer requirement that has been posted on the Digital Marketplace and may lead to the creation of a work order.
- "order material" means any material created by you as a result of performing your obligations under a work order, including any modifications.
- "our", "us" and "we" means the Commonwealth of Australia represented by the Digital Transformation Agency.
- "personal information" has the meaning given in the Privacy Act 1988 (Cth).
- "personnel" means, in relation to a party, any natural persons who are employees, officers, agents, contractors, subcontractors or professional advisers of that party.
- "product" or "products" means any item or items to be delivered or provided under a work order by you to a buyer, and may include, but is not limited to, software and digital products.
- "registered sellers" are not Digital Marketplace Panel members but have a profile, visible to buyers on the Digital Marketplace and can view opportunities. They cannot apply for opportunities but can request their assessment to become an approved seller is prioritised.
- "seller" means a business who offers their products or services on the Digital Marketplace.
- "services" means the work to be performed in specific areas of expertise as described in the work order.
- "software" means the programs, programming languages, and data that direct the operations of a computer system and includes any standard form documentation that is usually provided to customers with the software.
- "work order" means a contract formed between a buyer and a seller under this agreement for the provision of deliverables.
- "you" or "your" means the party specified as the seller and includes your personnel.

31. Interpretation

In this agreement, except where the contrary intention is expressed:

- The singular includes the plural and vice versa, and a gender includes other genders.
- Another grammatical form of a defined word or expression has a corresponding meaning.
- A reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time.
- A reference to A\$, \$A, dollar or \$ is to Australian currency.
- A reference to time is to Canberra, Australia time.
- A reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes.
- A reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity.
- A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- The meaning of general words is not limited by specific examples introduced by including, for example or other similar expressions.

Last updated: 31 May 2019

Part 1: Standing offer terms**1 EXPLANATION OF DEED**

1.1 The following documents make up this Deed and apply to any Order placed under this Deed:

- this Deed of Standing Offer;
- these Standing Offer Terms (which set out the process for requesting quotes and placing Orders); and
- the Glossary.

1.2 Some terms used in this Deed have been given a special meaning. Their meanings are set out in the Glossary.

1.3 'Agency' means the DTO or any Agency that places an Order.

1.4 The Agency may vary the documents forming part of this Deed by no less than 20 business days' prior notice to You. You may terminate this Deed (including any current Orders) by written notice prior to the date of the variation coming into effect if You do not accept the variation.

1.5 The DTO may invite You to offer additional Services for possible inclusion in this Deed at any time.

2 DURATION OF PANEL

2.1 This Deed begins on the Commencement Date and (unless otherwise lawfully terminated) continues until terminated by written notice from the Agency.

2.2 The DTO may invite additional organisations to join the Panel at any time.

3 REQUEST FOR QUOTATIONS

3.1 The Agency may issue an RFQ prior to issuing an Order.

3.2 Unless a fixed price is requested, the fees proposed in Your Quote must be based on rates that are no more than the Agreed Rates.

3.3 If the Agency wishes to proceed to obtain the Services referred to in Your Quote, the Agency will issue an Order to You.

4 ORDERS

4.1 The Agency may issue You with an Order, without having issued an RFQ. In that case the Service Charges payable to You for performing the Services will be Agreed Rates, unless both parties agree otherwise.

4.2 An Order is effective when You confirm that You have accepted the Order.

4.3 Orders placed by an Agency create a separate contract on the terms of this Deed.

5 CHANGES TO AGREED RATES

5.1 The Agreed Rates are fixed for the first 12 months. After the first 12 months, You may apply in writing to have the Agreed Rates increased by no more than the percentage increase in the Consumer Price Index (all groups), published by the Australian Bureau of Statistics for remaining period of this Deed.

5.2 The Agency will act reasonably and either approve or deny any variation to the Agreed Rates applied, by notice, to You.

5.3 Despite clauses 5.1 and 5.2, the Agency will accept a proposal to increase the Agreed Rates by no more than 3% every two years during the term of the Panel.

6 NON EXCLUSIVE ARRANGEMENT

6.1 You acknowledge that this Deed:

- does not guarantee that You will receive any RFQs or Orders; and
- is non-exclusive and that the Agency can buy services from any other person.

7 TERMINATION OF THIS DEED FOR ANY REASON

7.1 The Agency may, at any time, by notice, terminate this Deed for any reason without any liability to You.

7.2 Unless otherwise notified to You, any Orders that are current at the date of termination of this Deed will continue until their expiration or termination, on the terms of this Deed.

8 NOTICES

8.1 A notice under this Deed must be in writing and addressed to the intended recipient's contact person at their address for notice specified in this Deed, as varied by any notice.

8.2 A notice given in accordance with clause 8.1 takes effect at the time of receipt under the *Electronic Transactions Act 1999* (Cth), unless a later time is specified in the notice.

9 CONFLICT OF INTEREST

9.1 You represent and warrant that, to the best of Your knowledge after making diligent inquiry, no Conflict of Interest exists or is likely to arise in the performance of Your obligations under this Deed.

9.2 If, during this Deed a Conflict of Interest arises, or appears likely to arise, You must:

- notify the Agency immediately in writing with all relevant information; and
- take such steps as the Agency requires to resolve or otherwise deal with the conflict.

10 YOUR OBLIGATIONS

10.1 You must supply the Services specified in an Order:

- to the reasonable satisfaction of the Agency;

- in a manner that equals or exceeds the standard expected of a service provider experienced and qualified in the performance of similar services;

- in accordance with relevant standards, industry best practice and guidelines and, including any specified in the Order;

- in accordance with all applicable laws; and

- in accordance with the Agency policies and specific requirements, set out in an Order or notified to You.

10.2 You must ensure that:

- You and your Personnel have all rights, title, licences, interests and property necessary to lawfully perform the Services;

- the Services will be fit for the purpose as set out in the Categories of Services and any Order, and will be complete and accurate; and

- You will continue to hold worker's compensation insurance as may be required by law and all insurance policies specified in the Order or appropriate for the Services.

11 PERFORMANCE ASSESSMENT

11.1 You must ensure that:

- the Services comply with the Performance Criteria; and

- Your Personnel comply with any directions of the Agency issued in respect of Your compliance with (or failure to comply with) the Performance Criteria.

12 SUBCONTRACTING

12.1 Except as set out in an Order, You must not subcontract any aspect of the Services without obtaining the Agency's prior written consent.

into existence. You must ensure the Agency is provided with any intellectual property, licence or usage rights it needs to use any Material provided with (or needed for use of) the Order Material.

13 USE OF SPECIFIED PERSONNEL

13.1 Where Specified Personnel are specified in an Order, You must provide the Services using the expertise of the Specified Personnel.

15.2 You grant to the Agency and its Personnel a royalty-free, non-exclusive, non-transferable licence to use, reproduce, adapt, modify and communicate any Material in which the Intellectual Property Rights are owned by You or a third party for the purpose of the Agency obtaining the benefit of the Services.

13.2 Where one or more of the Specified Personnel is or will become unable or unwilling to provide the Services, You must notify the Agency immediately.

15.3 You must ensure that the Agency's use of the Materials You provide will not infringe the Intellectual Property Rights of any person.

13.3 You must promptly remove any of Your Personnel (including Specified Personnel) from the provision of Services if requested to do so by the Agency.

15.4 If someone claims, or the Agency reasonably believes that someone is likely to claim, that all or part of the Materials provided as part of the Services infringe their Intellectual Property Rights, You must, promptly, at Your expense:

- 13.4 You must:
- if requested by the Agency, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and
 - obtain the Agency's written consent prior to appointing any such replacement person.

- use Your best efforts to secure the rights for the Agency to continue to use the affected Materials free of any claim or liability for infringement; or

13.5 You must ensure Your Personnel comply with the security requirements of the Agency.

- if requested to do so by the Agency, replace or modify the affected Materials so that the Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Materials.

14 THE AGENCY MATERIAL

14.1 The Agency will provide to You any Agency Material relevant to the Services, and You must ensure that the Agency Material is used strictly in accordance with any conditions or restrictions specified in the Order or any direction by the Agency.

15.5 You must deliver to the Agency Representative all Order Material (and any Materials needed to use the Order Material) before completion of the Order.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 Intellectual Property Rights in Order Material vest in the Agency immediately from the date they come

15.6 You must obtain any moral rights consents necessary for the Agency to use the Deliverables and exercise its

Intellectual Property Rights provided in this Deed.

16 PAYMENT

- 16.1 Subject to this clause 16 and to the Services meeting the requirements of the applicable Order, including the Performance Criteria, the Agency will pay the Service Charges to You.
- 16.2 You must provide a correctly rendered invoice to the Agency for the Service Charges in accordance with the requirements specified below.
- 16.3 Correctly rendered invoices must meet the requirements of a tax invoice and contain the information required by the Agency.
- 16.4 The Agency will pay You within 30 days of its receipt of a correctly rendered invoice. If this period ends on a day that is not a business day, payment is due on the next business day.
- 16.5 If after payment by the Agency, it is found that an invoice was rendered incorrectly, any underpayment or overpayment will be recoverable by or from You, as the case may be, and, without limiting other available means, may be offset against any amount subsequently due by the Agency to You under any Order.
- 16.6 The Agency 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 You have not completed, to the satisfaction of the Agency, that part of the Services to which the payment relates.

17 EXPENSES

- 17.1 Unless specified otherwise in the Order, You must not charge the Agency for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Service Charges.

18 INTEREST FOR LATE PAYMENT

- 18.1 This clause 18 only applies where the Agency is a non-corporate Commonwealth entity and:
 - the total Service Charges payable under the Order do not exceed \$1 million (GST inclusive); and
 - the amount of interest payable exceeds \$10.
- 18.2 Where payment is made more than 30 days after the amount due under the applicable Order became due and payable, the Agency will pay interest on the amount calculated in accordance with the Commonwealth's Supplier Pay On-Time or Pay Interest Policy or any policy that replaces it.

19 TAXES

- 19.1 Except as provided by this clause 18, You must pay all taxes, duties and government charges that are due in Australia or overseas in connection with the performance of the Order.
- 19.2 Unless otherwise indicated in an Order, any consideration for any supply made under the Order is exclusive of any GST imposed on the supply.
- 19.3 If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Deed, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 19.4 No party may claim or retain from the other party any amount in relation to a supply made under this Deed for which the first party can obtain an input tax credit or decreasing adjustment.

20 TERMINATION

- 20.1 Without limiting any other rights or remedies the Agency may have against You arising out of or in

connection with this Deed, the Agency may terminate this Deed or any Order effective immediately by giving notice to You if:

- You breach a provision of this Deed or an Order where that breach is not capable of remedy; or
- You breach any provision of this Deed or an Order and fail to remedy the breach within 14 days after receiving notice requiring You to do so.

20.2 On termination of this Deed or any Order You must stop work on the affected Services and comply with any directions of the Agency.

20.3 The Agency may also terminate this Deed or an Order for any reason, on five days prior written notice. The Agency will be liable only to pay Service Charges due for the period before the date of termination.

21 CONFIDENTIALITY

21.1 Subject to clause 21.3, a party (**Receiving Party**) must not, without the prior written consent of the other party (**Disclosing Party**), disclose any of the Disclosing Party's Confidential Information to any person.

21.2 The Agency may at any time require You to arrange for any Personnel to execute a non-disclosure deed in a form determined by the Agency.

21.3 Neither party will be in breach of this clause to the extent that Confidential Information of the other party:

- is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Deed;
- is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this Deed;

- is disclosed by the Agency to the responsible Minister;
- is disclosed by the Agency, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or State or Territory;
- is shared by the Agency with other Government agencies, where this serves the legitimate interests of the Commonwealth or relevant State/s or Territory/ies;
- is disclosed by the Agency to any relevant government official for an official purpose;
- is required by law to be disclosed; or
- is in the public domain otherwise than due to a breach of the Order.

22 PRIVACY OBLIGATIONS

22.1 You agree, in providing the Services:

- not to do any act or engage in any practice which, if done or engaged in by the Agency, would be a breach of an Australian Privacy Principle under the Privacy Act;
- to comply with any directions, guidelines, determinations or recommendations referred to in the Order; and
- to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations in this clause 22.

23 SECURITY OBLIGATIONS

23.1 You must, and must ensure that Your Personnel comply with:

- all relevant security and other requirements specified in the

Australian Government Protective Security Policy Framework; and

- any other security procedures or requirements specified in an Order, or notified in writing, by the Agency to You.

23.2 You are responsible for all costs and expenses associated with obtaining security clearances unless the parties agree otherwise.

23.3 You must not, and must ensure that its subcontractors and Personnel do not:

- remove Agency Data or allow Agency Data to be removed from the Agency's premises; or
- take Agency Data or allow Agency Data to be taken outside of Australia,

without the Agency's prior written consent.

24 WORK, HEALTH AND SAFETY

24.1 You agree, in carrying out this Deed and any Order, to comply with all relevant legislation, codes of practice, national standards relating to work health and safety, including in relation to consultation, representation and participation.

25 BOOKS AND RECORDS

25.1 You must at your own cost keep and require Your subcontractors to keep and maintain adequate books and records in accordance with Australian Accounting Standards, in sufficient detail to enable the amounts payable by the Agency under any Order to be determined.

26 AUDIT AND ACCESS

26.1 You agree:

- to give the Agency Representative, or any persons authorised in writing by the Agency

Representative, access to assets, including any computer hardware or software or other equipment, or premises where the Services are being performed; and

- to permit those persons to inspect and take copies of any Material relevant to the Services.

26.2 This clause 26 does not detract from the statutory powers of the Auditor-General or Information Officer (including their delegates).

27 SURVIVAL

27.1 The termination or expiry of this Deed for any reason will not extinguish the terms which by their nature are intended to survive termination or expiry.

28 WAIVER

28.1 Waiver of any provision of or right under this Deed and any Order is effective only to the extent set out in any written notice.

29 GOVERNING LAW

29.1 This Deed (including any Order) is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

30 MISCELLANEOUS

30.1 This Deed (including any Order) may be varied only in writing signed by both parties.

30.2 You may not assign its rights or novate Your rights and obligations under this Deed or any Order without the prior written consent of the Agency.

31 POLICY REQUIREMENTS

31.1 You agree to:

- use Your reasonable efforts to comply with the Commonwealth's Indigenous Procurement Policy;
- comply with Your obligations, if any, under the WGE Act; and
- if You become non-compliant with the WGE Act during the Order Period, to notify any Agency that has placed an Order.

Part 2: Glossary

32 DEFINED TERMS

32.1 In this Deed and any Order, the terms below have the following special meaning unless the context otherwise requires.

Agency means:

- all agencies subject to the *Financial Management and Accountability Act 1997* (Cth) and on and from 1 July 2014 entities that are subject to the *Public Governance, Performance and Accountability Act 2013* (Cth);
- all bodies subject to the *Commonwealth Authorities and Companies Act 1997* (Cth) and on and from 1 July 2014 entities that are subject to the *Public Governance, Performance and Accountability Act 2013* (Cth);
- all other bodies governed by the Governor-General or a Minister of the Commonwealth or over which the Commonwealth exercises control; and
- all bodies governed by a State Governor or by a Minister of a State or Territory or over which a State or Territory exercises control (including departments in State or Territory Governments), and includes local government agencies.

Agency Data means all data and information relating to the Agency, and its operations, facilities, customers, Personnel, assets and programs (including Personal Information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Agency.

Agreed Rates means the hourly/daily rates applicable to each type of Personnel in a Category of Service set out in or determined in accordance with the schedule to this Deed.

Commencement Date means the date on which the last party to sign this Deed signs that document.

Commonwealth means the Commonwealth of Australia.

Confidential Information means information that is by its nature confidential and:

- is designated by a party as confidential;
- is described in the Order as confidential;
- is agreed in writing by the parties is confidential; or
- a party knows or ought to know is confidential,

but does not include information which is or becomes public knowledge otherwise than by breach of this Deed or an Order or any other confidentiality obligation.

Conflict of Interest means any circumstance in which You or any of the Your Personnel have an interest (whether financial or non-financial) or an affiliation that is affecting, will affect, or could be perceived to affect, Your ability to provide the Services, or meet its obligations under this Deed or an Order, fairly and independently.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all intellectual property rights, including the following rights:

- all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trade marks

(including service marks), patents, rights in designs and circuit layouts, trademarks, designs, trade secrets, know how;

- any application or right to apply for registration of any of the rights referred above; and
- all rights of a similar nature to any of the rights referred to above which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered but does not include Moral Rights, the personal rights of performers or rights in relation to Confidential Information.

Material means any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

Order Material means any Material created by You on or following the Services Start Date, for the purpose of or as a result of performing its obligations under an Order and includes any modifications.

Order Period means the period of time for which an Order is intended to continue, as specified in the Order.

Performance Criteria means the performance requirements set out in the Order for each Service and Deliverable and the requirements in clause 11.

Personnel means, in relation to a party, any natural person who is an employee, officer, agent, contractor, subcontractor or professional adviser of that party or, in the case of You, of a subcontractor.

Service Charges means the charges payable to You as specified in an Order.

Services means the services provided, or to be provided, under an Order (including the provision of the deliverables) as described in the Order.

Services Start Date means the date specified as such in the Order.

Specified Personnel means Your Personnel specified as such in the Order.

WGE Act means the *Workplace Gender Equality Act 2012* (Cth).

You means the party specified as the service provider in this Deed and includes Your Personnel.

Digital Marketplace work order Complex (high value or high risk)

<OPPORTUNITY TITLE>

Project (Brief ID # REF)

Note to drafters: This work order template includes example drafting. Review and amend the examples to suit your work order. Rows in italics are optional. Delete any rows that do not apply to your work order.

MA means Master Agreement

CT means Comprehensive Terms

You should have regard to the defined terms in clause 30 of the Master Agreement. Note that defined terms are in lower case and are not bolded.

General	
1 Authority and context	<p>This work order is issued by the Commonwealth of Australia as represented by the <buyer name> (buyer) to <seller name> ABN <seller ABN> (seller) in accordance with the Digital Marketplace Master Agreement <insert date> which relates to the Digital Transformation Agency’s Digital Marketplace Panel.</p> <p>In accordance with clause 2 of the Master Agreement, this work order, once executed by both parties, will create a separate contract between the buyer and the seller on the terms of the Master Agreement, the Comprehensive Terms and the terms specified in this work order.</p> <p>Unless the context otherwise provides, defined terms used in this work order have the same meaning as given in the Definitions section of the Master Agreement.</p>
2 Standing Offer Notice ID	SON3413842
3 Work order number	<insert work order number>
4 Buyer cost code GL code	<insert code>
5 Buyer representative	<insert name / phone number / email address>
6 Seller representative	<insert name / phone number / email address>
7 Project title	<insert project title (if any)>
8 Work order commencement date	<insert work order commencement date>
9 Term of the work order	<p>The initial term of the work order is <number> <months / years></p> <p>The buyer may extend the term of the work order by <number> further periods of <Option: up to> <number of months> months each on the same terms and conditions as this work order by giving notice in writing to the seller no later than 30 days prior to the end of the then current term.</p>

Deliverables											
1	Deliverables <i>MA cl. 6</i>	<p>Option 1: You will provide the deliverables set out in the statement of requirement attached to this work order.</p> <p>Option 2: You will provide the following deliverables to the buyer: <describe the deliverables, including the date that the seller must start providing the deliverables></p> <p>Note to drafters: Attachments have a lower priority in the event of inconsistency</p>									
1	Purpose <i>MA cl. 6</i>	<p>The deliverables must be fit for the following purpose(s): <describe the purpose of the deliverables. If necessary, list the deliverables, or categories of deliverables, and details the individual purposes of each.></p> <p>The seller agrees that the deliverables may be provided to the buyer for use partially or wholly under current and future shared services arrangements to other Commonwealth agencies.</p>									
1	Policies and standards <i>MA cl. 6</i> <i>CT cl. 3</i>	<p>You must, in supplying deliverables, comply with, and ensure your personnel comply with:</p> <p>(a) <insert any performance standards specific to the work order>;</p> <p>(b) <insert any applicable policies specific to the work order></p> <p>(c) <insert other applicable specifications, industry codes, best practice methodologies, or Australian, New Zealand or international standards></p> <p>All deliverables and outputs should conform to the Web Content Accessibility Guidelines (WCAG) 2.0 (specifying Level A, AA or AAA), preferably through the use of Sufficient Techniques (as that term is defined in the WCAG 2.0 Quick Reference (http://www.w3.org/WAI/WCAG20/quickref/)).</p>									
1	Documentation <i>MA cl. 7</i>	<p>You must provide the following documentation to the buyer:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">Documentation</th> <th style="width: 33%;">Format</th> <th style="width: 33%;">Timing</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><insert documentation required></td> <td style="text-align: center;"><insert format required for documentation></td> <td style="text-align: center;"><insert provision due date / time></td> </tr> </tbody> </table>		Documentation	Format	Timing	<insert documentation required>	<insert format required for documentation>	<insert provision due date / time>		
Documentation	Format	Timing									
<insert documentation required>	<insert format required for documentation>	<insert provision due date / time>									
1	Meetings	<p>The parties will meet at the following times: <insert meeting requirements></p> <p>You must ensure that your representative, and the buyer must ensure that the buyer's representative, is reasonably available to attend the meetings and answer any queries relating to the provision of the deliverables raised by either party.</p>									
1	Reports	<p>You must provide the following reports: <insert reports required and details such as frequency, due date, format, content etc></p>									
Delivery and acceptance											
1	Delivery and milestones <i>MA cl. 9</i>	<p>Option 1: You will provide the deliverables in accordance with the time frames / milestones set out in the statement of requirement attached to this work order.</p> <p>Option 2: You will provide the deliverables in accordance with the following schedule of milestones:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Milestone no.</th> <th style="width: 50%;">Deliverable</th> <th style="width: 20%;">Due date</th> <th style="width: 20%;">Subject to acceptance?</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		Milestone no.	Deliverable	Due date	Subject to acceptance?	1.			
Milestone no.	Deliverable	Due date	Subject to acceptance?								
1.											

	2.																				
1 Acceptance process and criteria <i>MA cl. 9</i>	<p><specify any steps required in addition to the acceptance process set out in the Master Agreement></p> <p><specify acceptance criteria for the deliverables></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">Deliverable no.</th> <th style="width: 45%;">Deliverable</th> <th style="width: 40%;">Acceptance criteria</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">2.</td> <td></td> <td></td> </tr> </tbody> </table>					Deliverable no.	Deliverable	Acceptance criteria	1.			2.									
Deliverable no.	Deliverable	Acceptance criteria																			
1.																					
2.																					
Pricing and payment																					
1 Contract price and payment schedule <i>MA cl. 12</i>	<p>The total contract price is \$<insert total value of this work order> (GST <inclusive / exclusive>)</p> <p><describe the payment approach for this work order.</p> <p>if relevant, complete the following milestone payment schedule:></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Milestone no.</th> <th style="width: 50%;">Deliverable</th> <th style="width: 20%;">Milestone payment (GST excl)</th> <th style="width: 20%;">Milestone payment (GST incl)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">2.</td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="2" style="text-align: right;">TOTAL</td> <td></td> <td></td> </tr> </tbody> </table>					Milestone no.	Deliverable	Milestone payment (GST excl)	Milestone payment (GST incl)	1.				2.				TOTAL			
Milestone no.	Deliverable	Milestone payment (GST excl)	Milestone payment (GST incl)																		
1.																					
2.																					
TOTAL																					
1 Additional costs <i>MA cl. 12</i>	<p>Option 1: The parties agree that the contract price is the sole and exclusive payment for all costs associated with the provision of the deliverables and that you are not entitled to any payment for additional costs in connection with this work order.</p> <p>To avoid doubt and without limitation, you are not entitled to any payment in addition to the contract price for travel, printing, <insert any additional costs that may be relevant to this work order>.</p> <p>Option 2: Subject to the requirements set out in the Master Agreement, you are entitled to recover the following additional costs:</p> <p>(a) <insert any additional costs applicable to the work order>.</p>																				
2 Maximum cost threshold <i>MA cl.12</i>	<p>You must stop work and advise the buyer immediately if the accrued costs reach the maximum cost threshold for a deliverable. You must not commence work or exceed the threshold without the buyer's approval.</p> <p>Option 1: The maximum cost threshold for each deliverable is \$<insert maximum cost threshold> (GST <inclusive / exclusive>)</p> <p>Option 2:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;">Deliverable</th> <th style="width: 30%;">Maximum cost threshold (GST excl)</th> <th style="width: 30%;">Maximum cost threshold (GST incl)</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table>					Deliverable	Maximum cost threshold (GST excl)	Maximum cost threshold (GST incl)													
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2 Invoicing <i>MA cl. 12</i>	<p>Note to drafters: This provision is drafted on the basis that the seller will issue invoices. If your agency uses recipient created tax invoices, you should replace this row with a clause setting this out.</p>																				

	<p>An invoice will be taken to be correctly rendered if the amount claimed in the invoice is due for payment under this work order and:</p> <ul style="list-style-type: none"> (a) the invoice contains: <ul style="list-style-type: none"> (i) the work order reference number; (ii) the deliverables related to the amounts being claimed; (iii) the name of the buyer's representative; (iv) the seller's ABN (if applicable); (v) the seller's bank account details for payment; and (vi) such other information as the buyer from time to time requires; and (b) the invoice is in the form of a valid tax invoice, where the seller is registered for GST; (c) the deliverables related to the amounts being claimed have been provided to the buyer's satisfaction and, if required, have been accepted by the buyer in accordance with this work order; (d) <when a work order is based on time, insert: the details of the amount of time spent by each person, including specified personnel (if any), on the deliverable for the period to which the invoice relates>; (e) <when a work order is based on milestone payments, insert: the details of the milestones/deliverables and the agreed payment amount as per the work order>; and (f) the invoice is accompanied, where required, by reasonable documentation that provides evidence that the deliverables have been performed and/or that any additional costs claimed are payable.
<p>2 Timesheets</p>	<p><insert this clause if some or all of the deliverables are being provided on a time and materials basis</p> <p>Your personnel must not work more than <insert> hours per week each, and <insert> hours per week in total, in supplying the deliverables.</p> <p>You must:</p> <ul style="list-style-type: none"> (a) ensure, for each week that the deliverables are provided, your personnel complete work effort recording; (b) complete and maintain timesheet(s) in a form acceptable to the buyer's representative to record the actual level of effort provided by each of your personnel; (c) submit the timesheets to the buyer's representative on a weekly basis for endorsement by the buyer's representative, or their nominated delegate; and (d) attach a copy of each endorsed timesheet to your invoice for the relevant deliverable. <p>For the purpose of subclause (b) above, the timesheet must, at minimum, identify the personnel and incorporate:</p> <ul style="list-style-type: none"> (a) reference to the work order number and period covered by the timesheet; (b) the statement "I certify the deliverables have been performed as recorded above and in accordance with work order number ...", and provide space to record the date and the signature, printed name and position of an authorised seller representative; and (c) the statement "The deliverables recorded in this timesheet were rendered in accordance with the requirements of the relevant agreement and work order" and provide space to record the date, signature, printed name, and position of the buyer's representative.

	<p>The buyer will not be liable to pay any amounts where timesheets show your personnel working more than the agreed hours per week, unless prior written approval has been given by the buyer's representative.></p>
<p>2 Liquidated damages</p>	<p>If there is a failure by the seller to achieve the following milestones then, without prejudice to any other remedy it has, the buyer is entitled, in its sole and absolute discretion, to recover from the seller the amounts specified below:</p> <p><insert table setting out the milestone and liquidated damages></p> <p>The parties agree that these amounts are not penalties but are reasonable, having regard to the loss, costs and expenses that the buyer is estimated to incur as a result of the delay.</p> <p>If the seller considers that the delay arose as a result of an event beyond its control, the seller must provide written notice to the buyer within five business days of that event occurring setting out the reasons why it considers that liquidated damages should not be payable. Unless and until the buyer agrees that the liquidated damages are not payable, the seller must deduct the liquidated damages from its invoice or pay the liquidated damages to the buyer.</p>
<p>2 Service Credits</p>	<p>If the seller fails to meet any of the service levels below, the seller must reduce the service charges in accordance with the table below:</p> <p><insert table setting out the service level and service credits>.</p> <p>The seller acknowledges that the service credits:</p> <ul style="list-style-type: none"> (a) have been the subject of negotiation between the parties; (b) are considered to be a genuine and reasonable pre-estimate of the loss likely to be suffered by the buyer if the seller fails to meet a service level; (c) are not intended, and the parties do not want them to be construed, as a penalty; and (d) to the extent that they have not been deducted from the service charges, are a debt due and payable as they arise. <p>Service credits are designed to be a simple mechanism for dealing with day-to-day issues. The buyer also reserves its other remedies under the contract (including the right to seek damages and/or terminate) in the event of more serious failures.</p> <p>The buyer also reserves its right to seek damages if the service credits are not payable by the seller for any reason (including because any provision of the contract is invalid or unenforceable).</p> <p>If the seller considers that a service credit arose as a result of an event beyond its control, the seller must provide written notice to the buyer within five business days of that event occurring setting out the reasons why it considers that a service credit should not be deducted. Unless and until the buyer agrees that the service credit is not payable, the seller must deduct the service credit. If the buyer advises the seller after the relevant invoice is issued that it agrees that some or all of the service credit is not payable, the seller may add the amount to its next invoice.</p>
<p>2 Payment on termination or reduction for convenience</p>	<p><specify any specific services or products in respect of which costs or no costs will be payable by the buyer in the event of termination for convenience.></p>
<p>Intellectual property rights</p>	
<p>2 Order material that is software and standard form documentation relating to that software</p>	<p>Option 1: Owned by seller but made available by the seller on an open source and creative commons basis.</p> <p>Option 2: Owned by seller but licensed to the buyer on the terms set out in clause 8 of the Master Agreement.</p> <p>Option 3: Owned by seller but licensed to the buyer on the following terms.</p> <p><insert alternative terms></p>

<p>MA cl. 8</p>	<p>Option 4: Vests in the buyer on creation.</p> <p>If requested, the seller must procure from its personnel any intellectual property assignments or consents, in a form acceptable to the buyer.</p>															
<p>2 Licence of order material owned by the buyer</p> <p>MA cl. 8</p>	<p>Your use of the order material which will be owned by the buyer is subject to the following restrictions:</p> <table border="1" data-bbox="437 376 1355 562"> <thead> <tr> <th data-bbox="437 376 721 443">Order material</th> <th data-bbox="721 376 1355 443">Restriction on use</th> </tr> </thead> <tbody> <tr> <td data-bbox="437 443 721 562"><insert order material subject to restriction></td> <td data-bbox="721 443 1355 562"><insert the purposes or activities the seller may use the order material for></td> </tr> </tbody> </table>		Order material	Restriction on use	<insert order material subject to restriction>	<insert the purposes or activities the seller may use the order material for>										
Order material	Restriction on use															
<insert order material subject to restriction>	<insert the purposes or activities the seller may use the order material for>															
<p>2 Material other than order material</p> <p>MA cl. 8 CT cl. 10</p>	<p>The licence of material, other than order material, is extended to allow the buyer (and its contractors) to use the material to provide shared services to other Commonwealth agencies.</p> <p>You must ensure that the buyer is granted any intellectual property rights, licence or usage rights to the following pre-existing material:</p> <table border="1" data-bbox="437 757 1297 943"> <thead> <tr> <th data-bbox="437 757 695 853">Pre-existing material</th> <th data-bbox="695 757 1297 853">Entity who owns the material</th> </tr> </thead> <tbody> <tr> <td data-bbox="437 853 695 943"><insert pre-existing material></td> <td data-bbox="695 853 1297 943"><seller / subcontractor / third party></td> </tr> </tbody> </table> <p><insert the following clause if any additional software terms apply to pre-existing software:></p> <p>Option 1: Licence terms to be specified</p> <p>The pre-existing software listed below is licensed to the buyer on the licence terms set out below (rather than the licence in clause 8 of the Master Agreement and clause 10 of the Comprehensive Terms).</p> <table border="1" data-bbox="437 1182 1297 1368"> <thead> <tr> <th data-bbox="437 1182 695 1279">Pre-existing software</th> <th data-bbox="695 1182 1297 1279">Licence terms</th> </tr> </thead> <tbody> <tr> <td data-bbox="437 1279 695 1368"><insert pre-existing software></td> <td data-bbox="695 1279 1297 1368"><insert specific licence terms></td> </tr> </tbody> </table> <p>Option 2: Standard licence terms to apply (subject to exceptions)</p> <p>Subject to the exceptions detailed in the table below, the pre-existing software listed below is licensed to the buyer on the licence terms set out in the standard terms referred to below (rather than the licence in clause 8 of the Master Agreement and clause 10 of the Comprehensive Terms). The software vendor's standard terms will not apply to the extent that they alter, or seek to alter, the legal obligations of, or relationship between, the buyer and the seller under the Master Agreement other than in respect of the buyer's use of the relevant pre-existing software.</p> <table border="1" data-bbox="437 1675 1297 2047"> <thead> <tr> <th data-bbox="437 1675 695 1794">Pre-existing software</th> <th data-bbox="695 1675 995 1794">Standard terms (include hyperlink or attach terms)</th> <th data-bbox="995 1675 1297 1794">The standard terms will not apply as follows</th> </tr> </thead> <tbody> <tr> <td data-bbox="437 1794 695 2047"><insert pre-existing software></td> <td data-bbox="695 1794 995 2047"> <insert name, date and location of standard terms> <insert clause / paragraph reference to applicable licence terms> </td> <td data-bbox="995 1794 1297 2047"> <describe any exceptions to the vendor's standard terms, eg: - any indemnities given by the buyer do not apply </td> </tr> </tbody> </table>		Pre-existing material	Entity who owns the material	<insert pre-existing material>	<seller / subcontractor / third party>	Pre-existing software	Licence terms	<insert pre-existing software>	<insert specific licence terms>	Pre-existing software	Standard terms (include hyperlink or attach terms)	The standard terms will not apply as follows	<insert pre-existing software>	<insert name, date and location of standard terms> <insert clause / paragraph reference to applicable licence terms>	<describe any exceptions to the vendor's standard terms, eg: - any indemnities given by the buyer do not apply
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			<ul style="list-style-type: none"> - limitation of licensor's liability does not apply - offshoring of data is not permitted - no fees are payable by the buyer unless they are detailed in this work order.> 								
<p>Option 3: Standard terms to apply in full (subject to exceptions)</p> <p>The following standard terms apply to the buyer's use of pre-existing software. To avoid doubt, the standard terms will only apply to the use of the software and not this work order generally. The software vendor's standard terms will not apply to the extent that they alter, or seek to alter, the legal obligations of, or relationship between, the buyer and the seller under the Master Agreement other than in respect of the buyer's use of the relevant pre-existing software.</p>											
		<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">Pre-existing software</th> <th style="width: 33%;">Standard terms (include hyperlink or attach terms)</th> <th style="width: 33%;">The standard terms will not apply as follows</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><insert pre-existing software></td> <td style="text-align: center;"><insert name, date and location of standard terms></td> <td> <p><describe any exceptions to the vendor's standard terms, eg:</p> <ul style="list-style-type: none"> - any indemnities given by the buyer do not apply - limitation of licensor's liability does not apply, - offshoring of data is not permitted - no fees are payable by the buyer unless they are detailed in this work order.> </td> </tr> </tbody> </table>	Pre-existing software	Standard terms (include hyperlink or attach terms)	The standard terms will not apply as follows	<insert pre-existing software>	<insert name, date and location of standard terms>	<p><describe any exceptions to the vendor's standard terms, eg:</p> <ul style="list-style-type: none"> - any indemnities given by the buyer do not apply - limitation of licensor's liability does not apply, - offshoring of data is not permitted - no fees are payable by the buyer unless they are detailed in this work order.> 			
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<p>2 Intellectual property register CT cl. 12</p>	<p>An intellectual property register is <required / not required>.</p> <p><You must provide the intellectual property register to the buyer within <insert number of days> days of a request to do so.</p> <p>The intellectual property register must be provided in the following format. <insert format requirements>></p>										
<p>Confidentiality and privacy</p>											
<p>3 Confidential information MA Definitions MA cl. 16 CT cl. 21</p>	<p>The parties agree that the following information is confidential information for the purposes of this work order:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Item</th> <th style="width: 25%;">Reason for confidentiality</th> <th style="width: 25%;">Party for whom information is confidential</th> <th style="width: 25%;">Period of confidentiality</th> </tr> </thead> <tbody> <tr> <td style="height: 40px;"></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>			Item	Reason for confidentiality	Party for whom information is confidential	Period of confidentiality				
Item	Reason for confidentiality	Party for whom information is confidential	Period of confidentiality								

	<clause / attachment/deliverable >	<insert reason item is confidential>	<buyer / seller>	<insert months / years>						
3 Confidentiality undertaking MA cl. 16	<p><insert if applicable: Before you commence work, confidentiality undertakings in a form attached to this work order or otherwise prescribed by the buyer are required from:</p> <p>(a) seller / personnel / specified personnel / subcontractors / financial, legal or other professional adviser / third party></p>									
3 Privacy MA cl. 17 CT cl. 22	<p>You must, in supplying deliverables, comply with, and ensure your personnel comply with:</p> <p>(a) <insert applicable directions, guidelines, determinations or recommendations></p> <p>(b) insert security requirements in relation to the collection, storage, use and disclosure of personal information></p> <p>You must ensure that your subcontracts include the same obligations as you have under clause 22 of the comprehensive terms.</p> <p>Note to drafters: Include these words if you want the seller to include clause 22 into its subcontracts. If you delete these words there will still be an obligation on the seller to ensure that its subcontracts are consistent with its obligations under clause 22 (see clause 20 of the comprehensive terms).</p>									
Optional clauses										
3 Insurance MA cl. 6	<p>You must obtain and maintain the following insurances:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Type</th> <th style="text-align: center;">Minimum limits</th> <th style="text-align: center;">Period of insurance</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"><insert required insurance policy type></td> <td style="vertical-align: top;">\$<insert amount> <per occurrence / in aggregate / and not less for <type of entity>></td> <td style="vertical-align: top;"><insert required period, including for example: until expiry or termination of this work order / until expiration of the period of [x] following expiry or termination of this work order></td> </tr> </tbody> </table> <p>If requested by the buyer, you must provide current relevant confirmation of insurance documentation from your insurers or insurance brokers certifying that you have insurance as required by the work order and clause 6 of the Master Agreement.</p>				Type	Minimum limits	Period of insurance	<insert required insurance policy type>	\$<insert amount> <per occurrence / in aggregate / and not less for <type of entity>>	<insert required period, including for example: until expiry or termination of this work order / until expiration of the period of [x] following expiry or termination of this work order>
Type	Minimum limits	Period of insurance								
<insert required insurance policy type>	\$<insert amount> <per occurrence / in aggregate / and not less for <type of entity>>	<insert required period, including for example: until expiry or termination of this work order / until expiration of the period of [x] following expiry or termination of this work order>								
3 Specified personnel MA cl. 10	<p>Note to drafters: Include this clause if the buyer requires that only named personnel perform the work order</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Name</th> <th style="text-align: center;">Position</th> <th style="text-align: center;">Proposed role</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"><insert the full name of the seller's specified personnel></td> <td style="vertical-align: top;"><insert current position></td> <td style="vertical-align: top;"><insert proposed role in performing the seller's obligations></td> </tr> </tbody> </table>				Name	Position	Proposed role	<insert the full name of the seller's specified personnel>	<insert current position>	<insert proposed role in performing the seller's obligations>
Name	Position	Proposed role								
<insert the full name of the seller's specified personnel>	<insert current position>	<insert proposed role in performing the seller's obligations>								
3 Security requirements MA cl. 10 CT cl. 15 - 18	<p><insert if applicable: Upon reasonable notice from the buyer, you must ensure that each of your personnel hold and maintain a security clearance at the level and for the period as notified by the buyer from time to time.></p> <p>You must comply with:</p> <p>(a) <insert any additional security requirements regarding the work, premises or location at which the deliverables are being delivered, the</p>									

		<i>IT systems in use or the personnel or subcontractors delivering those deliverables</i>	
3	Workplace health and safety requirements MA cl. 10 CT cl. 19	You must comply with: (a) <i><insert any workplace health and safety requirements specific to this work order.></i>	
3	Subcontracting MA cl. 11 CT cl. 20	The buyer permits you to subcontract the provision of the deliverables as follows:	
		Approved subcontractor	Description of the deliverables that may be provided
		<i><clause / attachment / deliverable ></i>	<i><insert description of the deliverables that may be provided></i>
3	Buyer material MA cl. 15 CT cl. 13 - 14	The buyer will provide you with the following assistance and material (buyer material):	
		Material	Restriction on use
		<i><insert buyer material></i>	<i><insert the purposes or activities the seller may use the material for></i>
			Warranted by buyer?
			<i><insert yes or no></i>
3	Harmful code MA-CT cl. 17	<i>Where harmful code is introduced in breach of the warranty in clause 17 of the comprehensive terms, you must pay any costs incurred by the buyer as a result of the breach. This includes paying the cost of any third party engaged by the buyer to repair or remove the harmful code.</i>	
4	Training requirements	Your personnel must attend the following training courses, seminars and conferences: <i><insert training requirements></i>	
4	Knowledge transfer CT cl. 23	You must provide the following knowledge transfer activities: <i><insert knowledge transfer requirements></i> Any deliverables that involve training must be provided by you so as to enable the buyer's personnel to meet the standards specified in this work order and must ensure that: (a) <i>trainees are trained to use all functionality of the deliverables which are the subject of the training which is relevant to the buyer's personnel being trained (as determined by the buyer); and</i> (b) <i>all necessary documentation is provided to trainees before or during the training.</i> Note to drafters: Any requirement to prepare, update and comply with a disengagement plan should be set out in the Statement of Work.	
4	Limitation of liability CT cl. 25	Note to drafters: If there is no liability cap, this row should be deleted. Option 1: <i>Subject to clause 25 of the comprehensive terms, each party's liability in respect of this work order (including for negligence) is limited to \$<insert amount> in aggregate.</i> Option 2: <i>Subject to clause 25 of the comprehensive terms, each party's liability in respect of this work order (including for negligence) is limited to \$<insert amount> per occurrence or series of related occurrences arising from a single cause.</i>	

<p>4 WGE compliance letter CT cl. 27</p>	<p><insert this clause if the term of the work order exceeds 18 months: If you are a relevant employer, you must provide a current letter of compliance issued by the Workplace Gender Equality Agency within 18 months of the commencement of the work order and following this, annually to the buyer's representative.></p>
<p>4 Indigenous Procurement Policy</p>	<p><if this work order exceeds \$7.5m, you may need to include mandatory minimum requirements for the seller – see the Indigenous Procurement Policy available here. Otherwise you should use the clause below.></p> <p>You must use reasonable endeavours to increase your:</p> <ul style="list-style-type: none"> (a) purchasing from Indigenous enterprises; and (b) employment of Indigenous Australians, <p>in the provision of the deliverables.</p> <p>Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a subcontractor, and use of Indigenous suppliers in the seller's supply chain.</p> <p>In this clause, "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business.</p>
<p>Additional terms MA cl. 2</p> <p>Note to drafters: The seller may prescribe additional terms to apply to this work order. If there is any inconsistency between the additional terms and the Master Agreement or Comprehensive Terms, the additional terms will prevail to the extent of the inconsistency.</p>	
4	
4	

Signing this work order means a contract is created between the buyer and seller as described in the [Master Agreement](#)

Buyer signatures

Buyer's authorised officer

Witness

Signature

Signature

Name

Name

Position

Date

Date

Seller signatures

Seller's authorised officer

Witness

Signature

Signature

Name

Name

Position

Date

Date

Digital Marketplace work order

Simple and low value

<OPPORTUNITY TITLE>

Project (Brief ID # REF)

Note to drafters: This work order template includes example drafting. Review and amend the examples to suit your work order. Rows in italics are optional. Delete any rows that do not apply to your work order.

MA means Master Agreement

You should have regard to the defined terms in clause 30 of the Master Agreement. Note that defined terms are in lower case and are not bolded.

General		
1.	Authority and context	<p>This work order is issued by the Commonwealth of Australia as represented by the <buyer name> (buyer) to <seller name> ABN <seller ABN> (seller) in accordance with the Digital Marketplace Master Agreement <insert date> which relates to the Digital Transformation Agency's Digital Marketplace Panel.</p> <p>In accordance with clause 2 of the Master Agreement, this work order, once executed by both parties, will create a separate contract between the buyer and the seller on the terms of the Master Agreement and the terms specified in this work order.</p> <p>Unless the context otherwise provides, defined terms used in this work order have the same meaning as given in the Definitions section of the Master Agreement.</p> <p>The Comprehensive Terms do not apply to this work order.</p>
2.	Standing Offer Notice ID	SON3413842
3.	Work order number	<insert work order number>
4.	Buyer cost code GL code	<insert code>
5.	Buyer representative	<insert name / phone number / email address>
6.	Seller representative	<insert name / phone number / email address>
7.	Project title	<insert project title (if any)>
8.	Work order commencement date	<insert work order commencement date>
9.	Term of the work order	<p>The initial term of the work order is <number> <months / years></p> <p>The buyer may extend the term of the work order by <number> further periods of <Option: up to> <number of months> months each on the same terms and conditions as this work order by giving notice in writing to the seller no later than <number of days> days prior to the end of the then current term.</p>

Deliverables								
<p>10.</p>	<p>Deliverables MA cl. 6</p>	<p>Option 1: You will provide the deliverables set out in the statement of requirement attached to this work order.</p> <p>Option 2: You will provide the following deliverables to the buyer: <describe the deliverables, including the date that the seller must start carrying out the deliverables></p> <p>Note to drafters: Attachments have a lower priority in the event of inconsistency</p>						
<p>11.</p>	<p>Purpose MA cl. 6</p>	<p>The deliverables must be fit for the following purpose(s): <describe the purpose of the deliverables. If necessary, list the deliverables, or categories of deliverables, and details the individual purposes of each.></p> <p>The seller agrees that the deliverables may be used by the buyer to provide shared services to other Commonwealth agencies.</p>						
<p>12.</p>	<p>Policies and standards MA cl. 6 MA cl. 10 MA cl. 17</p>	<p>You must, in supplying deliverables, comply with, and ensure your personnel comply with:</p> <ul style="list-style-type: none"> (a) <insert any performance standards specific to the work order>; (b) <insert any workplace health and safety requirements specific to this work order.> (c) <insert any applicable directions, guidelines, determinations or recommendations relating to privacy> (d) <insert security requirements in relation to the collection, storage, use and disclosure of personal information> (e) <insert any other security requirements regarding the work, premises or location at which the deliverables are being provided, the IT systems in use or the personnel or subcontractors providing those deliverables> (f) <insert any other applicable policies specific to the work order> (g) <insert other applicable specifications, industry codes, best practice methodologies, or Australian, New Zealand or international standards> <p>All deliverables and outputs should conform to the Web Content Accessibility Guidelines (WCAG) 2.0 (specifying Level A, AA or AAA), preferably through the use of Sufficient Techniques (as that term is defined in the WCAG 2.0 Quick Reference (http://www.w3.org/WAI/WCAG20/quickref)).</p>						
<p>13.</p>	<p>Documentation MA cl. 7</p>	<p>You must provide the following documentation to the buyer:</p> <table border="1" data-bbox="550 1612 1396 1792"> <thead> <tr> <th>Documentation</th> <th>Format</th> <th>Timing</th> </tr> </thead> <tbody> <tr> <td><insert documentation required></td> <td><insert format required for documentation></td> <td><insert provision due date / time></td> </tr> </tbody> </table>	Documentation	Format	Timing	<insert documentation required>	<insert format required for documentation>	<insert provision due date / time>
Documentation	Format	Timing						
<insert documentation required>	<insert format required for documentation>	<insert provision due date / time>						
<p>14.</p>	<p>Meetings</p>	<p>The parties will meet at the following times: <insert meeting requirements></p> <p>You must ensure that your representative, and the buyer must ensure that the buyer's representative, is reasonably available to attend the meetings and answer any queries relating to the provision of the deliverables raised by either party.</p>						

15.	Reports	You must provide the following reports: <insert reports required and details such as frequency, due date, format, content etc>																						
Delivery and acceptance																								
16.	Delivery and milestones MA cl. 9	<p>Option 1: You will provide the deliverables in accordance with the time frames / milestones set out in the statement of requirement attached to this work order.</p> <p>Option 2: You will provide the deliverables in accordance with the following schedule of milestones:</p> <table border="1" data-bbox="552 501 1401 719"> <thead> <tr> <th>Milestone no.</th> <th>Deliverable</th> <th>Due date</th> <th>Subject to acceptance?</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td></td> <td></td> <td></td> </tr> <tr> <td>2.</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Milestone no.	Deliverable	Due date	Subject to acceptance?	1.				2.													
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1.																								
2.																								
17.	Acceptance process and criteria MA cl. 9	<p><specify any steps required in addition to the acceptance process set out in the Master Agreement></p> <p><specify acceptance criteria for the deliverables></p> <table border="1" data-bbox="552 853 1401 1070"> <thead> <tr> <th>Deliverable no.</th> <th>Deliverable</th> <th>Acceptance criteria</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td></td> <td></td> </tr> <tr> <td>2.</td> <td></td> <td></td> </tr> </tbody> </table>	Deliverable no.	Deliverable	Acceptance criteria	1.			2.															
Deliverable no.	Deliverable	Acceptance criteria																						
1.																								
2.																								
Pricing and payment																								
18.	Contract price and payment schedule MA cl. 12	<p>The total contract price is \$<insert total value of this work order> (GST <inclusive / exclusive>)</p> <p><describe the payment approach for this work order.</p> <p>if relevant, complete the following milestone payment schedule:></p> <table border="1" data-bbox="552 1317 1401 1641"> <thead> <tr> <th>Milestone no.</th> <th>Deliverable</th> <th>Milestone payment (GST excl)</th> <th>Milestone payment (GST incl)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td></td> <td></td> <td></td> </tr> <tr> <td>2.</td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="2" style="text-align: right;">TOTAL</td> <td></td> <td></td> </tr> </tbody> </table> <p>You must stop work and advise the buyer immediately if the accrued costs reach the maximum cost threshold for a deliverable. You must not commence work or exceed the threshold without the buyer's approval.</p> <table border="1" data-bbox="552 1787 1401 1989"> <thead> <tr> <th>Deliverable</th> <th>Maximum cost threshold (GST excl)</th> <th>Maximum cost threshold (GST incl)</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Milestone no.	Deliverable	Milestone payment (GST excl)	Milestone payment (GST incl)	1.				2.				TOTAL				Deliverable	Maximum cost threshold (GST excl)	Maximum cost threshold (GST incl)			
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1.																								
2.																								
TOTAL																								
Deliverable	Maximum cost threshold (GST excl)	Maximum cost threshold (GST incl)																						
19.	Additional costs MA cl.12	Option 1: The parties agree that the contract price is the sole and exclusive payment for all costs associated with the provision of the deliverables and that you are not entitled to any payment for																						

		<p>additional costs in connection with this work order.</p> <p>To avoid doubt and without limitation, you are not entitled to any payment in addition to the contract price for travel, printing, <insert any additional costs that may be relevant to this work order>.</p> <p>Option 2: Subject to the requirements set out in the Master Agreement, you are entitled to recover the following additional costs:</p> <p>(a) <insert any additional costs applicable to the work order>.</p> <p>Subject to the requirements set out in the Master Agreement, you are entitled to recover the following additional costs:</p> <ul style="list-style-type: none"> (a) If the NDIA has provided its prior written consent, the Specified Personnel shall be entitled to reimbursement for travel expenses such as accommodation, transportation and meals as outlined in the NDIA subscription service. (i) The Agency will only reimburse actual out of pocket expenses to the maximum allowed supported by tax receipts. There is no allowance for incidental costs <p>Subject to the below, the Contractor must perform its obligations under this Contract at its own cost and expense.</p> <p>If the use of a personal car is required in order to travel for NDIA official business, reimbursement as per current ATO (Australian Taxation Office) cents per km is applicable.</p> <p>Travel, including flights and accommodation will be booked via the Agency’s established self-management system.</p> <p>Specified Personnel’s expenses may be claimed when travelling for NDIA official business during the Assignment. This is not a pre-paid allowance, it is a reimbursement of reasonable costs incurred as a result of Assignment-related travel. The maximum reimbursement amounts are Non-SES domestic Travel Allowance Rates as defined in the NDIA Labour Hire Worker Expense Reimbursement Guide. All expenses must be approved by the relevant NDIA manager or team leader before they are incurred. Evidence of the expense must be provided. Expenses will be reimbursed as per the Labour Hire Worker Expense Reimbursement Guide.</p>
<p>20.</p>	<p>Invoicing MA cl. 12</p>	<p><i>Note to drafters: This provision is drafted on the basis that the seller will issue invoices. If your agency uses recipient created tax invoices, you should replace this row with a clause setting this out.</i></p> <p>The Contractor must forward Correctly Rendered Invoices. Invoices are to be submitted on a monthly basis.</p> <p>Where the Services involve the provision of Specified Personnel to the buyer, copies of approved timesheets for those Contractor Placement Staff members must be provided to the buyer with any Correctly Rendered Invoice.</p> <p>Invoices must be emailed to: invoices@ndis.gov.au.</p> <p>An invoice will be taken to be correctly rendered if the amount claimed in the invoice is due for payment under this work order and:</p> <ul style="list-style-type: none"> (b) the work order contains: <ul style="list-style-type: none"> (i) the work order reference number; (ii) the name of the buyer’s representative; (iii) the seller’s ABN (if applicable); (iv) the seller’s bank account details for payment; and

		<p>(v) such other information as the buyer from time to time requires; and</p> <p>(c) the invoice is in the form of a valid tax invoice, where the seller is registered for GST;</p> <p>(d) the details of the amount of time spent by each person; and</p> <p>(e) the invoice is accompanied, where required, by reasonable documentation that provides evidence that the deliverables have been performed and/or that any additional costs claimed are payable.</p>				
21.	Timesheets	<p><i>You must:</i></p> <p>(f) ensure, for each week that your personnel complete work effort recording; complete and maintain timesheet(s) in a form acceptable to the buyer's representative to record the actual level of effort provided by each of your personnel;</p> <p>(g) submit the timesheets to the buyer's representative on a weekly basis for endorsement by the buyer's representative, or their nominated delegate; and</p> <p>(h) attach a copy of each endorsed timesheet to your invoice for the relevant deliverable.</p> <p><i>The buyer will not be liable to pay any amounts where timesheets show your personnel working more than the agreed hours per week, unless prior written approval has been given by the buyer's representative.</i></p>				
Intellectual property rights						
22.	<p>Order material that is software and standard form documentation relating to that software</p> <p><i>MA cl. 8</i></p>	<p>Option 1: Owned by seller but made available by the seller on an open source and creative commons basis.</p> <p>Option 2: Owned by seller but licensed to the buyer on the terms set out in clause 8 of the Master Agreement.</p> <p>Option 3: Owned by seller but licensed to the buyer on the following terms.</p> <p><insert alternative terms ></p> <p>Option 4: Vests in the buyer on creation.</p>				
23.	<p>Licence of order material owned by the buyer</p> <p><i>MA cl. 8</i></p>	<p><i>Your use of the order material which will be owned by the buyer is subject to the following restrictions:</i></p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: center;">Order material</th> <th style="text-align: center;">Restriction on use</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><insert order material subject to restriction></td> <td style="text-align: center;"><insert the purposes or activities the seller may use the order material for></td> </tr> </tbody> </table>	Order material	Restriction on use	<insert order material subject to restriction>	<insert the purposes or activities the seller may use the order material for>
Order material	Restriction on use					
<insert order material subject to restriction>	<insert the purposes or activities the seller may use the order material for>					
24.	<p>Material other than order material</p> <p><i>MA cl. 8</i></p>	<p><i>The seller agrees that the deliverables may be used by the buyer to provide shared services to other Commonwealth agencies.</i></p> <p><i>You must ensure that the buyer is granted any intellectual property rights, licence or usage rights to the following pre-existing material:</i></p> <table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: center;">Pre-existing material</th> <th style="text-align: center;">Entity who owns the material</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><insert pre-existing material></td> <td style="text-align: center;"><seller / subcontractor / third party></td> </tr> </tbody> </table> <p><i><insert the following clause if any additional software terms apply to pre-existing software:</i></p>	Pre-existing material	Entity who owns the material	<insert pre-existing material>	<seller / subcontractor / third party>
Pre-existing material	Entity who owns the material					
<insert pre-existing material>	<seller / subcontractor / third party>					

Option 1: Licence terms to be specified

The pre-existing software listed below is licensed to the buyer on the licence terms set out below (rather than the licence in clause 8 of the Master Agreement and clause 10 of the Comprehensive Terms).

Pre-existing software	Licence terms
<insert pre-existing software>	<insert licence terms>

Option 2: Standard licence terms to apply (subject to exceptions)

Subject to the exceptions detailed in the table below, the pre-existing software listed below is licensed to the buyer on the licence terms set out in the standard terms referred to below (rather than the licence in clause 8 of the Master Agreement and clause 10 of the Comprehensive Terms). The software vendor's standard terms will not apply to the extent that they alter, or seek to alter, the legal obligations of, or relationship between, the buyer and the seller under the Master Agreement other than in respect of the buyer's use of the relevant pre-existing software.

Pre-existing software	Standard terms (include hyperlink or attach terms)	The standard terms will not apply as follows
<insert pre-existing software>	<insert name, date and location of standard terms> <insert clause / paragraph reference to applicable licence terms>	<describe any exceptions to the vendor's standard terms, eg: - any indemnities given by the buyer do not apply - limitation of licensor's liability does not apply - offshoring of data is not permitted - no fees are payable by the buyer unless they are detailed in this work order.>

Option 3: Standard terms to apply in full (subject to exceptions)

The following standard terms apply to the buyer's use of pre-existing software. To avoid doubt, the standard terms will only apply to the use of the software and not this work order generally. The vendor's standard terms will not apply to the extent that they alter, or seek to alter, the legal obligations of, or relationship between, the buyer and the seller under the Master Agreement other than in respect of the buyer's use of the relevant pre-existing software.

Pre-existing software	Standard terms (include hyperlink or attach terms)	The standard terms will not apply as follows
<insert pre-existing software>	<insert name, date and location of standard terms>	<describe any exceptions to the

				<p>vendor's standard terms, eg:</p> <ul style="list-style-type: none"> - any indemnities given by the buyer do not apply - limitation of licensor's liability does not apply, - offshoring of data is not permitted - no fees are payable by the buyer unless they are detailed in this work order.> 						
Confidentiality and privacy										
25.	Confidential information <i>MA Definitions</i> <i>MA cl. 16</i>	The parties agree that the following information is confidential information for the purposes of this work order:								
		<table border="1"> <thead> <tr> <th>Item</th> <th>Reason for confidentiality</th> <th>Party for whom information is confidential</th> <th>Period of confidentiality</th> </tr> </thead> <tbody> <tr> <td><clause / attachment / deliverable ></td> <td><insert reason item is confidential></td> <td><buyer / seller></td> <td><insert months / years></td> </tr> </tbody> </table>	Item	Reason for confidentiality	Party for whom information is confidential	Period of confidentiality	<clause / attachment / deliverable >	<insert reason item is confidential>	<buyer / seller>	<insert months / years>
Item	Reason for confidentiality	Party for whom information is confidential	Period of confidentiality							
<clause / attachment / deliverable >	<insert reason item is confidential>	<buyer / seller>	<insert months / years>							
26.	Confidentiality undertaking <i>MA cl. 16</i>	<p><insert if applicable: Before you commence work, confidentiality undertakings in a form attached to this work order or otherwise prescribed by the buyer are required from:</p> <p>(a) seller / personnel / specified personnel / subcontractors / financial, legal or other professional adviser / third party></p>								
Optional clauses										
27.	Insurance <i>MA cl. 6</i>	Type		Coverage						
		Public liability insurance		\$10,000,000						
		Product liability insurance		\$10,000,000						
		Professional indemnity insurance		\$5,000,000						
		Workers compensation insurance		As required by Law						
<p><i>If requested by the buyer, you must provide current relevant confirmation of insurance documentation from your insurers or insurance brokers certifying that you have insurance as required by the work order and clause 6 of the Master Agreement.</i></p>										
28.	Specified personnel <i>MA cl. 10</i>	<p>Note to drafters: Include this clause if the buyer requires that only named personnel perform the work order</p>								
		<table border="1"> <thead> <tr> <th>Name</th> <th>Position</th> <th>Proposed role</th> </tr> </thead> <tbody> <tr> <td><insert the full name of the seller's</td> <td><insert current position></td> <td><insert proposed role in performing the seller's obligations></td> </tr> </tbody> </table>	Name	Position	Proposed role	<insert the full name of the seller's	<insert current position>	<insert proposed role in performing the seller's obligations>		
Name	Position	Proposed role								
<insert the full name of the seller's	<insert current position>	<insert proposed role in performing the seller's obligations>								

		<i>specified personnel</i> >						
29.	Security clearance <i>MA cl. 10</i>	Pep checks will be initiated by NDIA and commencement is subject to the key personnel meeting the standard in relation to the pep requirements.						
30.	Subcontracting <i>MA cl. 11</i>	<p>The buyer permits you to subcontract the provision of the deliverables as follows:</p> <table border="1"> <thead> <tr> <th>Approved subcontractor</th> <th>Description of the deliverables that may be provided</th> </tr> </thead> <tbody> <tr> <td><i><clause / attachment / deliverable ></i></td> <td><i><insert description of the deliverables that may be provided></i></td> </tr> </tbody> </table>			Approved subcontractor	Description of the deliverables that may be provided	<i><clause / attachment / deliverable ></i>	<i><insert description of the deliverables that may be provided></i>
Approved subcontractor	Description of the deliverables that may be provided							
<i><clause / attachment / deliverable ></i>	<i><insert description of the deliverables that may be provided></i>							
31.	Buyer material <i>MA cl. 15</i>	Upon commencement the specified personnel will be provided with government furnished material, such as a Microsoft surface pro and standard workstation.						
32.	WGE compliance letter	<i><insert this clause if the term of the work order exceeds 18 months: If you are a relevant employer, you must provide a current letter of compliance issued by the Workplace Gender Equality Agency within 18 months of the commencement of the work order and following this, annually to the buyer's representative.></i>						
33.	Indigenous Procurement Policy	<p>You must use reasonable endeavours to increase your:</p> <ul style="list-style-type: none"> (a) purchasing from Indigenous enterprises; and (b) employment of Indigenous Australians, <p>in the provision of the deliverables.</p> <p>Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a subcontractor, and use of Indigenous suppliers in the seller's supply chain.</p> <p>In this clause, "Indigenous enterprise" means an organisation that is 50 per cent or more Indigenous owned that is operating a business.</p>						
<p>Additional terms <i>MA cl. 2</i></p> <p>Note to drafters: The seller may prescribe additional terms to apply to this work order. If there is any inconsistency between the additional terms and the Master Agreement or Comprehensive Terms, the additional terms will prevail to the extent of the inconsistency.</p>								
34.	Hours	Hours of work are to be 7.5 hours daily / 37.5 hours per week or as agreed in writing with the Line Manager.						
35.	Additional Hours and Penalty Rates	<ul style="list-style-type: none"> (a) Penalty rates are not applicable Monday to Friday, excluding Public Holidays. All hours worked Monday to Friday, excluding Public Holidays, are to be charged at the Ordinary agreed rate. (b) All hours worked on Saturday will be paid at time and a half (Ordinary Hourly rate x 1.50) (c) All hours worked on Sunday will be paid at double time (Ordinary Hourly rate x 2.00) (d) All hours worked on a Public Holiday will be paid at double time (Ordinary Hourly rate x 2.00) 						

		<p>(e) No minimum number of hours are required before Penalty rates apply as set out in paragraphs (b), (c) or (d) above.</p> <p>(f) The Line Manager/Contract Manager may approve a substitution of a day or part-day that would otherwise be a public holiday having regard to business requirements.</p> <p>(g) The Contractor must obtain the prior written agreement from the Line Manager/Contract Manager confirming the rate that can be invoiced prior to work being performed on a Saturday, Sunday or Public Holiday.</p> <p>(h) In paragraphs (a) to (f), 'Public Holiday' means a public holiday in the location at which the work is undertaken.</p> <p>(i) NDIA approved travel time will be reimbursed through the usual mechanism of billable hours through a timesheet, regardless of the day the travel occurs.</p> <p>OR</p> <p>NDIA approved travel time will be reimbursed through comparable flexible time, regardless of the day the travel occurs.</p>
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Signing this work order means a contract is created between the buyer and seller as described in the [Master Agreement](#)

Buyer signatures

Buyer's authorised officer

Witness

Signature

Signature

Name

Name

Position

Date

Date

Seller signatures

Seller's authorised officer

Witness

Signature

Signature

Name

Name

Position

Date

Date



Australian Government
Australian Digital Health Agency

Deed of Standing Offer for Goods and/or Services

between the

Australian Digital Health Agency

ABN 84 425 496 912

and

[Click here to enter text](#)

For execution by an individual trustee, the Contractor Name field should be:

[Name] in [his/her] own capacity and as Trustee for the [Trust name]

For execution by a company trustee, the Contractor Name field should be:

[Company name] in its own capacity and as Trustee for the [Trust name]

ABN [Click here to enter text](#)

in relation to

Recruitment Services

OFFICIAL

Reference No: DH1358

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This Deed is made between:

AUSTRALIAN DIGITAL HEALTH AGENCY, a corporate Commonwealth entity established pursuant to the *Public Governance, Performance and Accountability (Establishing the Australian Digital Health Agency) Rule 2016* of Level 25, 56 Pitt Street Sydney NSW 2000, ABN 84 425 496 912 (the **Agency**);

and

Click here to enter text, **insert registered address of Contractor**, ABN Click here to enter text (the **Contractor**).

RECITALS

- A. From time to time, the Agency may require the provision of certain goods and/or services in the Categories of Goods and/or Services.
- B. The Contractor has agreed that when a Work Order is signed by both Parties, the Contractor will provide the Goods and/or Services to the Agency as a separate contract but on the terms and conditions set out in this Deed.
- C. The Contractor acknowledges that there is no guarantee or assurance:
 - (i) of any particular volume of business under this Deed; or
 - (ii) that any Work Orders will be placed with the Contractor.
- D. The Contractor is one of a number of panel members for the Agency's Recruitment Services Panel.

OPERATIVE PART

1 INTERPRETATION AND OPERATION OF DEED

1.1 In this Deed, unless the contrary intention appears:

ABN means Australian Business Number;

Advisers includes a Party's agents, contractors (including subcontractors), consultants or advisers (including legal advisers) engaged in, or in relation to, the performance or management of this Deed;

Agency means the Australian Digital Health Agency, established under the *PGPA Rule*, and includes any successor Government Agency which is from time to time responsible for the administration of this Deed;

Agency Deed Representative means the person identified in Item A of the Deed Details;

Agency Material means any Material:

- (a) provided by or on behalf of the Agency to the Contractor for the purposes of this Deed;
- (b) any improvements, modifications, derivatives or enhancements of the Material referred to in paragraph (a) above created by either the Contractor or the Agency; and
- (c) copied or derived at any time from the Material referred to in paragraphs (a) or (b) above;

Agreed Terms means clauses 1 to 27 of this Deed which set out terms and conditions agreed by the Parties;

Auditor-General means the office established under the *Auditor-General Act 1997* and includes any other person that may, from time to time, perform the functions of that office;

Bankruptcy Act means *Bankruptcy Act 1966*;

Business Day means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in the place where the act is to be performed;

Categories of Goods and/or Services means the categories of goods and services listed in Schedule 2;

Commonwealth means the Commonwealth of Australia;

Confidential Information means information that:

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

but does not include the terms of this Deed (unless expressly provided otherwise) or information which:

- (d) is or becomes public knowledge other than by:
 - (i) breach of this Deed or any other confidentiality obligations; or
 - (ii) any other unlawful means;
- (e) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Agency; or
- (f) is independently developed or acquired by the Contractor without breaching an obligation of confidentiality;

Conflict means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Contractor (or the Contractor Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Contractor in providing and performing its obligations under this Deed fairly and independently;

Contractor Deed Representative means the person identified in 0 of the Deed Details;

Contractor Personnel means:

- (a) officers, Officials, employees, agents, representatives or subcontractors of the Contractor;
- (b) officers, Officials, employees, agents, representatives or subcontractors of the Contractor's subcontractors; and
- (c) includes those individuals (if any) engaged by the Contractor or its subcontractors on a voluntary basis,

who are engaged in the provision and performance of the Goods and/or Services;

Control:

- (a) has the meaning given in section 50AA of the Corporations Act;
- (b) in respect of an 'entity' (as defined in the Corporations Act) also includes the direct or indirect power to directly or indirectly direct the management or policies of the entity or control the membership or voting of the board of directors or other governing body of the entity (whether or not the power has statutory, legal or equitable force or arises by means of statutory, legal or equitable rights or trusts, agreements, arrangements, understandings, practices, the ownership of any interest in a 'marketable security' (as defined in section 9 of the Corporations Act), bonds or instruments of the entity or otherwise); and
- (c) also includes owning or controlling, directly or indirectly, more than 50% of the shares or units in an entity;

Corporations Act means the *Corporations Act 2001*;

Deed means this document as amended from time to time in accordance with this deed, and includes its Schedules and any attachments;

Deed Details means the details set out in Schedule 1;

Deed Material means all Material:

- (a) created for the purposes of this Deed;
 - (b) provided or required under this Deed to be provided to the Agency; or
 - (c) copied or derived at any time from the Material referred to in paragraphs (a) or (b),
- including the Deed Material described in Item D of the Deed Details;

Deed Start Date means the date on which this Deed commences, as specified in Item C of the Deed Details;

Deed Term means the period for which this Deed is intended to continue, as specified in Item C of the Deed Details;

Eligible Data Breach has the same meaning as in the *Privacy Act 1988*;

Existing Material means all Material in existence prior to the Deed Start Date that is:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of,

the Deed Material and includes Material identified as Existing Material in Item H of the Deed Details but excludes Agency Material;

External Administrator means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity;

Goods and/or Services means the goods, services, work, activities, functions and responsibilities to be performed or provided by the Contractor under a Work Order;

Government Agency means:

- (a) a 'corporate Commonwealth entity' or 'Commonwealth company' as defined in the *Public Governance, Performance and Accountability Act 2013*;
- (b) an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation;
- (c) a body established by the Commonwealth Parliament, either House of Parliament, the Governor-General or a Minister of State or the Commonwealth; or
- (d) any body that may exercise any of the powers of the Commonwealth under the Commonwealth Constitution,

whether acting directly or through an agent;

Information Commissioner has the meaning given in the *Australian Information Commissioner Act 2010*;

Initial Deed Period has the meaning in Item C of the Deed Details.

Insolvency Event means in respect of a person, any of the following:

- (a) it becomes insolvent within the meaning of section 95A, or is taken to have failed to comply with a statutory demand under section 459F(1), or must be presumed by a court to be insolvent under section 459C(2), or is the subject of a circumstance specified in section 461 (whether or not an application to court has been made under that section) or, if the person is a Part 5.7 body, is taken to be unable to pay its debts under section 585, of the Corporations Act;
- (b) except with the Agency's consent:
 - (i) it is the subject of a Liquidation, or an order or an application is made for its Liquidation; or
 - (ii) an effective resolution is passed or meeting summoned or convened to consider a resolution for its Liquidation;
- (c) an External Administrator is appointed to it or any of its assets or a step is taken to do so or its Related Body requests such an appointment;
- (d) if a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration;
- (e) if a trustee of a trust, it is unable to satisfy out of the assets of the trust the liabilities incurred by it as and when those liabilities fall due;
- (f) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate pursuant to the Bankruptcy Act;
- (g) any application (not withdrawn or dismissed within five (5) Business Days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) a personal insolvency agreement;

- (iii) any other assignment, composition or arrangement (formal or informal) with a person's creditors;
- (iv) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee; or
- (v) or any agreement or other arrangement of the type referred to in this paragraph (g) is ordered, declared or agreed to;
- (h) a person becomes an insolvent under administration (as defined in the Corporations Act);
- (i) an analogous or equivalent event to any listed above occurs in any jurisdiction; or
- (j) it stops or suspends payment to all or a class of creditors generally;

Instrument of Acceptance means an instrument substantially in the form of Schedule 6;

Intellectual Property Rights includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks and all goodwill in those marks) and domain names, registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, and all rights of a similar nature to any of these rights which may subsist in Australia or elsewhere and any application or right to apply for registration of such rights;

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

Liquidation means:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- (b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them;

Material means documents, records, equipment, software (including source code and object code), goods, images, information, documented methodology, documented process and data stored by any means including all copies and extracts of the same, and including any deliverables, plans, reports, and the subject matter of any category of Intellectual Property Rights;

Moral Rights means the rights in Part IX of the *Copyright Act 1968*, and includes the following rights of an author of copyright Material:

- (a) the right of attribution of authorship;
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed;

Official has the meaning specified in section 13 of the *Public Governance, Performance and Accountability Act 2013*;

Ombudsman means the office established under the *Ombudsman Act 1976* and includes any other person that may, from time to time, perform the functions of that office;

Panel means the panel for the provision of certain Goods and/or Services, consisting of entities which have signed deeds similar to this Deed for the provision of the Services;

Panel Member means an entity which has become a member of the Panel;

Party mean a party to this Deed;

PGPA Rule means the *Public Governance, Performance and Accountability (Establishing the Australian Digital Health Agency) Rule 2016*;

Prices means the prices and rates set out in or determined in accordance with Schedule 3;

Privacy Commissioner has the meaning given in the *Australian Information Commissioner Act 2010*;

Quotation means a written quotation, provided in accordance with clause 4.4 given by the Contractor to the Agency in response to a Request for Quotation;

Related Body means, regardless of any body's trustee or other capacity:

- (a) a body corporate which would be related under section 50 of the Corporations Act; or
- (b) an entity which Controls, is Controlled by, or is under common Control with, that body;

Request for Quotation means a request for the Contractor to provide a quote for Goods and/or Services in the form of Schedule 4;

Schedules means the schedules to this Deed;

Services means the Services provided under this Deed as outlined at Item 2 of Schedule 2;

Specified Personnel means the Contractor Personnel specified in Item E of the Deed Details;

Terms and Conditions of Contract means the terms and conditions specified in Schedule 8; and

Work Order means an order executed by the Parties in accordance with clause 4.8.

1.2 In this Deed, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;
- (e) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (f) all references to dollars, A\$, \$A or \$ are to Australian dollars;
- (g) a reference to time is to Sydney, Australia time;

- (h) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
 - (i) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
 - (j) an uncertainty or ambiguity in the meaning of a provision of this Deed will not be interpreted against a Party just because that Party prepared the provision;
 - (k) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local department or agency or other entity;
 - (l) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended from time to time;
 - (m) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (n) the term 'may' when used in the context of a right or remedy exercisable by the Agency means that the Agency may exercise that right or remedy in its sole and absolute discretion and the Agency has no obligation to the Contractor to do so unless expressly stated;
 - (o) a reference to the word including in any form is not to be construed or interpreted as a word of limitation; and
 - (p) references to clauses are to clauses in this Deed, references to 'Items' are to Items in a Schedule to this Deed, and references to Annexures or Attachments are references to documents attached to this Deed.
- 1.3 If there is any conflict or inconsistency between the provisions of the documents that together form this Deed, the earlier mentioned document will prevail to the extent of that inconsistency:
- (a) the Agreed Terms;
 - (b) the Schedules to this Deed; and
 - (c) the Annexures or Attachments (if any) to this Deed.
- 1.4 The laws of New South Wales apply to this Deed. The Parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales in respect of any dispute under this Deed.
- 1.5 This Deed records the entire agreement between the Parties in relation to its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.
- 1.6 This Deed may be executed in counterparts, each of which will be deemed to be an original and all of which, taken together, constitutes one and the same agreement. The Parties may exchange counterparts of executed copies of this Deed by electronic mail. The Parties agree that the electronic receipt of such executed counterparts will have the same effect as if the Parties had exchanged an original Deed executed by the Parties.
- 1.7 No variation of this Deed is binding unless agreed in writing between the Parties.
- 1.8 Any reading down or severance of a particular provision does not affect the other provisions of this Deed.

- 1.9 A waiver of any provision of or right under this Deed must be in writing signed by the Party entitled to the benefit of that provision or right, and is effective only to the extent set out in any written waiver.
- 1.10 No waiver of a term or condition of this Deed will operate as a waiver of another breach of the same or of any other term or condition contained in this Deed.
- 1.11 If a Party does not exercise, or delays in exercising, any of its rights under this Deed or at Law, that failure or delay does not operate as a waiver of those rights.
- 1.12 A single or partial exercise by a Party of any of its rights under this Deed or at Law does not prevent the further exercise of any right.
- 1.13 The Contractor must not assign or transfer its rights or obligations under this Deed without prior approval in writing from the Agency.
- 1.14 The Contractor agrees not to consult with any person for the purposes of entering into an arrangement that will require novation of this Deed without first consulting the Agency.

2 DURATION OF DEED

- 2.1 This Deed continues for the Deed Term unless terminated earlier in accordance with this Deed.
- 2.2 The Deed Term may be extended by the Agency, in its sole discretion, beyond the Initial Deed Period for the further periods specified in Item C of the Deed Details (each a **Deed Option Period**), by giving notice to the Contractor at least 30 days before the end of the current Deed Term.
- 2.3 Any extension in accordance with this clause 2 takes effect from the end of the then current Deed Term and will be on the same terms and conditions as set out in this Deed.

3 GENERAL OBLIGATIONS OF THE CONTRACTOR

- 3.1 The Contractor will, at all times:
- (a) act reasonably in performing its obligations and exercising its rights under this Deed;
 - (b) diligently perform its obligations under this Deed; and
 - (c) comply with all Laws and any relevant policies in performing its obligations under this Deed.

4 STANDING OFFER

- 4.1 By this Deed, the Contractor makes an irrevocable standing offer to supply the Goods and/or Services to the Agency at the Prices and on the terms and conditions set out in this Deed.
- 4.2 The Fees payable to the Contractor for performing the Goods and/or Services:
- (a) will be specified in a Work Order; and
 - (b) must not exceed the Prices, unless otherwise agreed by the Agency in writing.
- 4.3 The Agency may, during the Deed Period, require the Contractor to provide a quotation (including on a competitive basis) prior to issuing a Work Order by issuing a Request for Quotation substantially in the form of Schedule 4.

- 4.4 If the Agency issues a Request for Quotation to which the Contractor proposes to respond, the Contractor must provide a Quotation to the Agency in the format, and within the timeframe specified in the Request for Quotation.
- 4.5 The Agency may, at its absolute discretion, withdraw a Request for Quotation at any time prior to signing a Work Order.
- 4.6 A Quotation will operate as an offer which is capable of being accepted by the Agency.
- 4.7 After considering the Contractor's Quotation provided in accordance with clause 4.4, the Agency may complete and send to the Contractor a Work Order substantially in the form of Schedule 5.
- 4.8 The Contractor's offer contained in and made under this Deed will be accepted by the Agency and a Contract is formed when the Agency and the Contractor have signed a Work Order.
- 4.9 The terms and conditions of a Contract are:
- (a) the terms and conditions specified in the Work Order; and
 - (b) the Terms and Conditions of Contract.
- 4.10 To the extent of any inconsistency between two or more documents which form part of a Contract, those documents will be interpreted in the following (descending) order of priority:
- (a) the Terms and Conditions of Contract;
 - (b) the Work Order; and
 - (c) any other document referred to in the Work Order.
- 4.11 Notwithstanding any other provision of this Deed or a Work Order:
- (a) the Agency does not guarantee or make any assurance that any goods or services or any particular volume of goods or services will be ordered from the Contractor under this Deed; and
 - (b) the Agency may at its absolute discretion obtain the Goods and/or Services from any source or by any method it chooses.

5 PANEL REVIEW AND REFRESH

- 5.1 Panel reviews will be undertaken at the sole discretion of the Agency on an as needs basis.
- 5.2 A Panel review may result in the Agency identifying a need to undertake a Panel refresh. A Panel refresh may be undertaken where the Agency:
- (a) identifies the need for one or more new Categories of Goods and/or Services; and
 - (b) identifies the need to add existing or new Panel Members to one or more existing Categories of Goods and/or Services, due to:
 - (i) Goods and/or Services being unavailable through existing Panel Members; or
 - (ii) the Agency's demand for the Goods and/or Services not being met by existing Panel Members;
 - (c) conducts one or more Panel reviews demonstrating that value for money is not being provided by existing Panel Members for the relevant Goods and/or Services; or

- (d) specific skill sets required for the Goods and/or Services are unavailable from existing Panel Members.
- 5.3 A Panel refresh may result in one or more of the following:
- (a) adding a new Category of Goods and/or Services to the Panel;
 - (b) adding one or more existing Categories of Goods and/or Services to the scope of an existing Panel Member's Services;
 - (c) adding additional Panel Members;
 - (d) removing one or more Panel Members;
 - (e) removing one or more Categories of Goods and/or Services from the Panel; or
 - (f) removing one or more Categories of Goods and/or Services from the scope of one or more existing Panel Members' Services.
- 5.4 Any Panel refresh to add new Categories of Goods and/or Services or new Panel Members will be undertaken by the Agency through an open approach to the market through AusTender. Existing Panel Members, including the Contractor, and new suppliers will be invited to respond. All responses to invitations to add Panel Members to an existing Category of Goods and/or Services will be evaluated in accordance with the criteria used when evaluating responses to RFT DH1358.
- 5.5 Where a Panel Member does not respond to an invitation to participate in a Panel refresh, the Goods and/or Services offered under that Panel Member's Deed will remain unchanged for the purposes of the Panel refresh including the original term.
- 5.6 Any variations to the provision of the Goods and/or Services resulting from a Panel refresh will be limited to the extent that those changes affect the Deed Details, Schedule 3, Schedule 4, Schedule 5 and Schedule 8 and must comply with clause 1.7.

6 MULTI-GOVERNMENT AGENCY ACCESS ARRANGEMENTS

- 6.1 The Contractor irrevocably offers to provide the Goods and/or Services to any Government Agency on the same terms and conditions in this Deed except as modified by the Instrument of Acceptance to provide for the adaptation of this Deed to the circumstances of the Government Agency.
- 6.2 A Government Agency may accept the offer made under clause 6.1 by giving the Contractor an Instrument of Acceptance.
- 6.3 Clause 27 applies to the giving of an Instrument of Acceptance as if the references to the Agency were read as references to the Government Agency giving the Instrument of Acceptance.
- 6.4 Each Instrument of Acceptance given to the Contractor in accordance with this Deed will create a separate agreement between the Contractor and the Government Agency, for the offer by the Contractor to supply the Goods and/or Services to the relevant Government Agency.

7 MEETINGS AND REPORTING

- 7.1 The Parties will meet at the times and in the manner set out in 0 of the Deed Details (or otherwise as agreed in writing between the Parties) to discuss any issues in relation to this Deed or the provision of the Goods and/or Services. The Contractor must ensure that the Contractor Deed Representative, and the Agency must ensure the Agency Deed Representative, is reasonably

available to attend such meetings and answer any queries relating to the provision of the Goods and/or Services raised by either Party.

7.2 The Contractor must provide the Agency with reports in accordance with Item K of the Deed Details.

8 AGENCY MATERIAL

8.1 The Agency will provide to the Contractor Agency Material and the Contractor must ensure that Agency Material is used strictly in accordance with any conditions or restrictions specified in Item F of the Deed Details and any direction by the Agency.

8.2 This clause 8 survives the expiration or earlier termination of this Deed.

9 INTELLECTUAL PROPERTY IN DEED MATERIAL

9.1 This clause 9 does not affect the ownership of Intellectual Property Rights in any Existing Material or Agency Material.

9.2 Intellectual Property Rights in all Deed Material created under this Deed vest in the Agency.

9.3 The Contractor grants, or undertakes to arrange for a third party to grant, to the Agency and the Commonwealth a perpetual, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence (including the right to sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, distribute, communicate, commercialise and exploit the Existing Material and otherwise exercise all Intellectual Property Rights in any such Existing Material in conjunction with the Deed Material.

9.4 To the extent that the Contractor needs to use any of the Deed Material for the purpose of performing its obligations under this Deed, the Agency grants to the Contractor for the Deed Term a royalty-free, non-exclusive, non-transferable, revocable licence (including a limited right to sub-licence to a subcontractor approved in writing by the Agency) to use and communicate such Material, solely for the purposes of this Deed.

9.5 The Contractor warrants and represents that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Deed Material and the Existing Material in the manner provided for in this clause 9, and that the provision of the Goods and/or Services and any Deed Material and Existing Material under this Deed, and its use by the Agency or the Commonwealth in accordance with this Deed, will not infringe any third party's Intellectual Property Rights or Moral Rights of any person.

9.6 The Contractor agrees to create, execute or sign any document which may be necessary to transfer the rights and interests specified in this clause 9 to the Agency.

9.7 The Contractor must:

- (a) secure all Deed Material within its control against loss and unauthorised use or disclosure; and
- (b) on the expiration or earlier termination of this Deed, to deliver to the Agency or, in accordance with the Agency directions, erase or otherwise deal with the Deed Material, unless any provision to the contrary is set out in Item I.

9.8 This clause 9 survives the expiration or early termination of the Deed.

10 MORAL RIGHTS

10.1 For the purposes of this clause 10, the **Specified Acts** relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Agency or the Commonwealth:

- (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Deed Material or Existing Material with or without attribution of authorship;
- (b) supplementing the Deed Material or Existing Material with any other Material;
- (c) using the Deed Material or Existing Material in a different context to that originally envisaged; and
- (d) falsely attributing authorship of any Deed Material or Existing Material, or any content in the Deed Material or Existing Material.

10.2 To the extent permitted by applicable Laws and for the benefit of the Agency and the Commonwealth, the Contractor must:

- (a) give, where the Contractor is an individual; and
- (b) use its best endeavours to ensure that each of the Contractor Personnel used by the Contractor in the production or creation of the Deed Material or Existing Material gives, genuine consent in writing to the use of the Deed Material or Existing Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights.

10.3 This clause 10 survives the expiration or earlier termination of this Deed.

11 DISCLOSURE OF INFORMATION

11.1 Subject to clause 11.5, the Contractor must not disclose any Confidential Information relating to this Deed or the provision and performance of the Goods and/or Services without prior approval in writing from the Agency.

11.2 The Agency may impose any conditions it considers appropriate when giving its approval under clause 11.1 and the Contractor agrees to comply with these conditions.

11.3 The Agency may at any time require the Contractor to give, and to arrange for Contractor Personnel to give, undertakings in writing in a form required by the Agency (including as specified at Schedule 7), relating to the non-disclosure of the Agency's Confidential Information.

11.4 If the Contractor receives a request under clause 11.3, it must promptly arrange for all such undertakings to be given.

11.5 The obligations on the Contractor under this clause 11 will not be taken to have been breached where that Confidential Information is required by Law to be disclosed. If the Contractor is so required to disclose any information by Law, it must, before disclosing it:

- (a) notify the receiving person that the information is Confidential Information;
- (b) where possible, not provide the information unless the receiving person agrees to use the information only for the purpose for which it has been given to the receiving person;

- (c) advise the Agency of the person to whom the Confidential Information is to be disclosed; and
 - (d) advise the Agency of the information to be disclosed.
- 11.6 Property in any copy of Confidential Information of the Agency (in the form of a document, article or removable medium) vests or will vest in the Agency.
- 11.7 The Contractor agrees:
- (a) to secure all Confidential Information within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or earlier termination of this Deed, to deliver to the Agency or, in accordance with the Agency directions, erase or otherwise deal with all Confidential Information,
- unless any provision to the contrary is set out in Item I of the Deed Details.
- 11.8 Unless otherwise specified in clause 12 and Item N of the Deed Details, the Agency gives no undertaking to treat Contractor information or this Deed (including its terms and conditions) as confidential. The Contractor acknowledges that the Agency may disclose information relevant to this Deed, or this Deed itself, to any person, including:
- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
 - (b) if required in connection with legal proceedings;
 - (c) for public accountability reasons, including disclosure on request to other Government Agencies, and a request for information by parliament or a parliamentary committee or the Minister with portfolio responsibility for the Agency;
 - (d) to the Agency's third party service providers for the purposes of providing or performing goods and/or services to, or on behalf of, the Agency; or
 - (e) for any other requirements of the Agency.
- 11.9 Nothing in this clause 11 or clause 12 limits the Contractor's obligations under clause 14 or clause 16.
- 11.10 This clause 11 survives the expiration or earlier termination of this Deed.
- 12 CONTRACTOR CONFIDENTIAL INFORMATION**
- 12.1 The Agency agrees that the information specified in Item N of the Deed Details (**Contractor Confidential Information**) meets the requirements of the Commonwealth's confidentiality guidelines, and agrees to treat the information as confidential unless it is entitled to disclose it in accordance with this Deed.
- 12.2 The obligations on the Agency under clause 12.1 will not be taken to have been breached to the extent that Contractor Confidential Information:
- (a) is disclosed by the Agency to its Accountable Authority (as defined in the *Public Governance, Performance and Accountability Act 2013*), Advisers, officers or employees or to other Government Agencies solely in order to comply with obligations, or to exercise rights, under this Deed or to seek advice in relation to this Deed;

- (b) is disclosed to the Agency’s internal management personnel, solely to enable effective management or auditing of its activities;
- (c) is disclosed by the Agency to its responsible Minister;
- (d) is disclosed by the Agency in response to a request by a House or a Committee of the Parliament of the Commonwealth;
- (e) is necessary for the Agency to disclose to ensure proper administration;
- (f) is necessary to allow the Agency's third party service providers to discharge their obligations to the Agency;
- (g) is shared within the Agency or within another Government Agency, including the Department of Health, where this serves the Agency's or the Commonwealth's legitimate interests;
- (h) is disclosed by the Agency to comply with its obligations under section 69, or any other applicable provision of, the PGPA Rule;
- (i) is authorised or required by Law to be disclosed;
- (j) is disclosed as agreed with the Contractor;
- (k) is disclosed by the Agency to the Agency’s insurers (including Comcover or Comcare); or
- (l) is in the public domain otherwise than due to a breach of this clause 12.

12.3 Notwithstanding clause 12.1, the Agency retains the right to disclose any other information which is not Contractor Confidential Information which is either contained in this Deed, including its terms and conditions, or used for the purposes of the Deed.

13 PROTECTION OF PERSONAL INFORMATION AND GOVERNMENT RELATED IDENTIFIERS

13.1 This clause 13 applies only where the Contractor deals with Personal Information when, and for the purpose of, performing its obligations under this Deed.

13.2 In this clause 13, the terms:

- (a) agency;
- (b) contracted service provider;
- (c) registered APP code or RAC;
- (d) Australian Privacy Principle or APP; and
- (e) Government Related Identifier,

have the same meaning as they have in the *Privacy Act 1988* (the **Privacy Act**).

13.3 The Contractor acknowledges that it may be treated as a contracted service provider and must in respect of the performance of its obligations under this Deed:

- (a) use or disclose Personal Information obtained during the course of performing its obligations under this Deed, only for the purposes of this Deed;
- (b) maintain reasonable safeguards against loss, unauthorised access, use, modification or disclosure and other misuse of Personal Information held in connection with this Deed;

- (c) not do any act or engage in any practice which if done or engaged in by an agency would be a breach of an APP;
- (d) notify individuals whose Personal Information the Contractor holds that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner, who has power to award compensation against the Contractor in appropriate circumstances;
- (e) comply with the obligations contained in the APPs that apply to the Contractor;
- (f) not use or disclose Personal Information or engage in an act or practice that would breach an APP or a RAC (whichever is applicable to the Contractor), unless the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Deed, and the activity or practice which is authorised by this Deed is inconsistent with the APP or RAC (whichever is applicable to the Contractor);
- (g) comply with any request under section 95C of the Privacy Act;
- (h) immediately notify the Agency if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in or referred to in this clause 13, whether by the Contractor or any subcontractor;
- (i) not use or disclose any Personal Information, obtained from the Agency, for the purposes of direct marketing;
- (j) not disclose or transfer any Personal Information, obtained from the Agency, to a person who is not in Australia or an external Territory;
- (k) comply with any directions, guidelines, determinations or recommendations of the Information Commissioner or Privacy Commissioner to the extent that they are consistent with the requirements of this clause 13; and
- (l) ensure that any Contractor Personnel who are required to deal with Personal Information for the purposes of this Deed are made aware of the obligations of the Contractor set out in this clause 13.

13.4 If the Contractor becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Deed, the Contractor agrees to:

- (a) notify the Agency in writing as soon as possible, which must be no later than within three (3) days of becoming aware; and
- (b) unless otherwise directed by the Agency, carry out an assessment in accordance with the requirements of the Privacy Act 1988.

13.5 Where the Contractor is aware that there are reasonable grounds to believe there has been, or where the Agency notifies the Contractor that there has been, an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Deed, the Contractor must:

- (a) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
- (b) unless otherwise directed by the Agency, take all other action necessary to comply with the requirements of the Privacy Act 1988; and

(c) take any other action as reasonably directed by the Agency.

- 13.6 In assessing whether an Eligible Data Breach may have occurred, the Contractor must have regard to any relevant guidelines, resources or information developed and made available by the Office of the Australian Information Commissioner in relation to Eligible Data Breaches.
- 13.7 The Agency may at any time require the Contractor to give, and to arrange for Contractor Personnel to give, undertakings in writing in a form required by the Agency in relation to the non-disclosure of Personal Information.
- 13.8 If the Contractor receives a request under clause 13.7, it must promptly arrange for all such undertakings to be given.
- 13.9 The Contractor indemnifies the Agency in respect of any loss, liability or expense suffered or incurred by the Agency which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause 13.
- 13.10 The Contractor's obligations under this clause 13 are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or Australian Privacy Principles contained in, authorised by or registered under any Law, including any such privacy codes or principles that would apply to the Contractor but for the application of this clause 13.
- 13.11 To the extent that the Contractor has access to or handles any Government Related Identifier in connection with this Deed, the Contractor must only use and disclose the Government Related Identifier to the extent that is necessary for the Contractor to perform its obligations under this Deed.
- 13.12 This clause 13 survives the expiration or earlier termination of this Deed.

14 ACCESS TO DOCUMENTS

- 14.1 In this clause 14, **document** and **Commonwealth contract** have the same meaning as in the *Freedom of Information Act 1982*.
- 14.2 This clause 14 only applies if this is a contract which meets the definition of Commonwealth contract.
- 14.3 Where the Agency has received a request for access to a document created by or in the possession of the Contractor or any subcontractor that relates to the performance of this Deed (and not to the entry into this Deed), the Agency may at any time by written notice require the Contractor to provide the document to the Agency and the Contractor must, at no additional cost to the Agency, promptly comply with the notice.
- 14.4 Section 69 of the PGPA Rule specifies circumstances in which certain information, documents or reports are to be provided to State and Territory Health Ministers by the Agency. The Contractor must ensure it does not do, and none of its subcontractors do or omit to do, anything that would hinder or prevent the Agency from complying with its obligations under section 69 of the PGPA Rule. The Contractor and subcontractors will provide any information, documents or reports in their possession in order for the Agency to so comply with section 69 of the PGPA Rule.
- 14.5 The Contractor must include in any subcontract relating to the performance of this Deed provisions that will enable the Contractor to comply with its obligations under this clause 14.

15 CONFLICT OF INTEREST

- 15.1 The Contractor represents and warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Deed no Conflict exists or is likely to arise in the performance of obligations under this Deed by the Contractor or the Contractor Personnel.
- 15.2 If, during the Deed Term, a Conflict arises, or appears likely to arise, in respect of the Contractor or any of the Contractor Personnel, the Contractor must:
- (a) notify the Agency immediately in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps the Contractor proposes to take to resolve or otherwise deal with the Conflict; and
 - (b) take such steps as have been proposed by the Contractor or, take such steps as the Agency may reasonably require to resolve or otherwise deal with the Conflict.
- 15.3 If the Contractor fails to notify the Agency under this clause 15 or is unable or unwilling to resolve or deal with the Conflict as required, the Agency may terminate this Deed in accordance with the provisions of clause 21.
- 15.4 The Contractor agrees that it will not, and will use its best endeavours to ensure that any Contractor Personnel do not, engage in any activity or obtain any interest during the course of this Deed that is likely to conflict with or restrict the Contractor in providing the Goods and/or Services to the Agency fairly and independently.

16 ACCOUNTABILITY AND ACCESS

- 16.1 The Contractor must give to:
- (a) the Auditor-General or his/her delegate;
 - (b) the Privacy Commissioner or his/her delegate;
 - (c) the Information Commissioner or his/her delegate;
 - (d) the Ombudsman or his/her delegate; and
 - (e) any persons authorised in writing by the Agency,
- (referred to in this clause 16 collectively as **those permitted**) access to the Contractor Personnel and to premises:
- (f) at which Materials associated with this Deed are stored; or
 - (g) work associated with this Deed is undertaken,
- in order for those permitted to be able to inspect and copy Material for purposes associated with this Deed or any review of performance under this Deed, or conduct audits relevant to the performance of the Contractor's obligations.
- 16.2 The rights referred to in clause 16.1 are, wherever practicable, subject to:
- (a) the provision of reasonable prior notice (except where there is an actual or apprehended breach of the Law);
 - (b) access being sought during reasonable times (except where the Agency believes there is an actual or apprehended breach of the Law); and
 - (c) the Contractor's reasonable security procedures.

- 16.3 The Contractor must provide all reasonable assistance requested by the Agency in respect of any inquiry into or concerning the Goods and/or Services or this Deed, including providing access to its computer hardware, software and equipment to the extent necessary to exercise the rights under clause 16.1.
- 16.4 Without limitation to the generality of clause 16.3:
- (a) the assistance to be provided by the Contractor under clause 16.3 will include, as appropriate, the provision of Material, and making available relevant Contractor Personnel to provide information or answer questions on any matters relevant to or arising from this Deed which might reasonably be expected to be within the knowledge of the Contractor; and
 - (b) an inquiry referred to in clause 16.3 will include any administrative or statutory review, audit or inquiry (whether within or external to the Agency), any request for information directed to the Agency, and any inquiry conducted by Parliament or any Parliamentary committee.
- 16.5 The Agency will endeavour to notify the Contractor as early as possible of any assistance required under clause 16.3, provided always that the Contractor acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.
- 16.6 The requirement for access under this clause 16 does not in any way reduce the responsibility of the Contractor to perform its obligations in accordance with this Deed.
- 16.7 The Contractor must ensure that any subcontract entered into for the purpose of this Deed contains an equivalent clause permitting those permitted to have access as specified in this clause 16.
- 16.8 Nothing in this Deed limits or restricts in any way any duly authorised function, power, right or entitlement of the Auditor-General, the Ombudsman, the Privacy Commissioner, the Information Commissioner or their respective delegates. The rights of the Agency under this Deed are in addition to any other duly authorised power, right or entitlement of the Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner, the Information Commissioner or their respective delegates.
- 16.9 This clause 16 survives the expiration or earlier termination of this Deed for a period of seven years.

17 INDEMNITY AND LIABILITY

- 17.1 To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Contractor under or in connection with this Deed.
- 17.2 The Contractor indemnifies the Agency, its officers, employees, other Officials and agents (each an **Indemnified Person**) from and against any:
- (a) loss or liability incurred by the Indemnified Person;
 - (b) loss of or damage to property of the Indemnified Person; and
 - (c) loss or expense incurred by the Indemnified Person in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by an Indemnified Person,

arising in connection with:

- (d) any act or omission by the Contractor or the Contractor Personnel in connection with this Deed, where there was fault (including any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense;
- (e) any breach by the Contractor of its obligations, representations or warranties under this Deed; or
- (f) any claim that the provision of the Existing Material or Deed Material infringes the Intellectual Property Rights or Moral Rights of any person.

17.3 The Contractor’s liability to indemnify an Indemnified Person under clause 17.2 will be reduced proportionately to the extent that any negligent or other tortious act or omission of the Indemnified Person contributed to the relevant liability, loss, damage, or expense.

17.4 The right of the Indemnified Person to be indemnified under this clause 17:

- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by law; and
- (b) does not entitle the Indemnified Person to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.

17.5 The Contractor agrees that the Agency will be taken to be acting as agent or trustee for and on behalf of its officers, Officials, employees and agents from time to time.

17.6 Subject to clause 17.7, and to the extent permitted by Law, the Contractor’s aggregate liability arising under this Deed is limited to \$1.1 million.

17.7 Clause 17.6 does not apply to any claim, liability, loss, damage or expense incurred as a result of or in connection with:

- (a) personal injury (including sickness and death);
- (b) loss of, or damage to, tangible property;
- (c) an infringement of Intellectual Property Rights;
- (d) a breach of any obligation of confidentiality, security requirement or privacy (including a breach of any of the obligations under clauses 11 and 13); or
- (e) any breach of statute or any fraudulent or wilfully wrong act or omission including any act or omission that constitutes repudiation of this Deed.

17.8 This clause 17 survives the expiration or earlier termination of this Deed.

18 INSURANCE

18.1 The Contractor represents and warrants that it has taken out or will take out, and will maintain for the period specified in clause 18.2 or 18.3 (as applicable) all appropriate types and amounts of insurance to cover the Contractor’s obligations under this Deed, including those which survive its expiration or earlier termination, which insurance must include but is not limited to the types and corresponding amounts of insurance specified in Item L of the Deed Details.

- 18.2 If the Contractor takes out a ‘claims made policy’, which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Contractor must maintain the policy during the Deed Term and a policy in like terms for seven years after the expiry or earlier termination of this Deed.
- 18.3 If the Contractor takes out an ‘occurrence’ policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Contractor must maintain the policy during the Deed Term.
- 18.4 The Contractor must, on request, promptly provide to the Agency any relevant insurance policies or certificates of currency for inspection.
- 18.5 This clause 18 survives the expiration or earlier termination of this Deed.

19 DISPUTE RESOLUTION

- 19.1 The Parties agree that any dispute arising during the course of this Deed (**Dispute**) will be dealt with as follows:
 - (a) the Party claiming that there is a Dispute will send to the other a notice setting out the nature of the dispute;
 - (b) the Parties will try to resolve the Dispute by direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
 - (c) the Parties have 20 Business Days from the receipt of the notice issued under clause 19.1(a) to reach a resolution or to agree that the Dispute will be submitted to mediation or some other form of alternative dispute resolution procedure (including an agreement on the identity of the mediator or other dispute resolution facilitator and what rules will be applied to the mediation or alternative dispute resolution procedure); and
 - (d) if:
 - (i) there is no resolution or agreement in accordance with clause 19.1(c); or
 - (ii) there is a submission of the Dispute to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Business Days,then, either Party may commence legal proceedings.
- 19.2 Despite the existence of a Dispute, the Contractor will (unless requested in writing not to do so) continue to perform under this Deed.
- 19.3 This clause 19:
 - (a) does not apply to action by the Agency under or purportedly under clauses 20 or 21; and
 - (b) does not preclude either Party from commencing legal proceedings for urgent interlocutory relief.

20 TERMINATION ON NOTICE

- 20.1 In addition to any other rights the Agency has under this Deed, the Agency may, at any time, terminate this Deed immediately by providing a notice to the Contractor.
- 20.2 Upon receipt of a notice of termination, the Contractor must take all available steps to minimise loss resulting from that termination and to protect Agency Material and Deed Material.
- 20.3 Where the Agency terminates this Deed under clause 20.1, the Agency will not be liable to the Contractor for any loss, liability, damage, expense or cost arising from or in connection with the termination and the Contractor will not be entitled to any compensation, including any compensation for loss of prospective profits or for any part of this Deed not performed.
- 20.4 To avoid doubt, the Agency has an unfettered discretion to terminate this Deed in accordance with this clause 20 and termination of this Deed does not affect the continuance of any Contract formed under this Deed unless the Agency terminates the Contract.

21 TERMINATION FOR DEFAULT

- 21.1 Where a Party fails to satisfy any of its obligations under this Deed, the other Party may:
- (a) if it considers that the failure is not capable of remedy, by notice, terminate this Deed immediately;
 - (b) if it considers that the failure is capable of remedy, by notice, require that the failure be remedied within a time specified in the notice (being not less than seven days); and
 - (c) if the failure is not remedied in accordance with a notice given under clause 21.1(b), by further notice, terminate this Deed immediately.
- 21.2 The Agency may also, by notice, terminate this Deed immediately (but without prejudice to any prior right of action or remedy which either Party has or may have) if:
- (a) the Contractor fails to notify the Agency under clause 15 or is unable or unwilling to resolve or deal with the conflict as required;
 - (b) the Agency terminates a Contract for default by the Contractor;
 - (c) subject to sections 415D, 434J and 451E of the Corporations Act (as the case may be), an Insolvency Event occurs in respect of the Contractor; or
 - (d) the Contractor breaches a representation or warranty listed in clause 24.
- 21.3 Termination of this Deed does not affect any accrued rights or remedies of a Party.
- 21.4 Termination of this Deed does not affect the continuance of any Contract formed under this Deed unless the Agency terminates the Contract.

22 DEEMED TERMINATION BY NOTICE

If a purported termination for cause by the Agency under clause 21 is determined by a competent authority not to be properly a termination for cause, then that termination by the Agency will be deemed to be a termination by notice under clause 20 which termination has effect from the date of the notice of termination referred to in clause 21.

23 TERMINATION OF CONTRACTS

For clarity, the Agency may terminate any Contract in accordance with clauses 25 and 26 of the Terms and Conditions of Contract.

24 CONTRACTOR WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

24.1 The Contractor represents, warrants and undertakes to the Agency that:

- (a) it will promptly notify and fully disclose to the Agency in writing any event or occurrence, actual or threatened, which could have an adverse effect on the Contractor's ability to perform any of its obligations under this Deed or a Contract;
- (b) it has full power and authority to enter into, perform and observe its obligations under this Deed;
- (c) the execution, delivery and performance of this Deed has been duly and validly authorised by the Contractor;
- (d) it will promptly notify and fully disclose to the Agency in writing if an Insolvency Event occurs in respect of the Contractor;
- (e) the unconditional execution and delivery of, and compliance with its obligations by it, under this Deed do not:
 - (i) contravene any Law to which it or any of its property is subject or any order or directive from a Government Agency binding on it or any of its property;
 - (ii) contravene its constituent documents;
 - (iii) contravene any contract or instrument to which it is a party;
 - (iv) contravene any obligation of it to any other person; or
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;
- (f) no litigation, arbitration, mediation, conciliation or proceedings, including any investigations, are taking place, pending or are threatened against the Contractor which could have an adverse effect upon either the Contractor's capacity to perform its obligations under this Deed or the Contractor's reputation;
- (g) it has not had a judicial decision (excluding decisions under appeal) made against it in relation to employee entitlements where that claim has not been paid;
- (h) unless otherwise disclosed in Item O of the Deed Details, it is not entering into this Deed as trustee of any trust or settlement;
- (i) it has not made any false declaration in respect of any current or past dealings with the Agency, the Commonwealth or any Government Agency, including in any tender or application process or in any contract; and
- (j) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior contract with the Agency, the Commonwealth or any Government Agency.

24.2 The Contractor acknowledges that the Agency in entering into this Deed is relying on the warranties and representations contained in this Deed.

24.3 Each representation and warranty is given on a continuing basis throughout the Deed Term and the duration of any Contract.

25 REPRESENTATION AND WARRANTY FOR TRUSTEE OF A TRUST

25.1 If the Contractor acts as a trustee of a trust in relation to this Deed:

- (a) it is liable both personally, and in its capacity as trustee of that trust; and
- (b) it represents and warrants that:
 - (i) such trust has been duly established and currently exists;
 - (ii) it is the duly appointed, current and only trustee of that trust;
 - (iii) as such trustee, it has the power to enter into and perform its obligations under this Deed; and
 - (iv) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations under this Deed.

25.2 The representations and warranties in clause 25.1(b) are given on a continuing basis throughout the Deed Term and the duration of any Contract.

26 NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

26.1 The Contractor is not, by virtue of this Deed, an officer, Official, employee, partner or agent of the Agency or the Commonwealth, nor does the Contractor have any power or authority to bind or represent the Agency or the Commonwealth.

26.2 The Contractor agrees not to represent itself, and to use its best endeavours to ensure that its Contractor Personnel do not represent themselves, as being an officer, Official, employee, partner or agent of the Agency or the Commonwealth, or as otherwise able to bind or represent the Agency or the Commonwealth.

27 NOTICES

27.1 A Party giving notice under this Deed must do so in writing, including by email, that is:

- (a) directed to the recipient's address, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post or email to that address.

The Parties' address details are as specified in Item M of the Deed Details.

27.2 The Parties agree that a notice given in accordance with clause 27.1 is received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, on the third Business Day after the date of posting; and
- (c) if sent by email, when received by the addressee or when the sender's computer generates written notification that the notice has been received by the addressee, whichever is earlier.

EXECUTED as a deed.

SIGNED for and on behalf of
Australian Digital Health Agency
ABN 84 425 496 912 on:

_____ *Date*

by:

_____ *Printed name of authorised representative of Agency*

_____ *Signature*

_____ *Position*

in the presence of:

_____ *Printed name of witness*

_____ *Signature of witness*

[Note to Tenderers: the appropriate signature block according to the type of legal entity will be included in this Deed and the remaining options deleted prior to finalising the Deed.]

Deed of Standing Offer – Recruitment Services

COMPANY – MULTIPLE DIRECTORS:

EXECUTED by

Click here to enter text

ABN Click here to enter text

in accordance with the requirements of section 127 of the *Corporations Act 2001* on:

Date

by:

Printed name of Director

Signature of Director

and

Printed name of Director / Secretary

Signature of Director / Secretary

COMPANY – SOLE DIRECTOR:

EXECUTED by

Click here to enter text

ABN Click here to enter text

in accordance with the requirements of section 127 of the *Corporations Act 2001* on:

Date

by authority of its sole director and secretary:

Printed name of Sole Director and Secretary

Signature of Sole Director and Secretary

in the presence of:

Deed of Standing Offer – Recruitment Services

Printed name of witness

Signature of witness

POWER OF ATTORNEY

EXECUTED by

Click here to enter text

ABN **Click here to enter text**

on:

Date

by its attorney under power of attorney dated [date of power of attorney] registered number [registered number] book number [book number], who warrants that, as at the date of this deed, they have had no notice of revocation of the power of attorney:

Printed name of attorney

Signature of attorney

in the presence of:

Printed name of witness

Signature of witness

INDIVIDUAL:

SIGNED, SEALED AND DELIVERED by

Click here to enter text

ABN **Click here to enter text**

Signature of [insert name]

On:

Deed of Standing Offer – Recruitment Services

Date

in the presence of:

Printed name of witness

Signature of witness

PARTNERSHIP:

EXECUTED by [Click here to enter text](#)

ABN [Click here to enter text](#), on:

Date

by:

Printed name of Partner

Signature of Partner

who represents and warrants that they have authority to bind the partnership in this regard, in presence of:

Printed name of witness

Signature of witness

INCORPORATED ASSOCIATION:

EXECUTED by [Click here to enter text](#)

ABN [Click here to enter text](#), on:

Date

by affixing its common seal in accordance with its rules in the presence of:

Deed of Standing Offer – Recruitment Services

Printed name of Public Officer

Signature of Public Officer

and:

Printed name of committee member/secretary

Signature of committee member/secretary

TRUSTEE FOR A TRUST

Execution by individual trustee

SIGNED, SEALED AND DELIVERED by

Click here to enter text

ABN **Click here to enter text**

on

Date

by:

Printed name of Trustee

Signature of Trustee who represents and warrants that he/she has the authority to bind the Trustee consistent with the terms of the Trust Deed

Execution by company trustee

EXECUTED by

Click here to enter text

ABN **Click here to enter text**

pursuant to section 127 of the *Corporations Act 2001*

in its own capacity and as trustee on

Date

by:

Printed name of Director

Signature of Director who represents and warrants that he/she has the authority to bind the Trustee consistent with the terms of the Trust Deed

and:

Printed name of Director/Secretary

Signature of Director/Secretary who represents and warrants that he/she has the authority to bind the Trustee consistent with the terms of the Trust Deed

Schedule 1 – DEED DETAILS

Item A Agency Deed Representative

The person acting in the position of Talent Acquisition Lead, Organisation Capability and Change Management Division, who at the Deed Start Date is Matthew Croft.

Item B Contractor Deed Representative

[Insert position and/or name of the Contractor's representative]

Item C Deed Term

This Deed will commence on the Deed Start Date specified in the table below and expires at the end of the Initial Deed Period specified in the table below unless it is extended in accordance with clause 2.2 or terminated earlier in accordance with this Deed.

Event	Date
Deed Start Date	The date this Deed is signed by the last Party to do so.
Initial Deed Period	30 November 2021
Deed Option Periods	Two options of 12 months each as follows: Deed Option Period 1: 12 months, from the end of the Initial Deed Period 1 until 30 November 2022. Deed Option Period 2: 12 months from the end of Option Period 1 until 30 November 2023.

Item D Deed Material

[Note: To be completed prior to finalising this Deed with successful Tenderers.]

Item E Specified Personnel

[Note: To be completed prior to finalising this Deed with successful Tenderers.]

Position/Role	Name	Services to be performed
<i>[Insert]</i>	<i>[Insert]</i>	<i>[Insert]</i>

Where the Specified Personnel are unable to provide the Goods and/or Services, the Contractor must notify the Agency immediately.

Item F Agency Material to be Provided by the Agency

Any relevant Agency policies and procedures.

Item G Use of Agency Material

Agency Material must only be used for the purpose of providing the Goods and/or Services in accordance with the Deed.

Item H Existing Material

[Note: To be completed prior to finalising this Deed with successful Tenderers.]

Item I Dealing with Copies

On expiry or earlier termination of this Deed, the Contractor may retain one hard copy of the Deed Material for its record keeping purposes only.

Item J Meetings

None specified.

Item K Reporting

- 1) On each anniversary of the Deed Start Date, the Contractor must provide an annual report demonstrating that over the previous 12 months they have been maintaining a database of candidates who could be placed as Resources in the Agency, and demonstrating that the database contains information on the candidates:
 - (b) personal details;
 - (c) verified educational and professional qualifications;
 - (d) work history;
 - (e) summaries of referees' comments; and
 - (f) details of any assessments undertaken and results.

- 2) On each anniversary of the Deed Start Date, the Contractor must provide an annual report detailing their candidate sourcing and attraction strategies including:
 - (a) evidence they during the previous 12-month period they advertised a minimum of twice to attract candidates who could be placed as Resources in the Agency if required;
 - (b) how the Contractor proposes to ensure a supply of Resources to meet the needs of the Agency for the remainder of the Deed Term; and
 - (c) how the Contractor will attract suitably skilled and experienced Resources eligible to work in Australia for the remainder of the Deed Term.

Item L Insurance

Type	Coverage
Public liability insurance	\$10,000,000
Product liability insurance	\$10,000,000
Professional indemnity insurance	\$5,000,000
Workers compensation insurance	As required by Law

Item M Address for Notices

The Agency’s Address for Notices:

Level 25, 56 Pitt Street
Sydney NSW 2000

Attention: The Recruitment Services Panel Manager

Contracts@digitalhealth.gov.au

CC: General Counsel

Legal@digitalhealth.gov.au

Contractor’s Address for Notices:

[Insert address]

[Insert email address]

Item N Contractor’s Confidential Information

[Note: To be completed prior to finalising this Deed with successful Tenderers. The Agency will only include a detailed specific description of any information that satisfies Commonwealth tests for contractor confidentiality in procurement contracts. Note the guidance provided by the Department of Finance (at <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html>) on what information can properly be classed as confidential.]

Contractor information to be kept confidential
[Insert]

Item O Trustee

[Note: This section will only be completed where the Contractor is a trustee for a trust. If the Contractor is not a trustee for a trust the words ‘Not applicable’ will be included.]

Item P Information

[Note: This section will only be completed where the Contractor is a trustee for a trust. If the Contractor is not a trustee for a trust the words ‘Not applicable’ will be included.]

Schedule 2 – CATEGORIES OF GOODS AND/OR SERVICES

1. SECTORS AND REGIONS FOR GOODS AND/OR SERVICES

The Contractor must be able to provide the Goods and/or Services in the Sectors and Regions set out in the table below:

[insert description of categories of services/ goods]

2. SUMMARY OF SERVICES

2.1 The Contractor must provide the Goods and/or Services for each Sector and in each Region indicated in paragraph 1, on an as required basis while meeting all obligations in the Deed of Standing Offer.

2.2 The services the Contractor must provide are:

- (a) services required regardless of whether the Contractor is providing Candidate Sourcing Services or Contingent Labour Services (**'General Services'**);
- (b) recruitment of Contractor Sourced Agency Employees for permanent and fixed-term roles (**'Candidate Sourcing Services'**);
- (c) provision of Contractor Placement Staff to fill temporary roles, and providing associated payroll services for those contractors (**'Contingent Labour Services'**); and
- (d) any incidental services agreed by the Parties, for example scribing during interviews or other parts of selection processes, conducting pre-employment testing, providing police checks or other services (**'Incidental Services'**).

3 General Services

3.1 The General Services include, without limitation:

- (a) receiving Requests for Quotation (RFQ) from the Agency, and providing the Agency with a list of candidates, and resumes, for consideration within the period specified in the RFQ;
- (b) ensuring that any Resource provided to the Agency are of a high calibre with the appropriate skills and experience to undertake the duties required by the Agency;
- (c) ensure that their systems, processes and procedures used to source, screen, test and assess the suitability of candidates offered to the Agency are of a high standard;
- (d) ensuring candidates are appropriate to meet the role scope, key duties and responsibilities, candidate key attributes, capabilities and/or experience the Position Description provided by the Agency;
- (e) undertaking database searches and sourcing activities based on the requirements identified in any RFQ and Position Descriptions provided by the Agency;

- (f) maintaining suitable systems and processes for identifying and validating particular qualifications (educational and professional) and personal skills of candidates and validating any candidate's skills and qualifications before offering them to the Agency;
- (g) ensuring recruitment and selection processes meet industry standards and comply in all respects with the principles of merit and equity;
- (h) where required, performing skills and competency assessments, including to verify aptitude, abstract, literacy and numeracy skills, where required;
- (i) advising candidates that the Agency may initiate employment screening checks on shortlisted potential Resources and that the Agency may decline the engagement of a particular Resource if the Agency considers that the result of a screening check is unsatisfactory;
- (j) discussing with candidates matters regarding salary, hourly pay rates (if applicable) and employment conditions;
- (k) complying with, any other requirements concerning pre-employment screening, including:
 - i. Criminal History and/or Integrity Checks – advising candidates that the Agency requires criminal history and integrity checks, and if specified in the RFQ, meeting the cost of obtaining any such checks; and
 - ii. ensuring candidates provide proof they are Australian citizens,
- (l) undertaking referee checks for all candidates with referees who have a thorough knowledge of that candidate's conduct and performance within the previous 2 years, and providing details of those referee checks to the Agency on request;
- (m) undertaking any additional referee check requirements requested by the Agency and detailed in an RFQ; and
- (n) requiring short-listed candidates to attend interviews before engagement or placement with the Agency, including by liaising with the Agency and candidates to coordinate interviews when required.

3.2 The Contractor acknowledges that the Agency may conduct its own evaluation and selection process of candidates recommended by a Contractor, before filling any position, to ensure that Agency requirements relating to recruitment and selection are met.

3.3 The Contractor is required to advise all candidates that they will be required to disclose employment as a lobbyist.

Response Times

3.4 The Contractor acknowledges that although the Agency will endeavour to provide as much advance notice as possible when requesting Resources under the Deed, in some instances, a request for Resources may be made with less than 1 weeks' notice.

Sourcing potential Resources

3.5 The Contractor is required to:

- (a) maintain a database of candidates who could be placed as Resources in the Agency, if required, detailing the candidates':

- i. personal details;
 - ii. verified educational and professional qualifications (verification achieved by sighting copies of relevant documents);
 - iii. work history;
 - iv. summaries of referees' comments;
 - v. details of any assessments undertaken and results; and
 - vi. where applicable, the Candidate's response to any merit criteria.
- (b) advertise at a minimum of twice yearly to attract candidates who could be placed as Resources in the Agency if required,

and provide an annual report to the Agency (on request) demonstrating that the requirements of this A.2.5 above are being met. The Contractor is required to provide the details specified in paragraph A.2.5(a) about particular candidates on request, or prior to offering a potential Resource to the Agency.

- 3.6 The Contractor is required to provide annual reports on their candidate sourcing and attraction strategies (on request) including how the Contractor:
- (a) ensures a supply of Resources to meet the needs of the Agency; and
 - (b) attracts suitably skilled and experienced Resources who are Australian citizens.

Ensuring compliance with the Agency's Policies, Procedures and Code of Conduct

- 3.7 The Contractor is required to:
- (a) advise each Resource that during their engagement with the Agency, the Resource must comply with the Australian Digital Health Agency Code of Conduct (the **Code**), as well as any Agency policies and procedures;
 - (b) obtain from each Resource (and provide to the Agency on request) a written acknowledgment that the Resource has been provided with the Code of Conduct and will comply with it; and
 - (c) ensure that each Resource completes Code training before or as soon as possible after the start of the Resource's engagement with the Agency.
- 3.8 The Agency may terminate a Resource's engagement at any time if, in the Agency's opinion, the Resource has failed to comply with the Code or any Agency policies and procedures. In these circumstances, the Contractor will be required to arrange for the Resource to be replaced within a reasonable time, if required, by another Resource with appropriate skills and experience, at no additional cost to the Agency.
- 3.9 The Contractor is required, when supplying potential Resources for consideration by the Agency, to disclose if those potential Resources have previously had their engagement with the Agency terminated as a result of non-compliance with any of the Agency's policies, procedures and/or the Code.

Guarantee of Service

- 3.10 The Contractor is required to provide replacement Contractor Placement Staff at no additional cost where they do not, in the Agency's reasonable opinion, meet the competency standards requested by the Agency or the requirements of the Position Description.
- 3.11 Where a Contractor Sourced Agency Employee who was recruited and placed by a Contractor does not, in the Agency's reasonable opinion, meet the competency standards requested by the Agency or set out in the Position Description, the Contractor will be required to provide a replacement Contractor Sourced Agency Employee at no additional cost to the Agency, providing the Agency has provided the Contractor with written notice within 3 months of the Contractor Sourced Agency Employee commencing employment with the Agency.

Travel

- 3.12 Any travelling expenses incurred by potential Resources for attending interviews conducted by the Agency at their locations will be the responsibility of the Resource or the Contractor, unless otherwise negotiated in advance.

Resource Expenses

- 3.13 The Agency will not be liable to pay any expenses incurred by Resources or candidates when they are:
- (a) supplying evidence to a Panellist or the Agency needed to verify their personal details, educational qualifications or referee details; or
 - (b) undertaking any assessment of skills, competencies, literacy, numeracy or abstract aptitudes.

Classification Levels and Pay Rates

- 3.14 For the purposes of calculating salary levels and Pay Rates, classifications of potential staff have been aligned to the Integrated Leadership System (ILS) Framework that is published by the Australian Public Service Commission.
- 3.15 The classification levels provided do not supersede Federal Legislation guidelines for applicable Pay Rates.

Customer Service

- 3.16 The Contractor, its officers and employees must:
- (a) have a strong client focus and communicate with the Agency throughout the Term;
 - (b) provide a high level of customer service and support to the Agency in dealing with a volume of administrative, accounting and billing operations;
 - (c) supply Resources that meet the required skill sets and the quality expectations of the Agency;
 - (d) undertake the Services requested in the timeframes negotiated;
 - (e) ensure that its quality assurance procedures and processes meet or exceed the standard required by the Agency;
 - (f) maintain continuity of supply, in particular to emergency and essential services and community recovery efforts, in times of disaster;

- (g) provide and maintain during the Term such professionally qualified and experienced staff and such infrastructure as will enable it to fully and properly discharge its duties and obligations as a Contractor; and
- (h) maintain an appropriate audit trail, showing the short-listed candidates and accepted Resources, and the commencement date of each engagement.

3.17 The Contractor is required to employ appropriate personnel to provide the Services as required by this Panel. The Contractor will be required to ensure adequately trained staff conduct and evaluate the assessments to identify Candidates for the Agency.

Deed Management

3.18 The Contractor must provide on-going administration of their Deeds of Standing Offer, including:

- (a) ongoing management of Contractor Personnel and any Contractor Placement Staff under the Deed;
- (b) management of queries, problems and dispute resolution;
- (c) providing feedback to the Agency on any issues, opportunities for improvement and minimising costs as required; and
- (d) management of Confidentiality and Privacy requirements.

Complaints Management

3.19 The Contractor must have effective procedures and processes to handle complaints from the Agency, and Contractor Placement Staff and candidates.

Disaster Management and Business Continuity

3.20 The Contractor must have suitable risk and disaster management policies and procedures to ensure business continuity in the event of a disaster and the provision of ongoing Services in the event of a major business interruption.

4 Candidate Sourcing Services

4.1 The Candidate Sourcing Services include, without limitation:

- (a) preparing project planning documents including specifying recruitment timeframes, drafting position capability requirements and establishing selection panels;
- (b) preparing candidate information packs, to be provided to prospective candidates that incorporates information on the Agency, position descriptions, position requirements, selection criteria and challenges and expectations of the role/s;
- (c) advertising positions in accordance with the Agency's instructions, including devising advertising and marketing approach and strategies and developing appropriate advertising documentation/text;
- (d) responding to all enquiries and requests for information from candidates during the advertising period and handling any pre-application requests for advice sensitively;
- (e) receiving formal applications from candidates and acknowledging these in writing;
- (f) undertaking any preliminary research and/or reference checking necessary to substantiate the claim of candidates;

- (g) preparing a summary of all candidates for discussion with the selection panel, which will include an initial assessment of each candidate's claims against the requirements of the position/s;
- (h) consulting with the selection panel to determine an initial shortlist of candidates to invite to screening interviews;
- (i) assessing and briefing the selection panel on the outcome of screening interviews and agree on the final shortlist of candidates to be invited to a panel interview;
- (j) provision of timely communication to candidates throughout the process, including but not limited to where there may be delays in the recruitment process, or where candidates have been unsuccessful in obtaining a position;
- (k) providing advice to selection panels to undertake the panel interview processes including by preparing suitable interview questions;
- (l) arranging panel interviews for each shortlisted candidate;
- (m) participating with the selection panel in the shortlisting and interview process where required;
- (n) undertaking and documenting detailed reference checks in relation to the preferred candidates;
- (o) preparing a final report following the interview of shortlisted candidates incorporating the selection panel's consideration;
- (p) obtaining personal information from candidates including postal address to assist with the offer process;
- (q) ensuring successful candidates hold, or on request from the Agency, facilitate them obtaining an appropriate level security clearance; and
- (r) notifying all candidates of the outcome of the selection process and provision of constructive feedback on their performance throughout the process.

5 Contingent Labour Services

5.1 The Agency may require the Contractor to provide Contractor Placement Staff in situations where there are short-term absences, to meet urgent unforeseeable demands, specific budget allocation for particular projects, to replace permanent employees who are absent from their substantive role or to meet peak workloads.

5.2 The Contingent Labour Services include, but are not limited to, the Services set out in this 5.2:

Contractor Placement Staff to act at direction of Agency

- (a) The Contractor must ensure that all Contractor Placement Staff offered to the Agency act at the direction of the Agency in relation to work to be performed, security requirements and access, hours of work, confidentiality and privacy.

Commencement of the engagement

- (b) Prior to the commencement of any Contractor Placement Staff's engagement with the Agency, the Contractor will provide the following information to the Agency:
 - i. the full name of the proposed Contractor Placement Staff member;
 - ii. the start date and finish date (if known) of the engagement;

- iii. the daily charge rate for the proposed Contractor Placement Staff member;
 - iv. the relevant industrial instrument, if applicable;
 - v. any relevant employment conditions including, ordinary hours, overtime and allowances; and
 - vi. original copies of any confidentiality or privacy undertakings signed by the Contractor Placement Staff member.
- (c) The Agency will conduct an induction with the Contractor Placement Staff member upon commencement of the engagement. The Contractor must also conduct inductions with Contractor Placement Staff relating to conditions of employment and relevant workplace health and safety requirements for the Agency.

Contractor Placement Staff Performance Management

- (d) During an engagement, performance management of Contractor Placement Staff is the joint responsibility of the Contractor and the Agency. The Contractor must:
- i. liaise with The Agency throughout the duration of the engagement, regarding the Contractor Placement Staff member's performance; and
 - ii. where the Agency advises that a Contractor Placement Staff member's performance is not satisfactory, implement remedial action as soon as is reasonably possible, subject to the Agency's approval.

Absences from the engagement

- (e) Where the Contractor Placement Staff member is on engagement with the Agency, they may, with the approval of the Agency, be absent from the engagement for an approved period of time.
- (f) Where the Contractor is notified by the Contractor Placement Staff member of their absence from the workplace (e.g. sick days), the Contractor must notify the Agency immediately.
- (g) If required by the Agency, the Contractor will provide a suitable substitute Contractor Personnel within the agreed response times for the remainder of the absence. No charges will be payable by the Agency for any absences by the Contractor Placement Staff member.

Extension of engagements

- (h) The Agency may request to extend the engagement of a Contractor Placement Staff member by notifying the Contractor in writing.
- (i) Where the original Contractor Placement Staff member is unable to continue the engagement, the Contractor is required to immediately notify the Agency. The Agency may require the Contractor to provide a suitable substitute Contractor Placement Staff member acceptable to the Agency or may choose to terminate the engagement.

Termination of engagement

The Agency will provide the Contractor a minimum of 10 Business Days' notice if a Contractor Placement Staff member is no longer required for an engagement.

In addition to any other rights to terminate, the Agency may terminate the engagement of a Contractor Placement Staff member by giving the Contractor 24 hours' notice if, in the Agency's opinion, the Contractor Placement Staff member has not performed their engagement to the Agency's satisfaction.

Additional termination requirements by the Contractor and the Agency may be agreed by all Parties before the commencement of an engagement. Evidence of the agreed termination requirements must be recorded in the Work Order.

Contractor Personnel placements

Upon placement of a Contractor Placement Staff member as a temporary resource within the Agency, the Agency may offer that Contractor Placement Staff member a permanent role as an employee within the Agency.

In the event the Contractor Placement Staff member accepts the permanent role as an employee with the Agency, the Contractor will not continue to charge the daily charge rate for the Contractor Placement Staff member but may instead charge the Placement Fee in accordance with paragraph 1.2 (c) of Schedule 3 - PRICES. In addition, as the Contractor Placement Staff member will cease to be an employee of the Contractor, the Contractor must not continue to monitor their performance once they become an employee of the Agency.

Relevant industrial instruments and Conditions of Employment

5.3 The conditions of employment (including ordinary hours, penalty rates applicable, overtime, meal and rest breaks) for Contractor Placement Staff will be in accordance with the provisions of the relevant industrial instrument.

5.4 The Contractor must:

- (a) meet all legal obligations concerning the terms and conditions of employment for Contractor Placement Staff;
- (b) ensure that its Contractor Personnel are aware of their pay rate and other conditions of employment; and
- (c) ensure that all Contractor Placement Staff members consent to the disclosure by:
 - (i) the Contractor to the Agency; and
 - (ii) the Agency to other the Agency Personnel,

of the Contractor Placement Staff members' terms and conditions of employment, including details of any relevant industrial instrument.

Timesheets

The Contractor must ensure that timesheets are maintained for each Contractor Placement Staff member it provides under a Work Order. Each timesheet must include, as a minimum, the following information:

- i. the Agency's name and the name of the Agency employee responsible for the day-to-day supervision of the Contractor Placement Staff Member ('**Agency Supervisor**');
- ii. the Contractor Placement Staff member's name and role;

- iii. normal and overtime (if applicable) hours worked;
- iv. the period covered under the timesheet;
- v. any absences from the engagement (due to sickness or otherwise);
- vi. the Agency Supervisor’s comments and signature; and
- vii. other details as agreed to by the Contractor and the Agency.

Timesheets must be submitted for approval to the Recruitment Services Panel Manager (or their nominated representative). The Agency will approve or reject all timesheets within five (5) Business Days of the timesheet being submitted for approval by the Contractor. Where the Agency rejects a timesheet, they will provide reasons to the Contractor for that rejection. If this occurs, the Contractor must resubmit the timesheet for approval within five (5) business days following notification of that rejection.

The Contractor must train, or provide user guides to, the Agency, concerning the use of their online timesheet systems, where applicable.

Overtime

- 5.5 Contractor Placement Staff may be required to work overtime including weekends and public holidays in some circumstances. No overtime is to be completed by a Contractor Placement Staff member unless instructed to do so by the Agency. Hours worked in excess of agreed or ordinary hours will not be paid without the prior written approval of the Agency.
- 5.6 Overtime must be based on hours recorded in timesheets completed by the Contractor Placement Staff and approved by the Agency during the engagement.
- 5.7 Subject to the requirements of any relevant industrial instrument (which will take precedence), the Contractor Placement Staff member must perform the engagement during the working hour periods specified in the Work Order. Where a normal working hour period is not specified in the Work Order, the normal working hour period will be 8.30am – 5pm on Business Days. It will be at the Agency’s sole discretion how any hours worked in addition to the normal working hour period of any Business Day, are to be treated. The Agency may, in its absolute discretion, either:
 - (a) agree to pay the additional hours worked in excess of the hours allocated to work for that day;
 - (b) offset the additional hours worked on that day against the total number of hours worked during a week. Where there are additional hours worked in excess of the total hours allocated for the week, the Agency will pay for such additional hours worked in excess of the total allocated against the week.

6 Incidental Services

- 6.1 The Incidental Services to be provided by the Contractor may include:
 - (a) providing assessment services such as psychometric testing;
 - (b) assessment tools (if applicable);
 - (c) organising and providing scribing support during selection processes;

any other value add service offered by the Contractor and accepted by the Agency.

Schedule 3 – PRICES

1. PRICES FOR SERVICES

1.1 General

The Contractor must not respond to a Request for Quotation using prices higher than the Prices.

1.2 Fees

[Note: This Schedule covers the maximum amount/ prices that Contractors will be able to quote the Agency for the relevant categories of services/ goods]

(a) Contingent Labour Services – Provision of Contractor Placement Staff

Descriptions	% Fee	Calculation Comments
Pay Rate	[Insert]	
Superannuation	9.5%	Calculated as a percentage of the applicable Pay Rate
Payroll Tax	[Insert]	Calculated as a percentage of (Pay Rate + Superannuation)
Worker's Compensation Insurance	[Insert]	Calculated as a percentage of (Pay Rate + Superannuation)
All other Insurances	[Insert]	Calculated as a percentage of (Pay Rate + Superannuation)
Mark Up (Non Referred Contractor Placement Staff)	[Insert]	Calculated as a percentage of Pay Rate Percentage Fee calculated on Pay Rate (excluding Superannuation, Payroll Tax, Workers Compensation and Insurances)
Mark Up (Referred Contractor Placement Staff) / Payroll Mark Up	[Insert]	Percentage Fee calculated on Pay Rate (excluding Superannuation, Payroll Tax, Workers Compensation and Insurances)

(b) Candidate Sourcing Services – recruitment of Contractor Sourced Agency Employees

Services	Price (ex GST)	GST Component	Price (inc GST)	Unit
Recruitment of APS level Contractor Sourced Agency Employees	[Insert]	[Insert]	[Insert]	Per process
Recruitment of EL level Contractor Sourced Agency Employees	[Insert]	[Insert]	[Insert]	Per process
Recruitment of SES level Contractor Sourced Agency Employees	[Insert]	[Insert]	[Insert]	Per process

(c) Contractor Placement Staff employed by Agency

Placement Fee	Tenure of Contractor Placement Staff	% of Candidate Sourcing Service price
	< 1 month	[Insert]
	1 – 2 month	[Insert]
	2 – 3 month	[Insert]
	3 – 4 month	[Insert]
	4 – 5 month	[Insert]
	5 – 6 month	[Insert]
	> 6 months	0.00%

(d) Other costs

[Note: Any agreed additional costs will be inserted here.]

(e) Incidental Services

Service	Price (ex GST)	GST Component	Price (inc GST)	Unit
[Description]	[Insert]	[Insert]	[Insert]	Per process
[Description]	[Insert]	[Insert]	[Insert]	Per process
[Description]	[Insert]	[Insert]	[Insert]	Per process

1.3 Prices for Goods

[Note: Insert pricing tables for Goods]

1.4 Discounts

[Note: Details of any discounts offered by the panellist will be included here]

1.5 GST Inclusive

All prices and rates are GST inclusive.

1.6 Variation to Personnel rates

- (a) The Contractor may apply to vary the rates on each anniversary of the Deed Start Date. Any request for a variation will be capped at the equivalent of the percentage increase in the Consumer Price Index (CPI) (All Groups, Weighted Average of 8 Capital Cities), as published by the Australian Bureau of Statistics, determined by comparing the latest index available at the anniversary of the Deed Start Date with the index for the same time the previous year.
- (b) The Agency may, acting reasonably, approve or deny any variation to the rates applied for under item 1.6(a).

Schedule 4 – REQUEST FOR QUOTATION

This Request for Quotation (including its attachments, if any) is issued by the Agency in accordance with clause 4 of the Deed of Standing Offer for the provision of Goods and/or Services, executed between the Agency and the Contractor on or about [insert date] (the Deed).

RFQ number	[Insert RFQ number]
RFQ closing date	[Insert closing date of RFQ]
Contractor	[Insert Contractor name]
Contractor Deed Representative	[Insert name and contact details]
Agency contact details for RFQ	RFQ_TResponses@digitalhealth.gov.au

PART A – Agency requirements for RFQ

Item A Goods, Services and Subcontractors

Goods:

[Note: This section will be completed prior to issuing any Request for Quotation.]

Period for the Agency's rejection of Goods: NA.

Services:

The Services which the Agency is seeking to procure consist of the following:

[Note: This section will be completed prior to issuing any Request for Quotation.]

Milestone	Delivered to	Due Date
[Insert]	[Insert]	[Insert]

Item B Contract Material

- Clauses 11.3 to 11.8 (Intellectual Property in Contract Material) are to apply and Intellectual Property Rights in all Contract Material created under the Contract vest in the Agency.
- Clauses 11.9 to 11.13 (Intellectual Property in Contract Material) are to apply and the Contractor owns Intellectual Property Rights in all Contract Material created under the Contract.

Item C Moral Rights

[Note: The appropriate application of Moral Rights under Contract will be completed prior to issuing any Request for Quotation.]

- Clause 12.2 (Moral Rights) is to apply.
- Clause 12.3 (Moral Rights) is to apply.

Item D Australian Standards and Best Practice, KPIs and Service Levels

Australian Standards and Codes

[Note: This section will be completed prior to issuing a Request for Quotation.]

KPIs and Service Levels

[Note: This section will be completed prior to issuing a Request for Quotation.]

Key Performance Indicators	[Insert]
Service Levels	[Insert]

Item E Proposed Contract Term

Proposed Contract Start Date	[Insert]
Proposed Contract End Date	[Insert]

Item F Invoice Procedures

The Contractor must forward Correctly Rendered Invoices in accordance with clause 4 of the Terms and Conditions of Contract.

Where the Services involve the provision of Contractor Placement Staff to the Agency, copies of approved timesheets for those Contractor Placement Staff members must be provided to the Agency with any Correctly Rendered Invoice.

[Note: Particular requirements for the submission of CRIs, such as that CRIs are to be submitted by email to a specified email address (copied to a particular person) and posted to the Agency will be included here.]

Item G Facilities and Assistance

None specified.

Item H Agency Material to be Provided by the Agency

[Note: A description of any Agency Material that the Agency will provide to the Contractor in the performance of the Contract (if any) will replace the words 'None specified' below if applicable.]

None specified.

Item I Use of Agency Material

[Note: Any conditions or restrictions on use of the Agency Material provided under the Contract will be included here.]

Item J Existing Material

[Note: Any Existing Material will be included here.]

Item K Dealing with Copies

[Note: Any requirements for dealing with copies will be included here.]

Item L Insurance

Type	Coverage
Public liability insurance	\$10,000,000
Product liability insurance	\$10,000,000
Professional indemnity insurance	\$5,000,000
Workers compensation insurance	As required by Law

Item M Permitted Use and Disclosure of Government Related Identifiers

Permitted use and disclosure of Government Related Identifiers
Not permitted

Item N Permitted Disclosure or Transfer of Personal Information Outside Australia

Permitted offshore disclosures or transfers of Personal Information
Not permitted

Item O Security Requirements

<p>The Agency's protective security policies and procedures</p>	<p><i>[Note: These requirements may be updated as required before issuing any RFQ]</i></p> <p>Risk Management AS/NZS ISO 31000:2009 and Australian Standards HB 167:2006</p> <p><i>Australian Government Information Security Manual</i> - guidance for agencies and Service Providers for managing the risks arising from greater sharing and exchange of information - see https://acsc.gov.au/infosec/ism/ for further information</p> <p><i>The Trusted Digital Identity Framework (TDIF)</i> which provides a standard for digital identity in Australia. Available at https://www.dta.gov.au/what-we-do/policies-and-programs/identity/.</p> <p>Australian Government Guidelines on Reporting Incident and Conducting Security Investigations. Available at</p>
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Deed of Standing Offer – Recruitment Services

	<p>https://www.protectivesecurity.gov.au/governance/Documents/Reporting-incidents-and-conducting-security-investigations-guidelines-v1.2.pdf</p> <p>Australian Government Cyber-Security Strategy 2016 available at https://www.homeaffairs.gov.au/nationalsecurity/Documents/australia-cyber-security-strategy.pdf</p>
Additional security requirements	[This section will be completed prior to issuing any Request for Quotation.]
Cost of security clearances	The Cost of security clearances will be paid for by the Contractor.

PART B – Requirement for response

Item number	Description	Details									
1.	Information to be included in proposal	<p>The Contractor should provide the following as part of its response to the RFQ:</p> <ul style="list-style-type: none"> (a) completed draft Work Order (at Schedule 5 to the Deed), to the extent practicable, setting out the Services offered in response to this RFQ and the proposed charges; (b) examples of previous projects which demonstrate the Contractor's capacity to successfully deliver services similar to the Services set out in this RFQ; (c) a minimum of 2 referees where the Contractor has recently delivered goods and/or services similar to the Goods and/or Services; (d) CVs for all proposed Resources or Specified Personnel; (e) a statement outlining any actual or perceived conflicts of interest, and how any conflicts of interest will be managed by the Contractor; and (f) identify any information which it proposes to be Confidential Information for the purposes of any resultant contract. 									
2.	Subcontractors	[Panel Member to insert names and ABNs of any proposed subcontractors. If no subcontractors are proposed, insert 'not applicable'.]									
3.	Specified Personnel, Contractor Placement Staff and other resources	<p>[Panel Member to insert names and positions of proposed Specified Personnel, Contractor Placement Staff and other resources. Otherwise insert 'not applicable'.]</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">Name</th> <th style="width: 33%;">Personnel Category</th> <th style="width: 33%;">Proposed role</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Name	Personnel Category	Proposed role						
Name	Personnel Category	Proposed role									
4.	Restrictions on Specified Personnel, Contractor	[Contractor to identify any limitations or restrictions on the availability of Specified Personnel, Contractor Placement Staff and other resources to provide the Services.]									

Deed of Standing Offer – Recruitment Services

Item number	Description	Details
	Placement Staff and other resources	

PART C – Contract Fees

Payment structure
<p><i>Note 1: Payments will be structured on the basis set out below</i></p> <p><i>Note 2: All amounts are GST inclusive</i></p> <p><i>[Note: The Agency will select one of the options below prior to issuing the RFQ. If more than one option both options will be selected and the Agency will specify which option applies to each Stage of the project.]</i></p> <p><input type="checkbox"/> Fixed fee: fixed fees sets out the fixed price portion of the maximum Fees.</p> <p><input type="checkbox"/> Variable fee: sets out the maximum variable amount for the Fees.</p>
1. Fixed fee
3. Allowances
<p>The total Allowances will not exceed a maximum of \$[insert] (GST inclusive).</p> <p>The Agency will not reimburse the Contractor for any expenses.</p>

Schedule 5 – WORK ORDER

Item A Work Order Details

Work Order Number: [Insert]

The Contractor has offered under clause 5.1 of the Deed specified at Item B below to provide the Goods and/or Services to the Agency. The Agency accepts this offer on the terms and conditions set out in the Deed and in this Work Order and issues this Work Order in accordance with clause 5.6 of the Deed. If there is an inconsistency between this Work Order and any other provisions of the Deed, the Deed will prevail to the extent of any inconsistency.

Item B Deed Details

Deed	Recruitment Services Panel
Contractor	[Insert Contractor Name]
Agency Representative	The person acting in the position of General Manager, Knowledge and Organisational Capability
Contractor Representative	[Insert name and contact details]
Date of Order	The date that the last party signed.
Aggregate Liability	\$1.1 million

Item C Goods, Services and Subcontractors

Goods:

[Note: This section will be completed prior to finalising this Work Order.]

Period for the Agency's rejection of Goods: NA.

Services:

The Services which the Contractor must provide and perform consist of the following:

[Note: To be completed prior to finalising this Work Order with Contractor.]

Milestone	Delivered to	Due Date
[Insert]	[Insert]	[Insert]

Permitted subcontractors:

[Note: To be completed prior to finalising this Work Order with Contractor.]

Subcontractor full legal name	Postal Address	Services to be performed / Goods to be provided	ACN / ABN / ARBN
[Insert]	[Insert]	[Insert]	[Insert]

Item D Contract Material

[Note: Contract Material to be provided/created will be inserted here prior to finalising Work Order with Contractor.]

Deed of Standing Offer – Recruitment Services

- Clauses 11.3 to 11.8 (Intellectual Property in Contract Material) are to apply and Intellectual Property Rights in all Contract Material created under the Contract vest in the Agency.
- Clauses 11.9 to 11.13 (Intellectual Property in Contract Material) are to apply and the Contractor owns Intellectual Property Rights in all Contract Material created under the Contract.

Item E Moral Rights

[Note: To be completed prior to finalising Work Order.]

- Clause 12.2 (Moral Rights) is to apply.
- Clause 12.3 (Moral Rights) is to apply.

Item F Australian Standards and Best Practice, KPIs and Service Levels

Australian Standards and Codes

[Note: This section will be completed prior to finalising a Work Order.]

KPIs and Service Levels

[Note: This section will be completed prior to finalising a Work Order.]

Key Performance Indicators	[Insert]
Service Levels	[Insert]

Item G Contract Term

This Contract will commence on the Contract Start Date specified in the table below and expires on the end date specified in the table below unless it is terminated earlier in accordance with the Contract.

Event	Date
Contract Start Date	[Insert day / month / year or 'The date this Contract is signed by the last Party to do so.']
End date	[Insert end date]

Item H Contract Fees

The total Contract Fees will not exceed an amount of \$[insert] (GST inclusive).

[Note: The maximum Fees below will be completed prior to finalising the Work Order.]

If there is no fixed Fee portion, the tables at (a) and (c) will be deleted.

If there is no variable portion of the Fees, the table at (b) will be deleted.]

(a) Fixed Contract Fees

Item description	Quantity	Unit price (GST exc)	GST component (Unit price)	Total Fees (GST inc)
[Insert]	1	\$[Insert]	\$[Insert]	\$[Insert]

Total fixed Contract Fees for Goods and/or Services is \$[Insert] (GST inclusive).

(b) Variable Contract Fees

Description / Comments / Personnel	Estimated work effort (specify hours/days)	[Daily rate / Per unit price] (GST exc)	GST component	Total Fees (GST inc)
[Insert]	[Insert]	\$[Insert]	\$[Insert]	\$[Insert]

Maximum estimated variable Contract Fees for Goods and/or Services is \$[Insert] (GST inclusive).

(c) Payment Schedule

Progress payments of the fixed Fees (inclusive of any GST and all taxes and charges) will be made as follows:

Estimated date	Milestone	Payment amount (GST exc)	Payment amount (GST inc)
[Insert]	[Insert]	\$[Insert]	\$[Insert]

(d) Service Rebates

[Note: If Service Rebates will apply, they will be inserted below.]

Service Level	Method of calculation
[Insert]	[Insert]

Item I Allowances

Subject to the below, the Contractor must perform its obligations under this Contract at its own cost and expense.

The total Allowances will not exceed a maximum of \$[insert] (GST inclusive).

The Agency will not reimburse the Contractor for any expenses (including travel, accommodation and taxi travel) under this Contract.

Item J Facilities and Assistance

None specified.

Item K Invoice Procedures

The Contractor must forward Correctly Rendered Invoices in accordance with clause 4 of the Terms and Conditions of Contract.

Where the Services involve the provision of Contractor Placement Staff to the Agency, copies of approved timesheets for those Contractor Placement Staff members must be provided to the Agency with any Correctly Rendered Invoice.

[Note: Particular requirements for the submission of CRIs, such as that CRIs are to be submitted by email to a specified email address (copied to a particular person) and posted to the Agency, will be included here prior to the finalisation of a Work Order.]

Item L Specified Personnel and Contractor Placement Staff

Position/Role	Name	Services to be performed
[Insert]	[Insert]	[Insert]

Where the Specified Personnel or Resources or Specified Personnel are unable to provide the Goods and/or Services, the Contractor must notify the Agency immediately.

Item M Agency Material to be Provided by the Agency

[Note: A description of any Agency Material that the Agency will provide to the Contractor in the performance of the Contract (if any) will replace the words 'None specified' below if applicable.]

None specified.

Item N Use of Agency Material

[Note: Any conditions or restrictions on use of the Agency Material provided under the Contract will be included here prior to finalisation of the Work Order.]

Item O Existing Material

[Note: Any Existing Material which the Contractor owns and/or is using to develop the Contract Material (and where ownership is not with the Agency), if any, will be included here prior to finalisation of the Work Order.]

Item P Dealing with Copies

[Note: Any requirements for dealing with copies will be included here prior to finalising the Work Order.]

Item Q Insurance

Type	Coverage
Public liability insurance	\$10,000,000
Product liability insurance	\$10,000,000
Professional indemnity insurance	\$5,000,000
Workers compensation insurance	As required by Law

Item R Address for Notices

The Agency's Address for Notices:

Level 25, 175 Liverpool Street

Sydney NSW 2000

Attention: The Recruitment Services Panel Manager

Contracts@digitalhealth.gov.au

CC: General Counsel

Legal@digitalhealth.gov.au

Contractor's Address for Notices:

[Insert address]

[Insert email address]

Item S Contractor's Confidential Information

[Note: To be completed prior to finalising this Work Order. The Agency will only include a detailed specific description of any information that satisfies Commonwealth tests for contractor confidentiality in procurement contracts. Note the guidance provided by the Department of Finance (at <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html>) on what information can properly be classed as confidential.]

Contractor information to be kept confidential
[Insert]

Item T Trustee Information

[Note: This section will only be completed only where the Contractor is a trustee for a trust. If the Contractor is not a trustee for a trust the words 'Not applicable' will be included.]

[Where relevant, details Trustee and Trust details, including ABNs and ACNs, will be included here.]

Item U Permitted Use and Disclosure of Government Related Identifiers

Permitted use and disclosure of Government Related Identifiers
Not permitted

Item V Permitted Disclosure or Transfer of Personal Information Outside Australia

Permitted offshore disclosures or transfers of Personal Information
Not permitted

Item W Security Requirements

The Agency's protective security policies and procedures	<p><i>[Note: These requirements may be updated as required before issuing any RFQ]</i></p> <p>Risk Management AS/NZS ISO 31000:2009 and Australian Standards HB 167:2006</p> <p><i>Australian Government Information Security Manual</i> - guidance for agencies and Service Providers for managing the risks arising from greater sharing and exchange of information - see https://acsc.gov.au/infosec/ism/ for further information</p> <p><i>The Trusted Digital Identity Framework (TDIF)</i> which provides a standard for digital identity in Australia. Available at https://www.dta.gov.au/what-we-do/policies-and-programs/identity/.</p> <p>Australian Government Guidelines on Reporting Incident and Conducting Security Investigations. Available at https://www.protectivesecurity.gov.au/governance/Documents/Reporting-incidents-and-conducting-security-investigations-guidelines-v1.2.pdf</p> <p>Australian Government Cyber-Security Strategy 2016 available at https://www.homeaffairs.gov.au/nationalsecurity/Documents/australia-cyber-security-strategy.pdf</p>
Additional security requirements	<i>[This section will be completed prior to finalising this Work Order.]</i>
Cost of security clearances	The Cost of security clearances will be paid for by the Contractor.

SIGNED for and on behalf of
Australian Digital Health Agency
ABN 84 425 496 912 on:

Date

by:

Printed name of authorised representative of Agency

Signature

Position

in the presence of:

Printed name of witness

Signature of witness

[The appropriate signature block for the Contractor according to the type of legal entity will be included below and the remaining options will be deleted, prior to finalisation of the Deed.]

Schedule 6 – INSTRUMENT OF ACCEPTANCE

Deed Number and description: *[insert]*

[Name of Contractor]

[Address of Contractor]

The offer to *[insert name of the Government Agency]* made in accordance with clause 6.1 of deed number *[insert]* for the provision of certain goods and/or Services (**Deed**) between the Australian Digital Health Agency (**Agency**) and *[insert Contractor name and ACN]* (**Contractor**) is accepted.

In accordance with clause 6.1 of the Deed the following modifications to the terms and conditions of the Deed apply to adapt it to the circumstances of *[insert name of the Government Agency]*:

1. REFERENCES TO THE AGENCY

A reference to the Agency is to be taken as a reference to:

(a) The Commonwealth of Australia represented by *[insert name of the Government Agency]*;
or

(b) *[insert name of the Government Agency]*,

as the case requires.

2. AMENDMENT TO DEED DETAILS

The notice details for the Agency are deleted and replaced with:

(a) *[insert notice details for the Government Agency]*.

3. AMENDMENT TO *[INSERT SCHEDULE]*

(a) *[Detail any required amendments to any Schedules]*

Dated / /

[Name of signatory for the Government Agency]

[Title of signatory for the Government Agency]

Schedule 7 – CONFIDENTIALITY UNDERTAKING

DEED POLL

CONFIDENTIALITY UNDERTAKING

THIS DEED POLL is made the _____ day of _____ [year]

by _____ of

Insert name of Recipient

Insert address of Recipient

(the Recipient).

RECITALS

- A. The Recipient is an officer, official, employee, agent or subcontractor of Click here to enter text ABN Click here to enter text (the Contractor).
B. The Contractor and the Australian Digital Health Agency (the Agency) have entered into a select 1- contract/ deed in relation to insert description dated (the Agreement).
C. In the course of working with the Contractor in relation to the Agreement, the Recipient may have access to Confidential Information held in connection with the Agreement.
D. Under the terms of the Agreement, the Agency requires the Contractor to obtain written undertakings in a form required by the Agency from its officers, officials, employees, agents and subcontractors relating to the non-disclosure of Confidential Information.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Deed Poll, unless the contrary intention appears:
1.2 Confidential Information means information provided to the Contractor by the Agency, or otherwise obtained by the Contractor, in connection with the Agreement that:
(a) is by its nature confidential;
(b) is designated by the Agency as confidential; or
(c) the Recipient knows or ought to know is confidential;
but does not include information which:

- (d) is or becomes public knowledge other than by:
 - (i) breach of the Agreement, this Deed Poll or any other confidentiality obligations; or
 - (ii) any other unlawful means;
- (e) is in the possession of the Recipient without restriction in relation to disclosure before the date of receipt from the Agency; or
- (f) has been independently developed or acquired by the Recipient without breaching an obligation of confidentiality.

2. PROTECTION OF CONFIDENTIAL INFORMATION

2.1 The Recipient acknowledges and agrees that:

- (a) the Confidential Information is confidential and that any Confidential Information is disclosed to the Recipient only pursuant to the terms of this Deed Poll;
- (b) it must not, other than with the prior written consent of the Agency, disclose, divulge, use or otherwise deal with the Confidential Information, except in accordance with this Deed Poll; and
- (c) improper use or disclosure of the Confidential Information would damage the Agency.

3. RESTRICTION ON USE

3.1 The Recipient may only use Confidential Information:

- (a) to comply with the Contractor’s obligations under the Agreement (and then only to the extent reasonably necessary to achieve such compliance); or
- (b) where relevant, to the extent necessary to enable the Contractor to exercise its rights (if any) under the Agreement.

4. UNDERTAKINGS OF NON-DISCLOSURE AND COMPLIANCE WITH AGENCY POLICIES

4.1 The Recipient must:

- (a) not, except to the extent necessary to enable the Recipient to do the things specified in clause 3:
 - (i) disclose the Confidential Information;
 - (ii) reproduce in any way any material containing, or referring to, any Confidential Information nor allow any other person to use or reproduce any such material; or
 - (iii) use the Confidential Information;
- (b) keep secret and confidential all Confidential Information and not copy, reproduce or disclose any Confidential Information the Recipient has acquired through the performance of his/her work in relation to the Agreement, except for the purpose of fulfilling that work;
- (c) in addition to any particular measures specified by the Contractor, to take all reasonable measures to ensure that any Confidential Information held in connection with the Agreement is protected against loss, unauthorised access, use, modification or disclosure and against other misuse;

- (d) take all reasonable measures to safeguard the physical and information technology security of the Confidential Information;
- (e) comply with any requirements specified by the Agency from time to time;
- (f) immediately notify the Contractor if the Recipient:
 - (i) suspects or becomes aware of any unauthorised access to, reproduction of, use of, disclosure of in any form, damage or destruction of any Confidential Information; or
 - (ii) is required by law to disclose any Confidential Information; and
- (g) take all reasonable steps and do all things, execute all documents and give all assistance reasonably required by the Contractor to enforce any obligation of confidence imposed or required to be imposed by this Deed Poll.

4.2 The Recipient agrees that if they are uncertain as to whether any information is Confidential Information, they will treat that information as if it were unless and until the Contractor agrees otherwise in writing.

5. RETURN OF MATERIALS

5.1 The Recipient agrees to return all material embodying Confidential Information, including any copies in the Recipient's possession or control, to the Contractor on the expiration of the Recipient's work with the Contractor in relation to the Agreement or as otherwise directed by the Contractor or the Agency.

6. SECURITY

6.1 If requested by the Agency, the Recipient must cooperate in any security checks the Agency wishes to make of the Recipient (including by providing information usually requested in such circumstances).

7. CONFLICT OF INTEREST

7.1 The Recipient warrants that no conflict of interest exists or is likely to arise while in receipt of Confidential Information.

7.2 The Recipient warrants that it will not permit any situation to arise or engage in any activity which may result in a conflict of interest with the Recipient's receipt of Confidential Information.

8. INDEMNITY

8.1 The Recipient indemnifies each of the Agency and the Contractor against any claim, loss, liability or expense reasonably incurred by the Agency or the Contractor in connection with the Recipient's failure to comply with this Deed Poll.

9. PERSONAL INFORMATION

9.1 Nothing in this Deed Poll derogates from any obligation which the Recipient may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under any relevant contract between the Recipient and the Contractor, in relation to the protection of personal information (as defined in the *Privacy Act 1988* (Cth)).

10. **EQUITABLE RELIEF**

- 10.1 The Recipient acknowledges that each of the Contractor and the Agency may be entitled to equitable relief against the Recipient (in addition to any rights available under the Agreement or at law) if the Recipient breaches its obligations under this Deed Poll.
- 10.2 This Deed Poll must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

11. **PROCEEDINGS**

- 11.1 The Recipient acknowledges that each of the Contractor and the Agency may take legal proceedings against the Recipient if there is an actual, threatened or suspected breach of this Deed Poll, including obtaining an injunction to restrain such breach.

12. **DEED POLL IN FAVOUR OF**

- 12.1 This Deed Poll is given in favour of each of the Agency and the Contractor.

13. **SURVIVAL OF UNDERTAKINGS**

- 13.1 The Recipient acknowledges that the obligations in this Deed Poll will survive:
 - (a) the termination or expiry of this Deed Poll;
 - (b) the termination or expiry of the Agreement; and
 - (c) the termination or expiration of the Recipient’s work with the Contractor in connection with the Agreement,and will continue for as long as the Confidential Information remains confidential.

14. **GOVERNING LAW**

- 14.1 This Deed Poll is governed by and will be construed according to the law of the New South Wales, and the Recipient agrees to submit to the non-exclusive jurisdiction of the courts of New South Wales in respect of all matters arising under, or in relation to, this Deed Poll.

15. **COSTS**

- 15.1 The Recipient must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.

Deed of Standing Offer – Recruitment Services

Executed as a Deed Poll

SIGNED, SEALED AND DELIVERED by the Recipient:

Printed name of Recipient

Signature of Recipient

in presence of:

Printed name of witness

Signature of witness

Schedule 8 – TERMS AND CONDITIONS OF CONTRACT

1. INTERPRETATION AND OPERATION OF CONTRACT

1.1 In this Contract, unless the contrary intention appears:

ABN means Australian Business Number;

Advisers includes a Party's agents, contractors (including subcontractors), consultants or advisers (including legal advisers) engaged in, or in relation to, the performance or management of this Contract;

Agency means the Australian Digital Health Agency, established under the *PGPA Rule*, and includes any successor Government Agency which is from time to time responsible for the administration of this Contract;

Agency Material means any Material:

- (a) provided by or on behalf of the Agency to the Contractor for the purposes of this Contract;
- (b) any improvements, modifications, derivatives or enhancements of the Material referred to in paragraph (a) above created by either the Contractor or the Agency in the course of the provision of the Goods and/or Services; and
- (c) copied or derived at any time from the Material referred to in paragraphs (a) or (b) above;

Allowances means the allowances, expenses and costs, if any, payable by the Agency under this Contract as specified in Item I of the Work Order;

Auditor-General means the office established under the *Auditor-General Act 1997* and includes any other person that may, from time to time, perform the functions of that office;

Australian Standards means the documents published under that name by Standards Australia Limited ABN 85 087 326 690;

Bankruptcy Act means *Bankruptcy Act 1966*;

Business Day means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in the place where the act is to be performed;

Commonwealth means the Commonwealth of Australia;

Confidential Information means information that:

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

but does not include the terms of this Contract (unless expressly provided otherwise) or information which:

- (d) is or becomes public knowledge other than by:
 - (i) breach of this Contract or any other confidentiality obligations; or

- (ii) any other unlawful means;
- (e) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Agency; or
- (f) is independently developed or acquired by the Contractor without breaching an obligation of confidentiality;

Conflict means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Contractor (or the Contractor Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Contractor in providing and performing the Goods and/or Services fairly and independently;

Contract means this document as amended from time to time in accordance with this Contract, and includes its Schedules and any attachments;

Contract Fees means all fees and charges payable by the Agency for the provision of the Goods and/or Services under this Contract as specified in Item H of the Work Order;

Contract Material means all Material:

- (a) created for the purposes of this Contract;
- (b) provided or required under this Contract to be provided to the Agency as part of the Goods and/or Services; or
- (c) copied or derived at any time from the Material referred to in paragraphs (a) or (b), including the Contract Material described in Item D of the Work Order;

Contract Start Date means the date on which this Contract commences, as specified in Item G of the Work Order;

Contract Term means the period for which this Contract is intended to continue, as specified in Item G of the Work Order;

Contractor Personnel means:

- (a) officers, Officials, employees, agents, representatives or subcontractors of the Contractor;
- (b) officers, Officials, employees, agents, representatives or subcontractors of the Contractor’s subcontractors; and
- (c) includes those individuals (if any) engaged by the Contractor or its subcontractors on a voluntary basis,

who are engaged in the provision and performance of the Goods and/or Services;

Contractor Sourced Agency Employees means Resources that are sourced by the Contractor as part of providing the Goods and/or Services and employed by the Agency at the end of that sourcing process;

Contractor Placement Staff means Resources employed or contracted by the Contractor and provided by the Contractor to the Agency, as part of the Goods and/or Services, to fill temporary positions within the Agency;

Control has the meaning given in section 50AA of the Corporations Act:

- (a) in respect of an 'entity' (as defined in the Corporations Act) also includes the direct or indirect power to directly or indirectly direct the management or policies of the entity or control the membership or voting of the board of directors or other governing body of the entity (whether or not the power has statutory, legal or equitable force or arises by means of statutory, legal or equitable rights or trusts, agreements, arrangements, understandings, practices, the ownership of any interest in a 'marketable security' (as defined in section 9 of the Corporations Act), bonds or instruments of the entity or otherwise); and
- (b) also includes owning or controlling, directly or indirectly, more than 50% of the shares or units in an entity;

Corporations Act means the *Corporations Act 2001*;

Correctly Rendered Invoice or CRI means an invoice that:

- (a) is correctly addressed and calculated in accordance with this Contract;
- (b) relates only to Goods and/or Services that have been accepted by the Agency in accordance with this Contract;
- (c) includes any number, name and phone number of the person specified in the Agency's address for notices;
- (d) is for an amount which, together with all other previously rendered CRIs, does not exceed the total Contract Fees and Allowances;
- (e) is a valid tax invoice in accordance with the GST Act;
- (f) where the Contract Fees are payable on a time and materials basis, details of the amount of time spent by each of the Contractor Personnel (including Specified Personnel and any Contractor Placement Staff) in performing or providing the Goods and/or Services; and
- (g) the Contract reference number specified in a Work Order;

Deed means the deed of standing offer between the Agency and the Contractor specified in Item B of the Work Order;

Eligible Data Breach has the same meaning as in the *Privacy Act 1988*;

Existing Material means all Material in existence prior to the Contract Start Date that is:

- (a) incorporated in;
- (b) supplied with, or as part of; or
- (c) required to be supplied with, or as part of,

the Contract Material and includes Material identified as Existing Material in Item O of the Work Order but excludes Agency Material;

External Administrator means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity;

Goods and/or Services means the goods, services, work, activities, functions and responsibilities to be performed or provided by the Contractor under this Contract including:

- (a) those specified in Item B of the Work Order;
- (b) those not specifically specified in Item B of the Work Order but which are reasonably related or incidental to, or reasonably required for the proper performance of this Contract; and
- (c) all Contract Material;

Government Agency means:

- (a) a ‘corporate Commonwealth entity’ or ‘Commonwealth company’ as defined in the *Public Governance, Performance and Accountability Act 2013*;
- (b) an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation;
- (c) a body established by the Commonwealth Parliament, either House of Parliament, the Governor-General or a Minister of State or the Commonwealth; or
- (d) any body that may exercise any of the powers of the Commonwealth under the Commonwealth Constitution,

whether acting directly or through an agent;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* and any applicable rulings of the Australian Taxation Office;

GST, GST Law, supply, input tax credit and other terms relevant to GST, have any meanings given in the GST Act;

Inappropriate Person means any person or organisation that is:

- (a) listed on one or more of the following lists:
 - (i) ‘Regulation 8 Consolidated List’ maintained by the Australian Government Department of Foreign Affairs and Trade; or
 - (ii) ‘Listing of Terrorist Organisations’ maintained by the Australian Government; or
- (b) non-compliant with its obligations under the *Workplace Gender Equality Act 2012* (the **WGE Act**) including those persons or organisations listed as non-compliant at <https://www.wgea.gov.au/about-legislation/complying-act> or any successor website;

Indigenous Procurement Policy means the policy of that name, as amended from time to time, available on the [Indigenous Procurement Website](https://www.dpmc.gov.au/sites/default/files/publications/indigenous_procurement_policy.pdf) at https://www.dpmc.gov.au/sites/default/files/publications/indigenous_procurement_policy.pdf or any successor website;

Information Commissioner has the meaning given in the *Australian Information Commissioner Act 2010*;

Insolvency Event means in respect of a person, any of the following:

- (a) it becomes insolvent within the meaning of section 95A, or is taken to have failed to comply with a statutory demand under section 459F(1), or must be presumed by a court to be insolvent under section 459C(2), or is the subject of a circumstance specified in section 461 (whether or not an application to court has been made under that section)

- or, if the person is a Part 5.7 body, is taken to be unable to pay its debts under section 585, of the Corporations Act;
- (b) except with the Agency's consent:
- (i) it is the subject of a Liquidation, or an order or an application is made for its Liquidation; or
- (ii) an effective resolution is passed or meeting summoned or convened to consider a resolution for its Liquidation;
- (c) an External Administrator is appointed to it or any of its assets or a step is taken to do so or its Related Body requests such an appointment;
- (d) if a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration;
- (e) if a trustee of a trust, it is unable to satisfy out of the assets of the trust the liabilities incurred by it as and when those liabilities fall due;
- (f) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate pursuant to the Bankruptcy Act;
- (g) any application (not withdrawn or dismissed within five (5) Business Days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
- (i) a moratorium of any debts of a person;
- (ii) a personal insolvency agreement;
- (iii) any other assignment, composition or arrangement (formal or informal) with a person's creditors;
- (iv) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee; or
- (v) any agreement or other arrangement of the type referred to in this paragraph (g) is ordered, declared or agreed to;
- (h) a person becomes an insolvent under administration (as defined in the Corporations Act);
- (i) an analogous or equivalent event to any listed above occurs in any jurisdiction; or
- (j) it stops or suspends payment to all or a class of creditors generally;

Intellectual Property Rights includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks and all goodwill in those marks) and domain names, registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, and all rights of a similar nature to any of these rights which may subsist in Australia or elsewhere and any application or right to apply for registration of such rights;

Interest means interest calculated at the 90 day bank-accepted bill rate (available from the

Reserve Bank of Australia);

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

Liquidation means:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or
- (b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them;

Material means documents, records, equipment, software (including source code and object code), goods, images, information, documented methodology, documented process and data stored by any means including all copies and extracts of the same, and including any deliverables, plans, reports, and the subject matter of any category of Intellectual Property Rights;

Moral Rights means the rights in Part IX of the *Copyright Act 1968*, and includes the following rights of an author of copyright Material:

- (a) the right of attribution of authorship;
- (b) the right of integrity of authorship; and
- (c) the right not to have authorship falsely attributed;

Official has the meaning specified in section 13 of the Public Governance, Performance and Accountability Act 2013;

Ombudsman means the office established under the Ombudsman Act 1976 and includes any other person that may, from time to time, perform the functions of that office;

Party mean a party to this Contract;

Personal Information has the meaning given in the Privacy Act 1988;

PGPA Rule means the Public Governance, Performance and Accountability (Establishing the Australian Digital Health Agency) Rule 2016;

Position Description means the position description that may be attached to a Work Order, or otherwise issued to the Contractor by the Agency, the key duties and requirements for a proposed Resource;

Privacy Commissioner has the meaning given in the Australian Information Commissioner Act 2010;

Protective Security Policy Framework or **PSPF** means the Australian Government's protective security requirements for the protection of its people, information and assets (which replaced the Commonwealth Protective Security Manual 2005), as amended or replaced from time to time;

Related Body means, regardless of any body's trustee or other capacity:

- (a) a body corporate which would be related under section 50 of the Corporations Act; or
- (b) an entity which Controls, is Controlled by, or is under common Control with, that body;

Resources means the individuals sourced by the Contractor to perform duties specified by the Agency, including Contractor Sourced Agency Employees and Contractor Placement Staff;

Service Levels means the service levels (if any) specified in Item B of the Work Order;

Service Rebate means an amount calculated in accordance with Item H of the Work Order which is payable by the Contractor to the Agency under clause 3.8;

Specified Personnel means the Contractor Personnel specified in Item L of the Work Order;

Web Content Accessibility Guidelines 2.1 means the Guidelines available at <http://www.w3.org/TR/WCAG20/> and successor websites;

WHS Legislation means the *Work Health and Safety Act 2011*, any regulations made under that act and any 'corresponding WHS law' within the meaning of section 4 of the *Work Health and Safety Act 2011* and Regulation 6A of the *Work Health and Safety Regulations 2011*;

Work Order means the order for Goods and/or Services executed by the Parties in accordance with clause 4.8 of the Deed that formed this Contract; and

World Wide Web Access: Disability Discrimination Act Advisory Notes, version 4.1 (2014) means the advisory notes released by the Australian Human Rights Commission available at [Disability Discrimination Act Advisory Notes](https://www.humanrights.gov.au/world-wide-web-access-disability-discrimination-act-advisory-notes-ver-41-2014) at <https://www.humanrights.gov.au/world-wide-web-access-disability-discrimination-act-advisory-notes-ver-41-2014> or any successor website.

1.2 In this Contract, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) another grammatical form of a defined word or expression has a corresponding meaning;
- (e) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (f) all references to dollars, A\$, \$A or \$ are to Australian dollars;
- (g) a reference to time is to Sydney, Australia time;
- (h) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (i) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
- (j) an uncertainty or ambiguity in the meaning of a provision of this Contract will not be interpreted against a Party just because that Party prepared the provision;
- (k) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local department or agency or other entity;
- (l) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended from time to time;

- (m) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (n) the term 'may' when used in the context of a right or remedy exercisable by the Agency means that the Agency may exercise that right or remedy in its sole and absolute discretion and the Agency has no obligation to the Contractor to do so unless expressly stated;
 - (o) a reference to the word including in any form is not to be construed or interpreted as a word of limitation;
 - (p) references to clauses are to clauses in this Contract and references to Annexures or Attachments are references to documents attached to this Contract; and
 - (q) to the extent that the Parties have not completed items in the Work Order, unless otherwise stated in the Work Order, that item will be taken to be 'not applicable' for the purpose of this Contract.
- 1.3 The laws of New South Wales apply to this Contract. The Parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales in respect of any dispute under this Contract.
- 1.4 This Contract records the entire agreement between the Parties in relation to its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.
- 1.5 This Contract may be executed in counterparts, each of which will be deemed to be an original and all of which, taken together, constitutes one and the same agreement. The Parties may exchange counterparts of executed copies of this Contract by electronic mail. The Parties agree that the electronic receipt of such executed counterparts will have the same effect as if the Parties had exchanged an original Contract executed by the Parties.
- 1.6 No variation of this Contract is binding unless agreed in writing between the Parties.
- 1.7 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.
- 1.8 A waiver of any provision of or right under this Contract must be in writing signed by the Party entitled to the benefit of that provision or right, and is effective only to the extent set out in any written waiver.
- 1.9 No waiver of a term or condition of this Contract will operate as a waiver of another breach of the same or of any other term or condition contained in this Contract.
- 1.10 If a Party does not exercise, or delays in exercising, any of its rights under this Contract or at Law, that failure or delay does not operate as a waiver of those rights.
- 1.11 A single or partial exercise by a Party of any of its rights under this Contract or at Law does not prevent the further exercise of any right.
- 1.12 The Contractor must not assign or transfer its rights or obligations under this Contract without prior approval in writing from the Agency.
- 1.13 The Contractor agrees not to consult with any person for the purposes of entering into an arrangement that will require novation of this Contract without first consulting the Agency.

2. TERM AND PROVISION OF GOODS AND/OR SERVICES

- 2.1 This Contract continues for the Contract Term unless terminated earlier in accordance with this Contract.
- 2.2 The Contractor must:
- (a) provide and perform the Goods and/or Services during the Contract Term;
 - (b) provide and perform the Goods and/or Services in accordance with this Contract, with due care and skill and in accordance with relevant best practice, including any applicable Australian Standards and any Commonwealth and industry standards and guidelines, Key Performance Indicators (KPIs) or Service Levels specified in Item D of the Work Order;
 - (c) ensure that the Goods and/or Services are fit for the purpose for which they are provided, and that the Goods are new and unused unless expressly provided to the contrary in Item B of the Work Order, and free of any security interest;
 - (d) ensure that any Contract Material which is to be placed on the Agency's website or the intranet, as part of the provision or performance of the Goods and/or Services, complies with the:
 - (i) Level AA accessibility requirements in the Web Content Accessibility Guidelines 2.0, and government requirements at <https://www.dta.gov.au/standard/> or any successor website; and
 - (ii) World Wide Web Access: Disability Discrimination Act Advisory Notes, version 4.1 (2014);
 - (e) liaise with the Agency, provide any information the Agency may reasonably require and comply with any reasonable directions of the Agency;
 - (f) ensure that it and its Contractor Personnel (including any Specified Personnel and Contractor Placement Staff), when carrying out their duties and performing work under this Contract, do not:
 - (i) cause any unreasonable or unnecessary disruption to the routines, procedures and responsibilities of the Agency; or
 - (ii) damage the reputation of the Agency or the Commonwealth more broadly in the community;
 - (g) meet with the Agency at the times set out in Item B of the Work Order (or as otherwise reasonably required by the Agency to discuss the provision of the Goods and/or Services). The Contractor must ensure that Specified Personnel are reasonably available to attend such meetings; and
 - (h) deliver to the Agency all deliverables, plans and reports specified in Item B of the Work Order.
- 2.3 The Contractor agrees (and must require its subcontractors to agree) not to make any public announcements in relation to the Goods and/or Services or this Contract without obtaining the Agency's approval in writing, except if required by Law or a regulatory body (including a relevant stock exchange) in which case the Contractor must, to the extent practicable, first consult with and take into account the reasonable requirements of the Agency.

- 2.4 The Contractor agrees that the Agency may reject the Goods and/or Services or any part of the Goods and/or Services (including any deliverables, plans or reports), within 30 calendar days after delivery, or such longer period specified at Item B of the Work Order, if the Goods and/or Services do not comply with the requirements of this Contract. If the Agency does not notify the Contractor of its rejection within 30 calendar days, or such longer period specified at Item B of the Work Order, the Agency will be taken to have accepted the Goods and/or Services, though the Agency may accept the Goods and/or Services sooner. Title to Goods transfers to the Agency only on the Agency's acceptance. If the Agency rejects the Goods and/or Services, the Agency must provide its reason for rejection and specify the remedy the Agency requires. No payment will be due for rejected Goods and/or Services until they are accepted by the Agency.
- 2.5 The Contractor acknowledges that:
- (a) the Agency collects or may come into possession of information concerning the Contractor that is either publicly available information or information obtained through the course of the Agency conducting its affairs;
 - (b) subject to clause 2.5(c), the Agency may use that information when considering the Contractor's ability to perform this Contract; and
 - (c) the Agency may consult with the Contractor if any information referred to under clause 2.5(a) is a cause of concern to the Agency.
- 2.6 Subject to clauses 13 and 15, no right or obligation in this Contract is to be read or understood as limiting the Contractor's rights to enter into public debate or criticism of the Agency or the Commonwealth, and their entities, officers, employees, other Officials or agents.
- 2.7 The Contractor must perform all necessary tasks and must comply with any reasonable directions of the Agency required to facilitate the smooth transition of provision of Goods and/or Services to the Agency with either an outgoing or incoming contractor, including where this Contract expires or is terminated pursuant to clauses 25 or 26.
- 3. FEES, ALLOWANCES AND SERVICE REBATES**
- 3.1 Subject to clauses 3 and 4, and acceptance of the Goods and/or Services, the Agency agrees to:
- (a) pay the Contract Fees in accordance with clause 4;
 - (b) pay the Allowances, if any, in accordance with clause 4; and
 - (c) provide the facilities and assistance, if any, specified in Item J of the Work Order.
- 3.2 The Agency will be entitled, in addition to any other right it may have, to withhold or reduce any payment of Contract Fees or Allowances until the Contractor has completed the provision of the Goods and/or Services to which the payment relates to the satisfaction of the Agency.
- 3.3 If an overpayment occurs at any time and for any reason (including where an invoice is found to have been incorrectly rendered after payment), the Agency may issue the Contractor with a written notice requiring repayment of the full amount of the overpayment.
- 3.4 The Contractor must pay to the Agency the full amount of the overpayment specified in the notice referred to in clause 3.3 in the manner specified in the notice, and within 20 Business Days of the date of the notice.

- 3.5 The Agency may recover the overpayment specified in the notice referred to in clause 3.3 from the Contractor by offsetting that overpayment against any amount subsequently due to the Contractor under this Contract.
- 3.6 If the Contractor fails to repay the full amount of an overpayment in accordance with a notice given pursuant to clause 3.3, the Agency may require that Interest be paid on the amount after the expiry of the 20 Business Days' notice referred to in clause 3.4, until the amount is paid to the Agency in full.
- 3.7 The Contractor must provide the Agency with an adjustment note if required by the GST Act, including where the Contractor repays to the Agency some or all of the Contract Fees or Allowances.
- 3.8 If specified in Item F of the Work Order, and to the extent that the Contractor is responsible for any failure to achieve a Service Level, the Contractor:
- (a) must pay to the Agency Service Rebates, the amount of which will be determined in accordance with Item H of the Work Order. The Parties agree that the amount of Service Rebates payable by the Contractor under this Contract will not exceed the total amount of the Contract Fees payable to the Contractor under this Contract;
 - (b) acknowledges that any Service Rebates calculated in accordance with Item H of the Work Order:
 - (i) represent a reduction in the Contract Fees to reflect the provision of a lower level of service than is required under this Contract;
 - (ii) are a genuine pre-estimate of the loss and damage the Agency will suffer as a result of the failure to achieve a Service Level; and
 - (iii) are an appropriate protection of the Agency's legitimate interests in relation to the performance of this Contract,and constitute an agreed amount by which the Contract Fees will be reduced;
 - (c) acknowledges that payment of Service Rebates under this Contract will be without prejudice to any other rights or remedies that the Agency may have against the Contractor under, or arising from, this Contract as a result of the Contractor's failure to achieve a Service Level; and
 - (d) will not be liable to pay any Service Rebates arising from the Contractor's failure to achieve a Service Level to the extent that failure arose as a result of:
 - (i) the Agency's failure to fulfil its obligations under this Contract; or
 - (ii) circumstances beyond the Contractor's reasonable control (other than lack of funds for any reason or any strike, lockout or labour disputes in respect of the Contractor only).

4. INVOICES AND PAYMENTS

- 4.1 The Contractor will issue the Agency with Correctly Rendered Invoices for payment in accordance with the GST Act and in the manner specified in Item K of the Work Order, any other invoicing requirements in other Items of the Schedule and clause 5, together with such supporting

documentation and other evidence reasonably required by the Agency to substantiate performance of this Contract by the Contractor.

- 4.2 The Agency will pay the Contractor within 30 calendar days after receipt of a CRI, or if this period ends on a day that is not a Business Day, payment is due on the next Business Day.
- 4.3 Payment of any CRI is not evidence that the obligations under this Contract are accepted, evidence of the value of the obligations performed by the Contractor or an admission of liability, but is payment on account only.
- 4.4 If the Contractor owes any amount to the Agency in connection with this Contract, the Agency may offset that amount, or part of it, against any amount which the Agency owes the Contractor from time to time, whether an obligation to pay any CRI or otherwise.

5. TAXES, DUTIES AND GOVERNMENT CHARGES

- 5.1 Subject to this clause 5, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Contract must be paid by the Contractor.
- 5.2 The provisions of this clause 5 in respect of GST apply where the Contractor is registered, or is required to be registered, for GST.
- 5.3 The Goods and/or Services and other supplies made by the Contractor under this Contract are 'taxable supplies' within the meaning of the GST Law.
- 5.4 The amounts payable by the Agency to the Contractor, as determined under clause 3, are stated inclusive of GST but must not include any amount which represents GST paid by the Contractor for which the Contractor may claim an input tax credit.
- 5.5 If and to the extent that, for any reason, the Goods and/or Services and other supplies made by the Contractor under this Contract are not 'taxable supplies' within the meaning of the GST Law or are not subject to GST in full for whatever reason, the GST inclusive Contract Fees and any other amounts payable to the Contractor:
- (a) will be reduced by 1/11th; and
 - (b) if those GST inclusive Fees or amounts have already been paid, the GST component must be immediately refunded by the Contractor to the Agency without demand.
- 5.6 If a payment to satisfy a claim or a right to claim under or in connection with this Contract gives rise to a liability to pay GST, the payer must also pay and indemnify the payee against the amount of that GST.
- 5.7 If a Party has a claim under or in connection with this Contract for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit). The Contractor will be presumed to be entitled to a full input tax credit for the purpose of this clause 5.7 unless it can demonstrate to the Agency's reasonable satisfaction why this is not the case.
- 5.8 If there is a change in the rate of GST applying to a 'taxable supply' within the meaning of the GST Law made under this Contract, from the point at which that change takes effect the consideration for that supply will be adjusted by increasing or decreasing the consideration so that the consideration received by the supplier after accounting for GST payable by it on the supply after

the change in rate (**GST exclusive consideration**) equals the GST exclusive consideration that would have been received by the supplier prior to the change in rate.

- 5.9 If a payment to be made under this Contract is calculated by reference to or as a percentage of another amount, that payment will be calculated by reference to or as a percentage of that amount excluding any GST component, unless expressly stated to the contrary. All references to amounts or revenues in formulas will be treated as a reference to GST exclusive amounts and revenues, unless expressly stated to the contrary.
- 5.10 If the Contractor does not provide the Agency with documentation containing the Contractor's valid ABN (or sufficient evidence of an exemption from the requirement to hold an ABN) prior to any payment being due under this Contract, the Agency may make such withholding from any such payment as required by applicable tax legislation at the time of the payment (including GST or any similar tax).

6. SUBCONTRACTORS

6.1 The Contractor must:

- (a) not subcontract the provision or performance of any part of the Goods and/or Services without the prior approval in writing of the Agency; and
- (b) ensure that the subcontractors, if any, specified in Item B of the Work Order will perform work in relation to the Goods and/or Services in accordance with this Contract and are approved by the Agency to do so.

6.2 The Agency may impose any terms and conditions it considers appropriate when giving its approval under clause 6.1(a).

6.3 Where a subcontractor specified in Item B of the Work Order or approved by the Agency under clause 6.1(a) is unable to perform the work, the Contractor must notify the Agency immediately.

6.4 Where clause 6.3 applies, the Agency may request the Contractor to secure a replacement subcontractor acceptable to the Agency at no additional cost and at the earliest opportunity, and the Contractor must provide details of each replacement subcontractor as required by Item B of the Work Order.

6.5 If the Contractor does not comply with any request made under clause 6.4, the Agency may terminate this Contract in accordance with the provisions of clause 21.

6.6 In respect of subcontractors listed in Item B of the Work Order or approved by the Agency under clause 6.1(a), the Contractor must ensure that:

- (a) the subcontract facilitates compliance by the Contractor with its obligations under this Contract;
- (b) the subcontract does not conflict with or detract from the rights and entitlements of the Agency under this Contract;
- (c) the other party to the subcontract has the necessary relevant expertise and the appropriate types and amounts of insurance to perform work in relation to the Goods and/or Services;
- (d) the other party to the subcontract has consented to the public disclosure of its name in connection with the provision of the Goods and/or Services;

- (e) it informs the other party to the subcontract that its participation in the subcontract to facilitate the Contractor's compliance with its obligations under this Contract may be publicly disclosed;
- (f) the subcontract contains all the relevant terms of this Contract, including those relating to compliance with the Law, subcontracting, intellectual property rights, security, audit and access, privacy, confidentiality, representations, warranties and indemnities, disclosure and termination, and provides that the Contractor has a right to terminate the subcontract immediately in the event of this Contract being terminated;
- (g) the other party to the subcontract acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* and subject to investigation by the Ombudsman under that Act and that the Agency will not be liable for the cost of any such investigation by the Ombudsman in connection with the subject matter of the subcontract or the subject matter of this Contract;
- (h) the other party to the subcontract is prohibited from further subcontracting the provision of the Goods and/or Services without the prior written approval of the Agency; and
- (i) if requested, the Contractor will promptly provide a copy of the relevant subcontract to the Agency.

7. SPECIFIED PERSONNEL AND OTHER PERSONNEL

- 7.1 The Contractor agrees that the Specified Personnel will perform the activities specified in Item L of the Work Order.
- 7.2 Where Specified Personnel are unable to perform the activities, the Contractor must notify the Agency immediately.
- 7.3 The Agency may at any time request the Contractor to remove Contractor Personnel (including Specified Personnel or any Contractor Placement Staff) from work in relation to the Goods and/or Services.
- 7.4 Where clauses 7.2 or 7.3 apply, the Agency may request the Contractor to provide replacement personnel acceptable to the Agency at no additional cost and at the earliest opportunity.
- 7.5 If the Contractor does not comply with any request made under clause 7.3 or clause 7.4, the Agency may terminate this Contract in accordance with the provisions of clause 26.
- 7.6 The Contractor is responsible for all wages, salaries, superannuation, other payments and entitlements payable or to be provided to the Contractor Personnel (including the Specified Personnel and Contractor Placement Staff) and must fully comply with all relevant Laws and other Government requirements in relation to its Contractor Personnel, including, without limitation, labour and industrial relation Laws and Laws relating to working conditions, salary, wages, the payment of any relevant Tax, 'pay as you go' or other income tax remissions, and any other amounts, remissions allowances including those under any industrial awards or agreements relevant to the Contractor Personnel. Upon the Agency's request, the Contractor must provide such evidence as the Agency may require in relation to, and otherwise demonstrate to the Agency that it has complied with these obligations.
- 7.7 Clause 7.6 survives the expiration or earlier termination of this Contract.

8. SUITABILITY OF RESOURCES

- 8.1 The Contractor must ensure that all Resources provided to the Agency in the performance of the Goods and/or Services:
- (a) have the degree of skill, care and diligence required for the role;
 - (b) are capable of performing the duties and obligations required or contemplated in the relevant Position Description;
 - (c) are properly qualified and adequately experienced to perform the duties allocated to them;
 - (d) are Australian citizens;
 - (e) meet all required checks, clearances, licencing, national vetting and approval requirements specified by the Agency before they commence in their role;
 - (f) are appropriately trained in the performance of the role they will be providing at the Agency, including in all relevant legal obligations and work health and safety requirements;
 - (g) behave with integrity and in an ethical manner.
- 8.2 The Contractor must ensure that Contractor Placement Staff will exercise the care and diligence required for the role they are performing for the term of their placement with the Agency.

9. RESPONSIBILITY OF CONTRACTOR

- 9.1 The Contractor agrees to be fully responsible for the provision and performance of the Goods and/or Services and for ensuring compliance with the requirements of this Contract, and will not be relieved of that responsibility because of any:
- (a) involvement by the Agency in the provision and performance of the Goods and/or Services;
 - (b) payment made to the Contractor on account of the provision and performance of the Goods and/or Services;
 - (c) subcontracting of any aspect of the provision and performance of the Goods and/or Services; or
 - (d) acceptance by the Agency of any Contractor Personnel (including Specified Personnel).

10. AGENCY MATERIAL

- 10.1 The Contractor has no right, title or interest in any Agency Material.
- 10.2 The Agency agrees to provide to the Contractor any Agency Material specified in Item M of the Work Order.
- 10.3 To the extent that the Contractor needs to use any of the Agency Material for the purpose of performing its obligations under this Contract, the Agency grants to the Contractor for the Contract Term a royalty-free, non-exclusive, non-transferable, revocable licence (including a limited right to sub-license to a subcontractor specified in Item B of the Work Order or approved by the Agency under clause 6.1(a)) to use, reproduce and adapt Agency Material during the Contract Term solely for the purposes of this Contract.
- 10.4 To the extent that the Contractor develops or creates any improvements, modifications, derivatives or enhancements of Agency Material as part of the provision of the Goods and/or

Services, such Material forms part of the Agency Material and the Intellectual Property Rights in such Material automatically vest in the Agency upon its creation. Accordingly, the Contractor will undertake all acts, and execute all documents reasonably necessary to give effect to this clause 10.

- 10.5 The Contractor must ensure that all Agency Material is used strictly in accordance with any conditions or restrictions set out in Item N of the Work Order, and any direction by the Agency.
- 10.6 The Contractor must:
- (a) secure all copies of any Agency Material within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or termination of this Contract, deliver to the Agency or, in accordance with the Agency directions, erase or otherwise deal with all such copies of the Agency Material,
- unless any provision to the contrary is set out in Item P of the Work Order.
- 10.7 This clause 10 survives the expiration or earlier termination of this Contract.

11. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

- 11.1 This clause 11 does not affect the ownership of Intellectual Property Rights in any Existing Material or Agency Material.
- 11.2 The ownership model for Intellectual Property Rights is set out in Item D of the Work Order. If no ownership model is selected, clauses 11.3 to 11.8 apply and clauses 11.9 to 11.13 in their entirety do not apply to this Contract.
- 11.3 If specified in Item D of the Work Order, Intellectual Property Rights in all Contract Material created under this Contract vest in the Agency.
- 11.4 The Contractor grants, or undertakes to arrange for a third party to grant, to the Agency and the Commonwealth a perpetual, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence (including the right to sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, distribute, communicate, commercialise and exploit the Existing Material and otherwise exercise all Intellectual Property Rights in any such Existing Material in conjunction with the Contract Material.
- 11.5 To the extent that the Contractor needs to use any of the Contract Material for the purpose of performing its obligations under this Contract, the Agency grants to the Contractor for the Contract Term a royalty-free, non-exclusive, non-transferable, revocable licence (including a limited right to sub-licence to a subcontractor specified in Item B of the Work Order or approved by the Agency under clause 6.1(a)) to use and communicate such Material, solely for the purposes of this Contract.
- 11.6 The Contractor warrants and represents that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Contract Material and the Existing Material in the manner provided for in this clause 11, and that the provision of the Goods and/or Services and any Contract Material and Existing Material under this Contract, and its use by the Agency or the Commonwealth in accordance with this Contract, will not infringe any third party's Intellectual Property Rights or Moral Rights of any person.

- 11.7 The Contractor agrees to create, execute or sign any document which may be necessary to transfer the rights and interests specified in this clause 11 to the Agency.
- 11.8 The Contractor must:
- (a) secure all Contract Material within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or earlier termination of this Contract, to deliver to the Agency or, in accordance with the Agency directions, erase or otherwise deal with the Contract Material, unless any provision to the contrary is set out in Item P of the Work Order.
- 11.9 If specified in Item D of the Work Order, the Contractor owns Intellectual Property Rights in the Contract Material created under this Contract.
- 11.10 The Contractor grants to the Agency and the Commonwealth a perpetual, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence to exercise the Intellectual Property Rights in the Contract Material for any purpose. The licence granted to the Agency under this clause 9 includes a right to sub-licence those rights, including to the public under an open access licence.
- 11.11 The Contractor grants, or undertakes to arrange for a third party to grant, to the Agency and the Commonwealth a perpetual, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence (including the right to sub-licence) to use, reproduce, modify, adapt, publish, perform, broadcast, distribute, communicate, commercialise and exploit the Existing Material and otherwise exercise all Intellectual Property Rights in any such Existing Material in conjunction with the Contract Material.
- 11.12 The Contractor warrants and represents that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property Rights in the Contract Material and Existing Material in the manner provided for in this clause 11, and that the provision of the Goods and/or Services and any Contract Material and Existing Material under this Contract, and its use by the Agency or the Commonwealth in accordance with this Contract, will not infringe any third party's Intellectual Property Rights or the Moral Rights of any person.
- 11.13 If requested by the Agency, the Contractor agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 11.
- 11.14 This clause 11 survives the expiration or earlier termination of this Contract.
12. **MORAL RIGHTS**
- 12.1 The application of Moral Rights under this Contract is set out in Item E of the Work Order. If no Moral Rights model is selected, clause 12.2 applies and clause 12.3 in its entirety does not apply to this Contract.
- 12.2 For the purposes of this clause 12, the **Specified Acts** relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Agency or the Commonwealth:
- (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Contract Material or Existing Material with or without attribution of authorship;

- (b) supplementing the Contract Material or Existing Material with any other Material;
- (c) using the Contract Material or Existing Material in a different context to that originally envisaged; and
- (d) falsely attributing authorship of any Contract Material or Existing Material, or any content in the Contract Material or Existing Material.

12.3 For the purposes of this clause 12, the **Specified Acts** relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Agency or the Commonwealth:

- (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Contract Material or Existing Material with or without attribution of authorship;
- (b) supplementing the Contract Material or Existing Material with any other Material; and
- (c) using the Contract Material or Existing Material in a different context to that originally envisaged,

but does not include false attribution of authorship.

12.4 To the extent permitted by applicable Laws and for the benefit of the Agency and the Commonwealth, the Contractor must:

- (a) give, where the Contractor is an individual; and
- (b) use its best endeavours to ensure that each of the Contractor Personnel used by the Contractor in the production or creation of the Contract Material or Existing Material gives, genuine consent in writing to the use of the Contract Material or Existing Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights.

12.5 This clause 12 survives the expiration or earlier termination of this Contract.

13. DISCLOSURE OF INFORMATION

13.1 Subject to clause 13.5, the Contractor must not disclose any Confidential Information relating to this Contract or the provision and performance of the Goods and/or Services without prior approval in writing from the Agency.

13.2 The Agency may impose any conditions it considers appropriate when giving its approval under clause 13.1 and the Contractor agrees to comply with these conditions.

13.3 The Agency may at any time require the Contractor to give, and to arrange for Contractor Personnel (including any Contractor Placement Staff) to give, undertakings in writing in a form required by the Agency (including as specified at Schedule 7 of the Deed), relating to the non-disclosure of the Agency's Confidential Information.

13.4 If the Contractor receives a request under clause 13.3, it must promptly arrange for all such undertakings to be given.

13.5 The obligations on the Contractor under this clause 13 will not be taken to have been breached where that Confidential Information is required by Law to be disclosed. If the Contractor is so required to disclose any information by Law, it must, before disclosing it:

- (a) notify the receiving person that the information is Confidential Information;
- (b) where possible, not provide the information unless the receiving person agrees to use the information only for the purpose for which it has been given to the receiving person;
- (c) advise the Agency of the person to whom the Confidential Information is to be disclosed; and
- (d) advise the Agency of the information to be disclosed.

13.6 Property in any copy of Confidential Information of the Agency (in the form of a document, article or removable medium) vests or will vest in the Agency.

13.7 The Contractor agrees:

- (a) to secure all Confidential Information within its control against loss and unauthorised use or disclosure; and
- (b) on the expiration or earlier termination of this Contract, to deliver to the Agency or, in accordance with the Agency directions, erase or otherwise deal with all Confidential Information,

unless any provision to the contrary is set out in Item P of the Work Order.

13.8 Unless otherwise specified in clause 14 and Item S of the Work Order, the Agency gives no undertaking to treat Contractor information or this Contract (including its terms and conditions) as confidential. The Contractor acknowledges that the Agency may disclose information relevant to this Contract, or this Contract itself, to any person, including:

- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
- (b) if required in connection with legal proceedings;
- (c) for public accountability reasons, including disclosure on request to other Government Agencies, and a request for information by parliament or a parliamentary committee or the Minister with portfolio responsibility for the Agency;
- (d) to the Agency's third party service providers for the purposes of providing or performing goods and/or services to, or on behalf of, the Agency; or
- (e) for any other requirements of the Agency.

13.9 Nothing in this clause 13 or clause 14 limits the Contractor's obligations under clause 15, clause 16 or clause 21.

13.10 This clause 13 survives the expiration or earlier termination of this Contract.

14. **CONTRACTOR CONFIDENTIAL INFORMATION**

14.1 The Agency agrees that the information specified in Item S of the Work Order (**Contractor Confidential Information**) meets the requirements of the Commonwealth's confidentiality guidelines, and agrees to treat the information as confidential unless it is entitled to disclose it in accordance with this Contract.

14.2 The obligations on the Agency under clause 14.1 will not be taken to have been breached to the extent that Contractor Confidential Information:

- (a) is disclosed by the Agency to its Accountable Authority (as defined in the *Public Governance, Performance and Accountability Act 2013*), Advisers, officers or employees or to other Government Agencies solely in order to comply with obligations, or to exercise rights, under this Contract or to seek advice in relation to this Contract;
- (b) is disclosed to the Agency's internal management personnel, solely to enable effective management or auditing of its activities;
- (c) is disclosed by the Agency to its responsible Minister;
- (d) is disclosed by the Agency in response to a request by a House or a Committee of the Parliament of the Commonwealth;
- (e) is necessary for the Agency to disclose to ensure proper administration;
- (f) is necessary to allow the Agency's third party service providers to discharge their obligations to the Agency;
- (g) is shared within the Agency or within another Government Agency, including the Department of Health, where this serves the Agency's or the Commonwealth's legitimate interests;
- (h) is disclosed by the Agency to comply with its obligations under section 69, or any other applicable provision of, the PGPA Rule;
- (i) is authorised or required by Law to be disclosed;
- (j) is disclosed as agreed with the Contractor;
- (k) is disclosed by the Agency to the Agency's insurers (including Comcover or Comcare); or
- (l) is in the public domain otherwise than due to a breach of this clause 14.

14.3 Notwithstanding clause 14.1, the Agency retains the right to disclose any other information which is not Contractor Confidential Information which is either contained in this Contract, including its terms and conditions, or used for the purposes of the Contract.

15. ACCESS TO DOCUMENTS

15.1 In this clause 15, **document** and **Commonwealth contract** have the same meaning as in the *Freedom of Information Act 1982*.

15.2 This clause 15 only applies if this is a Contract which meets the definition of Commonwealth contract.

15.3 Where the Agency has received a request for access to a document created by or in the possession of the Contractor or any subcontractor that relates to the performance of this Contract (and not to the entry into this Contract), the Agency may at any time by written notice require the Contractor to provide the document to the Agency and the Contractor must, at no additional cost to the Agency, promptly comply with the notice.

15.4 Section 69 of the PGPA Rule specifies circumstances in which certain information, documents or reports are to be provided to State and Territory Health Ministers by the Agency. The Contractor must ensure it does not do, and none of its subcontractors do or omit to do, anything that would hinder or prevent the Agency from complying with its obligations under section 69 of the PGPA

Rule. The Contractor and subcontractors will provide any information, documents or reports in their possession in order for the Agency to so comply with section 69 of the PGPA Rule.

15.5 The Contractor must include in any subcontract relating to the performance of this Contract provisions that will enable the Contractor to comply with its obligations under this clause 14.

16. **PROTECTION OF PERSONAL INFORMATION AND GOVERNMENT RELATED IDENTIFIERS**

16.1 This clause 16 applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Goods and/or Services under this Contract.

16.2 In this clause 16, the terms:

- (a) agency;
- (b) contracted service provider;
- (c) registered APP code or RAC;
- (d) Australian Privacy Principle or APP; and
- (e) Government Related Identifier,

have the same meaning as they have in the *Privacy Act 1988* (the **Privacy Act**) and **subcontract** and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.

16.3 The Contractor acknowledges that it may be treated as a contracted service provider and must in respect of the provision of the Goods and/or Services under this Contract:

- (a) use or disclose Personal Information obtained during the course of providing the Goods and/or Services under this Contract, only for the purposes of this Contract;
- (b) maintain reasonable safeguards against loss, unauthorised access, use, modification or disclosure and other misuse of Personal Information held in connection with this Contract;
- (c) not do any act or engage in any practice which if done or engaged in by an agency would be a breach of an APP;
- (d) notify individuals whose Personal Information the Contractor holds that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner, who has power to award compensation against the Contractor in appropriate circumstances;
- (e) comply with the obligations contained in the APPs that apply to the Contractor;
- (f) not use or disclose Personal Information or engage in an act or practice that would breach an APP or a RAC (whichever is applicable to the Contractor), unless the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the APP or RAC (whichever is applicable to the Contractor);
- (g) comply with any request under section 95C of the Privacy Act;
- (h) immediately notify the Agency if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in or referred to in this clause 16, whether by the Contractor or any subcontractor;

- (i) not use or disclose any Personal Information, obtained from the Agency, for the purposes of direct marketing;
 - (j) not disclose or transfer any Personal Information, obtained from the Agency, to a person who is not in Australia or an external Territory except as permitted in Item V of the Work Order;
 - (k) comply with any directions, guidelines, determinations or recommendations of the Information Commissioner or Privacy Commissioner to the extent that they are consistent with the requirements of this clause 16; and
 - (l) ensure that any Contractor Personnel who are required to deal with Personal Information for the purposes of this Contract are made aware of the obligations of the Contractor set out in this clause 16.
- 16.4 If the Contractor becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Contract or its provision of the Goods and/or Services, the Contractor agrees to:
- (a) notify the Agency in writing as soon as possible, which must be no later than within three (3) days of becoming aware; and
 - (b) unless otherwise directed by the Agency, carry out an assessment in accordance with the requirements of the *Privacy Act 1988*.
- 16.5 Where the Contractor is aware that there are reasonable grounds to believe there has been, or where the Agency notifies the Contractor that there has been, an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Contract or its provision of the Goods and/or Services, the Contractor must:
- (a) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
 - (b) unless otherwise directed by the Agency, take all other action necessary to comply with the requirements of the *Privacy Act 1988*; and
 - (c) take any other action as reasonably directed by the Agency.
- 16.6 In assessing whether an Eligible Data Breach may have occurred, the Contractor must have regard to any relevant guidelines, resources or information developed and made available by the Office of the Australian Information Commissioner in relation to Eligible Data Breaches.
- 16.7 The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract imposes on the subcontractor the same obligations as the Contractor has under this clause 16, including the requirement in relation to subcontracts.
- 16.8 The Agency may at any time require the Contractor to give, and to arrange for Contractor Personnel (including any Contractor Placement Staff) to give, undertakings in writing in a form required by the Agency in relation to the non-disclosure of Personal Information.
- 16.9 If the Contractor receives a request under clause 16.8, it must promptly arrange for all such undertakings to be given.
- 16.10 The Contractor indemnifies the Agency in respect of any loss, liability or expense suffered or incurred by the Agency which arises directly or indirectly from a breach of any of the obligations of

the Contractor under this clause 16, or a subcontractor under the subcontract provisions referred to in clause 16.7.

- 16.11 The Contractor's obligations under this clause 16 are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or Australian Privacy Principles contained in, authorised by or registered under any Law, including any such privacy codes or principles that would apply to the Contractor but for the application of this clause 16.
- 16.12 To the extent that the Contractor has access to or handles any Government Related Identifier in connection with this Contract, the Contractor must only use and disclose the Government Related Identifier to the extent that is necessary for the Contractor to provide the Goods and/or Services or otherwise perform its obligations under this Contract and only as permitted in Item U of the Work Order.
- 16.13 This clause 16 survives the expiration or earlier termination of this Contract.

17. COMPLIANCE WITH LAWS AND POLICIES

- 17.1 The Contractor must, in carrying out this Contract, comply with all Laws and any relevant policies, including:
- (a) the *Crimes Act 1914*;
 - (b) the *Racial Discrimination Act 1975*;
 - (c) the *Sex Discrimination Act 1984*;
 - (d) the *Age Discrimination Act 2004*;
 - (e) the *Disability Discrimination Act 1992*;
 - (f) the *Charter of United Nations Act 1945* and the *Charter of United Nations (Dealing with Assets) Regulations 2008*;
 - (g) the *Archives Act 1983*;
 - (h) the *Privacy Act 1988*;
 - (i) the *Freedom of Information Act 1982*;
 - (j) the *Criminal Code Act 1995*;
 - (k) the *Public Interest Disclosure Act 2013*;
 - (l) the *My Health Record Act 2012*;
 - (m) the *Healthcare Identifiers Act 2010*;
 - (n) any work health and safety legislation applicable to the Contractor;
 - (o) the Australian Government's Lobbying Code of Conduct;
 - (p) any fraud control guidelines issued by the Australian Government Department of Finance from time to time; and
 - (q) any other policies notified to the Contractor in writing or listed in Item F of the Work Order.

- 17.2 The Contractor acknowledges that under section 137.1 of the Schedule to the *Criminal Code Act 1995*, giving false or misleading information to the Agency or the Commonwealth is a serious offence.
- 17.3 The Contractor agrees, when using the Agency’s premises or facilities, to:
- (a) comply with, and ensure its officers, employees, Officials, agents, Contractor Placement Staff and subcontractors comply with, all reasonable directions and procedures relating to work health, safety and security in operation at those premises or in regard to those facilities, whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances; and
 - (b) ensure that any Material and property (including security related devices and clearances) provided by the Agency for the purposes of this Contract are protected at all times from unauthorised use, access, use by third parties, misuse, damage and destruction and is returned as directed by the Agency.
- 17.4 Without limiting the effect of clause 28, the Contractor must comply with, and require Contractor Personnel (including any Contractor Placement Staff) to comply with, the behaviours specified in:
- (a) the Australian Digital Health Agency Code of Conduct (the **Code**) as if the Contractor and those Contractor Personnel were employees as defined in the Code; and
 - (b) the general duties of Officials under sections 25-29 of the *Public Governance, Performance and Accountability Act 2013* as if the Contractor and those Contractor Personnel were Officials.
- 17.5 In this clause 17.5:
- Letter of Compliance** refers to a letter issued by the Workplace Gender Equality Agency which indicates compliance by a Relevant Employer with the *Workplace Gender Equality Act 2012* (the **WGE Act**); and
- Relevant Employer** has the same meaning as it has in the WGE Act.
- (a) This clause 17.5 applies only to the extent that the Contractor is a Relevant Employer.
 - (b) The Contractor must comply with its obligations, if any, under the WGE Act.
 - (c) If the Contractor become non-compliant with the WGE Act during the Contract Term, it must notify the Agency in accordance with clause 32.
 - (d) If the Contract Term exceeds 18 months, the Contractor must provide a current Letter of Compliance to the Agency within 18 months from the Contract Start Date and, following this, annually.
 - (e) Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.

18. INDIGENOUS PROCUREMENT POLICY

- 18.1 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see the Indigenous Procurement Policy for further information).
- 18.2 The Contractor must use its reasonable endeavours to increase its:

- (a) purchasing from Indigenous enterprises; and
- (b) employment of Indigenous Australians,

in the delivery of the Goods and/or Services as specified in the Work Order.

18.3 Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a subcontractor or use of Indigenous enterprises in the Contractor's supply chain.

18.4 The Contractor must, on request of the Agency, provide such written reports and evidence of its compliance with this clause 18 every year during the Contract Term.

18.5 In this clause 18, the term **Indigenous enterprise** has the meaning given in the Indigenous Procurement Policy.

19. **CONFLICT OF INTEREST**

19.1 The Contractor represents and warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no Conflict exists or is likely to arise in the performance of obligations under this Contract by the Contractor or the Contractor Personnel.

19.2 If, during the Contract Term, a Conflict arises, or appears likely to arise, in respect of the Contractor or any of the Contractor Personnel, the Contractor must:

- (a) notify the Agency immediately in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps the Contractor proposes to take to resolve or otherwise deal with the Conflict; and
- (b) take such steps as have been proposed by the Contractor or, take such steps as the Agency may reasonably require to resolve or otherwise deal with the Conflict.

19.3 If the Contractor fails to notify the Agency under this clause 19 or is unable or unwilling to resolve or deal with the Conflict as required, the Agency may terminate this Contract in accordance with the provisions of clause 26.

19.4 The Contractor agrees that it will not, and will use its best endeavours to ensure that any Contractor Personnel do not, engage in any activity or obtain any interest during the course of this Contract that is likely to conflict with or restrict the Contractor in providing the Goods and/or Services to the Agency fairly and independently.

20. **SECURITY**

20.1 The Contractor must, and must ensure that the Contractor Personnel, comply with:

- (a) all relevant requirements of the PSPF and its Protective Security Protocols (Personnel security, Information security and Physical security), including the PSPF Protective security governance guidelines – Security of outsourced services and functions;
- (b) the requirements of the Agency's protective policies and procedures under the PSPF, including as specified in Item W of the Work Order;
- (c) any additional security requirements specified in Item W of the Work Order; and
- (d) any other security requirements that are notified in writing by the Agency to the Contractor from time to time, including any changes to the requirements referred to in clauses 20.1(a)

to 20.1(c). Such other security requirements must be complied with from the date specified in the notice, or if none is specified, within five Business Days of receipt of the notice.

20.2 The Contractor acknowledges and agrees that:

- (a) it must not, and must not permit any Contractor Personnel, to access security classified information unless the individual concerned has a security clearance to the appropriate level and the need-to-know, and will prevent access by any such individual whose security clearance has lapsed or been revoked or who no longer requires such access;
- (b) it must provide written notification to the Agency immediately upon becoming aware of any unauthorised access to security classified information and the extent and nature of that access (whether incidental access, or by any of the Contractor Personnel), and must comply with any reasonable directions of the Agency in order to rectify the security incident; and
- (c) it must, and must ensure that the Contractor Personnel, store and handle security classified information and resources in premises and facilities that meet the minimum standards set by the Commonwealth for storage and handling of such information and/or resources, as applicable, of the relevant security classification level.

20.3 The Contractor acknowledges and agrees that:

- (a) if and when requested by the Agency, it, and the Contractor Personnel, must promptly execute a declaration of interest and deed of non-disclosure, in a form reasonably required by the Customer, relating to the use and non-disclosure of official information in connection with this Contract;
- (b) it must promptly provide written notification and disclose to the Agency any conflict of interest affecting it, or the Contractor Personnel, that may impact on security in the performance of the Contractor's obligations with respect to official information under this Contract;
- (c) it must promptly inform, and keep informed, the Contractor Personnel in respect of all of the Agency's security requirements, and the security obligations of the Contractor under this Contract, including that the obligation to maintain confidentiality of official information is ongoing (notwithstanding termination or expiry of this Contract or their involvement with it);
- (d) it must, and must ensure that the Contractor Personnel, have and use systems, that meet the designated information security standards under the Australian Government Information Security Manual, for the electronic processing, storage, transmission and disposal of official information;
- (e) it must, and must ensure that the Contractor Personnel, provide written notification to the Agency immediately of any actual or suspected security incident, security infringement, security violation or security breach in connection with this Contract, including where it may impact upon the provision of the Goods and/or Services, or official information held by or in the control of the Contractor; and
- (f) on termination or expiry of this Contract it must, and must ensure that the Contractor Personnel:
 - (i) delete all official information from their respective ICT systems; and

- (ii) return all the Agency resources and assets to the Agency,

except to the extent that the Law requires it to be retained by them, in which event the retained information, resource or asset continues to be subject to all security requirements under this Contract.

20.4 The Contractor acknowledges and agrees that:

- (a) upon reasonable written notice from the Agency, it must ensure that each of the Contractor Personnel (including any Contractor Placement Staff) hold and maintain a security clearance at the level and for the period as notified by the Agency to the Contractor, from time to time; and
- (b) unless otherwise specified in Item W of the Work Order, it is responsible for all costs associated with obtaining and maintaining security clearances for the Contractor Personnel.

20.5 In this clause 20:

- (a) regardless of whether or not the first letter of any word is capitalised, 'asset', 'Australian Government Information Security Manual', 'confidentiality', 'conflict of interest', 'ICT system', 'information security', 'need-to-know', 'official information', 'personnel security', 'physical security', 'protective security', 'resources', 'security classified information', 'security breach', 'security clearance' and 'security incident', have the meaning given to them in the PSPF Australian Government protective security policy framework – glossary of security terms; and
- (b) an obligation of the Contractor under any of clauses 20.1, 20.2, 20.3 or 20.4 is additional to and does not affect nor derogate from the obligations of the Contractor under:
 - (i) one or more of the other of those clauses; or
 - (ii) any other provision of this Contract.

21. ACCOUNTABILITY AND ACCESS

21.1 The Contractor must give to:

- (a) the Auditor-General or his/her delegate;
- (b) the Privacy Commissioner or his/her delegate;
- (c) the Information Commissioner or his/her delegate;
- (d) the Ombudsman or his/her delegate; and
- (e) any persons authorised in writing by the Agency,

(referred to in this clause 21 collectively as **those permitted**) access to the Contractor Personnel and to premises:

- (f) at which Materials associated with this Contract are stored; or
- (g) work associated with this Contract is undertaken,

in order for those permitted to be able to inspect and copy Material for purposes associated with this Contract or any review of performance under this Contract, or conduct audits relevant to the performance of the Contractor's obligations.

- 21.2 The rights referred to in clause 21.1 are, wherever practicable, subject to:
- (a) the provision of reasonable prior notice (except where there is an actual or apprehended breach of the Law);
 - (b) access being sought during reasonable times (except where the Agency believes there is an actual or apprehended breach of the Law); and
 - (c) the Contractor's reasonable security procedures.
- 21.3 The Contractor must provide all reasonable assistance requested by the Agency in respect of any inquiry into or concerning the Goods and/or Services or this Contract, including providing access to its computer hardware, software and equipment to the extent necessary to exercise the rights under clause 21.1.
- 21.4 Without limitation to the generality of clause 21.3:
- (a) the assistance to be provided by the Contractor under clause 21.3 will include, as appropriate, the provision of Material, and making available relevant Contractor Personnel to provide information or answer questions on any matters relevant to or arising from this Contract or the provision or performance of the Goods and/or Services which might reasonably be expected to be within the knowledge of the Contractor; and
 - (b) an inquiry referred to in clause 21.3 will include any administrative or statutory review, audit or inquiry (whether within or external to the Agency), any request for information directed to the Agency, and any inquiry conducted by Parliament or any Parliamentary committee.
- 21.5 The Agency will endeavour to notify the Contractor as early as possible of any assistance required under clause 21.3, provided always that the Contractor acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.
- 21.6 The requirement for access under this clause 21 does not in any way reduce the responsibility of the Contractor to perform its obligations in accordance with this Contract.
- 21.7 The Contractor must ensure that any subcontract entered into for the purpose of this Contract contains an equivalent clause permitting those permitted to have access as specified in this clause 21.
- 21.8 Nothing in this Contract limits or restricts in any way any duly authorised function, power, right or entitlement of the Auditor-General, the Ombudsman, the Privacy Commissioner, the Information Commissioner or their respective delegates. The rights of the Agency under this Contract are in addition to any other duly authorised power, right or entitlement of the Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner, the Information Commissioner or their respective delegates.
- 21.9 This clause 21 survives the expiration or earlier termination of this Contract for a period of seven years.

22. INDEMNITY AND LIABILITY

- 22.1 To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Contractor under or in connection with this Contract.
- 22.2 The Contractor indemnifies the Agency, its officers, employees, other Officials and agents (each an **Indemnified Person**) from and against any:
- (a) loss or liability incurred by the Indemnified Person;
 - (b) loss of or damage to property of the Indemnified Person; and
 - (c) loss or expense incurred by the Indemnified Person in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by an Indemnified Person, arising in connection with:
 - (d) any act or omission by the Contractor or the Contractor Personnel in connection with this Contract, where there was fault (including any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense;
 - (e) any breach by the Contractor of its obligations, representations or warranties under this Contract; or
 - (f) any claim that the provision of the Goods and/or Services, Existing Material or Contract Material infringes the Intellectual Property Rights of any person; or
 - (g) any claim for any payments or entitlements referred to in clause 7.6.
- 22.3 The Contractor's liability to indemnify an Indemnified Person under clause 22.2 will be reduced proportionately to the extent that any negligent or other tortious act or omission of the Indemnified Person contributed to the relevant liability, loss, damage, or expense.
- 22.4 The right of the Indemnified Person to be indemnified under this clause 22:
- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by law; and
 - (b) does not entitle the Indemnified Person to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.
- 22.5 The Contractor agrees that the Agency will be taken to be acting as agent or trustee for and on behalf of its officers, Officials, employees and agents from time to time.
- 22.6 If an Aggregate Liability amount is included at Item B of the Work Order, subject to clause 22.7, and to the extent permitted by Law, the Contractor's aggregate liability arising under this Contract is limited to that amount.
- 22.7 Clause 22.6 does not apply to any claim, liability, loss, damage or expense incurred as a result of or in connection with
- (a) personal injury (including sickness and death);
 - (b) loss of, or damage to, tangible property;
 - (c) an infringement of Intellectual Property Rights;

- (d) a breach of any obligation of confidentiality, security requirement or privacy (including a breach of any of the obligations under clauses **Error! Reference source not found.**, **Error! Reference source not found.** and **Error! Reference source not found.**); or
- (e) any breach of statute or any fraudulent or wilfully wrong act or omission including any act or omission that constitutes repudiation of this Deed.

22.8 This clause 22 survives the expiration or earlier termination of this Contract.

23. INSURANCE

23.1 The Contractor represents and warrants that it has taken out or will take out, and will maintain for the period specified in clause 23.2 or 23.3 (as applicable) all appropriate types and amounts of insurance to cover the Contractor's obligations under this Contract, including those which survive its expiration or earlier termination, which insurance must include but is not limited to the types and corresponding amounts of insurance specified in Item Q of the Work Order.

23.2 If the Contractor takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Contractor must maintain the policy during the Contract Term and a policy in like terms for seven years after the expiry or earlier termination of this Contract.

23.3 If the Contractor takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Contractor must maintain the policy during the Contract Term.

23.4 The Contractor must, on request, promptly provide to the Agency any relevant insurance policies or certificates of currency for inspection.

23.5 This clause 23 survives the expiration or earlier termination of this Contract.

24. DISPUTE RESOLUTION

24.1 The Parties agree that any dispute arising during the course of this Contract (**Dispute**) will be dealt with as follows:

- (a) the Party claiming that there is a Dispute will send to the other a notice setting out the nature of the dispute;
- (b) the Parties will try to resolve the Dispute by direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
- (c) the Parties have 20 Business Days from the receipt of the notice issued under clause 24.1(a) to reach a resolution or to agree that the Dispute will be submitted to mediation or some other form of alternative dispute resolution procedure (including an agreement on the identity of the mediator or other dispute resolution facilitator and what rules will be applied to the mediation or alternative dispute resolution procedure); and
- (d) if:
 - (i) there is no resolution or agreement in accordance with clause 24.1(c); or
 - (ii) there is a submission of the Dispute to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of

the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Business Days,

then, either Party may commence legal proceedings.

24.2 Despite the existence of a Dispute, the Contractor will (unless requested in writing not to do so) continue to provide and perform the Goods and/or Services.

24.3 This clause 24:

- (a) does not apply to action by the Agency under or purportedly under clauses 3.2, 25 or 26; and
- (b) does not preclude either Party from commencing legal proceedings for urgent interlocutory relief.

25. TERMINATION AND REDUCTION FOR CONVENIENCE

25.1 In addition to any other rights the Agency has under this Contract, the Agency may, at any time, terminate this Contract in whole, or reduce the quantity or scope of the Goods and/or Services (**Scope Reduction**), immediately by providing a notice to the Contractor.

25.2 Upon receipt of a notice of termination or Scope Reduction, the Contractor must:

- (a) stop or reduce the Goods and/or Services as specified in the notice; and
- (b) take all available steps to minimise loss resulting from that termination or Scope Reduction and to protect Agency Material and Contract Material.

25.3 Where there has been a termination under clause 25.1, the Agency will be liable only for:

- (a) payments and assistance under clause 3 for Goods and/or Services properly rendered before the effective date of termination; and
- (b) reasonable costs unavoidably incurred by the Contractor and directly attributable to the termination and which the Contractor fully substantiates to the Agency's reasonable satisfaction.

25.4 The Agency will not be liable to pay compensation under clause 25.3(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, together exceed the Contract Fees.

25.5 The Contractor will not be entitled to compensation for loss of prospective profits or for any part of this Contract not performed.

25.6 If there is a Scope Reduction, the Agency's obligation to pay any fee will abate proportionately to the reduction in the Goods and/or Services.

25.7 To avoid doubt, the Agency has an unfettered discretion to terminate this Contract or reduce the scope of the Goods and/or Services in accordance with this clause 25.

26. TERMINATION FOR DEFAULT

26.1 Where a Party fails to satisfy any of its obligations under this Contract, the other Party may:

- (a) if it considers that the failure is not capable of remedy, by notice, terminate this Contract immediately;

- (b) if it considers that the failure is capable of remedy, by notice, require that the failure be remedied within a time specified in the notice (being not less than seven days); and
- (c) if the failure is not remedied in accordance with a notice given under clause 26.1(b), by further notice, terminate this Contract immediately.

26.2 The Agency may also, by notice, terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either Party has or may have) if:

- (a) the Contractor does not comply with any request made under clause 6.5;
- (b) the Contractor does not comply with any request under clause 7.5;
- (c) the Agency terminates the Deed for default by the Contractor;
- (d) the Contractor fails to notify the Agency under clause 19 or is unable or unwilling to resolve or deal with the conflict as required;
- (e) subject to sections 415D, 434J and 451E of the Corporations Act (as the case may be), an Insolvency Event occurs in respect of the Contractor; or
- (f) the Contractor breaches a representation or warranty listed in clause 28.

26.3 Termination of this Contract does not affect any accrued rights or remedies of a Party.

27. DEEMED TERMINATION FOR CONVENIENCE

27.1 If a purported termination for cause by the Agency under clause 26 is determined by a competent authority not to be properly a termination for cause, then that termination by the Agency will be deemed to be a termination for convenience under clause 25 which termination has effect from the date of the notice of termination referred to in clause 26.

28. CONTRACTOR WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

28.1 The Contractor represents, warrants and undertakes to the Agency that:

- (a) it will promptly notify and fully disclose to the Agency in writing any event or occurrence, actual or threatened, which could have an adverse effect on the Contractor's ability to perform any of its obligations under this Contract;
- (b) it has full power and authority to enter into, perform and observe its obligations under this Contract;
- (c) the execution, delivery and performance of this Contract has been duly and validly authorised by the Contractor;
- (d) it will promptly notify and fully disclose to the Agency in writing if an Insolvency Event occurs in respect of the Contractor;
- (e) the unconditional execution and delivery of, and compliance with its obligations by it, under this Contract do not:
 - (i) contravene any Law to which it or any of its property is subject or any order or directive from a Government Agency binding on it or any of its property;
 - (ii) contravene its constituent documents;

- (iii) contravene any contract or instrument to which it is a party;
- (iv) contravene any obligation of it to any other person; or
- (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;
- (f) no litigation, arbitration, mediation, conciliation or proceedings, including any investigations, are taking place, pending or are threatened against the Contractor which could have an adverse effect upon either the Contractor's capacity to perform its obligations under this Contract or the Contractor's reputation;
- (g) it has not had a judicial decision (excluding decisions under appeal) made against it in relation to employee entitlements where that claim has not been paid;
- (h) unless otherwise disclosed in Item T of the Work Order, it is not entering into this Contract as trustee of any trust or settlement;
- (i) it has not made any false declaration in respect of any current or past dealings with the Agency, the Commonwealth or any Government Agency, including in any tender or application process or in any contract;
- (j) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior contract with the Agency, the Commonwealth or any Government Agency;
- (k) it has, and will continue to have and to use the skills, qualifications and experience to provide and perform the Goods and/or Services in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Contract;
- (l) it has and will continue to have the necessary resources, including financial resources, to provide and perform the Goods and/or Services and will use those resources to provide and perform the Goods and/or Services; and
- (m) it is not, and none of its subcontractors are an Inappropriate Person.

28.2 The Contractor acknowledges that the Agency in entering into this Contract is relying on the warranties and representations contained in this Contract.

28.3 The Contractor:

- (a) acknowledges that it has been chosen to provide and perform the Goods and/or Services in an area of expertise that is outside those of the Agency; and
- (b) represents and warrants to the Agency that it has the necessary knowledge and expertise to provide and perform the Goods and/or Services,
and the Agency:
- (c) relies on the Contractor's representation and warranty that it is an expert; and
- (d) has engaged the Contractor to provide and perform the Goods and/or Services on that basis.

28.4 Each representation and warranty is given on a continuing basis throughout the Contract Term.

29. REPRESENTATION AND WARRANTY FOR TRUSTEE OF A TRUST

29.1 If the Contractor acts as a trustee of a trust in relation to this Contract:

- (a) it is liable both personally, and in its capacity as trustee of that trust; and
- (b) it represents and warrants that:
 - (i) such trust has been duly established and currently exists;
 - (ii) it is the duly appointed, current and only trustee of that trust;
 - (iii) as such trustee, it has the power to enter into and perform its obligations under this Contract; and
 - (iv) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations under this Contract.

29.2 The representations and warranties in clause 29.1(b) are given on a continuing basis throughout the Contract Term.

30. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

30.1 The Contractor is not, by virtue of this Contract, an officer, Official, employee, partner or agent of the Agency or the Commonwealth, nor does the Contractor have any power or authority to bind or represent the Agency or the Commonwealth.

30.2 The Contractor agrees not to represent itself, and to use its best endeavours to ensure that its Contractor Personnel (including the Specified Personnel and Contractor Placement Staff) do not represent themselves, as being an officer, Official, employee, partner or agent of the Agency or the Commonwealth, or as otherwise able to bind or represent the Agency or the Commonwealth.

31. WORK HEALTH AND SAFETY

31.1 In providing the Goods and/or Services under this Contract, the Contractor must ensure that the Goods and/or Services are provided and performed in a safe manner, in compliance with all reasonable directions and procedure relating to work health and safety and in compliance with the WHS Legislation.

32. NOTICES

32.1 A Party giving notice under this Contract must do so in writing, including by email, that is:

- (a) directed to the recipient's address, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post or email to that address.

The Parties' address details are as specified in Item R of the Work Order.

32.2 The Parties agree that a notice given in accordance with clause 32.1 is received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, on the third Business Day after the date of posting; and

- (c) if sent by email, when received by the addressee or when the sender’s computer generates written notification that the notice has been received by the addressee, whichever is earlier.

Schedule 5 – WORK ORDER

Item A Work Order Details

Work Order Number: [Insert]

The Contractor has offered under clause 5.1 of the Deed (SON3557594) specified at Item B below to provide the Goods and/or Services to the Agency. The Agency accepts this offer on the terms and conditions set out in the Deed (SON3557594) and in this Work Order and issues this Work Order in accordance with clause 5.6 of the Deed. If there is an inconsistency between this Work Order and any other provisions of the Deed, the Deed will prevail to the extent of any inconsistency.

Item B Deed Details

Deed	ADHA Recruitment Services Panel
Contractor	[Insert Contractor Name]
Agency Representative	[Insert Agency Contract Manager Name]
Contractor Representative	[Insert name and contact details]
Date of Order	[The date that the last party signed.]
Aggregate Liability	\$1.1 million

Item C Goods, Services and Subcontractors

Goods: Not applicable

Service: Contingent Labour Service

Period for the Agency's rejection of Goods: Not applicable

Services:

The Services which the Contractor must provide and perform consist of the following:

Equivalent APS Level	No. of Positions	Position Title	Location
APS x	x	x	x

The Agency is not required to engage Specified Personnel to fill all the positions specified in this request. The Agency may choose to engage fewer Specified Personnel than is specified or the Agency may choose to engage additional Specified Personnel than specified.

The Agency may identify and move existing employees into any of the positions specified at any time if a position is vacant.

Permitted subcontractors:

Not applicable

Item D Contract Material

- Clauses 11.3 to 11.8 (Intellectual Property in Contract Material) are to apply and Intellectual Property Rights in all Contract Material created under the Contract vest in the Agency.

Item E Moral Rights

- Clause 12.2 (Moral Rights) is to apply.

Item F Service Levels

The following performance standards will apply to the contract:

- Specified Personnel supplied were suitable to undertake the specified scope of work;
- Delivery of a prompt and effective response to the concerns or requests of the Agency in relation to the Specified Personnel, including in relation to performance;
- Ensure the continuity of the provision of Services through the timely replacement of Specified Personnel when necessary;
- Final cost did not exceed agreed cost;
- Ensuring all applicable disability related requirements within the responsibilities of the Contractor are met, including laws and other obligations;
- Compliance by the Contractor and Specified Personnel with all NDIA policies, procedures and guidelines where applicable, including, but not limited to [NDIA Values](#), [APS Code of Conduct](#), Work Health and Safety Policy and [Privacy Policy](#).
- Provision of an Employee Assistant Program (EAP) to all Specified Personnel
- Ensure to the best of its knowledge after making diligent inquiries no conflict of interest exists or is likely to arise in the performance of this Contract. The Contractor shall notify the NDIA in writing immediately if such a conflict of interest arises, or appears likely to arise by itself or any of its Specified Personnel.

Item G Contract Term

This Contract will commence on the Contract Start Date specified in the table below and expires on the end date specified in the table below unless it is terminated earlier in accordance with the Contract.

Event	Date
Contract Start Date	[Insert day / month / year]
Contract End date	[Insert end date]
Options for extension: Due to business requirements NDIA may seek an extension to the agreed contract.	
Specified Personnel may not be required to work over the Christmas/New Year reduced activity period as scheduled by the Agency.	

Item H Contract Fees

The total Contract Fees will not exceed an amount of \$[insert] (GST exclusive), \$[insert] (GST inclusive).

(a) Contract Fees

Specified Personnel	Hourly rate (GST exc)	Hourly rate (GST inc)	Total Fees (GST inc)
[Insert]	\$[Insert]	\$[Insert]	\$[Insert]

Standard hours of work: 08:30am till 5:00pm

It is the expectation that the Specified Personnel will work between the hours as stated above with an average of up to 7.5 hours (excluding breaks) per business day, unless otherwise directed by the Agency representative.

Under WHS policy, the Specified Personnel must not work more than 5 consecutive hours without taking a minimum of a half hour break. Breaks will not be paid and must be deducted from the total hours worked for the day. The Specified Personnel is required to record breaks on their timesheet provided by the Contractor.

Additional Hours and Penalty Rates

- (a) Penalty rates are not applicable Monday to Friday, excluding Public Holidays. All hours worked Monday to Friday, excluding Public Holidays, are to be charged at the Ordinary agreed rate.
- (b) All hours worked on Saturday will be paid at time and a half (Ordinary Hourly rate x 1.50)
- (c) All hours worked on Sunday will be paid at double time (Ordinary Hourly rate x 2.00)
- (d) All hours worked on a Public Holiday will be paid at double time (Ordinary Hourly rate x 2.00)
- (e) No minimum number of hours are required before Penalty rates apply as set out in paragraphs (b), (c) or (d) above.
- (f) The Line Manager/Contract Manager may approve a substitution of a day or part-day that would otherwise be a public holiday having regard to business requirements.

- (g) The Contractor must obtain the prior written agreement from the Line Manager/Contract Manager confirming the rate that can be invoiced prior to work being performed on a Saturday, Sunday or Public Holiday.
- (h) In paragraphs (a) to (f), 'Public Holiday' means a public holiday in the location at which the work is undertaken.
- (i) NDIA approved travel time will be reimbursed through the usual mechanism of billable hours through a timesheet, regardless of the day the travel occurs.

OR

NDIA approved travel time will be reimbursed through comparable flexible time, regardless of the day the travel occurs.

Item I Allowances

Subject to the below, the Contractor must perform its obligations under this Contract at its own cost and expense.

If the use of a personal car is required in order to travel for NDIA official business, reimbursement as per current ATO (Australian Taxation Office) cents per km is applicable.

Travel, including flights and accommodation will be booked via the Agency's established self-management system.

Specified Personnel's expenses may be claimed when travelling for NDIA official business during the Assignment. This is not a pre-paid allowance, it is a reimbursement of reasonable costs incurred as a result of Assignment-related travel. The maximum reimbursement amounts are Non-SES domestic Travel Allowance Rates as defined in the NDIA Labour Hire Worker Expense Reimbursement Guide. All expenses must be approved by the relevant NDIA manager or team leader before they are incurred. Evidence of the expense must be provided. Expenses will be reimbursed as per the Labour Hire Worker Expense Reimbursement Guide.

Alternatively if the Labour Hire Worker is required to regularly travel interstate or to rural areas to provide labour hire services away from the Agency's usual work location described in this Work Order, then if (but only as agreed in writing by the Line Manager or Contract Manager):

A per-diem allowance of \$90.00 ex GST (based on the ATP reasonable travel allowances 2018-19) for each night of an overnight stay to cover the cost of meals and other incidental costs. Any incidental expenses incurred over the per-diem allowance will not be reimbursed by the Agency. Where no overnight stay is required (for example, day trips) there is no incidental allowance and the Agency will not cover the cost of meals or any incidentals.

Item J Facilities and Assistance

None specified.

Item K Invoice Procedures

The Contractor must forward Correctly Rendered Invoices in accordance with clause 4 of the Terms and Conditions of Contract. Invoices are to be submitted on a monthly basis.

Where the Services involve the provision of Contractor Placement Staff to the Agency, copies of approved timesheets for those Contractor Placement Staff members must be provided to the Agency with any Correctly Rendered Invoice.

Invoices must be emailed to: invoices@ndis.gov.au.

Item L Specified Personnel and Contractor Placement Staff

Position/Role	Name	Services to be performed
[Insert]	[Insert]	As per the position description

In the instance that the specified personnel nominated under this Work Order has been engaged for a period of 6 months or greater with the National Disability Insurance Scheme Launch Transition Agency as Contractor Placement Staff then the Placement Fee outlined in Schedule 3 of this Deed is considered void.

Where the Specified Personnel or Resources or Specified Personnel are unable to provide the Goods and/or Services, the Contractor must notify the Agency immediately.

Item M Agency Material to be Provided by the Agency

Computer

Item N Use of Agency Material

None Specified

Item O Existing Material

None Specified

Item P Dealing with Copies

None Specified

Item Q Insurance

Type	Coverage
Public liability insurance	\$10,000,000
Product liability insurance	\$10,000,000
Professional indemnity insurance	\$5,000,000
Workers compensation insurance	As required by Law

Item R Address for Notices

The Agency's Address for Notices:

Level G, 13-19 Malop Street,
Geelong, Vic, 3220
Attention: Benjamin Bradley

STRATEGICPROCUREMENTBRANCH@ndis.gov.au

Contractor's Address for Notices:

[Insert address]

[Insert email address]

Item S Contractor's Confidential Information

Contractor information to be kept confidential
Not applicable

Item T Trustee Information

[Note: This section will only be completed only where the Contractor is a trustee for a trust. If the Contractor is not a trustee for a trust the words 'Not applicable' will be included.]

[Where relevant, details Trustee and Trust details, including ABNs and ACNs, will be included here.]

Item U Permitted Use and Disclosure of Government Related Identifiers

Permitted use and disclosure of Government Related Identifiers
Not permitted

Item V Permitted Disclosure or Transfer of Personal Information Outside Australia

Permitted offshore disclosures or transfers of Personal Information
Not permitted

Item W Security Requirements

The Agency's protective security policies and procedures	
Additional security requirements	<p>Pre-engagement Checks will be undertaken by NDIA and commencement is subject to the Specified Personnel meeting the standard in relation to the Pre-engagement Check requirements. The Contractor must comply with and ensure ongoing compliance with the Pre-engagement Checks.</p> <p>It is preferred that proposed Specified Personnel be an Australian citizen, however NDIA do welcome candidates that hold the right to work within Australia to apply for all Labour Hire positions.</p> <p>A Specified Personnel is required to comply with relevant WCV (Working with Children and Vulnerable People) checks as they vary throughout each State and Territory. The cost of a state-based check for Specified Personnel is not reimbursed by the NDIA.</p>
Cost of security clearances	The cost of Pre-Engagement Checks will be paid for by the Agency.

SIGNED for and on behalf of
**The Commonwealth of Australia represented by the National Disability Insurance Launch
Transition Agency 25 617 475 104** on:

Date

by:

Printed name of authorised representative of Agency

Signature

Position

in the presence of:

Printed name of witness

Signature of witness

SIGNED for and on behalf of
[Supplier Name] on:

Date

by:

Printed name of authorised representative of supplier

Signature

Position

in the presence of:

Printed name of witness

Signature of witness

NDIA Additional Contract Terms

1. Privacy Provisions in the NDIS Act

1.1. For the purposes of this clause, protected Agency information (Protected Agency Information) has the meaning given in section 9 of the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act).

1.2. The Supplier must not do any act or engage in any practice in relation to Protected Agency Information that is a breach of, or an offence under the NDIS Act. The Supplier acknowledges and agrees that an unauthorised use or disclosure of Protected Agency Information is a criminal offence under the NDIS Act.

1.3. The Supplier must not obtain, record, disclose, supply, use or otherwise deal with the Protected Agency Information in any way, except:

- (a) for the purposes of performing the Contract; and
- (b) where permitted by the NDIS Act.

1.4. The Supplier must comply with the Customer's record management policy with respect to any Protected Agency Information that comes into its possession or control when performing the Services.

1.5. The Supplier must implement all reasonable measures to ensure the requirements of this clause 1 are met.

1.6. The Supplier must immediately notify the Customer if it becomes aware that a disclosure of Protected Agency Information may be required by a Law and only disclose such information where permitted by the NDIS Act, including section 67G of the NDIS Act.

1.7. The Supplier must take all reasonable measures to ensure that Protected Agency Information is protected against:

- (a) misuse, interference and loss;
- (b) unauthorised access, modification, or disclosure; and
- (c) any other misuse,

and that only authorised Supplier personnel have access to Protected Agency Information.

1.8. The Supplier must immediately notify the Customer of any loss or unauthorised use, modification or disclosure of Protected Agency Information or when the Supplier becomes aware of a breach of any obligation concerning such information.

1.9. The Supplier must notify the Customer of any investigation into a breach of, or an offence under, the requirements of the NDIS Act in relation to Protected Agency Information.

1.10. The Supplier must upon written notice from the Customer, destroy or permanently de-identify any Protected Information as soon as practicable after it is no longer required for the purpose for which it was originally collected.

Indemnity

1.11. The Supplier must indemnify the Customer in respect of any Loss suffered or incurred by the Customer arising out of or in connection with:

- (a) a breach of the obligations of the Supplier under this clause 1;
- (b) any breach of the requirements of the NDIS Act in relation to Protected Agency Information, except to the extent that the Loss is directly caused by a negligent or unlawful act or omission of the Customer or any of its officers or employees.

Obligations in relation to Supplier personnel

1.12. The Supplier must ensure that all Supplier personnel are aware of the need to comply with the NDIS Act and clause 1 in the performance of the Services.

Subcontracts

1.13. The Supplier must ensure that any subcontract entered into for the purpose of fulfilling its obligations under the Contract contains provisions to ensure that the subcontractor and its personnel have the same awareness and obligations as the Supplier has under this clause 1, including the requirement in relation to subcontracts.

2. Disability Inclusion

Commitment to people with disabilities

2.1. The Supplier agrees and acknowledges that:

- (a) the Customer is committed to ensuring that the principles in the United Nations Convention on the Rights of Persons with Disabilities are implemented and that the Customer is acting in compliance with the obligations in the Relevant Disability Laws; and
- (b) one of the key principles of the National Disability Insurance Scheme is that people with disabilities should be supported in all their dealings and communications with the Customer so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs (sections 4(9) and 17A(2) of the NDIS Act).

Supplier obligations

2.2. To assist the Customer to comply with its obligations specified in clause 2.1, the Supplier must:

- (a) to the extent they apply to the Supplier, comply with all Relevant Disability Laws;
- (b) provide all deliverables under the Contract in a format that is compliant with the Web Content Accessibility Guidelines Version 2.0 (WCAG); and

- (c) use its best endeavours to:
 - (i) create a welcoming workplace and fosters an inclusive culture, where people with a disability feel valued and encouraged to participate; and
 - (ii) attract, appoint, retain and develop employees with a disability.

3. Working with Vulnerable Persons

Definitions

3.1. For the purposes of this clause 3:

- (a) 'Child' means an individual under the age of 18;
- (b) 'Criminal or Court Record' means any record of any Other Offence;
- (c) 'Other Offence' means, in relation to any Relevant Person, a conviction, finding of guilt, on-the-spot fine for, or court order relating to:
 - (i) an apprehended violence or protection order (howsoever described) made against the Relevant Person;
 - (ii) one or more traffic offences involving speeding more than 30 kilometres over the speed limit, injury to a person or damage to property;
 - (iii) a crime or offence involving the consumption, dealing in, possession or handling of alcohol, a prohibited drug, a prohibited narcotic or any other prohibited substance;
 - (iv) a crime or offence involving violence against or the injury to, but not the death of, a person;
 - (v) a crime or offence involving dishonesty that is not covered by clause 3.1(f)(iii); or
 - (vi) an attempt to commit a crime or offence described in clauses 3.1(c)(i) to 3.1(c)(v);
- (d) 'Police Check' means a formal inquiry made to the relevant police authority in each Australian State or Territory that is designed to obtain details of the Relevant Person's criminal conviction or a finding of guilt in all places (within and outside Australia) in which the Supplier knows the Relevant Person has resided;
- (e) 'Relevant Person' means a natural person who is an actual or potential officer, employee, volunteer, agent or contractor of the Supplier;
- (f) 'Serious Offence' means:
 - (i) a crime or offence involving the death of a person;
 - (ii) a sex-related offence or crime, including sexual assault (whether against an adult or Child), Child pornography, or an indecent act involving a Child;
 - (iii) fraud, money laundering, insider dealing or any other financial offence or crime, including those under legislation relating to companies, banking, insurance or other financial services; or

- (iv) an attempt to commit a crime or offence described in clauses 3.1(f)(i) to 3.1(f)(iii);
- (g) 'Serious Record' means a conviction or any finding of guilt regarding a Serious Offence; and
- (h) 'Vulnerable Person' means:
 - (i) a Child; or
 - (ii) an individual aged 18 years and above who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation for any reason, including age, physical or mental illness, trauma or disability, pregnancy, the influence, or past or existing use, of alcohol, drugs or substances or any other reason.

Working with Vulnerable Persons

3.2. This clause 3 applies to any part of the Services that involves working, or contact, with Vulnerable Persons.

3.3. The Supplier must:

- (a) before engaging, deploying or redeploying a Relevant Person in relation to any part of the Services that involves working or contact with a Vulnerable Person; and
- (b) thereafter every three years that the Relevant Person is deployed or redeployed in relation to any part of the Services that involves working or contact with a Vulnerable Person,

do the following:

- (c) obtain a Police Check for the Relevant Person, unless otherwise agreed by the Customer;
- (d) confirm that no applicable Commonwealth, State or Territory Law prohibits the Relevant Person from being engaged in a capacity where they may have contact with Vulnerable Persons;
- (e) comply with all other applicable Laws of the place in which that part of the Services is being conducted in relation to engaging or deploying the Relevant Person in a capacity where he or she may have contact with Vulnerable Persons; and
- (f) comply with any other conditions required by the Customer.

3.4. If a Police Check indicates that a Relevant Person has a Serious Record, the Supplier must not deploy or redeploy that Relevant Person in relation to any part of the Services that involves working or contact with a Vulnerable Person.

3.5. The Supplier agrees:

- (a) if a Police Check indicates that a Relevant Person has a Criminal or Court Record, not to engage, deploy or redeploy that Relevant Person in respect of any part of the Services that involves working with Vulnerable Persons unless the Supplier has conducted and documented a risk assessment for that Relevant Person in accordance with clauses 3.7 to 3.9;

- (b) within 24 hours of becoming aware of any Relevant Person being charged or convicted of any Other Offence, or charged with any Serious Offence, to comply with clause 3.3(e) and conduct and document a risk assessment in accordance with clauses 3.7 to 3.9 to determine whether to allow that Relevant Person to continue performing any part of the Services that involves working with Vulnerable Persons;
- (c) on becoming aware of a Relevant Person being convicted of a Serious Offence, to comply with clause 3.3(e) and immediately cease to deploy the Relevant Person in relation to any part of an Activity that involves working or contact with a Vulnerable Person; and
- (d) to document the actions the Supplier will take as a result of conducting a risk assessment.

3.6. The Supplier must promptly notify the Customer if the Supplier becomes aware of an occurrence specified in clause 3.5 or the Supplier conducts a risk assessment in accordance with clauses 3.7 to 3.9 except to the extent otherwise agreed in writing by the Customer.

3.7. The Supplier is wholly responsible for conducting any risk assessment, assessing its outcome and deciding to engage, deploy or redeploy a Relevant Person who has:

- (a) a Criminal or Court Record;
- (b) been charged or convicted of any Other Offence;
- (c) been charged with a Serious Offence,
- (d) to work on any part of the Services that involves working or contact with Vulnerable Persons.

3.8. In undertaking the risk assessment under clause 3.7 in respect of a Relevant Person, the Supplier agrees to take into account the following factors:

- (a) whether the Relevant Person's Criminal or Court Record (or the offence that the Relevant Person has been charged with, or convicted of, as specified in clause 3.5(b) is directly relevant to the role that he or she will or is likely to perform in relation to the Services;
- (b) the length of time that has passed since the Relevant Person's charge or conviction and his or her record since that time;
- (c) the nature of the offence pertaining to the Relevant Person's charge or conviction and the circumstances in which it occurred;
- (d) whether the Relevant Person's charge or conviction involved Vulnerable Persons;
- (e) the nature of the services which the Relevant Person is employed or engaged to perform and the circumstances in which the Relevant Person will or is likely to have contact with Vulnerable Persons;
- (f) the particular role the Relevant Person is proposed to undertake or is currently undertaking in relation to the Services and whether the fact the Relevant Person has a Criminal or Court Record

(or has been charged or convicted as specified in clause 3.5(b) is reasonably likely to impair his or her ability to perform or continue to perform the inherent requirements of that role;

(g) the Relevant Person's suitability based on their merit, experience and references to perform the role they are proposed to undertake, or are currently undertaking, in relation to the Services; and

(h) any other factors the Customer requires the Supplier to take into account in conducting a risk assessment for the purpose of this clause.

3.9. After taking into account the factors set out in clause 3.8 in respect of a Relevant Person, the Supplier must:

(a) determine whether the Relevant Person poses an unacceptable risk to Vulnerable Persons; and

(b) take such action as is appropriate to protect Vulnerable Persons following that assessment and consider whether it is reasonably necessary to any or all of the following:

(i) not engage, deploy or redeploy the Relevant Person in relation to the Services or any part of the Services;

(ii) remove the Relevant Person from working in any position or acting in any capacity in relation to any part of the Services that involves working or having contact with Vulnerable Persons;

(iii) make particular arrangements or impose conditions in relation to the Relevant Person's role in relation to the Services (or any part of the Services) and, where relevant, his or her contact with Vulnerable Persons; and

(iv) take steps to protect the physical, psychological or emotional wellbeing of the Vulnerable Persons to whom the Services relate.

3.10. Where the Supplier has completed a risk assessment as required by 3.7 a copy must be provided to the Customer within 10 Business Days of completing the risk assessment.

3.11. Notwithstanding the Supplier's decision under clause 3.9, the Customer may, at its absolute discretion, exercise its rights under clause C.C.14 to request the replacement of personnel.

3.12. The Supplier agrees to ensure that, in any subcontract that the Supplier enters into:

(a) the terms of that subcontract enable the Supplier to comply with its obligations under this clause 3; and

(b) the subcontractor is required to comply with requirements that are identical to the requirements of this clause 3,

in relation to any part of the Services that involves working with Vulnerable Persons.

3.13. If any part of the Services involves the Supplier employing or engaging a person (whether as

an officer, employee, contractor, or volunteer) that is required by State or Territory law to have a working with children check to undertake the Services or any part of the Services, the Supplier agrees:

- (a) to comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children in relation to the Services, including mandatory reporting and working with children checks however described; and
- (b) if requested, provide the Commonwealth at the Supplier's cost, an annual statement of compliance with this clause, in such form as may be specified by the Commonwealth.

When Child Safety obligations may be relevant to a Subcontract, the Supplier must ensure that any subcontract entered into by the Supplier for the purposes of fulfilling the Supplier's obligations under the contract imposes on the Subcontractor the same obligations regarding Child Safety that the Supplier has under the Contract. Each subcontract must also require the same obligations (where relevant) to be included by the Subcontractor in any secondary subcontracts.

4. Compliance with Laws

- 4.1. The Supplier agrees, in carrying out the Contract, to comply with any applicable Law as amended from time to time Customer.
- 4.2. The Supplier must not do anything that causes the Customer to breach any Law.
- 4.3. The Supplier acknowledges that the giving of false or misleading information to a Commonwealth entity is a serious offence under the Criminal Code Act 1995 (Cth).

5. Archives Act 1983 (Cth)

- 5.1. The Supplier must not destroy or arrange for, nor effect a transfer of custody or ownership of any Commonwealth Record without the prior written approval of the Customer and the National Archives of Australia.
- 5.2. Where the Customer and the National Archives of Australia authorise the destruction or transfer of custody of a Commonwealth Record by or to the Supplier, the Supplier must comply in every respect with the requirements of the Archives Act 1983 (Cth) (Archives Act) or guidelines issued by National Archives of Australia.
- 5.3. The Supplier must comply with any direction given by the Customer for the purpose of transferring Commonwealth Records to the National Archives of Australia or providing the National Archives of Australia with full and free access to Commonwealth Records.

6. WHS Law Requirements

- 6.1. In carrying out the Contract, the Supplier must ensure that the Services are provided in a safe manner.
- 6.2. Without limiting the obligation in clause 6.1, when providing the Services the Supplier must:
 - (a) comply with, and ensure that all Supplier personnel comply with, all WHS legislation and Approved Codes of Practice relating to work health and safety;
 - (b) when performing the Services on the Supplier's premises, comply with, and ensure that all

Supplier personnel comply with, all the Supplier's applicable instructions, directions, policies and procedures relating to work health and safety;

- (c) when performing the Services at the Customer's premises, the Supplier must:
- (i) inform itself, and ensure that all Supplier personnel inform themselves, of Customer work health and safety policies and procedures that the Customer provides to the Supplier and are relevant to the Services; and
 - (ii) comply with, and ensure that all Supplier personnel comply with, the above health and safety policies and procedures;
- (d) not place the Customer in breach of its obligations under the WHS Legislation and must ensure that no Supplier personnel place the Customer in breach of its obligations under WHS legislation;
- (e) where the health and safety of any person may be affected by the performance of the Services, the Supplier must consult, cooperate and coordinate with the Customer and any other relevant duty holders and Workers in relation to health and safety issues;
- (f) notify the Customer, as soon as practicable, of:
- (i) any concern of the Supplier regarding work health and safety in relation to Services performed by Workers;
 - (ii) any Notifiable Incident arising and provide the Customer with a copy of any written notice given to the Regulator, the results of any investigation into the cause and any recommendation the Supplier has for prevention in the future;
 - (iii) breach or suspected breach of the WHS legislation in relation to the Services performed under the Contract;
 - (iv) cessation of work on the Services, or direction to cease work on the Services from any person having a right or power under the WHS legislation to do so, due to unsafe work;
 - (v) entry by an Inspector to any place where the Services are being performed and a Provisional Improvement Notice, Non-Disturbance Notice, Section 155 Notice, Section 171 Direction or Prohibition Notice is issued or Enforceable Undertaking provided to the Regulator;
 - (vi) proceedings against, decision by the Regulator in relation to, or request from the Regulator to the Supplier or the Supplier's workers under the WHS Act; and
 - (g) ensure that any subcontract entered into in relation to the Services imposes obligations on Subcontractors equivalent to the obligations of the Supplier under this clause.

6.3. In the event of any inconsistency between:

- (a) any of the obligations set out in this clause; and
- (b) any obligation contained in the WHS legislation,

the Supplier will comply with the WHS legislation and notify the Customer of any such inconsistency.

6.4. To the extent permitted by law, the Customer is not liable to the Supplier for any loss in connection with work health and safety in relation to Workers performing Services.

6.5. For the purposes of this clause, the terms:

(a) 'Approved Code of Practice' means a practical guide to achieving the standards of health, safety and welfare that is approved pursuant to section 274 of the Work Health and Safety Act 2011 (Cth) (WHS Act);

(b) 'WHS legislation' means the Work Health and Safety Act 2011 (Cth), any regulations made under that act and any 'corresponding WHS law' within the meaning of section 4 of the WHS Act and Regulation 6A of the Work Health and Safety Regulations 2011;

(c) 'Notifiable Incident', 'Inspector', 'Non-Disturbance Notice', 'Provisional Improvement Notice', 'Prohibition Notice', 'Worker' and 'WHS Entry Permit Holder' have the meaning given in the WHS Act;

(d) 'Section 155 Notice' means a notice issued under section 155 of the WHS Act;

(e) 'Section 171 Direction' means a direction issued under section 171 of the WHS Act; and

(f) 'Regulator' has the meaning given to it under WHS legislation.

(g) 'Workers' has the meaning given to it under the WHS legislation.

7. Workplace Gender Equality

7.1. This clause 7 applies only to the extent that the Supplier is a 'relevant employer' for the purposes of the Workplace Gender Equality Act 2012 (Cth) (WGE Act).

7.2. The Supplier must comply with any applicable obligation in the WGE Act.

7.3. If the Supplier becomes non-compliant with the WGE Act during the Contract Period, the Supplier must notify the Customer.

7.4. If the Contract Period exceeds 12 months, the Supplier must provide a current letter of compliance annually to the Customer.

7.5. Compliance with the WGE Act does not relieve the Supplier from its responsibility to comply with its other obligations under the Contract.

8. Definitions

8.1. In these Additional Contract Terms, the following definitions are used:

'Commonwealth Record' has the same meaning as the Archives Act.

'Law' includes:

(a) any law in force applying to the provision of the Services or the Contract;

(b) the common law and equity;

(c) any statute, act of Parliament, proclamation, order in the Agency, regulation, rule, by-law, ordinance, subordinate legislation or other regulatory measures; and

(d) any certificate, licence, permit, authorisation, accreditation, code of practice, code of conduct or other requirement which is issued under an instrument referred to in paragraph (c).

Relevant Disability Laws means all laws, regulations, rules, charters and standards related to the involvement or engagement of persons with disabilities in an employment context including the following:

- (a) National Disability Agreement;
- (b) National Disability Insurance Scheme Act 2013 (Cth);
- (c) Disability Discrimination Act 1992 (Cth) and related legislation;
- (d) Disability Services Act 1986 (Cth) and related legislation;
- (e) Equal Employment Opportunity legislation including the Workplace Gender Equality Act 2012 (Cth);
- (f) Workplace Health and Safety Act 2011 (Cth);
- (g) Fair Work Act 2009 (Cth);
- (h) Other applicable State and Territory legislation including the Human Rights Act 2004 (ACT) and the Charter of Human Rights and Responsibilities Act 2006 (Vic); and
- (i) Public Service Act 1999 (Cth) and related legislation.