



**Australian Government**  
**Department of Finance**  
**Head Agreement**

**Between**

**Commonwealth of Australia as represented by its  
Department of Finance**

**(ABN 61 970 632 495)**

**And**

**<Insert Full Legal Entity Name>**

**(ABN xx xxx xxx xxx)**

**To Join a Panel for the Provision of Whole-of-  
Australian-Government Web Development Services**

**(Final Version 3.2 July 2024)**

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**Schedule 1 GLOSSARY AND FORMS**

**Schedule 2 LIST OF ENROLLED MODULES**

**Schedule 3 MODULES**

## Version Control/Change History

| Date           | Version | Description of changes (refer Appendix A for additional details of changes)   |
|----------------|---------|---|
| October 2021   | 1.1     | <p>Published AusTender FIN15-2020 General review and updates to the original draft 2018 to correct out of date government agency names, policies, website references and links.</p> <p>General review and updates to the original draft (V1.0) 2018 to correct out of date government agency names, policies, website references and links.</p>   |
| October 2022   | 1.2     | <p>Published AusTender PQRT210001242 Request for Tender GovCMS Drupal Services Panel Refresh.</p> <p>General review and updates to correct out of date government agency names, policies, website references and links.</p>   |
| November 2022  | 1.2     | <p>Issued FIN15/2020/PQRT21000768 Request for Proposal to refresh the Whole-of-Government GovCMS Drupal Services Panel to establish a new Category 3 of Module 1 to include Digital Experience (DXP) and Content Personalisation Services</p> <p>General review and updates to correct out of date government agency names, policies, website references and links.</p> <p>Amendments to clause 11.4 Charges; clause 14.1 and 14.2 Intellectual Property</p>  |
| September 2023 | 1.2     | Published AusTender PQRT21000784 Request for Tender - Stage 2 GovCMS Hosting Services   |
|                | 2.0     | <p>Amended following contract negotiations to establish the GovCMS Services Panel</p> <p>Add new sub clause 29.24 &amp; 29.25 in relation to the <i>National Anti-Corruption Commission Act 2022</i> (Cth) (NACC Act) requirements.</p> <p>Add new clause 31 Notification of Significant Events.</p>  |
|                | 3.0     | Effective 27 September 2023   |
| April 2024     | 3.1     | <p>Amended following contract negotiations to establish a new Category 3 of Module 1 to include Digital Experience (DXP) and Content Personalisation Services under the GovCMS Drupal Services Panel.</p> <p>Amendments made to clauses/sub clauses concerning security, audit and access, step-in rights.</p> <p><b>Schedule 3 – Module 1 (Drupal Services Panel) (v1.4):</b> minor amendments to Cloud Services at clauses 11.2.1.2 and 11.2.4.2 to include the words “if specified in a Contract.”</p> |
| July 2024      | 3.2     | <p>Further amendments to clauses/sub clauses concerning confidentiality, privacy, warranties, insurance, security, liability, continuous improvements and efficiencies, audit and access.</p> <p><b>Schedule 3 – Module 1 (Drupal Services Panel) (v1.5):</b> minor amendments to clauses 2.5, 15.9, 15.12, 25.1.</p>   |

## **Parties**

The **COMMONWEALTH OF AUSTRALIA** as represented by the Department of Finance (ABN 61 970 632 495) (**Finance**)

and

**<Insert Full Legal Entity Name> (Contractor).**

## **Recitals**

- A Finance has been tasked by the Australian Government to put in place a panel for the provision to Agencies of Deliverables.
- B The Contractor acknowledges and agrees that Finance will administer this Head Agreement for the benefit of all Agencies, including Finance. The Contractor has fully informed itself on all aspects of the requirements and has offered to enter into this Head Agreement under which Agencies, and in certain cases Approved Third Party Providers, can enter Contracts for the provision of Deliverables.
- C The Contractor has represented to Finance in respect of this Head Agreement, and represents to each Agency and Finance in respect of any Module and Contract, that it has the ability to provide the Deliverables for each Module to which it has been enrolled under this Head Agreement.
- D Finance has agreed to enter into this Head Agreement with the Contractor, and the Contractor has agreed to enter into this Head Agreement with Finance, by which the Contractor offers to provide Deliverables on the terms and conditions contained in this Head Agreement (and the Module for the relevant Deliverables) and any Contract formed under this Head Agreement.

## **Operative Provisions**

### **1 Definitions and Interpretation**

#### **Definitions**

- 1.1 In this Head Agreement and any Contract, except where the contrary intention is expressed, the definitions in **Schedule 1 – Attachment 1 (Head Agreement Glossary)** apply.

#### **Interpretation**

- 1.2 In this Head Agreement and any Contract, except where the contrary intention is expressed:
  - 1.2.1 a reference to this Head Agreement is to **clauses 1 to 47**, and includes the Schedules (and any Attachments to the Schedules) as the context requires;
  - 1.2.2 a reference to a Module is to a Module to which the Contractor is subscribed as set out in **Schedule 2 (List of Enrolled Modules)** and **Schedule 3 (Modules)**;

**[Note: Schedule 2 (List of Enrolled Modules) will also specify the Initial and Option Terms for the relevant Module.]**

- 1.2.3 a reference to a Contract is to a Contract formed in accordance with **clause 4** and includes the terms of the Head Agreement in the manner described in **clause 4**;
- 1.2.4 a reference to Finance means Finance as a party to the Head Agreement;
- 1.2.5 a reference to an Agency, does not include Finance, unless Finance is a Customer under a Contract;
- 1.2.6 the singular includes the plural and vice versa;
- 1.2.7 a gender includes other genders;
- 1.2.8 another grammatical form of a defined word or expression has a corresponding meaning;
- 1.2.9 a reference to a clause, paragraph, Schedule or Attachment is to a clause or paragraph of, or Schedule or Attachment to, this Head Agreement or any Contract and a reference to this Head Agreement or any Contract includes any Schedule or Attachment to this Head Agreement or the Contract, as the context requires;
- 1.2.10 a reference to a clause, section or paragraph includes a reference to a subclause of that clause; subsection of that section or subparagraph of that paragraph;
- 1.2.11 a reference to a Document, publication, Standard, Commonwealth policy or instrument is a reference to the Document, publication, Standard, Commonwealth policy or instrument as altered, supplemented or replaced from time to time;
- 1.2.12 a reference to A\$, \$A, AUD, dollar or \$ is to Australian currency unless stated otherwise;
- 1.2.13 a reference to time is to the time in the place where the obligation is to be performed;
- 1.2.14 a reference to a party is to a party to this Head Agreement or any Contract as the context requires, and a reference to a party to a Document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- 1.2.15 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or Agency or other entity;
- 1.2.16 if the Contractor is a trustee, the Contractor enters this Head Agreement and any Contract personally and in its capacity as trustee and warrants that it has the power to perform its obligations under this Head Agreement and any Contract;
- 1.2.17 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;
- 1.2.18 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;

- 1.2.19 any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.20 any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.21 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Head Agreement, the applicable Contract or any part of those Documents;
- 1.2.22 if a day on or by which an obligation must be performed or an event must occur is not a Business Day in the relevant location, the obligation must be performed or the event must occur on or by the next Business Day in that location;
- 1.2.23 headings are for ease of reference only and do not affect interpretation;
- 1.2.24 a reference to a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after proper inquiry including inquiry which a reasonable person would be prompted to make by reason of knowledge of a fact; and
- 1.2.25 a reference to an Attachment of **Schedule 3 (Modules)** is a reference to that Attachment in the relevant Module in **Schedule 3 (Modules)**.

1.3 To the extent that the parties have not completed items in a Schedule or Attachment, unless otherwise stated in that Schedule or Attachment, that item will be taken to be 'not applicable' for the purpose of this Head Agreement and any applicable Contract.

#### **Order of precedence**

- 1.4 For the Head Agreement, to the extent of any conflict between the provisions contained in the body of this Head Agreement, any provisions in the Schedules, or Documents incorporated by reference, the following order of precedence will apply (with higher listed Documents taking precedence over lower listed Documents):
  - 1.4.1 the body of this Head Agreement; then
  - 1.4.2 **Schedule 1 – Attachment 1 (Head Agreement Glossary)**; then
  - 1.4.3 **Schedule 2 (List of Enrolled Modules)**; then
  - 1.4.4 **Schedule 3 (Modules)**; then
  - 1.4.5 the other Schedules; then
  - 1.4.6 the Attachments; then
  - 1.4.7 the Annexures (if any); and then
  - 1.4.8 Documents incorporated by reference.

## **2 Scope of Head Agreement**

2.1 This Head Agreement is a standing offer between Finance (representing all Agencies) and the Contractor under which, on an as-required and non-exclusive basis, any Agency (or group of Agencies or Approved Third Party Provider(s)) may enter into a Contract with the Contractor for the provision of Deliverables.

2.2 This Head Agreement does not:

- 2.2.1 give the Contractor the right to be the sole Contractor of any Deliverables to any Agency;
- 2.2.2 oblige Finance or any Agency to acquire any, or any particular quantity of, Deliverables, from the Contractor; or
- 2.2.3 prevent Finance or an Agency from obtaining Deliverables that are the same as, or similar to, the Deliverables from other contractors (including contractors that were not selected as part of the Request for Tender process that ultimately resulted in Finance entering this Head Agreement with the Contractor).

2.3 The Contractor acknowledges that:

- 2.3.1 the Deliverables the Contractor offers to provide are set out in the Module or Modules to which the Contractor is enrolled as set out in **Schedule 2 (List of Enrolled Modules)**; and
- 2.3.2 enrolment under one Module does not entitle enrolment under any other Module.

2.4 Finance reserves the right to:

- 2.4.1 enter into Head Agreements with additional contractors at any time; and
- 2.4.2 enrol any contractor to one or more Modules at any time.

## **3 Role of Finance**

3.1 Finance's role is to (either directly or through a representative):

- 3.1.1 administer this Head Agreement (including the Module(s)), including approving or rejecting any proposal from the Contractor to vary its Charges set out in **Schedule 3 – Attachment 2 (Deliverables and Pricing)**;
- 3.1.2 approve any change to the Head Agreement proposed for a Contract;
- 3.1.3 monitor the performance of Contracts (if any) to ensure that Agencies obtain the benefits to which they are entitled under the Contracts;
- 3.1.4 collect data from Panellists (including the Contractor); and
- 3.1.5 monitor and report on the operation of the Panel (including at the Module level), including its operation, viability and cost savings (if any).

### **Protections apply to Agencies**

3.2 The rights and the benefits provided to Finance pursuant to this Head Agreement also apply for the benefit of Agencies. Finance holds those rights and benefits on trust for Agencies and those rights may be enforced by Finance as trustee or by an Agency as beneficiary.

### **Rights of Finance or Agencies**

3.3 Subject to this Head Agreement, rights provided to Finance in a provision of the Head Agreement may be exercised by Finance in respect of the Head Agreement and rights provided to an Agency, including because the Head Agreement terms and conditions are included in a Contract, may be exercised by the Agency in respect of a Contract created by that Agency.

## **4 Formation of Contracts**

### **Quotations**

4.1 An Agency (which includes Finance) may, at any time, issue the Contractor and other Panellists under the relevant Module(s) with a request for quotation (**RFQ**) or a request for expression of interest (**REOI**) followed by an RFQ (as a two-stage process) for the provision of Deliverables under any one or more Module.

4.2 Upon receipt of a RFQ or REOI, if the Contractor wishes to submit a quotation or registration of interest for provision of the Deliverables, it must submit a quotation or registration in writing to the Agency by the date specified.

4.3 In providing its quotation the Contractor may offer, and the Agency may negotiate, Charges lower than those set out in **Schedule 3 – Attachment 2 (Deliverables and Pricing)** for the Contractor's provision of the Deliverables, but the Charges quoted must not be higher than the Charges set out in **Schedule 3 – Attachment 2 (Deliverables and Pricing)** for the relevant Deliverables. If Charges lower than those set out in **Schedule 3 – Attachment 2 (Deliverables and Pricing)** are negotiated for any Contract, **Schedule 3 – Attachment 2 (Deliverables and Pricing)** will be deemed amended to reflect the lower Charges for the purposes of that Contract.

4.4 Unless otherwise specified in a Module, Finance requires that all draft Contracts be provided to Finance, prior to execution, for Finance's review and confirmation that the Contracts are formed in accordance with this Head Agreement and are suitable for execution.

### **Best and Final Offers**

4.5 After receiving a quotation under **clause 4.1**, the Agency may invite the Contractor to provide a best and final offer (**BAFO**) in respect of the Deliverables which are the subject of the quotation. The Agency may specify terms and conditions that apply to the BAFO process.

4.6 Upon receipt of an invitation to provide a BAFO, the Contractor must:

4.6.1 provide a BAFO to the Agency in accordance with any applicable terms and conditions that apply to the BAFO process; or

4.6.2 reaffirm its quotation submitted under **clause 4.1** as being its BAFO.

### **Placing Contract Order Forms**

4.7 An Agency may place a Contract Order Form with the Contractor for the provision of Deliverables at any time during the Term of the relevant Module. A single Contract Order Form may encompass Deliverables from multiple Modules.

4.8 An Agency may place a Contract Order Form with the Contractor for provision of Deliverables to one or more Agencies (including Finance) at any time during the Term of the relevant Module by specifying more than one Agency in the Contract Order Form as the Agency. If a consolidated Contract Order Form is placed under this **clause 4.8**, the Agency may elect that the consolidated Contract Order Form results in the formation of:

- 4.8.1 a single Contract (with multiple Agencies); or
- 4.8.2 separate Contracts for each Agency.

### **Formation of a Contract**

4.9 Subject to **clause 4.8**, a separate Contract will be formed between an Agency or Approved Third Party Provider and the Contractor on the Contract Start Date (subject to the valid execution of a written contract in the form specified in the relevant Module).

4.10 To avoid doubt, if the parties cannot agree the terms of a Contract Order Form, no Contract will be formed between the parties.

### **Terms of a Contract**

4.11 The terms and conditions of each Contract will be:

- 4.11.1 the terms and conditions of the Head Agreement (except **clauses 2 and 4**);
- 4.11.2 the Contract Order Form including any Additional Terms;
- 4.11.3 any Module Specific Terms as set out in **Schedule 3 (Modules)** for the relevant Deliverables; and
- 4.11.4 any other Documents specified as being part of, incorporated into, or otherwise applicable to, the Contract (including relevant Attachments and attached Documents).

### **Order of Precedence for a Contract**

4.12 For a Contract, to the extent of any conflict between the provisions contained in the Contract, the following order of precedence will apply (with higher listed Documents taking precedence over lower listed Documents):

- 4.12.1 any Additional Terms (if approved by Finance);
- 4.12.2 the terms and conditions of the Head Agreement (except **clauses 2 and 4**);
- 4.12.3 the Contract Order Form excluding any Additional Terms;

- 4.12.4 any Module Specific Terms as set out in **Schedule 3 (Modules)** for the relevant Deliverables; and
- 4.12.5 any other Documents specified as being part of, incorporated into, or otherwise applicable to, the Contract (including relevant Attachments and attached Documents).

4.13 Under a Contract, an Agency is only entitled to exercise the rights expressed to be given to an Agency in the terms and conditions of the Head Agreement.

4.14 Where a Contract Order Form seeks to modify the terms of the Head Agreement that apply to the Contract through Additional Terms or otherwise, the terms that seek to modify the Head Agreement have no legal effect, irrespective of whether or not the Contract Order Form has been executed by an Agency and the Contractor unless the relevant terms:

- 4.14.1 are specified in the applicable Contract Order Form; and
- 4.14.2 have been approved in writing by Finance prior to execution of the Contract. Where Finance approves the execution of the Contract, the Head Agreement is deemed to be amended for that Contract without the need to separately amend the Head Agreement.

#### **Deliverables for PGPA Entities**

4.15 Except where the Contractor is a Panellist for a co-ordinated procurement panel or Finance otherwise grants approval, the Contractor must not enter an agreement for the provision of deliverables similar to the Deliverables (including deliverables that are the subject of a Module to which the Contractor is not enrolled) to a PGPA Entity, by any means other than in accordance with the terms of this Head Agreement through the placement of a Contract Order Form pursuant to this **clause 4**, unless the Contractor or an Agency has obtained the prior written approval of Finance or the deliverables to be provided are wholly unrelated to the Deliverables specified under a Module (including deliverables that are the subject of a Module to which the Contractor is not enrolled). Any Contract created that does not accord with **clause 4.14** and this **clause 4.15** is null and void and the Contractor waives all its rights (if any) to claim any Losses from Finance or the Agency concerned.

#### **Deliverables to Approved Third Party Providers**

4.16 An Approved Third Party Provider may issue the Contractor with a Contract Order Form under this Head Agreement for the provision of the Deliverables specified in that Contract Order Form only as part of the Approved Third Party Provider's provision of information technology services to an Agency (or group of Agencies).

4.17 If an Approved Third Party Provider issues the Contractor with a Contract Order Form under **clause 4.16**, the process reflected in this **clause 4** will apply for the formation of the Contract, and references to "Agency" will be assumed to be references to "Approved Third Party Provider" throughout this Head Agreement and the resultant Contract. To avoid doubt, the placement of a Contract Order Form under this Head Agreement by an Approved Third Party Provider does not diminish any of Finance's rights or the Contractor's obligations under this Head Agreement.

**[Note:** This allows an ICT contractor to an Agency (which would become an Approved Third Party Provider once approved by Finance/Agency) to provide end to end services to an Agency or group of Agencies under a services contract.]

4.18 Where **clause 4.17** applies, the Contractor must only provide Deliverables to the Approved Third Party Provider as part of the Approved Third Party Provider's provision of information technology services to an Agency (or group of Agencies). Any provision of the Deliverables by the Contractor in accordance with the Contract for the Approved Third Party Provider's provision of services to any other customer will constitute a material breach of the Contract to which **clause 44** will apply.

### **Contract Period**

4.19 Subject to **clause 4.7**, a Contract formed under this **clause 4** before the expiration or termination of the relevant Module continues for the Contract Period, notwithstanding the expiration or termination of the relevant Module. The terms of this Head Agreement (including the relevant Module) continue to apply to the Contract for the entire Contract Period.

## **5 Head Agreement Term**

### **Head Agreement Term**

5.1 This Head Agreement begins on the Head Agreement Commencement Date and continues until it is terminated in accordance with **clause 44** or the last Module under this Head Agreement expires.

### **Module Period**

5.2 Each Module begins on the relevant Module Commencement Date and continues for the Initial Module Period, unless it is terminated earlier in accordance with **clause 44**.

5.3 Finance may extend the Initial Module Period by a further period (**Module Option Period**) as specified in the relevant Module (if any) on the terms and conditions then in effect (subject to **clause 5.4**), by giving written Notice to the Contractor. Such Notice must be provided:

- 5.3.1 at least 20 Business Days before the end of the then current Module Period; or
- 5.3.2 within another period agreed in writing between the parties.

5.4 Where an extension is exercised in accordance with **clause 5.3**, the Charges for the relevant Module in the Module Option Period will be the Charges applicable immediately before the extension of the Initial Module Period unless otherwise agreed in accordance with **clause 36** of this Head Agreement or **clause 6.3** (as applicable).

5.5 An extension exercised in accordance with **clause 5.3** takes effect from the end of the then current Module Period.

## **Transition**

5.6 The Contractor agrees to transition any contracts (**Existing Contracts**) created under an arrangement that is similar to the one set out in the Head Agreement (**Existing Panels**) on the following basis:

- 5.6.1 Finance will determine whether any Existing Contracts are to be transitioned to be a Contract placed under this Head Agreement by notice to the Contractor. In making this determination, Finance will consider the remaining term of any Existing Contract, and for example, may determine that an Existing Contract is not to be transitioned if the remaining term is less than 3 months;
- 5.6.2 for Existing Contracts that are to be transitioned, Finance will provide a Change Order to the Contractor to give effect to the transition. Finance intends that the Change Order will deal only with transition to this Head Agreement. The Contractor must take all possible steps to execute the Change Order in a timeframe acceptable to Finance;
- 5.6.3 if a Change Order to transition an Existing Contract to this Head Agreement requires any negotiation between the parties, the Contractor must enter into those negotiations in good faith with the objective of ensuring that the Agencies who are parties to the Existing Contracts to be transitioned to this Head Agreement can obtain all the benefits of this Head Agreement (including the applicable Modules) within the time period required by Finance; and
- 5.6.4 from the date specified in an executed Change Order giving effect to a transition, the Existing Contract must be treated as a Contract placed under this Head Agreement, and the provisions of this Head Agreement will apply to that Contract as described in this Head Agreement. From the Head Agreement Start Date, the Contractor agrees that:
  - (a) no further contracts for Services included in the scope of this Head Agreement must be placed or accepted under the Existing Panels; and
  - (b) the Contractor is prohibited from accepting any extensions of the term of any Existing Contracts.

5.7 Any acceptance by the Contractor of a contract sought to be placed under the Existing Panel, or of the extension of the term of an Existing Contract, will constitute a breach of this Head Agreement which may result in the exercise of any remedies available to Finance under this Head Agreement.

## **6 Contract Period**

### **Contract Period**

6.1 A Contract begins on the Contract Start Date and continues for the initial Contract period as specified in the Contract Order Form (**Initial Contract Period**) unless the Contract is terminated in accordance with **clause 44**.

## **Extensions**

6.2 The Agency may extend the Initial Contract Period by a further period as specified in the Contract Order Form (**Contract Option Period**) on the terms and conditions then in effect (subject to **clause 6.3**), by giving written Notice to the Contractor. Such Notice must be provided:

- 6.2.1 at least 20 Business Days before the end of the then current Contract Period; or
- 6.2.2 within another period agreed in writing between the parties.

6.3 Where an extension is exercised in accordance with **clause 6.2**, the Charges in the Contract Option Period will be the Charges applicable immediately before the extension of the Initial Contract Period unless otherwise agreed in accordance with **clause 36**. An extension exercised in accordance with **clause 6.2** takes effect from the end of the then current Contract Period.

6.4 With the written approval of Finance, the Contract Period may extend beyond the Term of the Head Agreement and the relevant Module Period.

## **7 Relationship**

### **General obligations of the parties**

7.1 Each party must:

- 7.1.1 diligently perform its obligations under this Head Agreement and any Contract; and
- 7.1.2 work together in a collaborative manner in good faith.

7.2 The Contractor must:

- 7.2.1 comply with any reasonable directions given by Finance in respect of this Head Agreement;
- 7.2.2 provide all reasonable assistance required by Finance provided that the assistance requested is consistent with the Contractor's obligations under this Head Agreement; and
- 7.2.3 communicate with Agencies in the manner specified in this Head Agreement and any Contract or as otherwise directed by Finance from time to time,

and is responsible for all aspects of the provision of Deliverables under a Contract, irrespective of whether it is a reseller or engages Subcontractors for its provision of the Deliverables.

7.3 If requested by Finance, the Contractor must participate in any forums or meetings, at the Contractor's own expense, in relation to the operation of this Head Agreement and any Contract (including forums or meetings with other Panellists or with Agencies).

7.4 The Contractor must clearly identify itself as a contractor when communicating through telephone, facsimile, email or any other method in relation to this Head Agreement and in the course of performing a Contract.

### **Limitation of relationship**

- 7.5 Neither this Head Agreement nor any Contract creates a relationship of employment, agency or partnership between the parties or their respective Personnel.
- 7.6 The parties must not represent themselves, and must ensure that their Personnel do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.

## **8 Delivery**

### **Delivery**

- 8.1 Upon entering into a Contract, the Contractor must provide the Deliverables:
  - 8.1.1 as detailed in **Schedule 3 (Modules)** for the relevant Deliverables, including to achieve or exceed the Minimum Requirements applicable to the Deliverables (if any):
    - (a) as detailed in the Contract Order Form; and
    - (b) in accordance with the Contract;
  - 8.1.2 with due skill and care and to the best of the Contractor's knowledge, expertise and ability; and
  - 8.1.3 in accordance with all relevant Laws.

### **Implementation**

- 8.2 The Contractor must undertake all implementation activities specified in the Contract Order Form, including cooperating with the Agency and its other contractors for the purpose of facilitating the smooth transition of the provision of the Deliverables by the Contractor.

*[Note: The Contract Order Form and Contract can include specific implementation requirements.]*

### **Additional Deliverables**

- 8.3 The Agency may, at any time during the Contract Period, place a Contract Order Form in accordance with the Head Agreement (or vary an existing Contract Order Form in accordance with the Contract) for the provision of Additional Deliverables. In all cases the Agency must notify Finance in writing prior to the variation.

## **9 Agency obligations**

- 9.1 The Agency must pay for Deliverables that are delivered in accordance with a Contract.
- 9.2 The Agency must use reasonable endeavours to ensure that Agency Personnel do not interfere with the operations, equipment, Material or Personnel of the Contractor's other customers.

9.3 The Agency must comply with all relevant Laws in its use of the Deliverables, unless the Contractor, Contractor Personnel, Subcontractors or third parties outside the control of the Agency have caused the non-compliance.

## **10 Acceptance Testing**

10.1 Deliverables delivered under a Contract are subject to Acceptance by the Agency, unless specified otherwise in the Contract Order Form.

10.2 The Deliverables will be considered for Acceptance in accordance with the requirements set out in this **clause 10** and in the Contract Order Form.

10.3 Deliverables such as Documentation and other data items, that by their nature do not require the conduct of Acceptance Testing, will be considered for Acceptance on the basis of their compliance with the Specifications or other criteria specified in the Contract Order Form.

*[Note: The Contract Order Form will include the agreed Acceptance Test process or the means of agreeing that process. For example, the detail may be in an agreed Acceptance Test Plan.]*

### **Acceptance Testing**

10.4 The Contractor must carry out Acceptance Testing as agreed in the Contract Order Form, to ensure that the Deliverables comply with the Specifications and in particular the Acceptance Criteria in the Contract Order Form.

10.5 Unless specified to the contrary in **clause 10.6**, the costs of complying with this **clause 10** will be borne by the Contractor.

10.6 The Contractor agrees that the Agency, or any of its contractors, may also carry out the Acceptance Testing or any part of the Acceptance Testing. The direct costs of the Agency undertaking the Acceptance Testing will be borne by the Agency unless the testing shows that the Contractor failed to comply with the provisions of the Contract, in which case the cost of the testing must be borne by the Contractor.

10.7 The Contractor must comply with any reasonable request by the Agency for further testing in relation to the Deliverables.

10.8 The Contractor must allow the Agency or its authorised representative to observe the performance of the Acceptance Testing or other tests by the Contractor.

10.9 If the Agency finds that the Contractor:

10.9.1 has satisfied the Acceptance Criteria, the Agency must within the time frame specified in a Contract Order Form issue a certificate of Acceptance in respect of that Acceptance Criteria in accordance with the Contract (and the relevant Deliverables will then be deemed to have been Accepted by the Agency); or

10.9.2 has not satisfied the Acceptance Criteria, the Contractor must (at no cost to the Agency) do all things necessary to rectify any problems to ensure that the Acceptance Criteria are met. The Acceptance Testing must be repeated as soon as practicable or within the time period agreed by the parties after notification from the Contractor that it believes it meets the Acceptance Criteria, and this **clause 10.9** will apply to the repeated Acceptance Testing.

10.10 If the Contractor does not comply with the Acceptance Criteria for relevant Deliverables within:

10.10.1 15 Business Days after the commencement of Acceptance Testing for that Deliverable; or

10.10.2 if further Acceptance Testing is required under **clause 10.9.2**, such further period as is notified by the Agency,  
the Agency may treat the non-compliance as a failure by the Contractor to comply with the relevant obligation under the Contract.

10.11 The issuing of a certificate of Acceptance in accordance with **clause 10.9.1** is not a waiver of rights; and the Agency may, in issuing a certificate of Acceptance, impose such conditions and qualifications as it reasonably requires.

## **11 Charges and GST**

### **Charges**

11.1 Charges for the Deliverables are specified in **Schedule 3 – Attachment 2 (Deliverables and Pricing)**.

11.2 The Charges applicable to any Contract (including the total price payable in respect of a Contract) will be calculated in accordance with **Schedule 3 – Attachment 2 (Deliverables and Pricing)** and specified in a Contract and may be subject to a quote by the Contractor in accordance with **clause 4**. Charges payable in respect of a Contract will be payable by the Agency subject to the Contractor performing the Contract, including meeting any Milestones and achieving Acceptance of Deliverables by the applicable Agency, which are specified in that Contract.

11.3 Subject to this **clause 11**, the Agency will pay to the Contractor the Charges and Approved Pass-Through Expenses specified in **Schedule 3 - Attachment 2 (Deliverables and Pricing)** and the Contract Order Form for the Deliverables. Charges payable in respect of a Contract will be payable by the Agency subject to the Contractor performing the Contract, including meeting any Milestones and achieving Acceptance of Deliverables by the Agency, which are specified in that Contract.

11.4 The Agency will make payment within the following periods after receipt of a Correctly Rendered Tax Invoice:

11.4.1 5 calendar days, if:

(a) the Agency and the Contractor have the capability to receive and deliver (respectively) e-invoices through the PEPPOL framework; and

(b) the Agency has agreed to receive invoices, and the Contractor has provided the Correctly Rendered Tax Invoice, in that fashion; or

11.4.2 20 Business Days in all other cases.

However, if this period ends on a day that is not a Business Day, payment is due on the next Business Day.

11.5 **Clauses 11.16 to 11.18** only applies to a Contract where:

- 11.5.1 the amount of the interest payable exceeds A\$100; and
- 11.5.2 the Agency is a non-corporate Commonwealth entity.
- 11.6 Subject to **clause 11.9**, for payments made by the Agency after the payment is due, the Agency pays the unpaid amount plus interest on the unpaid amount.
- 11.7 Interest payable under **clause 11.6** will be simple interest calculated in respect of each calendar day from the day after the amount was due and payable, up to and including the day that the Agency effects payment as represented by the following formula:

$$SI = UA \times GIC \times D$$

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

D = the number of days from the day after payment was due up to and including the day that payment is made.

- 11.8 Where "General Interest Charge Rate" means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day.
- 11.9 In the event of a Dispute as to whether an amount is payable pursuant to a Correctly Rendered Tax Invoice, the Agency may withhold the disputed portion pending resolution of that Dispute in good faith but will, subject to **clauses 11.12 to 11.14** pay the undisputed portion within the period specified in **clause 11.4**.
- 11.10 The Charges include all costs and resources required by the Contractor to perform the Contract.

### **Payment Not Evidence**

- 11.11 The payment of moneys under an invoice is to be taken to be payment on account only and any such payment is not to be taken as evidence against or an admission by the Agency:
  - 11.11.1 of the value of any Deliverables; or
  - 11.11.2 of any Deliverables having been performed in accordance with the Contract.

### **GST**

- 11.12 All consideration provided under a Contract and any money payable (if any) under this Head Agreement is exclusive of GST, unless it is expressed to be GST inclusive.

11.13 Where a party (**Supplier**) makes a taxable supply to another party (**Recipient**) under or in connection with this Head Agreement or a Contract, the Recipient must pay to the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for that taxable supply is expressed to include GST). The additional amount must be paid by the Recipient at the later of the following:

11.13.1 the date when any consideration for the taxable supply is first paid or provided; and

11.13.2 the date when the Supplier issues a tax invoice to the Recipient.

11.14 If, under or in connection with this Head Agreement or a Contract, the Supplier has an adjustment for a supply under the GST Law which varies the amount of GST payable by the Supplier, the Supplier will adjust the amount payable by the Recipient to take account of the varied GST amount. The Supplier must issue an adjustment note to the Recipient within 20 Business Days after becoming aware of the adjustment.

### **Other GST Matters**

11.15 If a party is entitled to be reimbursed or indemnified under this Head Agreement or a Contract, the amount to be reimbursed or indemnified is reduced by the amount of GST for which there is an entitlement to claim an input tax credit on an acquisition associated with the reimbursement or indemnity. The reduction is to be made before any increase under **clause 11.13**. An entity is assumed to be entitled to a full input tax credit on an acquisition associated with the reimbursement or indemnity unless it demonstrates otherwise before the date the reimbursement or indemnity is made.

11.16 Any reference in this Head Agreement or in a Contract to cost, expense, liability or similar amount (**Expense**) is a reference to that Expense exclusive of GST (unless that Expense is expressed to be GST inclusive).

### **Changes in Government Taxes**

11.17 Subject to **clause 11.21**, if any new or existing government Tax (**Changed Tax**) levied in Australia in connection with the provision of the Deliverables is introduced, increases, decreases or is removed in its entirety and this affects:

11.17.1 the cost of an item included in the Charges; or

11.17.2 the cost to the Contractor of providing the Deliverables, the Contractor:

11.17.3 in the case of an increase or introduction of a Tax, may apply to vary **Schedule 3 – Attachment 2 (Deliverables and Pricing)** to take account of the net effect of the change in the Changed Tax; or

11.17.4 in the case of a decrease or a removal of a Tax, must give Finance written Notice of the decrease or removal together with evidence of the net effect of the decrease or removal on the Charges as soon as practicable after the change in the Changed Tax is announced or the Contractor becomes aware of the decrease or removal, and **Schedule 3 – Attachment 2 (Deliverables and Pricing)** will be varied to take account of the effect of such decrease or removal.

11.18 The increase in the Charges under **clause 11.17** will not take effect, and Finance is not obliged to approve any variation to **Schedule 3 – Attachment 2 (Deliverables and Pricing)** attributable to the Changed Tax, unless and until the Contractor provides Finance with evidence of the net effect of the Changed Tax on the cost of an item or the costs of supplying the Deliverables and Finance is satisfied that:

11.18.1 the claimed increase is actually attributable to that Tax and takes into account reductions in any other government Tax; and

11.18.2 the change in the Changed Tax has affected the Charges, and the increase will take effect from the date on which the Changed Tax became effective.

11.19 A decrease in the Charges under **clause 11.17** will take effect from the date on which the change in the Changed Tax becomes effective.

11.20 To avoid doubt, any change to **Schedule 3 – Attachment 2 (Deliverables and Pricing)** will automatically apply to all current Contracts without the need to formally amend or vary those Contracts.

11.21 **Clauses 11.17 to 11.19** do not apply to income Tax, Taxes on turnover or revenue or similar Taxes imposed on or in respect of income, turnover or revenue, any employment-related Taxes (including, without limitation any Tax on or in respect of superannuation) or capital gains Taxes.

## **12 Personnel**

### **General**

12.1 The Contractor must, at its own cost, use such Personnel as are necessary to enable it to fulfil its obligations under any Contract. The Contractor must ensure that Contractor Personnel that it uses to perform a Contract have the requisite skills, qualifications and experience for the tasks they are given.

12.2 The Contractor must:

12.2.1 provide, or procure the provision of, such information as can be lawfully provided and which is reasonably requested by the Agency concerning the Contractor Personnel it is using, or proposes to use, in performing its obligations under a Contract;

12.2.2 provide suitable replacement Contractor Personnel should the Agency, for security reasons, deny access to or request removal of any Contractor Personnel;

12.2.3 provide suitable replacement of Contractor Personnel should the Agency requests the removal of that person for any of the following reasons:

(a) the Contractor Personnel failed to observe one of the Agency's policies;

(b) the Contractor Personnel failed to comply with any Law;

(c) the Contractor Personnel failed to comply with any workplace health and safety requirements specified in the Contract;

- (d) the Contractor Personnel does not have, in the opinion of the Agency the required skill to perform their role; or
- (e) to protect people or property;

12.2.4 ensure Contractor Personnel comply with the Contractor's obligations in the Contract; and

12.2.5 ensure Contractor Personnel, when on the Agency's premises or when accessing the Agency's facilities and information, comply as necessary with the reasonable requirements and directions of the Agency with regard to conduct, behaviour, safety and security (including submitting to security checks as required and complying with any obligation imposed on the Agency by Law).

12.3 The Agency is not obliged to pay the Charges in respect of any Contractor Personnel who:

- 12.3.1 do not have the relevant skills or qualifications specified for that person in the Contract, for any period; or
- 12.3.2 the Agency has requested be removed in accordance with **clauses 12.2.2** and **12.2.3**, after the date on which the request was made (or, if the request requires the personnel to be removed at a later date, then after that later date).

### **Contractor's responsibilities**

12.4 The Contractor is responsible for all wages, salaries and other payments to Contractor Personnel and must fully comply with all relevant Laws and other Commonwealth of Australia requirements in relation to Contractor Personnel including labour and industrial relations Laws and those relating to working conditions, salary, wages, the payment of any relevant Tax, superannuation, 'pay as you go' or other income Tax remissions and any other amounts, remissions allowances including those under any industrial awards or agreements relevant to the Contract. Upon request, the Contractor must demonstrate that it has complied with these obligations.

12.5 Without limiting **clause 12.4**, the Contractor must:

- 12.5.1 comply with all applicable Laws and other requirements relating to the security of payments that are due to persons;
- 12.5.2 ensure that payments made by the Contractor, including to Subcontractors, are made in a timely manner; and
- 12.5.3 as far as practicable, ensure that Disputes about any payments, whether to Subcontractors or Contractor Personnel, are resolved in a reasonable, timely and cooperative way.

### **Key Personnel**

12.6 The Contractor must ensure that each Key Person named in the Contract Order Form is appointed to the role nominated for that person by the dates (if any) specified in the Contract Order Form.

12.7 The Contractor must not remove any Key Person until agreed by the Agency in writing, except where the removal arises as a result of the Key Person's voluntary resignation, sickness or injury, internal promotion or involuntary termination of employment for cause or is requested by the Agency in accordance with **clauses 12.2.2 and 12.2.3**.

12.8 Where **clause 12.7** applies, the Contractor must provide replacement Key Persons acceptable to the Agency at no additional cost to the Agency and at the earliest opportunity. Any replacement Key Person must be approved by the Agency.

## **13 Subcontracting**

13.1 Unless expressed otherwise in the Contract Order Form, the Contractor must:

13.1.1 not subcontract any aspect of the performance of the Contract without the prior written Approval of the Agency, which Approval will not be unreasonably withheld;

13.1.2 not subcontract on terms that would permit the Subcontractor to do or omit to do something that would, if done or omitted to be done by the Contractor, constitute a breach of the Contract;

13.1.3 not subcontract with an entity that:

(a) has had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid any judgment amount;

(b) is on, or which has one or more employees that are on, or which is a member of an entity that is on, the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies; and

(c) is named in a report tabled in the Australian Parliament by the Workplace Gender Equality Agency as a supplier that has not complied with the *Workplace Gender Equality Act 2012* (Cth); and

13.1.4 ensure that any Subcontractor that is Approved is bound by, and complies with, provisions to the effect of the following clauses of this Head Agreement as included in the Contract:

(a) **clause 35** (Audit and Access);

(b) **clause 15** (Confidentiality);

(c) **clause 16** (Privacy);

(d) **clause 22** (Security);

(e) **clause 30** (Conflict of Interest); and

(f) **clause 44** (Termination).

13.2 The Contractor must provide the Agency with details of the subcontract (excluding pricing) between the Contractor and the Subcontractor within five (5) Business Days after receiving a request from the Agency to provide the subcontract.

13.3 At the Contract Start Date, the Subcontractors identified in the Contract Order Form are approved Subcontractors under the Contract.

- 13.4 The Contractor must inform its Subcontractors that the Subcontractor's provision of any Deliverables under the Contract may be disclosed publicly.
- 13.5 Approved Subcontractors will be specified in the Contract Order Form.

## **14 Intellectual Property Rights**

### **Intellectual Property Rights in New Material**

- 14.1 Unless specified otherwise in a Contract Order Form and subject to **clauses 14 and 27**, Intellectual Property Rights in any New Material vest in the Agency absolutely upon creation.

*[Note: To be determined by Agency after risk assessment.]*
- 14.2 Subject to security and confidentiality obligations, and any limits in Additional Terms approved by Finance, the Agency grants to the Contractor an irrevocable, non-exclusive, world-wide, paid-up licence to hold, use, reproduce, modify, display and sub-license the Intellectual Property Rights in any New Material in which ownership vests with an Agency pursuant to **clause 14.1** for the Contractor's own purposes.
- 14.3 Finance and each Agency are not liable in respect of any Loss caused by the Contractor's exercise of the licence in **clause 14.1** and the Contractor releases and indemnifies Finance and each Agency in respect of any such Loss.
- 14.4 To the extent any New Material incorporates or is delivered in conjunction with Existing Material:
  - 14.4.1 Intellectual Property Rights in that Existing Material are retained by the owner of those Intellectual Property Rights absolutely; and
  - 14.4.2 in respect of Intellectual Property Rights in the Existing Material as and to the extent incorporated in New Material, the Contractor grants to (or must acquire for where the Intellectual Property Rights in the Existing Material are owned by a third party) the Agency an irrevocable, perpetual, non-exclusive, world-wide, paid-up licence to hold, use, execute, reproduce, display, perform and sublicense that Existing Material as part of the relevant New Material, and to alter, enhance, and produce derivative works from that Existing Material as a whole for use by the Agency provided that the Agency must not exploit the Existing Material for commercial purposes.
- 14.5 On the expiration or termination of a Contract, the Contractor must deliver to the Agency copies of all New Material and any data relevant to that New Material or the Agency held by the Contractor or under its control, in a format that the Agency can use.
- 14.6 The Contractor must ensure that, to the extent it has control of Agency Confidential Information, it is used, copied, supplied or reproduced only for the purposes of a Contract in accordance with **clause 15.1**.

### **Intellectual Property warranty**

- 14.7 Unless specified otherwise in a Contract Order Form in a manner that provides protection to the Agency, the Contractor warrants that:
  - 14.7.1 the Deliverables, and use of those Deliverables, will not infringe the Intellectual Property Rights or Moral Rights of any person; and

14.7.2 it has the necessary rights to grant the licences required by this **clause 14**.

#### **Remedy for breach of Intellectual Property warranty**

14.8 If someone claims, or the Agency reasonably believes that someone is likely to claim, that all or part of the Deliverables infringe their Intellectual Property Rights or that use of the Deliverables infringes their Moral Rights, the Contractor must, in addition to the indemnity under **clause 25.1.7** and to any other rights that the Agency may have against it, promptly, at the Contractor's expense:

14.8.1 secure the rights for the Agency to continue to use the affected Deliverables free of any claim or liability for infringement; or

14.8.2 replace or modify the affected Deliverables so that the Deliverables or the use of them does not infringe the Intellectual Property Rights or Moral Rights of any person in a way that does not degrade the performance or quality of the affected Deliverables.

#### **Moral Rights**

14.9 To the extent permitted by applicable Laws, the Contractor must ensure that each of the Personnel used by the Contractor in the production or creation of the New Material gives a genuine consent in writing, in a form acceptable to the Agency, to the use of the New Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights.

#### **Specified Acts**

14.10 In this **clause 14**, Specified Acts means:

14.10.1 not attributing the authorship, or falsely attributing the authorship, of any New Material, or any content in the New Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));

14.10.2 materially altering the style, format, colours, content or layout of the New Material and dealing in any way with the altered New Material;

14.10.3 reproducing, communicating, adapting, publishing or exhibiting any New Material; and

14.10.4 adding any additional content or information to the New Material.

### **15 Confidentiality**

#### **Disclosure of Confidential Information**

15.1 Subject to **clause 15.6**, a party to the Head Agreement or a Contract must not, without the prior consent of the other party, disclose any Confidential Information of the other party to a third party.

15.2 In giving consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party must comply with those conditions if it proceeds to make the disclosure.

### **Written undertakings**

- 15.3 Each party must take all reasonable steps to ensure that, subject to **clause 15.6**, its Personnel engaged to perform work under this Head Agreement or a Contract do not disclose Confidential Information of the other party obtained during the course of performing such work.
- 15.4 Unless specified otherwise in a Contract Order Form for a Contract, a party may at any time request the other party to arrange for any of its Personnel to whom information may be disclosed pursuant to **clauses 15.6.1, 15.6.2, 15.6.3, or 15.6.4** (other than a person employed under the *Public Service Act 1999* (Cth) or, where the Agency is a State Agency, the equivalent legislation) to give a written undertaking in the form set out at **Schedule 1 – Attachment 2 (Deed of Confidentiality)** to the Head Agreement.
- 15.5 If a party receives a request under **clause 15.4**, it must promptly arrange for all such undertakings to be given and must provide copies to the other party.

### **Exceptions to obligations**

- 15.6 The obligations of each party under this **clause 15** will not be taken to have been breached to the extent that Confidential Information:
  - 15.6.1 is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Head Agreement or any Contract;
  - 15.6.2 is disclosed to a party's internal management Personnel, or legal or commercial advisors, solely to enable effective management or auditing of Head Agreement-related or Contract-related activities;
  - 15.6.3 is shared by Finance within Finance, or with another Agency in connection with its management of the Head Agreement or the Contract;
  - 15.6.4 is shared by an Agency within the Agency or with another Agency including Finance in connection with its management of the Contract;
  - 15.6.5 is disclosed by Finance or an Agency to a Commonwealth minister and their advisers;
  - 15.6.6 is disclosed by Finance or an Agency in response to a request from a House or a Committee of the Parliament of the Commonwealth, or from a State or Territory Parliament or Assembly if the relevant Agency is a State or Territory Agency;
  - 15.6.7 disclosure is authorised or required by Law or the rules of a stock exchange, including under this Head Agreement or any Contract, under a licence or otherwise, to be disclosed; or
  - 15.6.8 is in the public domain otherwise than due to a breach of this **clause 15**.

### **Obligations on disclosure**

- 15.7 A party that discloses Confidential Information to another person must:
  - 15.7.1 if the disclosure is pursuant to **clauses 15.6.1, 15.6.2, 15.6.3 or 15.6.4**:
    - (a) inform the receiving person that the information is Confidential Information; and

(b) not provide the information unless the receiving person agrees to keep the information confidential and agrees, if requested, to provide a written confidentiality undertaking; or

15.7.2 if the disclosure is pursuant to **clauses 15.6.5, 15.6.6 or 15.6.7**, inform the receiving party that the information is Confidential Information and take reasonable steps to ensure the receiving party keeps the information confidential. In this **clause 15.7.2**, 'reasonable steps' include taking reasonable steps to ensure that the receiving party is subject to statutory or contractual confidentiality obligations.

#### **No reduction in privacy obligations**

15.8 Nothing in **clauses 15.1 to 15.7** limits any obligation which either party may have under Statute including the *Privacy Act*, Part 13 of the *Telecommunications Act 1997* (Cth), any applicable State or Territory privacy legislation, or under a Contract, in relation to the protection of personal information.

#### **Announcements**

15.9 Subject to **clause 15.10**, the Contractor must not make a Public Announcement unless it has:

15.9.1 Finance's written agreement about this Head Agreement or the Deliverables; or

15.9.2 an Agency's written agreement about a Contract or the Deliverables under the Contract.

15.10 The Contractor is not required to obtain Finance's or the Agency's written consent to make a Public Announcement if the Public Announcement is required by Law or a regulatory body (including a relevant stock exchange).

15.11 If the Contractor is required by Law or a regulatory body to make a Public Announcement, the Contractor must:

15.11.1 limit the Public Announcement to the extent required by the relevant Law or regulatory body; and

15.11.2 to the extent practicable, first consult with and take into account the reasonable requirements of:

(a) Finance if the Public Announcement relates to this Head Agreement; and

(b) the Agency if the Public Announcement relates to a Contract.

## **16 Privacy**

#### **Personal Information**

16.1 This **clause 16** applies only where the Contractor deals with Personal Information for the purpose of, providing the Deliverables in accordance with this Head Agreement and any Contract. Nothing in this **clause 16** derogates from **clauses 15 or 22**.

16.2 The Contractor acknowledges that it is or may be considered to be a "contracted service provider" within the meaning of section 6 of the *Privacy Act*, and agrees in respect of the provision of the Deliverables:

16.2.1 to use or disclose Personal Information obtained during the course of performing the Services under a Contract, only for the purposes of this Head Agreement or a Contract, or as required or authorised by law;

16.2.2 not to do any act, or engage in any practice that would breach an Australian Privacy Principle, or which if done or engaged in by Finance or an Agency, would be a breach of that Australian Privacy Principle by Finance or an Agency;

16.2.3 not to use or disclose Personal Information, or engage in an act or practice that would breach an Australian Privacy Principle or an APP Code, unless:

- (a) in the case of an Australian Privacy Principle or an APP Code, 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 is inconsistent with the Australian Privacy Principle or APP Code;
- (b) it notifies individuals whose Personal Information is held by the Contractor or Subcontractor, as the case may be, of the complaints mechanism outlined in the *Privacy Act* that may apply to the Contractor;
- (c) it discloses in writing to any person who asks, the content of the provisions of the Contract (if any) that are inconsistent with an Australian Privacy Principle or an APP Code binding a party to this Head Agreement or a Contract;
- (d) it carries out and discharges the obligations contained in the Australian Privacy Principles as if it were an Agency (including Finance) under the *Privacy Act*; and
- (e) it ensures that any Contractor Personnel who are required to deal with Personal Information for the purposes of this Head Agreement or a Contract, are made aware of the obligations of the Contractor as set out in this **clause 16**.

16.3 To the extent that notification does not cause the Contractor to be in breach of any Law, the Contractor must promptly notify Finance in respect of this Head Agreement and the Agency Representative in respect of a Contract and if the Contractor:

- 16.3.1 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 a Subcontractor;
- 16.3.2 becomes aware that a disclosure of Personal Information may be required by Law; or
- 16.3.3 receives a request or an inquiry from the Privacy Commissioner, or from any individual to whom any Personal Information held by the Contractor or Subcontractors relates, in respect of Personal Information.

16.4 The Contractor must take all possible steps to ensure that all Subcontracts entered into for the purposes of fulfilling its obligations under a Contract contain provisions to ensure that each Subcontractor has the same awareness and obligations as the Contractor has under this **clause 16**, including the requirement in relation to Subcontracts.

16.5 The Contractor's obligations in this **clause 16** are in addition to, and do not restrict, any obligations it may have under the *Privacy Act* or the APPs 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 the other provisions of this **clause 16**.

16.6 In this **clause 16**, the term 'Agency' has the same meaning as they have in section 6 of the *Privacy Act*.

#### **Mandatory Data Breach Notification**

16.7 For the purpose of **clauses 16.8 to 16.12** an 'Eligible Data Breach' has the meaning given in the *Privacy Act*.

16.8 **Clauses 16.7 to 16.12** apply unless a Contract expressly specifies that **clauses 16.8 to 16.11** do not apply, or applies with modifications to it.

16.9 If the Contractor has reasonable grounds to suspect there may have been an event which amounts to an Eligible Data Breach:

- 16.9.1 the Contractor must as soon as possible, but within no more than 2 Business Days, notify the Agency;
- 16.9.2 comply with its obligations under the *Privacy Act* in relation to that event;
- 16.9.3 provide the Agency with all information requested by the Agency about the event; and
- 16.9.4 if requested, allow the Agency to participate in the Contractor's assessment of the event and whether it amounts to an Eligible Data Breach.

16.10 If the Contractor, after complying with **clause 16.9**, determines that an Eligible Data Breach has occurred and notification of that Eligible Data Breach is required under the *Privacy Act*:

- 16.10.1 if requested by the Agency, the Parties must meet to discuss and endeavour to agree who will issue the notification (but if the parties are unable to agree, then the Agency will, acting reasonably, decide which party will issue that notification);
- 16.10.2 if the Contractor is to issue a notification, then the Contractor must:
  - (a) as soon as possible, but within no more than 2 Business Days, provide the Agency with a draft of the notification;
  - (b) make any changes to the draft notification that are reasonably required by the Agency; and
  - (c) issue the notification in accordance with the requirements of the *Privacy Act* (including any applicable time periods).
- 16.10.3 If the Agency is to issue the notification, then the Agency must:
  - (a) as soon as possible, but within no more than 3 Business Days, notify the Contractor and provide a draft of the notification;
  - (b) make any changes to the notification that are reasonably required by the Contractor for consistency with the *Privacy Act*; and
  - (c) issue the notification in accordance with the requirements of the *Privacy Act* (including any applicable time periods).

16.11 The Contractor must ensure that:

16.11.1 the Agency is promptly notified of any investigation or other action taken by the Privacy Commissioner in connection with any actual or suspected Eligible Data Breach, or notification in relation to that matter; and

16.11.2 the Agency is kept informed in relation to that investigation or other action.

16.12 The parties acknowledge and agree that nothing in **clauses 16.8 to 16.11** affects their obligations under the *Privacy Act* and under a Contract, unless otherwise agreed in writing by the Parties.

## **17 Warranties**

### **Application of general warranties**

17.1 The general warranties provided under this **clause 17**:

17.1.1 will survive the termination or expiry of this Head Agreement and any Contract; and

17.1.2 are in addition to, do not limit and are not limited by:

- (a) any warranties specific to any Contract or Deliverables;
- (b) warranties associated with Intellectual Property Rights;
- (c) any other warranties provided by either party under this Head Agreement or any Contract; and
- (d) the other warranties referred to in **clause 17**.

### **Contractor warranty – Contractor has informed itself**

17.2 The Contractor warrants, on the Head Agreement Commencement Date, each Module Commencement Date and the Contract Start Date (if any), that:

17.2.1 subject to the Agency providing the Contractor with all reasonably requested information with respect to the Contract, it has and will be deemed to have done everything possible to inform itself fully and completely as to:

- (a) the requirements in this Head Agreement and any Contract;
- (b) the Law and the conditions, risks, contingencies and all other factors which may affect the timing, scope, cost or effectiveness of performing this Head Agreement and any Contract; and
- (c) all things necessary for delivery and management of this Head Agreement and the performance of the Contractor's obligations under this Head Agreement and any Contract;

17.2.2 subject to the Agency providing the Contractor with all reasonably requested information with respect to a Contract, it enters into this Head Agreement and any Contract based on its own investigations, interpretations, deductions, information and determinations;

17.2.3 without limiting **clause 17**, it does not rely on any representation, warranty, condition or other conduct, information, statement or Document which may have been made by Finance or any person purporting to act on behalf of

Finance in entering into this Head Agreement or any Contract, other than an express warranty contained in this Head Agreement or any Contract;

17.2.4 it has the right to enter into this Head Agreement and any Contract and:

- (a) full corporate power and authority; and
- (b) all rights, title, licences, interests and property necessary, to lawfully enter into, perform and observe its obligations under this Head Agreement and any Contract;

17.2.5 the execution, delivery and performance of this Head Agreement and any Contract has been or will be duly and validly authorised by all necessary corporate action;

17.2.6 the Contractor's signing, delivery and performance of this Head Agreement and any Contract does not constitute:

- (a) a violation of any judgment, order or decree;
- (b) a material default under any agreement which relates in any way to the provision of Deliverables; or
- (c) an event that would, with notice or lapse of time, constitute such a default; and

17.2.7 to the best of its knowledge no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Head Agreement or any Contract.

**Contractor warranty – disclosure of proceedings and matters**

17.3 The Contractor warrants that it has disclosed in writing to Finance prior to the Head Agreement Commencement Date and will disclose prior to each Module Commencement Date and Contract Start Date any matter that may affect the Contractor's reputation or the Contractor's capacity or ability to perform and fulfil its obligations under this Head Agreement or any Contract, including:

17.3.1 any relevant litigation, arbitration, mediation, conciliation, proceeding or investigation that is taking place, pending or threatened (either in Australia or overseas); and

17.3.2 any relevant matters relating to the commercial, technical or financial capacity of the Contractor or of any Subcontractor proposed to be engaged in respect of any Contract, including the existence of any breach, default or alleged breach or default of any agreement, order or award that is binding upon the Contractor.

**Contractor warranty – Australian Government policy**

17.4 The Contractor warrants on the Head Agreement Commencement Date, each Module Commencement Date and each Contract Start Date that:

17.4.1 it is not named by the Workplace Gender Equality Agency as an employer that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth);

- 17.4.2 it has not had a judicial decision against it (not including decisions under appeal) relating to employee entitlements in respect of which it has not paid the judgment amount;
- 17.4.3 it is not on the Commonwealth's consolidated list of individuals and entities to which terrorist asset freezing applies and none of its Personnel are on, or a member of an entity on, that list;
- 17.4.4 it will comply with the Australian Government's Indigenous Procurement Policy to the extent that policy applies to this Head Agreement, and any Contract; and
- 17.4.5 it will comply with any AIP Plan included in a Contract.

17.5 The Contractor warrants that it will promptly notify and fully disclose to Finance any event or occurrence actual or threatened during the Term or the Contract Period that would materially affect the Contractor's ability to perform any of its obligations under this Head Agreement or any Contract.

#### **Contractor warranty – skill and quality**

17.6 The Contractor represents and warrants that it has, and the Contractor Personnel have, and they will both continue to have and to use, substantially the same level of skills, qualifications and experience as would be expected from a comparable service provider in the Contractor's industry to provide the Deliverables in a skilful, diligent, responsive, professional, efficient and controlled manner, with a high degree of quality and to a standard that complies with the Contract and meets the Agency's requirements as set out in the relevant Contract Order Form in full.

#### **Contractor warranty – right to grant licences**

17.7 The Contractor warrants that it has the right to grant all licences required to be granted under the Contract.

#### **Third party warranties**

17.8 If the Contractor delivers any item that has been procured from a third party, the Contractor assigns to the Agency, to the extent permitted by Law, the benefits of the warranties given by the third party and will do all things requested by the Agency to enforce those warranties.

17.9 Nothing in **clause 17.8** relieves the Contractor of the obligation to comply with warranties offered directly by the Contractor.

#### **Finance warranty – right to enter this Head Agreement**

17.10 Finance warrants that it has the right and authority to enter into this Head Agreement.

#### **Agency warranty – right to enter the Contract**

17.11 The Agency warrants that it has the right and authority to enter into this Head Agreement and any Contract.

#### **Trustee Contractor**

17.12 If the Contractor acts as trustee of a trust, in relation to this Head Agreement and any Contract:

- 17.12.1 it is liable both personally, and in its capacity as trustee of that trust;

- 17.12.2 it must not assign, transfer, mortgage, charge, release, waive, encumber or compromise its right of indemnity out of the assets of that trust, but retain and apply such indemnity only towards meeting its obligations under this Head Agreement or any Contract;
- 17.12.3 it must not retire, resign nor by act or omission effect or facilitate a change to its status as the sole trustee of that trust; and
- 17.12.4 it represents and warrants that:
  - (a) such trust has been duly established and currently exists;
  - (b) it is the duly appointed, current and only trustee of that trust;
  - (c) as such trustee it has the power to enter into and perform its obligations under this Head Agreement and any Contract;
  - (d) it has an unqualified right of indemnity out of the assets of that trust in respect of its obligations;
  - (e) Conflict of Interest and duty affecting it as such trustee (and/or its directors, if any) does not arise, or otherwise is overcome by the terms of the relevant trust deed; and
  - (f) no breach of the relevant trust deed exists or would arise.

### **Effect of warranties**

- 17.13 Nothing in this **clause 17**:
  - 17.13.1 restricts the effect of any guarantees, conditions or warranties which may be implied by the *Competition and Consumer Act 2010* (Cth) or any sale of goods or fair trading legislation; or
  - 17.13.2 limits Finance's or an Agency's right to take action on the basis of:
    - (a) the Law that would be applied by the High Court of Australia in respect of a breach of this Head Agreement, or any Contract;
    - (b) tort; or
    - (c) any Statutory cause of action.
- 17.14 The Contractor acknowledges that Finance is entering into this Head Agreement, and any Agency enters into any Contract, in reliance on the warranties given by the Contractor in this **clause 17** and any response by the Contractor to an RFQ, as included in a Contract.

## **18 Insurance**

### **Obligation to maintain insurance**

- 18.1 The Contractor must have and maintain valid and enforceable insurance policies (with reputable insurance companies that do not contain any unusual exclusions) to the following levels, unless otherwise specified in a Contract:
  - 18.1.1 for the Term of the Head Agreement and any Contract which survives the expiry or termination of the Head Agreement:
    - (a) minimum \$20,000,000.00 per claim for public liability;

- (b) minimum \$2,000,000.00 per claim for either professional indemnity or errors and omissions;
- (c) minimum \$10,000,000.00 per claim for product liability;
- (d) workers' compensation as required by law; and
- (e) any other, or increased, insurance specified in a Contract; and

18.1.2 for seven-years following the expiry or termination of the later of the Head Agreement or any Contract, \$2,000,000.00 per claim for either professional indemnity or errors and omissions.

18.2 Finance will annually review the amounts of insurance to ensure that they are sufficient and may require the Contractor to adjust the insurance amounts accordingly subject to agreement between Finance and the Contractor.

**Insurance documentation**

18.3 The Contractor must, on request by Finance, provide to Finance within five Business Days proof of the currency of the required insurances including:

- 18.3.1 an insurance certificate certifying that the insurance required by this **clause 18** is in force; and/or
- 18.3.2 copies of the policies of insurance; and/or
- 18.3.3 other proof of the currency of the required insurances, to the satisfaction of Finance.

## **19 Head Agreement Guarantees**

19.1 If required by Finance, the Contractor must provide Finance within the timeframe specified by Finance with an executed:

- 19.1.1 Performance Guarantee in the form of **Schedule 1 – Attachment 3 (Performance Guarantee and Indemnity)**; and/or
- 19.1.2 Unconditional Financial Undertaking in the form of **Schedule 1 – Attachment 4 (Unconditional Financial Undertaking)**,

for the benefit of Finance and any Agency under a Contract.

19.2 Finance may require the Contractor to increase or reduce the amount of the Performance Guarantee and Unconditional Financial Undertaking (as applicable) from time to time, including to reflect the Contractor's enrolment on, or removal from enrolment from, a Module or entry into of any Contract.

19.3 If the Contractor does not comply with any of its obligations under this Head Agreement or any Contract, Finance may call on either or both the Performance Guarantee and/or Unconditional Financial Undertaking (at Finance's absolute discretion) without notice to the Contractor.

19.4 If Finance calls on an Unconditional Financial Undertaking under **clause 19.3**, Finance may, by written Notice to the Contractor, require the Contractor to provide a replacement or additional Unconditional Financial Undertaking and the Contractor must provide such replacement or additional Unconditional Financial Undertaking to Finance within five (5) Business Days after the date of the Notice.

19.5 All costs incurred in obtaining and maintaining the required security will be met by the Contractor.

## **20 Unconditional Financial Undertaking**

20.1 If an Agency determines that it requires an Unconditional Financial Undertaking that is specific to a Contract, in addition to any Unconditional Financial Undertaking the Contractor has provided under the Head Agreement, the Agency must have approval in writing from Finance prior to specifying its requirements in a Contract Order Form.

20.2 If specified in the Contract Order Form, the Contractor must, on or before the Contract Start Date (or other date as agreed by the parties in a Contract Order Form), provide the Agency Representative with an executed Unconditional Financial Undertaking substantially in the form of **Schedule 1 – Attachment 4 (Unconditional Financial Undertaking)** to the Head Agreement.

20.3 If the Contractor does not comply with any of its obligations under the Contract, the Agency may call on the Unconditional Financial Undertaking without notice to the Contractor.

20.4 If the Agency calls on the Unconditional Financial Undertaking in accordance with **clause 20.3**, then no later than five (5) Business Days after the Agency gives the Contractor a Notice asking for it, the Contractor agrees to deliver to the Agency, a replacement or additional Unconditional Financial Undertaking.

20.5 If the Agency does not call on the Unconditional Financial Undertaking, the Agency will return the Unconditional Financial Undertaking, within six months after expiry or termination of the Contract.

## **21 Performance Guarantee**

21.1 If an Agency determines that it requires a Performance Guarantee that is specific to a Contract, in addition to any Performance Guarantee the Contractor has provided under the Head Agreement, the Agency must have approval in writing from the Finance Representative prior to specifying its requirements in a Contract Order Form.

21.2 If specified in the Contract Order Form, the Contractor must, on or before the Contract Start Date or other date agreed by the parties in a Contract Order Form, provide the Agency Representative with an executed Performance Guarantee substantially in the form of **Schedule 1 – Attachment 3 (Performance Guarantee and Indemnity)** of the Head Agreement unless otherwise requested by an Agency.

## **22 Security**

### **General**

22.1 The Contractor must:

22.1.1 comply with any security requirements specified in a Module or a Contract Order Form (including those contained in the PSPF and the ISM) and as otherwise notified by the Agency to the Contractor from time to time;

- 22.1.2 ensure that its officers, employees, agents and Subcontractors are aware of and comply with the Agency's security requirements in respect of the Deliverables, including having and maintaining appropriate Personnel security clearances;
- 22.1.3 comply with the requirements of the PSPF and the ISM, as amended from time to time;
- 22.1.4 ensure that its officers, employees, agents and Subcontractors undertake any security checks, clearances or accreditations as required by the Agency;
- 22.1.5 comply with any written direction given with reasonable Notice by an Agency with respect to Deliverables. To the extent that such direction results in substantial additional costs to the Contractor, the Contractor may request a Change Order to the Contract in accordance with **clause 36** to address these additional costs (provided they are substantiated to the Agency's satisfaction);
- 22.1.6 notify the Agency of any changes to circumstances which may affect the Contractor's capacity to provide the Deliverables in accordance with the Agency's security requirements;
- 22.1.7 not, and must ensure that Contractor Personnel do not, permit or allow any remote access to Agency systems unless approved by the Agency; and
- 22.1.8 inform the Agency (via the nominated contact point) by telephone (or other nominated contact method approved by the Agency) as soon as possible after it becomes aware of any actual, suspected or threatened security incident or breach, and as soon as practicable (and at least within 2 days) confirm the details in writing. In the event of any security incident or breach, the Contractor must comply with all directions of the Agency to assist in mitigating the impact of the incident or breach on the Agency.

22.1A To the extent that the Contractor is not compliant with the requirements set out at clause 22.1 as at the Head Agreement Commencement Date, the Contractor must prepare and submit to Finance for Approval, by no later than the date Notified to the Contractor by Finance, an action plan that sets out:

- 22.1A.1 details of the steps the Contractor will take to ensure it becomes compliant with the requirements set out in clause 22.1;
- 22.1A.2 the date by which the Contractor will become compliant with these requirements; and
- 22.1A.3 any additional details requested by Finance (**Action Plan**).

22.1B Once the Action Plan has been received, Finance will, within a reasonable period of time:

- 22.1B.1 approve the Action Plan;
- 22.1B.2 reject the Action Plan; or
- 22.1B.3 require variations to, or explanations of, any aspect of the Action Plan (at which point, the Contractor must re-submit a revised Action Plan to Finance by a date nominated by Finance).

22.1C If Finance approves the Action Plan (**Approved Action Plan**), the Contractor must perform the actions and tasks set out in the Approved Action Plan in accordance with the terms of this Deed.

#### **Data Mining**

22.2 Unless authorised in writing by the Agency, the Contractor must not at any time conduct data mining activities in respect of the Deliverables.

22.3 The prohibition on data mining applies even if a user is required to click through and accept Contractor terms permitting the Contractor to conduct data mining on a user, or a collection of user accounts. Such terms have no effect whatsoever.

22.4 If data mining is ordinarily conducted by seller by means of an automated process the Contractor must disable it for the Deliverables.

#### **General Data Protection Regulation**

22.5 **Clause 22.6** applies without limiting the Contractors' obligations under this Head Agreement or otherwise at Law.

22.6 At no additional cost, and in the performance of a Contract, the Contractor must comply with Regulation (EU) 2016/679 (General Data Protection Regulation) (GDPR) to the extent that it applies to the delivery of the Deliverables.

22.7 The Agency will comply with any GDPR obligations applicable to it and relevant to a Contract.

#### **Risk Management and Supply Chain Integrity**

22.8 The Contractor must identify and manage any risks and issues associated with the performance of its obligations under a Contract, including in relation to the introduction of any harmful code into the Agency's systems and the risk of loss or corruption of Agency Material.

22.9 The Contractor acknowledges and agrees that Deliverables are to be provided to the Agency in ICT environments that are critical to the Agency's functions and that the protection of the Agency's cyberspace is a priority for the Agency, including:

- 22.9.1 ensuring the security, confidentiality and availability of any Deliverables under a Contract; and
- 22.9.2 maintaining the integrity of the supply chain in relation to any Deliverables provided under a Contract.

22.10 Without limiting any other clause in a Contract, the Contractor must:

- 22.10.1 provide information about its local and global supply chain; and
- 22.10.2 provide any additional information reasonably requested by the Agency about entities in Contractor's local or global supply chain (including the name, location, ownership, and details of the type of service or product provided by those entities).

#### **IRAP or equivalent certification**

22.11 If specified in a Contract, the Contractor must have, or be in the process of, IRAP assessment (or equivalent security assessment or requirements (including consultative forums)) for data centres or products used or provided as part of the Deliverables.

22.12 If **clause 22.11** applies to a Contract, the Contractor must:

22.12.1 maintain the IRAP or equivalent certification for the term of the Contract; and

22.12.2 comply with any recommendations included in any IRAP or equivalent assessments or certifications.

#### **Security Clearance**

22.13 The Contractor acknowledges that the Agency may specify some Deliverables as security sensitive in a Contract, and select a security classification to apply to those Deliverables (or the applicable part of the Deliverables). If the Agency exercises its rights in this **clause 22.13**, the Contractor must ensure that only Contractor Personnel with the security clearances required by the Agency provide the Deliverables (or the applicable part of the Deliverables), and the Contractor must comply with, and ensure Contractor Personnel comply with, any security obligations specified in a Contract with respect to such Deliverables.

22.14 Unless specified in a Contract, for Deliverables with a security classification specified by the Agency under **clause 22.13**, the Contractor must ensure that it retains accurate records of any access to, software uploaded on or keystrokes made in connection with those Deliverables.

22.15 The Contractor must ensure that its Personnel provide any identification required by the Agency when arriving at the Agency's premises or at any time when at those premises.

22.16 The Contractor acknowledges that the Agency may at any time refuse access to its premises to any individual. The Agency, as applicable, will use reasonable endeavours to inform the Contractor of any such refusal, but is not obliged to do so for security reasons. The Contractor is not relieved of any of its obligations under a Contract because of the exercise of any of the Agency's rights under this **clause 22.16**.

22.17 Unless otherwise specified in Contract, the Contractor is responsible for all costs associated with obtaining any security clearances required by a Contract.

22.18 If the Agency denies access to, or requests removal of, any Contractor Personnel because they do not hold the required security clearance, the Contractor must provide suitable replacement Contractor Personnel.

#### **Commonwealth Data Protection Plan**

22.19 If specified in a Contract, the Contractor must provide for approval by the Agency a 'Commonwealth Data Protection Plan' (**CDPP**) that sets out how the Contractor and the Agency will deal with and discharge their obligations in respect of Agency Material (including personal information) in relation to the provision of the Deliverables. The CDPP must:

- 22.19.1 be consistent with the requirements of the Contract (including **clause 22.1.8**);
- 22.19.2 be consistent with the requirements of the *Privacy Act*;
- 22.19.3 specifically deal with cybercrime risks, including unauthorised access and denial of service attacks;
- 22.19.4 be consistent with the PSPF and ISM; and
- 22.19.5 set out the steps and processes that the Contractor and the Agency will follow to protect Agency Material from unauthorised access, use, misuse, destruction or loss,

and once accepted, the CDPP will form part of a Contract and the Contractor must comply with it unless the Agency otherwise agrees in writing.

### **Legislative offences**

- 22.20 The Contractor acknowledges and agrees that:
  - 22.20.1 any unauthorised access, alteration, removal, addition, possession, control, supply of or impediment to the access, reliability, security or operation of information held in any computer (or, in some cases, any storage device) in the course of providing the Deliverables may be an offence under Part 5.6 of the *Criminal Code Act 1995* (Cth) for which there are a range of penalties, including a maximum of ten (10) years imprisonment;
  - 22.20.2 the giving of false or misleading information to the Agency or Agency Personnel is a serious offence under Part 5.6 of the *Criminal Code Act 1995* (Cth); and
  - 22.20.3 the publication or communication of any information or document by a person which has come to their knowledge or into their possession or custody by virtue of a Contract (other than to whom the Contractor is authorised to publish or disclose the fact or document) may be an offence under Part 5.6 of the *Criminal Code Act 1995* (Cth), for which there are a range of penalties, including a maximum of ten (10) years imprisonment.

## **23 Liability under Head Agreement**

- 23.1 The liability of a party for breach of this Head Agreement, or in tort, or for any other common law or Statutory cause of action arising out of the operation of this Head Agreement will be determined under the relevant Law in Australia that is recognised, and would be applied, by the High Court of Australia. Any agreed limit on liability for claims made under this Head Agreement does not limit or affect any claims made under a Contract.

## 24 Liability under a Contract

24.1 The liability of a party for breach of any Contract, or in tort, or for any other common law or Statutory cause of action arising out of the operation of the Contract will be determined under the relevant Law in Australia that is recognised, and would be applied, by the High Court of Australia.

### Liability Cap

24.2 Subject to **clause 24.3**, the Contractor's liability under **clause 24.1** or for breach of a Contract, in equity, tort (including negligence) or Statute for any Loss is capped as specified in the applicable Contract Order Form (**Liability Cap**).

24.3 The Liability Cap does not apply to any Loss arising out of:

- 24.3.1 personal injury (including sickness or death of a person);
- 24.3.2 loss of, or damage to, tangible property;
- 24.3.3 any breach of Intellectual Property Rights, confidentiality, privacy, or breach of any personnel or data security obligations in the Contract or at Law;
- 24.3.4 any breach of any Statute, fraud or any unlawful act or omission; or
- 24.3.5 liability for Taxes (and any related penalties or interest) in respect of the Contract payable by the Contractor or payable by the Agency but recoverable from the Contractor.

24.4 The liability of a party for Loss sustained by the other party will be reduced proportionately to the extent that such Loss has been caused by:

- 24.4.1 the other party's failure to comply with its obligations and responsibilities under the Contract; or
- 24.4.2 the negligent act or omission of the other party,

regardless of whether a claim is made by the other party for breach of Contract or for negligence.

24.5 To the extent permitted by Law, notwithstanding any other clause in a Contract, other than **clause 24.4**, neither Party is liable to the other Party for breach of a Contract, or in tort (including negligence), or for any other common law, equitable or Statutory cause of action arising out of, or in connection with, the operation of the Contract (including under an indemnity) for:

- 24.5.1 punitive or exemplary damages of any kind;
- 24.5.2 loss of goodwill, loss of savings, business profits, revenue or opportunity arising out of, or in connection with, the Contract; or
- 24.5.3 consequential or indirect Losses, meaning (to the extent not otherwise specifically excluded in this **clause 24.5**) Losses such as may reasonably be supposed to have been in the contemplation of both Parties, at the time they entered into the Contract, as the probable result of breach of the Contract, but not including Losses such as may fairly and reasonably be considered as arising naturally (that is according to the usual course of things) from the relevant breach of the Contract. For the avoidance of doubt

**clause 24.5.3** excludes consequential or indirect Losses within the meaning of the second limb of *Hadley v Baxendale* (1854) 9 Ex 341.

## **25 Indemnity**

### **Contractor's Indemnity**

25.1 Subject to **clauses 23, 24, and, 25** the Contractor indemnifies:

- 25.1.1 with respect to **clauses 25.1.3, 25.1.5 and 25.1.6**, Finance and Finance Personnel; and
- 25.1.2 with respect to a Contract, an Agency and Agency Personnel, (each being **Indemnified Persons**) in respect of any direct Loss suffered or incurred by an Indemnified Person which is caused by or arises from:

  - 25.1.3 any breach of the Head Agreement or a Contract by the Contractor or Contractor Personnel, including a breach in respect of which Finance or an Agency exercises an express right to terminate this Head Agreement or a Contract;
  - 25.1.4 without limiting **clause 25.1.3**, any breach of any of the obligations of the Contractor or a Subcontractor under or in respect of **clauses 15, 16 and 22**;
  - 25.1.5 any breach of any Statute by the Contractor or Subcontractor in the performance of this Head Agreement or any Contract;
  - 25.1.6 any negligent or unlawful act or omission of the Contractor or Contractor Personnel in relation to this Head Agreement or a Contract; or
  - 25.1.7 a claim made by a third party arising out of or in connection with an allegation that any Deliverables (including the use of any Deliverables by the Indemnified Persons) infringes the Intellectual Property Rights or Moral Rights of the third party.

25.2 The indemnity for Loss suffered or incurred by an Indemnified Person will be reduced proportionately to the extent that such Loss has been caused by:

- 25.2.1 the Indemnified Person's failure to comply with its obligations and responsibilities under this Head Agreement or the relevant Contract; or
- 25.2.2 the negligent or unlawful act or omission of the Indemnified Person, regardless of whether a claim is made by the Indemnified Person for breach of this Head Agreement or the relevant Contract or for negligence.

25.3 For the purposes of **clause 25.1.7**, an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth) and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.

### **Rights not exclusive**

25.4 The rights of the Indemnified Persons pursuant to the indemnity in this **clause 25** are in addition to, and not exclusive of, any other right, power, or remedy provided by Law, but the Indemnified Persons are not entitled to be compensated in excess of the amount of the relevant Loss they have incurred.

### **Indemnified Person's obligations**

25.5 If an Indemnified Person wishes to enforce an indemnity under **clause 25.1**, it must:

- 25.5.1 give written Notice to the Contractor promptly;
- 25.5.2 subject to the Contractor agreeing to comply at all times with **clause 25.6**, if the Indemnified Person is subject to the Legal Services Directions, permit the Contractor, at the Contractor's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow; and
- 25.5.3 in the event that the Contractor is permitted to handle negotiations or conduct litigation on behalf of an Indemnified Person, under **clause 25.5.2** and at the Contractor's cost, provide all reasonable assistance to the Contractor in the handling of any negotiations and litigation.

### **Contractor's obligations**

25.6 If the Contractor is permitted to handle negotiations or conduct litigation on behalf of an Indemnified Person that is subject to the Legal Services Directions, the Contractor must:

- 25.6.1 comply with applicable government policy and obligations relevant to the conduct of the litigation and any settlement negotiation (including the Legal Services Directions) and any direction issued by the Attorney-General to the Commonwealth or delegate;
- 25.6.2 keep the Indemnified Person (and the Agency and Finance, at the Agency's or Finance's request), informed of any significant developments relating to the conduct of the defence or settlement of any claim;
- 25.6.3 provide to the Indemnified Person (and the Agency and Finance, at the Agency's or Finance's request), all information and Documents reasonably requested by the Indemnified Person, to enable the Indemnified Person to ascertain whether the defence or settlement by the Contractor of any claim is being conducted in accordance with applicable government policy and obligations including the Legal Services Directions (including any requirements relating to legal professional privilege and confidentiality); and
- 25.6.4 comply with any conditions imposed by the Indemnified Person, or Finance or the Agency (including any condition requiring the provision of an Unconditional Financial Undertaking or other guarantee).

### **Rights held on trust**

25.7 Where an indemnity in this **clause 25** provides a benefit to a person who is not a party to this Head Agreement or any Contract, that benefit will be held on trust for that person by Finance (in relation to this Head Agreement) or the Agency (in relation to any Contract), through whom those rights are obtained and that benefit may be exercised by the person as beneficiary under the trust or on their behalf by Finance or the Agency as trustee (as applicable).

### **Mitigation**

25.8 Each party must use all reasonable endeavours to mitigate its Loss, arising under or in connection with a breach of this Head Agreement and any Contract.

## **26 Continuous Improvements and Efficiencies**

26.1 On request by Finance, the Contractor must promptly advise Finance of all new trends in methodology related to the Deliverables including non-confidential future product enhancements and other intended product roadmap items.

26.2 During the Term, the Contractor must actively seek and, when identified, recommend improvements to processes, systems and services that would benefit Finance or Agencies, in particular by::

- 26.2.1 identifying opportunities for cost savings;
- 26.2.2 improving user experience; and
- 26.2.3 streamlining processes and customer service.

26.3 The Contractor must not charge Finance or any Agency any Charges to modify the manner in which the Deliverables are supplied unless the modification and any Charges are approved by Finance prior to the work being undertaken.

26.4 Nothing in this **clause 26** requires Finance to:

- 26.4.1 request;
- 26.4.2 approve; or
- 26.4.3 if the modification is approved, to fund, modifications to the manner in which the Deliverables are provided.

## **27 Reporting**

### **Reporting to Finance**

27.1 At no cost to Finance or any other Agency, the Contractor must provide Finance with the reports for each Module to which it is enrolled, as set out in **Schedule 3 (Modules)**.

27.2 The Contractor must promptly provide additional information in respect of this Head Agreement (including any Module) and any Contract as Finance may reasonably request from time to time.

27.3 Except for Intellectual Property Rights that have vested in an Agency under a Contract, Intellectual Property Rights in all reports provided under this Head Agreement (including any Module) will vest in Finance absolutely upon creation.

27.4 Subject to the Contractor complying with confidentiality obligations to Finance and any Agency, Finance grants to the Contractor an irrevocable, non-exclusive, world-wide, paid-up licence to hold, use, reproduce, modify, display and sub-lodge the Intellectual Property Rights in the reports provided under this Head Agreement for its own purposes at the Contractor's own risk. Finance and each Agency are not liable in respect of any Loss caused by the Contractor's exercise of the licence in this **clause 27.4** and the Contractor releases and indemnifies Finance and each Agency in respect of any such Loss.

### **Reporting to the Agency**

27.5 At no cost to the Agency, the Contractor must report to the Agency as specified in the relevant Module and the Contract Order Form.

27.6 The Contractor must promptly provide additional information in respect of any Contract as the Agency may reasonably request from time to time.

27.7 A copy of each report provided under the Contract must be given to Finance.

27.8 Without limiting **clause 14**, Intellectual Property Rights in all reports provided under a Contract will vest in the Agency absolutely upon creation.

27.9 Subject to the Contractor complying with confidentiality obligations to the Agency, the Agency grants to the Contractor an irrevocable, non-exclusive, world-wide, paid-up licence to hold, use, reproduce, modify, display and sub-lodge the Intellectual Property Rights in the reports provided under a Contract for its own purposes at the Contractor's own risk. The Agency is not liable in respect of any Loss caused by the Contractor's exercise of the licence in this **clause 27.9** and the Contractor releases and indemnifies the Agency in respect of any such Loss.

## **28 Policies and Procedures Manual**

### **Policies and Procedures Manual**

28.1 For each Contract, the Contractor must develop and maintain a Policies and Procedures Manual, which details all aspects of the Contractor's provision of the Deliverables and such other information specified in the Contract Order Form.

28.2 The Contractor must provide the Policies and Procedures Manual to the Agency for the Agency's Acceptance within 60 Business Days after the Contract Start Date and each anniversary of the Contract Start Date during the Contract Period.

## **29 Commonwealth Policies**

### **Indigenous Procurement Policy**

29.1 The Contractor acknowledges and agrees:

29.1.1 that 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 available on the Indigenous Procurement Website at [www.dpmc.gov.au/ipp](http://www.dpmc.gov.au/ipp) for further information);

29.1.2 the Contractor must use its reasonable endeavours to increase its:

- (a) purchasing from businesses operated by organisations that are 50% or more Indigenous owned (**Indigenous Enterprises**); and
- (b) employment of Indigenous Australians,

in the performance of a Contract;

29.2 If at any time the total value of a Contract exceeds \$7.5 million, the Contractor must Notify the Agency and comply with any directions by the Agency required to ensure that the Contract meets the requirements of the Indigenous Procurement Policy (including the development of an Indigenous participation plan and necessary reporting on the implementation of that plan).

### **Prohibition on use of Illegal Workers**

29.3 The Contractor must:

- 29.3.1 ensure that no Contractor Personnel, including those engaged by any Subcontractors, are **Illegal Workers**;
- 29.3.2 ensure that all subcontracts include a provision prohibiting Subcontractors engaging **Illegal Workers** (and require such a provision in any further Subcontracts);
- 29.3.3 must remove, or cause to be removed, any **Illegal Worker** from any involvement in performing its obligations under a Contract (including if engaged by a Subcontractor) and arrange for their replacement at no cost to the Agency immediately upon becoming aware of the involvement of the **Illegal Worker**.

### **Workplace Gender Equality**

29.4 The Contractor must:

- 29.4.1 to the extent that the Contractor is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the **WGE Act**):
  - (a) comply with its obligations, if any, under the WGE Act;
  - (b) if the Contractor becomes non-compliant with the WGE Act during the Term, Notify Finance;
  - (c) provide a current letter of compliance within 18 months from the Commencement Date and following this, annually, to Finance,

but compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its obligations under a Contract.

### **Work Health and Safety**

29.5 The Contractor must:

- 29.5.1 ensure that the Contract is performed in a manner that does not pose any avoidable health or safety risk to the Contractor's Personnel, to the Agency's Personnel or to any other person;
- 29.5.2 Notify the Agency of any work related injury that causes death or serious personal injury, and each occasion it notifies a regulatory authority under the *Work Health and Safety Act 2011* (Cth) or a corresponding State or Territory legislation; and
- 29.5.3 comply with any reasonable direction of the Agency in connection with any monitoring, inspection, investigation or audit of work health and safety matters arising in relation to the performance of the Contract.

### **Freedom of Information**

- 29.6 The Contractor acknowledges that the FOI Act enables the Australian community to have access to information in the possession of the Commonwealth government.
- 29.7 If the Head Agreement or a Contract is a 'Commonwealth services agreement' as defined in the FOI Act, the following clauses apply:
  - 29.7.1 if Finance or an Agency has received a request for access to a document (as defined in the FOI Act) created by, or in the possession of, the Contractor or any Subcontractor that relates to the performance of the Head Agreement or Contact (and not to the entry into those documents):
    - (a) Finance or the Agency may at any time by written Notice require the Contractor to provide the document to Finance or the Agency;
    - (b) the Contractor must, at no additional cost, promptly comply with the Notice; and
    - (c) the Contractor must indicate if it believes any material provided by it should be exempt from the operations of the FOI Act; and
  - 29.7.2 the Contractor must include in any subcontract relating to the performance of Contract provisions that will enable the Contractor to comply with its obligations under **clause 29.7.1**.
- 29.8 **Clause 29.7** applies for the Term and for a period of seven (7) years from the termination or expiry of the Head Agreement or all Contracts, whichever is later.

### **Modern Slavery**

- 29.9 The Contractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Deliverables.
- 29.10 If at any time the Contractor becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of a Contract, the Contractor must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

### **Code of Conduct and APS Values**

- 29.11 The Contractor must (and must ensure that Contractor Personnel) comply with the:
  - 29.11.1 Australian Public Service Values (available at <https://www.apsc.gov.au/aps-values-1>);
  - 29.11.2 Australian Public Service Code of Conduct (available at [APS Code of Conduct | Australian Public Service Commission](#)); and
  - 29.11.3 Agency's policies and procedures related to fraud control (as notified to the Contractor from time to time).
- 29.12 The Contractor must ensure that Contractor Personnel are aware of the requirements of the documents referred to in **clause 29.11** before the Contractor Personnel start performing services under a Contract.
- 29.13 For clarity nothing in this **clause 29** limits or otherwise affects any other part of a Contract.

### **Shadow Economy Procurement Connected Policy**

- 29.14 The Contractor warrants that, at the Commencement Date of this Head Agreement and each Contract, it holds and will continue to hold a Valid and Satisfactory Statement of Tax Record.
- 29.15 The Contractor must hold a Valid and Satisfactory Statement of Tax Record at all times during the term of this Head Agreement and each Contract (including any extension) and, on request by an Agency (including Finance), provide a copy of such Statement of Tax Record.
- 29.16 The Contractor warrants in relation to any first tier Subcontractor it has engaged to deliver goods and/or services with an estimated value of over \$4 million (GST inclusive) that the Contractor holds a Satisfactory Statement of Tax Record for the subcontractor that was Valid at the time of entry into the Subcontract by the Contractor and the Subcontractor.
- 29.17 The Contractor must ensure that any first tier Subcontractor engaged under a Contract to deliver goods and/or services with an estimated value of over \$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant Subcontract.
- 29.18 The Contractor must retain a copy of any Statement of Tax Record held by any first tier Subcontractor in accordance with **clause 29.16** and must, on request by an Agency (including Finance), provide a copy of such Statement of Tax Record.
- 29.19 If the Contractor is a partnership, then the Contractor must ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to Finance as soon as possible after they become a partner to the partnership.
- 29.20 Without limiting its other rights under this Head Agreement, a Contract or at Law, any failure by the Contractor to comply with the requirements outlined in **clauses 29.14** to **29.19** will be a breach of this Head Agreement and each relevant Contract.

## **Sustainability**

29.21 The Commonwealth Government is committed to sustainable procurement practices, as further described in the Commonwealth's Sustainable Procurement Guide. Accordingly, as at the Commencement Date of the Head Agreement, Commonwealth policy requires Agencies to consider environmental sustainability when conducting procurements for goods and services, including energy efficiency, environmental and climate change impact.

29.22 To support the Commonwealth's commitment to sustainable procurement practices, the Contractor must, if requested by Finance or an Agency during the Term of the Head Agreement or a Contract (as the case may be), provide reasonable information regarding the Contractor's environmental sustainability arrangements.

29.23 Agencies may specify additional requirements regarding environmental sustainability in a Contract.

## **National Anti-Corruption Commission**

29.24 The Contractor acknowledges that in entering into this Head Agreement and providing the Services to the Agency under a Contract, it is a contracted service provider for the purposes of the *National Anti-Corruption Commission Act 2022* (Cth) (**NACC Act**).

29.25 The Contractor must comply with any reasonable request, policy or direction issued by Finance or an Agency and otherwise cooperate with Finance and any Agency in relation to any action taken by Finance or the Agency required or authorised by the NACC Act.

## **30 Conflict of Interest**

### **Notification of a Conflict of Interest**

30.1 If, during the performance of this Head Agreement or any Contract a Conflict of Interest arises, or appears likely to arise, the Contractor must:

- 30.1.1 notify Finance and the applicable Agency immediately in writing;
- 30.1.2 make full disclosure of all relevant information relating to the Conflict of Interest; and
- 30.1.3 take all steps that Finance and the applicable Agency reasonably requires the Contractor to take in order to resolve or otherwise deal with the Conflict of Interest.

30.2 If, in the opinion of the Agency a Conflict of Interest is not able to be resolved to its satisfaction it may terminate the Contract in accordance with **clause 44.1**.

## **31 Significant Events**

31.1 For the purposes of this clause 31, '**Significant Event**' means:

- 31.1.1 any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or its officers, employees, agents or Subcontractors that

impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or

31.1.2 any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or its officers, employees, agents or Subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.

31.2 The Contractor must immediately issue Finance and any Agency with which it has a contract a Notice on becoming aware of a Significant Event.

31.3 The Notice issued under clause 31.2 must provide a summary of the Significant Event, including the date that it occurred and whether any Key Person or other Personnel engaged in connection with this Head Agreement or the Services were involved.

31.4 Finance or an Agency may notify the Contractor in writing that an event is to be considered a Significant Event for the purposes of this clause 31, and where this occurs the Contractor must issue a Notice under clause 31.2 in relation to the event within three (3) Business Days of being notified by Finance or the Agency.

31.5 Where reasonably requested by Finance or an Agency, the Contractor must provide Finance or the Agency with any additional information regarding the Significant Event within three (3) Business Days of the request.

31.6 If requested by Finance or an Agency, the Contractor must prepare a draft remediation plan and submit that draft plan to the Finance Representative or the Agency Representative (as applicable) for approval within ten (10) Business Days of the request.

31.7 A draft remediation plan prepared by the Contractor under clause 31.6 must include the following information:

31.7.1 how the Contractor will address the Significant Event in the context of this Head Agreement and the provision of Services, including confirmation that the implementation of the remediation plan will not in any way impact on its performance of this Head Agreement or the delivery of the Goods and/or Services or compliance by the Contractor with its other obligations under this Head Agreement or a Contract; and

31.7.2 how the Contractor will ensure events similar to the Significant Event do not occur again; and

31.7.3 any other matter reasonably requested by Finance or the Agency.

31.8 Finance or the Agency (as applicable) will review the draft remediation plan and either approve the draft remediation plan or provide the Contractor with the details of any changes that are required. The Contractor must make any changes to the draft remediation plan reasonably requested by Finance or the Agency and resubmit the draft remediation plan to Finance or the Agency for approval within three (3) Business Days of the request unless a different timeframe is agreed in writing by Finance or the Agency. This clause 31.8 will apply to any resubmitted draft remediation plan.

31.9 Without limiting its other obligations under this Head Agreement or a Contract, the Contractor must comply with the remediation plan as approved by Finance or the Agency (as applicable). The Contractor agrees to provide reports and other information about the Contractor's progress in implementing the remediation plan as reasonably requested by Finance or the Agency.

31.10 A failure by the Contractor to comply with its obligations under this clause 31 will be a material breach of this Head Agreement and any applicable Contract. Finance and the Agency's rights under this clause are in addition to and do not otherwise limit any other rights Finance may have under this Head Agreement or the Agency may have under a Contract. The performance by the Contractor of its obligations under this clause will be at no additional cost to Finance or the Agency.

## **32 Annual Review**

### **Conducting Annual Reviews**

32.1 The parties will, following each anniversary of the Commencement Date of this Head Agreement, conduct an Annual Review to comprehensively review the operation of this Head Agreement and all Contracts (if any).

32.2 The Contractor must participate in the Annual Review as required by Finance. This may include provision of data and participation in meetings.

### **Cost of Annual Reviews**

32.3 Each party must bear its own costs of any Annual Review conducted under this **clause 32**.

## **33 Benchmarking**

### **Benchmarking**

33.1 From time to time during the Term, Finance may:

- 33.1.1 test the market for any or all of the Deliverables;
- 33.1.2 undertake benchmarking of some or all of the Deliverables where Finance intends to refresh the Panel (at the Head Agreement or Module level); or
- 33.1.3 utilise the services of a Benchmarking to undertake benchmarking to measure the standards of delivery and cost of the Deliverables in part or in the aggregate to determine if the performance of the Contractor matches and the Charges are competitive with, then current market prices and standards of delivery for Similar Deliverables.

33.2 Benchmarking will be conducted in accordance with the timing and procedures as determined by Finance. Finance will consult the Contractor on these matters and benchmarking will not occur more than once every twelve months.

33.3 Without limiting the rights of Finance, Finance may release benchmarking results to:

- 33.3.1 other Agencies;
- 33.3.2 Ministers and their advisors;
- 33.3.3 Parliament or Parliamentary Committees; and

33.3.4 advisers to Finance who have executed a confidentiality undertaking substantially in the form of **Schedule 1 – Attachment 2 (Deed of Confidentiality)**.

33.4 If the benchmarking shows that the Charges are not priced competitively for Similar Deliverables, unless the Contractor satisfies Finance that the difference in price is due to the relevant Contract's unique requirements and not due to the Contractor's performance:

- 33.4.1 the Contractor agrees to assist Finance for a three month period to determine the causes of the Benchmark's findings and proactively seek resolution within 60 Business Days;
- 33.4.2 if no resolution is reached within 60 Business Days, the Charges (including the Charges payable under any Contract) will be deemed to be reduced by the amount of the excess determined in the manner described in this **clause 33.4** from the end of that period;
- 33.4.3 **Schedule 3 – Attachment 2 (Deliverables and Pricing)** must be updated to reflect the reduced Charges; and
- 33.4.4 the reduced Charges must be reflected in subsequent invoices or may be set-off by an Agency against any invoice received under a Contract.

33.5 A Dispute in relation to benchmarking will be resolved in accordance with **clause 40**.

33.6 The Agency may join in any benchmarking Finance undertakes of the Contractor's provision of the Deliverables under this **clause 33** in respect of a Module for which the Agency has a Contract.

#### **Cost of Benchmarking**

33.7 Each party must bear its own costs of any benchmarking conducted under this **clause 33**.

### **34 Books and Records**

#### **Maintenance of records**

34.1 The Contractor must at all times maintain full, true, accurate and up-to-date accounts and records relating to this Head Agreement and each Contract. Such accounts and records must:

- 34.1.1 include appropriate audit trails for transactions performed, including details of Contracts entered into (if any);
- 34.1.2 record all receipts and expenses in relation to the provision of Deliverables under a Contract;
- 34.1.3 record all other matters on which the Contractor is required to report by this Head Agreement or any Contract;
- 34.1.4 be kept in a manner that permits them to be conveniently and properly audited, and enables the Charges and Approved Pass-Through Expenses to be determined;

- 34.1.5 comply at an individual, corporation, or group level with any applicable Australian Accounting Standards; and
- 34.1.6 be made available to Finance (and an Agency in respect of a Contract) as required for monitoring and reviewing the performance of the Contractor's obligations under this Head Agreement or any Contract including being available for audit and access in accordance with **clause 35**.

### **Subcontractor requirements**

- 34.2 The Contractor must retain, and require its Subcontractors to retain, securely for a period of seven years after termination or expiration of the Head Agreement or a Contract, whichever is later, all accounts and records referred to in **clause 34.1**.

### **Survival**

- 34.3 This **clause 34** applies for the Term and for a period of seven years after the termination or expiry of the last Module under this Head Agreement or all Contracts, whichever is later.

### **Archival requirements**

- 34.4 The Contractor agrees to comply with any reasonable directions from Finance with respect to any applicable Commonwealth, State or Territory Laws relating to archival requirements.

### **Costs**

- 34.5 The Contractor must bear its own costs of complying with **clauses 34.1 to 34.4**.

## **35 Audit and Access**

**[Note to Contractor: It is intended that Finance and an Agency will align any audits and that Finance will be the lead agency in relation to any audit.]**

### **Right to conduct audits**

- 35.1 For:
  - 35.1.1 the Head Agreement, Finance, or a person or organisation nominated by Finance; or
  - 35.1.2 a Contract, the Agency or a person or organisation nominated by the Agency,

(each an **Authorised Investigator**) may during Business Hours, on reasonable Notice, conduct audits relevant to the performance of the Contractor's obligations under this Head Agreement and any Contract. Audits may be conducted of:

- 35.1.3 the Contractor's operational practices and procedures as they relate to this Head Agreement and any Contract (including security procedures);

- 35.1.4 the Charges and the accuracy of the Contractor's invoices and reports in relation to the provision of Deliverables under this Head Agreement and any Contract;
- 35.1.5 the Contractor's compliance with its confidentiality, privacy, security and other obligations under this Head Agreement and any Contract;
- 35.1.6 Material (including accounts and records) in the possession of the Contractor relevant to the Deliverables or this Head Agreement or any Contract; and
- 35.1.7 any other matters determined by Finance to be relevant to the operations and the performance of the Deliverables or this Head Agreement or any Contract (excluding Contractor Proprietary Information in relation to any audit of any Contract conducted by an Agency).

35.1A Finance and an Agency will not appoint a Direct Competitor of the Contractor as an auditor under this clause 35.

35.2 Relevant Agencies with Contracts with the Contractor may participate in audits conducted by Finance and it is not intended that Agencies conduct audits separate to Finance audits.

#### **Access by Finance or an Agency**

- 35.3 An Authorised Investigator may during Business Hours and on giving reasonable Notice to the Contractor and no more than once every 12-month period:
  - 35.3.1 access the premises of the Contractor (including any Location from which work under a Contract is performed) from which Deliverables are provided; and
  - 35.3.2 inspect and copy relevant Documents, books and records, however stored, in the possession, custody or control of the Contractor or its (such Documents, resources, books and records to be treated as the Contractor's Confidential Information, and only to be used by Finance or an Agency or its respective nominees for the purposes of the audit), for the purposes of this **clause 35**.
  - 35.3.3 In the first instance, a Notice under this clause 35.3 is limited to providing reasonable access to the Contractor's Documents, books and records as set out in this clause 35.3.2. Finance or an Agency may only request reasonable access to the Contractor's premises under clause 35.3.1 if the provision of access to the Contractor's Documents, books and records is insufficient for the purposes of auditing the Contractor's performance of its obligations under this Head Agreement or any Contract.
- 35.4 The Authorised Investigator must comply with the Contractor's Security Plan whilst on the Contractor's premises.
- 35.5 An Authorised Investigator must comply with the Contractor's security requirements whilst on the Contractor's premises. This includes for an Authorised Investigator who is not employed under the *Public Service Act 1999* (Cth) entering into a confidentiality agreement in the form of **Schedule 1 – Attachment 2 (Deed of Confidentiality)**.

35.6 The Contractor must comply with any request from Finance or an Agency, as applicable, for the Contractor to:

35.6.1 give the Authorised Investigator copies of Documents, books, records and information in a data format and storage medium accessible by the Authorised Investigator; and

35.6.2 provide assistance in respect of any inquiry into or concerning this Head Agreement or any Contract. For this purpose, an inquiry includes any administrative or Statutory review, audit or inquiry (whether within or external to Finance or Agency organisation), any request for information directed to Finance or the Agency, and any inquiry conducted by Parliament or any Parliamentary Committee, the Australian Information Commissioner, Freedom of Information Commissioner or the Privacy Commissioner, or if the Agency is a State Agency, to the equivalent office holders in that State or Territory.

### **Conduct of audit and access**

35.7 The Contractor must provide:

35.7.1 access to its computer hardware and software used in providing the Deliverables under Contracts or on which it stores information about the performance of Contracts to the extent necessary for the Authorised Investigator to exercise its rights under this **clause 35**; and

35.7.2 the Authorised Investigator with any reasonable assistance requested by the Authorised Investigator to use that hardware and software.

35.8 The Authorised Investigator must use reasonable endeavours to ensure that:

35.8.1 audits performed pursuant to **clause 35.1**; and

35.8.2 the exercise of the rights granted by this **clause 35**,

do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under this Head Agreement or any Contract or require the Contractor to provide access to:

35.8.3 any trade secrets of the Contractor; or

35.8.4 any information that, in the Contractor's reasonable opinion, could:

(a) compromise the security of the Contractor's systems or premises;

(b) result in compromising the Contractor's ability to maintain security related certifications and attestations; or

(c) cause the Contractor to breach its obligations under applicable Law or its security, confidentiality and/or privacy obligations towards any third parties.

35.8A In the event that any of the circumstances in **clauses 35.8.3 and 35.8.4** may prevent an Authorised Investigator from gaining access to required information under an audit, the Contractor must consult with Finance and provide satisfactory reasons why it cannot provide the Authorised Investigator with access to this information.

### **Costs**

35.9 Each party must bear its own costs of all inspections, access and audits.

### **Auditor-General, Australian Information Commissioner, Privacy Commissioner and Ombudsman**

35.10 The rights of Finance and an Agency under this **clause 35** apply equally to the Auditor-General, the Australian Information Commissioner, the Freedom of Information Commissioner, the Privacy Commissioner and the Ombudsman or a delegate of any of the above-listed persons for the purpose of performing the Auditor-General's, the Australian Information Commissioner's, the Freedom of Information Commissioner's, the Privacy Commissioner's or Ombudsman's Statutory functions or powers (each also being an Authorised Investigator). If the Agency is a State Agency, the rights apply to the equivalent office holders in that State or Territory (each also an Authorised Investigator).

### **Contractor to comply with Authorised Investigator's requirements**

35.11 The Contractor must do all things necessary to comply with the requirements of an Authorised Investigator, notified under **clause 35.3**, provided such requirements are legally enforceable and within the power of the Authorised Investigator.

### **No restriction**

35.12 Nothing in this Head Agreement or any Contract reduces, limits or restricts in any way any Statutory function, power, right or entitlement of an Authorised Investigator. The rights of Finance and an Agency under this **clause 35.1** are in addition to any other Statutory power, right or entitlement of an Authorised Investigator.

### **No reduction in responsibility**

35.13 The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Head Agreement or any Contract.

### **Consequences of audit**

35.14 The Contractor must promptly take, at no additional cost to Finance or an Agency, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit relating to the way the Contractor has performed its obligations under this Head Agreement or any Contract.

35.15 If an audit reveals any overcharging, the Contractor must:

35.15.1 refund any amounts overcharged to the relevant Agency; and

35.15.2 pay to Finance or the Agency, as applicable, the cost of any auditor fees that Finance or an Agency has incurred.

## **Survival**

35.16 This **clause 35** applies for the Term and for a period of seven years after the termination or expiry of the last Module under this Head Agreement or all Contracts, whichever is the later.

## **Notice of an audit**

35.17 In the Notice provided to the Contractor in accordance with clause 35.1, Finance or an Agency will set out:

- 35.17.1 the scope of the audit;
- 35.17.2 the access to the Contractor's premises, Documents, books or records required as part of the audit;
- 35.17.3 the proposed timing for when the audit will take place; and
- 35.17.4 the specific purposes for which the audit is being conducted.

## **36 Variation**

### **Variation to Head Agreement**

36.1 Only the Finance Representative can agree to make variations to this Head Agreement.

36.2 Subject to **clause 36.6**, if Finance seeks to vary this Head Agreement:

- 36.2.1 Finance will request a variation by providing to the Contractor a draft Change Order (using the Change Order Form) setting out the proposed variations;
- 36.2.2 within 10 Business Days after receiving Finance's draft Change Order, or within another period agreed by the parties, the Contractor must respond in writing to Finance specifying what impact those variations will have on:
  - (a) the Charges;
  - (b) the Deliverables;
  - (c) the Contractor's ability to perform its obligations under this Head Agreement or any Contract; and
  - (d) this Head Agreement and any Contract;
- 36.2.3 within 10 Business Days after receiving the Contractor's response under **clause 36.2.2**, or within another period agreed by the parties, Finance will approve or reject the response in writing; and
- 36.2.4 if Finance approves the response, the parties must promptly execute the Change Order.

36.3 If the Contractor seeks to vary this Head Agreement, including to seek a change in the Charges set out in **Schedule 3 – Attachment 2 (Deliverables and Pricing)** as a result of increases in the Contractor's costs of providing the Deliverables:

- 36.3.1 the Contractor must request a variation by providing to Finance a draft Change Order (using the Change Order Form) setting out the proposed variations and specifying what impact those variations will have on:

- (a) the Charges;
- (b) the Deliverables;
- (c) the Contractor's ability to perform its obligations under this Head Agreement or any Contract; and
- (d) this Head Agreement and any Contract;

36.3.2 within 10 Business Days after receiving the draft Change Order under **clause 36.3.1** or within another period agreed by the parties, Finance will give the Contractor a written Notice approving or rejecting the Contractor's request; and

36.3.3 if Finance approves the request, the parties must promptly execute the Change Order.

36.4 Any variation to this Head Agreement takes effect from the date on which the parties execute a Change Order, unless otherwise agreed in writing by the parties, and binds the Contractor and Finance.

36.5 If this Head Agreement is varied, that variation (including any changes to the Charges) will apply to all future Contracts and to Contracts in effect (but only to undelivered Deliverables) at the time of the variation, unless agreed otherwise in writing between the parties.

### **Adding new Modules**

36.6 Finance may, at any time during the Term, enrol the Contractor under a new or additional Module by issuing the Contractor with a draft Change Order.

36.7 A draft Change Order issued under **clause 36.6** will:

- 36.7.1 vary the table of Enrolled Modules at **Schedule 2 (List of Enrolled Modules)** by listing the new or additional Module;
- 36.7.2 include the new or additional Module for inclusion in **Schedule 3 (Modules)**; and
- 36.7.3 include the Charges for the new or additional Module for inclusion in the relevant **Schedule 3 – Attachment 2 (Deliverables and Pricing)**.

36.8 The Contractor must respond in writing:

- 36.8.1 with details of any proposed amendments to the draft Change Order issued under **clause 36.6**; or
- 36.8.2 confirming the draft Change Order as not requiring any amendments; within 10 Business Days (or such other period as agreed by the parties) after receipt of the draft Change Order.

36.9 Finance will approve or reject the Contractor's proposed amendments to the draft Change Order (if any) within 10 Business Days (or such other period as agreed by the parties) after receipt of the response under **clause 36.8.1**.

36.10 If Finance approves the response, the parties must promptly execute the Change Order.

### **Variation to a Contract**

36.11 Variations to a Contract must be agreed by the parties and, in accordance with **clause 4.14** of the Head Agreement, approved by Finance before they become effective. Any variations to a Contract which do not accord with **clause 4.14** of the Head Agreement will be null and void and the Contractor will be deemed to have waived all rights (if any) to claim any Losses from Finance or the Agency concerned in relation to the amendment.

36.12 The following variation process applies to any Contract.

36.13 The Contractor must not vary a Contract without the Agency's prior written approval. If the Contractor wants to vary or seek to vary the Contract:

36.13.1 the Contractor must request the Agency's approval by providing to the Agency a draft Change Order (using the Change Order Form) setting out the proposed variations and specifying what impact those variations will have on:

- (a) the Charges;
- (b) the Deliverables;
- (c) the Contractor's ability to perform its obligations under the Contract; and
- (d) the Contract;

36.13.2 subject to **clause 36.13.1** and **clause 4.14** of the Head Agreement, within 10 Business Days or such other time period specified in a Contract Order Form after receiving the request or within another period agreed by the parties, the Agency will approve or reject the Contractor's request; and

36.13.3 if the Agency approves the request, the Contractor may seek to vary the Contract in accordance with the change control process set out in the Contract.

36.14 If the Agency wants to vary the Contract:

36.14.1 the Agency will issue the Contractor with a draft Change Order (using the Change Order Form) setting out the proposed variations;

36.14.2 the Contractor will respond to the draft Change Order within 10 Business Days specifying what impact those variations will have on:

- (a) the Charges;
- (b) the Deliverables;
- (c) the Contractor's ability to perform its obligations under the Contract; and
- (d) the Contract;

36.14.3 subject to **clause 36.15**, within 10 Business Days after receiving the Contractor's response under **clause 36.14.2**, the Agency will notify the Contractor in writing if it intends to proceed with the variation; and

36.14.4 if the Agency elects to proceed with the variation under **clause 36.14**, the Agency may vary the Contract in accordance with the change control process set out in the Contract.

- 36.15 To avoid doubt, the Contractor acknowledges that any changes that seek to modify the Head Agreement must be approved by Finance and the Head Agreement Contractor Representative in accordance with **clause 4.14** of the Head Agreement.
- 36.16 All executed Change Orders must be provided to Finance.
- 36.17 If the Contractor seeks to vary pricing, a variation for changes will need to be submitted to Finance. The Contractor will need to substantiate any proposed increases to Finance. Finance will not unreasonably withhold their approval.

## **37 Head Agreement Administration**

### **Representatives**

- 37.1 The Head Agreement Contractor Representative is responsible for administration of this Head Agreement on behalf of the Contractor and must:
  - 37.1.1 be able to answer enquiries, queries or requests for quotation for Deliverables;
  - 37.1.2 be contactable by the Finance Representative and the Agency Representative within Business Hours; and
  - 37.1.3 ensure that his or her contact details are accurate and up to date at all times.
- 37.2 The Head Agreement Contractor Representative must have sufficient authority to be able to resolve any issues that arise, in a prompt and effective manner.
- 37.3 The Head Agreement Contractor Representative is responsible for administration of this Head Agreement on behalf of the Contractor. The Contractor Representative at the Commencement Date is:

**[INSERT Details]**
- 37.4 The Finance Representative is responsible for administration of this Head Agreement on behalf of Finance. The Finance Representative is the only person authorised to agree to changes to this Head Agreement.
- 37.5 The Finance Representative will be nominated by Notice to the Contractor from time to time and at the Commencement Date is:
  - First Assistant Secretary
  - Chief Information Officer
  - Information & Communications Technology Division
  - Department of Finance
  - One Canberra Avenue
  - FORREST ACT 2603
  - Email: [govcms@finance.gov.au](mailto:govcms@finance.gov.au)
- 37.6 Either party may update their Representative details by providing a Notice to the other party.

## **Delegation**

37.7 The Head Agreement Contractor Representative and the Finance Representative may each delegate their functions, or authorise that their functions be carried out on their behalf (including by a third party). The Contractor or Finance, as appropriate, will notify the other party of any such delegation or authorisation.

## **E-commerce**

37.8 The parties will cooperate in performing their respective obligations under the Head Agreement in an electronic environment.

## **38 Contract Administration**

### **Representatives**

38.1 The Contractor Representative is responsible for administration of any Contract for the Contractor. The Agency Representative is responsible for administration of any Contracts for the Agency.

38.2 The Contractor Representative for a Contract will be identified in the Contract Order Form.

38.3 The Agency Representative for a Contract will be identified in the Contract Order Form.

38.4 The Contractor Representative and the Agency Representative may each delegate their functions, or authorise that their functions be carried out on their behalf (including by a third party). The Contractor or the Agency, as appropriate, will notify the other party of any such delegation or authorisation.

## **39 Notices and other Communications**

### **Service of Notices**

39.1 A Notice must be in written English and signed by:

- 39.1.1 in the case of a Notice from the Contractor, the Contractor Representative (for the Head Agreement or a Contract, as applicable);
- 39.1.2 in the case of a Notice from Finance, the Finance Representative; and
- 39.1.3 in the case of a Notice from an Agency, the Agency Representative.

39.2 A Notice relating to:

- 39.2.1 notification of change of its address or any delivery instructions for the issue of Notices under **clause 39.7** or specified in a Contract Order Form;
- 39.2.2 extension of a Module Period under **clause 5.3**;
- 39.2.3 extension of a Contract Period under **clause 6.2**;
- 39.2.4 increase, decrease or a removal of a Tax under **clauses 11.17 to 11.21**;
- 39.2.5 additional, replacement or amended Unconditional Financial Undertaking or Performance Guarantee under **clause 19**;
- 39.2.6 enforcement of an indemnity under **clause 25**;

39.2.7 a Conflict of Interest under **clause 30**;

39.2.8 a Significant Event under **clause 31**

39.2.9 the conduct of an audit under **clause 35**;

39.2.10 a Dispute under **clause 40.2**;

39.2.11 circumstances beyond control under **clause 41**;

39.2.12 step-in under **clause 42**;

39.2.13 a suspension under **clause 43**;

39.2.14 termination of this Head Agreement under **clause 44** or a Contract under **clause 44**;

39.2.15 breach of this Head Agreement or a Contract; or

39.2.16 assignment, novation or waiver under **clauses 47.4 to 47.6**;

is properly given or served by a party if that party:

39.2.17 delivers it by hand;

39.2.18 sends it via email to the specified email address; or

39.2.19 posts it by registered post,

to the recipient's address for Notices in accordance with any delivery instructions specified in **clauses 39.4 or 39.5** (as updated in accordance with **clause 39.7**) and marked for the attention of the person who at that time is the Representative, in accordance with the Head Agreement or a Contract, of the party intended to receive it.

39.3 All Notices issued under a Contract must be copied to the Finance Representative.

#### **Address for Notices**

39.4 Finance's address for Notices is:

First Assistant Secretary

Chief Information Officer

Information & Communications Technology Division

Department of Finance

One Canberra Avenue

FORREST ACT 2603

Email: [govcms@finance.gov.au](mailto:govcms@finance.gov.au)

39.5 The Contractor's address for Notices is:

| Method                            | Address                          | Delivery Instructions |
|-----------------------------------|----------------------------------|-----------------------|
| By hand, email or registered post | <a href="#">[Insert details]</a> |                       |

39.6 The Agency's address for Notices is specified in the Contract Order Form.

#### **Change of address**

39.7 Each party must notify the other of any change in its address or any delivery instructions for Notices, or in the identity of its Representative, including through delegation or authorisation under **clause 37.7**.

#### **Deemed receipt**

39.8 A Notice or other communication is deemed to be received:

- 39.8.1 if delivered by hand, when the party which sent the Notice or other communication holds a receipt for it, signed by a person employed by the intended recipient at the physical address for Notices;
- 39.8.2 if sent by electronic mail, on the day of dispatch providing the sender receives an acknowledgement or read receipt to the correct email address from the sender's machine; or
- 39.8.3 if delivered by registered post, when the party who sent the Notice or other communication holds a receipt for it, signed by a person employed at the physical address for the Notices (referred to by Australia Post as 'Domestic Delivery Confirmation').

#### **Formal and informal communications**

39.9 The parties wish to distinguish formal communications and informal communications.

39.10 A formal communication is one which complies with the requirements of **clauses 39.1 to 39.8**.

39.11 An informal communication is one which does not comply with the requirements of **clauses 39.1 to 39.8**. Examples of informal communications include:

- 39.11.1 oral communications, whether made during meetings, discussions, over the phone or otherwise.

39.12 Formal communications will have effect as communications under or in connection with this Head Agreement or a Contract.

39.13 Informal communications will not:

- 39.13.1 be treated as formal communications under or in connection with this Head Agreement or a Contract; or
- 39.13.2 affect the parties' rights or obligations under or in connection with this Head Agreement or a Contract,

and do not vary this Head Agreement or a Contract and cannot be relied upon.

## **40 Dispute resolution**

### **No arbitration or court proceedings**

40.1 If a dispute arises in relation to the interpretation, conduct, enforcement or any other aspect of this Head Agreement or any Contract (**Dispute**), a party must comply with this **clause 40** before starting arbitration or court proceedings (except proceedings for urgent interlocutory relief). After a party has sought or obtained any urgent interlocutory relief that party must follow this **clause 40**.

### **Dispute Notice**

40.2 A party claiming a Dispute has arisen must give the other parties to the Dispute a Notice setting out details of the Dispute.

### **Parties to resolve Dispute**

40.3 During the 10 Business Days after a Notice is given under **clause 40.2** (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable endeavours through a meeting of CEOs or equivalent (or their nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to the Finance Representative or Agency Representative (as applicable) at the request of one of the parties to the Dispute. If the matter remains in Dispute 10 Business Days after referral to the Finance Representative or the Agency Representative under this **clause 40.3**, the parties must refer the Dispute to a mediator at the request of one of the parties to the Dispute.

### **Appointment of mediator**

40.4 If the parties to the Dispute cannot agree on a mediator within five (5) Business Days after a request under **clause 40.3**, the parties must request the chairperson of LEADR or the chairperson's nominee to appoint a mediator.

### **Role of mediator and obligations of parties**

40.5 The role of the mediator will be to assist in negotiating a resolution of the Dispute. The mediator may not make a decision which is binding on a party to the Dispute unless the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 15 Business Days of the request for mediation in **clause 40.3**. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

### **Confidentiality**

40.6 Any information or Documents disclosed by a party under this **clause 40**:

- 40.6.1 must be kept confidential and are subject to **clause 14**; and
- 40.6.2 may only be used to attempt to resolve the Dispute.

## **Costs**

40.7 Each party to a Dispute must pay its own costs of complying with this **clause 40**. The parties to the Dispute must equally pay the costs of any mediator.

## **Termination of process**

40.8 A party to a Dispute may terminate the Dispute resolution process by giving Notice to each other party after it has complied with **clauses 40.1 to 40.5**. **Clauses 40.6** and **40.7** survive termination of the Dispute resolution process.

## **Breach of this clause**

40.9 If a party to a Dispute breaches any of **clauses 40.1 to 40.8**, the other party does not have to comply with those clauses in relation to the Dispute.

## **41 Circumstances Beyond Control**

41.1 If the Contractor is prevented from performing its obligations under this Head Agreement due to circumstances beyond the Contractor's reasonable control (for example acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation), the Contractor must give Notice of such circumstances to Finance (and provide a copy to any Agencies affected) as soon as possible, identifying the specific effect those circumstances will have on its performance of this Head Agreement or any Contract.

41.2 The Contractor must make all reasonable efforts to minimise the effects on this Head Agreement of circumstances beyond the Contractor's reasonable control.

41.3 If the Contractor is prevented from performing its obligations under this Head Agreement due to circumstances beyond the Contractor's reasonable control, the Finance Representative may approve an extension of time for the Contractor to perform the affected obligations, provided that the Contractor has given the Finance Representative all information or evidence required to demonstrate that the Contractor's performance under this Head Agreement is affected and the Contractor has otherwise complied with this **clause 41**.

## **42 Step-In Rights**

### **Issue of Step-In Notice**

42.1 Without prejudice to any other right or remedy which an Agency may have under a Contract or under any Law, if a Trigger Event occurs an Agency may, at its option, give a Notice (**Step-In Notice**) to the Contractor. The Agency must provide a copy of any Step-in Notice given under this **clause 42** to Finance.

42.2 For the purposes of this **clause 42**, a Trigger Event occurs if:

42.2.1 any default or non-performance by the Contractor under a Contract which substantially prevents, hinders, degrades or delays the performance of any critical function of the relevant Agency;

42.2.2 in the Agency's reasonable opinion there has been substantial non-performance by the Contractor of its obligations under the Contract;

- 42.2.3 the Contractor does not commence to remedy the relevant event immediately after being given notice by the Agency Representative requiring the Contractor to remedy the relevant event or fails to remedy the relevant event within 20 Business Days (or such longer period as agreed by the Agency) after being given that Step-In Notice;
- 42.2.4 the Contractor seeks to terminate a Contract other than in accordance with its legal rights under the Contract or at Law, or otherwise repudiates or abandons a Contract; or
- 42.2.5 an event referred to in **clause 44.3** or **clause 44.4** occurs in respect of the Contractor.

#### **Upon issue of Step-In Notice**

- 42.3 Upon the issue of a Step-In Notice to the Contractor:
  - 42.3.1 the Agency, after notifying Finance in writing, may take control of that part or the whole of the provision of Deliverables under the affected Contract as is necessary to exercise the Step-In Rights under this clause and to remedy the Trigger Event;
  - 42.3.2 the Agency may procure Similar Deliverables for the affected Agencies elsewhere or make any other arrangements considered necessary by Finance to maintain continuity of operations;
  - 42.3.3 the Contractor agrees to provide all reasonable assistance to the Agency or its nominee wherever and however reasonably possible to ensure that the Agency is able to take the steps permitted under this **clause 42**, including by:
    - (a) the grant of royalty-free licences to the Agency to:
      - (i) access the relevant part of the Contractor facilities and use the Contractor's equipment, furnishings and fittings; and
      - (ii) use any Documentation and software, including Intellectual Property Rights in that Documentation and software, or other Material or intellectual property in respect of which the Contractor has the necessary ownership or usage rights, needed for the exercise of the Agency's rights under this **clause 42**;
    - (b) providing the Agency or its nominee with access to, and the use of, relevant Contractor Personnel for no additional Charges; and
    - (c) ensuring that the Agency or its nominee is able to assist the Contractor to continue to meet the Contractor's ongoing contractual or other obligations (other than obligations arising under the Contract) that relate to the Contractor's activities affected by the Step-In Notice, without any liability accruing to the Agency or its nominee in respect of those obligations (but without limitation to **clause 42.14**).

42.4 The steps which the Agency will be entitled to take in assuming control of the provision of the part or the whole of the Deliverables, pursuant to this **clause 42** include:

- 42.4.1 temporarily assuming total or partial possession, management and operation of those parts of the Contractor's facilities which may be relevant to ensure the provision of the Deliverables, or to remedy the Trigger Event;
- 42.4.2 such other steps as are, in the reasonable opinion of the Finance Representative, necessary to safeguard the provision of the Deliverables as required by the relevant Contract(s), or to remedy the Trigger Event; and
- 42.4.3 ceasing the exercise of any of its rights referred to above, to the extent and for the period reasonably necessary as determined by the Agency having regard to the Trigger Event giving rise to the relevant Step-In Notice.

42.5 Upon the Agency or its nominee exercising any of its rights under this **clause 42**, the Contractor's obligations under the relevant Contract to provide the Deliverables, or in respect of which the Agency is exercising its rights under this clause, are suspended to the extent and for such period as is necessary to permit the Agency to exercise those rights.

#### **Cost of exercising Step-In Rights**

42.6 If the Agency exercises its rights under this **clause 42**, the Agency will be entitled to retain from the Charges an amount equal to its or its nominee's reasonable costs and any necessary capital expenditure (**Reasonable Costs**) required in exercising those rights and, where appropriate, providing the relevant Deliverables.

42.7 If the Reasonable Costs calculated in accordance with **clause 42.6** exceed the Charges payable under the affected Contract(s), Finance or its nominee may recover from the Contractor the difference between the Reasonable Costs and the Charges that would otherwise have been payable to the Contractor for those Deliverables.

42.8 The Charges payable by the affected Agency (or Agencies) to the Contractor during the period in which Finance exercises its rights under this **clause 42** will be the amount payable under the relevant Contract(s), after taking into account any rights Finance may have to set off, retain or recover the Charges including under **clauses 42.6 and 42.7**.

#### **Cessation of Step-In Rights**

42.9 The Agency must cease to exercise its rights under this **clause 42** if:

- 42.9.1 in its reasonable opinion, the Trigger Event is satisfactorily remedied or resolved; and
- 42.9.2 the Agency is reasonably satisfied that there is no longer a material risk to the provision of the Deliverables under the affected Contract.

### **Termination by the Agency**

42.10 If the event giving rise to the Trigger Event has not been remedied or resolved within a period of 20 Business Days from the date that the Step-In Notice was issued, or such later date for remedy or resolution agreed to by the Agency and the Contractor, the Agency, after notifying Finance in writing, may terminate the Contract in accordance with **clause 44**.

42.11 Subject to the Contractor's right to receive any payments to be made under **clause 42.8**, if the Contract is terminated in the circumstances referred to in **clause 42.10**, the Contractor is not entitled to any termination compensation or payment whatsoever, including any payment in relation to the remaining period of the Contract.

### **Indemnity**

42.12 Subject to **clause 42.6**, the Contractor indemnifies Finance and affected Agencies against any Loss that Finance and affected Agencies incur or suffer as a result of exercising Step-In Rights in accordance with this **clause 42**.

### **Other matters**

42.13 No action of Finance or its nominee under this **clause 42** limits or otherwise affects the Contractor's liability to an Agency with respect to any default or non-performance by, or other liability of, the Contractor under the relevant Contract(s).

42.14 Subject to **clause 42.6**, the Contractor's liability under **clauses 42.12 and 42.13** will be reduced proportionately to the extent that any tortious (including negligent), unlawful act or omission of Finance or an Agency (or their nominees) caused or contributed to the Loss.

42.15 For clarity, Step-In Rights are not applicable to any proprietary software provided by the Contractor to Finance or an Agency under a SaaS arrangement. However Step-In Rights are applicable to any professional services provided by the Contractor that are related to the provision of SaaS (such as implementation or configuration of the software) and any relevant Deliverables that the Contractor must provide.

## **43 Suspension of a Module**

43.1 Without limiting any other rights or remedies Finance may have against the Contractor arising out of or in connection with this Head Agreement, Finance may, by giving Notice to the Contractor, impose a suspension in respect of any one or more Modules (or part of any one or more Modules) to which the Contractor is enrolled if one or more of the following occurs:

43.1.1 Finance has received substantiated negative feedback from an Agency in respect of the performance of the Contractor which Finance reasonably determines is materially adverse to the Contractor's obligations under this Head Agreement or a Contract;

43.1.2 Finance considers that the Contractor is not providing Deliverables in accordance with a Contract and **Schedule 3 (Modules)**; or

43.1.3 Finance has a right to terminate this Head Agreement in accordance with **clause 44**.

43.2 If Finance imposes a suspension in accordance with **clause 43.1**:

43.2.1 Finance must notify the Contractor of the reason for imposing the suspension; and

43.2.2 the following apply until the suspension is lifted in accordance with **clause 43.3**:

(a) Agencies must not issue a Contract Order Form to the Contractor for the provision of the Deliverables;

(b) the Contractor must promptly notify Finance if it receives a Contract Order Form for the provision of the Deliverables;

(c) the Contractor must not enter a Contract with an Agency; and

(d) each party must continue to perform all of its other obligations under this Head Agreement and all existing Contracts. To avoid doubt, Agency rights and obligations also continue under existing Contracts.

43.3 Finance may at any time lift a suspension that it has imposed in accordance with **clause 43.1** by issuing a Notice to the Contractor that the suspension is lifted. Finance must lift the suspension promptly after the Contractor demonstrates to Finance's satisfaction that the Contractor has rectified the issue that caused the suspension.

## **44 Termination**

### **Termination for default**

44.1 Without limiting any other rights or remedies Finance or an Agency may have against the Contractor arising out of or in connection with this Head Agreement or a Contract as the case may be, Finance may terminate this Head Agreement, and an Agency may terminate a Contract (in either case, in whole or in part) (including by removing one or more Modules from the scope of this Head Agreement) effective immediately, by giving Notice to the Contractor if:

44.1.1 the Contractor breaches a material provision of this Head Agreement or a Contract, where that breach is not capable of remedy;

44.1.2 the Contractor breaches any provision of this Head Agreement or a Contract that is capable of remedy, and fails to remedy the breach within 20 Business Days, or such other timeframe as is agreed in writing between the parties, after receiving Notice requiring it to remedy the breach; or

44.1.3 an event listed in **clause 44.4** happens to the Contractor and Finance or the Agency reasonably considers that such an event will adversely impact on the Contractor's ability to provide Deliverables.

44.2 Finance may only exercise its rights under this **clause 44** in respect of the Head Agreement.

44.3 Without limitation, for the purposes of **clause 44.1.1**, each of the following constitutes a breach of a material provision:

- 44.3.1 breach of a warranty in **clause 17** except **clauses 17.2.2** and **17.2.3** (Warranties);
- 44.3.2 a failure to comply with **clause 15** (Confidentiality);
- 44.3.3 a breach of any warranty, or failure to comply with any obligation, in **clauses 29.14** to **29.20** (Shadow Economy Procurement Connected Policy);
- 44.3.4 a failure to notify Finance or an Agency of a Conflict of Interest under **clause 30** (Conflict of Interest) or an inability to resolve a Conflict of Interest to the reasonable satisfaction of Finance or an Agency;
- 44.3.5 Finance considers that the Contractor is not providing Deliverables in accordance with this Head Agreement or the terms of any Contract made under this Head Agreement;
- 44.3.6 Finance has assessed the Contractor as not offering value for money;
- 44.3.7 the Contractor has failed to respond, without providing reasons, to more than three requests for quotation issued under this Panel in any six calendar month period;
- 44.3.8 Finance has reasonable grounds to believe that the Contractor no longer supplies Deliverables that meet the requirements of the Statement of Requirements for the Panel;
- 44.3.9 Finance removes a Module from the Panel that the Contractor provides services to;
- 44.3.10 the Contractor makes a request in accordance with **clause 44.9**;
- 44.3.11 Finance has received substantiated evidence of continuous or substantive negative feedback from one or more Agencies in respect of the performance of the Contractor in connection with the Panel; and
- 44.3.12 for termination of a Contract:
  - (a) failure to comply with **clauses 4.17** and **4.18** (Approved Third Party Providers);
  - (b) failure to comply with **clause 14** (Intellectual Property Rights);
  - (c) failure to comply with **clause 16** (Privacy);
  - (d) failure to comply with **clause 22** (Security);
  - (e) a breach of any warranty, or failure to comply with any obligation, in **clauses 29.14** to **29.20** (Shadow Economy Procurement Connected Policy);
  - (f) failure to notify the Agency of a Conflict of Interest under **clause 30** (Conflict of Interest) or an inability to resolve a Contract of Interest to the reasonable satisfaction of the Agency; and
  - (g) failure to meet any other material provision which may be specified in a Contract Order Form.

44.4 The Contractor must notify Finance (and in respect of any Contract, the Agency) in writing immediately if one or more of the following occurs:

- 44.4.1 the Contractor disposes of the whole or any substantial part of its assets, operations or business other than in the ordinary course of business;
- 44.4.2 the Contractor ceases to carry on business;
- 44.4.3 the Contractor ceases to be able to pay its debts as they become due;
- 44.4.4 the Contractor is a corporation and there is any change in the direct or indirect beneficial ownership or control of the Contractor which may have an adverse effect on the ability of the Contractor to perform its obligations under this Head Agreement or a Contract;
- 44.4.5 the Contractor is the subject of Insolvency Proceedings;
- 44.4.6 the Contractor becomes an Insolvent Under Management; or
- 44.4.7 the Contractor is a trustee and the trust is terminated or an event occurs for vesting the trust property.

#### **Termination and reduction for convenience**

44.5 Finance may by Notice, at its absolute discretion, terminate or reduce the scope of this Head Agreement (including to remove any Module from this Head Agreement), for any reason including as a result of a machinery of government change, a change to government policy or due to unforeseen circumstances.

44.6 If this Head Agreement is terminated or reduced in scope pursuant to **clause 44.5**, the Contractor is not entitled to compensation for any Loss.

44.7 The Agency may, by Notice, at its absolute discretion, terminate or reduce the scope of any Contract as a result of a machinery of government change a change to government policy or due to unforeseen circumstances. A Notice given under this **clause 44.7** must be approved in writing by Finance.

44.8 If a Contract is terminated or reduced in scope pursuant to **clause 44.7**:

- 44.8.1 the Contractor must comply with reasonable directions given by the Agency;
- 44.8.2 the Contractor must do everything reasonably possible to mitigate its Loss including by redeploying infrastructure, equipment and Personnel;
- 44.8.3 the Agency will only be liable for:
  - (a) payments under the payment terms specified in the Contract Order Form for work conducted before the effective date of termination or reduction; and
  - (b) any other unavoidable costs suffered by the Contractor in direct consequence of a termination or reduction under **clause 44.7**.  
unavoidable costs include amortised start-up costs and reasonable wind-down expenses directly related to the Contract if the Contractor substantiates all amounts claimed to the reasonable satisfaction of the Agency Representative; and

44.8.4 except for payments in respect of work conducted to which **clause 44.8.3(a)** applies, the Contractor will not be entitled to compensation for Loss including of prospective profits or any other indirect or Consequential Losses.

### **Withdrawal**

44.9 The Contractor may, by written notice to Finance at any time, request to withdraw from the Panel, in which event Finance will not involve the Contractor in any future engagement process.

44.10 Any withdrawal under **clause 44.9** will not relieve the Contractor from, or otherwise affect, the Contractor's obligations in respect of any Contract which it has already performed or already been engaged to perform under this Head Agreement.

### **After termination**

44.11 On termination (in whole or part) of:

44.11.1 this Head Agreement, the Contractor must:

- (a) except in respect of Contracts that have been formed prior to the termination of the Head Agreement (or removal of a Module from the scope of this Head Agreement), stop offering the relevant Deliverables to Agencies under this Head Agreement or Module (as the case may be);
- (b) take all available steps to protect Material in which Intellectual Property Rights, Confidential Information or Personal Information subsists;
- (c) return to Finance all of Finance's Confidential Information except in respect of Contracts that have been formed prior to the termination of the Head Agreement and which have not been terminated or expired;
- (d) follow any reasonable direction of Finance; and
- (e) continue to perform any part of this Head Agreement (and any Contract) not affected by the Notice; and

44.11.2 a Contract, the Contractor must:

- (a) take all available steps to protect Material in which Intellectual Property Rights, Confidential Information or Personal Information subsists;
- (b) return to the Agency all of the Agency Confidential Information in respect of the Contract, unless otherwise agreed in writing with the Agency;
- (c) follow any reasonable direction of the Agency; and
- (d) continue to perform any part of the Contract not affected by the Notice.

### **Consequences of termination**

44.12 If this Head Agreement or a Contract is terminated in whole or in part under this **clause 44**:

- 44.12.1 subject to the terms of this Head Agreement or the Contract (including any Transition Out Plan), the parties are relieved from future performance of the terminated Head Agreement or Contract or relevant part of it;
- 44.12.2 subject to this Head Agreement or the Contract (including any Transition Out Plan), all licences and authorisations relating to or concerning this Head Agreement or the Contract (including any Transition Out Plan) granted to the Contractor by Finance or the Agency terminate immediately despite anything to the contrary contained in the licence or authorisation;
- 44.12.3 each party must comply with all surviving terms of this Head Agreement or Contract and any Transition Out Plan;
- 44.12.4 Contracts placed before termination of this Head Agreement remain on foot unless an Agency terminates the Contract in accordance with the terms of the Contract; and
- 44.12.5 the accrued rights of either party are not affected.

44.13 Unless specifically stated in the Notice of termination, termination of this Head Agreement does not automatically terminate Contracts current at that time. However, no new Contract may be formed after termination of this Head Agreement.

### **Termination by Contractor**

44.14 The Contractor may only terminate a Contract by issuing a Notice to Terminate in writing where the Agency has:

- 44.14.1 not paid a properly rendered invoice within the period specified in the Contract Order Form or 120 Business Days after payment was due and payable and the Contractor has notified the Agency in writing of its claim for payment at least 40 Business Days and then 60 Business Days after payment was due; or
- 44.14.2 breached a material obligation provision (as specified in **clause 44.3** or in the Contract Order Form) in the Contract and has failed to remedy the breach within 40 Business Days or such other period agreed by the parties after receiving a Notice requiring it to remedy the breach.

44.15 The Contractor has no right and, to the extent permitted by Law, waives any right which it may otherwise have had to terminate the Contract.

## 45 Knowledge Transfer and Transition Out

### Knowledge transfer

45.1 The Contractor must, at no additional cost to Finance or an Agency (or any person nominated by Finance), after receipt of a request by the Finance (which may be provided at any time during the Term or Module Period), provide all reasonable assistance, information, data and Documents (excluding Contractor Proprietary Information) relating to the Contractor's provision of Deliverables under a Contract which may be required by Finance to undertake a procurement process related to the Head Agreement or any Module (including any refresh of the Head Agreement or any Module).

### Transition out

45.2 Without limiting **clause 45.1**, the Contractor must, at no additional cost to Finance or any Agency provide the following assistance to Finance on termination or expiration of a Module:

- 45.2.1 transferring or providing access to Finance to all information, stored by whatever means, held by the Contractor or under the control of the Contractor in connection with the relevant Module excluding Contractor Personnel Information; and
- 45.2.2 making Contractor Personnel involved in the Contractor's provision of Deliverables under the terminating or expiring Module available for discussions with Finance in relation to those Deliverables as required.

## 46 Transition Out for a Contract

46.1 The Contractor must perform Transition Out Services in accordance with this **clause 46**, the Contract and the Transition Out Plan approved by the Agency to ensure the orderly transition out of the Deliverables provided under a Contract. Transition Out Charges will be agreed as part of the agreement of the Transition Out Plan but will be based on the Charges in **Schedule 3 – Attachment 2 (Deliverables and Charges)**.

46.2 The Contractor agrees that:

- 46.2.1 upon the expiration or earlier termination of the Contract or a reduction in the scope of the Deliverables, the Contractor may be replaced by the Agency or another contractor appointed by the Agency to provide deliverables the same as or similar to the Deliverables;
- 46.2.2 it is essential for the continuing operation of the Agency and its functions that there be no interruption to the provision of the Deliverables to the Agency as a result of the transition from the Contractor to the Agency or an incoming contractor; and
- 46.2.3 the Contractor will be required to provide relevant Deliverables in accordance with the Contract until the expiration or earlier termination of the Contract (unless the Agency directs or agrees otherwise).

46.3 If requested in the Contract Order Form, the Contractor must develop and submit to the Agency for approval, a Transition Out Plan in accordance with the Contract Order Form.

46.4 The Contractor must:

- 46.4.1 perform all activities described in the approved Transition Out Plan;
- 46.4.2 fully co-operate with the Agency and any incoming contractor and do all tasks and things as may be reasonably necessary to ensure the smooth transition of the provision of the Deliverables from the Contractor to the incoming contractor or the Agency (as the case may be) in a manner which ensures no interruption to the provision of the Deliverables;
- 46.4.3 work in good faith to resolve any issues arising with the transition from the Contractor to the incoming contractor or the Agency (as the case may be);
- 46.4.4 comply with all reasonable directions from the Agency Representative, having regard to the requirements of the Agency or the incoming contractor;
- 46.4.5 take all available steps to protect Material in which Intellectual Property Rights, Confidential Information or personal information of the Agency or its Personnel subsists;
- 46.4.6 return to the Agency (or such other person as directed by the Agency Representative) all Agency Material, Commonwealth data and other property or information provided by the Agency to the Contractor under or in connection with the Contract in the condition required by the Contract and to the satisfaction of the Agency Representative;
- 46.4.7 engage in briefings as required by the Agency Representative and the incoming contractor with a view to ensuring that the Agency or incoming contractor have sufficient information to provide the Deliverables or products or services of a similar nature to the Deliverables;
- 46.4.8 use reasonable endeavours to novate to the Agency, or to any person nominated by the Agency, any Subcontract as required by the Agency Representative on the terms of a novation deed that are reasonably satisfactory to the Agency Representative; and
- 46.4.9 if any Subcontract is not specific to the Contract, use reasonable endeavours to procure the Subcontractor to enter into a contract with the Agency, or any person nominated by the Agency, as required by the Agency Representative on terms reasonably satisfactory to the Agency Representative.

## **47 General**

### **Approvals and consents**

47.1 Except where this Head Agreement or a Contract states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Head Agreement.

**Costs**

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

**Further action**

47.3 Each party must do, at its own expense, everything reasonably necessary (including executing Documents) to give full effect to this Head Agreement and any Contract and any transaction contemplated by those Documents.

**Assignment and novation**

47.4 A party may only assign its rights or novate its rights and obligations under this Head Agreement or any Contract (in whole or part) with the prior written consent of the other party, and this consent must not be unreasonably withheld, except that Finance or an Agency may assign its rights or novate its rights and obligations under this Head Agreement or any Contract to another Agency without obtaining the Contractor's consent if all, or substantially all, of its functions are transferred to another Agency as part of a machinery of government change.

**Waiver**

47.5 Waiver of any provision of, or right under, this Head Agreement or a Contract:

- 47.5.1 must be by Notice from the party entitled to the benefit of that provision or right; and
- 47.5.2 is effective only to the extent set out in such Notice.

47.6 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Head Agreement or a Contract, does not amount to a waiver of any obligation of, or breach of obligation by, the other party.

**Severability**

47.7 A term or part of a term of this Head Agreement or any Contract that is illegal or unenforceable may be severed from this Head Agreement or the Contract and the remaining terms or parts of the terms of that Document will continue in force.

**Entire agreement**

47.8 This Head Agreement and any Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

**Rights are cumulative**

47.9 The rights, powers and remedies provided in this Head Agreement and any Contract are cumulative and are not exclusive of the rights, powers or remedies provided by Law independently of this Head Agreement.

### **No merger**

47.10 The rights and obligations of the parties under this Head Agreement and any Contract do not merge on completion of any transaction contemplated by this Head Agreement.

### **Survival**

47.11 The following clauses survive the termination and expiry of this Head Agreement and any Contract:

- 47.11.1 **clause 11** (Charges and GST);
- 47.11.2 **clause 14** (Intellectual Property Rights);
- 47.11.3 **clause 15** (Confidentiality);
- 47.11.4 **clause 16** (Privacy);
- 47.11.5 **clause 17** (Warranties);
- 47.11.6 **clause 19** (Head Agreement Guarantees);
- 47.11.7 **clause 20** (Unconditional Financial Undertaking);
- 47.11.8 **clause 21** (Performance Guarantee);
- 47.11.9 **clause 24** (Liability under a Contract);
- 47.11.10 **clause 25** (Indemnity);
- 47.11.11 **clause 27** (Reporting);
- 47.11.12 **clause 34** (Books and Records);
- 47.11.13 **clause 35** (Audit and Access);
- 47.11.14 **clause 44** (Termination) in respect of the rights and obligations arising on termination;
- 47.11.15 **clause 46** (Transition Out);
- 47.11.16 any clauses that are expressed to or which by their nature survive termination or expiry; and
- 47.11.17 all clauses required to give effect to this **clause 47.11** including definitions and interpretation.

### **Counterparts**

47.12 This Head Agreement and any Contract may be executed in counterparts. All executed counterparts constitute one Document.

### **Governing Law and jurisdiction**

47.13 This Head Agreement and any Contract is governed by the Laws of the Australian Capital Territory.

47.14 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

### **Australian Industry Participation Plan**

47.15 The Contractor must comply with an AIP Plan if included in a Contract.

### **Fraud Control Guidelines**

47.16 The Contractor must comply with the Commonwealth Fraud Control Framework (or any applicable State or Territory fraud control guidelines or policies if it is providing Deliverables to an Agency that is a State or Territory Agency).

47.17 The Contractor must notify Finance and the applicable Agency immediately if it knows or has reason to suspect that any fraud has occurred or is occurring or is likely to occur in relation to the Head Agreement or a Contract (including by the Contractor, Contractor Personnel, Subcontractors and suppliers).

### **Compliance with Laws**

47.18 Each party must in carrying out its obligations under this Head Agreement and any Contract comply with all applicable Laws.

47.19 The Contractor must, in carrying out its obligations under this Head Agreement and any Contract, comply with publicly available policies and standards and other policies and standards as notified by Finance from time to time.

### **Electronic Execution**

47.20 Each party consents to the signing of this Head Agreement by electronic means. The parties agree to be legally bound by this Head Agreement signed in this way.

**EXECUTED AS A DEED**

**Executed as a deed** for and on behalf of the **Commonwealth of Australia** as represented by the **Department of Finance** (ABN 61 970 632 495) by its duly authorised delegate:

**In the presence of:**

.....  
Signature of delegate

.....  
Signature of witness

Name of delegate (print)

.....  
Name of witness (print)

Date

Date

**Executed as a deed** by **<INSERT Full Legal Entity name> [Contractor] (Insert Contractor ABN)** by the named officers of the company in accordance with the requirements of section 127 of the *Corporations Act 2001* (Cth) and warrant that the Agency and Finance may rely on the operative effect of sections 127, 128 & 129 of that Act:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

Name of Director (print)

.....  
Name of Director/Company Secretary (print)

Date

Date

**SCHEDULE 1 - (GLOSSARY AND FORMS)**

|              |                                     |
|--------------|-------------------------------------|
| Attachment 1 | Head Agreement Glossary             |
| Attachment 2 | Deed of Confidentiality             |
| Attachment 3 | Performance Guarantee Indemnity     |
| Attachment 4 | Unconditional Financial Undertaking |
| Attachment 5 | Change Order Form                   |
| Attachment 6 | Contractor Confidential Information |

## SCHEDULE 1 – ATTACHMENT 1 (HEAD AGREEMENT GLOSSARY)

| TERM                            | DEFINITION   |
|---------------------------------|--|
| Acceptance                      | Means a signature, by the Agency Representative, of an Acceptance certificate in accordance with <b>clause 10</b> of the Head Agreement; and 'Accept' and 'Accepted' have a corresponding meaning.   |
| Acceptance Criteria             | Means a list of criteria that the Deliverables must meet before the Agency will Accept them, as set out in the Contract Order Form.  |
| Acceptance Testing              | Means the testing of Deliverables against the Acceptance Criteria for the purpose of Acceptance.   |
| Additional Deliverables         | Means any additional Deliverables requested by Finance or an Agency from time to time in accordance with the provisions of the Head Agreement or a Contract that do not, at the time of the request, form part of the Deliverables.<br><br><i>[Note: Over time Finance may add new Modules to the Head Agreement (subject to Finance being satisfied that the addition of one or more new Module represents value for money to the Commonwealth).]</i>   |
| Additional Terms                | Means the additional terms (if any) that apply to a Contract, as specified in a Contract Order Form.   |
| Agency                          | Means any one or more of the following as the context requires:<br><br>(a) Commonwealth entities which are 'non-corporate Commonwealth entities' under the PGPA Act;<br>(b) Commonwealth entities which are 'corporate Commonwealth entities' under the PGPA Act;<br>(c) Commonwealth entities which are 'Commonwealth companies' under the PGPA Act;<br>(d) State, Territory and local government bodies; and<br>(e) other organisations approved by Finance as eligible to use GovCMS from time to time, which currently includes other government-funded entities such as some schools and universities.<br><br>In the case of a Contract, means the Agency that enters into that Contract. |
| Agency Confidential Information | In relation to an Agency, means information that:<br><br>(a) is by its nature confidential; or<br>(b) is designated by an Agency as confidential; or<br>(c) the Contractor knows or ought to know is confidential, including:<br><br>(i) information comprised in or relating to any of an Agency's Intellectual Property Rights;<br>(ii) information relating to the policies, strategies, practices and procedures of an Agency and any  |

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| <b>TERM</b>           | <b>DEFINITION</b>  |
|-----------------------|--|
|                       | <p>information in the Contractor's possession relating to an Agency;</p> <p>(iii) information relating to other contractors of an Agency; and</p> <p>(iv) Security Classified Information; or</p> <p>(d) is Agency Material and data, but does not include information which:</p> <p>(e) is or becomes public knowledge other than by breach of any confidentiality obligation; or</p> <p>(f) has been independently developed or acquired by the Contractor as established by written evidence.</p>   |
| Agency Personnel      | <p>Means any natural person who is an employee, director, officer, agent or professional adviser of the Agency (not including Contractor Personnel) and includes:</p> <p>(a) the Minister(s) responsible for the Agency and all staff of such Minister's offices;</p> <p>(b) officers and employees within the Agency, including public servants at all levels employed on a full-time, part-time, permanent, casual or temporary basis;</p> <p>(c) contractors (including contractors providing outsourcing services to the Agency) and agents which perform services for or on behalf of the responsible Department; and</p> <p>(d) other Personnel as agreed between the Agency and the Contractor.</p> |
| Agency Representative | Means the person identified as such in a Contract Order Form.  |
| AIP Plan User Guide   | Means the Australian Industry Participation Plans and Implementation Reports for Australian Government Projects: SmartForm User Guide for Organisations published by the Department of Industry, Science and Resources.  |
| ANAO                  | Means the Australian National Audit Office.  |
| Annual Review         | Means an annual review conducted in accordance with <b>clause 32</b> of the Head Agreement.  |
| Approval              | <p>(a) any approval, authorisation, consent, declaration, exemption, permit, notarisation, licence, certificate, registration, filing, agreement, notification, permission or waiver however described including any condition attached to it required under the Head Agreement or a Contract or for the purposes of providing the Deliverables; and</p> <p>(b) in relation to anything that could be prohibited or restricted by Law if an Authority acts in a way within a specified period, the</p>   |

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| <b>TERM</b>   | <b>DEFINITION</b>  |
|---|--|
|   | expiry of that period without that action being taken, including any renewal or amendment.   |
| Approved Australian Industry Participation Plan or AIP Plan | Means an Australian Industry Participation ( <b>AIP</b> ) Plan that has been approved by the Department of Industry, Science and Resources in accordance with the AIP Plan User Guide.   |
| Approved Pass-Through Expense                               | Means an expense the Contractor incurs in providing the Deliverables for which the Agency has agreed in writing it will reimburse (without application of any margin) the Contractor, as specified in a Contract Order Form.   |
|   |  |
| Approved Third Party Provider                               | Means a third party ICT provider that has been: <ul style="list-style-type: none"> <li>(a) contracted by an Agency (or group of Agencies) to provide ICT services to that Agency (or group of Agencies); and</li> <li>(b) approved in writing by Finance and that Agency to enter into a Contract under the Head Agreement with the Contractor for the provision of Deliverables as part of the third party ICT provider's provision of ICT services to that Agency (or group of Agencies).</li> </ul> |
| <i>Archives Act</i>   | Means the <i>Archives Act 1983</i> (Cth).  |
| Auditor-General   | Means the Auditor-General for the Commonwealth or an equivalent State or Territory office holder.  |
| Australian Information Commissioner                         | Means the Commonwealth Australian Information Commissioner or, if the Agency is a State or Territory Agency, an equivalent State or Territory office holder with jurisdiction over the Agency.   |
| Authorised Investigator                                     | Has the meaning given in <b>clause 35.1</b> of the Head Agreement.   |
| Authority   | Means any legal entity with legislative authority including any ministry, department, government, governmental or semi-governmental authority, agency, instrumentality, council or corporation.  |
| Benchmarking  | Means an independent third party engaged by Finance to perform benchmarking.   |
| Business Day  | <ul style="list-style-type: none"> <li>(a) for receiving a Notice under <b>clause 39</b> of the Head Agreement, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the Notice is to be received; and</li> <li>(b) for all other purposes, any day that is not a Saturday or Sunday or a Commonwealth public service holiday throughout Australia promulgated in the Commonwealth of Australia Gazette.</li> </ul>   |

| TERM                                | DEFINITION  |
|-------------------------------------|---|
| Change Order                        | Means a Document in the form specified in <b>Schedule 1 – Attachment 5 (Change Order Form)</b> which is used to implement and record changes to the Head Agreement and any Contract.  |
| Charges                             | Means the amount or amounts (excluding GST) payable by the Agency to the Contractor for the Deliverables in accordance with a Contract (as set out in <b>Schedule 3 – Attachment 2 (Deliverables and Pricing)</b> to the Head Agreement).   |
| Commencement Date                   | <p>(a) For the Head Agreement, means the Head Agreement Commencement Date is the date on which the Head Agreement is executed by both parties (or if executed on different days, the date on which it has been executed by both parties).</p> <p>(b) For a Module, means the Module Commencement Date is the date set out in <b>Schedule 2 (List of Enrolled Modules)</b>.</p> <p><b>[Note: For a Contract, the Contract Period commences on the Contract Start Date.]</b></p>  |
| Commonwealth                        | Means the Commonwealth of Australia.  |
| Commonwealth entity                 | Has the meaning given in the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).   |
| Commonwealth Record                 | Has the meaning given in the <i>Archives Act</i> and includes Material developed under the Head Agreement or any Contract.  |
| Confidential Information            | Means Agency Confidential Information or Contractor Confidential Information or Finance Confidential Information.   |
| Contractor Confidential Information | <p>In relation to the Contractor means:</p> <p>(a) information specified in <b>Schedule 1 – Attachment 6 (Contractor Confidential Information)</b> to the Head Agreement; or</p> <p>(b) information agreed and specified in the Contract that is confidential; or</p> <p>(c) information that is by its nature confidential, but does not include information which:</p> <p>(d) is or becomes public knowledge other than by breach of any confidentiality obligation; or</p> <p>(e) has been independently developed or acquired by Finance or by the Agency as established by written evidence.</p> |
| Contractor Proprietary Information  | <p>Means the Contractor's:</p> <p>(a) cost models;</p> <p>(b) information relating to other customers of the Contractor;</p> <p>(c) Contractor Confidential Information relating to the Contractor's</p>  |

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| TERM                      | DEFINITION  |
|---------------------------|---|
|                           | <p>employees; and</p> <p>(d) profit margin information.</p>   |
| Conflict of Interest      | <p>Means any known actual, potential or perceived conflict between:</p> <p>(a) the duty that the Contractor, Contractor Personnel and any Related Body Corporate will have to Finance or an Agency under the proposed contractual arrangements; and</p> <p>(b) either:</p> <p>(i) the personal interests of the Contractor, Contractor Personnel or a Related Body Corporate; or</p> <p>(ii) the duty of the Contractor, Contractor Personnel or a Related Body Corporate to another person or entity.</p> <p>A Conflict of Interest includes a financial or corporate relationship between a Contractor, Contractor Personnel or a Related Body Corporate which may influence or appear to influence, a decision made by a Contractor, or their capacity to make independent decisions, in the best interest of Finance, the Commonwealth or the Agency.</p> |
| Contract                  | Means a contract entered into under a Head Agreement for the provision of Deliverables and includes all schedules, attachments and plans to that Contract and Documents incorporated into that Contract.  |
| Contract Order Form       | Means an order in the form of the relevant <b>Schedule 3 – Attachment 3 (Contract Order Form)</b> of the Head Agreement that may be agreed by an Agency or an Approved Third Party Provider pursuant to <b>clause 4</b> of the Head Agreement and the Contractor.   |
| Contract Period           | Means the Initial Contract Period for a Contract plus any extension in accordance with the relevant Contract.   |
| Contract Start Date       | <p>Means the date:</p> <p>(a) on which a Contract Order Form is agreed by the parties; or</p> <p>(b) a date agreed by the parties and included in the Contract Order Form.</p> <p>The Contract Period commences on the Contract Start Date.</p>   |
| Contractor                | Means the organisation that entered into the Head Agreement to provide the Deliverables/supplied details in the relevant Module.  |
| Contractor Personnel      | <p>Means any individual who is an employee, director, officer, agent, professional adviser of the:</p> <p>(a) Contractor; or</p> <p>(b) a Subcontractor.</p>  |
| Contractor Representative | <p>(a) for the Head Agreement, means the person identified in <b>clause 37.3</b> of the Head Agreement; and</p>   |

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| TERM                           | DEFINITION   |
|--------------------------------|--|
|                                | (b) for a Contract, means the person identified in <b>clause 38.2</b> of the Head Agreement.   |
| Contract Terms                 | Means the Head Agreement terms and the Module Specific Terms applicable to the Contract in each Module.  |
| Correctly Rendered Tax Invoice | Means an invoice that is: <ul style="list-style-type: none"> <li>(a) it is correctly addressed and calculated in accordance with the relevant Contract;</li> <li>(b) it relates only to Deliverables that have been provided to the Agency in accordance with the Contract; and</li> </ul> it is a valid tax invoice in accordance with <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth). |
| <i>Corporations Act</i>        | Means the <i>Corporations Act 2001</i> (Cth).  |
| <i>Criminal Code</i>           | Means the <i>Criminal Code Act 1995</i> (Cth).   |
| Customer                       | <ul style="list-style-type: none"> <li>(a) for the Head Agreement, means the Department of Finance; and</li> <li>(b) for a Contract, means the Agency.</li> </ul>  |
| Data Mining                    | Means analysing or searching for patterns in data sets to extract information and transform it into an understandable structure, whether through automated or human means, and includes data dredging, data fishing and data snooping or similar methods.  |
| Deliverables or Supplies       | For the purposes of the Head Agreement, means the products and services or any part of them described in an Enrolled Module in <b>Schedule 3 (Modules)</b> or a Contract.  |
| Delivery Date                  | Means the date for delivery of the Deliverables specified in a Contract Order Form.  |
| Direct Competitor              | Means an entity which competes directly with the Contractor in providing goods and services that are materially the same as, or similar to, the Deliverables provided by the Contractor, including any entities that may be specified in a Contract.   |
| Dispute                        | Has the meaning given in <b>clause 40.1</b> of the Head Agreement.   |
| Document                       | Includes: <ul style="list-style-type: none"> <li>(a) any paper or other Material on which there is words, figures, symbols or perforations having a meaning for persons qualified to interpret them; and</li> <li>(b) any article or Material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device.</li> </ul>                    |

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| <b>TERM</b>                      | <b>DEFINITION</b>  |
|----------------------------------|--|
| Documentation                    | Means the Documents to be provided by the Contractor under the Head Agreement or any Contract.   |
| Enrolled Module                  | Means a Module to which the Contractor is enrolled as set out in <b>Schedule 2 (List of Enrolled Modules)</b> .<br><br><i>[Note: Schedule 2 (List of Enrolled Modules) will also specify the Initial Module Period and Module Option Period for each Enrolled Module.]</i>   |
| Existing Material                | Means material that:<br><br>(a) is in existence prior to the relevant Module Commencement Date or the relevant Contract Start Date; or<br><br>(b) is brought into existence after the relevant Module Commencement Date or the relevant Contract Start Date other than as a result of the performance of obligations under the Head Agreement or any Contract,<br><br>and is related to the provision of the Deliverables and includes Material that is a modification of Existing Material.   |
| Finance                          | Means the Commonwealth of Australia represented by the Department of Finance.  |
| Finance Confidential Information | In relation to Finance, means information that:<br><br>(a) is by its nature confidential; or<br><br>(b) is designated by Finance as confidential; or<br><br>(c) the Contractor knows or ought to know is confidential, including:<br><br>(i) information comprised in or relating to any of Finance's Intellectual Property Rights;<br><br>(ii) information relating to the policies, strategies, practices and procedures of Finance and any information in the Contractor's possession relating to Finance;<br><br>(iii) information relating to other contractors of Finance; and<br><br>(iv) Security Classified Information; or<br><br>(d) is Agency Material and data,<br><br>but does not include information which:<br><br>(e) is or becomes public knowledge other than by breach of any confidentiality obligation; or<br><br>(f) has been independently developed or acquired by the Contractor as established by written evidence. |
| Finance Personnel                | Means any natural person who is an employee, director, officer, agent or professional adviser of Finance (not including Contractor Personnel)  |

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| <b>TERM</b>                                     | <b>DEFINITION</b>  |
|---|--|
|   | <p>and includes:</p> <ul style="list-style-type: none"> <li>(a) the Ministers having responsibility for Finance, and all staff of such Minister's offices;</li> <li>(b) officers and employees within Finance, including public servants at all levels employed on a full-time, part-time, permanent, casual or temporary basis;</li> <li>(c) contractors (including contractors providing outsourcing services to Finance) and agents which perform services for or on behalf of Finance; and</li> <li>(d) other personnel as agreed between Finance and the Contractor.</li> </ul> |
| Finance Representative                          | Means the person nominated by Finance in accordance with <b>clause 37.5</b> of the Head Agreement.   |
| FOI Act   | Means the <i>Freedom of Information Act 1982</i> (Cth).  |
| Head Agreement                                  | Means the Head Agreement between Finance and the Contractor.   |
| Head Agreement Contractor Representative        | Means the person identified in <b>clause 37.3</b> of the Head Agreement.   |
| GST   | Has the meaning defined in the <i>GST Act</i> .  |
| GST Act   | Means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).   |
| Guiding Principles on Business and Human Rights | Means the United Nations' Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework available at <a href="https://ohchr.org/EN/Issues/Business/Pages/GuidingPrinciplesBusinessHR.aspx">guidingprinciplesbusinesshr_en.pdf (ohchr.org)</a> .   |
| ICT   | Means Information and Communication Technology.  |
| ICT Review                                      | Means the <i>Review of the Australian Government's Use of Information and Communication Technology</i> conducted by Sir Peter Gershon.   |
| Illegal Worker                                  | <p>Means a person who:</p> <ul style="list-style-type: none"> <li>(a) has unlawfully entered and remains in Australia;</li> <li>(b) has lawfully entered Australia, but remains in Australia after his/her visa has expired; or</li> <li>(c) is working in breach of his/her visa conditions.</li> </ul> <p><b>[Note: For more information refer to 'Employing and Sponsoring Someone' available at <a href="https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone">https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone</a> .]</b></p>           |
| Initial Contract Period                         | Means the period specified as such in the Contract Order Form and which commences on the Contract Start Date.  |

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| <b>TERM</b>                  | <b>DEFINITION</b>  |
|------------------------------|--|
| Initial Module Period        | Means the initial period of time for which a Module is intended to continue, as specified in <b>Schedule 2 (List of Enrolled Modules)</b> .  |
| Insolvency Proceeding        | Means any application or proceedings before a court or tribunal, or an action by a creditor or other person, in Australia or overseas which may result in the Contractor becoming Insolvent Under Management.  |
| Insolvent Under Management   | Means any of the following circumstances, where the Contractor: <ul style="list-style-type: none"> <li>(a) becomes bankrupt or insolvent;</li> <li>(b) becomes subject to one of the forms of external administration provided for in Chapter 5 of the <i>Corporations Act 2001</i> (Cth);</li> <li>(c) the appointment of a person to administer a scheme or compromise in relation to the body in accordance with Part 5.1 of the <i>Corporations Act 2001</i> (Cth);</li> <li>(d) the appointment of a controller or managing controller to the whole or any part of its assets or undertakings in accordance with Part 5.2 of the <i>Corporations Act 2001</i> (Cth);</li> <li>(e) the appointment of an administrator under Part 5.3A of the <i>Corporations Act 2001</i> (Cth);</li> <li>(f) the appointment of a liquidator in relation to the body;</li> <li>(g) is wound up by resolution or an order of the court;</li> <li>(h) suffers execution against any of its assets which has an adverse effect on the Contractor's ability to perform its obligations under the Head Agreement or Contract;</li> <li>(i) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors;</li> <li>(j) becomes insolvent under administration; or</li> <li>(k) becomes subject to any form of administration under the Laws of a non-Australian jurisdiction, which is the same as, or substantially equivalent to, one of those referred to in paragraphs (a) to (j) above.</li> </ul> |
| Intellectual Property Rights | Means: <ul style="list-style-type: none"> <li>(a) all rights in respect of intellectual property, whether or not such rights are registered or capable of being registered;</li> <li>(b) any application or right to apply for registration of any intellectual property; and</li> <li>(c) all rights of a similar nature to any of the rights referred to in paragraphs (a) and (b) which may subsist in Australia or elsewhere.</li> </ul>   |
| ISM                          | Means the Australian Government Information Security Manual.   |

**WDSHA24\_Category 1-2-3\_Supplier Head Agreement (GovCMS Services Panel)**

| <b>TERM</b>               | <b>DEFINITION</b>  |
|---------------------------|--|
| Key Person                | Means a person filling a position that requires highly specialised skills or such capabilities that are crucial to the provision of the Deliverables, as specified in any Contract.  |
| Law                       | Means any applicable law, without limitation, including common or customary law, equity, judgment, legislation, orders, regulations, Statutes, by-laws, ordinances or any other legislative or regulatory measures (including any amendment, modification or re-enactment of them).                    |
| LEADR                     | Means the Association of Dispute Resolvers, Australia.   |
| Legal Services Directions | Means the Legal Services Directions made under section 55ZF of the <i>Judiciary Act 1903</i> (Cth).  |
| Loss or Losses            | Means all losses, liabilities, damages, fines, costs and expenses (including reasonable legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).  |
| Material                  | Means any tangible thing in which Intellectual Property Rights can subsist, including without limitation software, firmware, Documents, reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions or other material. |
| Milestone                 | Means the event or series of events for which the Contractor is responsible and for which Charges are payable as specified in the Contract that is to be achieved to the satisfaction of the Agency Representative and Accepted by the Agency.   |
| Modern Slavery            | Has the same meaning as it has in the <i>Modern Slavery Act 2018</i> (Cth).  |
| Module                    | Means a Module of ICT Deliverables available for provision under the Head Agreement.   |
| Module Commencement Date  | Means the date specified in <b>Schedule 2 (List of Enrolled Modules)</b> of the Head Agreement.  |
| Module Option Period      | Means the Module Option Period, if any, for a Module as set out in <b>Schedule 2 (List of Enrolled Modules)</b> .  |
| Module Period             | Means the Initial Module Period for a Module plus any extension in accordance with <b>clause 5</b> of the Head Agreement and <b>Schedule 2 (List of Enrolled Modules)</b> .  |
| Module Specific Terms     | Means the terms in <b>Part A of Schedule 3 - Attachment 2 (Deliverables and Pricing)</b> for a Module.   |
| Moral Rights              | Means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship   |

**WDSHA24\_Category 1-2-3\_Supplier Head Agreement (GovCMS Services Panel)**

| <b>TERM</b>                             | <b>DEFINITION</b>   |
|---|---|
|   | of a work and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).   |
| New Material                            | Means material created by the Contractor on or after the Commencement Date, for the purpose of or as a result of performing its obligations under the Head Agreement or any Contract other than reports for Finance or an Agency, and includes any modifications that may be required for that purpose but excludes any Finance or Agency Confidential Information. |
| Normal Business Hours or Business Hours | <p>(a) for a Contract, has the meaning set out in the applicable Module or Contract; and</p> <p>(b) for this Head Agreement, means 9 am to 5 pm on Business Days.</p>   |
| Notice                                  | Means a Notice under the Head Agreement or a Contract that is sent in accordance with <b>clause 39</b> of the Head Agreement.   |
| Ombudsman                               | Means the Commonwealth Ombudsman or, if the Agency is a State or Territory Agency, an equivalent State or Territory office holder with jurisdiction over the Agency.  |
| Panellist                               | Means a contractor who has entered into a Head Agreement with Finance.  |
| PEPPOL                                  | Means the Pan-European Public Procurement On-Line standard, which is an e-invoicing standard for Government agencies.   |
| Performance Guarantee                   | Means a deed of performance in the form of <b>Schedule 1 – Attachment 3 (Performance Guarantee and Indemnity)</b> of the Head Agreement that is provided by the Contractor pursuant to <b>clause 19</b> of the Head Agreement.  |
| Personal Information                    | Has the meaning given to it in the <i>Privacy Act</i> .   |
| Personnel                               | <p>(a) in relation to Finance, means Finance Personnel;</p> <p>(b) in relation to the Agency, means Agency Personnel; and</p> <p>(c) in relation to the Contractor, means Contractor Personnel.</p>   |
| PGPA Act                                | Means the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).  |
| PGPA Entities                           | Means all agencies subject to the PGPA Act.   |
| Policies and Procedures Manual          | Means the manual of that name to be provided by the Contractor under <b>clause 28</b> of the Head Agreement.  |
| Pricing Model                           | Means the pricing model offered by the Contractor as set out in the Products and Services Catalogue which reflects the maximum amounts that the Contractor can charge under a Contract.   |

**WDSHA24\_Category 1-2-3\_Supplier Head Agreement (GovCMS Services Panel)**

| <b>TERM</b>                     | <b>DEFINITION</b>   |
|---------------------------------|---|
| <i>Privacy Act</i>              | Means the <i>Privacy Act 1988</i> (Cth).  |
| Privacy Commissioner            | Means the Privacy Commissioner for the Commonwealth or, if the Agency is a State or Territory Agency, an equivalent State or Territory office holder (if any) with jurisdiction over the Agency.  |
| Proceedings                     | Means any litigation, arbitration, mediation, conciliation or proceeding, including any investigations and any Insolvency Proceedings.  |
| PSPF                            | Means the <i>Australian Government Protective Security Policy Framework</i> (PSPF) which, amongst other things, directs Commonwealth Agencies to consider the security implications of their electronic information systems and to devise policy and plans to ensure the systems are appropriately protected.   |
| Public Announcement             | Means a public announcement in connection with the Head Agreement or any Contract or any transaction contemplated by those Documents.   |
| Records Disposal Authority      | Means the authority issued by the National Archives of Australia in accordance with the <i>Archives Act</i> .   |
| Regulatory Agency               | Means any government or any public, Statutory, governmental, semi-governmental, local governmental or judicial body, entity, ombudsman or authority that has a regulatory, supervisory or prudential power or function under any Statute, or can issue any licence or permit or authorise or approve or forbid any act or conduct or other matter or impose conditions in respect of any act or conduct or other matter, or that has a power to investigate, review, make any determination or finding, or prosecute, or commence or recommend any civil, criminal or administrative proceeding or process. |
| Related Body Corporate          | In relation to the Contractor, means any person which is a related body corporate of the Contractor (as defined in section 50 of the <i>Corporations Act</i> ).   |
| Request for Quotation (RFQ)     | Means a request for quotation for the provision of Deliverables under any one or more Modules issued under <b>clause 4</b> of the Head Agreement.   |
| Satisfactory                    | Means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy.   |
| Schedule                        | Means each of the schedules to the Head Agreement or a Contract.  |
| Security Classified Information | Means information defined as Security Classified Information in accordance with the ISM and PSPF.   |

**WDSHA24\_Category 1-2-3\_Supplier Head Agreement (GovCMS Services Panel)**

| TERM  | DEFINITION   |
|---|--|
| Shadow Economy Procurement Connected Policy | Means the <i>Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019</i> available at <a href="https://treasury.gov.au/publication/p2019-t369466">https://treasury.gov.au/publication/p2019-t369466</a> .  |
| Significant Events                          | Means: <ul style="list-style-type: none"> <li>(a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or its officers, employees, agents or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or</li> <li>(b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or its officers, employees, agents or Subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.</li> </ul> |
| Similar Deliverables                        | Means products and services supplied by the Contractor: <ul style="list-style-type: none"> <li>(a) having substantially similar functional and performance outcomes as the Deliverables;</li> <li>(b) having comparable scope and scale; and</li> <li>(c) being provided by IT service providers.</li> </ul>   |
| Software as a Service (SaaS)                | means any software that is hosted or managed by the Contractor and made available to Finance or an Agency via a network.   |
| Specifications                              | Means, in order of priority: <ul style="list-style-type: none"> <li>(a) any relevant specifications contained in any Product and Service Catalogue established for the purposes of a Module;</li> <li>(b) the Agency's functional and technical requirements for a Deliverable or for a group of Deliverables as described or incorporated by reference in the Contract Order Form including as updated from time to time in accordance with the applicable Module; and</li> <li>(c) all applicable manufacturers' or suppliers' (including any resellers') specifications and applicable standards including as updated from time to time in accordance with the applicable Module.</li> </ul>  |
| Specified Acts                              | Has the meaning given in <b>clause 14.10</b> of the Head Agreement.  |
| Standard                                    | Means any standard that applies to a Module, as advised in writing by Finance from time to time.   |
| State or Territory Agencies                 | Means 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).   |

**WDSHA24\_Category 1-2-3\_Supplier Head Agreement (GovCMS Services Panel)**

| <b>TERM</b>                   | <b>DEFINITION</b>   |
|-------------------------------|---|
| Statement of Tax Record       | Means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at <a href="https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR">https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR</a> .  |
| Statute                       | Includes any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia or overseas (whether made by a State, Territory, the Commonwealth, or a local government).   |
| Step-In Rights                | Means the rights of Finance or the Agency to step in and take over the Contractor's responsibilities to ensure the continued delivery of the Deliverables until such time as: <ul style="list-style-type: none"> <li>(a) the requirements under <b>clause 42.9</b> of the Head Agreement are met; or</li> <li>(b) the Agency decides to terminate the Contract in accordance with <b>clause 42.10</b> of the Head Agreement.</li> </ul> |
| Subcontractor                 | Means an entity engaged under a subcontract to perform any part of the work under the Head Agreement or any Contract and that entity's directors, officers, employees, subcontractors, agents and consultants (as relevant).  |
| Supplies                      | See definition for Deliverables.  |
| Sustainable Procurement Guide | Means the <i>Sustainable Procurement Guide – A practical guide for Commonwealth entities</i> available at:<br><a href="https://www.agriculture.gov.au/sites/default/files/documents/sustainable-procurement-guide.pdf">https://www.agriculture.gov.au/sites/default/files/documents/sustainable-procurement-guide.pdf</a> .   |
| Tax                           | Means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by a Regulatory Agency, together with any related interest, penalty, fine or other charge.  |
| Tax Invoice                   | Means a tax invoice as defined in the <i>GST Act</i> .  |
| Term                          | Means the term of the Head Agreement (see <b>clause 5</b> of the Head Agreement).   |
| Transition Out Plan           | Means the plan that details the Transition Out Services to be provided under any Contract. The Transition Out Plan is a document put in place to facilitate the smooth handing over of Products, systems, services and data at the end of a Contract, as Approved by the Agency in accordance with <b>clause 46</b> . The Transition Out Plan describes the Contractor's and the Agency's transition out responsibilities.              |
| Transition Out Services       | Means the services relating to transition out activities to be provided by the Contractor in accordance with a Contract Order Form and <b>clause 46</b> of the Head Agreement to facilitate the end of a Contract, and the transference of the Agency's Products, systems, services and data.   |

**WDSHA24\_Cat1-2-3\_Supplier Head Agreement (GovCMS Services Panel)**

| TERM                                | DEFINITION  |
|-------------------------------------|---|
| Unconditional Financial Undertaking | Means an unconditional financial undertaking substantially in the form of <b>Schedule 1 - Attachment 4 (Unconditional Financial Undertaking)</b> to the Head Agreement. |
| Valid                               | Means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.   |

**SCHEDULE 1 – ATTACHMENT 2 (DEED OF CONFIDENTIALITY) (TEMPLATE)**

**THIS DEED OF CONFIDENTIALITY MADE ON THE                    DAY OF                    202**

**BETWEEN**

**[Insert Name of Customer] ACN [Insert ACN] of [Insert Address]**

**(‘Customer’)**

and

**[Insert Name of Confidant] ACN [Insert ACN] of [Insert Address]**

**(‘Confidant’)**

**BACKGROUND**

- A. The Confidant provides the undertakings set out below in respect of work to be performed, and information to be acquired, directly or indirectly in connection with the Contract.
- B. The Contract is the Contract between [Insert Name of Contract Date of Contract and Parties to the Contract.

**TERMS AND CONDITIONS**

**1. Definition**

1.1 ‘Information’ means information, documents and data stored by any means and any information made available to me in the course of my dealings with the Customer and includes information relating to:

- (a) any Intellectual Property Rights of the Customer;
- (b) to the financial position or reputation of the Customer;
- (c) the internal management and structure of the Customer;
- (d) the personnel, policies and strategies of the Customer; and
- (e) the Customer’s clients or suppliers,

and information of the Customer that has any actual or potential commercial value to the Customer or to the person or corporation which supplied that information.

**2. Non-disclosure**

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

**3. Restriction on use**

- 3.1 I will use the Information only for the purpose of my dealings with the Customer (whether directly or indirectly).
- 3.2 I will not copy or reproduce the Information without the approval of the Customer, will not allow any other person outside the Customer access to the Information and will take all necessary precautions to prevent unauthorised access to or copying of the Information in my control.

**4. Survival**

- 4.1 This Deed will survive the termination or expiry of any contract between the Customer and me providing for the performance of services or the provision of goods by me (whether directly or indirectly).

**5. Powers of the Customer**

- 5.1 Immediately upon request by the Customer, I must deliver to the Customer all documents in my possession or control containing Information.
- 5.2 If at the time of such a request I am aware that documents containing Information are beyond my possession or control, then I must provide full details of where the documents containing the Information are, and the identity of the person who has control of them.

**6. Applicable law**

- 6.1 This Deed will be governed in accordance with the law in the Australian Capital Territory.

**7. Electronic Execution**

- 7.1 Each party consents to the signing of this Deed by electronic means. The parties agree to be legally bound by this Deed signed in this way.

**EXECUTED AS A DEED**

**CUSTOMER**

[Use if the Customer is an Agency]

**Executed as a deed** for and on behalf of  
*[insert name of Agency]* (ABN *[insert ABN of Agency]*) by its duly authorised delegate and, if executing electronically, by affixing their electronic signature, with intention to bind the Agency:

[Use if Customer is not an Agency]

**Executed as a deed** by *[Insert Contractor name and ABN]* by the named officers of the company and, if executing electronically, by affixing their electronic signatures, with the intention to bind the company, execute in accordance with the requirements of section 127 of the *Corporations Act 2001* (Cth) and warrant that the Agency and Finance may rely on the operative effect of sections 127, 128 & 129 of that Act:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Name of Director (print)

.....  
Name of Director/Company Secretary (print)

.....  
Date

.....  
Date

**CONFIDANT**

**Executed as a deed by** [Insert Contractor name and ABN] by the named officers of the company and, if executing electronically, by affixing their electronic signatures, with the intention to bind the company, execute in accordance with the requirements of section 127 of the *Corporations Act 2001* (Cth) and warrant that the Agency and Finance may rely on the operative effect of sections 127, 128 & 129 of that Act:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Name of Director

.....  
Name of Director/Company Secretary

.....  
Date

.....  
Date

**SCHEDULE 1 – ATTACHMENT 3 (PERFORMANCE GUARANTEE AND INDEMNITY)**

*[Note: This is the form of document that Finance or an Agency may require depending on its risk assessment.]*

**THIS DEED OF GUARANTEE** made on the **day of** **202** .  
**BETWEEN**

COMMONWEALTH OF AUSTRALIA acting through and represented by the **[insert name and ABN of the agency]** ('Customer')

and

1. **[Insert Name of Guarantor]** ACN **[Insert ACN]** of **[Insert Address]**  
(‘Guarantor’)

**RECITALS:**

- A The Customer requires the provision of certain *[information and communication technology services]* (Deliverables).
- B *[insert Contractor's name and ABN]* (hereinafter called ‘the Contractor’) has agreed to perform that work for the Customer on the terms and conditions contained in the Contract executed by the Contractor and the Customer on *[date]* ('the Contract').
- C The Guarantor agrees to provide the guarantees and indemnities set out below.

**IT IS AGREED AS FOLLOWS:**

The Guarantor guarantees to the Customer the performance of the obligations undertaken by the Contractor under the Contract on the following terms and conditions:

- (1) If the Contractor (unless relieved from the performance of the Contract by the Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings under the Contract the Guarantor will, if required to do so by the Customer, complete or cause to be completed those undertakings in accordance with the conditions of the Contract. If the Contractor commits any breach of its obligations, and such breach is not remedied by the Guarantor pursuant to the foregoing sentence, and the Contract is then terminated for default, the Guarantor must indemnify the Customer against costs and expenses directly incurred by reason of such default.
- (2) The Guarantor will not be discharged or released or excused from this Deed of Guarantee by an arrangement made between the Contractor and the Customer with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Contractor or by any forbearance whether as to payment, time, performance or otherwise. This guarantee by the Guarantor to assume the obligations of the Contractor will continue in force and effect until completion of all the Contractor's obligations under the Contract or until the completion of the undertakings of this Deed of Guarantee by the Guarantor.
- (3) The obligations of the Guarantor under this Deed of Guarantee will not exceed the obligations of the Contractor under the Contract.
- (4) This Deed of Guarantee is subject to and must be construed in accordance with the laws in force in the Australian Capital Territory and the parties agree that the courts of that Territory have jurisdiction to entertain any action in respect of, or arising out of, this Deed of Guarantee and submit themselves to the jurisdiction of those courts. Each party consents to the signing of this Deed by electronic means. The parties agree to be legally bound by this Deed signed in this way.

**EXECUTED AS A DEED**

**CONTRACTOR**

**Executed as a deed by** [/Insert Contractor name and ABN] by the named officers of the company and, if executing electronically, by affixing their electronic signatures, with the intention to bind the company, execute in accordance with the requirements of section 127 of the *Corporations Act 2001* (Cth) and warrant that the Agency and Finance may rely on the operative effect of sections 127, 128 & 129 of that Act:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Name of Director (print)

.....  
Name of Director/Company Secretary (print)

.....  
Date

.....  
Date

**CUSTOMER**

**Executed as a deed for and on behalf of** [insert name of Agency] (ABN [insert ABN of Agency]) by its duly authorised delegate and, if executing electronically, by affixing their electronic signature, with intention to bind the Agency in the presence of:

.....  
Signature of witness

.....  
Signature of delegate

.....  
Name of witness (print)

.....  
Name of delegate (print)

.....  
Position of delegate (print)

**SCHEDULE 1 – ATTACHMENT 4 (UNCONDITIONAL FINANCIAL UNDERTAKING)**

*[Note to Contractor: Your bank may have a standard form for Finance/Agencies to consider.]*

**THIS DEED OF AGREEMENT MADE ON THE      DAY OF      20**

**BETWEEN**

1. [Insert Name of Customer] ACN [Insert ACN] of [Insert Address]  
(‘Customer’)
2. [Insert Name of Guarantor] ACN [Insert ACN] of [Insert Address]  
(‘Guarantor’)  
and
3. [Insert Name of Contractor] ACN [Insert ACN] of [Insert Address]  
(‘Contractor’)

**BACKGROUND**

- A. The Contractor has agreed to supply Services and/or Products to the Customer pursuant to a contract (‘Contract’).
- B. The Guarantor agrees to provide the following undertakings stated below in respect of the Contract.

**TERMS AND CONDITIONS**

1. The Guarantor unconditionally agrees to pay to the Customer on demand without reference to the Contractor and separate from any notice given by the Contractor to the Guarantor not to pay same, any sum or sums which may from time to time be demanded in writing by the Customer to a maximum aggregate sum of  
\$.....[insert dollar amount]
2. The Guarantor's liability under this Undertaking will be a continuing liability and will continue until:
  - (a) payment of the maximum aggregate sum of \$.....[insert dollar amount] under this Undertaking is made;
  - (b) all obligations are discharged under the Head Agreement between the Contractor and Finance/the Customer and under any Contracts made under that Head Agreement; or
  - (c) Finance/the Agency notifies the Guarantor that this Undertaking is no longer required,  
whichever occurs first.
3. This undertaking shall be governed by and construed in accordance with the laws in force in the [insert name of appropriate jurisdiction].
- 3.1 Each party consents to the signing of this undertaking by electronic means. The parties agree to be legally bound by this undertaking signed in this way.
4. A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits a copy electronically (electronic mail or facsimile) to the address last advised by one of them to the other. Where the notice is given or served electronically, the sending party must confirm receipt by any other means.

4.1 A notice or other communication is deemed to be received if:

- (a) sent by post from and to an address within Australia, after three (3) Business Days;
- (b) sent by post from or to an address outside Australia, after ten (10) Business Days;
- (c) sent by facsimile, at the time which the facsimile machine to which it has been sent records that the communication has been transmitted satisfactorily (or, if such time is outside normal business hours, at the time of resumption of normal business hours);
- (d) sent by electronic mail, only in the event that the other party acknowledges receipt by any means;
- (e) sent by any other electronic means, only in the event that the other party acknowledges receipt by any means; or
- (f) delivered by hand, when the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service.

4.2 Address of the Customer

Physical address:  
Postal address:  
Phone number:  
Fax number:  
Email address:

4.3 Address of the Guarantor

Physical address:  
Postal address:  
Phone number:  
Fax number:  
Email address:

4.4 Address of the Contractor

Physical address:  
Postal address:  
Phone number:  
Fax number:  
Email address:

**EXECUTED AS A DEED**

**CUSTOMER**

**Executed as a deed** for and on behalf )  
of **[insert name of Agency]** )  
(ABN **[insert ABN of Agency]**) by its duly )  
authorised delegate and, if executing )  
electronically, by affixing their electronic )  
signature, with intention to bind the )  
Agency in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of delegate

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of delegate (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**GUARANTOR**

**Executed as a deed** by **[Insert** )  
**Guarantor name and ABN]** by the )  
named officers of the company and, if )  
executing electronically, by affixing their )  
electronic signatures, with the intention )  
to bind the company, execute in )  
accordance with the requirements of )  
section 127 of the *Corporations Act* )  
2001 (Cth) and warrant that the Agency )  
and Finance may rely on the operative )  
effect of sections 127, 128 & 129 of that )  
Act:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Company Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**CONTRACTOR**

**Executed as a deed by [Insert ]**  
*Contractor name and ABN]* **by the [ ]**  
named officers of the company and, if [ ]  
executing electronically, by affixing their [ ]  
electronic signatures, with the intention  
to bind the company, execute in  
accordance with the requirements of  
section 127 of the *Corporations Act*  
2001 (Cth) and warrant that the Agency  
and Finance may rely on the operative  
effect of sections 127, 128 & 129 of that  
Act:

---

Signature of Director

---

Signature of Director/Company Secretary

---

Name of Director

---

Name of Director/Company Secretary

---

Date

---

Date

**SCHEDULE 1 – ATTACHMENT 5 (CHANGE ORDER FORMS)**

**[Note: The Change Order Form templates at Part A and Part B will be used for all changes proposed to the Head Agreement and any Contract (as applicable), which must be made in accordance with clause 36 of the Head Agreement.]**

**Part A - Head Agreement Change Proposal Deed**

**Part B - Contract Change Order Form**

**PART A: HEAD AGREEMENT CHANGE PROPOSAL DEED (TEMPLATE)**

This Change Proposal Deed (including its attachments, if any) serves to vary the Head Agreement executed on [insert], in accordance with the terms set out below. Unless specifically stated in this Change Proposal Deed, all terms and conditions of the Head Agreement continue unaffected.

|   |  |
|---|--|
| <b>Change Order number</b>  |  |
| <b>Date proposed</b>  |  |
| <b>Name of party instigating the change</b>   |  |
| <b>Implementation date of change</b>  |  |
| <b>Details of change proposal</b>   |  |
| <b>Clauses affected by the proposal are as follows</b>                                  |  |
| <b>New Charges payable to the Contractor or Agency affected by this change proposal</b> |  |
| <b>Plan for implementing the change</b>   |  |
| <b>The responsibilities of the parties for implementing the change</b>                  |  |
| <b>The new date for the Acceptance Testing of the system</b>                            |  |
| <b>Effect of change on performance</b>  |  |
| <b>Effect on documentation</b>  |  |
| <b>Effect on training</b>   |  |
| <b>Effect on the users of the system</b>  |  |
| <b>Any other matters which the parties consider are important</b>                       |  |

**EXECUTED AS A DEED**

**AGENCY**

**Executed as a deed for and on behalf )**  
of *[insert name of Agency]* )  
(ABN *[insert ABN of Agency]*) by its duly )  
authorised delegate and, if executing )  
electronically, by affixing their electronic )  
signature, with intention to bind the )  
Agency in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of delegate

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of delegate (print)

\_\_\_\_\_  
Position of delegate (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**CONTRACTOR**

**Executed as a deed by [Insert )**  
Contractor name and ABN] by the )  
named officers of the company and, if )  
executing electronically, by affixing their )  
electronic signatures, with the intention )  
to bind the company, execute in )  
accordance with the requirements of )  
section 127 of the *Corporations Act* )  
2001 (Cth) and warrant that the Agency )  
and Finance may rely on the operative )  
effect of sections 127, 128 & 129 of )  
that Act:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company  
Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Company Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**OR**

**Executed as a deed for and on behalf of**  
[*INSERT NAME of Contractor*] (*ABN* [*INSERT*  
*ABN of Contractor*]) under power of attorney  
dated [*INSERT date of power of attorney*].

In the presence of:

Signature of Attorney

Signature of witness

.....  
Name of Attorney (print)

.....  
Name of witness (print)

.....  
Date

.....  
Date

**[Note to Contractor: A copy of the power of attorney pursuant to which this Change Proposal  
Deed will be executed will need to be provided to Finance.]**

**PART B: CONTRACT CHANGE ORDER (TEMPLATE)**

This Contract Change Order (including its attachments, if any) serves to vary the Contract executed on [insert], in accordance with the terms set out below. Unless specifically stated in this Change Order, all terms and conditions of the Contract continue unaffected.

|   |  |
|---|--|
| <b>Change Order number</b>  |  |
| <b>Date proposed</b>  |  |
| <b>Name of party instigating the change</b>   |  |
| <b>Implementation date of change</b>  |  |
| <b>Details of change proposal</b>   |  |
| <b>Clauses affected by the proposal are as follows</b>                                  |  |
| <b>New Charges payable to the Contractor or Agency affected by this change proposal</b> |  |
| <b>Plan for implementing the change</b>   |  |
| <b>The responsibilities of the parties for implementing the change</b>                  |  |
| <b>The new date for the Acceptance Testing of the system</b>                            |  |
| <b>Effect of change on performance</b>  |  |
| <b>Effect on documentation</b>  |  |
| <b>Effect on training</b>   |  |
| <b>Effect on the users of the system</b>  |  |
| <b>Any other matters which the parties consider are important</b>                       |  |

**SCHEDULE 1 – ATTACHMENT 6 (CONTRACTOR CONFIDENTIAL INFORMATION)**

The following information is confidential to the Contractor:

| <b>Item</b> | <b>Description of Information</b> | <b>Reason for confidentiality (having regard to Finance/ANAO Guidelines)</b> |
|-------------|-----------------------------------|--|
| 1           |                                   |  |
| 2           |                                   |  |

**SCHEDULE 2 (LIST OF ENROLLED MODULES)**

The Contractor has been enrolled to provide Deliverables in respect of each of the following Modules:

| <b>Name of Module</b>                  | <b>Module Commencement Date</b>    | <b>Initial Module Period</b> | <b>Module Option Period (if any)</b> |
|--|------------------------------------|------------------------------|--------------------------------------|
| Module 1: GovCMS Drupal Services Panel | On execution of the Head Agreement | 30 September 2024            | 30 September 2026                    |

**SCHEDULE 3 (MODULES)**

This Schedule contains details of Deliverables available under each Module, as well as Module Specific Terms which apply to each Contract placed in respect of that Module.

**Please see separate document.**

## Appendix A – History of amendments to the Head Agreement

This Head Agreement as amended from time to time applies to the Standing Offers published on AusTender for SON4010424 GovCMS Hosting Services and SON3816897 GovCMS Drupal Services Panel. Under **clause 36**, only the Finance Representative can agree to make variations to this Head Agreement.

| Date   | Version | Description of changes   |
|--|---------|--|
| October 2021   | 1.1     | <p>Published AusTender FIN15-2020 Request for Tender to establish the Whole-of-Government GovCMS Drupal Services Panel.</p> <p>General review and updates to the original draft 2018 to correct out of date government agency names, policies, website references and links.</p> |
| October 2022   | 1.2     | Published AusTender PQRT210001242 Request for Tender GovCMS Drupal Services Panel Refresh.   |
| November 2022  | 1.2     | <p>Issued FIN15/2020/PQRT21000768 Request for Proposal to refresh the Whole-of-Government GovCMS Drupal Services Panel to establish a new Category 3 of Module 1 to include Digital Experience (DXP) and Content Personalisation Services</p>                                    |
| <p>General review and updates to correct out of date government agency names, policies, website references and links.</p> <p><b>Amendments to clauses/sub clauses:</b></p> <p><b>Clause 11.4 Charges</b> &lt;amended&gt; Agency will make payment within 5 calendar days (from 20 business days).</p> <p><b>Clause 14.1 Intellectual Property</b> – &lt;amended for clarity&gt; New material vests in the Agency (not the contractor).</p> <p><b>Clause 14.2 Intellectual Property</b> &lt;addition&gt; Subject to security and confidentiality obligations, and any limits in Additional Terms approved by Finance, the Agency (from Contractor) grants to the Contractor an irrevocable, non-exclusive, world-wide, paid-up licence to hold, use, reproduce, modify, display and sub-license the Intellectual Property Rights in any New Material in which ownership vests with an Agency pursuant to clause 14.1 for the Contractor's own purposes.</p> |         |  |
| September 2023   | 1.2     | Published PQRT21000784 Request for Tender - Stage 2 GovCMS Hosting Services  |
|  | 2.0     | Amended following contract negotiations for the establishment of the GovCMS Services Panel   |
|  | 3.0     | Effective 27 September 2023  |

| Date  | Version | Description of changes |
|---|---------|------------------------|
| <b>Amendments to clauses/sub clauses:</b>   |         |                        |
| <p><b>ADD sub-clauses 29.24 to 29.25</b> in relation to the <i>National Anti-Corruption Commission Act 2022 (Cth)</i> (NACC Act) requirements.</p> <p>These subclauses acknowledge that the Contractor is a contracted service provider for the purposes of the NACC Act and outlines the obligations that a Contractor must comply with regarding actions taken by Finance or an Agency required or authorised by the NACC Act.</p> <p>More information is available via <a href="https://www.legislation.gov.au/Details/C2022A00088">https://www.legislation.gov.au/Details/C2022A00088</a></p>   |         |                        |
| <p><b>ADD new clause 31</b> Notification of Significant Events</p> <p>This clause provides the Finance and Agencies with additional rights in circumstances where adverse comments or findings are made about the Contractor or their personnel by legal or professional bodies, or other significant matters about them arise that could adversely impact on Finance or the Agency's reputation or its compliance with law or policy.</p> <p>If the Contractor fails to comply with this clause, it will be treated as a breach of the Contract which entitles Finance or the Agency to terminate the Head Agreement or Contract (as applicable).</p> <p><b>AMEND</b> Glossary with new terms and definitions to reflect policy and legislative changes.</p> <p><b>AMEND clause 36.17</b> to allow the Contractor to seek pricing changes.</p> <p>The reference to CPI is removed to acknowledge other price indexes exist as published on the Australian Bureau of Statistics and are used by businesses and government to adjust payments and/or charges.</p> <p><b>Clause numbers and references updated to reflect amendments.</b></p> |         |                        |
| <p><b>April 2024</b>    <b>3.1</b></p> <p>Amended following contract negotiations to establish a new Category 3 of Module 1 to include Digital Experience (DXP) and Content Personalisation Services Amended following contract negotiations to establish a new Category 3 of Module 1 to include Digital Experience (DXP) and Content Personalisation Services under the GovCMS Drupal Services Panel.</p>   |         |                        |
| <p><b>Amendments to clauses/sub clauses:</b></p> <p><b>ADD Clause 22.1A Security</b> Contractor undertaking to address noncompliance with security requirements.</p> <p><b>MODIFY/ADD Clause 35.8A Audit and Access</b> the Contractor must consult with Finance in the event the Contractor is unable to provide access to an Authorised Investigator during an audit.</p> <p><b>ADD Clause 42.15 Step-In Rights</b> additional clarification to step-in rights applicable to any professional services provided by the Contractor that are related to the provision of Software as a Service (SaaS).</p> <p><b>ADD SaaS definition to the Glossary.</b></p> <p><b>Schedule 3 – Module 1 (Drupal Services Panel):</b></p> <p>Minor amendments to <b>Clause 11</b> Cloud Services at clauses 11.2.1.2 and 11.2.4.2 to include the words "if specified in a Contract."</p>   |         |                        |

| Date  | Version | Description of changes  |
|---|---------|---|
| July 2024   | 3.2     | Further amendments following contract negotiations to establish a new Category 3 of Module 1 to include Digital Experience (DXP) and Content Personalisation Services under the GovCMS Drupal Services Panel. |
| <b>Amendments to clauses/sub clauses:</b>   |         |   |
| <b>Clause 15 Confidentiality</b>  |         |   |
| <b>Exceptions to obligations</b>  |         |   |
| 15.6.2 is disclosed to a party's internal management Personnel, <del>&lt;ADD the words&gt;</del> or legal or commercial advisors, solely to enable effective management or auditing of Head Agreement-related or Contract-related activities;   |         |   |
| 15.6.3 is shared by Finance within Finance, or with another Agency <del>&lt;ADD the words&gt;</del> in connection with its management of the Head Agreement or the Contract, <del>&lt;REMOVED&gt; if this serves the Commonwealth's or an Agency's legitimate interests;</del>  |         |   |
| 15.6.4 is shared by an Agency within the Agency or with another Agency including Finance <del>&lt;ADD the words&gt;</del> in connection with its management of the Contract, <del>&lt;REMOVE&gt; if this serves the Commonwealth's or the Agency's legitimate interests;</del>  |         |   |
| 15.6.7 disclosure is authorised or required by Law <del>&lt;ADD the words&gt;</del> or the rules of a stock exchange, including under this Head Agreement or any Contract, under a licence or otherwise, to be disclosed;   |         |   |
| <b>Obligations on disclosure</b>  |         |   |
| 15.7.2 if the disclosure is pursuant to clauses <b>15.6.5, 15.6.6 or 15.6.7</b> , inform the receiving party that the information is Confidential Information <del>&lt;ADD the words&gt;</del> and take reasonable steps to ensure the receiving party keeps the information confidential. In this clause 15.7.2, 'reasonable steps' include taking reasonable steps to ensure that the receiving party is subject to statutory or contractual confidentiality obligations. |         |   |
| <b>Clause 16 Privacy</b>  |         |   |
| <b>Personal Information</b>   |         |   |
| 16.2.1 to use or disclose Personal Information obtained during the course of performing the Services under a Contract, only for the purposes of this Head Agreement or a Contract, <del>&lt;ADD the words&gt;</del> or as required or authorised by law;  |         |   |
| 16.3 <del>&lt;ADD the words&gt;</del> To the extent that notification does not cause the Contractor to be in breach of any Law, the <del>The</del> Contractor must promptly notify Finance in respect of this Head Agreement and the Agency Representative in respect of a Contract and if the Contractor:  |         |   |
| 16.4 The Contractor must <del>&lt;ADD the words&gt;</del> take all possible steps to ensure that all Subcontracts entered into for the purposes of fulfilling its obligations under a Contract contain provisions to ensure that each Subcontractor has the same awareness and obligations as the Contractor has under this <b>clause 16</b> , including the requirement in relation to Subcontracts.   |         |   |
| <b>Clause 17 Warranties</b>   |         |   |
| <b>Contractor warranty – Contractor has informed itself</b>   |         |   |
| 17.2.1 <del>&lt;ADD the words&gt;</del> subject to the Agency providing the Contractor with all reasonably requested information with respect to the Contract, it has and will be deemed to have done everything possible to inform itself fully and completely as to:  |         |   |

| Date | Version | Description of changes  |
|------|---------|---|
|      |         | <p>17.2.2 &lt;ADD the words&gt; subject to the Agency providing the Contractor with all reasonably requested information with respect to a Contract, it enters into this Head Agreement and any Contract based on its own investigations, interpretations, deductions, information and determinations;</p> <p><b>Contractor warranty – skill and quality</b></p> <p>17.6 The Contractor represents and warrants that it has, and the Contractor Personnel have, and they will both continue to have and to use, &lt;ADD the words&gt; substantially the same level of the skills, qualifications and experience as would be expected from a comparable service provider in the Contractor's industry to provide the Deliverables in a skilful, diligent, responsive, professional, efficient and controlled manner, with a high degree of quality and to a standard that complies with the Contract and meets the Agency's requirements as set out in the relevant Contract Order Form in full.</p> <p><b>Effect of warranties</b></p> <p>17.14 The Contractor acknowledges that Finance is entering into this Head Agreement, and any Agency enters into any Contract, in reliance on the warranties given by the Contractor in this clause 17 and any response by the Contractor to an RFQ, &lt;ADD the words&gt; as included in a Contract.</p> <p><b>Clause 18 Insurance</b></p> <p><b>Obligation to maintain insurance</b></p> <p>18.1 The Contractor must have and maintain valid and enforceable insurance policies (with reputable insurance companies that do not contain any unusual exclusions) to the following levels, &lt;ADD the words&gt; unless otherwise specified in a Contract: ...</p> <p><b>Clause 22 Security</b></p> <p><b>General</b></p> <p>22.1.5 comply with any written direction given &lt;ADD the words&gt; with reasonable Notice by an Agency with respect to Deliverables. &lt;ADD the words&gt; To the extent that such direction results in substantial additional costs to the Contractor, the Contractor may request a Change Order to the Contract in accordance with <b>clause 36</b> to address these additional costs (provided they are substantiated to the Agency's satisfaction);</p> <p>22.1A &lt;NEW&gt; To the extent that the Contractor is not compliant with the requirements set out at clause 22.1 as at the Head Agreement Commencement Date, the Contractor must prepare and submit to Finance for Approval, by no later than the date Notified to the Contractor by Finance, an action plan that sets out:</p> <p>22.1A.1 details of the steps the Contractor will take to ensure it becomes compliant with the requirements set out in clause 22.1;</p> <p>22.1A.2 the date by which the Contractor will become compliant with these requirements; and</p> <p>22.1A.3 any additional details requested by Finance (Action Plan).</p> <p>22.1B &lt;NEW&gt; Once the Action Plan has been received, Finance will, within a reasonable period of time:</p> <p>22.1B.1 approve the Action Plan;</p> <p>22.1B.2 reject the Action Plan; or</p> |

| Date | Version | Description of changes   |
|------|---------|--|
|      |         | <p>22.1B.3 require variations to, or explanations of, any aspect of the Action Plan (at which point, the Contractor must re-submit a revised Action Plan to Finance by a date nominated by Finance).</p> <p>22.1C &lt;NEW&gt; If Finance approves the Action Plan (Approved Action Plan), the Contractor must perform the actions and tasks set out in the Approved Action Plan in accordance with the terms of this Deed.</p>   |
|      |         | <p><b>Clause 23 Liability under Head Agreement</b></p> <p>23.1 The liability of a party for breach of this Head Agreement, or in tort, or for any other common law or Statutory cause of action arising out of the operation of this Head Agreement will be determined under the relevant Law in Australia that is recognised, and would be applied, by the High Court of Australia. &lt;ADD the words&gt; Any agreed limit on liability for claims made under this Head Agreement does not limit or affect any claims made under a Contract.</p> <p><b>Clause 26 Continuous Improvements and Efficiencies</b></p> <p>26.1 &lt;REMOVE&gt; The Contractor must provide continuous quality assurance and quality improvement relevant to its Enrolled Module Deliverables during the relevant Module Period, including by: &lt;ADD the words&gt; On request by Finance, the Contractor must promptly advise Finance of all new trends in methodology related to the Deliverables including non-confidential future product enhancements and other intended product roadmap items.</p> <p>&lt;REMOVE&gt; 26.1.1 identifying and applying proven techniques and tools utilised by the Contractor or industry that would benefit Agencies either operationally or financially; and</p> <p>&lt;REMOVE&gt; 26.1.2 implementing programs, practices and measures designed to improve the Contractor's levels of performance, including any programs, practices and measures as specified in a Contract.</p> <p>26.2 &lt;ADD the words&gt; During the Term, the Contractor must actively seek and, when identified, recommend improvements to processes, systems and services that would benefit Finance or Agencies, in particular by: &lt;REMOVE&gt; Without limiting clauses 26.1 and 27, the Contractor must:</p> <p>26.2.1 &lt;REMOVE&gt; proactively and promptly advise Finance of all new trends in methodology related to the Deliverables; &lt;ADD the words&gt; identifying opportunities for cost savings; and</p> <p>26.2.2 &lt;REMOVE&gt; continually plan for the evolution of the Deliverables and modify the manner in which the Deliverables are supplied (subject to any variations to a Contract required to implement any change) to improve the quality, effectiveness and efficiency of the Deliverables and their delivery, without increasing the Charges. &lt;ADD the words&gt; improving user experience; and</p> <p>26.2.3 &lt;ADD the words&gt; streamlining processes and customer service.</p> <p><b>Clause 35 Audit and Access</b></p> <p><b>Right to conduct audits</b></p> <p>35.1A &lt;NEW&gt; Finance and an Agency will not appoint a Direct Competitor of the Contractor as an auditor under this clause 35.</p> <p><b>Access by Finance of an Agency</b></p> |

| Date | Version | Description of changes  |
|------|---------|---|
|      |         | <p>35.3 An Authorised Investigator may during Business Hours and on giving reasonable Notice to the Contractor &lt;ADD the words&gt; and no more than once every 12-month period:</p> <p>35.3.2 inspect and copy relevant Documents, books and records, however stored, in the possession, custody or control of the Contractor or its &lt;ADD the words&gt; (such Documents, resources, books and records to be treated as the Contractor's Confidential Information, and only to be used by Finance or an Agency or its respective nominees for the purposes of the audit), for the purposes of this <b>clause 35</b> &lt;REMOVED&gt; Personnel,</p> <p>35.3.3 &lt;NEW&gt; In the first instance, a Notice under this <b>clause 35.3</b> is limited to providing reasonable access to the Contractor's Documents, books and records as set out in this <b>clause 35.3.2</b>. Finance or an Agency may only request reasonable access to the Contractor's premises under <b>clause 35.3.1</b> if the provision of access to the Contractor's Documents, books and records is insufficient for the purposes of auditing the Contractor's performance of its obligations under this Head Agreement or any Contract.</p> <p><b>Conduct of audit and access</b></p> <p>35.5 The Authorised Investigator must use reasonable endeavours to ensure that:</p> <p>35.8.1 audits performed pursuant to <b>clause 35.1</b>; and</p> <p>35.8.2 the exercise of the rights granted by this <b>clause 35</b>, do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under this Head Agreement or any Contract &lt;ADD the words&gt; or require the Contractor to provide access to....</p> <p>35.8.3 &lt;NEW&gt; any trade secrets of the Contractor; or</p> <p>35.8.4 &lt;NEW&gt; any information that, in the Contractor's reasonable opinion, could:</p> <ul style="list-style-type: none"> <li>(a) compromise the security of the Contractor's systems or premises;</li> <li>(b) result in compromising the Contractor's ability to maintain security related certifications and attestations; or</li> <li>(c) cause the Contractor to breach its obligations under applicable Law or its security, confidentiality and/or privacy obligations towards any third parties.</li> </ul> <p>35.8A &lt;NEW&gt; In the event that any of the circumstances in <b>clauses 35.8.3 and 35.8.4</b> may prevent an Authorised Investigator from gaining access to required information under an audit, the Contractor must consult with Finance and provide satisfactory reasons why it cannot provide the Authorised Investigator with access to this information.</p> <p><b>&lt;NEW&gt; Notice of an audit</b></p> <p>35.17 In the Notice provided to the Contractor in accordance with clause 35.1, Finance or an Agency will set out:</p> <ul style="list-style-type: none"> <li>35.17.1 the scope of the audit;</li> <li>35.17.2 the access to the Contractor's premises, Documents, books or records required as part of the audit;</li> <li>35.17.3 the proposed timing for when the audit will take place; and</li> <li>35.17.4 the specific purposes for which the audit is being conducted.</li> </ul> <p><b>Schedule 3 – Module 1</b> (Drupal Services Panel) (v1.5): minor amendments 2.5, 15.9, 15.12, 25.1.</p> |

**Amendments to Schedule 1 – Attachment 1 (Head Agreement Glossary)**

| Term                                       | Definition  |
|--|---|
| <REMOVE> Approved Privacy Principle of APP | Means the Australian Privacy Principles as set out under the Privacy Act.   |
| <AMEND>Contractor Confidential Information | <p>In relation to the Contractor means:</p> <p>(a) information specified in Schedule 1 – Attachment 6 (Contractor Confidential Information) to the Head Agreement; or</p> <p>(b) information agreed and specified in the Contract that is confidential; or</p> <p>(b)(c) &lt;NEW&gt; information that is by its nature confidential, but does not include information which:</p> <p>(e)(d) is or becomes public knowledge other than by breach of any confidentiality obligation; or</p> <p>(d)(e) has been independently developed or acquired by Finance or by the Agency as established by written evidence.</p> |
| <NEW> Direct Competitor                    | Means an entity which competes directly with the Contractor in providing goods and services that are materially the same as, or similar to, the Deliverables provided by the Contractor, including any entities that may be specified in a Contract.  |
| <NEW> Software as a Service (SaaS)         | means any software that is hosted or managed by the Contractor and made available to Finance or an Agency via a network.  |