

DEED OF STANDING OFFER

DEED OF STANDING OFFER FOR THE PROVISION OF LEGAL SERVICES

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Date

This Deed of Standing Offer is made on **^day(numeric) month(name) year(numeric) in full^**.

Parties

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

1. **Commonwealth of Australia** represented by the **^Full name of Agency^** ABN **^ABN Number^**
^Agency Address^ (the Lead Agency)
2. **^Party 2 Name^** **^Party 2 ABN and ACN/ARBN if applicable^**
^Party 2 Address^ (the Service Provider)

Context

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

- A. The Lead Agency (and its Portfolio Agencies) may require the provision of Services by the Service Provider.
- B. The Lead Agency has established a panel of suppliers to provide legal services to the Agency (and the Portfolio Agencies) (Panel). The Service Provider is one of the suppliers on the Panel.
- C. The parties have agreed that when the Service Provider receives an Order from an Agency, the Service Provider must provide the Services specified through the Order on the terms and conditions set out in this deed.

OPERATIVE PROVISIONS

1. Interpretation

1.1. Definitions

1.1.1. In this deed, unless the context indicates otherwise:

Agency	means the Lead Agency or a Portfolio Agency;
Agency's Representative	means, in relation to an Agency, the person specified by name or position in the relevant Specific Agency Requirements or any substitute notified to the Service Provider by the Agency;
Australian Government Agency	means: <ol style="list-style-type: none">a. an entity or agency that is subject to the provisions of the <i>Commonwealth Authorities and Companies Act</i>

1997 (Cth), excluding a government business enterprise or a Commonwealth company within the meaning of that Act; or

- b. an entity or agency that is subject to the provisions of the *Financial Management and Accountability Act 1997* (Cth);

Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item F [Applicable law];
Commencement Date	means ^the date on which this deed is made OR insert date^;
Conflict	means any matter, circumstance, interest, or activity affecting the Service Provider, its personnel or subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to an Agency diligently and independently;
Contract	means a contract for particular Services formed between an Agency and the Service Provider by the Agency issuing an Order to the Service Provider;
End Date	means the later of the Initial End Date and the final day of any extension of the Term of this deed under clause 2.1.4;
Extension Date	means the date specified in Item B.2 [Extension Date];
Initial End Date	means the date specified as such in Item B.1 [Initial End Date];
Lead Agency	includes any department, agency or authority of the Commonwealth which is from time to time responsible for administering this deed;
Lead Agency Representative	means the person specified by name or position in the Lead Agency's Specific Agency Requirements or any substitute notified to the Service Provider by the Agency;
Legal Services Directions	means the Commonwealth Attorney-General's Legal Services Directions issued under s 55ZF of the <i>Judiciary Act 1903</i> (Cth);
New Portfolio Agency	means an Australian Government Agency that is included in scope of this deed in accordance with clause 2.5;
Notice of Inclusion Form	means a notice, substantially in the form of Schedule 3 [Notice of Inclusion Form];
Order	means an order issued by an Agency requesting the provision of specific Services by the Service Provider, in accordance with the process specified in the relevant Specific Agency Requirements;

Ordered Services	has the meaning given to it in Schedule 4 [Contract Terms and Conditions];
Panel	means the panel of suppliers if mentioned in the Recitals to this deed;
Personnel	means: <ul style="list-style-type: none"> a. in relation to the Service Provider – any natural person who is an officer, partner, employee, agent or professional advisor of the Service Provider or of a subcontractor; and b. in relation to an Agency – any natural person, other than a person referred to in paragraph (a), who is an officer, employee, agent or professional advisor of the Agency;
Portfolio Agency	means the Australian Government Agencies listed in Item C [Portfolio Agencies] and includes a New Portfolio Agency; <input type="checkbox"/>
Pro Bono Legal Work	means: <ul style="list-style-type: none"> a. giving legal assistance for free or at a substantially reduced fee to any of the following: <ul style="list-style-type: none"> i. individuals who can demonstrate a need for legal assistance but cannot obtain legal assistance or otherwise access the legal system without incurring significant financial hardship; ii. individuals or organisations whose matter raises an issue of public interest that would not otherwise be pursued; iii. charities or other non-profit organisations that work on behalf of low income or disadvantaged members of the community, or for the public good; b. conducting law reform and policy work on issues affecting low income or disadvantaged members of the community, or on issues of public interest; c. participating in the provision of free community legal education on issues affecting low income or disadvantaged members of the community, or on issues of public interest; d. providing a lawyer on secondment at a community organisation (including a community legal organisation) or at a referral service provider such as a public interest law clearinghouse,

but does not include:

- e. giving legal assistance to any person for free or at a reduced fee without reference to whether a person has the capacity to pay;
- f. free first consultations with clients who are otherwise billed at a firm's normal rates;
- g. legal work provided under a grant of legal assistance;
- h. contingency fee arrangements or other speculative work that is undertaken with a commercial expectation of a fee;
- i. the sponsorship of cultural and sporting events, work undertaken for business development, and other marketing opportunities, or
- j. time spent by lawyers sitting on the board of a community organisation (including a community legal organisation) or a charity.

Note: This definition is based on the definition of 'pro bono legal services' in the National Pro Bono Aspirational Target Statement of Principles developed by the National Pro Bono Resource Centre, as at 1 September 2008. Pro Bono Legal Work, including any Pro Bono Legal Work in the Asia/Pacific Region, that the Service Provider has carried out or will carry out;

Pro Bono Work means:

- a. Pro Bono Legal Work, including any Pro Bono Legal Work in the Asia/Pacific Region, that the Service Provider has carried out or will carry out;
- b. unpaid capacity building work in the Asia/Pacific region that the Service Provider has carried out or will carry out; and
- c. other community or charitable work undertaken by the Service Provider,

but excludes:

- d. work done by the Service Provider's Personnel on their own initiative; for example, work they may do for their local sporting association.

Project Officer means, in relation to an Agency, the person specified by name or position in the relevant Specific Agency Requirements or any substitute notified to the Service Provider by the Agency;

Services means the services described in Item A [Services];

- Specific Agency Requirements** means:
- a. in relation to a Portfolio Agency listed in Item C [Portfolio Agencies] to which this deed applies at the Commencement Date - those requirements specific to the Agency specified in Schedule 2 [Specific Agency Requirements]; and
 - b. in relation to a New Portfolio Agency - those requirements specific to the Agency that are included with the Notice of Inclusion Form for the Agency;
- Specified Personnel** means the personnel specified in the relevant Specific Agency Requirements;
- Term** means the term of this deed, being the period from the Commencement Date to the End Date; and
- Valid Reason** means, in respect of the rejection of an Order by the Service Provider:
- a. where the Service Provider would have a Conflict;
 - b. where the Agency making the Order has not made payment of fees, allowances or costs to the Service Provider under an existing Contract with the Service Provider in accordance with the terms of that Contract; and
 - c. any other reason accepted in writing by the Agency.

1.2. Interpretation

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

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

- h. a reference to an Item is a reference to an Item in Schedule 1 [Deed Details];
- i. the Schedule and any attachments form part of this deed;
- j. if any conflict arises between the terms and conditions specified through an Order and the terms of a Contract or the terms of this deed the following order of priority will apply:
 - i. the terms specified through the Order;
 - ii. the terms and conditions of a Contract, as set out in Schedule 4 [Contract Terms and Conditions];
 - iii. the terms and conditions of this deed; then
 - iv. the other schedules to this deed;
- k. a reference to the Schedule (or an attachment) is a reference to the Schedule (or an attachment) to this deed, including as amended or replaced from time to time by agreement in writing between the parties; and
- l. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3. Guidance on construction

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

1.4. Commencement

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

2. Formation of Contracts

2.1. Offer to provide Services

- 2.1.1. The Service Provider irrevocably offers to provide Services as and when directed by an Agency by the issue to the Service Provider of an Order pursuant to this deed.

- 2.1.2. The Service Provider's standing offer in clause 2.1.1 will remain open for acceptance by an Agency for the Term of this deed and in accordance with this deed.
- 2.1.3. The Service Provider acknowledges that it is one of a number of suppliers on the Panel which may be requested by an Agency to provide Services.
- 2.1.4. The Lead Agency may extend the Term of this deed for a further period or periods ending not later than the Extension Date by notice in writing delivered to the Service Provider not less than 30 days before the end of the then current term of this deed. Any extension will be on the same terms and conditions, and cover the same Services, as set out in this deed.

2.2. Orders

- 2.2.1. Subject to clause 2.2.5, the Service Provider's standing offer in clause 2.1.1 will be accepted by an Agency each time the Agency issues an Order to the Service Provider in relation to specific Services to be performed by the Service Provider.
- 2.2.2. An Agency will specify through the Order the precise Services to be performed.
- 2.2.3. Subject to clause 2.2.5, each Order issued by an Agency in accordance with this deed will create a separate Contract between the Agency and the Service Provider in relation to the provision of the Ordered Services specified in the Order.
- 2.2.4. The parties agree that the terms of each Contract will be those set out in Schedule 4 [Contract Terms and Conditions].
- 2.2.5. The Service Provider may reject an Order for a Valid Reason.

2.3. Determining whether to place an Order

- 2.3.1. The Service Provider acknowledges that when an Agency requires services of the kind covered by this deed, the Agency may, but is not obliged to, seek competitive quotes from the Service Provider and/or one or more other suppliers on the Panel.
- 2.3.2. An Agency will only seek a competitive quote from the suppliers on the Panel if the Agency considers that the value of the particular Services are likely to exceed \$80,000 (including GST). Whether an Agency will seek a competitive quote in these circumstances will be at its sole and absolute discretion.
- 2.3.3. If an Agency seeks competitive quotes in the circumstance envisaged by clause 2.3.1, the Agency may:
- a. seek quotes on a fixed price or other basis; and/or

- b. give suppliers (including the Service Provider) the opportunity to quote on the basis of the rates set out in their respective deeds of standing offer with the Agency.

2.3.4. The amount of a quote prepared by the Service Provider must be equal to or less than the amount that would be produced had the quote been calculated in accordance with Item D [Fees, allowances & costs].

2.3.5. A Contract for the provision of any Services is not created until an Agency issues an Order in accordance with clause 2.2.

2.4. Agencies not bound to place Order from Service Provider

2.4.1. An Agency:

- a. is not obliged to place any Order with the Service Provider or to request any volume of Services from the Service Provider; and
- b. may at any time purchase or acquire services the same as, or similar to, the Services from another supplier on the Panel or from any other person on such terms and conditions as the Agency wishes.

2.5. New Portfolio Agencies

2.5.1. An Australian Government Agency that is not included in the scope of this deed at the time of its execution becomes a Portfolio Agency to which this deed applies at any time during the Term if:

- a. the Lead Agency has notified the Service Provider in writing that the New Portfolio Agency is to be included in the scope of this deed; and
- b. the New Portfolio Agency has signed a Notice of Inclusion Form.

3. Fees, Subcontractors and Personnel

3.1. Fees, allowances and costs

3.1.1. The fees, allowances and costs due to the Service Provider for performing the Ordered Services will be calculated in accordance with Item D [Fees, allowances & costs].

3.2. Estimate of fees, allowances and costs

3.2.1. If requested by an Agency, the Service Provider must prepare, at no cost to the Agency and prior to any work being undertaken, an estimate for approval by the Agency. The estimate must be provided on the basis requested by an Agency. Estimates must be provided:

- a. for routine matters – within ^{^insert no. of Business Days^} after agreeing the scope of work, and

- b. for complex matters – within ^{^insert no. of Business Days^} after agreeing the scope of work.
- 3.2.2. The Service Provider must warrant that its estimates are as accurate as is reasonably possible.
- 3.2.3. The amount of an estimate prepared by the Service Provider must be equal to or less than the amount that would be produced had the estimate been calculated in accordance with Item D [Fees, allowances & costs].
- 3.2.4. If in the course of performing Ordered Services under a Contract, the Service Provider anticipates that the fees, allowances and costs in respect of that Contract will exceed any estimate provided in respect of that Contract, it must inform the Project Officer no later than when the amount of the fees, allowances and costs reaches 80 per cent of the amount of the estimate and seek approval for the increase to be incorporated into a new estimate.
- 3.2.5. The Service Provider must seek written approval from an Agency for any new estimate, setting out:
 - a. the reason for the new estimate, and
 - b. the amount of the new estimate.
- 3.2.6. Invoices for fees, allowances and costs which exceed the estimate (or where a new estimate has been agreed, the new estimate) will not be paid by an Agency unless the excess is approved in writing by the Agency.
- 3.2.7. An Agency may approve a new estimate at its sole and absolute discretion. An approval for a new estimate will be effective only if the Agency provides the approval in writing. Where a new estimate is not approved the parties will negotiate any reduction in the scope of the Ordered Services so that those Services can be provided within the original estimate.

3.3. Superannuation

- 3.3.1. The deed is entered into on the understanding that an Agency is not required to make any superannuation contributions in connection with any Contract.

3.4. Invoices and payment

- 3.4.1. Invoices for Ordered Services must be submitted, together with any supporting documentation, in the manner specified in the Specific Agency Requirements for a particular Agency.
- 3.4.2. An Agency will make all payments in the manner specified in the relevant Specific Agency Requirements, unless otherwise specified by an Agency through the Order process.

3.5. Subcontractors

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

3.6. Specified Personnel

- 3.6.1. Where Specified Personnel are nominated by an Agency through an Order process:
 - a. those Specified Personnel must be utilised by the Service Provider as specified through the Order process; and
 - b. those Specified Personnel must be charged out in the manner specified in the Specific Agency Requirements.

4. Reporting and Performance Measurement

4.1. Reports

- 4.1.1. ^{^insert reporting requirements^}
- 4.1.2. The Service Provider must provide any reports required in the relevant Agency's Specific Agency Requirements.
- 4.1.3. During the Term of this deed, the Service Provider must within thirty (30) days after the end of each financial year report to the Office of Legal Services Coordination within the Attorney-General's Department (OLSC) using the template approved from time to time by OLSC that specifies the matters to be reported, including the requirements to report on:
 - a. the total value of work undertaken for the Commonwealth of Australia by the Service Provider during that financial year; and
 - b. the amount of Pro Bono Work undertaken by the Service Provider during that financial year.

4.2. Performance Measurement

- 4.2.1. An Agency will monitor the Service Provider's performance in delivering the Services by the use of any method of performance assessment from time to time, as the Agency, in its absolute discretion, deems appropriate, including any method set out in the Agency's Specific Agency Requirements.
- 4.2.2. The Service Provider may conduct 1 annual client satisfaction survey in respect of the Services provided to an Agency, and agrees to work collaboratively with

the relevant Agency Representative in developing an appropriate survey to meet the needs of the relevant Agency and the Service Provider, including in respect of the timeframe and the participants.

5. Dispute resolution

5.1. Interpretation

5.1.1. In this clause, a reference to a 'party' is a reference to the Service Provider or an Agency, as the case may be.

5.2. Procedure for dispute resolution

5.2.1. The parties agree that a dispute arising under this deed or any Contract will be dealt with as follows:

- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- b. within 5 Business Days each party will nominate a representative not having any prior involvement in the dispute;
- c. the representatives will try to settle the dispute by direct negotiation between them;
- d. failing settlement within a further 10 Business Days, the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - ii. to mediate and recommend some form of non-binding resolution;
- e. the parties will cooperate fully with any process instigated under clause 5.2.1.d in order to achieve a speedy resolution; and
- f. if a resolution is not reached within a further 20 Business Days, either party may commence legal proceedings.

5.3. Costs

5.3.1. Each party will bear its own costs of complying with this clause 5, and the parties will bear equally the cost of any third person engaged under clause 5.2.1.d.

5.4. Continued performance

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

5.5. Exemption

5.5.1. This clause 5 does not apply to:

- a. action by either party under or purportedly under any clause relating to termination, whether for convenience or for default; or
- b. legal proceedings by either party seeking urgent interlocutory relief.

6. Liability

6.1. Proportionate liability regimes excluded

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

6.2. Indemnity

6.2.1. The Service Provider indemnifies an Agency from and against any:

- a. cost or liability incurred by the Agency;
- b. loss of or damage to property of the Agency; or
- c. loss or expense incurred by the Agency in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Agency,

arising from either:

- d. a breach by the Service Provider of this deed or any Contract; or
- e. an act or omission involving fault on the part of the Service Provider or its Personnel in connection with this deed or any Contract.

6.2.2. The Service Provider's liability to indemnify an Agency under clause 6.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the Agency or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

6.2.3. The right of an Agency to be indemnified under this clause 6.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Agency is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

6.2.4. This clause 6 survives the expiration or termination of this deed or any Contract.

7. Termination of the deed

7.1. Termination for convenience

7.1.1. The Lead Agency may by notice, at any time and in its absolute discretion, terminate or reduce the scope of this deed immediately.

7.2. Termination for fault

7.2.1. If the Service Provider fails to satisfy any of its obligations under this deed, then the Lead Agency – *if it considers that the failure is:*

- a. *not capable of remedy* – may, by notice, terminate this deed immediately; or
- b. *capable of remedy* – may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this deed immediately by giving a second notice.

7.2.2. The Lead Agency may also by notice terminate this deed immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:

- a. fails to comply with any requirement relating to the Legal Services Directions;
- b. *being a corporation* – comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration; or
- c. *being an individual* – becomes bankrupt or enters into a scheme of arrangement with creditors.

7.3. Existing Contracts

7.3.1. Termination of this deed will have the effect of terminating only those Contracts specified, or reducing the scope of those Contracts specified, in a notice issued under clauses 7.1.1, 7.2.1 or 7.2.2.

8. Notices

8.1. Format, addressing and delivery

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

- a. *if given by the Service Provider to an Agency* – addressed to the Agency's Representative at the address specified in the Agency's Specific Agency Requirements or as otherwise notified by the Agency; or
- b. *if given by an Agency to the Service Provider* – given by the Agency's Representative (or any superior officer to Agency's Representative) and

addressed (and marked for attention) as specified in the Agency's Specific Agency Requirements or as otherwise notified by the Service Provider.

- 8.1.2. A notice is to be:
- a. signed by the person giving the notice and delivered by hand; or
 - b. signed by the person giving the notice and sent by pre-paid post; or
 - c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

8.2. When effective

- 8.2.1. A notice is deemed to be effected:
- a. *if delivered by hand* – upon delivery to the relevant address;
 - b. *if sent by post* – upon delivery to the relevant address;
 - c. *if transmitted electronically* – upon actual receipt by the addressee.
- 8.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

9. General provisions

9.1. Insurance

- 9.1.1. The Service Provider agrees:
- a. to effect and maintain the insurance specified in Item E [Insurance]; and
 - b. on request by an Agency, to provide proof of insurance acceptable to the Agency.
- 9.1.2. This clause 9.1 continues in operation for a period of 7 years after the expiration or termination of this deed.

9.2. Conflict of interest

- 9.2.1. The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict, except as disclosed in writing to the relevant Agency, exists or is likely to arise in the performance of the Services.
- 9.2.2. The Service Provider must use its best endeavours (including making all appropriate enquiries) during the Term to ensure that:
- a. a situation does not arise which may result in a Conflict; and

- b. any Personnel of the Service Provider does not engage in any activity or obtain any interests likely to conflict with or restrict the Service Provider in providing Services to an Agency fairly and independently.

9.2.3. If, during the period of this deed a Conflict arises, or appears likely to arise, the Service Provider agrees:

- a. to notify the relevant Agency immediately;
- b. to make full disclosure of all relevant information relating to the Conflict; and
- c. to take any steps the relevant Agency reasonably requires to resolve or otherwise deal with the Conflict.

9.3. Co-operation

9.3.1. The parties intend to conduct themselves for the purposes of the performance of this deed and each Contract in the spirit of co-operation and good faith. For avoidance of doubt, the spirit of co-operation and good faith does not override or limit the provisions of this deed or any Contract.

9.3.2. An Agency will co-operate with the Service Provider by:

- a. making available, as reasonably requested by the Service Provider, management decisions and information that is necessary for the Service Provider to provide the Ordered Services, and
- b. setting priorities for the Ordered Services.

9.3.3. The Service Provider must co-operate with any other service provider appointed by an Agency (including the Agency when it is providing services similar to or related to the Services in-house) to ensure the integrated and efficient carrying on of the Agency's operations and must provide such reasonable assistance to other service providers as the Agency may reasonably request, and at no additional cost to the Agency.

9.3.4. To ensure maximum efficiency in the delivery of Ordered Services, where an Agency provides services in-house, the Agency will co-operate with the Service Provider and where the Agency uses another service provider, the Agency will use its reasonable endeavours to ensure that that service provider co-operates with the Service Provider.

9.4. Relationship of parties

9.4.1. The Service Provider is not by virtue of this deed or any Contract an officer, employee, partner or agent of an Agency, nor does the Service Provider have any power or authority to bind or represent an Agency.

9.4.2. The Service Provider agrees:

- a. not to misrepresent its relationship with an Agency; and
- b. not to engage in any misleading or deceptive conduct in relation to the Services.

9.5. Waiver

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

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

9.6. Variation

9.6.1. The terms of this deed may not be varied unless:

- a. the Lead Agency has consulted all of the Agencies concerning the proposed variation; and
- b. the Lead Agency and the Service Provider have agreed to that variation in writing.

9.6.2. A Portfolio Agency and the Service Provider may not vary the terms set out in Schedule 4 [Contract Terms and Conditions] without the written consent of the Lead Agency. Any such variation is effective only with respect to the relationship between the Portfolio Agency that has agreed to the variation and the Service Provider.

9.6.3. The Specific Agency Requirements and a Contract may be varied by agreement of the relevant Agency and the Service Provider in writing. Any such variation is effective only with respect to the relationship between the Agency that has agreed to the variation and the Service Provider.

9.7. Assignment

9.7.1. The Service Provider cannot assign its obligations, and agrees not to assign its rights, under this deed or any Contract without the Lead Agency's prior written approval.

9.8. Survival

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

- a. licensing of Intellectual Property;
- b. confidentiality;

- c. privacy;
- d. books and records;
- e. audit and access;
- f. security;
- g. an indemnity; or
- h. any other provision which expressly or by implication from its nature is intended to continue.

9.9. Compliance with Legislation

9.9.1. In this clause 9.9:

Legislation means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.

9.9.2. The Service Provider agrees to comply with any Legislation applicable to its performance of this deed or a Contract, in particular:

- a. the *Crimes Act 1914* (Cth);
- b. the *Criminal Code Act 1995* (Cth);
- c. the *Privacy Act 1988* (Cth);
- d. the *Racial Discrimination Act 1975* (Cth);
- e. the *Sex Discrimination Act 1984* (Cth);
- f. the *Disability Discrimination Act 1992* (Cth);
- g. the *Equal Opportunity for Women in the Workplace Act 1999* (Cth);
- h. the *Freedom on Information Act 1982* (Cth);
- i. the *Workplace Relations Act 1996* (Cth); and
- j. the *Judiciary Act 1903* (Cth).

9.10. Applicable law

9.10.1. This deed is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State or Territory specified in Item F [Applicable law].

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

9.10.3. Each Contract is to be construed in accordance with clause 12.5 of Schedule 4 [Contract Terms and Conditions].

Executed as a Deed

SIGNED for and on behalf of the
Commonwealth of Australia as
represented by **^Full name of Lead
Agency^** by:

_____)
_____)
_____)

^Name of signatory^

Signature

In the presence of:

_____)
^Name of witness^

_____)
Signature of witness

SIGNED for and on behalf of **^Party 2
Name^** by:

_____)
_____)
_____)

^Name of signatory^

Signature

In the presence of:

_____)
^Name of witness^

_____)
Signature of witness

SCHEDULE 1 DEED DETAILS

A. Services

^insert description of Services^

B. Timeframe

(see clauses 1.1 and 2.1)

B.1. Initial End Date

Guidance:

An Agency should specify date the Deed of Standing Offer will expire if not extended here.

^insert date^

B.2. Extension Date

Guidance:

An Agency should specify the latest date to which the Deed of Standing Offer may be extended by the Agency under clause 2.1.4 here.

C. Portfolio Agencies

Guidance:

An Agency should insert a list of any Portfolio Agencies that are able to request Services from the Service Provider here at the time of execution of the deed. This should be consistent with the information provided to Tenderers in the RFT as to what Portfolio Agencies will be covered by the deed from the commencement of the Panel arrangements. If there are no Portfolio Agencies that are to be covered from the time of execution of the deed then the words 'Not applicable' should be inserted. This does not mean that Portfolio Agencies cannot be added during the Term of the deed. Rather a New Portfolio Agency may be added in accordance with the process set out in clause 2.5. This does not require that anything be completed here in order for that process to be able to be utilised.

^insert list of Portfolio Agencies^

D. Fees, allowances & costs

D.1. Fees

Guidance:

Paragraph 8.67 of the CPGs provides that panel arrangements “must contain minimum requirements, including an indicative or set price or rate as appropriate for the property or services to be procured in the period of the panel arrangement”. An Agency should include the fee structure tendered as part of the tender process here.

In accordance with clause 3.2.1 in Schedule 4 [Contract Terms and Conditions] fees are taken to be exclusive of GST unless otherwise indicated. To avoid any uncertainty, it may be useful to explicitly state whether an amount is GST exclusive or inclusive.

In some situations, fees may differ between different Agencies that are covered by the same Deed of Standing Offer. If this is the case, this section should refer to the Specific Agency Requirements for each Agency.

^insert fees^

D.2. Fee variation

D.2.1. ^insert way in which fees may be varied^

D.3. Allowances and costs

Guidance:

The details of other financial obligations the Agency will cover, eg. travelling allowances or printing and production costs should be specified here. The obligations should be clearly stated to prevent claims for excessive expenses.

^insert information concerning allowances and costs^

E. Insurance

(see clause 9.1)

Guidance:

An Agency should specify any insurance required to be provided by the Service Provider here.

The Service Provider is to obtain and maintain the following insurance cover:

- a. workers' compensation as required by law
- b. public liability insurance to a value of \$^{^insert^} million per event
- c. professional indemnity insurance to a value of \$^{^insert^} million per event and in the aggregate

F. Applicable law
(see clause 9.10)

Guidance:

An Agency should specify the State or Territory whose laws will govern the construction of, and other matters related to, the deed here. Note that this also affects the definition of Business Day in clause 1.1.

^{^insert State or Territory^}

SCHEDULE 2 SPECIFIC AGENCY REQUIREMENTS

Guidance:

The below sets out the requirements in relation to the provision of Services that are particular to a specific Agency. A separate Schedule will need to be completed for each Agency (whether the Lead Agency, or a Portfolio Agency) and included here.

A. Name of Agency

^insert name of Agency, together with ABN^

B. Invoices and Payment

Guidance:

In this Item each Agency should set out their invoicing requirements. The below details are given by way of an example. For more information in relation to what constitutes a valid tax invoice see the ATO publication ‘Valid tax invoices and GST credits’ at:

<http://www.ato.gov.au/content/downloads/gstnat12358022006.pdf>

B.1. Invoices

A separate invoice must be submitted for each Contract. Invoices must include the following information:

- a. the words “tax invoice” stated prominently;
- b. the Service Provider’s name;
- c. the Service Provider’s ABN;
- d. the Agency’s ABN or address;
- e. the date of issue of the tax invoice;
- f. the title of this deed and the Order number (if any);
- g. details of fees, allowances and costs including the items to which they relate;
- h. the total amount payable (including GST); and
- i. the GST amount shown separately.

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

All invoices must be addressed to the Agency's Representative.

B.2. Payment

Guidance:

In this Item each Agency should set out the payment procedures that are applicable.

^insert payment procedures^

C. Agency's Representative

Guidance:

In this Item each Agency should specify their Representative for the purposes of the deed. The Agency's Representative may be specified by name and/or position. By way of example the below sets out the position of the person.

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

D. Project Officer

Guidance:

In this Item each Agency should specify their representative for the purposes of Contracts. In the event this may vary from Contract to Contract, it could be stated 'As specified in through an Order process'.

^insert name of Project Officer^

E. Specified Personnel

Guidance:

The details of any particular individuals nominated to undertake and perform the Services, or specified portions of those Services should be specified here. It is possible that each Agency in a portfolio will have different Specified Personnel. Alternatively, some Agencies may not have any 'Specified Personnel' requirements.

Specified Personnel	Fees
----------------------------	-------------

^insert name and title of Specified Personnel^	^insert any applicable fees, this can be by reference to the fees set out in Item D of Schedule 1^

F. Confidential Information of the Service Provider

Item	Period of Confidentiality
^insert relevant items^	

G. Agency's Address for Notices
(see clause 8.1)

Physical address	^insert^
Postal address	^insert^
Email	^insert^
Facsimile	^insert^

H. Service Provider's Address for Notices
(see clause 8.1)

Physical address	^insert^
Postal address	^insert^
Email	^insert^
Facsimile	^insert^

I. Order Process

Guidance:

In this Item each Agency should specify their requirements regarding Orders, in particular whether the Order is required to be in a particular form. Any form may be included as an Attachment to this Schedule. Alternatively an Agency could simply set out that an Order is required to be in writing but may be in any form.

J. Fees

Guidance:

If Item D of Schedule 1 lists options for Fees then the option that the Agency wants to select should be specified here.

^insert any Agency-specific Fee requirements^

K. Reporting requirements

^insert any Agency-specific reporting requirements^

L. Performance measurement

^insert any Agency-specific performance measurement requirements^

M. Applicable Law

Guidance:

In this Item each Agency should specify the State or Territory whose laws will govern the construction of, and other matters related to, Contracts. This may vary from Contract to Contract in which case it could be stated 'As specified through an Order process'.

^insert State or Territory^

SCHEDULE 3 NOTICE OF INCLUSION FORM

Parties

1. **Commonwealth of Australia** represented by the **Full name of Agency** or **insert CAC Act entity name** **ABN Number**
Agency Address (the New Portfolio Agency)
2. **Party 2 Name** **Party 2 ABN and ACN/ARBN if applicable**
Party 2 Address (the Service Provider)

Context

- A. By Deed of Standing Offer dated **insert** **insert name of the Lead Agency**, as the authorised contracting authority, appointed the Service Provider to provide the Services to Portfolio Agencies of the Lead Agency.
- B. The Deed of Standing Offer enables other specified Australian Government Agencies to be accommodated under the Deed of Standing Offer for the purpose of enabling those Australian Government Agencies to receive Services from the Service Provider.
- C. The New Portfolio Agency wishes to acquire such Services from the Service Provider as it requires from time to time in accordance with the terms of the Deed of Standing Offer and this Notice of Inclusion Form.

Notice of inclusion

The New Portfolio Agency notifies the Service Provider that it is appointed to provide Services for the Term to the New Portfolio Agency in accordance with:

- a. the Deed of Standing Offer other than those schedules that are specific to the Lead Agency or a particular Portfolio Agency; and
- b. the attached Specific Agency Requirements.

Guidance:

Specific Agency Requirements in the form set out in Schedule 2 [Specific Agency Requirements] need to be attached to this Notice of Inclusion Form.

SIGNED for and on behalf of ^insert)
^the Commonwealth of Australia as)
represented by ^Full name of)
Agency^^ or ^CAC Act entity name^^)
by:

^Name of signatory^

Signature

In the presence of:

^Name of witness^

Signature of witness

NOTED for and on behalf of ^Party 2)
Name^ by:)
)
)

^Name of signatory^

Signature

In the presence of:

^Name of witness^

Signature of witness

SCHEDULE 4 CONTRACT TERMS AND CONDITIONS

OPERATIVE PROVISIONS

The following terms and conditions apply when a Contract is created by the issue of an Order to the Service Provider by an Agency.

1. Interpretation

1.1. Definitions

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

Agency	means the party identified as such through the Order process;
Agency's Representative	has the meaning set out in clause 1.1 of the Deed;
Business Day (in a place)	means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified as the applicable law in the Specific Agency Requirements, unless otherwise specified through the Order process;
Confidential Information (of the Service Provider)	means information that is by its nature confidential and is described in the Specific Agency Requirements;
Contract Material	means any Material: a. created for the purposes of the Contract; b. provided or required to be provided to the Agency as part of the Ordered Services; or c. derived at any time from the Material referred to in paragraph (a) or (b);
Commonwealth Material	means any Material: a. provided by the Agency to the Service Provider for the purposes of the Contract; or b. derived at any time from the Material referred to in paragraph (a);
Deed	means the deed of standing offer dated ^{^insert date^} in respect of the provision of Services;
Existing Material	means any Material in existence at the commencement of the Contract and developed by the Service Provider independently of the performance of the Deed or any

	Contract;
Force Majeure Event	means: <ul style="list-style-type: none"> a. any occurrence or omission as direct or indirect result of which the party relying on it is prevented from or delayed in performing any of its obligations under the Contract and that is beyond the reasonable control of the party; or b. an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, lightning, fire, earthquake, storm, flood, drought, disease, explosion, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government agency other than the Agency, or a failure of a supplier, public utility or common carrier;
GST	has the meaning it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
Intellectual Property	includes: <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts); b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: <ul style="list-style-type: none"> d. Moral Rights; e. the non-proprietary rights of performers; or f. rights in relation to Confidential Information;
Legal Services Directions	means the Commonwealth Attorney-General's Legal Services Directions issued under s 55ZF of the <i>Judiciary Act 1903</i> (Cth);
Material	means any thing in relation to which Intellectual Property rights arise;
Moral Rights	means the following non-proprietary rights of authors of copyright Material: <ul style="list-style-type: none"> a. the right of attribution of authorship; b. the right of integrity of authorship; and c. the right not to have authorship falsely attributed;

Official Information	means any information developed, received or collected by or on behalf of the Agency to which the Service Provider gains access under or in connection with the Contract, and includes the Contract Material and the terms of the Contract;
Order	has the meaning set out in clause 1.1 of the Deed;
Ordered Services	means the services required by the Agency to be provided through the Order process and includes all: <ul style="list-style-type: none"> a. incidental services; b. functions required for the proper provision of those services; and c. the provision to the Agency of the Material specified through the Order process;
Permitted Acts	means any of the following classes or types of acts or omissions: <ul style="list-style-type: none"> a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship; b. supplementing the Contract Material with any other Material; and c. using the Contract Material in a different context to that originally envisaged; <p>but does not include false attribution of authorship;</p>
Personnel	means: <ul style="list-style-type: none"> a. in relation to the Service Provider – any natural person who is an officer, employee, agent or professional advisor of the Service Provider or of a subcontractor; and b. in relation to the Agency – any natural person, other than a person referred to in paragraph (a), who is an officer, employee, agent or professional advisor of the Agency;
Project Officer	has the meaning set out in clause 1.1 of the Deed;
Service Provider	means the party identified as such in the Deed;
Specific Agency Requirements	has the meaning set out in clause 1.1 of the Deed; and
Specified Personnel	means the persons specified in the Specific Agency Requirements or through the Order process.

1.2. Interpretation

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

- a. words importing a gender include any other gender;
- b. words in the singular include the plural and words in the plural include the singular;
- c. clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- d. words importing a person include a partnership and a body whether corporate or otherwise;
- e. all references to dollars are to Australian dollars;
- f. a reference to any legislation or legislative provision includes any statutory modification substitution or re-enactment of such legislation or legislative provision;
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- h. any schedules or attachments form part of the Contract;
- i. if any conflict arises between the terms and conditions specified through the Order process and these terms and conditions or the terms of the Deed the following order of priority will apply:
 - i. the terms specified through the Order process;
 - ii. these terms and conditions;
 - iii. the terms and conditions specified in the Deed; then
 - iv. the other schedules to the Deed;
- j. reference to a schedule (or an attachment) is a reference to a schedule (or an attachment) to the Contract, including as amended or replaced from time to time by agreement in writing between the parties; and
- k. a reference to writing means any representation of words, figures or symbols, whether or not in a visible form.

1.3. Commencement

1.3.1. The terms of the Contract apply on and from the date the Order is issued.

2. Performance

2.1. Ordered Services

2.1.1. The Service Provider agrees to:

- a. perform the Ordered Services:
 - i. to a standard recognised as a high professional standard by professional legal advisers;
 - ii. in accordance with the Legal Services Directions;
- b. provide to the Agency any Contract Material specified through the Order process;
- c. comply with the requirements of the Deed to the extent they apply to the provision of the Ordered Services;
- d. comply with all applicable the Agency, Commonwealth and industry standards and guidelines;
- e. comply with the time frame for the performance of the Ordered Services specified through the Order process;
- f. submit invoices and any required supporting documentation in the manner specified in clause 3.1; and
- g. obtain all approvals and licences necessary to perform the Ordered Services in accordance with the Contract.

2.1.2. The Service Provider agrees to keep adequate books and records, in accordance with Australian accounting standards, in sufficient detail to enable the amounts payable by the Agency under a Contract to be determined.

2.2. Liaison with the Project Officer

2.2.1. The Service Provider agrees:

- a. to liaise with the Project Officer as reasonably required; and
- b. to comply with directions of the Project Officer that are consistent with the any conditions specified through the Order process or are contained in the Contract and the Deed.

2.3. Subcontractors

2.3.1. The Service Provider agrees not to subcontract the performance of any part of the Ordered Services without the Agency's prior written approval.

2.3.2. The Agency may impose any conditions it considers appropriate when giving its approval under clause 2.3.1.

2.4. Specified Personnel

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

3. Fees

3.1. Payment

- 3.1.1. Subject to clause 3.2 of the Deed, the Agency will pay the Service Provider the fees, allowances and costs for the Ordered Services calculated in accordance with calculated in accordance with Item D [Fees, allowances & costs] of Schedule 1 and the Specific Agency Requirements.
- 3.1.2. Invoices must be submitted monthly in arrears unless otherwise specified in the Specific Agency Requirements or through the Order process.
- 3.1.3. An invoice will be correctly rendered for the purposes of clause 3.1.1, if it complies with the invoicing requirements set out in Specific Agency Requirements.
- 3.1.4. The Agency will make all payments in the manner set out in the Specific Agency Requirements, unless otherwise specified through the Order process.

3.2. Taxes, duties and government charges

- 3.2.1. Except as provided by this clause 3.2, the Service Provider agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of the Contract.
- 3.2.2. Unless otherwise indicated, the fees and all other consideration for any supply made under the Contract is exclusive of any GST imposed on the supply.
- 3.2.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under the Contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

- 3.2.4. No party may claim or retain from the other party any amount in relation to a supply made under the Contract before the first party has deducted from the amount any input tax credit or decreasing adjustment which the first party is entitled to.

4. Intellectual Property

4.1. Use of Commonwealth Material

- 4.1.1. The Agency agrees to provide Material to the Service Provider as specified through the Order process or otherwise agreed by the Agency.
- 4.1.2. The Agency grants (or will procure) a royalty-free, non-exclusive licence for the Service Provider to use, reproduce and adapt Commonwealth Material for the purposes of the Contract.
- 4.1.3. The Service Provider agrees to use Commonwealth Material strictly in accordance with any conditions or restrictions set specified through the Order process and any direction from the Agency.

4.2. Rights in Contract Material

- 4.2.1. Intellectual Property in all Contract Material vests or will vest in the Agency.
- 4.2.2. Clause 4.2.1 does not affect the ownership of Intellectual Property in:
- a. any Commonwealth Material incorporated into Contract Material; or
 - b. any Existing Material.
- 4.2.3. The Service Provider grants to (or will procure for) the Agency a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit any Existing Material referred to in clause 4.2.2.b, in conjunction with the Contract Material.
- 4.2.4. The Service Provider reserves a permanent, irrevocable, world-wide, royalty-free, non-exclusive right, subject to clause 5, to use, reproduce, adapt, sublicense and exploit the Contract Material for the services of the Services Provider.
- 4.2.5. The Service Provider warrants that:
- a. it is entitled; or
 - b. it will be entitled at the relevant time,
- to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 4.2.

4.3. Moral Rights

4.3.1. In this clause 4.3:

Permitted Acts

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

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

but does not include false attribution of authorship.

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

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

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

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

5. Confidentiality of Official Information and other security obligations

5.1. Interpretation

5.1.1. In this clause 5:

Official Resources

includes:

- a. Official Information;
- b. people who work for or with the Agency; and
- c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Agency;

Security Classified Resources	means Official Resources that, if compromised, could have adverse consequences for the Agency; and
Security Incident	means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.

5.2. Confidentiality of Official Information

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

5.3. Other security obligations of Service Provider

- 5.3.1. The Service Provider agrees:
- a. to ensure that all Personnel that require access to Security Classified Resources have obtained the appropriate security clearance;
 - b. to make its Personnel available to attend any security training provided by the Agency;
 - c. to notify the Agency immediately if it becomes aware that a Security Incident has occurred and otherwise implement the Agency's procedures for Security Incident reporting as advised by the Agency from time to time;
 - d. not to perform the Ordered Services outside Australia without the Agency's prior written approval; and
 - e. to comply with the additional security requirements specified through the Order process or otherwise directed by the Agency, if any, and any variations or additions to those requirements as notified by the Agency from time to time.

- 5.3.2. The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 5 and will provide details of these procedures to the Agency on request.

6. Privacy

6.1. Interpretation

- 6.1.1. In this clause 6, 'Information Privacy Principle' has the same meaning as it has in the *Privacy Act 1988* (Cth).

6.2. Obligations of Service Provider in relation to privacy

- 6.2.1. The Service Provider agrees, in providing the Ordered Services:
- a. not to do any act or engage in any practice which, if done or engaged in by the Agency, would be a breach of an Information Privacy Principle; and
 - b. to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters specified through the Order process or otherwise notified by the Agency, to the extent that they are consistent with the Information Privacy Principles.
- 6.2.2. The Service Provider agrees to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 6.

7. Dealing with Copies

7.1. Interpretation

- 7.1.1. In this clause 7, 'Copy' means any document, device, article or medium in which Commonwealth Material or Official Information is embodied.

7.2. Actions at end of contract

- 7.2.1. Subject to clause 4.2, the Service Provider agrees, on expiration or termination of the Contract, to deal with all Copies as directed by the Agency, subject to any requirement of law binding on the Service Provider.

8. Confidential Information of the Service Provider

8.1. Confidential Information not to be disclosed

- 8.1.1. Subject to clause 8.2, the Agency will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

8.2. Exceptions to obligations

8.2.1. The obligations on the Agency under this clause 8 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by the Agency to its Personnel solely in order to comply with obligations, or to exercise rights, under the Deed or the Contract;
- b. is disclosed to the Agency internal management Personnel, solely to enable effective management or auditing of contract-related activities;
- c. is disclosed by the Agency to the responsible Minister;
- d. is disclosed by the Agency in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- e. is shared by the Agency within the Agency's organisation, or with another agency, where this serves the Commonwealth's legitimate interests;
- f. is authorised or required by law to be disclosed; or
- g. is in the public domain otherwise than due to a breach of this clause 8.

8.2.2. Where the Agency discloses Confidential Information to another person pursuant to clauses 8.2.1.a - 8.2.1.e, the Agency will notify the receiving person that the information is confidential.

8.2.3. In the circumstances referred to in clauses 8.2.1.a, 8.2.1.b and 8.2.1.e, the Agency agrees not to provide the information unless the receiving person agrees to keep the information confidential.

8.3. Period of confidentiality

8.3.1. The obligations under this clause 8 in relation to an item of Confidential Information of the Service Provider continue for the period set out in Specific Agency Requirements.

9. Legal Services Directions

9.1.1. The Services Provider will, in relation to the Ordered Services it provides to the Agency, act in a manner that ensures the Agency remains in compliance with the Legal Services Directions.

9.1.2. The Service Provider will comply with those obligations of the Legal Services Directions that are applicable to it, which without limitation include those set out in Appendix D in relation to the engagement of counsel.

9.1.3. The Service Provider will ensure that all Personnel undertaking legal work for the Agency under its authority or on its behalf are familiar with the Legal Services Directions, particularly as they apply to the Agency.

- 9.1.4. The Service Provider will take all reasonable steps to ensure that it does not perform without proper authority such work proscribed under the Legal Services Directions, including tied work as described in the Legal Services Directions.
- 9.1.5. Where the Service Provider considers that Services for which it is engaged may involve work proscribed under the Legal Services Directions, for example tied work, the Agency reserves the right to :
- a. withdraw that part of the Ordered Services related to the proscribed work from the Service Provider, and
 - b. engage an approved legal service provider to undertake that part of the services related to proscribed work.
- 9.1.6. In the event that the Agency exercises its rights under clause 9.1.5, the Service Provider will hand over all files and documents relating to the work and cooperate fully in ensuring that the Agency and its nominated legal service provider are able to undertake the work effectively and efficiently.
- 9.1.7. The Service Provider will inform the Agency immediately of, and promptly report to the Agency in writing, any breach or potential breach of the Legal Services Directions in relation to Ordered Services. Where the Service Provider is responsible for the relevant breach or potential breach of the Legal Services Directions, it will advise the Agency on remedial actions as appropriate at no cost to the Agency.
- 9.1.8. Where the Service Provider fails to comply with this clause 9 the Agency reserves the right not to pay the Service Provider for non-compliant work.
- 9.1.9. This clause 9 survives the expiration or termination of this Contract or the Deed.

10. Force Majeure

- 10.1.1. If a party is affected, or likely to be affected, by a Force Majeure Event:
- a. that party must give the other prompt notice of that fact including:
 - i. full particulars of the Force Majeure Event
 - ii. an estimate of its likely duration
 - iii. the obligations affected by it and the extent of its effect on those obligations, and
 - iv. the steps taken to rectify it, and
 - b. the obligations under the Contract of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues. Without limiting the foregoing the time for completion of any obligation to provide

Ordered Services is extended by a period equivalent to the period of the suspension.

- 10.1.2. A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. However, this does not require a party to settle any industrial dispute or claims or demands by any government agency other than the Agency in any way it does not want to.
- 10.1.3. During any period in which a party is not performing obligations because of a claimed Force Majeure Event, the other party may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the party claiming the Force Majeure Event is not performing without incurring any liability to that party.
- 10.1.4. If a delay or failure by either party to perform its obligations due to a Force Majeure Event that is not caused by the other party exceeds 45 Business Days, that other party may immediately terminate the Contract on providing notice in writing to the party which has delayed or failed to perform.

11. Termination or reduction in scope of Ordered Services

11.1. Termination for convenience

- 11.1.1. The Agency may by notice, at any time and in its absolute discretion terminate the Contract, or reduce the scope of any Ordered Services, immediately.
- 11.1.2. The Service Provider agrees, on receipt of a notice of termination or reduction:
 - a. to stop or reduce work as specified in the notice;
 - b. to take all available steps to minimise loss resulting from that termination or reduction; and
 - c. to continue work on any part of any Ordered Services not affected by the notice.
- 11.1.3. In the event of termination under clause 11.1.1, the Agency will be liable only:
 - a. to pay any fees due under a Contract relating to Ordered Services completed before the date of termination;
 - b. to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Ordered Services not covered under clause 11.1.3.a; and
 - c. to pay any allowance and meet any costs unavoidable incurred under a Contract before the effective date of termination.

- 11.1.4. The Agency will not be liable to pay amounts under clause 11.1.3.a and 11.1.3.b which would, added to any fees already paid to the Service Provider under a Contract, together exceed the fees specified through the Order process.
- 11.1.5. In the event of a reduction in the scope of any Ordered Services under clause 7.1.1, the Agency's liability to pay fees, allowances or costs under any relevant Contract will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Ordered Services.
- 11.1.6. The Service Provider will not be entitled to compensation for loss of prospective profits.

11.2. Termination for default

- 11.2.1. If a party fails to satisfy any of its obligations under the Contract, then the other party – *if it considers that the failure is:*
- a. *not capable of remedy* – may, by notice, terminate this deed or the Contract immediately; or
 - b. *capable of remedy* – may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this deed or the Contract immediately by giving a second notice.
- 11.2.2. The Agency may also by notice terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:
- a. fails to comply with any requirement relating to the Legal Services Directions;
 - b. *being a corporation* – comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001 (Cth)*, or has an order made against it for the purpose of placing it under external administration; or
 - c. *being an individual* – becomes bankrupt or enters into a scheme of arrangement with creditors.

12. General provisions

12.1. Audit and access

- 12.1.1. The Service Provider agrees:
- a. to give the Agency's Representative, or any persons authorised in writing by an Agency's Representative, access to premises where Ordered Services are being performed; and

- b. to permit those persons to inspect and take copies of any Material relevant to the Ordered Services.
- 12.1.2. The rights referred to in clause 12.1.1 are subject to:
- a. the Agency providing reasonable prior notice;
 - b. reasonable security procedures in place at the premises; and
 - c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.
- 12.1.3. The Auditor-General and the Privacy Commissioner are persons authorised for the purposes of this clause 12.1.
- 12.1.4. This clause 12.1 does not detract from the statutory powers of the Auditor-General or the Privacy Commissioner.

12.2. Inquiries

- 12.2.1. The Service Provider agrees to provide free of charge all reasonable assistance requested by the Agency in respect of any inquiry concerning the Ordered Services.
- 12.2.2. Without limitation to the generality of clause 12.2.1:
- a. the assistance to be provided by the Service Provider under clause 12.2.1 will include, as appropriate, the preparation of reports, the provision of documents or other Material, and making available relevant Personnel to provide information or answer questions on any matters relevant to or arising from the Contract which might reasonably be expected to be within the knowledge of the Service Provider; and
 - b. an inquiry referred to in clause 12.2.1 will include any administrative or statutory review, audit or inquiry (whether within or external to the Agency), any request for information directed to the Agency and any inquiry conducted by Parliament or any Parliamentary committee.
- 12.2.3. The Project Officer will endeavour to notify the Service Provider as early as possible of any assistance required under clause 12.2.1, provided always that the Service Provider acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.
- 12.2.4. This clause 12.2 survives expiration or termination of the Contract and the Deed.

12.3. Occupational health and safety

- 12.3.1. The Service Provider agrees, in carrying out the Contract, to comply with:

- a. all relevant legislation, codes of practice and national standards relating to occupational health and safety; and
- b. all applicable policies and procedures relating to occupational health and safety including those that apply to the Agency's premises when using those premises.

12.3.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 12.3.1.b, the Service Provider will comply with those policies and procedures that produce the highest level of health and safety.

12.4. Extension of provisions to subcontractors and Personnel

12.4.1. In this clause 12.4:

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

12.4.2. The Service Provider agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements; and
- b. any contract entered into in connection with the Contract imposes all relevant Requirements on the other party.

12.4.3. The Service Provider agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Agency.

12.5. Applicable Law

12.5.1. The Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State or Territory specified in the Specific Agency Requirements, unless otherwise specified through the Order process.

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