



Australian Government

**Department of Families, Housing,
Community Services and Indigenous Affairs**

DEED OF AGREEMENT

Number: 46037780

Between: **COMMONWEALTH OF AUSTRALIA**
represented by the Department of Families, Housing, Community Services and
Indigenous Affairs

and **COLMAR BRUNTON PTY LIMITED**
ACN 003 748 981 ABN 22 003 748 981

for: **The provision of Contract Services in relation to
communications-related market research as a
member of the Communication Market Research
Panel**

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THIS DEED is made on the 15th day of May 2008

BETWEEN

COMMONWEALTH OF AUSTRALIA ("the Commonwealth") as represented by the Department of Families, Housing, Community Services and Indigenous Affairs ("**the Department**")

AND

COLMAR BRUNTON PTY LIMITED ("the Contractor") ACN 003 748 981, ABN 22 003 748 981, an Australian company incorporated in accordance with the *Corporations Act 2001* and having its registered office at Suites 7 and 8, 45 Novar Street, Yarralumla, ACT, 2600.

RECITALS:

- A. The Department may from time to time require the provision of particular Contract Services; and
- B. The Contractor has agreed that when the Department sends an Official Order in accordance with this Deed to the Contractor, the Contractor will, in accordance with this Deed, take all actions required to provide the Contract Services specified in the Official Order for the fees specified in the Official Order.

IT IS AGREED:

1. Interpretation

1.1 In this Deed, unless the contrary intention appears:

"Contract" means a contract for particular Contract Services formed between the Department and the Contractor by the Department issuing an Official Order on the Contractor, the terms of which are specified in Schedule 6 of this Deed.

"Contract Services" means the services specified in Schedule 1 and in an Official Order.

"Contract Personnel" means the personnel detailed in an Official Order as personnel required to undertake the Contract Services or part of the work constituting the Contract Services.

"Deed" means this Deed and any Schedules to this Deed.

"Department" means the Department of Families, Housing, Community Services and Indigenous Affairs and its portfolio agencies, including Social Security Administrative Tribunal (SSAT) and Australian Institute of Family Studies (AIFS) and includes any department or agency of the Commonwealth of Australia which is from time to time responsible for the administration of this Deed.

"Official Order" means the official written document the Department sends to the Contractor in accordance with Clause 3 of this Deed when the Department requires the Contract Services.

"Project Officer" means the person for the time being holding, occupying or performing the duties specified in an Official Order.

1.2 Words in the singular number include the plural and vice versa.

1.3 A reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time.

1.4 All references to dollars are to Australian dollars and this Deed and Official Orders under this Deed use Australian currency.

1.5 All Schedules and Attachments (and annexures if any) form part of this Deed and any individual Contract under this Deed.

1.6 In the event of any conflict between the terms and conditions contained in the clauses of this Deed and any part of the Schedules (and annexures if any) then the terms and conditions of the clauses will take precedence.

1.7 A reference to a Schedule is a reference to a Schedule to this Deed and includes such Schedule as amended or replaced from time to time by agreement in writing between the parties.

1.8 Words importing persons include a partnership and a body whether corporate or otherwise.

1.9 Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

2. Term of Agreement

- 2.1 This Deed commences on 19 May 2008 and continues in force for a period of three (3) years unless sooner determined.
- 2.2 The Department has the option to extend the period of this Deed by two twelve (12) month extensions, allowable by giving the Contractor written notice of such extension prior to the expiration of the initial three (3) year period. Any such extension will be on the same terms and conditions with the exception of this provision.

3. Formation of Contracts

- 3.1 When the Department requires the Contract Services, the Department will consult with the Contractor about the following details to be specified in the Official Order:
- (a) the precise Contract Services to be performed;
 - (b) the time frame within which the Contract Services will be performed and the manner and times for performance of the Contract Services;
 - (c) the Contract Personnel by whom the Contract Services will be performed;
 - (d) the fee to be paid for the performance of the Contract Services calculated in accordance with Schedule 2 and any fee for travel associated with the performance of the Contract Services calculated in accordance with Schedule 2; and
 - (e) whether the Department may pay the fees by installments and, if so, the installment intervals.
- 3.2 When the details set out in sub-clause 3.1 have been agreed, the Department will complete, sign and send to the Contractor an Official Order and the Contractor will then supply the Contract Services to the Department. Each Official Order will be endorsed to the following effect:
- ‘This Official Order is placed pursuant to and subject to the terms and conditions of Deed Number 46037780 between the Department and Colmar Brunton Pty Limited dated xxxx.’
- 3.3 The Contractor’s offer will be accepted by the Department when the Department sends an Official Order to the Contractor.
- 3.4 The Department will specify in an Official Order the precise Contract Services to be performed, including the items listed in Schedule 5.
- 3.5 The Contractor agrees that each Official Order sent to the Contractor by the Department in accordance with this Deed will create a separate contract between the Department and the Contractor.
- 3.6 The parties agree that the terms of each contract created by the placement of an Official Order will be those set out in Schedule 6 and any additional terms specified in the Official Order.

3.7 In the event of any inconsistency between the terms specified in the Official Order and the terms appearing in Schedule 6, the terms of the Official Order will prevail to the extent of the inconsistency except where the contrary is expressly provided for in Schedule 6.

4. Commonwealth not bound to order from Contractor

4.1 It is an express condition of this Deed that the Department:

- (a) is not obliged to place an Official Order with the Contractor and is not committed to request any specific volume of services from the Contractor; and
- (b) may at any time purchase or acquire services the same or similar to the Contract Services in any other way, from any other person on such terms and conditions as may be agreed between the Department and that other person.

5. Fees

5.1 The fees due to the Contractor for performing the Contract Services will be set out in the Official Order and calculated in accordance with Schedule 2.

5.2 The amount to be paid by the Department as determined in accordance with sub-clause 5.1 will be inclusive of Goods and Services Tax (GST) for supplies made under this Deed which are taxable supplies within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).

5.3 In relation to taxable supplies made under this Deed, the Contractor agrees to issue the Department with a tax invoice in accordance with the GST Act.

6. Entire Agreement

6.1 This Deed constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings whether verbal or in writing.

7. Variation and Waiver

7.1 The provisions of this Deed will not be varied either at law or in equity except by agreement in writing between the parties.

7.2 A waiver by either party in respect of a breach of a provision of this Deed by the other party will not be deemed to be a waiver in respect of any other breach and the failure of either party to enforce at any time a provision of this Deed will in no way be interpreted as a waiver of such provision.

8. Assignment

8.1 Except as provided in Clause 12 neither party will assign, in whole or in part, its benefits under this Deed without the prior written consent of the other party.

9. Applicable Law

9.1 The laws applicable in the Australian Capital Territory apply to this Deed.

10. Notices

- 10.1 Any notice, request or other communication to be given or served pursuant to this Deed will be in writing and dealt with as follows:
- (a) If given by the Contractor to the Department - addressed and forwarded to the address notified by the Department to the Contractor from time to time as the address for notifications.
 - (b) If given by the Department to the Contractor - addressed and forwarded to the Contractor at the address indicated at the commencement of this Deed or as otherwise notified by the Contractor to the Department from time to time as the address for notifications.
- 10.2 Any such notice, request or other communication will be delivered by hand or sent by post or transmitted electronically, to the address of the party to which it is sent.
- 10.3 Any notice, request or other communication will be deemed to have been received:
- (a) if delivered personally, on the date of delivery;
 - (b) if sent by post, on the third business day after dispatch; and
 - (c) if transmitted electronically, on receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient and the sender is not notified by the recipient by close of business on that day that the transmission was illegible.
- 10.4 It will be sufficient to establish that the notice or communication was delivered and on a given date if the person who made the delivery obtains a receipt for the notice or communication signed by a person appropriately employed at the physical address for service and the records of the courier will be conclusive proof in that respect.

11. Access to Contractor's Premises

- 11.1 The Contractor agrees that:
- (a) the Department, including any persons authorised in writing by the Department;
 - (b) the Project Officer, or any persons authorised in writing by the Project Officer;
 - (c) the Department's auditors; and
 - (d) the Federal Privacy Commissioner;

have the right of access to the premises of the Contractor at all reasonable times and the right to inspect and copy documentation, records, accounts and other financial material or material relevant to the Deed and any Contract(s) under the Deed, including Contract Material, however and wherever stored, in the custody, possession or control of the Contractor, its officers, employees, agents or sub-contractors for purposes associated with this Deed or any review of performance under this Deed. The Department will also have access to any Department assets located on the premises of the Contractor which come into existence as a result of the Deed or any Contract(s) under the Deed.

- 11.2 In the case of documents or records stored on a medium other than in writing, the Contractor will make available on request such reasonable facilities as may be necessary to enable a legible reproduction to be created at no additional cost to the Department.

- 11.3 The rights referred to in sub-clause 11.1 are subject to:
- (a) the provision of reasonable prior notice;
 - (b) the Contractor's reasonable security procedures; and
 - (c) if appropriate, execution of a deed of confidentiality relating to non-disclosure of the Contractor's Confidential Information.
- 11.4 The requirement for access as specified in sub-clause 11.1 does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with the Deed.
- 11.5 In exercising the rights granted by this Clause 11, the Department will use reasonable endeavours to not interfere with the Contractor's performance of the Contract Services under the Deed in any material respect.
- 11.6 If, in the Contractor's reasonable opinion, there is likely to be a significant delay in the Contractor discharging an obligation under the Deed because of a cause beyond the reasonable control of the Contractor and as a direct result of the Department's action under this Clause 11, the Contractor may request a reasonable extension of time.
- 11.7 The Department shall not refuse a request for extension of time under sub-clause 11.6 without reasonable grounds for doing so.
- 11.8 The Contractor must ensure that any sub-contract entered into for the purpose of this Deed and Contract(s) under this Deed contains an equivalent clause granting the rights specified in this Clause 11.
- 11.9 This Clause 11 applies for the term of the Deed and for a period of five years from the date of expiration or termination.
- 12. ANAO Access**
- 12.1 The Auditor-General or a delegate of the Auditor-General, for the purpose of performing the Auditor-General's statutory functions, may, at reasonable times and on giving reasonable notice to the Contractor:
- (a) require the provision by the Contractor, its Staff or sub-Contractors, of records and information which are directly related to the Deed and any Contract(s) under the Deed;
 - (b) have access to the premises of the Contractor for the purposes of inspecting and copying documentation and records, however stored, in the custody or under the control of the Contractor, its Staff or sub-Contractors which are directly related to the Deed and any Contract(s) under the Deed; and, where relevant
 - (c) inspect any Department assets held on the premises of the Contractor.
- 12.2 In the case of documents or records stored on a medium other than in writing, the Contractor will make available on request such reasonable facilities as may be necessary to enable a legible reproduction to be created at no additional cost to the Commonwealth.

12.3 The Contractor shall ensure that any sub-contract entered into for the purpose of this Deed or any Contract under the Deed contains an equivalent clause granting the rights specified in this Clause 12.

12.4 This Clause 12 applies for the term of the Deed and for a period of five years from the date of expiration or termination.

13. Market Testing

13.1 The Contractor acknowledges that the Department is or will be undergoing a market testing process ('Market Testing') which may result in some of the current functions of the Department being outsourced to an external service provider and which may result in the responsibility for all or part of this Deed being transferred from the Department to the nominated external service provider.

13.2 Without affecting any rights the Department has with regard to disclosure of Confidential Information outside the provisions of this Clause 13, and subject to the provisions of sub-clause 13.3, the Department may, in the event of Market Testing and as part of the Market Testing process, disclose Confidential Information of the Contractor, details of the Contract and other information relating to the Contract and the Contract Services:

- (a) to its employees, agents or Contractors who have a need to know that information for the purposes of fulfilling the Department's requirements with regard to Market Testing; and
- (b) to potential Contractors to the Department where those potential Contractors are being solicited through a tender or other procurement process as part of the Market Testing program.

13.3 Prior to any disclosure of Confidential Information of the Contractor in accordance with the provisions of sub-clause 13.2 each agent, Contractor or potential Contractor mentioned in sub-clauses 13.2(a) and 13.2(b) must have agreed to confidentiality obligations in the form of written undertakings as required by the Department relating to the non-disclosure of Confidential Information.

13.4 The Department may, at no additional cost to the Department under this Deed and by giving the Contractor written notice:

- (a) assign the Department's rights and obligations under the Deed; or
- (b) require the Contractor to enter into a novation agreement by which the Department novates its rights and obligations under the Deed;

to any of the Department's Contractors engaged through the Market Testing program. The Contractor will cooperate with the Department and execute any documentation reasonably required by the Department to give effect to novation of this Deed required as a result of Market Testing.

13.5 The Contractor will provide any assistance reasonably requested by the Department to enable the newly appointed external service provider to commence performing its obligations under any outsourcing agreement entered into as a result of Market Testing.

Schedule 1

CONTRACT SERVICES

The Contractor may be required to undertake one, all or a combination of the following specialist communications-related market research Contract Services as a member of the Communication Market Research Panel as directed by the Department.

The specialist communications-related market research Contract Services to be performed by the Communication Market Research Panel may include, but are not limited to, the following:

- developmental research (both qualitative and quantitative);
- conceptual material testing;
- benchmarking and tracking;
- evaluation of the awareness and effectiveness of communication and education campaigns;
- recommendation of improvements to communication and education campaigns based on research;
- audience research – eg English speaking, Indigenous and non-English speaking, rural and remote Australians – to determine preferred methods of communication for each target audience;
- specialist Indigenous market research; and
- specialist non-English speaking (NESB) market research.

Each of the above areas of market research could include, but is not limited to, the following:

Developmental research (both qualitative and quantitative)

Development of research to identify key target audiences, explore issues and reactions to government policy and program changes, identify key areas of concern and establish whether a campaign can contribute to changing behaviour and attitudes.

Conceptual material testing

Product/conceptual material testing to develop and refine program area strategies, methods and tools, including testing key messages to ensure suitability for outlined target audiences and to determine understanding/usefulness of FaHCSIA's information and promotional materials.

Benchmarking and tracking

Benchmarking and tracking to measure the current awareness, knowledge and understanding of client groups on departmental policy and program measures.

Evaluation of the awareness and effectiveness of communication and education campaigns

Evaluation of the awareness and effectiveness of communication campaigns aimed at providing information to target audiences about the effects of changes in government policy and programs.

Analysis, interpretation and recommendations

Analysis and interpretation of research, resulting in reporting of recommendations of improvements to communication and education campaigns.

Audience research

Audience research with English speaking, Indigenous and non-English speaking, rural and remote Australians on campaign communication messages and materials to determine preferred methods of communication for each target audience and understand any barriers or triggers to communication for the target audiences.

Specialist Indigenous market research

Market research specifically tailored to target Indigenous audiences.

Specialist non-English speaking (NESB) market research

Market research specifically tailored to target non-English speaking (NESB) audiences.

Account Management

Management and coordination of projects will be undertaken by the Contractor's nominated Account Manager who will be available and contactable during the hours of a Business Day, including on non-Business Days and after hours on Business Days, in accordance with the agreed provision of the Contract Services in the Official Order for each project. The Contractor will provide the Department's Project Officer with contact details for the Account Manager or the Assistant Account Manager.

The Contractor will ensure that the Account Manager/Account Management Team will consist of person(s) who possess extensive experience (at least 5 years) in:

- managing and developing client relationships;
- communication, liaison, conflict resolution and negotiation;
- project management, including performance management of staff and sub-contractors, interpreting client briefs and requirements, monitoring of service levels including delivery of projects on schedule and according to specified requirements; and
- the provision of advice and project planning in the provision of market research services in support of communication campaigns and projects.

The Contractor is required to consult with the Project Officer regarding any changes to the specified personnel agreed to in the Official Order for each project.

Performance, Quality Assurance and Standards

The Contractor agrees to adhere to all the quality assurance processes as defined in their original tender response and to maintain all insurances as specified in their original response.

The Contractor will carry out professionally and ethically all Contract Services required under an Official Order.

Performance will be monitored by the Communication and Media Branch in accordance with the following:

- a) industry standards;
- b) the representations made by the Contractor in its response to the Request for Tender for inclusion on the Communication Market Research Panel;
- c) the requirements stated in the Request for Tender;
- d) the project brief provided by the Department to the Contractor outlining the project;
- e) the proposal from the Contractor in response to the project brief; and
- f) the specific requirements of the Official Order – namely:
 - timeliness to project deadlines;
 - total all-inclusive project fees (including GST) which should not exceed those provided in the Contractor's proposal (in accordance with contracted hourly rates);
 - expectations of the Department's Project Officer being met;
 - quality of the work performed; and
 - service levels offered and delivered.

The Department will formally notify the Contractor during the course of the provision of the Contract Services should the Project Officer nominated in the Official Order for the project be of the opinion that the Contractor is not meeting the agreed performance standards in carrying out the Contract Services.

The Contractor agrees to cooperate with the Department within 48 hours in addressing any failure to meet the agreed performance standards in an Official Order. The Contractor agrees to accept and be bound by such reasonable performance requirements as the Department may wish to include in an Official Order and as the circumstances of the Contract Services may reasonably indicate.

The Department reserves the right to remove Communication Market Research Panel members from the panel if they are not delivering the Contract Services specified in Official Orders to a high standard, in accordance with relevant best practice, including any Commonwealth and industry standards.

Recruitment of participants for market research

The Contractor will undertake all recruitment in accordance with the agreed methodology and requirements in the Official Order for each project.

Operation of the Communication Market Research Panel

The Communication and Media Branch will centrally manage the Communication Market Research Panel. As outlined in *clause 4-Commonwealth not bound to order from Contractor*, of the Deed of Agreement, Panel members will not be provided with any guarantee of work. To achieve best value for money for the Department, one or more panel members may be asked to submit a proposal for a project.

The Department will submit a project brief to the Contractor which will include:

- background information about the project;
- details of the project to be undertaken;
- key deliverables;
- details of any previous market research undertaken;
- project timelines;
- estimated budget, as applicable;
- name and contact details of the project officer; and
- briefing meeting details, as required.

The Contractor will be asked to provide a proposal to the Department in response to the project brief. The Contractor will:

- Provide a **fixed price all-inclusive quote** for the project, in accordance with their contracted fees. The quote must detail: all costs (GST inclusive) associated with delivery of the Contract Services including incentive payments, milestone payments, any optional extras and any proposed travel costs in accordance with departmental non-SES rates; the methodology to be used; how recruitment and fieldwork will be undertaken; the roles and responsibilities of the Contractor's specified personnel and/or sub-contractors, if any, who will deliver the Contract Services; the key deliverables of the project, including reporting, and the Contractor's ability to deliver the Contract Services within the required timelines.
- Not start any work on a specific project until an Official Order is executed by the Contractor and the Department for the project. The Official Order will have an Official Order Number and full details of the Contract Services agreed between the Department and the Contractor; name(s) of specified personnel and/or sub-contractors who will deliver the Contract Services to be provided; the total all-inclusive (including GST) fees to be paid to the Contractor for delivery of the Contract Services, including any agreed milestone payments; reporting requirements and the name of the Department's Project Manager.
- Always comply with the provisions of the Commonwealth *Privacy Act 1988 and the Privacy Amendment (Private Sector) Act 2000*, including the *Information Privacy Principles (IPPs) and National Privacy Principles (NPPs)*; the *Crimes Act 1914* and the *Criminal Code Act 1995* as they relate in particular to privacy, security, confidentiality, non-disclosure of information and protection of personal information; as well as those of the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, the *Equal Opportunity for Women in the Workplace Act 1999* and the *Social Security (Administration) Act 1999*.
- Declare and immediately notify the Department in writing if any conflict of interest arises at any time while undertaking any Contract Services.

Reporting

The Contractor will be required to self-report twice yearly (on or before 30 June and 20 December) to the Communication and Media Branch Panel Manager on the projects undertaken within that reporting period. Reports must include:

- a) the Official Order number for each project commenced or completed during the reporting period;
- b) the name of each project commenced or completed during the reporting period, including a brief description of each project;
- c) the total cost (GST inclusive) for each project for the reporting period;
- d) the total payments received by the Contractor against each Official Order for the reporting period;
- e) the name of the Department project officer for each project;
- f) an update on current accreditation received from approved certification bodies and membership of professional market research organisations; and
- g) copies of current insurance certificates to the amounts specified under *clause 18—Insurance of Schedule 6*.

A nil return should be submitted if there has been no activity during the reporting period, but current insurance certificates must be submitted each reporting period for all insurances specified under *clause 18—Insurance of Schedule 6*.

Specified Personnel

The following specified personnel have been approved by the Department for provision of the Contract Services outlined below:

Name	Position
Joan Young	Managing Director
Corey Fisher	Associate Director – Quantitative Research
Matthew Daniel	Associate Director – Qualitative Research
David Bruce	Account Director
John Young	Senior Qualitative Researcher
Jodie Temperton	Senior Account Manager
Nicole Mundy	Project Manager

The Contractor will provide notification to the Department in writing of any changes to the above approved Specified Personnel. At the time of advising the Department of the change, the Contractor will provide the Department with current curriculum vitae for the proposed Specified Personnel which outlines the experience and skills of the personnel in delivering communications-related market research services.

Sub-Contractors

The following sub-contractors have been approved by the Department for provision of the Contract Services outlined below:

Name of Sub-Contractor:	
Contract Services to be performed:	NO SUB-CONTRACTORS

If the Contractor intends to use a sub-contractor other than the above approved sub-contractors for delivery of the Contract Services, the Contractor will advise the Department in writing before any work is undertaken by the sub-contractor. At the time of providing this advice, the Contractor will include details of relevant current experience of the sub-contractor in delivering communications-related market research services. The Department will provide approval of the sub-contractor in writing to the Contractor.

Schedule 2

FEES, COSTS AND PAYMENT ARRANGEMENTS

A. Fees

A1 Subject to D [Quotes] below the fees to be paid to the Contractor for the Contract Services specified in the Official Order are as follows:

Price Schedule (Year 1 of Contract Term)

Staff/Resource Level	Year 1 of the Contract Term	
	Hourly rate (GST inclusive)	Daily rate (GST inclusive)
	\$	\$
Senior executive/partner/director/managing director	308	2464
Executive/associate director	253	2024
Research director/account director	242	1936
Senior research specialist	220	1760
Junior research specialist	165	1320
Recruitment specialist	52.80	422.40

Price Schedule (Year 2 of Contract Term)

Staff/Resource Level	Year 2 of the Contract Term	
	Hourly rate (GST inclusive)	Daily rate (GST inclusive)
	\$	\$
Senior executive/partner/director/managing director	324.50	2596
Executive/associate director	269.50	2156
Research director/account director	258.50	2068
Senior research specialist	231	1848
Junior research specialist	176	1408
Recruitment specialist	56.10	448.80

Price Schedule (Year 3 of Contract Term)

Staff/Resource Level	Year 3 of the Contract Term	
	Hourly rate (GST inclusive)	Daily rate (GST inclusive)
	\$	\$
Senior executive/partner/director/managing director	341	2728
Executive/associate director	286	2288
Research director/account director	275	2200
Senior research specialist	242	1936
Junior research specialist	187	1496
Recruitment specialist	59.40	475.20

B. Travel, Accommodation and Associated Expenses

- B1 The Department will, as a rule, only reimburse the Contractor for travel, accommodation and associated expenses reasonably incurred by the Contractor in the performance of the Contract Services, where such travel and accommodation has been approved in advance in writing by the Department. Expenses will be reimbursed at the rate payable to non-SES Department officers.

C. Payment Arrangements

- C1 If the Contractor is registered for GST, a valid tax invoice must be forwarded to the Department.
- C2 Method for Submission of Invoices (see sub-clause 3.3 of Schedule 6):
- (i) The Contractor will only be entitled to render an invoice for an amount that is due for payment under the Contract.
 - (ii) The Contractor will submit invoices to the Project Officer.
 - (iii) The due date for payment will be 30 days after delivery of a correctly rendered invoice to the Department following acceptance by the Department of the Contract Services.
 - (iv) An invoice will be taken to be correctly rendered if:
 - (a) it contains the:
 - full title of the Contract Services
 - name of the Project Officer
 - FaHCSIA Contract Number

- The Contractor's ABN (if applicable)
 - Contractor's bank account details
 - Bank details (if electronic payment is being used); and
- (b) the amount claimed in the invoice is:
- in accordance with the Official Order and the Contract Services for which payment is claimed; and
 - the Contract Services have been performed to the satisfaction of the Department and accepted by the Department;
- (c) the invoice is accompanied, where required, by documentation that provides evidence that the Contract Services have been performed or, where the Contractor is invoicing the Department for an installment, that the relevant part of the Contract Services have been performed, and provides detail of the hours worked for which fees are charged;
- (d) the amount claimed in the invoice is due for payment; and
- (e) the invoice is a valid tax invoice and complies with the requirements of the *A New Tax System (Goods and Services Tax) Act 1999*.

D. Quotes

- D1 The Department may request a quote for a project and the Contractor may submit a quote. The quote should be based on the contracted hourly rates which should be clearly identified against each activity to be undertaken for the project. If the Department accepts the quote, the fees payable will be specified in the Official Order.

Schedule 3

INFORMATION PRIVACY PRINCIPLES (IPP's)

(Sub-Clause 14.2 of Schedule 6 refers)

IPP 1 Manner and Purpose of Collection of Personal Information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:
 - (a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
 - (b) the collection of the information is necessary for or directly related to that purpose.
2. Personal information shall not be collected by a collector by unlawful or unfair means.

IPP 2 Solicitation of Personal Information from Individual Concerned

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector from the individual concerned;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, before the information is collected or, if that is not practicable, as soon as practicable after the information is collected, the individual concerned is generally aware of:

- (i) the purpose for which the information is being collected;
- (ii) if the collection of the information is authorised or required by or under law - the fact that the collection of the information is so authorised or required; and
- (iii) any person to whom, or any body or agency to which, it is the collector's usual practice to disclose personal information of the kind so collected, and (if known by the collector) any person to whom, or any body or agency to which, it is the usual practice of that first-mentioned person, body or agency to pass on that information.

IPP 3 Solicitation of Personal Information Generally

Where:

- (a) a collector collects personal information for inclusion in a record or in a generally available publication; and
- (b) the information is solicited by the collector;

the collector shall take such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is collected:

- (i) the information collected is relevant to that purpose and is up to date and complete; and
- (ii) the collection of the information does not intrude to an unreasonable extent upon the personal affairs of the individual concerned.

IPP 4 Storage and Security of Personal Information

A record-keeper who has possession or control of a record that contains personal information shall ensure:

- (a) that the record is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and
- (b) that if it is necessary for the record to be given to a person in connection with the provision of a service to the record-keeper, everything reasonably within the power of the record-keeper is done to prevent unauthorised use or disclosure of information contained in the record.

IPP 5 Information Relating to Records Kept by Record-Keeper

1. A record-keeper who has possession or control of records that contain personal information shall, subject to Clause 2 of this Principle, take such steps as are, in the circumstances, reasonable to enable any person to ascertain:
 - (a) whether the record-keeper has possession or control of any records that contain personal information; and
 - (b) if the record-keeper has possession or control of a record that contains such information:
 - (i) the nature of that information;
 - (ii) the main purposes for which that information is used; and
 - (iii) the steps that the person should take if the person wishes to obtain access to the record.
2. A record-keeper is not required under Clause 1 of this Principle to give a person information if the record-keeper is required or authorised to refuse to give that information to the person under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.
3. A record-keeper shall maintain a record setting out:
 - (a) the nature of the records of personal information kept by or on behalf of the record-keeper;
 - (b) the purpose for which each type of record is kept;
 - (c) the classes of individuals about whom records are kept;
 - (d) the period for which each type of record is kept;
 - (e) the persons who are entitled to have access to personal information contained in the records and the conditions under which they are entitled to have that access; and
 - (f) the steps that should be taken by persons wishing to obtain access to that information.
4. A record-keeper shall:
 - (a) make the record maintained under Clause 3 of this Principle available for inspection by members of the public; and

- (b) give the Commissioner, in the month of June in each year, a copy of the record so maintained.

IPP 6 Access to Records Containing Personal Information

Where a record-keeper has possession or control of a record that contains personal information the individual concerned shall be entitled to have access to that record except to the extent that the record-keeper is required or authorised to refuse to provide the individual with access to that record under the applicable provisions of any law of the Commonwealth that provides for access by persons to documents.

IPP 7 Alteration of Records Containing Personal Information

1. A record-keeper who has possession or control of a record that contains personal information shall take such steps (if any), by way of making appropriate corrections, deletions and additions as are, in the circumstances, reasonable to ensure that the record:
 - (a) is accurate; and
 - (b) is, having regard to the purpose for which the information was collected or is to be used and to any purpose that is directly related to that purpose, relevant, up to date, complete and not misleading.
2. The obligation imposed on a record-keeper by Clause 1 is subject to any applicable limitation in a law of the Commonwealth that provides a right to require the correction or amendment of documents.
3. Where:
 - (a) the record-keeper of a record containing personal information is not willing to amend that record, by making a correction, deletion or addition, in accordance with a request by the individual concerned; and
 - (b) no decision or recommendation to the effect that the record should be amended wholly or partly in accordance with that request has been made under the applicable provisions of a law of the Commonwealth;

the record-keeper shall, if so requested by the individual concerned, take such steps (if any) as are reasonable in the circumstances to attach to the record any statement provided by that individual of the correction, deletion or addition sought.

IPP 8 Record-Keeper to check accuracy etc. of Personal Information before use

A record-keeper who has possession or control of a record that contains personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date and complete.

IPP 9 Personal Information to be used only for relevant purposes

A record-keeper who has possession or control of a record that contains personal information shall not use the information except for a purpose to which the information is relevant.

IPP 10 Limits on use of Personal Information

1. A record-keeper who has possession or control of a record that contains personal information that was obtained for a particular purpose shall not use the information for any other purpose unless:
 - (a) the individual concerned has consented to use of the information for that other purpose;
 - (b) the record-keeper believes on reasonable grounds that use of the information for that other purpose is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person;
 - (c) use of the information for that other purpose is required or authorised by or under law;
 - (d) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue; or
 - (e) the purpose for which the information is used is directly related to the purpose for which the information was obtained.
2. Where personal information is used for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the record-keeper shall include in the record containing that information a note of that use.

IPP 11 Limits on Disclosure of Personal Information

1. A record-keeper who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:
 - (a) the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person, body or agency;
 - (b) the individual concerned has consented to the disclosure;
 - (c) the record-keeper believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;
 - (d) the disclosure is required or authorised by or under law; or
 - (e) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.
2. Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the record-keeper shall include in the record containing that information a note of the disclosure.
3. A person, body or agency to whom personal information is disclosed under Clause 1 of this Principle shall not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

Schedule 4

PROFORMA DEED OF CONFIDENTIALITY

(Clause 12.4 of Schedule 6 refers)

THIS DEED is made the _____ day of _____ 20XX

BETWEEN

the Commonwealth of Australia as represented by the Department of Families, Housing, Community Services and Indigenous Affairs ("the Department")

AND

_____ (the "Confidant")

RECITALS

- A. The Confidant is an officer/employee/agent/sub-Contractor of the Contractor.
- B. The Contractor is _____ (the "Contractor").
- C. The Contractor and the Department are parties to a Contract in relation to _____ (the "Contract") dated _____.
- D. The Confidant may become aware of information pertaining to, or in connection with, the Contract which is Confidential Information.
- E. The Department requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed of Confidentiality) to ensure that Confidential Information is kept confidential.

COVENANTS

1. Interpretation

"Commonwealth Material" has the same meaning as defined in the Contract.

"Confidential Information" means information that:

- (a) is comprised in Contract Material or Commonwealth Material;
- (b) is described in an Official Order as Confidential Information;
- (c) is Personal Information under the *Privacy Act 1988*;
- (d) amounts to protected information (information about a person that is or was held in the records of the Department, or information that there is no information about a person held in the records of the Department) under section 23(1) of the *Social Security Act 1991*;

- (e) is protected information under Division 2 of Part 6 of *A New Tax system (Family Assistance) [Administration] Act 1999* or other Commonwealth legislation;
- (f) is by its nature confidential;
- (g) is designated by the Department as confidential;
- (h) the Contractor knows or ought to know is confidential; or
- (i) is information that is agreed between the Parties in writing after the date of commencement of the Contract as constituting Confidential Information for the purposes of the Contract.

Confidential Information does not include information which:

- (i) is or becomes public knowledge other than by breach of this Deed or any other confidentiality obligations;
- (ii) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Department; or
- (iii) has been independently developed or acquired by the Contractor as established by written evidence.

"Contract Material" has the same meaning as defined in the Contract.

"Deed" means this Deed of Confidentiality.

"Document" includes:

- (a) any paper or other material on which there is writing;
- (b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning to persons qualified to interpret them; and
- (c) any article, material or media from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device.

"Intellectual Property" has the same meaning as defined in the Contract.

"Party" means a Party to the Contract.

"Third Party Interest" means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth, the Contractor or the Confidant in connection with the Contract, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.

"Staff" means a Party's employees, agents, Contractors or advisers engaged in the performance or management of the Contract.

2. Non Disclosure

2.1 In consideration of the Department disclosing certain Confidential Information to the Confidant, the Confidant acknowledges and agrees with the Department:

- (a) that all Confidential Information is secret and confidential, is the property of the Department, and that any Confidential Information disclosed to the Confidant is disclosed to the Confidant only pursuant to the terms of this Deed;
- (b) to keep Confidential Information secret and confidential at all times; and
- (c) that it must observe and be bound by the provisions of this Deed.

3. Restriction on Use

3.1 The Confidant must use Confidential Information only for the purpose of performing any obligation of a party under or in relation to the Contract.

3.2 The Confidant must:

- (a) take all reasonable steps and do all reasonable things necessary, and do all things that may be reasonably required by the Department to keep the Confidential Information, including all Documents setting out or referring to any Confidential Information, under effective control of the Confidant;
- (b) immediately notify the Department in the event that the Confidant becomes aware of any unauthorised access to, or use or disclosure of, any Confidential Information;
- (c) not use, copy or reproduce any Document, nor allow any other person to use or reproduce any Document, setting out or referring to any Confidential Information otherwise than for the purposes specified in Clauses 4 and 5 without the prior written consent of the Department, which consent the Department may grant or withhold in its absolute discretion;
- (d) take all reasonable steps to ensure that the Confidential Information, including all Documents, setting out or referring to the Confidential Information, are protected at all times from any unauthorised use or access;
- (e) subject to Clauses 4 and 5, the Confidant will if required at any time by the Department, deliver up to the Department, or at the option of the Department destroy, all Confidential Information in all Documents, including Documents setting out or referring to any Confidential Information in the possession, custody or control of the Confidant; and
- (f) if required by the Department:
 - (i) permit the Department or any nominees of the Department reasonable access to the premises of the Confidant to ensure or check compliance with this Deed; and/or
 - (ii) provide to the Department a statutory declaration signed by the Confidant stating that Clause 4 or Clause 5, as the case may require, has been complied with.

3.3 The Confidant may retain a copy of the Confidential Information if, and only to the extent to which and for the purpose for which, the Confidant is required by law to do so.

4. Disclosure to Employees and Nominees

4.1 Subject to this Clause 4, the Confidant may give access to or disclose the Confidential Information disclosed to the Confidant to:

- (a) any fellow employee of the Confidant;
- (b) any Staff of the Confidant; or
- (c) any other person;

provided that the person (a "Nominee") to whom the Confidant proposes to disclose or give access to Confidential Information:

- (i) has been nominated by the Confidant in writing to the Department and the Department has consented in writing prior to any such access or disclosure; and
- (ii) is a person to whom it is necessary that access to or disclosure of such Confidential Information be given to enable the Confidant to perform its obligations under the Contract.

4.2 Any Staff, fellow employee or Nominee to whom access or disclosure of any Confidential Information is to be given pursuant to this Clause 4 must have given a written undertaking in such form as the Department may require prior to any such access or disclosure being given.

5. Disclosure as Required By Law

5.1 The obligations on the Confidant under this Deed will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by the Confidant in response to a request by any Commonwealth Minister, or by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (b) is authorised or required by law to be disclosed; or
- (c) is in the public domain otherwise than due to a breach of this Deed or the Contract.

5.2 Where the Confidant discloses Confidential Information to another person pursuant to sub-clause 5.1 the Confidant must notify the receiving person that the information is Confidential Information.

5.3 The Confidant may disclose any Confidential Information which the Confidant is required by law to disclose, but only if:

- (a) the extent and manner of the disclosure is strictly limited to what is required by law; and
- (b) the Confidant has:
 - (i) given the Department sufficient notice to enable the Department to seek a protective order or other relief from disclosure; and
 - (ii) provided all assistance and cooperation which the Department reasonably considers necessary for that purpose.

6 Security

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

7. Privacy

7.1 This Clause 7 applies only where the Confidant deals with Personal Information when, and for the purpose of, providing Contract Services under the Contract.

7.2 In this Clause 7, the terms 'agency', 'approved privacy code' (APC), 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as

they have in section 6 of the Privacy Act, and 'Personal Information', which also has the meaning it has in section 6 of the Privacy Act, means:

'information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

7.3 The Confidant acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of Contract Services under the Contract:

- (a) to use or disclose Personal Information obtained during the course of providing Contract Services under the Contract, only for the purposes of the Contract;
- (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under that Act;
- (d) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Confidant, unless:
 - (i) in the case of section 16F of the Privacy Act – the use or disclosure is necessary, directly or indirectly, to discharge an obligation under the Contract; or
 - (ii) in the case of an NPP or an APC – where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under the Contract or this Deed, and the activity or practice which is authorised by the Contract or Deed is inconsistent with the NPP or APC;
- (e) to immediately notify the Department if the Confidant becomes aware of a breach or possible breach of any of the obligations contained in, or referred to, in this Clause 7, whether by the Confidant, Staff, fellow employee or Nominee;
- (f) to comply with any directions, guidelines, determinations or recommendations of the Department to the extent that they are not inconsistent with the requirements of this Clause; and
- (g) to ensure that any Staff, fellow employee or Nominee of the Confidant who is required to deal with Personal Information for the purposes of the Contract is made aware of the obligations of the Confidant set out in this Clause 7.

7.4 The Confidant agrees to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Confidant under this Clause 7.

7.5 The provisions of this Clause 7 survive termination or expiration of the Contract.

8. Delivery up of Documents

- 8.1 The Department may, at any time and without notice, demand, either orally or in writing, the delivery to the Department of all documents in the possession or control of the Confidant which contain the Confidential Information.

9. Conflict of Interest

- 9.1 The Confidant warrants that no conflict of interest exists or is likely to arise while in receipt of Confidential Information.
- 9.2 The Confidant warrants that it will not permit any situation to arise or engage in any activity which may result in a conflict of interest with the Confidant's receipt of Confidential Information.

10. Crimes Act

- 10.1 The Confidant acknowledges that section 3(1) of the *Crimes Act 1914* states that the term "Commonwealth officer" includes a person who "performs services for or on behalf of the Commonwealth".
- 10.2 The Confidant acknowledges that:
- (a) the giving of false and misleading information is a serious offence under section 137.1 of the *Criminal Code Act 1995* and there are a number of computer offences and other offences under the *Criminal Code Act 1995* for which there are a range of penalties, including a maximum of ten years imprisonment; and;
 - (b) the publication or communication by the Confidant of any fact or document which has come to its knowledge or into its possession or custody by virtue of the performance of the Contract (other than to a person to whom the Confidant is authorised to publish or disclose the fact or document) may be an offence under section 70 of the *Crimes Act 1914*, punishment for which may be a maximum of two (2) years imprisonment.

11. Commencement

- 11.1 This Deed will be taken to have commenced on the date on which the Confidant first received the Confidential Information, whether or not that date was before the date of the execution of this Deed.

12. Indemnity

- 12.1 In addition to Clause 7, the Confidant indemnifies the Department against any claim, loss, liability or expense incurred by the Department which is caused or contributed to by:
- (a) the Confidant's failure to comply with this Deed; or
 - (b) the act or omission of the Confidant's employees, agents or sub-Contractors in relation to Confidential Information.

13. Survival of Obligations

- 13.1 The obligations under this Deed continue, notwithstanding the expiry or termination of this Deed:

- (a) in relation to an item of information described in an Official Order, for the period set out in that Official Order in respect of that item; and
- (b) in relation to any information which the Parties agree in writing after the date of commencement of the Contract is to constitute Confidential Information for the purposes of the Contract, for the period agreed by the Parties in writing in respect of that information.

14. Applicable Law

14.1 This Deed will be governed by and construed in accordance with the laws of the Australian Capital Territory and the Confidant agrees to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of all matters arising under, or in relation to, this Deed.

15. No Exclusion

15.1 This Deed does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

15.2 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law.

16. Waiver

16.1 Failure by the Department to enforce a provision of the Deed will not be construed as in any way affecting the enforceability of that provision or of the Deed as a whole.

17. Moral Rights Consent

17.1 For the purposes of this Clause 17 'Specified Acts' in relation to any Contract Material, means the following classes or types of acts or omissions:

- (a) those which would, but for this Clause 17, infringe the author's right of attribution of authorship;
- (b) those which would, but for this Clause 17, infringe the author's right of integrity of authorship;

but does not include:

- (c) those which would infringe the author's right not to have authorship falsely attributed.

17.2 Where the Confidant is a natural person and the author of any Contract Material, he or she consents to the Specified Acts by or on behalf of the Commonwealth in relation to such Contract Material (whether occurring before or after the consent is given).

17.3 In any other case, the Confidant warrants or undertakes that the author of the Contract Material has given or will give a written consent to the Specified Acts, and that such consent extends directly or indirectly to the performance of the Specified Acts by or on behalf of the Commonwealth in relation to such Contract Material (whether occurring before or after the consent is given).

Schedule 5

INFORMATION TO BE SET OUT IN AN OFFICIAL ORDER

1. Date

For example: "This Official Order is executed on ___/___/20XX."

2. Contract Services

2.1 A full description of the Contract Services, the manner and method in which they are to be performed, any particular conditions, issues or other requirements. Performance measures, where there are any, may also need to be included.

3. Endorsement

3.1 Each Official Order is to contain the following endorsement:

"This Official Order is placed pursuant to and subject to the terms and conditions of the Deed Number XXXXXXXXX between the Department and XXXXXXXXX dated XX/XX/XXXX."

4. Term

4.1 The Term or period of the Official Order.

5. Contract Personnel

5.1 A description of the Contract Personnel required and their names where possible or known.

6. Fees

6.1 The fees payable for the performance of the Contract Services calculated in accordance with Schedule 2 and, if applicable, any fee or costs for travel associated with the performance of the Contract Services calculated in accordance with Schedule 2.

7. The Project Officer

7.1 The name, job description or title and full contact details of the relevant Project Officer.

8. Times for Delivery

8.1 The most appropriate specification of the times or schedules for the delivery of the Contract Services and outcomes under the Contract, and what those deliverables and outcomes will comprise.

9. Payment Arrangements

9.1 Whether the Department can pay by instalments and, if so, the intervals for payment, the milestones etc.

Milestone Details	Milestone Date	Milestone Payment

9.2 Submission of Invoices:

- (i) The Contractor will only be entitled to render an invoice for an amount that is due for payment under the Contract.
- (ii) The Contractor will submit invoices to the Project Officer.
- (iii) The due date for payment will be 30 days after delivery of a correctly rendered invoice to the Department following acceptance by the Department of the Contract Services.
- (iv) An invoice will be taken to be correctly rendered if:
 - (a) it contains:
 - the full title of the Contract Services
 - the name of the Project Officer
 - the FaHCSIA Contract Number
 - the Contractor's ABN (if applicable)
 - the Contractor's bank account details
 - Bank details (if electronic payment is being used); and
 - (b) the amount claimed in the invoice is:
 - in accordance with the Contract Services for which payment is claimed; and
 - the Contract Services have been performed to the satisfaction of the Department and accepted by the Department;
 - (c) the invoice is accompanied, where required, by documentation that provides evidence that the Contract Services have been performed or, where the Contractor is invoicing the Department for an installment, that the relevant part of the Contract Services have been performed, and provides detail of the hours worked for which fees are charged;
 - (d) the amount claimed in the invoice is due for payment; and
 - (e) the invoice is a valid tax invoice and complies with the requirements of the *A New Tax System (Goods and Services Tax) Act 1999*.

10. **Contract Material**

- 10.1 Any Contract Material required to be provided/produced and delivered by the Contractor. Should specify in what form – eg. reports, interim reports, etc - including provisions regarding the form – eg. hard copy, data storage system, sound or visual images - in which the Contract Material is to be provided/delivered.

11. **Commonwealth Material**

- 11.1 Any exceptions to sub-clauses 9.1 and 9.2 of Schedule 6.

12. **Restrictions**

- 12.1 Any restrictions on the use by the Contractor of Commonwealth or Contract Material.

13. Confidential Information of the Parties

13.1 Commonwealth's Confidential Information

(a) Contract Provisions/Schedules/Items

Provision/Schedule/Item	Rationale	Period of Confidentiality

(b) Contract-related material

Item	Rationale	Period of Confidentiality

13.2 Contractor's Confidential Information

(a) Contract Provisions/Schedules/Items

Provision/Schedule/Item	Rationale	Period of Confidentiality

(b) Contract-related material

Item	Rationale	Period of Confidentiality

14. Other Conditions

14.1 Any other terms and conditions which the parties agree to specify. Note that these terms and conditions will prevail over the terms in Schedule 6 to the extent of any inconsistency except where the contrary is provided for in Schedule 6.

15. Notices

15.1 Details for both the Department and the Contractor.



Schedule 6

TERMS AND CONDITIONS APPLICABLE WHEN A CONTRACT IS CREATED BY THE DELIVERY OF AN OFFICIAL ORDER BY THE DEPARTMENT TO THE CONTRACTOR

1. Interpretation

1.1 In the Contract unless the contrary intention appears:

"Commonwealth Material" means any Material provided by the Department to the Contractor for the purposes of this Contract or which is copied or derived from Material so provided.

"Confidential Information" means information that:

- (a) is comprised in Contract Material or Commonwealth Material;
- (b) is described in an Official Order as Confidential Information;
- (c) is Personal Information under the *Privacy Act 1988*;
- (d) amounts to protected information (information about a person that is or was held in the records of the Department, or information that there is no information about a person held in the records of the Department) under section 23(1) of the *Social Security Act 1991*;
- (e) is protected information under Division 2 of Part 6 of *A New Tax system (Family Assistance) [Administration] Act 1999* or other Commonwealth legislation;
- (f) is by its nature confidential;
- (g) is designated by the Department as confidential;
- (h) the Contractor knows or ought to know is confidential; or
- (i) is information that is agreed between the Parties in writing after the date of commencement of the Contract as constituting Confidential Information for the purposes of the Contract.

Confidential Information does not include information which:

- (i) is or becomes public knowledge other than by breach of this Contract or any other confidentiality obligations; or
- (ii) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Department; or
- (iii) has been independently developed or acquired by the Contractor as established by written evidence.

"Contract" means the contract created as a result of the placement of an Official Order by the Department on the Contractor.

"Contract Material" means all Material:

- (a) brought into existence for the purpose of performing the Contract Services;
- (b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or

- (c) copied or derived from Material referred to in paragraphs (a) or (b); but
- (d) does not include trademarks or trade names of the Contractor.

“Contractor”, where the context so admits, includes the officers, employees, volunteers, bailees, agents and sub-Contractors of the Contractor.

“Contract Services” means, for the purposes of these terms and conditions, the Contract Services specified in the Official Order.

“Data” means any information provided by the Contractor under this Contract from any source, or collected or created by the Contractor in connection with the Contract Services, whether in magnetic, electronic, hard copy or any other form.

“Intellectual Property” means all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered designs, confidential information (including trade secrets and know-how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

“Material” includes documents, equipment, software, goods, information and Data stored by any means.

“Party” means a Party to the Contract.

“Project Officer” means the person for the time being holding, occupying or performing the duties specified in this Contract and who is empowered to perform any function or to exercise any power of the Department under this Contract.

“Third Party Interest” means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Contractor in connection with the Contract, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.

2. Performance of the Contract Services

- 2.1 The Contractor will perform the Contract Services at a high standard, in accordance with relevant best practice, including any Commonwealth and industry standards and guidelines specified in the Official Order and to the satisfaction of the Project Officer.
- 2.2 This Contract commences on the date that it is signed and expires on the date specified in the Official Order.
- 2.3 Any extension of the Contract Term by the Department will be agreed to by both parties and provided in writing.
- 2.4 The Contractor will perform the Contract Services at the times, within the period and in the manner specified in the Official Order.
- 2.5 The Contractor agrees to be fully responsible for the performance of the Contract Services and for ensuring compliance with the requirements of this Contract, and will not be relieved of that responsibility because of any:
 - (a) involvement by the Department in the performance of the Contract Services;
 - (b) payment made to the Contractor on account of the Contract Services; or

- (c) acceptance by the Department of replacement personnel as provided in Clause 5 of this Contract.

3. Fees and Taxes (Including GST), Duties and Government Charges

- 3.1 The Department will pay to the Contractor the fees specified in the Official Order calculated in accordance with Schedule 2 of the Deed, or as otherwise agreed between the parties, within 30 days of receipt of a correctly rendered invoice.
- 3.2 Where the Official Order provides that the Contractor is to be paid by progressive instalments, the Department will be entitled, without derogating from any other right it may have, to defer payment of an instalment until the Contractor has completed to the satisfaction of the Department that part of the Contract Services to which that instalment relates.
- 3.3 The Contractor will submit invoices for payment in the manner specified in Schedule 2 of the Deed and in sub-clause 3.10 below. The Department prefers payments to be issued by electronic funds transfer. The Contractor agrees to provide all relevant financial account details to the Department.
- 3.4 If the Contractor is registered for ABN, the Contractor warrants that:
- (a) at the date of entering into this Contract it is entitled to be and has been registered on the Australian Business Register for the Australian Business Number (ABN) appearing in this Contract;
 - (b) it will maintain its ABN registration on the Australian Business Register until the expiration or termination of this Contract, and
 - (c) the Contractor agrees to be responsible for paying to the Australian Taxation Office all Pay as You Go (PAYG) installments that are required to be paid by the Contractor under the *Taxation Administration Act 1953* in relation to the Contract.
- 3.5 Except as provided by this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract shall be borne by the Contractor.
- 3.6 The amount payable to the Contractor under this Contract determined in accordance with sub-clause 3.1 ('the Original Amount Payable') includes an amount to cover any liability of the Contractor for Goods and Services Tax (GST) on any taxable supplies as determined under *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).
- 3.7 If applicable, the Contractor agrees to reduce the Original Amount Payable to ensure that the benefit of any reduction in or removal of taxes, duties or charges which impacts on the costs to the Contractor in performing this Contract is passed onto the Department.
- 3.8 If a reduction to the Original Amount Payable is made under this clause, the reduced amount will become the 'Original Amount Payable' for the purposes of this Contract and will be effective from the date that the benefit of any reduction in or removal of taxes, duties or charges accrues to the Contractor.
- 3.9 If required to do so by the Department at any time, the Contractor shall substantiate to the Department's reasonable satisfaction how any reduction in the amounts payable by the Department under this clause has been calculated.

3.10 The Contractor agrees to issue the Department with a valid tax invoice in accordance with the GST Act in relation to taxable supplies made under this Contract.

4. Provision of Office Services by the Department

4.1 The Department will provide Contract Personnel with office accommodation, services and supplies as agreed by the Department in each Official Order, for the performance of the Contract Services.

5. Contract Personnel

5.1 The Contractor will ensure that the Contract Personnel undertake work in respect of the Contract Services in accordance with the terms of the Contract.

5.2 The Contractor will ensure that the Contract Personnel sign any documents that the Department considers necessary to conduct appropriate security checks on the Contract Personnel. If at any time during the performance of the Contract Services the Department considers in its reasonable opinion that the Contract Personnel present a security risk for the Department, the Department will be entitled to request that the relevant Contract Personnel cease work. The Department will also be entitled to request that the Contractor provide replacement personnel acceptable to the Department. Any replacement personnel will be provided at no additional charge and at the earliest opportunity. The Contractor will comply with any requests made by the Department under this clause.

5.3 Where Contract Personnel are unable to undertake work in respect of the Contract Services, the Contractor will notify the Department immediately. The Contractor will, if so requested by the Department, provide replacement personnel acceptable to the Department at no additional charge and at the earliest opportunity.

5.4 The Department may, at its absolute discretion, give notice requiring the Contractor to remove personnel (including Contract Personnel) from work in respect of the Contract Services. The Contractor will, at its own cost, promptly arrange for the removal of such personnel from work in respect of the Contract Services and, if requested by the Department, their replacement with personnel acceptable to the Department.

5.5 If the Contractor is unable to provide acceptable replacement personnel where the Department has requested replacement personnel pursuant to sub-clause 5.2 or sub-clause 5.3 or sub-clause 5.4, the Department may terminate the Contract in accordance with the provisions of Clause 22.

6. Liaison

6.1 The Contractor will liaise with and report to the Project Officer as reasonably required by the Project Officer during the period of the Contract.

6.2 The Contractor may nominate from time to time a person who has authority to receive and sign notices and written communications for the Contractor under the Contract and accept any request or direction in relation to the Contract Services.

7. Sub-Contracting

- 7.1 The Contractor agrees that it will not, without the prior written approval of the Department, sub-contract the performance of any part of the Contract Services. In giving written approval the Department may impose such terms and conditions as it thinks fit.
- 7.2 The Contractor agrees to be fully responsible for the performance of the Contract Services notwithstanding that the Contractor has sub-contracted the performance of any part of those Contract Services.
- 7.3 Despite any approval given by the Department, the Contractor will be responsible for ensuring the suitability of a sub-Contractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Contract.

8. Contract Material

- 8.1 Ownership of all Contract Material will vest in the Department on creation.
- 8.2 The Contractor undertakes to ensure that all Contract Material is neatly and legibly compiled and adequately documented and contains sufficient evidence to support all conclusions, findings, and opinions.
- 8.3 The Contractor agrees to provide the Contract Material in the form specified in the Official Order.
- 8.4 The Contractor agrees to establish and maintain procedures to secure Contract Material against loss and unauthorised access, use, modification or disclosure.
- 8.5 On the expiration or earlier termination of this Contract, the Contractor agrees to deliver to the Department all Contract Material remaining in its possession within seven (7) days.
- 8.6 This Clause applies subject to any stipulation to the contrary in the Official Order.

9. Commonwealth Material

- 9.1 Ownership of all Commonwealth Material remains vested at all times in the Commonwealth.
- 9.2 On the expiration or earlier termination of this Contract, the Contractor agrees to return to the Department within seven (7) days, all Commonwealth Material remaining in its possession.
- 9.3 The Contractor will ensure that the Commonwealth Material is used, copied, supplied or reproduced only for the purposes of the Contract.
- 9.4 The Contractor will use the Commonwealth Material strictly in accordance with any conditions or restrictions set out in the Official Order, or notified from time to time in writing by the Department.
- 9.5 The Commonwealth grants to the Contractor a royalty-free, non-exclusive licence to use, reproduce and adapt the Commonwealth Material for the purposes of this Contract.
- 9.6 This Clause 9 applies notwithstanding any stipulation to the contrary in the Official Order.

10. Intellectual Property Rights

- 10.1 Subject to this clause, Intellectual Property in all Contract Material vests immediately in the Commonwealth. The Contractor will ensure that where any of the Contract Personnel are not employees of the Contractor that all necessary documentation will be entered into by the Contract Personnel to allow Intellectual Property in Contract Material to vest in the Commonwealth in accordance with this clause.
- 10.2 Sub-clause 10.1 does not affect the ownership of Intellectual Property in any pre-existing material in which intellectual property rights subsist, however in that case, the Contractor grants to the Commonwealth a permanent, irrevocable, royalty-free, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt and exploit the pre-existing material anywhere in the world.
- 10.3 If requested by the Department to do so the Contractor will, at its own cost, bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this Clause.
- 10.4 The Contractor warrants that it is entitled, or will be entitled, or will procure that it is entitled at the relevant time, to deal with the Intellectual Property in any Contract Material in the manner provided for in this clause.
- 10.5 The Contractor agrees to at all times indemnify and hold harmless the Commonwealth, its officers, employees and agents (in this Clause referred to as 'those indemnified') from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability, incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement of Intellectual Property rights by the Contractor, its officers, employees, agents or sub-Contractors in the course of, or incidental to, performing the Contract Services or the use by the Commonwealth of the Contract Material.
- 10.6 The indemnity referred to in this Clause 10 will survive the expiration or termination of the Contract.

11. Collection of Information

- 11.1 The Contractor will only collect information on behalf of the Commonwealth as directed by the Commonwealth, and will collect it in accordance with the procedures specified from time to time by the Commonwealth.

12. Disclosure of Confidential Information

Confidential Information not to be disclosed

- 12.1 Subject to sub-clause 12.7 a Party must not, without the prior written consent of the other Party, use, disclose or publish (including by means of the Internet) any Confidential Information of the other Party.
- 12.2 The Contractor will not transfer any of the Commonwealth's Confidential Information outside Australia, or allow persons outside Australia to have access to such material, without the prior written consent of the Commonwealth.

- 12.3 In giving written consent to use, disclose, publish or transfer the Commonwealth's Confidential Information the Commonwealth may impose such conditions as it thinks fit, and the Contractor agrees to comply with those conditions.

Written undertakings

- 12.4 The Commonwealth may at any time require the Contractor to give and to arrange for its officers, employees, agents and sub-Contractors engaged in the performance of the Contract Services to give, or arrange for any person with a Third Party Interest to give, written undertakings in a form required by the Department (Schedule 4 refers) relating to the use and non-disclosure of the Commonwealth's Confidential Information.
- 12.5 If the Contractor receives a request under sub-clause 12.4, it must promptly arrange for all such undertakings to be given to the Department.
- 12.6 The Contractor will make available to the Project Officer or other nominated Departmental representatives the original non-disclosure undertakings made by all or specified officers, employees, agents and sub-Contractors of the Contractor, within seven (7) days of a verbal or written request being made by the Project Officer or other nominated Departmental representative.

Exceptions to Obligations

- 12.7 The obligations on the Parties under this Clause 12 will not be taken to have been breached to the extent that Confidential Information:
- (a) is disclosed by a Party to its officers or employees solely in order to comply with obligations, or to exercise rights, under this Contract;
 - (b) is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of Contract-related activities;
 - (c) is disclosed by the Commonwealth in response to a request by any Commonwealth Minister, or by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (d) is authorised or required by law to be disclosed by the Commonwealth;
 - (e) is authorised or required by law to be disclosed by the Contractor, provided the Contractor notifies the Department immediately and such notification is prior to disclosure;
 - (f) is disclosed by the Commonwealth and is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property in relation to that material form, has vested in, or is assigned to, the Commonwealth under this Contract or otherwise, and that disclosure is permitted by that licence or otherwise; or
 - (g) is in the public domain otherwise than due to a breach of this Clause 12.

Obligation on disclosure

- 12.8 Where a Party discloses Confidential Information to another person:
- (a) pursuant to sub-clauses 12.7 (a) or (b), the disclosing Party must:

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- (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
- (b) pursuant to sub-clause 12.7(c), the disclosing Party must notify the receiving Party that the information is Confidential Information.

Additional Confidential Information

- 12.9 The Parties may agree in writing after the date of commencement of this Contract that certain information is to constitute Confidential Information for the purposes of this Contract.
- 12.10 Where the Parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract, this documentation is incorporated into, and becomes part of, this Contract, on the date by which both Parties have signed this documentation.

Period of confidentiality

- 12.11 The obligations under this Clause 12 continue, notwithstanding the expiry or termination of this Contract:
- (a) in relation to an item of Confidential Information described in this Contract, for the period set out in respect of that item; and
 - (b) in relation to any information which the Parties agree in writing after the date of commencement of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the Parties in writing in respect of that information.

No Reduction in Privacy Obligations

- 12.12 Nothing in this Clause 12 derogates from any obligation which either Party may have either under the *Privacy Act 1988* as amended from time to time, or under this Contract, in relation to the protection of Personal Information.

13. Use and Return of Information

- 13.1 The Contractor will use Confidential Information held or acquired or which the Contractor may have had access to in connection with the Contract only for the purposes of fulfilling its obligations under the Deed and any Contract under the Deed.
- 13.2 On expiration or earlier termination of the Deed or Contract under the Deed, the Contractor will, on request, deliver up to the Department (and not retain any copies) all material forms of Confidential Information.
- 13.3 This Clause 13 will survive the expiration or termination of the Contract, and applies notwithstanding any contrary provision in the Official Order.

14. Privacy Act 1988 (Commonwealth)

- 14.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Contract Services under this Contract.
- 14.2 The Contractor acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (the Privacy Act), and agrees in respect of the provision of the Contract Services under this Contract:
- (a) to use or disclose Personal Information obtained during the course of providing the Contract Services under this Contract only for the purposes of this Contract;
 - (b) not to do any act or engage in any practice that would breach an Information Privacy Principle (IPP) contained in section 14 of the Privacy Act, which if done or engaged in by an Agency, would be a breach of that IPP;
 - (c) to carry out and discharge the obligations contained in the IPPs as if it were an Agency under that Act;
 - (d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
 - (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), an NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Contractor, unless:
 - (i) in the case of section 16F of the Privacy Act, the use or disclosure is necessary, directly or indirectly, to discharge an obligation under Clause 12 [*Disclosure of Confidential Information*] of this Contract; or
 - (ii) in the case of an NPP or an APC, where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under Clause 12 [*Disclosure of Confidential Information*] of this Contract, and the activity or practice which is authorised by Clause 12 [*Disclosure of Confidential Information*] of this Contract is inconsistent with the NPP or APC;
 - (f) to disclose in writing to any person who asks, the content of the provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding a party to this Contract;
 - (g) to immediately notify the Agency if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this Clause 14, whether by the Contractor or any sub-Contractor; and
 - (h) to ensure that any employee of the Contractor who is required to deal with Personal Information for the purposes of this Contract is made aware of the obligations of the Contractor set out in this Clause 14.
- 14.3 The Contractor agrees to ensure that any sub-contract entered into for the purpose of fulfilling its obligations under this Contract contains provisions to ensure that the sub-Contractor has the same awareness and obligations as the Contractor has under this Clause 14, including the requirement in relation to sub-contracts.

14.4 The Contractor agrees to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Contractor under this Clause 14, or a sub-Contractor under the sub-contract provisions referred to in sub-clause 14.3.

14.5 In this Clause 14, the terms 'Agency', 'Approved Privacy Code' (APC), 'Information Privacy Principles' (IPPs), and 'National Privacy Principles' (NPPs) have the same meaning as they have in section 6 of the Privacy Act, and 'Personal Information', which also has the meaning it has in section 6 of the Privacy Act, means:

'information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

14.6 The provisions of this Clause 14 survive termination or expiration of this Contract.

15. Compliance with Law

15.1 The Contractor acknowledges that:

- (a) the giving of false and misleading information is a serious offence under section 137.1 of the *Criminal Code Act 1995* and there are a number of computer offences and other offences under the *Criminal Code Act 1995* for which there are a range of penalties, including a maximum of ten years imprisonment; and
- (b) the publication or communication of any fact or document by a person which has come to their knowledge or into their possession or custody by virtue of the performance of this Contract (other than to a person to whom the Contractor is authorised to publish or disclose the fact or document) may be an offence under section 70 of the *Crimes Act 1914*, the maximum penalty for which is two years imprisonment.

15.2 The Contractor agrees, in carrying out this Contract, to comply with:

- (a) all relevant legislation of the Commonwealth (particularly the *Criminal Code Act 1995*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984* and *Disability Discrimination Act 1992*), or of any State, Territory or local authority; and
- (b) any obligations it has under the *Equal Opportunity for Women in the Workplace Act 1999*.

15.3 The Contractor acknowledges that a person who intentionally deals in an unauthorised way with information relating to customer personal information may be guilty of an offence under Division 3 of Part 5 of the *Social Security (Administration) Act 1999* (for which the maximum penalty is 2 years imprisonment), Division 2 of Part 6 of *A New Tax System (Family Assistance) [Administration] Act 1999* or other Commonwealth legislation.

16. Indemnity

16.1 The Contractor agrees to indemnify the Commonwealth from and against any:

- (a) liability incurred by the Commonwealth;

- (b) loss of or damage to property of the Commonwealth; or
- (c) loss or expense incurred by the Commonwealth 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 Commonwealth;

arising from:

- (i) any act or omission by the Contractor, its officers, employees, agents or sub-Contractors in connection with this Contract;
- (ii) any breach by the Contractor of its obligations or warranties under this Contract;
- (iii) any use or disclosure by the Contractor, its officers, employees, agents or sub-Contractors of Personal Information held or controlled in connection with this Contract; or
- (iv) the use by the Commonwealth of the Contract Material as intended under this Contract.

16.2 The Contractor's liability to indemnify the Commonwealth under sub-clause 16.1 will be reduced proportionately to the extent that any negligent act or omission of the Commonwealth contributed to the relevant liability, loss or damage, or loss or expense.

16.3 The right of the Commonwealth to be indemnified under this Clause 16 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant liability, loss or damage, or loss or expense.

16.4 In this Clause 16 "Commonwealth" includes officers, employees and agents of the Commonwealth.

16.5 This Clause 16 will survive the expiration or termination of this Contract, and applies notwithstanding any contrary provision in the Official Order.

17. Compliance with Departmental Policies

17.1 The Contractor must, when using the Department's premises or facilities, comply with all reasonable directions and Departmental procedures relating to workplace harassment, occupational health (including the Department's smoke free work place policy), APS and FaHCSIA Codes of Conduct, safety and security, including the Department's Internet access and usage guidelines, in effect at those premises or in regard to those facilities, as notified by the Department or as might reasonably be inferred from the use to which the premises or facilities are being put.

18. Insurance

18.1 The Contractor agrees, for so long as any obligations remain in connection with the Contract, to effect and maintain:

- (a) a public liability policy of insurance to the value of at least \$10 million in respect of each claim;
- (b) professional indemnity insurance to the value of \$10 million or as otherwise agreed in writing by the Department; and
- (c) workers' compensation insurance in an unlimited amount.

18.2 On request, the Contractor agrees to provide the Department proof of insurance acceptable to the Department, including but not limited to a Certificate of Currency.

19. Conflict Of Interest

19.1 The Contractor warrants that, to the best of its knowledge no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract by itself or by any of its officers, employees, agents or sub-Contractors.

19.2 If during the term of the Contract a conflict of interest arises, or appears likely to arise, the Contractor undertakes to notify the Department immediately in writing and to take such steps as the Department may reasonably require to resolve or otherwise deal with the conflict. If the Contractor fails to notify the Department or is unable or unwilling to resolve or deal with the conflict as required, the Department may terminate the Contract in accordance with the provisions of Clause 22.

19.3 The Contractor agrees that they will not, and must ensure that any officer, employee, agent or sub-Contractor of the Contractor does not, engage in any activity or obtain any interest during the course of this Contract that is likely to conflict with or restrict the Contractor in providing the Contract Services to the Department fairly and independently.

20. Negation of Employment, Partnership and Agency

20.1 The Contractor agrees that it will not represent itself, and must ensure that its officers, employees, agents and sub-Contractors do not represent themselves, as being an officer, employee, agent or sub-Contractor of the Department, or as otherwise able to bind or represent the Department.

20.2 The Contractor agrees that it will not by virtue of this Contract be or for any purpose be deemed to be an officer, partner, employee, agent or sub-Contractor of the Department, or as having any power or authority to bind or represent the Department.

21. Termination and Reduction for Convenience

21.1 The Department may, at any time by notice, terminate this Contract or reduce the scope of the Contract Services immediately.

21.2 On receipt of a notice of termination or reduction the Contractor agrees to:

- (a) stop work as specified in the notice;
- (b) take all available steps to minimise loss resulting from that termination and to protect Commonwealth Material and Contract Material; and
- (c) continue work on any part of the Contract Services not affected by the notice.

21.3 Where there has been a termination under sub-clause 21.1, the Department will be liable only for:

- (a) payments and assistance under Clause 3 [*Fees and Taxes (including GST), Duties and Government Charges*] for services rendered before the effective date of termination; and
- (b) reasonable costs incurred by the Contractor and directly attributable to the termination.

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21.4 Where there has been a reduction in the scope of the Contract Services, the Department's liability to pay fees or allowances, meet costs or provide facilities and assistance under Clause 3 [*Fees and Taxes (including GST), Duties and Government Charges*] will, unless there is agreement in writing to the contrary, abate proportionately to the reduction in the Contract Services.

21.5 The Department will not be liable to pay compensation under sub-clause 21.3(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, together exceed the fees set out in Item C of Schedule 2 [*Fees, Cost and Payment Arrangements*].

21.6 The Contractor will not be entitled to compensation for loss of prospective profits.

22. Termination for Default

22.1 Where a party fails to satisfy any of its obligations under this Contract, the other party if it considers that the failure is:

- (a) not capable of remedy, may, by notice, terminate this Contract immediately;
- (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 Contract immediately by giving a second notice.

22.2 Where a notice issued under sub-clause 22.1(b) specifies a time within which a particular failure must be remedied the time specified must, with reference to the particular failure, be reasonable under the circumstances of that failure.

22.3 The Department 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 Contractor:

- (a) being a corporation, comes under one of the forms of external administration referred to in the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration; or
- (b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors.

23. Variation and Waiver

23.1 The provisions of the Contract will not be varied either at law or in equity except by agreement in writing between the parties.

23.2 If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

23.3 A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.

23.4 A waiver by either party of any of its rights will not be deemed to be a waiver in respect of any other right.

23.5 In this Clause 23 'rights' means rights or remedies provided by this Contract or at law.

24. Dispute Resolution

- 24.1 The parties agree that any dispute arising during the course of this Contract will be dealt with as follows:
- (a) firstly, the party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
 - (b) secondly, the parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;
 - (c) thirdly, the parties have 10 business days from the sending of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
 - (d) lastly, either party may commence legal proceedings if:
 - (i) there is no resolution or agreement in accordance with sub-clause 24.1(c); or
 - (ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 business days.
- 24.2 Despite the existence of a dispute, the Contractor will (unless requested in writing not to do so) continue to perform the Contract Services.
- 24.3 Notwithstanding the existence of a dispute, each party will continue to perform its obligations under this Contract.
- 24.4 A party may commence court proceedings relating to any dispute arising from this Contract at any time where that party seeks urgent interlocutory relief.
- 24.5 This Clause 24 does not apply to:
- (a) action by either party under or purportedly under Clause 22 [*Termination For Default*],
 - (b) action by the Commonwealth under or purportedly under sub-clause 3.2 [*Fees, Allowances & Assistance*] or Clause 21 [*Termination and Reduction for Convenience*]; or
 - (c) either party commencing legal proceedings for urgent interlocutory relief.

25. Assignment and Novation

- 25.1 The Contractor cannot assign its obligations, and agrees not to assign its rights, under this Contract without, in either case, prior approval in writing from the Department.
- 25.2 The Contractor agrees that it will not consult with any other person or body for the purposes of entering into an arrangement which will require novation of this Contract without first consulting the Department.

26. Disclosure by Contractor

- 26.1 The Contractor warrants that, as at the date of this Contract, having made reasonable inquiries of its officers, employees, agents and sub-Contractors that it is not aware of any:
- (a) matter relating to the commercial, financial or legal capacity or status of the Contractor that has not been disclosed to the Department and may affect the ability of the Contractor to perform the Contract Services;
 - (b) litigation, proceedings, judicial or administrative enquiry, investigation, claim or allegation, actual or threatened, and whether admitted or contested, by another person or body (including the regulatory bodies such as the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission, the Australian Stock Exchange or equivalent bodies), against or in any way involving the Contractor or any settlement in respect of any such matter;
 - (c) proven or alleged breach or default under any law, regulation, agreement, order or award binding on the Contractor; or
 - (d) any criminal or other act or any other behaviour, conduct or activity of the Contractor which may:
 - (i) materially and adversely affect the Contractor's credit worthiness, integrity, character or reputation; or
 - (ii) attract or have attracted negative publicity or attention or generate public or media criticism either inside or outside of Australia;

and which was not disclosed to the Department prior to execution of this Contract.

- 26.2 The Contractor repeats the warranty in sub-clause 26.1 on the first date of each month until the Contract Services have been completed.

27. Applicable Law

- 27.1 The laws applicable in the Australian Capital Territory apply to this Contract.

28. Notices

- 28.1 Any notice, request or other communication to be given or served under this Contract will be in writing and dealt with as follows:
- (a) If given by the Contractor to the Department - addressed and forwarded to the Project Officer at the address notified by the Department to the Contractor from time to time as the address for notifications.
 - (b) If given by the Department to the Contractor - signed by the Project Officer and forwarded to the Contractor at the address indicated in the Contract or as otherwise notified by the Contractor to the Department from time to time as the address for notifications.
- 28.2 Any such notice, request or other communication will be delivered by hand or sent by post or electronic transmission, to the address of the party to which it is sent.
- 28.3 Any notice, request or other communication will be deemed to have been received:
- (a) if delivered personally or by an independent courier, on the date of delivery;

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- (b) if sent by prepaid security post, on the day that the acknowledgment of delivery is completed by the recipient; and
- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient and the sender is not notified by the recipient by close of business on that day that the transmission was illegible.

28.4 It will be sufficient to establish that the notice or communication was delivered and on a given date if the person who made the delivery obtains a receipt for the notice or communication signed by a person appropriately employed at the physical address for service and the records of the courier will be conclusive proof in that respect.

29. Moral Rights Consent

29.1. For the purposes of this clause 'Specified Acts' in relation to any Contract Material, means the following classes or types of acts or omissions:

- (a) those which would, but for this clause, infringe the author's right of attribution of authorship;
- (b) those which would, but for this clause, infringe the author's right of integrity of authorship;

but does not include:

- (c) those which would infringe the author's right not to have authorship falsely attributed.

29.2 Where the Contractor is a natural person and the author of any Contract Material, he or she consents to the Specified Acts by or on behalf of the Department in relation to such Contract Material (whether occurring before or after the consent is given).

29.3. In any other case, the Contractor warrants or undertakes that the author of the Contract Material has given or will give a written consent to the Specified Acts, and that such consent extends directly or indirectly to the performance of the Specified Acts by or on behalf of the Department in relation to such Contract Material (whether occurring before or after the consent is given).

SIGNED as a Deed by the parties as at the date first above mentioned.

SIGNED by the COMMONWEALTH OF AUSTRALIA

acting through and represented by the Department of Families, Housing, Community Services and Indigenous Affairs s47F - Personal privacy

by

Andrew LARSEN

(Name of Commonwealth Representative)

[Signature]
(Signature of Commonwealth Representative)

IN THE PRESENCE OF

s47F - Personal privacy

Michele A. Pinner

(Name of Witness)

[Signature]
(Signature of Witness)

SIGNED for and on behalf of

*COMAR BRUNTON
SOCIAL RESEARCH*

(Name of Company)

22 0031 748 981

(ACN/ABN Number)

s47F - Personal privacy

Jean Young

(Name of Director)

[Signature]
(Signature of Director)

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Joan Sparrow

(Name of Director/Secretary)

[Signature]
(Signature of Director/Secretary)

IN THE PRESENCE OF

s47F - Personal privacy

JODI BROWN

(Name of Witness)

[Signature]
(Signature of Witness)

s47F