

Schedule 6 – Draft Deed of Standing Offer



Australian Government

Department of Health

**DEED OF STANDING OFFER
(HEAD AGREEMENT FOR SERVICES)**

(Number: SON3390679)

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Health

ABN 83 605 426 759

and

Lorica Health Pty Limited

ABN 50 107 188 974

**in relation to Services for
Health Data Analytics Panel**

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH AND AGED CARE

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This Deed is made between the

COMMONWEALTH OF AUSTRALIA for the purposes of this Deed represented by and acting through the **Department of Health** ABN 83 605 426 759

and

Lorica Health Pty Limited Level 3, 55 Harrington Street the Rocks, NSW, 2000 ABN 50 107 188 974 ('the Contractor')

(a) RECITALS

- A. The Department and any New Customer may require the provision of the Services from time to time.
- B. The Contractor has fully informed itself on all aspects of the work required to be performed and has submitted a proposal and quotation entitled *Response to the Australian Government Department of Health Request for Tender for the establishment of a Health Data Analytics Panel* and dated 8 August 2016.
- C. The Parties have agreed upon the terms and conditions under which the Contractor may enter into Contracts with Customers for the supply of Services.
- D. The Contractor is one of a number of panel members for the Health Data Analytics Panel.

(b) OPERATIVE PART

1. INTERPRETATION

- 1.1 In this Deed and any Deed, unless the contrary intention appears:

'**Business Day**' means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place;

'**Commencement Date**' means the date specified as such in Item 2 of Schedule 1;

'**Commonwealth**' means the Commonwealth of Australia;

'**Commonwealth Entity**' has the same meaning as in section 8 of the *Public Governance, Performance and Accountability Act 2013*;

'**Confidential Information**' means information that:

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

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Deed or a Deed or by any other unlawful means;
- (e) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from a Customer; or
- (f) has been independently developed or acquired by the Contractor;

'**Contract**' means a Contract created pursuant to clause 3.6 between the Contractor and a Customer in relation to the provision of the Services;

'**Contractor Personnel**' means:

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

engaged in the performance of the Services;

'Customer' means the Department and any New Customer;

'Customer Material' means any Material:

- (a) provided by a Customer to the Contractor for the purposes of this Deed or a Contract; or
- (b) derived at any time from the Material referred to in paragraph (a);

'Deed Liaison Officer' means a person specified as such by name or position in Item 1 of Schedule 1 or any substitute notified in writing by either Party to the other from time to time;

'Deed of Inclusion' means a Contract between a New Customer and the Contractor substantially in the form of Schedule 7;

'Department' means the Commonwealth as represented by the Department of Health and includes any Commonwealth Entity that is from time to time responsible for the administration of this Deed;

'End Date' means the later of the Initial End Date, the Extension Date and the Further Extension Date (if any);

'Extension Date' means the date to which this Deed may be extended by the Customer as specified in Item 4 of Schedule 1;

'Further Extension Date' means the further date to which this Deed may be extended by the Department as specified in Item 5 of Schedule 1;

'Included Agency' means a Commonwealth Entity that is in the Department's portfolio from time to time;

'Initial End Date' means the date specified in Item 2 of Schedule 1;

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

'Material' means documents, records, equipment, software (including source code and object code), goods, images, information and data stored by any means including all copies and extracts of the same;

'New Customer' means any Included Agency that becomes a Party to this Deed in accordance with clause 5;

'Official Order' means the official written document substantially in the form set out in Schedule 6 which a Customer sends to the Contractor in accordance with clause 3 when a Customer requires the Services;

'Party' means a party to this Deed or any Contract;

'Quotation' means the pricing offer requested by the Customer and supplied by the Contractor under clause 3.4, substantively in the form set out in Schedule 5B;

'Request for Quotation' means a request for Services issued by the Customer under clause 3.2, substantively in the form set out in Schedule 5A;

'Services' means such of the services specified in Schedule 3 that are particularised in the Official Order;

'Specified Personnel' means the Contractor Personnel specified in the Official Order; and

'Term' means the term of this Deed, being the period from the Commencement Date to the End Date.

1.2 In this Deed and any Contract, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (e) all references to dollars are to Australian dollars;
- (f) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
- (g) any uncertainty or ambiguity in the meaning of a provision will not be interpreted against a Party just because that Party prepared the provision;
- (h) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended from time to time;
- (i) a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation; and
- (j) references to clauses are to clauses in this Deed or Schedule 1, references to 'Items' are to items in the Schedule to this Deed, references to a 'Schedule' is to a Schedule to this Deed and references to annexures or attachments are references to documents attached to this Deed.

1.3 If any conflict arises between the terms and conditions contained in this Deed and its Schedules and the Official Order, then the Deed and its Schedules will prevail.

1.4 This Deed and each Deed records the entire agreement between the Parties in relation to its subject matter.

1.5 No variation of this Deed is binding unless it is agreed in writing between the Customer and the Contractor.

1.6 Any reading down or severance of a particular provision does not affect the other provisions of this Deed.

1.7 A waiver of any provision of this Deed must be in writing.

1.8 No waiver of a term or condition of this Deed will operate as a waiver of another breach of the same or of any other term or condition contained in this Deed.

1.9 If a Party does not exercise, or delays in exercising, any of its rights under this Deed or at Law, that failure or delay does not operate as a waiver of those rights.

- 1.10 A single or partial exercise by a Party of any of its rights under this Deed or at Law does not prevent the further exercise of any right.
- 1.11 The Contractor must not assign or transfer its rights or obligations under this Deed without prior approval in writing from the Customer.
- 1.12 The Contractor agrees not to consult with any other person for the purposes of entering into an arrangement that will require novation of this Deed without first consulting the Customer.
- 1.13 The laws of the Australian Capital Territory apply to this Deed. The Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any dispute under this Deed.
- 1.14 This Deed may be executed in counterparts.

2. TERM OF DEED

- 2.1 This Deed commences on the Commencement Date and continues in force until the Initial End Date unless terminated earlier or extended in accordance with clauses 2.2 or 2.2A.
- 2.2 The Customer may extend the Term for up to a further 24 month period (the 'Extension Date'), by notice in writing delivered to the Contractor not less than 30 days before the Initial End Date.
- 2.2A If the Customer only extends the Term for a 12 month period under clause 2.2, the Customer may extend the Term for a further 12 month period (the 'Further Extension Date'), by notice in writing delivered to the Contractor not less than 30 days before the end of the Extension Date.
- 2.2B Any extension under clauses 2.2 or 2.2A will be on the same terms and conditions, and cover the same Services, as set out in this Deed.
- 2.3 Despite termination or expiration of this Deed:
 - (a) the terms and conditions of this Deed will continue in force in respect of all Deeds which have not been terminated or have not expired and which were entered into prior to the date of termination or expiration of this Deed; and
 - (b) any Deed formed prior to expiration or termination of this Deed will continue in force until it terminates or expires notwithstanding that this Deed is no longer in force.

3. STANDING OFFER

- 3.1 By executing this Deed, the Contractor makes an irrevocable standing offer to supply the Services to the Customer on the terms and conditions set out in this Deed.
- 3.2 The Customer may, during the Term, issue a Request for Quotation for work.
- 3.3 A Request for Quotation will include details of the Services required by the Customer, including:
 - (a) the required Services;
 - (b) whether the Customer requires the Services (or any part) to be performed by particular Contractor Personnel;
 - (c) the time frame for delivery of the Services; and
 - (d) any other specific requirements of the Customer in relation to the Deed.

- 3.4 Upon receipt of a Request for Quotation, the Contractor must, within the time frame specified in the Request for Quotation, prepare a written Quotation specifying the:
- (a) Services to be provided;
 - (b) fees to provide the Services; and
 - (c) names of Specified Personnel proposed to deliver the Services.
- 3.5 Upon acceptance of a successful Quotation from the Contractor, the Customer will place an Official Order with the Contractor.
- 3.6 A Deed to provide Services is formed between the Customer and the Contractor when the Contractor and the Customer execute the Official Order to which the Services relate. For the avoidance of doubt, the Customer does not have to issue a Request for Quotation and receive a Quotation from the Contractor before executing an Official Order with the Contractor.
- 3.7 The terms and conditions of the Deed formed upon execution of the Official Order by the Contractor and the Customer are the terms and conditions specified in the Official Order and Schedule 2 of this Deed.
- 3.9 To the extent of any inconsistency between two or more documents which form part of a Deed, those documents will be interpreted in the following order of priority:
- (a) this Deed;
 - (b) the terms and conditions in Schedule 2;
 - (c) the Official Order;
 - (d) the attachments to the Official Order; and
 - (e) any other document referred to in the Official Order.
- 3.10 The Contractor must perform the Services specified in an Official Order in accordance with the Official Order, the Deed and this Deed.
- 4. CUSTOMER NOT BOUND TO ORDER FROM CONTRACTOR**
- 4.1 The Customer:
- (a) is not obliged to place any Official Order with the Contractor or to request any volume of Services from the Contractor;
 - (b) may at any time purchase or acquire services the same as, or similar to, the Services from [another service provider on the panel or from] any other person on such terms and conditions as the Customer wishes; or
 - (c) may at any time itself undertake performance of services the same as or similar to the Services.
- 4.2 The Contractor acknowledges that it is a member of a panel of providers of Services to the Customer. When selecting a person from the panel to provide the Services, the Customer may seek further quotations from any or all service providers who are current members of the panel in accordance with the process at clauses 3.2 to 3.5.
- 4.3 Following receipt of quotations from panel members, the Customer may then select the person who will perform the Services for the best overall value for money, taking into consideration:
- (a) the availability of the panel member and/or Contractor Personnel at the time preferred by the Customer;

- (b) the proposed approach or methodology for performing the applicable Services;
- (c) the fees payable by the Customer to the panel members based on the rates quoted; and
- (d) the expected timeframe for performing the Services.

5. NEW CUSTOMER

- 5.1 The Contractor irrevocably offers to enter into a Deed of standing offer on the same terms as this Deed with an Included Agency, if at any time during the Term that Included Agency has provided the Contractor with a Deed of Inclusion.
- 5.2 The Contractor must execute the Deed of Inclusion in a way that gives the Deed of Inclusion effect as a Deed, and return the Deed of Inclusion to the New Customer within ten Business Days after receiving the Deed of Inclusion.
- 5.3 The Contractor must notify the Department's Deed Liaison Officer that it has executed a Deed of Inclusion with the New Customer within ten Business Days of executing the Deed of Inclusion.
- 5.4 This Deed and any Deed formed in accordance with this clause 5 are each separate Deeds between the Contractor and the relevant Customer. Each Customer may exercise its right independently of each other Customer and the acts or omissions of one Customer do not affect the rights of any other Customer.

6. FEES

- 6.1 The fees due to the Contractor for performing the Services will be set out in the Official Order and calculated in accordance with Schedule 4.

7. DISCLOSURE OF INFORMATION

- 7.1 The Contractor agrees not to disclose to any person other than the Customer any Confidential Information relating to this Deed without prior approval in writing from the Customer.
- 7.2 The Customer may impose any conditions it considers appropriate when giving its approval under clause 7.1 and the Contractor agrees to comply with these conditions.
- 7.3 The Customer may at any time require the Contractor to give, and to arrange for Contractor Personnel to give, undertakings in writing in a form required by the Customer, relating to the non-disclosure of Confidential Information.
- 7.4 If the Contractor receives a request under clause 7.3, it agrees to promptly arrange for all such undertakings to be given.
- 7.5 The obligations on the Contractor under this clause will not be taken to have been breached where the information referred to is required by Law to be disclosed.
- 7.6 Property in any copy of Confidential Information (in the form of a document, article or removable medium) vests or will vest in the Customer. The Contractor agrees:
 - (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or earlier termination of this Deed, to deliver to the Customer, or, in accordance with the Customer's directions, erase or otherwise deal with all such copies, unless any provision to the contrary is set out in the Official Order.

- 7.7 The Customer gives no undertaking to treat Contractor information, or this Deed, as confidential information. The Contractor acknowledges that the Customer may disclose information relevant to this Deed, or this Deed itself, to any person:
- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
 - (b) if required in connection with legal proceedings;
 - (c) for public accountability reasons, including disclosure on request to other Commonwealth Entities, and a request for information by parliament or a parliamentary committee or a Commonwealth Minister;
 - (d) to the Customer's third party service providers for the purposes of providing goods and services to, or on behalf of, the Customer; or
 - (e) for any other requirements of the Customer.
- 7.8 This clause 7 survives the expiration or earlier termination of this Deed.
- 8. INSURANCE**
- 8.1 The Contractor warrants that it has taken out or will take out, and will maintain for the period specified in clause 8.2 or 8.3 as applicable the types and corresponding amounts of insurance as specified in the Item 6 of Schedule 1.
- 8.2 If the Contractor takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Contractor must maintain the policy during the Term and a policy in like terms for seven years after the expiry or earlier termination of this Deed.
- 8.3 If the Contractor takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of the event can occur at any time subsequently, the Contractor must maintain the policy during the Term.
- 8.4 The Contractor must, on request, promptly provide to the Customer any relevant insurance policies or certificates of currency for inspection.
- 8.5 This clause 8 survives the expiration or earlier termination of this Deed.
- 9. WORKPLACE GENDER EQUALITY**
- 9.1 This clause 9 only applies to the extent that:
- (a) this Deed is entered into following a procurement which is at, or above, the relevant procurement thresholds as defined in the *Commonwealth Procurement Rule* but not where that procurement is listed in Appendix A to that Rule; and
 - (b) the Contractor is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* ('the WGE Act').
- 9.2 The Contractor must comply with its obligations, if any, under the WGE Act.
- 9.3 If the Contractor becomes non-compliant with the WGE Act during the Term, the Contractor must notify the Customer.
- 9.4 If the Term exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the Commencement Date and following this, annually, to the Customer.
- 9.5 Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Deed or any Deed.

10 DISPUTE RESOLUTION

10.1 The Customer and the Contractor agree that any dispute arising during the term of this Deed will be dealt with as follows:

- (a) first, 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 have authority to intervene and direct some form of resolution;
- (c) thirdly, the Parties have 10 Business Days from the receipt of the notice in clause 10.1(a) to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
- (d) lastly, if:
 - (i) there is no resolution or agreement; 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,

then, either Party may commence legal proceedings

10.2 Each Party must bear its own costs of complying with this clause and the Parties must bear equally the cost of any third person engaged under clause 10.1(c).

10.3 Despite the existence of a dispute, the Contractor will (unless requested in writing not to do so) continue to perform its obligations under this Deed, including the performance of Services under a Deed.

10.4 This clause 10:

- (a) does not apply to action by the Customer under or purportedly under clause 11 or by either Party under or purportedly under clause 12; and
- (b) does not preclude either Party from commencing legal proceedings for urgent interlocutory relief.

11. TERMINATION FOR CONVENIENCE

11.1 The Customer may, at any time by notice, terminate this Deed immediately. If the Customer exercises this right, no compensation will be payable to the Contractor.

11.2 Upon receipt of a notice of termination the Contractor agrees to take all available steps to minimise loss resulting from that termination and to protect Customer Material.

11.3 To avoid doubt, the Customer has an unfettered discretion to terminate this Deed in accordance with this clause 11.

12. TERMINATION FOR DEFAULT

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

- (a) if it considers that the failure is not capable of remedy, by notice, terminate this Deed immediately;
- (b) if it considers that the failure is capable of remedy, by notice, require that the failure be remedied within a time specified in the notice (being not less than 5 Business Days); and

- (c) if the failure is not remedied in accordance with a notice given under clause 12.1(b), by further notice, terminate this Deed immediately.

12.2 The Customer may also, by notice, terminate this Deed immediately (but without prejudice to any prior right of action or remedy which either Party has or may have) if the Contractor:

- (a) being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration;
- (b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors; or
- (d) breaches a warranty listed in clause 13.

13. CONTRACTOR WARRANTIES

13.1 The Contractor represents, warrants and undertakes to the Customer that:

- (a) it will promptly notify and fully disclose to the Customer in writing any event or occurrence actual or threatened which could have an adverse effect on the Contractor's ability to perform any of its obligations under this Deed;
- (b) it has full power and authority to enter into, perform and observe its obligations under this Deed;
- (c) the execution, delivery and performance of this Deed has been duly and validly authorised by the Contractor;
- (d) it will promptly notify and fully disclose to the Customer in writing if:
 - (i) it becomes insolvent or is wound up;
 - (ii) it makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver, manager or administrator appointed;
 - (iii) it goes into liquidation or passes a resolution to go into liquidation, or becomes subject to any petition or proceedings in a court for its compulsory winding up or becomes subject to the supervision of a court or regulatory authority, either voluntarily or otherwise;
 - (iv) it suffers any execution against its assets;
 - (v) anything analogous to, or of a similar effect to anything described above under the Law occurs in respect of the Contractor;
- (e) the unconditional execution and delivery of, and compliance with its obligations by it under this Deed do not:
 - (i) contravene any Law to which it or any of its property is subject or any order or directive from a Commonwealth Entity binding on it or any of its property;
 - (ii) contravene its constituent documents;
 - (iii) contravene any Deed or instrument to which it is a party;
 - (iv) contravene any obligation of it to any other person; or
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;

- (f) no litigation, arbitration, mediation, conciliation or proceedings including any investigations, are taking place, pending, or are threatened against the Contractor which could have an adverse effect upon either the Contractor's capacity to perform its obligations under this Deed or the Contractor's reputation;
- (g) it has not had a judicial decision (excluding decisions under appeal) made against it in relation to employee entitlements where that claim has not been paid;
- (h) unless otherwise disclosed in this Deed, it is not entering into this Deed as trustee of any trust or settlement;
- (i) it has not made any false declaration in respect of any current or past dealings with the Customer or any Commonwealth Entity, including in any tender or application process or in any Deed; and
- (j) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior Deed with the Customer or any Commonwealth Entity.

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

13.3 Each representation and warranty survives the execution of this Deed.

14. NOTICES

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

- (a) directed to the recipient's Deed Liaison Officer; and
- (b) hand delivered or sent by pre-paid post, email or facsimile to the relevant Deed Liaison Officer's address.

14.2 The Parties agree that a notice given in accordance with clause 14.1 is received:

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

This Deed of Standing Offer is **EXECUTED** as a Deed.

SIGNED, SEALED AND DELIVERED for and on behalf of the **COMMONWEALTH OF AUSTRALIA** as represented by the Department of Health ABN 83 605 426 759 on:

31/1/17
Date

by:

IAN CURTIS
Printed name of signatory

s22

Signature

ASSISTANT SECRETARY
Position of signatory

in the presence of:

s47F

Printed name of witness

s47F

Signature

SIGNED, SEALED AND DELIVERED by Lorica Health Pty Limited, ABN 50 107 188 974 in accordance with subsection 127(1) of the *Corporations Act 2001* on:

25 JANUARY 2017
Date

by:

PAUL NICOLARAKIS
Printed name of Director*/~~Secretary~~*/~~Witness~~*

and in the presence of:

DAVID SKELLERN
Printed name of Director*/~~Secretary~~*/~~Witness~~*

s47F

Signature of Director*/~~Secretary~~*/~~Witness~~*

IMPORTANT NOTE: * Please cross out which is not applicable. The signatures of two directors, or a director and a company secretary, must be present unless the constitution of [Supplier] allows signing by one director only. If the constitution permits only one director to sign, any person over the age of 18 may then act and sign as a witness. The witness must sign in the presence of the director.

(c) SCHEDULE 1

DEED DETAILS

Items	Information required
ITEM 1 DEED LIAISON OFFICERS -(clauses 1.1 and 14.1)	Customer's Deed Liaison Officer The Customer's Deed Liaison Officer is the person occupying the position of: Panel Manager, currently s22 Address: MDP 1014, GPO Box 9848, Canberra, ACT 2601 Telephone: s22 Email: s22@health.gov.au
	Contractor's Deed Liaison Officer The Contractor's Deed Liaison Officer is the person occupying the position of: Chief Executive Officer & Managing Director, currently Paul Nicolarakis Address: Level 3, 55 Harrington Street The Rocks, NSW, 2000 Telephone: 02 8088 4200 Email: paul.nicolarakis@loricahealth.com
ITEM 2 COMMENCEMENT DATE (clauses 1.1 and 2.1)	The date this Deed is executed by the first Party to do so.
ITEM 3 INITIAL END DATE (clauses 1.1 and 2.1)	The date that falls 3 years after the Commencement Date.
ITEM 4 EXTENSION DATE (clauses 1.1 and 2.2)	At the end of the contract period the Commonwealth may, at its discretion, extend the contract period for a further two years, if the contractor agrees.
ITEM 5 FURTHER EXTENSION DATE	The date that falls 5 years after the Extension Date.

Items	Information required
(clauses 1.1 and 2.2)	
s47	

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH AND AGED CARE

(d) SCHEDULE 2**TERMS AND CONDITIONS APPLICABLE****WHEN A DEED IS CREATED****Table of Clauses**

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1. INTERPRETATION AND OPERATION OF DEED

1.1 In this Deed, unless the contrary intention appears, words will have the same meaning as in the Deed.

1.2 In this Deed, unless the contrary intention appears:

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

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

'Deed' means this Contract created as a result of the signing by both Parties of an Official Order in accordance with clause 3 of the Deed;

'Deed Liaison Officer' means a person specified as such by name or position in the Official Order or any substitute notified in writing by either Party to the other from time to time;

'Contract Material' means all Material:

- (a) created for the purposes of a Contract;
- (b) provided or required under a Contract to be provided to the Customer as part of the Services; or
- (c) derived at any time from the Material referred to in paragraphs (a) or (b);

including the Contract Material described in the Official Order;

'Customer' means the body identified as such in the Official Order;

'Existing Material' means all Material in existence prior to the commencement of a Contract that is:

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

the Contract Material and includes Material identified as Existing Material in the Official Order but excludes Customer Material;

'Intellectual Property' includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

'Interest' means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points;

'Moral Rights' includes the following rights of an author of copyright Material:

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

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

'Personal Information' has the meaning given in the *Privacy Act 1988*; and

'Privacy Commissioner' means any of the information officers appointed under the *Australian Information Commissioner Act 2010* when performing the 'privacy functions' as defined in the Act.

- 1.3 No variation of this Contract is binding unless it is agreed in writing between the Parties.
- 1.4 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.
- 1.5 The laws of the Australian Capital Territory apply to this Contract. The Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any dispute under this Contract.
- 1.6 A waiver of any provision of this Contract must be in writing.
- 1.7 No waiver of a term or condition of this Contract will operate as a waiver of another breach of the same or of any other term or condition contained in this Contract.
- 1.8 The Contractor agrees not to consult with any other person for the purposes of entering into an arrangement that will require novation of this Contract without first consulting the Customer.
- 1.9 If a Party does not exercise, or delays in exercising, any of its rights under this Contract or at Law, that failure or delay does not operate as a waiver of those rights.
- 1.10 A single or partial exercise by a Party of any of its rights under this Contract or at Law does not prevent the further exercise of any right.
- 1.11 The Contractor must not assign or transfer its rights or obligations under this Contract without prior approval in writing from the Customer.
- 1.12 This Contract may be executed in counterparts.

2. PROVISION OF SERVICES

2.1 The Contractor agrees to:

- (a) perform the Services in accordance with this Contract, with due care and skill and in accordance with relevant best practice, including any applicable Australian Standards and any Commonwealth and industry standards and guidelines specified in the Official Order;
- (b) provide to the Customer any Contract Material specified in the Official Order;
- (c) comply with the requirements of the Deed to the extent they apply to the provision of the Services;
- (d) comply with the time frame for the performance of the Services specified in the Official Order;
- (e) liaise with the Customer, provide any information the Customer may reasonably require and comply with any reasonable directions of the Customer; and
- (f) obtain all approvals and licences necessary to perform the Services in accordance with the Deed.

- 2.2 The Contractor acknowledges that:
- (a) the Customer collects or may come into possession of information concerning the Contractor that is either publicly available information or information obtained through the course of the Customer conducting its affairs; and
 - (b) subject to clause 2.3, the Customer may use that information when considering the Contractor's ability to perform this Deed.
- 2.3 The Customer may consult with the Contractor if any information referred to under clause 2.2 is a cause of concern to the Customer.
- 2.4 Subject to clauses 12 and 13, no right or obligation in this Deed is to be read or understood as limiting the Contractor's rights to enter into public debate or criticism of the Commonwealth, its entities, officers, employees or agents.

3. FEES, ALLOWANCES, COSTS AND ASSISTANCE

- 3.1 The Customer agrees to:
- (a) pay the fees specified in the Official Order;
 - (b) pay the allowances and meet the costs, if any, specified in the Official Order; and
 - (c) provide the facilities and assistance, if any, specified in the Official Order.
- 3.2 The Customer will be entitled, in addition to any other right it may have, to withhold any payment of fees, allowances or costs until the Contractor has completed to the satisfaction of the Customer that part of the Services to which the payment relates.
- 3.3 If an overpayment occurs at any time and for any reason (including where an invoice is found to have been incorrectly rendered after payment), the Customer may issue the Contractor with a written notice requiring repayment of the full amount of the overpayment.
- 3.4 The Contractor must pay to the Customer the full amount of the overpayment specified in the notice referred to in clause 3.3 in the manner specified in the notice, and within twenty (20) Business Days of the date of the notice.
- 3.5 The Customer may, at its sole and absolute discretion, recover the overpayment specified in the notice referred to in clause 3.3, from the Contractor by offsetting that overpayment against any amount subsequently due to the Contractor under this Deed.
- 3.6 If the Contractor fails to repay the full amount of an overpayment in accordance with a notice given pursuant to clause 3.3, the Customer may (at its sole discretion) require that Interest be paid on the amount after the expiry of the twenty (20) Business Days' notice referred to in clause 3.4, until the amount is paid to the Customer in full.
- 3.7 The Contractor must provide the Customer with an adjustment note if required by the *A New Tax System (Goods and Services Tax) Act 1999*, including where the Contractor repays to the Customer some or all of the fees or expenses.
- 3.8 The Contractor agrees to submit invoices for payment in the manner specified in the Official Order and clause 5.

4. SMALL BUSINESS PAYMENTS

- 4.1 The Customer will pay the Contractor within 30 days after receipt of a correctly rendered invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.
- 4.2 This clause only applies where:

- (a) the Contractor is a Small Business;
- (b) the value of this Deed is not more than A\$1 million (GST inclusive);
- (c) the amount of the interest payable exceeds A\$10; and
- (d) the fee will be paid by the Customer from Departmental items.

4.3 The Customer will pay interest on late payments to the Contractor as follows:

- (a) for payments made by the Customer 30 days and up to 60 days after the amount became due and payable, only where the Contractor issues a correctly rendered invoice for the interest; or
- (b) for payments made by the Customer more than 60 days after the amount became due and payable, the Customer will pay the interest accrued together with the payment.

4.4 Interest payable under this clause will be simple interest on the unpaid amount at the General Interest Charge Rate, calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Customer effects payment as represented by the following formula:

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

Where:

SI = simple interest amount;

UA = the unpaid amount;

GIC = General Interest Charge Rate daily rate; and

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

4.5 In this clause 4:

- (a) 'General Interest Charge Rate' means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day; and
- (b) 'Small Business' means an enterprise that employs less than the full time equivalent of 20 persons on the day that this Deed is entered into. If the enterprise is an 'associated entity' as defined in section 50AAA of the *Corporations Act 2001*, this test is applied to the group of associated entities as a whole.

4.6 For the purposes of this clause 4 an invoice is correctly rendered if it:

- (a) is correctly addressed and calculated in accordance with this Deed;
- (b) relates only to supplies that have been delivered to the Customer in accordance with this Deed; and
- (c) is a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999*.

5. TAXES, DUTIES AND GOVERNMENT CHARGES

5.1 Except as provided by this clause 5, the Contractor agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Deed.

- 5.2 The provisions of this clause in respect of GST apply where the Contractor is registered, or is required to be registered for GST.
- 5.3 The goods, services and other supplies made by the Contractor under this Deed are 'taxable supplies' within the meaning of the GST Law.
- 5.4 The Contractor will issue the Customer with a 'tax invoice' in accordance with the GST Act together with, or as a part of, each invoice submitted for payment in accordance with clause 3.8.
- 5.5 The amounts payable by the Customer to the Contractor, as determined under clause 3, are stated inclusive of GST but must not include any amount which represents GST paid by the Contractor for which the Contractor may claim an input tax credit.
- 5.6 If a payment to satisfy a claim or a right to claim under or in connection with this Deed gives rise to a liability to pay GST, the payer must also pay, and indemnify the payee against the amount of that GST.
- 5.7 If a Party has a claim under or in connection with this Deed for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit).
- 5.8 For the purposes of this clause, 'GST', 'GST Law', 'supply', 'input tax credit' and other terms relevant to GST, have any meanings given in the *A New Tax System (Goods and Services Tax) Act 1999*, any regulations made pursuant to that Act and any applicable rulings of the Australian Taxation Office.

6. SUBCONTRACTORS

- 6.1 The Contractor agrees that:
 - (a) it will not subcontract the performance of any part of the Services without the prior approval in writing of the Customer; and
 - (b) the subcontractors, if any, specified in the Official Order will perform work in relation to the Services in accordance with this Deed and are approved by the Customer to do so.
- 6.2 The Customer may impose any terms and conditions it considers appropriate when giving its approval under clause 6.1(a).
- 6.3 Where a subcontractor specified in the Official Order or approved by the Customer under clause 6.1(a) is unable to perform the work, the Contractor agrees to notify the Customer immediately.
- 6.4 Where clause 6.3 applies, the Customer may request the Contractor to secure a replacement subcontractor acceptable to the Customer at no additional cost and at the earliest opportunity.
- 6.5 If the Contractor does not comply with any request made under clause 6.4, the Customer may terminate this Deed in accordance with the provisions of clause 21.
- 6.6 In respect of subcontractors specified in the Official Order or approved by the Customer under this clause, the Contractor must ensure that:
 - (a) the subcontract facilitates compliance by the Contractor with its obligations under this Contract;
 - (b) the subcontract will not conflict with or detract from the rights and entitlements of the Customer under this Contract;

- (c) the other party to the subcontract, has the necessary relevant expertise and the appropriate type and amounts of insurance in order to perform its work in relation to the Services;
- (d) the other party to the subcontract has consented to the public disclosure of its name in connection with the performance of the Services;
- (e) the subcontract contains all the relevant terms of this Contract including those relating to compliance with the Law, subcontracting, intellectual property, audit and access, privacy, confidentiality, warranties and indemnities, disclosure and termination and in particular that the Contractor has or will secure for itself a right to terminate the subcontract on terms no less favourable than those accorded the Customer by clause 20, in the event of this Contract being terminated;
- (f) the other party to the subcontract acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* and subject to investigation by the Ombudsman under that Act and that the Customer will not be liable for the cost of any such investigation by the Ombudsman in connection with the subject matter of the subcontract or the subject matter of this Contract;
- (g) the other party to the subcontract is prohibited from further subcontracting the Services without the prior written approval of the Customer; and
- (h) if requested, the Contractor will promptly provide a copy of the relevant subcontract to the Customer.

7. SPECIFIED PERSONNEL AND OTHER PERSONNEL

- 7.1 The Contractor agrees that the Specified Personnel will perform work in relation to the Services as specified in the Official Order
- 7.2 Where Specified Personnel are unable to perform the work, the Contractor agrees to notify the Customer immediately.
- 7.3 The Customer may, at its absolute discretion, request the Contractor to remove Contractor Personnel (including Specified Personnel) from work in relation to the Services.
- 7.4 Where clauses 7.2 or 7.3 apply, the Customer may request the Contractor to provide replacement personnel acceptable to the Customer at no additional cost and at the earliest opportunity.
- 7.5 If the Contractor does not comply with any request made under clause 7.3 or clause 7.4 the Customer may terminate this Deed in accordance with the provisions of clause 21.

8. RESPONSIBILITY OF CONTRACTOR

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

9. CUSTOMER MATERIAL

- 9.1 The Customer agrees to provide Material to the Contractor as specified in the Official Order.
- 9.2 The Customer grants to the Contractor a royalty-free, licence fee-free, non-exclusive licence (including a limited right of sub-licence to sub-licence to a subcontract specified in the Official Order or approved by the Customer under clause 6) to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in the Customer Material for the purposes of this Deed.
- 9.3 The Contractor agrees to ensure that all Customer Material is used strictly in accordance with any conditions or restrictions set out in the Official Order, and any direction by the Customer.
- 9.4 Property in any copy of Customer Material (in the form of a document, article or removable medium) vests or remains vested in the Customer. The Contractor agrees:
- (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or termination of this Deed, to deliver to the Customer, or, in accordance with the Customer's directions erase or otherwise deal with all such copies,
- unless any provision to the contrary is set out in the Official Order.
- 9.5 This clause survives the expiration or earlier termination of this Deed.

10. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

- 10.1 Subject to clause 10.2 Intellectual Property in all Contract Material vests or will vest in the Customer.
- 10.2 Clause 10.1 does not affect the ownership of Intellectual Property in any Existing Material, but the Contractor grants or undertakes to arrange for a third party to grant, to the Customer a permanent, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit any such Existing Material in conjunction with the other Contract Material.
- 10.3 If requested by the Customer, the Contractor agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 10.
- 10.4 The Contractor warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in this Contract Material in the manner provided for in this clause 10.
- 10.5 Property in any copy of Contract Material (in the form of a document, article or removable medium) vests or remains vested in the Customer. The Contractor agrees:
- (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or termination of this Deed, to deliver to the Customer, or, in accordance with the Customer's directions erase or otherwise deal with all such copies,
- unless any provision to the contrary is set out in the Official Order.
- 10.6 This clause 10 survives the expiration or earlier termination of this Deed.

11. MORAL RIGHTS

11.1 For the purposes of this clause, 'Specified Acts' relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Customer:

- (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Deed Material, with or without attribution of authorship;
- (b) supplementing the Contract Material with any other Material; and
- (c) using the Contract Material in a different context to that originally envisaged; but does not include false attribution of authorship.

11.2 The Contractor must use its best endeavours to ensure that:

- (a) where there is no consent already in place, a written consent will be given by the author of any Contract Material, other than Existing Material, to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Customer or any person claiming under or through the Customer; and
- (b) where there is no consent already in place, the author of any Existing Material will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the benefit of the Customer in relation to the Customer's licensed use of such Material.

11.3 This clause 11 survives the expiration or earlier termination of this Deed.

12. DISCLOSURE OF INFORMATION

12.1 The Contractor agrees not to disclose to any person other than the Customer, any Confidential Information relating to this Deed or the Services without prior approval in writing from the Customer.

12.2 The Customer may impose any conditions it considers appropriate when giving its approval under clause 12.1, and the Contractor agrees to comply with these conditions.

12.3 The Customer may at any time require the Contractor to give, and to arrange for its Contractor Personnel engaged in the performance of the Services to give, undertakings in writing in a form required by the Customer, relating to the non-disclosure of Confidential Information.

12.4 If the Contractor receives a request under clause 12.3 it agrees to promptly arrange for all such undertakings to be given.

12.5 The obligations on the Contractor under this clause will not be taken to have been breached where the information referred to is required by Law to be disclosed.

12.6 Property in any copy of Confidential Information (in the form of a document, article or removable medium) vests or will vest in the Customer. The Contractor agrees:

- (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
- (b) on the expiration or termination of this Deed, to deliver to the Customer, or, in accordance with the Customer's directions erase or otherwise deal with all such copies,

unless any provision to the contrary is set out in the Official Order.

- 12.7 The Customer gives no undertaking to treat Contractor information, or this Deed, as confidential information. The Contractor acknowledges that the Customer may disclose information relevant to this Deed, or this Deed itself to any person:
- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
 - (b) if required in connection with legal proceedings;
 - (c) for public accountability reasons, including disclosure on request to other Commonwealth Entities, and a request for information by parliament or a parliamentary committee or a Commonwealth Minister;
 - (d) to the Customer's third party service providers for the purposes of providing goods and services to, or on behalf of, the Customer; or
 - (e) for any other requirements of the Customer.

12.8 This clause 12 survives the expiration or earlier termination of this Deed.

13. ACCESS TO DOCUMENTS

- 13.1 In this clause 13, 'document' and 'Commonwealth Deed' have the same meaning as in the *Freedom of Information Act 1982*.
- 13.2 This clause 13 only applies if a Deed is a Contract which complies with the description of 'Commonwealth Contract'.
- 13.3 Where the Customer has received a request for access to a document created by or in the possession of, the Contractor or any subcontractor that relates to the performance of this Deed (and not to the entry into this Contract), the Customer may at any time by written notice require the Contractor to provide the document to the Customer and the Contractor must, at no additional cost to the Customer, promptly comply with the notice.
- 13.4 The Contractor must include in any subcontract relating to the performance of a Deed provisions that will enable the Contractor to comply with its obligations under this clause.

14. PROTECTION OF PERSONAL INFORMATION

- 14.1 This clause 14 applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services under this Deed.
- 14.2 In this clause 14, the terms:
- (a) agency;
 - (b) Contracted service provider;
 - (c) registered APP code ('RAC'); and
 - (d) Australian Privacy Principle ('APP'),
- have the same meaning as they have in the *Privacy Act 1988* ('the Privacy Act') and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.
- 14.3 The Contractor acknowledges that it may be treated as a 'Contracted service provider' and agrees in respect of the provision of the Services under this Deed:
- (a) to use or disclose Personal Information obtained during the course of providing the Services under this Deed, only for the purposes of this Deed;

- (b) not to do any act or engage in any practice which if done or engaged in by an agency, would be a breach of an APP;
 - (c) 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;
 - (d) comply with the obligations contained in the APPs that apply to the Contractor;
 - (e) not to use or disclose Personal Information or engage in an act or practice that would breach an APP or a RAC, whichever is applicable to the Contractor, unless the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Deed, and the activity or practice which is authorised by this Deed is inconsistent with the APP or RAC, whichever is applicable to the Contractor;
 - (f) to comply with any request under section 95C of the Privacy Act;
 - (g) to immediately notify the Customer if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause, whether by the Contractor or any subcontractor;
 - (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause; and
 - (i) to ensure that any officers, employees or agents of the Contractor who are required to deal with Personal Information for the purposes of this Deed are made aware of the obligations of the Contractor set out in this clause.
- 14.4 The Contractor agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Deed imposes on the subcontractor the same obligations as the Contractor has under this clause, including the requirement in relation to subcontracts.
- 14.5 The Customer may at any time require the Contractor to give, and to arrange for Contractor Personnel to give, undertakings in writing in a form required by the Customer, relating to the non-disclosure of Personal Information.
- 14.6 If the Contractor receives a request under clause 14.5, it agrees to promptly arrange for all such undertakings to be given.
- 14.7 The Contractor agrees to indemnify the Customer in respect of any loss, liability or expense suffered or incurred by the Customer which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a subcontractor under the subcontract provisions referred to in clause 14.4.
- 14.8 The Contractor's obligations under this clause are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any law including any such privacy codes or principles that would apply to the Contractor but for the application of this clause.
- 14.9 This clause 14 survives the expiration or earlier termination of this Deed.
- 15. COMPLIANCE WITH LAWS AND POLICIES**
- 15.1 The Contractor agrees, in carrying out this Deed, to comply with all Laws and any relevant policies, including:
- (a) the *Crimes Act 1914*;

- (b) the *Racial Discrimination Act 1975*;
 - (c) the *Sex Discrimination Act 1984*;
 - (d) the *Disability Discrimination Act 1992*;
 - (e) the *Charter of United Nations Act 1945* and the *Charter of United Nations (Dealing with Assets) Regulations 2008*;
 - (f) the *Archives Act 1983*;
 - (g) the *Privacy Act 1988*;
 - (h) the *Freedom of Information Act 1982*;
 - (i) the *Criminal Code Act 1995*;
 - (j) any occupational health and safety legislation applicable to the Contractor;
 - (k) the Australian Government's *Lobbying Code of Conduct 2013*;
 - (l) the *Protective Security Policy Framework* which is available at: [Protective Security Policy Framework website](#);
 - (m) any fraud control guidelines issued by the Department of Finance from time to time; and
 - (n) any other policies notified to the Contractor in writing or listed in the Official Order.
- 15.2 The Contractor acknowledges that under section 137.1 of the Schedule to the *Criminal Code Act 1995*, giving false or misleading information to the Commonwealth is a serious offence.
- 15.3 The Contractor agrees, when using the Customer's premises or facilities, to comply with all reasonable directions and procedures relating to occupational health, safety and security in operation at those premises or in regard to those facilities whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.
- 15.4 Without limiting the effect of clause 24, the Contractor must comply with, and require Contractor Personnel to comply with, the behaviours specified in:
- (a) the Code of Conduct in section 13 of the *Public Service Act 1999* as if the Contractor and those Contractor Personnel were APS employees as defined in that Act; and
 - (b) on and from 1 July 2014, the general duties of officials at sections 25-29 of the *Public Governance, Performance and Accountability Act 2013* as if the Consultant and those Consultant Personnel were officials as defined in that Act.
- 16. CONFLICT OF INTEREST**
- 16.1 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of this Deed no Conflict exists or is likely to arise in the performance of obligations under this Deed by the Contractor or the Contractor Personnel.

- 16.2 If, during the term of this Deed, a Conflict arises, or appears likely to arise, in respect of the Contractor or the Contractor Personnel, the Contractor agrees to:
- (a) notify the Customer immediately in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps the Contractor proposes to take to resolve or otherwise deal with the Conflict; and
 - (b) take such steps as have been proposed by the Contractor, or at the discretion of the Customer, take such steps as the Customer may reasonably require to resolve or otherwise deal with the Conflict.
- 16.3 If the Contractor fails to notify the Customer under this clause or is unable or unwilling to resolve or deal with the Conflict as required, the Customer may terminate this Deed in accordance with the provisions of clause 21.
- 16.4 The Contractor agrees that it will not, and will use its best endeavours to ensure that any Contractor Personnel do not, engage in any activity or obtain any interest during the course of this Deed that is likely to conflict with or restrict the Contractor in providing the Services to the Customer fairly and independently.

17. ACCOUNTABILITY

- 17.1 The Contractor must give to:

- (a) the Auditor-General or his/her delegate;
 - (b) the Privacy Commissioner or his/her delegate;
 - (c) the Ombudsman or his/her delegate;
 - (d) the persons appointed under the *Australian Information Commissioner Act 2010* as the Information Commissioner and the FOI Commissioner or his/her delegate; and
 - (e) any persons authorised in writing by the Customer,
- (referred to in this clause collectively as 'those permitted') access to premises :
- (f) at which Materials associated with this Deed are stored; or
 - (g) work associated with this Deed is undertaken, and
 - (h) to the Contractor Personnel,

in order for those permitted to be able to inspect and copy Material for purposes associated with this Deed or any review of performance under this Deed.

- 17.2 The rights referred to in clause 17.1 are, wherever practicable, subject to:

- (e) the provision of reasonable prior notice from the Customer (except where there is an actual or apprehended breach of the Law);
- (f) access being sought during reasonable times (except where there is an actual or apprehended breach of the Law); and
- (g) the reasonable security procedures of the Contractor.

- 17.3 The Contractor agrees to provide all reasonable assistance requested by the Customer in respect of any inquiry into or concerning the Services or this Deed.

- 17.4 Without limitation to the generality of clause 17.3:

- (a) the assistance to be provided by the Contractor under clause 17.3 will include, as appropriate, the provision of Material, and making available relevant personnel of the Contractor to provide information or answer questions on any matters

relevant to or arising from this Deed or the performance of the Services which might reasonably be expected to be within the knowledge of the Contractor; and

- (b) an inquiry referred to in clause 17.3 will include any administrative or statutory review, audit or inquiry (whether within or external to the Commonwealth), any request for information directed to the Customer, and any inquiry conducted by Parliament or any Parliamentary committee.

- 17.5 The Customer will endeavour to notify the Contractor as early as possible of any assistance required under clause 17.3, provided always that the Contractor acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.
- 17.6 The requirement for access under this clause does not in any way reduce the responsibility of the Contractor to perform its obligations in accordance with this Deed.
- 17.7 The Contractor agrees to ensure that any subcontract entered into for the purpose of this Deed contains an equivalent clause permitting those permitted to have access as specified in this clause.
- 17.8 Nothing in this Deed limits or restricts in any way any duly authorised function, power, right or entitlement of the Auditor-General, the Ombudsman, the Privacy Commissioner, the Information Commissioner, the FOI Commissioner or their respective delegates. The rights of the Customer under this Deed are in addition to any other duly authorised power, right or entitlement of the Auditor-General, the Ombudsman, the Privacy Commissioner, the Information Commissioner, the FOI Commissioner or their respective delegates.
- 17.9 This clause 17 survives the expiration or earlier termination of this Deed for a period of seven years.

18. INDEMNITY

- 18.1 To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Contractor under or in connection with this Deed.
- 18.2 The Contractor agrees to indemnify the Customer, its officers, employees and agents from and against any:
 - (a) loss or liability incurred by the Customer;
 - (b) loss of or damage to property of the Customer; or
 - (c) loss or expense incurred by the Customer 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 Customer, arising from:
 - (d) any act or omission by the Contractor or the Contractor Personnel in connection with this Deed, where there was fault (including, without limitation, any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense; or
 - (e) any breach by the Contractor of its obligations or warranties under this Deed.

- 18.3 The Contractor's liability to indemnify the Customer under clause 18.1 will be reduced proportionately to the extent that any negligent or other tortious act or omission of the Customer contributed to the relevant liability, loss, damage, or expense.
- 18.4 The right of the Customer to be indemnified under this clause:
- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by law; and
 - (b) does not entitle the Customer to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.
- 18.5 The Contractor agrees that the Customer will be taken to be acting as agent or trustee for and on behalf of its officers, employees and agents from time to time.
- 18.6 This clause survives the expiration or earlier termination of this Deed.

19. DISPUTE RESOLUTION

- 19.1 The Parties agree that any dispute arising during the course of this Deed will be dealt with as follows:
- (a) first, 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 have authority to intervene and direct some form of resolution;
 - (c) thirdly, the Parties have 10 Business Days from the receipt of the notice in clause 19.1(a) to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
 - (d) lastly, if:
 - (i) there is no resolution or agreement; 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,
 then, either Party may commence legal proceedings.
- 19.2 Despite the existence of a dispute, the Contractor will (unless requested in writing not to do so) continue to perform the Services.
- 19.3 This clause:
- (a) does not apply to action by the Customer under or purportedly under clauses 3.2 or 20 or by either Party under or purportedly under clause 21; and
 - (b) does not preclude either Party from commencing legal proceedings for urgent interlocutory relief.

20. TERMINATION AND REDUCTION FOR CONVENIENCE

- 20.1 The Customer may, at any time by notice and at its sole discretion, terminate this Deed in whole or reduce the scope of the Services immediately.
- 20.2 Upon receipt of a notice of termination or reduction the Contractor must:
- (a) stop or reduce work as specified in the notice; and

- (b) take all available steps to minimise loss resulting from that termination or reduction and to protect Customer Material and Deed Material.
- 20.3 Where there has been a termination under clause 20.1, the Customer will be liable only for:
- (a) payments and assistance under clause 3 for Services properly rendered before the effective date of termination; and
 - (b) reasonable costs unavoidably incurred by the Contractor and directly attributable to the termination and which the Contractor fully substantiates.
- 20.4 The Customer will not be liable to pay compensation under clause 20.3(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Deed, together exceed the fees set out in the Official Order.
- 20.5 The Contractor will not be entitled to compensation for loss of prospective profits.
- 20.6 If there is a reduction in the Services, the Customer's obligation to pay any fee will abate proportionately to the reduction in the Services.
- 20.7 To avoid doubt, the Customer has an unfettered discretion to terminate this Deed or reduce the scope of the Services in accordance with this clause.
- 21. TERMINATION FOR DEFAULT**
- 21.1 Where a Party fails to satisfy any of its obligations under this Deed, the other Party may:
- (a) if it considers that the failure is not capable of remedy, by notice, terminate this Deed immediately;
 - (b) if it considers that the failure is capable of remedy, by notice, require that the failure be remedied within a time specified in the notice (being not less than seven days); and
 - (c) if the failure is not remedied in accordance with a notice given under clause 21.1(b), by further notice, terminate this Deed immediately.
- 21.2 The Customer may also, by notice, terminate this Deed immediately (but without prejudice to any prior right of action or remedy which either Party has or may have) if the Contractor:
- (a) being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration;
 - (b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors; or
 - (d) breaches a warranty listed in clause 23.
- 22. DEEMED TERMINATION FOR CONVENIENCE**
- 22.1 If a purported termination for cause by the Customer under clause 21 is determined by a competent authority not to be properly a termination for cause, then that termination by the Customer will be deemed to be a termination for convenience under clause 20 which termination has effect from the date of the notice of termination referred to in clause 21.
- 23. CONTRACTOR WARRANTIES**
- 23.1 The Contractor represents, warrants and undertakes to the Customer that:

- (a) it will promptly notify and fully disclose to the Customer in writing any event or occurrence actual or threatened which could have an adverse effect on the Contractor's ability to perform any of its obligations under this Deed;
- (b) it has full power and authority to enter into, perform and observe its obligations under this Deed;
- (c) the execution, delivery and performance of this Deed has been duly and validly authorised by the Contractor;
- (d) it will promptly notify and fully disclose to the Customer in writing if:
 - (i) it becomes insolvent or is wound up;
 - (ii) it makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver, manager or administrator appointed;
 - (iii) it goes into liquidation or passes a resolution to go into liquidation, or becomes subject to any petition or proceedings in a court for its compulsory winding up or becomes subject to the supervision of a court or regulatory authority, either voluntarily or otherwise;
 - (iv) it suffers any execution against its assets;
 - (v) anything analogous to, or of a similar effect to anything described above under the Law occurs in respect of the Contractor;
- (e) the unconditional execution and delivery of, and compliance with its obligations by it under this Deed do not:
 - (i) contravene any Law to which it or any of its property is subject or any order or directive from a Commonwealth Entity binding on it or any of its property;
 - (ii) contravene its constituent documents;
 - (iii) contravene any Deed or instrument to which it is a party;
 - (iv) contravene any obligation of it to any other person; or
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;
- (f) no litigation, arbitration, mediation, conciliation or proceedings including any investigations, are taking place, pending, or are threatened against the Contractor which could have an adverse effect upon either the Contractor's capacity to perform its obligations under this Deed or the Contractor's reputation;
- (g) it has not had a judicial decision (excluding decisions under appeal) made against it in relation to employee entitlements where that claim has not been paid;
- (h) unless otherwise disclosed in this Deed, it is not entering into this Deed as trustee of any trust or settlement;
- (i) it has not made any false declaration in respect of any current or past dealings with the Customer or any Commonwealth Entity, including in any tender or application process or in any Deed;
- (j) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior Deed with the Customer or any Commonwealth Entity;

- (k) it has, and will continue to have and to use, the skills, qualifications and experience to perform the Services in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Deed; and
 - (l) it has and will continue to have the necessary resources, including financial resources, to perform the Services and will use those resources to perform the Services.
- 23.2 The Contractor acknowledges that the Customer in entering into this Deed is relying on the warranties and representations contained in this Deed.
- 23.3 Each representation and warranty survives the execution of this Deed.
- 24. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY**
- 24.1 The Contractor is not, by virtue of this Deed, an officer, employee, partner or agent of the Customer, nor does the Contractor have any power or authority to bind or represent the Customer.
- 24.2 The Contractor agrees not to represent itself, and to use its best endeavours to ensure that its Contractor Personnel do not represent themselves as being an officer, employee, partner or agent of the Customer, or as otherwise able to bind or represent the Customer.
- 25. NOTICES**
- 25.1 A Party giving notice under this Deed must do so in writing, including by email or facsimile, that is:
 - (a) directed to the recipient's Deed Liaison Officer as specified in the Official Order or as varied by any notice; and
 - (b) hand delivered or sent by pre-paid post, email or facsimile to the Deed Liaison Officer's address.
- 25.2 The Parties agree that a notice given in accordance with clause 25.1 is received:
 - (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, on the third Business Day after the date of posting;
 - (c) if sent by email or facsimile, when received by the addressee or when the sender's computer or facsimile machine generates written notification that the notice has been received by the addressee, whichever is earlier.

(h) SCHEDULE 3**SERVICES**

Subject to the Request for Quote (if any) and the Contractor's acceptance, and the scope, of an Official Order in accordance with clause 3 of this Deed, the Contractor may be required to provide any or all of the Services specified in this Schedule 3.

Services	Tick which you will be offering
Supplementing the Department's data analytics staffing and capabilities in order to deliver outcomes from data analytics projects;	✓
Assisting the Department to evaluate new and emerging analysis methods;	✓
Delivering trial and evaluation services of self-service data reporting and analytics tools, including those to assist economic, statistical and location based analysis, and geospatial services;	✓
Delivering project management services for data analytics projects;	
Delivering services to collect, collate and prepare data (e.g. survey design, modelling, cleaning, integration) for data analysis projects;	✓
Delivering services to communicate the results of data analysis in an engaging way for the target audience whatever their nature or location, eg turning health data into visual intelligence;	✓
Delivering advisory services on the role of data analytics in strategic planning, analytic processes and capability improvements.	✓

(i) SCHEDULE 4**FEES, ALLOWANCES AND COSTS**

Classification (e.g Partner)	Hourly Rate (inc GST)	Daily Rate (inc GST)	Weekly Rate (inc GST)
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BY THE DEPARTMENT OF HEALTH AND AGED CARE

(j) SCHEDULE 5A

FORM OF REQUEST FOR QUOTATION

This Request for Quotation is issued in accordance with clause 3.3 of the Deed of Standing Offer for Services entered into between the Commonwealth of Australia as represented by *[insert Customer's name]* ('Customer') and *[insert Contractor's full legal name]* ('Contractor') dated *[insert date of Deed]* ('Deed').

ID	Item	Detail
1	Date of Request for Quotation	<i>[Insert date RFQ is issued]</i>
2	Quotation due date	Quotations should be submitted to the Customer's Deed Liaison Officer by <i>[insert due date]</i> .
2	Defined terms	As defined in the Deed. <i>[Insert additional terms if required]</i>
3	Services to be provided	<i>[Insert details by reference to Schedule 3 of the Deed and attach additional pages if required]</i> <i>[Include details of any deliverables]</i> <i>[Insert details of any milestones]</i>
4	Timeframes	<i>[Insert proposed start / finish dates and peak workload cycles]</i>
5	Other requirements	<i>[Other requirements may be negotiated having regard to the particular Services to be provided. Examples could be:</i> <ol style="list-style-type: none"> 1. Reporting 2. Confidential Information 3. Specified Personnel 4. Customer Material to be provided 5. Required Contract Material 6. Fees, allowances and costs 7. Conditions/Restrictions re Personal Information 8. Department policies <i>If there are no other requirements, insert 'None specified.']</i>

(k) SCHEDULE 5B**FORM OF QUOTATION**

[This form must be used when responding to a Request for Quotation. Use attachments to incorporate bulky details if required.]

1. ***[Insert Contractor's full legal name]*** ('Contractor') submits this Quotation in accordance with clause 3.4 of the Deed of Standing Offer for Services entered into between the Commonwealth of Australia as represented by ***[insert Customer's name]*** ('Customer') and the Contractor dated ***[insert date of Deed]*** ('Deed') to provide the Services specified in the Request for Quotation dated ***[insert date of RFQ]*** (RFQ).
2. This Quotation will remain valid for a period of ***[insert number]*** months from the date of submission.
3. Without limiting clause 3.6 of the Deed, the Contractor acknowledges that no binding Deed (express or otherwise) is created between the Customer and the Contractor until the Parties execute an Official Order.

ID	Item	Details
1	Contractor	<i>[Insert Contractor's full legal name]</i>
2	Date of Quotation	<i>[Insert date Quotation is submitted]</i>
3	Defined terms	As defined in the Deed. <i>[Insert additional terms if required]</i>
4	Services to be provided	<i>[Insert Contractor's proposal for meeting the Customer's need as set out in item 3 of the RFQ and by reference to Schedule 3 of the Deed.]</i>
5	Fees, allowances and costs	<i>[Insert the Contractor's fees, allowances and costs to provide the Services by reference to Schedule 4 of the Deed.]</i>
6	Ability to meet timeframes	<i>[Insert Contractor's ability to meet the required timeframes as set out in item 4 of the RFQ.]</i>
7	Other requirements	<i>[Contractor to respond to the other requirement's specified by the Customer at item 5 of the RFQ (if any). Contractor should also list:</i> <ol style="list-style-type: none"> 1. Specified Personnel 2. Contractor confidential information 3. Existing Material that will be provided 4. any other requirements for the Customer to consider. <i>If there are no other requirements, insert 'None specified.']</i>

(I) SCHEDULE 6
OFFICIAL ORDER



Australian Government

Department of Health

Official Order/Deed details [insert SAP Deed number] for [insert the Services]

Under Deed of Standing Offer (Head Agreement for Services) – [insert the Deed of Standing Offer number]

Customer details	Contractor details
<i>[Customer Branch Name]</i> <i>[Address]</i>	<i>[Contractor Name] [ABN:]</i> <i>[Address]</i>
Customer Contract Liaison Officer: [.....position], currently [.....name] Telephone: Email:	Contractor Deed Liaison Officer: [.....position], currently [.....name] Telephone: Email:

This Official Order is placed pursuant to and subject to the terms and conditions of the Deed of Standing Offer (Head Agreement for Services) between the *[insert Customer eg Commonwealth of Australia as represented by the Department of Health]* and *[insert name of Contractor]* dated *[insert date]*.

Note to Contractor: If you wish to provide the Services to the Customer, please sign this Official Order and send it to the Customer. If the Customer wishes to accept your offer to provide the Services, it will execute the Official Order and return a copy of the executed Official Order to you. You must not supply the Services until after you have received the copy of the executed Official Order from the Customer.

Service	Detail
Service Description	[Summary description of Services required]
Cost	[\$XXX (Cost) plus \$XXX (GST) totalling \$XXX TOTAL COST (GST Inc.)]
Date services to commence on	.../.../...
Date services to be completed by	.../.../...

Invoices are to be issued to the Customer Deed Liaison Officer named above.

Internal codes for Customer Purposes Only

Internal Code	Insert code number
Cost Centre	
Charge Code	
SAP Deed #	
SAP PO#	

For fees and rates, see Item 3.

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BY THE DEPARTMENT OF HEALTH AND AGED CARE

[Where a Request for Quotation process preceded this Official Order, the following items should be populated with information from the Quotation. The form of Official Order may need to be amended for other Commonwealth Entities.]

1. The Services and subcontractors

[Specify here the description of the Services, clearly detailing exactly what you require the Contractor to do and the outcomes. Include also details of any subcontractors that the Department has agreed can undertake any part of the Services.]

Specify any relevant Australian Standards, Commonwealth and industry standards and guidelines that you require the Contractor to comply with or meet, in delivering the Services.]

2. Time frame

[Specify here the times for performance of the Services and the period over which the Services are to be performed. This should align with the dates on the cover of this Official Order. If progressive delivery is required, a timetable should be included here. You may also describe timeframes by reference to outcomes or milestones.]

3. Fees, allowances and costs

[Insert here the fees payable for the performance of the Services calculated in accordance with Schedule 4 of the Deed (including any hourly or daily rates payable) and, if applicable, any allowances or costs associated with the performance of the Services calculated in accordance with Schedule 4 of the Deed.]

You need to stipulate here whether the Customer will pay fees by instalments and if so, the deliverables to which payments will relate or the instalment intervals.

Detail any special requirements for the submission of invoices by the Contractor.

For example:

The total fee for the Services is \$[insert] payable by the following instalments:

- \$[insert] following delivery of an interim report (as described in Item 8 [Contract Material]) and*
- \$[insert] following delivery of a final report (as described in Item 8 [Contract Material]).*

The due date for payment is 30 days after delivery of a correctly rendered invoice to the Customer.]

4. Specified Personnel

[You need to specify here the names of Specified Personnel who you have agreed are to undertake the work.]

OR

If there are no Specified Personnel you need to insert the following words:

None specified.]

5. Customer Material to be provided by Customer

[Insert here the details of any Customer Material to be provided to the Contractor by the Customer and any special requirements relating to the use, storage and retention by the Contractor of that Customer Material.]

OR

If there is no Customer Material you need to insert the following words:

No Customer Material required to be provided.

(Seek assistance from LSB if you are unsure how to complete this item.)]

6. Existing Material

[You need to stipulate here any Existing Material that the Contractor will utilise in development of the Contract Material and to which the Customer will get a licence to use in conjunction with the Contract Material. You will need to discuss this with the Contractor as it is the Contractor's (or a third party's) Existing Material that needs to be listed here.

OR

If there is no Existing Material you need to insert the following words:

There is no Existing Material to be used in the development of the Contract Material.

(Seek assistance from LSB if you are unsure how to complete this item.)]

7. Contract Material

[Specify here the Contract Material that you expect the Contractor to produce including the reporting requirements. As well as listing the Contract Material in detail, you need to also specify the format required by the Customer.

The following words must be included if any Contract Material will be put on the intranet or internet.

The Contractor must ensure that any Contract Material which is to be placed on a Departmental website or the intranet complies with the:

Level AA accessibility requirements in the Web Content Accessibility Guidelines 2.0 (available at [Web Content Accessibility Guidelines](#)); and

World Wide Web Access: Disability Discrimination Act Advisory Notes, version 4.0 (2010), released by the Australian Human Rights Commission (available at [Human Rights Commission website](#)).

You also need to insert here any additional requirements or directions relating to the handling and retention of Contract Material.

(Seek assistance from LSB if you are unsure how to complete this item.)]

8. Confidential Information

[Insert here any additional requirements or directions relating to the handling and retention of the Customer's Confidential Information. If the Contractor has requested any information be treated as confidential, this should be included in item 12 below.]

9. Customer facilities and assistance

[Insert here any facilities and/or assistance that the Customer has agreed to provide to the Contractor.

OR

If there is none required you need to insert the following words:

No Customer facilities or assistance is required.]

10. Invoice procedures

[Unless alternative invoice procedures have been agreed, include the following words:

The Contractor must forward correctly addressed invoices that are in the form of a tax invoice and include the following:

- the title of the Services or other identification of this Deed;
- the name of the Customer Deed Liaison Officer;
- the fees, allowances and costs due; and
- a written statement signed by the Contractor, or where the Contractor is a body corporate, by a representative of the Contractor authorised to sign on behalf of the body corporate, verifying that no wages are due and owing by the Contractor in respect of the performance of the Services at the time the claim for payment is made.

11. Other Terms and Conditions (optional – delete paragraph if not applicable)

[You need to specify here any other terms and conditions. An example of when this paragraph could be used is, if the Contractor has identified a conflict of interest prior to undertaking the Services and the Customer wants the Contractor to undertake certain steps during the course of the Contract to resolve or otherwise deal with that conflict. This provision could be used by the Customer to stipulate those steps or to set out how the Customer wants the conflict to be dealt with under the Conflict of Interest clause (clause 15 of Schedule 1). (You must seek assistance from LSB before including any additional terms and conditions.)]

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THE FREEDOM OF INFORMATION ACT 1987
BY THE DEPARTMENT OF HEALTH AND AGEING

This Deed/Official Order is **SIGNED** as a Contract.

SIGNED for and on behalf of the [insert either "**COMMONWEALTH OF AUSTRALIA**" as represented by the [insert name of Non-Corporate Commonwealth Entity]" OR "[**NAME OF CORPORATE COMMONWEALTH ENTITY**]" ABN [insert] on:

.....
Date

by:

.....
Printed name of signatory

.....
Signature

.....
Position of signatory

in the presence of:

.....
Printed name of witness

.....
Signature

SIGNED, SEALED AND DELIVERED by [insert name of Contractor], ABN [insert Contractor's ABN], in accordance with subsection 127(1) of the Corporations Act 2001 on: [You will need to insert the appropriate signature block according to the type of legal entity – see the Guide to the Standard Contract for Services. This signature block is only appropriate when the Contractor is a company incorporated under the Corporations Act with several directors or a director and secretary who are separate persons.]

.....
Date

by:

.....
Printed name of Director

.....
Signature of Director

and:

.....
Printed name of Director/Secretary/Witness

.....
Signature of Director/Secretary/Witness

(m) **SCHEDULE 7****DEED OF INCLUSION****DETAILS**

Date

Parties New Customer and Contractor

New Customer:Name **Commonwealth of Australia** represented by *[insert name of Non-Corporate Commonwealth Entity]*

OR

*[insert name of Corporate Commonwealth Entity]*ABN *[insert]***Contractor:**Name *[insert name of Contractor]*ABN *[insert]***Background**

On *[insert date of original Deed]*, the Commonwealth of Australia as represented by the Department of Health ('Health') and the Contractor entered into the Deed of Standing Offer ('Deed') for the provision of *[insert description of services]* ('Services') [as part of the *[insert name]* panel] for Health.

The Deed enables Included Agencies to enter into a Deed of standing offer on the same terms as the Deed to enable them to receive Services from the Contractor by executing a Deed in the form of this Deed of Inclusion.

The New Customer wishes to acquire and the Contractor has agreed to supply such Services from the Contractor as it requires from time to time in accordance with the terms of the Deed and this Deed of Inclusion.

AGREED TERMS**1. Notice of Inclusion**

1.1 The Parties agree that, in accordance with clause 5.4 of the Deed, this Deed of Inclusion creates a Deed of standing offer between the New Customer and the Contractor that incorporates:

- (a) all terms of the Deed, other than Schedule 1 of the Deed, which is specific to Health, as if those provisions were set out in full in this Deed; and
- (b) the specific New Customer requirements set out in schedule 1 of this Deed of Inclusion.

(n) Schedule 1 of the Deed of Inclusion

Items	Inclusion information required
ITEM 1 DEED LIAISON OFFICERS	New Customer's Deed Liaison Officer The New Customer's Deed Liaison Officer is the person occupying the position of: <i>[insert position], currently [insert name]</i> Address: <i>[insert address]</i> Telephone: <i>[insert phone]</i> Email: <i>[insert email]</i>
	Contractor's Deed Liaison Officer The Contractor's Deed Liaison Officer is the person occupying the position of: <i>[insert position], currently [insert name]</i> Address: <i>[insert address]</i> Telephone: <i>[insert phone]</i> Email: <i>[insert email]</i>
ITEM 2 COMMENCEMENT DATE	<i>[insert Commencement Date here, e.g. "The date this Deed is executed by the last Party to do so,"]</i>
ITEM 3 INITIAL END DATE	<i>[insert Initial End Date here, e.g. "The date that falls xxx years after the Commencement Date."]</i>
ITEM 4 EXTENSION DATE	<i>[insert Extension Date here, e.g. "The date that falls xxx years after the Initial End Date."]</i> <i>If there is no extension option, insert 'No option to extend.']</i>
ITEM 5 FURTHER EXTENSION DATE	<i>[insert Further Extension Date here, e.g. "The date that falls xxx years after the Extension Date."]</i> <i>If there is no further extension option, insert 'No further option to extend.']</i>

Items	Inclusion information required
ITEM 6 INSURANCE	<ul style="list-style-type: none"> • Public liability insurance for an amount of not less than \$10 million on a per claim basis • Professional indemnity insurance for an amount of not less than \$10 million on a per claim basis. • Workers' compensation insurance for an amount required by relevant State or Territory legislation.
ITEM 7 OTHER NEW CUSTOMER REQUIREMENTS	<i>[Insert any other New Customer requirements]</i>

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THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH AND AGED CARE

Official Order No 1 for the Deed of Standing Offer in relation to Services for Health Data Analytics Panel
Execution Version - (ACW:NS:AB)

Attachment A - Special Conditions

Additional Contract Definitions

1. In this Contract, unless the contrary insertion appears, the following definitions apply in addition to those identified in **clause 1** of the Terms and Conditions:

Agency means

- a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth, State or Territory legislation, or an instrument made under that legislation (including a local authority);
- b) a body established by the Governor General or by a Minister of State of the Commonwealth, State or Territory, including departments; or
- c) an incorporated company over which the Commonwealth, State or Territory exercises control.

Benefit has the meaning set out in **paragraph 4.1** of **Attachment C - Pricing**;

Commonwealth Data Protection Plan means a data protection plan prepared by the Customer to manage the protection of Health Data, as updated from time to time;

Compliance Risk means, in respect of the Customer's health care reimbursement system, the claiming of health care reimbursement to which the claimant is not entitled;

Contract Commencement Date means the later of the following:

- a) the date the Official Order is signed by both Parties, and if signed on different dates, the date of the last Party to sign, and
- b) 18 April 2017

Contract Extension Term has the meaning set out in **clause 2.2** of the **Official Order**;

Contract Material has the meaning in the Deed, including the material set out in **Table 4** in **clause 7** of the Official Order;

Contractor Material means Existing Material owned by the Contractor as at the Contract Commencement Date;

Contract Term means the total Contract term, being the Initial Contract Term and all Contract Extension Terms (if any);

Contractor's Platform has the meaning set out in **paragraph 1.2** of **Attachment B - Statement of Requirement**;

Customer Data Analytics Laboratory has the meaning set out in **paragraph 2.3** of **Attachment B - Statement of Requirement**;

Customer Personnel means the officers, employees, agents, consultants, contractors and subcontractors and other personnel of the Customer (other than Contractor Personnel);

Customer's Platform means the Customer's existing Non-Compliance Detection Systems and platforms, forming part of the Health ICT Environment;

Cyber Incident has the meaning set out in **clause 8.2(a)**;

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Official Order No 1 for the Deed of Standing Offer in relation to Services for Health Data Analytics Panel
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Debt Services has the meaning set out in paragraph 1.2(a) of Attachment B - Statement of Requirement.

Deed of Standing Offer means the Deed of Standing Offer (Head Agreement for Services) between the Customer and the Contractor, contract no. SON3390679;

Documentation means:

- (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;
- (c) any article, material or media from which sounds, image or writings are capable of being reproduced with or without the aid of another article or device (including, by way of example and without limitation, disks, CDs, USB or other drives, recording devices, tapes, hard drives and any like device);
- (d) a copy of any of the things referred to in paragraphs (a) to (c) of this definition, which records, contains, sets out or refers to information; and
- (e) to Document means to cause any of paragraphs (a) to (d) of this definition to occur;

Embedded Material has the meaning set out in clause 12.4;

Full Time Equivalent means a measurement equal to one (1) person working on a full time basis;

Harmful Code means any software or code or any other thing that is designed to infiltrate or otherwise disrupt a computer, system, network or other infrastructure without an end user's informed consent, such as attack of any kind including distributed denial of service, malware, virus, worm, Trojan, time bomb, spam, phishing email, backdoors, botspyware, adware, diallers, toolkits, key loggers, hijackers, web bug, exploits, cracking and hacking tools;

Health Data means all data (including MBS data and PBS data) and information (including Personal Information) relating to an individual's health information, information relating to a healthcare provider, the Customer or another Agency and its or their respective functions (including data and information to the Customer's business operations, business assets, business programs, programmes and Customer Personnel), facilities, Customer Personnel, assets or programs, in whatever form that data and information may exist and whether or not it was generated by or processed by or on behalf of the Customer, or is stored in any Commonwealth Record. Health Data includes all Modifications to Health Data.

Health Data does not include data or information that is generated by software or equipment as a consequence of its inherent operation and which does not allow identification of the Customer, its functions or any particular individual (including non-identifiable log files, software and equipment performance data or other system operating information);

Health ICT Environment means all logical and physical environments of the Customer that contain information technology;

Implementation Services has the meaning set out in paragraph 1.2(b) of Attachment B - Statement of Requirement;

Implemented Contractor's Platform has the meaning set out in paragraph 1.2 of Attachment B - Statement of Requirement;

Initial Contract End Date means 30 June 2019;

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Initial Contract Term means the period commencing on the Contract Commencement Date and ending on the Initial Contract End Date;

Law means any applicable statute in force from time to time anywhere including in Australia or overseas, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time;

Loss or Losses includes all losses, liabilities, damages, fines, costs and expenses, including reasonable legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

Modify means to add to, enhance, reduce, adapt, change, replace, vary or improve. Derivatives such as 'Modification' and 'Modified' have corresponding meanings;

Non-Compliance Detection Systems has the meaning set out in paragraph 5.1 of Attachment B - Statement of Requirement;

Objective means the Customer's object to raise levels of debt and prevent payment of incorrect payments by the Customer's health care reimbursement system as set out in paragraph 4.5 and Table 4 in Attachment C - Pricing;

Other Incident has the meaning set out in clause 8.2(b);

Pass Through Costs has the meaning set out in paragraph 1.4 of Attachment C - Pricing;

Rebate has the meaning set out in paragraph 3.2 of Attachment C - Pricing;

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth);

Security Classified Information has the meaning given in the Protective Security Policy Framework;

Statute means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere including in Australia, whether made by State, Territory, the Commonwealth or local government;

Steering Committee has the meaning set out in paragraph 8.1 of Attachment B - Statement of Requirement;

Terms and Conditions means the terms and conditions applicable to this Contract as set out in Schedule 2 of the Deed as amended;

Third Party Material means all Material including Third Party Software (including Modifications of or to that Material) acquired from a third party supplier (other than Customer Material, Contract Material and Contractor Material) that is used by the Contractor to provide the Services, or provided by the Contractor to, and used by, the Customer under or in connection with this Contract;

Third Party Software means software (including Modifications of or to that software) that is:

- (a) acquired from a third party supplier; and
- (b) used by the Contractor in the performance of the Services.

Waiver Manual means the manual of that name as updated from time to time detailing all waivers made under this Contract.

2. **Data Management**

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- 2.1 The Contractor agrees that the implementation of the Services will involve the access to or creation of information incorporating Personal Information and other sensitive health information that comprise Health Data.
- 2.2 The Contractor agrees that compliance with this Contract and applicable Laws, including in respect of privacy and security, are of paramount importance.
- 2.3 The Contractor acknowledges and agrees that:
- (a) the Customer holds and deals with highly sensitive information and such information is incorporated in Health Data;
 - (b) the Customer is concerned to ensure that such information is not improperly damaged, destroyed, lost, used or disclosed contrary to this Contract or any Laws;
 - (c) use or disclosure of such information contrary to this Contract may constitute a breach to which **clause 21** of the Terms and Conditions applies; and
 - (d) the Contractor must notify the Customer immediately and comply with all directions of the Customer if the Contractor becomes aware of any contravention of its privacy and/or security requirements.
- 2.4 The Customer agrees that, in relation to **clause 14.3(c)** of the Terms and Conditions, the Contractor is not obliged to notify any individual whose Personal Information the Contractor holds by virtue of holding the Health Data, of the matters referred to in that **clause 14.3(c)**.
3. **Ownership of Health Data**
- 3.1 Health Data remains the property of the Customer at all times and the Customer may, among other things make Health Data available to other persons.
4. **Protection of Health Data**
- 4.1 The Contractor must comply with all data security requirements in respect of access to and use of Health Data specified in **Attachment B - Statement of Requirement** or notified to the Contractor by the Customer from time to time. Individual Data classification of each item is "UNCLASSIFIED DLM or Sensitive Personal". The aggregation of all the records will increase the risk associated with the release of information, necessitating the implementation of additional controls which, subject to **clause 5.5**, are to be agreed between the Parties.
- 4.2 The Contractor must not, and must ensure that its subcontractors and Contractor Personnel do not:
- (a) remove Health Data or allow Health Data to be removed from the Customer's premises at any time;
 - (b) take Health Data or allow Health Data to be taken outside of or stored outside of, or accessed from outside of, Australia or require the Customer to allow Health Data to be taken outside of or stored outside of Australia;
 - (c) use Health Data for purposes other than those directly related to the performance of the Services;
 - (d) sell, let for hire, assign rights in or otherwise dispose of any Health Data;
 - (e) make available any Health Data to any third party other than subcontractors approved in accordance with this Contract and then only to the extent necessary to enable the subcontractor to perform its part of the Services;

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- (f) allow any person who does not have the appropriate level of security clearance from gaining access to Health Data; or
 - (g) commercially or otherwise exploit Health Data,
- without the Customer's prior written consent (from the Customer Contract Liaison Officer).
- 4.3 The Contractor must ensure that it has in place, at all times, safeguards for all matters within its control against the unauthorised access, misuse, damage, destruction, loss, alteration or corruption of Health Data (including by third parties) which is in the possession of the Contractor, its subcontractors or Contractor Personnel. The Parties agree:
- (a) the Contractor must ensure that such safeguards comply with any other security procedures or requirements specified by the Customer from time to time and all applicable Laws; and
 - (b) because the Contractor will be accessing the Health Data at the Customer's premises, the Customer also has responsibility for ensuring the security of that Health Data, including an obligation to ensure those premises and the Health ICT Environment contain safeguards to prevent unauthorised access, misuse, damage, destruction, loss, alteration or corruption of Health Data (including by third parties). However, the Customer's obligations are impacted by the Contractor's access to the Health ICT Environment and the Customer's obligations must be read subject to the Contractor's access requirements.
5. **Compliance with Customer Security requirements**
- 5.1 The Contractor must, and must ensure that its subcontractors and Contractor Personnel, comply with all relevant security procedures and other security requirements:
- (a) as set out in **Attachment B - Statement of Requirement**; or
 - (b) as otherwise specified by written notice from the Customer from time to time.
- 5.2 The Contractor must comply with any such security procedure or other security requirement immediately if directed by the Customer or, if no direction is given, within a reasonable time, having regard to the nature of the requirement.
- 5.3 The Contractor must send the Customer a notice identifying any potentially relevant security procedure or other security requirement of the Customer of which it is aware and which has not been otherwise specified in a notice in accordance with **clause 5.1**.
- 5.4 The Contractor acknowledges the Customer may undertake assessments from time to time to verify that the Contractor complies with the requirements set out in **clause 17** of the Terms and Conditions.
- 5.5 The Contractor must:
- (a) comply with all relevant requirements of the Commonwealth Protective Security Policy Framework at <http://www.protectivesecurity.gov.au>, as amended or replaced from time to time and its Protective Security Protocols, including the Protective Security Governance Guidelines - Security of outsourced services and functions and the Information Security Manual at <http://www.asd.gov.au/infosec/ism/index.htm>;
 - (b) comply with the requirements of the Information Security Manual, as amended from time to time;

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- (c) ensure that Contractor Personnel and subcontractors undertake any security checks, clearances or accreditations as required by the Customer; and
 - (d) notify the Customer of any changes to circumstances which may affect the Contractor's capacity to provide the Services in accordance with the Customer's security requirements.
- 5.6 Security Classified Information furnished or generated under this Contract, must not be released to a third party, including a representative of another country, without prior written acceptance of the originator through the Customer Contract Liaison Officer.
- 5.7 In giving any acceptance to the Contractor under **clause 5.6**, the Customer Contract Liaison Officer may impose such conditions as the Customer Contract Liaison Officer thinks fit, including conditions requiring any recipient of Security Classified Information to obtain a level of security clearance and to enter into a deed in a form acceptable to the Customer.
- 5.8 The Contractor must promptly report to the Customer Contract Liaison Officer any instance in which it is known or suspected that Security Classified Information furnished or generated under this Contract has been lost or disclosed to unauthorised persons, including a representative of another country.
- 5.9 The Contractor must not transit any Health Data outside the Customer's premises without the Customer's prior written approval, which approval may be given or not given at the Customer's absolute discretion.
- 5.10 If there has been a breach of **clause 5.9** by the Contractor, Contractor Personnel or a subcontractor, the Customer Contract Liaison Officer may give the Contractor a notice of immediate termination for default under **clause 21** of the Terms and Conditions.
- 5.11 The Contractor must ensure that the requirements of this **clause 5** are included in all subcontracts where the subcontractor requires access to any Commonwealth place, area or facility, or to Security Classified Information, in order to perform the obligations of the subcontract.
- 6. Commonwealth Data Protection Plan**
- 6.1 The Contractor must comply with the Commonwealth Data Protection Plan, as updated from time to time, in its provision of the Services. While the Contractor's cost of doing so is included in the fees charged by the Contractor, subject to this **clause 6**, the Contractor and the Contractor Personnel are not responsible for any failure, delay or defect in providing the Services due to compliance with the Commonwealth Data Protection Plan.
- 6.2 The Contractor must review the Commonwealth Data Protection Plan within 10 Business Days after receiving it and inform the Customer via the Steering Committee of any concern it has in relation to that Commonwealth Data Protection Plan in relation to that plan's impact on Service delivery.
- 6.3 The Parties will negotiate in good faith to determine whether any adjustments are required to Service delivery. Once agreed the Contractor must comply with the Commonwealth Data Protection Plan as adjusted and the relief in **clause 6.1** does not apply.
- 7. Return of Health Data**
- 7.1 Upon the Customer's request, or on expiry or termination of this Contract, the Contractor must:
 - (a) promptly return all Health Data and all physical and written records containing any of the Customer's Confidential Information, and all Documentation relating to or concerning that Health Data and Customer Confidential Information (or the part the Customer requests) (including copies) to the Customer in a form reasonably

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requested by the Customer. Return will primarily occur by leaving the Health Data on site at the Customer's premises unless the Contractor has removed items in which case those items and copies must be returned; or

- (b) if requested by the Customer:
 - (i) destroy that Health Data and the Customer's Confidential Information (including copies) in the manner specified by the Customer or otherwise deal with these items in the manner specified by the Customer; and
 - (ii) promptly certify to the Customer in writing that it has done so.
- 7.2 Without limiting **clause 7.1**, upon the Customer's request, or on expiry or termination of this Contract, the Contractor must:
- (a) provide the Customer with access to, and the ability to retrieve any Health Data (at no additional charge);
 - (b) comply with any directions of the Customer in relation to the destruction or de-identification of Health Data;
 - (c) not destroy any Health Data unless it has the prior written approval of the Customer to do so; and
 - (d) return all Health Data in the format it is provided by the Customer unless amended by the Contractor in which case the latter must also be returned.
8. **Breaches of data security**
- 8.1 The Contractor must notify the Customer Contract Liaison Officer immediately and comply with all directions of the Customer if the Contractor becomes aware of:
- (a) any contravention of the Customer's data security requirements; and
 - (b) any requests from foreign governments or agencies for access to any Health Data.
- 8.2 If the Contractor becomes aware of any actual or suspected:
- (a) action taken through the use of computer networks that result in an actual or potentially adverse effect on the Customer's systems (including those operated by the Contractor to provide the Services to the Customer) or any Health Data (**Cyber Incident**); or
 - (b) any other unauthorised access, misuse, damage, destruction, loss, alteration or corruption of Health Data by any person (**Other Incident**),
- the Contractor must:
- (c) notify the Customer in writing immediately (and no later than twelve (12) hours after becoming aware of the Cyber Incident or Other Incident); and
 - (d) comply with any directions issued by the Customer in connection with the Cyber Incident or Other Incident, including in relation to:
 - (i) notifying CERT Australia, or any other relevant body, as required by the Customer;
 - (ii) obtaining evidence about how, when and by whom the Customer's systems (including those operated by the Contractor to provide the

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Services to the Customer) or Health Data has or may have been compromised, and preserving and protecting that evidence for no less than twelve (12) months;

- (iii) implementing any mitigation strategies to reduce the impact of the Cyber Incident or Other Incident or the likelihood or impact of any future similar incident; and
- (iv) preserving and protecting Health Data (including as necessary reverting to any backup or alternative site or taking other action to recover Health Data).

8.3 The Contractor must ensure that:

- (a) all subcontracts and other supply chain arrangements, which may allow or cause access to Health Data, contain no provisions that are inconsistent with **clauses 8.1 or 8.2**; and
- (b) all Contractor Personnel and any subcontractors who have access to Health Data act in a manner that is consistent with the Contractor's obligations under this **clause 8**.

9. **Misuse of Health Data**

9.1 The Contractor acknowledges and agrees that:

- (a) any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of information held in any computer (or, in some cases, any storage device) in the course of providing the Services may be an offence under Part 10.7 of the Criminal Code Act 1995 (Cth) of which there are a range of penalties, including a maximum of 10 years imprisonment;
- (b) the giving of false or misleading information to the Customer or Customer Personnel is a serious offence under Division 137 of the Crimes Act 1914 (Cth); and
- (c) 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 this Contract (other than to whom the Contractor is authorised to publish or disclose the fact or document) may be an offence under sections 70 and 79 of the Crimes Act 1914 (Cth), the maximum penalty for which is seven (7) years imprisonment.

10. **Warranty in respect of Health Data**

10.1 Without limiting any other provision in this Contract, the Contractor represents and warrants that, except as otherwise directed in writing by or agreed in writing with the Customer:

- (a) no Health Data will be accessed without authorisation, misused, damaged, destroyed, lost, altered or corrupted in the course of the provision of the Services as a result of a breach by the Contractor or any of the Contractor Personnel or subcontractors of the obligations set out in this Contract; and
- (b) all Health Data required to be migrated or otherwise transferred between any component of the Health ICT Environment will retain at least the same degree of integrity, functionality and useability following any migration or transfer.

Intellectual Property

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11. **Contractor Material**

11.1 The Contractor will at all times own and retain all rights, title and interest (including Intellectual Property rights) in and to all Contractor Material (including Modifications of or to it) regardless of whether created before, during or after this Contract.

11.2 Subject to **clause 12**:

- (a) the Contractor grants to the Customer a royalty free, non-exclusive and world-wide licence (including a right to sublicense) to access, copy, reproduce and use for the duration of the Contract but not to commercialise, all Contractor Material (including Modifications of or made to Contractor Material in the performance of the Services) for the purposes of the Customer's data requirements; however
- (b) the Parties acknowledge and agree the licence referred to in **clause 11.2(a)** does not include any licence or right to use the Contractor's Platform or Implemented Contractor's Platform, the treatment of which is solely governed by the limited licence granted by the Contractor to the Customer in **paragraph 1.3 of Attachment B - Statement of Requirement**.

11.3 The licence granted by the Contractor to the Customer under **clause 11.2(a)** will take effect from the date on which Contractor Material is first used by the Contractor to perform the Services without the need for the Parties to effect any further Documentation. However, the Contractor agrees to execute any additional Documentation in a form reasonably required by the Customer that is necessary to give full effect to such licence upon the Customer's written request from time to time.

12. **Contract Material**

12.1 All rights (including Intellectual Property rights), title and interest in Contract Material (including any Modification of that Contract Material) are assigned to and vest in the Contractor at the time of their creation by virtue of this **clause 12**.

12.2 The Contractor:

- (a) grants to the Customer a perpetual, irrevocable, royalty free, non-exclusive and world-wide licence (including a right to sublicense) to copy, reproduce, Modify, communicate, distribute and use any Contract Material (including any Modification of that Contract Material) for any purpose; however
- (b) the Parties acknowledge and agree the licence referred to in **clause 12.2(a)** does not include any licence or right to use the Contractor's Platform or Implemented Contractor's Platform, the treatment of which is solely governed by **paragraph 1.3 of Attachment B - Statement of Requirement**.

12.3 The Contractor may exploit the Contract Material for any commercial purpose with the prior written approval of the Customer. The Customer may impose reasonable conditions on approval to protect Customer privacy, security and commercial interests.

12.4 If the Contractor embeds any Contractor Material or any other Existing Material, including Third Party Material, into Contract Material the licence in **clause 12.2** applies to that embedded material (**Embedded Material**), provided that the Embedded Material is used only in conjunction with the relevant Contract Material and not on a standalone basis.

12.5 On the expiration or termination of this Contract, the Contractor must promptly deliver to the Customer a copy of all Contract Material and any Embedded Material.

13. **Customer Material**

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- 13.1 Subject to **clause 13.5**, during the Term, the Customer grants to the Contractor for the duration of the Contract, a revocable, non-exclusive, royalty-free and licence-free licence to access, use, copy and reproduce any Customer Material to meet the requirements of this Contract (including the right to grant a sub-licence to subcontractors on the same terms for the sole purpose of meeting the requirements of this Contract).
- 13.2 The Contractor must not, and must ensure that its subcontractors and Contractor Personnel do not, Modify any Customer Material without the prior written consent of the Customer. The Customer hereby consents to Modifications necessary for the performance by the Contractor of its obligations under this Contract.
- 13.3 If the Contractor, its subcontractors or Contractor Personnel or any person on behalf of the Contractor or a subcontractor Modifies Customer Material, then the Contractor assigns or will ensure the assignment of (as the case may be) all title to and Intellectual Property rights, in the Modification and all Material created in designing and making the Modification to the Customer Material, to the Customer with effect on and from the date on which the Modification was made or the Material was created. Except for reports generated by the Contractor's Platform or the Health ICT Environment as a result of use of the Contractor's Platform, this **clause 13.3** does not apply to any Customer Material that is generated by software or equipment (including the Contractor's Platform or Implemented Contractor's Platform) as a consequence of its inherent operation and which does not allow identification of the Customer, its functions or any particular individual (including non-identifiable log files, software and equipment performance data or other system operating information).
- 13.4 The Contractor must do all things necessary (including, at the Customer's option, ensuring that a subcontractor, Contractor Personnel or other person enters into a deed of assignment of Intellectual Property rights with the Customer) to confirm that the ownership of that Modification and Material and those Intellectual Property rights referred to in **clause 13.3** passes to the Customer on the date of creation of the Modification and the Material.
- 13.5 The Customer will notify the Contractor of any third party terms and conditions that apply to the Customer Material and the Contractor must comply with those third party terms and conditions.
- 13.6 If in the Customer's opinion any third party terms and conditions notified under **clause 13.6** are inconsistent with the Customer's obligations under this Contract, or otherwise impose additional obligations or liability on the Contractor, the Contractor and the Customer will in good faith discuss any required amendments to those terms and conditions and, if agreed, seek those amendments from the relevant third party. Until such time as those amendments are agreed to by the relevant third party to the Parties' satisfaction, the relevant Customer Material will not be used in connection with the Services.
14. **Warranties**
- 14.1 The Contractor represents and warrants that:
- (a) it has or will have the necessary rights to vest the Intellectual Property rights and grant all necessary licences or sublicences under this Contract;
 - (b) it will not infringe any person's Intellectual Property rights and Moral Rights in performing the Services;
 - (c) it will not, nor will it suffer or permit Contractor Personnel or any third party under its direction or control to negligently or wilfully introduce into the Customer's systems or any software, any Harmful Code; and
 - (d) if any Harmful Code is introduced into the Customer's systems or any software, whether through breach of this Contract or otherwise, the Contractor must:
 - (i) immediately report that introduction to the Customer;

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- (ii) in consultation with the Customer take all necessary action to eliminate the Harmful Code; and
- (iii) promptly repair any harm or destruction caused by that Harmful Code, subject to any directions from the Customer.

15. **Personnel Security Clearances**

- 15.1 The Contractor must ensure that the Contractor Personnel that it utilises have the requisite skills, qualifications, experience and security clearances necessary to properly perform the Services in accordance with this Contract. The Contractor must obtain at its own cost any necessary security clearances required by this Contract, including as required in **paragraph 7 of Attachment B - Statement of Requirement**.
- 15.2 The Customer may, from time to time, notify the Contractor of additional or varied levels of security or access clearance required for Contractor Personnel, and the date from which, or the period during which, that clearance will be effective and the Contractor must comply with an ensure its subcontractors and Contractor Personnel act in accordance with that notice. The Contractor is entitled to recover its additional substantiated (to the Customer's satisfaction) costs (if any) of complying with the additional or varied requirements from the Customer.

16. **Restraints on Engagement of Commonwealth Personnel**

- 16.1 Subject to **clause 17.1**, the Contractor must not, and must ensure that its Contractor Personnel, subcontractors and any Related Body Corporate do not:
- (a) solicit, entice away or attempt to solicit or entice away any Key Commonwealth Personnel from continuing to be Engaged by the Customer or the Commonwealth (as applicable), either on behalf of the Contractor or any other person; or
 - (b) Engage any Key Commonwealth Personnel,
- during the period:
- (c) commencing on the Contract Commencement Date and continuing for six (6) months after the date on which this Contract expires or is terminated;
 - (d) if the period mentioned in **clause 16.1(c)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing for three (3) months after the date on which this Contract expires or is terminated;
 - (e) if the period mentioned in **clause 16.1(d)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing for two (2) months after the date on which this Contract expires or is terminated;
 - (f) if the period mentioned in **clause 16.1(e)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing for one (1) month after the after the date on which this Contract expires or is terminated; or
 - (g) if the period mentioned in **clause 16.1(f)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing until the date this Contract expires or terminates.
- 16.2 Subject to **clause 17.2**, the Customer must not, and must ensure that its personnel do not:
- (a) solicit, entice away or attempt to solicit or entice away any Contractor Personnel from continuing to be Engaged by the Contractor, either on behalf of the Customer or any other person; or

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(b) Engage any Contractor Personnel,

during the period:

- (c) commencing on the Contract Commencement Date and continuing for six (6) months after the date on which this Contract expires or is terminated;
- (d) if the period mentioned in **clause 16.2(c)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing for three (3) months after the date on which this Contract expires or is terminated;
- (e) if the period mentioned in **clause 16.2(d)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing for two (2) months after the date on which this Contract expires or is terminated;
- (f) if the period mentioned in **clause 16.2(e)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing for one (1) month after the date on which this Contract expires or is terminated; or
- (g) if the period mentioned in **clause 16.2(f)** is not valid or enforceable for any reason, commencing on the Contract Commencement Date and continuing until the date this Contract expires or terminates.

17. **Enforceable restraint**

17.1 The Contractor will not be in breach of a restraint contained in **clause 16.1** if the Customer gives its prior written consent to the Contractor, Contractor Personnel, subcontractors or Related Body Corporate to:

- (a) solicit any Key Commonwealth Personnel; or
- (b) Engage any Key Commonwealth Personnel,

who is specified by the Customer in giving such consent or is recruited by the Contractor as part of a public recruitment process.

17.2 The Customer will not be in breach of a restraint contained in **clause 16.2** if the Contractor gives its prior written consent to the Customer to:

- (a) solicit any Contractor Personnel; or
- (b) Engage any Contractor Personnel,

who is specified by the Contractor in giving such consent or is recruited by the Customer as part of a public recruitment process.

17.3 The restraints contained in **clauses 16.1** and **16.2** will be regarded as separate, distinct and several as regards each time period so that the unenforceability of a restraint in respect of one time period will not affect the enforceability of the others.

17.4 For the purposes of **clauses 16.1, 16.2, 17.1** and **17.2**:

- (a) 'Key Commonwealth Personnel' means any Customer Personnel or other personnel of the Commonwealth who are or have been working in the Health Provider Compliance Division; and
- (b) 'Engagement' means to engage in any capacity including without limitation as an employee, consultant, adviser, partner, contractor or agent, and 'Engage', 'Engaged' and 'Engaging' have a like meaning.

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18. **Waiver**

18.1 A waiver of any provision of, or right under this Contract:

- (a) must be by notice from the Party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in such notice.

18.2 The fact that a Party fails to do (or delays in doing) something the Party is entitled to do under this Contract, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

18.3 The Contractor may request that the Customer waive some or all of the requirements under this Contract. The Customer will consider any such written request and may at its absolute discretion determine to waive any of the requirements of this Contract in accordance with **clause 18.1**.

18.4 In granting a waiver under **clause 18.1**, the Customer may impose such conditions that the Customer thinks fit at its absolute discretion, and the Contractor agrees to comply with these conditions, unless the Contractor declines the waiver.

18.5 Waivers will be recorded in a Waiver Manual that will be maintained by the Customer and which will be made available to the Contractor on request.

19. **Written undertakings**

19.1 The Customer may, at any time, require the Contractor to arrange for any of its Contractor Personnel (other than a person employed under the *Public Service Act 1999* (Cth)) to whom Confidential Information may be disclosed to give a written undertaking in the form set out at **Attachment D - Health Deed of Confidentiality** relating to the use and non-disclosure of the Customer's Confidential Information.

19.2 The Contractor must arrange for its Contractor Personnel to execute a deed in the form of **Attachment D - Health Deed of Confidentiality** before Health Data is given to those Contractor Personnel.

19.3 If the Contractor receives a request under **clause 19.1**, it must promptly arrange for all such undertakings to be given and must provide copies to the Customer.

20. **Performance Management**

20.1 The Contractor acknowledges and agrees that:

- (a) the Customer has relied on the Contractor's representations, as reflected in this Contract, and on the Contractor's ability to:
 - (i) meet the Objectives;
 - (ii) comply in full with the quality, architectural, functional and performance requirements for the Services; and
 - (iii) meet the performance management framework specified in this Contract;
- (b) the Customer's value for money assessment of the Contractor's representations depends on the Contractor complying in full with this Contract; and
- (c) the Objectives operate in addition to, and so as to supplement, the Contractor's obligation to provide the Services.

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- 20.2 The Parties agree that the fees may be adjusted to reflect the application of Rebates in accordance with the performance management framework specified in **Attachment C - Pricing**. The Parties acknowledge that any adjustment on this basis is reasonable and represents the level of value provided to the Customer.
- 20.3 The Parties will comply with the details in the performance management framework specified in **Attachment C - Pricing** including in relation to measuring and reporting on the Contractor's performance under this Contract.
21. **State and Territory Laws**
- 21.1 The Contractor must also comply with its obligations under any relevant State or Territory privacy Law in its provision of the Services.
22. **Liability Cap**
- 22.1 The liability of a Party for breach of this Contract, or in tort (including negligence), or for any other common law, equitable or Statutory or other cause of action arising out of, or in connection with the operation of this Contract, will be determined under the relevant Law in Australia that is recognised, and would be applied, by the High Court of Australia.
23. **Limitation of Liability - the Customer and the Contractor**
- 23.1 The liability of each of the Customer and the Contractor arising out of or in connection with a breach of this Contract, or in tort (including negligence) or for any other common law, equitable, Statutory or other cause of action arising out of, or in connection with the operation of this Contract (including under any indemnity) is, subject to **clause 22.1**, limited to an amount equal to \$13,476,420 (excluding GST) in the aggregate.
- 23.2 The limit on the liability of the Customer or the Contractor under **clause 23.1** does not apply in relation to liability relating to:
- (a) personal injury (including sickness and death);
 - (b) loss of, or damage to, tangible property;
 - (c) an infringement of Intellectual Property rights;
 - (d) a breach of any obligation of confidentiality, security, privacy or data security obligations under this Contract or at Law;
 - (e) fraud, breach of Statute, any deliberately wrongful act or omission, or unlawful act or omission (including repudiation of this Contract); or
 - (f) the obligation on the Customer to pay the fees.
- 23.3 The limitation of liability specified in **clause 23.1** is an aggregate limit during the Contract Term.
- 23.4 The Parties acknowledge that the limitation of liability specified in **clause 23.1** will be subject to review in the event that this Contract is varied.
- 23.5 For the avoidance of doubt, a Party may require a review of the limitation of liability specified in **clause 23.1** as a condition of its acceptance to a variation request, but only for the purpose of achieving a proportionate adjustment to reflect any alteration to that Party's risk exposure arising out of that variation.
- 23.6 The limitations on liability specified in **clause 23.1** do not apply to a Party's liability to the extent that (ignoring the application of **clauses 23.1**) a Party is entitled to be indemnified for

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that liability under a policy of insurance or would have been entitled to be indemnified for that liability but for an act or omission of the Party.

24. **Mitigation**

- 24.1 Each Party must use all reasonable endeavours to mitigate its Loss arising out of or in connection with a breach of this Contract, or in tort (including negligence), or for any other common law, equitable or Statutory cause of action arising out of or in connection with this Contract.

THIS DOCUMENT HAS BEEN RELEASED UNDER
THE FREEDOM OF INFORMATION ACT 1982
BY THE DEPARTMENT OF HEALTH AND AGED CARE

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Attachment B - Statement of Requirement

1. Overview of Services

1.1 The Contractor must provide the Services in accordance with the Contract, including this **Attachment B - Statement of Requirement**.

1.2 The Services that the Contractor must provide comprise the following:

(a) first, the following services (**Debt Services**)

- (i) identify, measure and track known Compliance Risks in the Customer's health system;
- (ii) developing rules, methodologies and algorithms for the Customer's Platform; and
- (iii) undertake open ended exploration of the Health Data to look for unknown areas of Compliance Risks in the Customer's health system; and

(b) second, the following services (**Implementation Services**)

- (i) on and from the Contract Commencement Date, the Contractor will develop an instance of the Contractor's platform that is designed to detect anomalies and patterns that might indicate fraud or misuse of funds (**Contractor's Platform**) that is capable of being installed on the Health ICT Environment on a 'proof of concept' basis. The Customer acknowledges that:
 - A. the Contractor's Platform will not be capable of being installed on the Health ICT Environment on the Contract Commencement Date, as the Contractor is required to undertake the development mentioned above from that date to do so; and
 - B. the Contractor's Platform will not, at the time of installation on the Health ICT Environment, have been in any way Modified or customised to meet the Customer's purposes including the Objective or otherwise; and
- (ii) following installation of the Contractor's Platform on the Health ICT Environment, the Contractor will develop and Modify that Contractor's Platform on an iterative and incremental basis during the Contract Term:
 - A. incorporate those of the Customer's requirements communicated to the Contractor Personnel (including in the course of performing the Debt Services), including the Customer's rules, methodologies and algorithms to detect anomalies and patterns that might indicate fraud or misuse of funds; and
 - B. fully implement the Contractor's Platform into the Health ICT Environment,

and this Modified and fully implemented Contractor's Platform is the **Implemented Contractor's Platform**.

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1.3 The Customer acknowledges and agrees that:

- (a) subject to **paragraph 9** of this **Attachment B** the Contractor does not give any warranty or assurance that either the Contractor's Platform or the Implemented Contractor's Platform is or will be fit for the purposes of Customer, operate error or fault free or at all and the Customer agrees the Contractor's Platform and the Implemented Contractor's Platform may experience interruptions and access difficulties from time to time;
- (b) the Customer and the Contractor may separately agree including pursuant to an open procurement process (on terms to be agreed) under **paragraph 1.7** of this **Attachment B** below that the Customer will obtain the right to use and access Implemented Contractor's Platform;
- (c) accordingly, subject to **paragraph 1.3(d)** of this **Attachment B** and that separate agreement, the Customer:
 - (i) has no licence or right to use or access either the Contractor's Platform or the Implemented Contractor's Platform or any of the underlying software code (including object code, intermediate code and source code);
 - (ii) may not use or exploit any Intellectual Property rights in the Contractor's Platform or Implemented Contractor's Platform,

either during or after the Contract Term, except for the sole purpose of hosting the Contractor's Platform or Implemented Contractor's Platform on the Health ICT Environment so as to allow the Contractor Personnel to perform the Debt Services and the Implementation Services;
- (d) Customer Personnel will be trained by the Contractor to use the Contractor's Platform and will be entitled to use the Contractor's Platform and Implemented Contractor's Platform on the Health ICT Environment under the Contractor's supervision during the Contract Term;
- (e) the limited right of access referred to in **paragraphs 1.3(c)** and **1.3(d)** of this **Attachment B** above ends immediately on termination or expiry of this Contract. In this case the Customer must immediately and permanently delete all copies and instances of the Contractor's Platform or Implemented Contractor's Platform on the Health ICT Environment and acknowledge this deletion in writing to the Contractor;
- (f) the Contractor's Platform and the Implemented Contractor's Platform (and all Intellectual Property rights in them) are confidential information of the Contractor (**Contractor's Confidential Information**) and, notwithstanding **clause 12** of the **Terms and Conditions**:
 - (i) property in the Contractor's Confidential Information (including any copies) remains with the Contractor and does not vest in the Customer;
 - (ii) the Customer agrees to treat the Contractor's Confidential Information as confidential and secure all copies of the Contractor's Confidential Information within its control against loss and unauthorised use or disclosure; and
 - (iii) on the expiration or termination of this Contract, the Customer agrees to deliver to the Contractor or, in accordance with the Contractor's directions erase or otherwise deal with all such copies; and

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- (g) the Customer acknowledges and agrees that it must not, at any time:
- (i) use, license, copy, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Contractor's Platform, the Implemented Contractor's Platform or any Contractor's Confidential Information available to any person or deal with any Intellectual Property rights in the Contractor's Platform or Implemented Contractor's Platform;
 - (ii) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Contractor's Platform or Implemented Contractor's Platform in any form or media or by any means;
 - (iii) use any robot, spider, retrieval application, or other manual or automatic device or process to retrieve, index, data mine, harvest, scrape or in any way reproduce or circumvent the navigational structure or presentation of the Contractor's Platform or Implemented Contractor's Platform;
 - (iv) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Contractor's Platform or Implemented Contractor's Platform (including any Contractor's Platform or Implemented Contractor's Platform software); or
 - (v) access all or any part of the Contractor's Platform or Implemented Contractor's Platform in order to build or Modify a product or service which competes with the Contractor's Platform or Implemented Contractor's Platform.

1.4 The Contractor must provide:

- (a) the Contractor Personnel described in **Table 1** of the **Official Order** as Specified Personnel; and
- (b) other Contractor Personnel set out in **Table 1 Fees in Attachment C - Pricing**, in accordance with Full Time Equivalent (FTE) basis allocations as set out in **Table 1 Fees in Attachment C - Pricing**.

1.5 Contractor Personnel must work cooperatively with Customer Personnel to ensure delivery of the Services in accordance with this Contract. The Customer acknowledges and agrees:

- (a) in order for the Contractor to supply the Services, the Customer must:
 - (i) provide physical access at and facilities for the Contractor Personnel at the Customer's premises at [Elizabeth Street, Surry Hills, Sydney] and ensure those premises are safe, clean and fit for the purpose of the Contractor Personnel providing the Services;
 - (ii) provide access for those Contractor Personnel at those Customer's premises to the Customer's Health ICT Environment; and
 - (iii) provide orientation and training to those Contractor Personnel in the use and operation of the Customer's Platform and the Health ICT Environment during the period from the Contract Commencement Date until 1 July 2017 and thereafter as reasonably requested from time to time by the Contractor to provide the Services or required by the Customer;

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- (b) the Contractor is an independent contractor and it and the Contractor Personnel have skill and expertise in the provision of the Services. Accordingly, while Contractor Personnel will work as part of the overall Customer team while at the Customer's premises:
 - (i) the Customer agrees it will have regard to and give due weight and consideration to recommendations from Contractor Personnel in the course of providing the Services; and
 - (ii) not to unreasonably interfere with, impede or prevent the Contractor Personnel from performing the Services in the manner which the Contractor Personnel see fit;
 - (c) subject to consultation with the Customer and provided the Contractor Personnel hold the relevant security clearance the Contractor may rotate the Contractor Personnel on a regular basis such that different Contractor Personnel will attend the Customer's premises; and
 - (d) subject to consultation with the Customer, each of the Contractor Personnel will spend one (1) day each fortnight at the Contractor's premises and will therefore not be present at the Customer's premises on that day.
- 1.6 The Contractor acknowledges that the Customer may undertake a Privacy Impact Assessment in relation to health data analytics tasks (including the Services provided by the Contractor). In the event that a Privacy Impact Assessment is required the Parties agree:
 - (a) the Contractor Personnel must cooperate and comply with any reasonable directions given by the Customer in connection with the implementation and outcomes of the Privacy Impact Assessment; and
 - (b) while the Contractor's cost of doing so is included in the fees charged by the Contractor, subject to this **paragraph 1.6**, the Contractor and the Contractor Personnel are not responsible for any failure, delay or defect in providing the Services due to compliance with the Privacy Impact Assessment;
 - (c) the Contractor must review the Privacy Impact Assessment within 10 Business Days after receiving it and inform the Customer via the Steering Committee of any concern it has in relation to that Privacy Impact Assessment in relation to that assessment's impact on Service delivery; and
 - (d) that the Parties will negotiate in good faith to determine whether any **paragraph 1.6(b)** adjustments are required to Service delivery. Once agreed, the Contractor must comply with the Privacy Impact Assessment as adjusted and the relief in **paragraph 1.6(b)** does not apply.
- 1.7 The Customer may consider (without obligation) purchase of access to the Contractor software (including the Implemented Contractor's Platform), alongside those offered by other software vendors, in separate procurement processes to be conducted in accordance with the Commonwealth Procurement Rules. For the avoidance of doubt, the Services do not include the purchase of any existing Contractor software (including the Contractor's Platform or Implemented Contractor's Platform) by the Customer.
- 2. **Environment**
 - 2.1 The Services must be provided within the Customer's premises using the Health ICT Environment.

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- 2.2 The Contractor must seek written approval from the Customer prior to introducing any of its software (including the Contractor's Platform or Implemented Contractor's Platform) or deploying any Third Party Software it wishes to use, including any Existing Material, into the Health ICT Environment.
- 2.3 The Services will be provided from a Customer data analytics laboratory located in [Elizabeth Street, Surry Hills, Sydney, New South Wales] or such other location as agreed by the Parties (**Customer Data Analytics Laboratory**).
- 2.4 The Customer will provide the following facilities and assistance in relation to the Customer Data Analytics Laboratory:
- (a) office space on the Customer's premises, including appropriate furniture and office equipment;
 - (b) IT access and equipment;
 - (c) access to Health ICT Environment on an "as is" basis through the premises referenced at **paragraph 2.3** of this **Attachment B** above; and
 - (d) otherwise ensure the Customer Data Analytics Laboratory complies with the requirements of **paragraph 1.5** of this **Attachment B** above.

3. Timeframes

- 3.1 The Contractor must have the capacity to provide the full complement of staff described in **paragraph 1.4** of this **Attachment B** by 1 July 2017.
- 3.2 The Contractor must commence:
- (a) orientation, planning work, training in the use of the Health ICT Environment;
 - (b) the Implementation Services referenced in **paragraph 1.2(b)** of this **Attachment B**; and
 - (c) Service provision,
- immediately on and from the Contract Commencement Date as described further below, but
- (d) the Contractor is not obliged to provide the full Services until 1 July 2017.

4. Implementation

- 4.1 The Implemented Customer's Platform must be implemented into the Health ICT Environment without any adverse impact or disruption to the Health ICT Environment.

The Contractor must liaise with the Customer's technical experts to clarify information and implementation requirements as required during the provision of the Implementation Services.

5. Non-Compliance Detection Systems

- 5.1 As part of the Debt Services, the Contractor must develop rules, methodologies, and algorithms to produce non-compliance detection systems on the Health ICT Environment that are able to perform the analysis of Health Data for Compliance Risk, including the detection of anomalies and patterns that might indicate fraud or misuse of funds (**Non-Compliance Detection Systems**). To avoid doubt, the Non-Compliance Detection Systems do not include the Contractor's Platform or the Implemented Contractor's Platform, which are provided as part of the Implementation Services.

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- 5.2 The Contractor must provide ongoing development services to maintain, optimise and fine tune the Non-Compliance Detection Systems, including services to ensure that the Non-Compliance Detection Systems continue to operate effectively within the requirements of this Contract.

6. **Orientation**

- 6.1 As soon as possible after the Contract Commencement Date, the Contractor must provide no fewer than 3.5 FTEs for orientation and planning purposes for a period of 10 Business Days.

- 6.2 The Contractor must ensure that Contractor Personnel and relevant Customer Personnel who are connected to the provision of the Services have adequate training in relation to analytics and data mining, including the use of the Non-Compliance Detection Systems.

7. **Security Checks**

- 7.1 All Contractor Personnel with access to Health Data must have undergone a criminal history check and received baseline vetting clearance from the Australian Government Security Vetting Agency.

- 7.2 The Contractor must notify the Customer immediately if any Contractor Personnel that are required to hold security clearances fail to meet, or fail to maintain for the duration of the Contract, the requirements for such clearance.

- 7.3 The Contractor must provide all necessary support required in relation to security reviews to verify compliance with the Customer's security-related policies, including those set out in **Attachment A - Special Conditions** and any changes to or new security-related Customer policies notified to the Contractor from time to time.

- 7.4 The Contractor must report to the Customer the outcome of any security reviews conducted in accordance with **paragraph 7.3** of this **Attachment B**.

8. **Governance**

- 8.1 The Parties agree to form a steering committee comprised of the following:

- (a) three (3) executives of the Customer; and
- (b) two (2) executives of the Contractor,

(**Steering Committee**), to oversee performance of the Contract.

- 8.2 The Contractor must also have in place governance arrangements which allow for the appropriate supervision and management of Contractor Personnel and performance of the work by the Contractor.

- 8.3 The Steering Committee must meet monthly for the first three (3) months after the Contract Commencement Date, and then at a frequency of every four (4) months unless otherwise agreed by the Parties.

- 8.4 In addition to the formal Steering Committee meetings in **paragraph 8.3** of this **Attachment B**, meetings may be requested by either Party, within reasonable notice, at other times on a needs basis.

9. **Contract Material and Approach**

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- 9.1 Noting the Services involve a proof of concept, the Contractor must use reasonable endeavours to ensure that the Implemented Contracted Platform is fit for purpose of detecting anomalies and patterns that might indicate fraud or other misuse of funds.

10. **Performance Management**

- 10.1 The Contractor must regularly evaluate the Non-Compliance Detection systems to ensure compliance with this Contract and to identify general opportunities for service improvement and individual Contractor Personnel and relevant Customer Personnel training needs.
- 10.2 The Contractor must undertake quality testing and auditing of the Non-Compliance Detection Systems and report outcomes to the Customer.

11. **Reporting**

- 11.1 The Contractor must provide accurate, timely and detailed reports in accordance with the Contract including this **Attachment B - Statement of Requirement**.

- 11.2 The Contractor must provide the following reports:

- (a) progress reports for each six (6) month period for the duration of the Contract, due at the end of June and at the end of December of each year (the first report must be provided to the Customer by 31 December 2017). Each progress report must include:
- (i) reporting against the Objectives;
 - (ii) reporting on any difficulties encountered in the delivery of the Services and if any, what action was undertaken to overcome and address these difficulties; and
 - (iii) reporting on the progress of development of the Non-Compliance Detection Systems and, once developed, its ongoing performance as a detection system; and
- (b) ad hoc reports as reasonably required by the Customer.

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Attachment C - Pricing

1. **Pricing**
- 1.1 Subject to **paragraph 1.3** of this **Attachment C - Pricing**, the fees included in this **Attachment C - Pricing** cover all the costs of implementing and providing the Services (including those set out in **Attachment B - Statement of Requirement**).
- 1.2 Subject to **paragraph 2.1** of this **Attachment C - Pricing** the fees for providing the Services are set out in **Table 1** and unless otherwise stated are GST inclusive.

Table 1 - Fees



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Attachment D - Health Deed of Confidentiality

Deed Poll made at _____ on _____

By _____

[Insert name and address of person] (Confidant)

In favour of

Commonwealth of Australia represented by the **Department of Health**
ABN 83 605 426 759 of Sirius Building, 23 Furzer Street, Woden Town Centre, ACT
(Health)

Recitals

- A. Health possesses valuable Confidential Information.
- B. The Confidant is currently in, or may in the future come into, possession of certain Confidential Information.
- C. By this Deed Poll, the Confidant agrees to certain restrictions on the use and disclosure of that Confidential Information by the Confidant.

Operative provisions**1. Definitions**

In the interpretation of this Deed Poll, unless the contrary intention appears or the context otherwise requires or admits, the following expressions will have the following meanings:

Commonwealth means the Commonwealth of Australia.

Commonwealth Record has the meaning in the *Archives Act 1983* (Cth).

Confidential Information means information that:

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

and includes to the extent that it is confidential:

- (d) information comprised in or relating to any Intellectual Property Rights owned by Health, a State or Territory;
- (e) information relating to the internal management and structure of Health, a State or Territory;

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- (f) information relating to other contractors or suppliers to Health, or its customers; and
 - (g) Health Data and information relating to Health Data,
- but does not include information which:
- (h) is or becomes public knowledge other than by breach of this Deed Poll or any confidentiality obligation; or
 - (i) has been independently developed or acquired by the Confidant as established by written evidence.

Contract means the Official Order and any Attachments to that document placed under the Deed in relation to supplementing Health's data analytics staffing and capabilities executed by Health and the Contractor on or about April 2017.

Contractor means Lorica Health Pty Limited ABN 50 107 188 974.

Contractor Personnel means the individuals who are officers, employees, agents, advisers, directors or subcontractors of the Contractor or of its subcontractors who are engaged in performing the services or activities associated with the provision of the services under the Deed and the Contract.

Deed means the Deed of Standing Offer (Head Agreement for Services) in relation to Services for Health Data Analytics Panel between Health and the Contractor dated 31 January 2017.

Deed Poll means this document.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of law,

and unless stated otherwise, includes Commonwealth, State and Territory Agencies.

Health means the Commonwealth of Australia acting through the Department of Health.

Health Data means all data (including MBS data and PBS data) and information (including Personal Information) relating to Health or a Government Agency and its or their respective functions (including data and information relating to Health's business operations, business assets, business programs, programmes and Health Personnel), facilities, customers, constituents, personnel, assets or programs, in whatever form that information may exist and whether or not it was generated by or processed by or on behalf of Health, or is stored in any Commonwealth Record.

Health Data does not include data or information that is generated by software or equipment as a consequence of its inherent operation and which does not allow identification of the Customer, its functions or any particular individual (including non-identifiable log files, software and equipment performance data or other system information).

Health Personnel means individuals who are officers, employees, agents, advisers,

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consultants, contractors and subcontractors and other personnel of Health (other than Contractor Personnel).

Intellectual Property Rights or IPR means all intellectual property, including:

- (a) rights in relation to inventions, patents, copyright, circuit layouts, registered designs, registered and unregistered trade marks (including service marks, goodwill in those marks), business, company and domain names and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- (b) any application or right to apply for registration of any of the rights referred to in clause (a); and
- (c) all rights of a similar nature to any of the rights in clauses (a) and (b) which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered.

Law means any applicable law in force from time to time anywhere, including in Australia (whether made by the Commonwealth, a State, Territory, or a local government) or relevant overseas jurisdiction (if any), and includes the common law and equity as applicable from time to time.

Personal Information has the meaning in the *Privacy Act 1988* (Cth).

Notice means notice in Writing given in accordance with this Deed Poll.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Statute means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere including in Australia, whether made by a State, Territory, the Commonwealth or a local government.

Writing means any mode of representing or reproducing words, figures, drawings or symbols in a visible form delivered, posted, or transmitted electronically.

2. Interpretation

Unless the contrary intention appears:

- (a) monetary references are references to Australian currency;
- (b) the clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its sub-clauses;
- (d) words in the singular include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) words "includes" or "including" means without limitation;
- (g) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (h) a reference to a clause is a reference to a clause of this Deed Poll;

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- (i) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (j) a reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.

3. Confidentiality

3.1 Non disclosure

Subject to **clause 3.5**, the Confidant must not disclose Confidential Information or Personal Information to any person without the prior written consent of Health.

3.2 Consent

Health may grant or withhold its consent in its absolute and unfettered discretion.

3.3 Conditions on consent

If Health grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, Health may require that the Confidant procure the execution of a confidentiality undertaking in these terms and conditions by the person to whom the Confidant proposes to disclose the Confidential Information or Personal Information.

3.4 Complying with conditions

If Health grants consent subject to conditions, the Confidant must comply with those conditions.

3.5 Legal disclosure

The Confidant may only disclose Confidential Information and Personal Information:

- (a) to the extent required by Law or by a lawful requirement of any Government Agency having authority over the Confidant;
- (b) subject to any Law to the contrary, if required in connection with legal proceedings;
- (c) subject to any Law to the contrary, for governmental, reporting or public accountability reasons, including a request for information by parliament or a parliamentary committee;
- (d) to the extent necessary to obtain professional advice in relation to the Contractor's rights and obligations under the Deed; or
- (e) to its officers or employees to the extent reasonably necessary to exercise its rights or to perform its obligations under the Deed.

4. Restriction on use

The Confidant will use the Confidential Information and Personal Information provided by Health only for the purposes of its dealings with Health and, if necessary, for the purposes of the Confidant performing any part of the Deed.

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5. Uncertainty

In the event of uncertainty as to whether any information is Confidential Information, the information is deemed to be Confidential Information unless Health notifies the Confidant in Writing to the contrary.

6. Security

The Confidant will:

- (a) maintain proper and secure custody of all Confidential Information and Personal Information which is in its possession or under its control;
- (b) use its best endeavours to prevent the use or disclosure of the Confidential Information or Personal Information by third parties contrary to this Deed Poll;
- (c) immediately notify Health in Writing of any suspected, expected or actual unauthorised use, copying or disclosure of the Confidential Information or Personal Information contrary to this Deed Poll; and
- (d) give Health all reasonable assistance in connection with any action or proceeding which Health may institute against any person relating to any unauthorised use, copying or disclosure of the Confidential Information or Personal Information, and with any investigation Health may initiate into any suspected, expected or actual unauthorised use, copying or disclosure of the Confidential Information or Personal Information.

7. Disclaimer

7.1 No warranty

The Confidant acknowledges that Health does not make any representation or warranty as to the accuracy or completeness of any information which is provided to the Confidant.

7.2 No liability

Except as may otherwise be expressly agreed in Writing, Health is not liable to the Confidant in relation to the use of Confidential Information or Personal Information by the Confidant.

8. Powers of Health

8.1 Delivery and destruction of documents

The Confidant will:

- (a) immediately on the request of Health or a person authorised by Health (without needing to produce the demand in Writing) deliver up to Health:
 - (i) all of the Confidential Information and Personal Information;
 - (ii) all alterations, modifications, developments and enhancements to, copies of, extracts from or notes on, the Confidential Information and Personal Information in whatever form; and

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- (iii) all materials related to or in any way associated with the Confidential Information and Personal Information, in the Confidant's possession, power or control; or
- (b) immediately on the request of Health or a person authorised by Health:
 - (i) destroy the documents mentioned in **clause 8.1(a)**, and in the case of computer data, this must be done by a method of erasing it from the media on which it is stored so that it cannot in any way be recovered, reconstructed or reconstituted; or
 - (iv) otherwise deal with the document mentioned in **clause 8.1(a)** as Health directs,

and the Confidant will then promptly certify in Writing to Health that all of the documents mentioned in **clause 8.1(a)** have been delivered up, destroyed or dealt with as directed.

8.2 Confidential Information and Personal Information beyond possession or control

If Health makes a demand under this **clause 8**, and the Confidant has placed documents containing the Confidential Information or Personal Information, or is aware that documents containing the Confidential Information or Personal Information are, beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information or Personal Information, and the identity of the person in whose custody or control they lie.

8.3 Meaning of "documents"

In this **clause 8**, "documents" includes any form of storage of information, whether visible to the eye or not.

8.4 Legal proceedings

The Confidant acknowledges that Health may take legal proceedings against the Confidant if there is any actual, threatened or suspected breach of this Deed Poll, including proceedings for an injunction to restrain such breach.

9. Criminal liability

9.1 Criminal offences

The Confidant acknowledges that:

- (a) section 3(1) of the *Crimes Act 1914* (Cth) states that the term "Commonwealth officer" includes, for the purpose of section 70 of that Act, a person who "performs services for or on behalf of the Commonwealth";
- (b) the publication or communication by a Commonwealth officer of any fact or document which has come to its knowledge or into the person's possession or custody by virtue of the person's being a Commonwealth officer (other than to a person to whom the Commonwealth officer is authorised to publish or disclose the fact or document) may be an offence under section 70 or 79 of the *Crimes Act 1914* (Cth), punishment for which may be a maximum of two (2) (section 70) to seven (7) (section 79) years imprisonment;
- (c) any unauthorised access, alteration, removal, addition, possession, control, supply or impediment to the access, reliability, security or operation of

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information held in any computer (or, in some cases, any storage device) in the course of performing any part of the Deed may be an offence under Part 10.7 of the *Criminal Code Act 1995* (Cth) of which there are a range of penalties, including a maximum of 10 years imprisonment; and

- (d) it is an offence under Division 137 of the *Criminal Code Act 1995* (Cth) to knowingly give false and misleading information (in a material particular) to the Commonwealth or its officers or agents.

10. No exclusion of Law

This Deed Poll must not be construed to exclude the operation of any principle of Law intended to protect and preserve the confidentiality of the Confidential Information or protect the Personal Information.

11. Waiver

11.1 Separate instances of waivers

No waiver by Health of any breach of any obligation or provision of this Deed Poll (expressed or implied) will operate as a waiver of another breach of the same or of any other obligation or provision of this Deed Poll (expressed or implied).

11.2 Consent in Writing

None of the provisions in this Deed Poll must be taken at Law (other than by Statute) to have been varied, waived, discharged or released by Health unless by its express consent in Writing.

12. Remedies cumulative

The rights and remedies provided under this Deed Poll are cumulative and not exclusive of any rights or remedies provided by Law or any other such right or remedy.

13. Variations and amendments

No term or provision of this Deed Poll may be amended or varied unless such amendment or variation is in Writing and signed by the Confidant and Health.

14. Applicable Law

This Deed Poll is governed by and is to be construed in accordance with the Laws in force in the Australian Capital Territory (ACT). The Confidant and Health irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the ACT in respect of all matters arising from this Deed Poll.

15. Notices

15.1 Deemed service to the Confidant

A Notice or other communication which may be given to the Confidant under this Deed Poll will be deemed to have been duly given if it is in Writing, signed by Health, and is either delivered by hand, posted or sent by email in pdf to the Confidant at the address (as the case may be) set out in **Attachment A** to this Deed or such other address as may be notified in Writing to Health from time to time.

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15.2 Deemed service to Health

A Notice or other communication which may be given to or served on Health under this Deed Poll will be deemed to have been duly given or served if it is in Writing, signed by or on behalf of the Confidant and is either delivered by hand, posted or sent by email in pdf to Health at the address (as the case may be) set out in **Attachment A** to this Deed Poll or such other address as may be notified in Writing to the Confidant from time to time.

16. Survival of obligations

The obligations in this Deed Poll are perpetual.

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BY THE DEPARTMENT OF HEALTH AND AGED CARE

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Attachment A – Contact Details**Health**

Contact: [insert]
Physical Address: [insert]
Postal Address: [insert]
Phone: [insert]
Email: [insert]

Confidant

Contact: [insert]
Physical Address: [insert]
Postal Address: [insert]
Phone: [insert]
Email: [insert]

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EXECUTED as a deed poll.

SIGNED, SEALED AND DELIVERED by:

In the presence of:

Signature of Confidant

Signature of witness

Name

Name

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Deed of Amendment No 1 - Lorica Health - Deed of Standing Offer (Head Agreement for Services)
in relation to Services for Health Data Analytics Panel
Execution Version - (ACW:NS:AB)

DEED OF AMENDMENT (No. 1)

between

**COMMONWEALTH OF AUSTRALIA as represented by the
Department of Health
ABN 83 605 426 759**

and

**LORICA HEALTH PTY LIMITED
ABN 50 107 188 974**

in relation to the

**Deed of Standing Offer (Head Agreement for Services) in relation to
Services for Health Data Analytics Panel**

Deed of Amendment No 1 - Lorica Health - Deed of Standing Offer (Head Agreement for Services)
in relation to Services for Health Data Analytics Panel
Execution Version - (ACW:NS:AB)

This Deed of Amendment No 1 is made on _____ 2017

BETWEEN the

COMMONWEALTH OF AUSTRALIA, as represented by the Department of Health
ABN 83 605 426 759 of Level 8, Sirius Building, 23 Furzer Street, Woden ACT 2606
(Customer)

AND

LORICA HEALTH PTY LIMITED
ABN 50 107 188 974 of Level 3, 55 Harrington Street, The Rocks, NSW 2000
(Contractor)

RECITALS

- A. The Parties executed a Deed of Standing Offer (Head Agreement for Services) in relation to Services for Health Data Analytics Panel on 31 January 2017 (**Deed**).
- B. The Parties will or have entered into the first official order under the Deed in relation to Services supplementing the Customer's data analytics staffing and capabilities in order to deliver outcomes from data analytics projects in April 2017 (**First Contract**).
- C. The Parties now wish to vary the terms of the Deed, with respect to the First Contract only, under this Deed of Amendment No 1 to give effect to the First Contract between the Parties.
- D. Clause 1.5 of the Deed requires any variation to the Deed to be agreed in writing by Parties.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

- 1.1 In this Deed of Amendment No 1, defined terms have the same meaning as in the Deed unless indicated below:

Business Day means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place;

Deed has the meaning set out in Recital A;

Deed of Amendment No 1 means this deed of amendment document;

First Amendment Date means the date this Deed of Amendment No 1 is signed by the Parties, and if signed on different days, the date of the last Party to do so;

First Contract has the meaning as set out in Recital B;

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

Parties means the Customer and the Contractor. A reference to a Party means either the Customer or the Contractor.

- 1.2 Headings are for convenience only, and do not affect interpretation. The following

Deed of Amendment No 1 - Lorica Health - Deed of Standing Offer (Head Agreement for Services)
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rules also apply in interpreting this Deed of Amendment No 1, except where the context makes it clear that a rule is not intended to apply:

- (a) a reference to:
- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a Party to this Deed of Amendment No 1 or to any other document or agreement includes a permitted substitute or a permitted assignment of that Party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (v) any thing (including a right, obligation or concept) includes each part of it;
 - (vi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax and email transmissions;
 - (vii) this Deed of Amendment No 1 includes all schedules and annexures to it;
 - (viii) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this Deed of Amendment No 1; and
 - (ix) a matter being to the knowledge of a person means that the matter is to the best of the knowledge and belief of that person after proper inquiry, including inquiry which a reasonable person would be prompted to make by reason of knowledge of a fact;
- (b) a singular word includes the plural and vice versa;
- (c) the word "includes" in any form is not a word of limitation;
- (d) a word which suggests one gender includes the other genders;
- (e) if a word is defined, another part of speech has a corresponding meaning;
- (f) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing; and

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(g) a reference to "dollars" or "\$" is to an amount in Australian currency.

1.3 If the day on or by which a person must do something under this Deed of Amendment No 1 is not a Business Day the person must do it on or by the next Business Day.

2. Amendments to the Deed

2.1 The Parties agree to amend the Deed to apply to the First Contract only, with effect on and from the First Amendment Date, as follows:

(a) clause 1.3 is deleted and replaced with a new clause 1.3 as follows:

"If any conflict arises between the terms and conditions contained in this Deed and its schedules and the Official Order, then to the extent of the inconsistency the higher ranked document will prevail, namely:

- (a) the Official Order; then
- (b) the attachments to the Official Order; then
- (c) this Deed; then
- (d) the schedules to this Deed."; and

(b) clause 3.9 is deleted and replaced with the words "Not used".

2.2 The Parties agree to amend Schedule 2 to the Deed to apply to the First Contract only, with effect on and from the First Amendment Date as follows.

(a) in clause 1.1 the first reference to the word 'Deed' is deleted and replaced with the word 'Contract' as follows:

"1.1 In this Contract, unless the contrary intention appears, words will have the same meaning as in the Deed.";

(b) in clause 1.2 the word 'Deed' is deleted and replaced with the word 'Contract' as follows:

"1.2 In this Contract, unless the contrary intention appears:";

(c) in clause 1.2 the definition 'Deed' is deleted and replaced with a new definition 'Contract' as follows:

"'Contract' means the contract created as a result of the signing by both Parties of an Official Order in accordance with clause 3 of the Deed;"

(d) in clause 1.2 insert the definition of 'Deed' as follows:

"'Deed' means the Deed of Standing Offer (Head Agreement for Services) in relation to Services for Health Data Analytics Panel signed by the Parties on 31 January 2017 as amended by Deed of Amendment No 1;"

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- (e) in clause 1.2 the word 'Deed' found in the definition of 'Deed Liaison Officer' is deleted and replaced with the word 'Contract' so that it reads 'Contract Liaison Officer';
- (f) clauses 13.1 and 13.2 are deleted and replaced with new clauses 13.1 and 13.2 as follows:
 - "13.1 In this clause 13, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982*.
 - 13.2 This clause 13 only applies if this is a Contract which complies with the description of 'Commonwealth contract'.";
- (g) clauses 15.1(j) to (n) are deleted and replaced with new clauses 15.1(j) to (p) as follows:
 - "(j) the *Health Insurance Act 1973*;
 - (k) the *National Health Insurance Act*;
 - (l) any occupational health and safety legislation applicable to the Contractor;
 - (m) the Australian Government's *Lobbying Code of Conduct 2013*;
 - (n) the *Protective Security Policy Framework* which is available at: Protective Security Policy Framework website;
 - (o) any fraud control guidelines issued by the Department of Finance from time to time; and
 - (p) any other policies notified to the Contractor in writing or listed in the Official Order."
- (h) in clause 20.2(b) the words 'Deed Material' are deleted and replaced with the words 'Contract Material';
- (i) clause 20.3(b) is deleted and replaced with a new clause 20.3(b) as follows:
 - "(b) the amount of \$s47 (including GST). Subject to any amounts payable under clause 20.3(a), the Parties further agree that the Customer will not be liable for any other amount other than the amount stated in this clause 20.3(b) where there has been a termination under clause 20.1."
- (j) clauses 20.4 and 20.5 are deleted and replaced with the words "Not Applicable";
- (k) in clause 25.1 the words 'Deed Liaison Officer' are deleted and replaced with the words 'Contract Liaison Officer';
- (l) all other references to 'Deed' are deleted and replaced with the word

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'Contract', except in the following clauses:

- (i) clause 23.1(e)(iii);
 - (ii) clause 23.1(i); and
 - (iii) clause 23.1(j); and
 - (m) in clause 23.1(e)(iii), clause 23.1(i) and clause 23.1(j), replace the word 'Deed' with the word 'agreement'.
- 2.3 The Parties acknowledge and agree that this Deed of Amendment No 1 is binding on the Parties with respect to the First Contract.

3. Affirmation of the Deed

- 3.1 The Parties affirm in all other respects the terms and conditions in the Deed.
- 3.2 The Parties acknowledge and agree that the Deed as varied by this Deed of Amendment No 1 is and continues to be in full force and effect in relation to the First Contract only.
- 3.3 Nothing in this Deed of Amendment No 1 affects or reduces in any way any rights that the Customer may have in relation to the performance of the Deed prior to the First Amendment Date or in relation to any other Official Order placed after the First Amendment Date.

4. Notices

- 4.1 Except for informal or day to day notices, which must be delivered in accordance with **clause 4.4(b)**, a notice, consent or other communication under this Deed of Amendment No 1 is only effective if it is:
 - (a) in writing, signed by or on behalf of the person giving it;
 - (b) addressed to the person to whom it is to be given; and
 - (c) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) or email enclosing a pdf version of a written notice to that person's address.
- 4.2 A notice, consent or other communication that complies with this **clause 4** is regarded as given and received if it is sent by mail:
 - (a) within Australia – three (3) Business Days after posting; or
 - (b) to or from a place outside Australia – seven (7) Business Days after posting.
- 4.3 A person's address and email address are those set out below, or as the person notifies the sender:

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Deed of Amendment No 1 - Lorica Health - Deed of Standing Offer (Head Agreement for Services)
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Customer

Address MDP 859
GPO Box 9848
Canberra, ACT 2601
Email simon.cotterell@health.gov.au

Attention Simon Cotterell
First Assistant Secretary
Health Compliance Division
Department of Health

Contractor

Address Level 3, 55 Harrington Street
The Rocks, NSW 2000
Email paul.nicolarakis@loricahealth.com
Attention Paul Nicolarakis
Chief Executive Officer & Managing
Director
Lorica Health

- 4.4 For the purposes of this **clause 4**:
- (a) a formal communication is one which complies with the requirements of **clause 4.1**.
 - (b) an informal communication is one which does not comply with the requirements of **clause 4.1**. Examples of informal communications include:
 - (i) oral communications, whether made during meetings, discussions, over the phone or otherwise; and
 - (ii) communications sent by email unless the email forwards a pdf version of a written notice or consent.
 - (c) Formal communications will have effect as communications under or in connection with this Deed of Amendment No 1. Informal communications, on the other hand, will not be treated as communications under or in connection with this Deed of Amendment No 1. Informal communications will not affect the Parties' rights or obligations under or in connection with this Deed of Amendment No 1, and cannot be relied upon.
- 4.5 The Parties may agree in writing a procedure for scanning and emailing formal communications.

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5. Costs

- 5.1 Each Party must pay their own legal and other costs and expenses of negotiating, preparing, executing and performing this Deed of Amendment No 1.

6. Variation

- 6.1 This Deed of Amendment No 1 may only be varied or replaced by a document executed by the Parties.

7. Governing law and jurisdiction

- 7.1 This Deed of Amendment No 1 is governed by the Law in force in the Australian Capital Territory.
- 7.2 Each Party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the Australian Capital Territory, and any court that may hear appeals from any of those courts, for any proceedings under or in connection with this Deed of Amendment No 1, and waives any right it might have to claim that those courts are an inconvenient forum.

8. Compliance with Law

- 8.1 Each Party must comply with all relevant Laws in performing this Deed of Amendment No 1.

9. Counterparts

- 9.1 This Deed of Amendment No 1 may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

10. Warranty

- 10.1 The Contractor represents and warrants that the persons who execute this Deed of Amendment No 1 for the Contractor have authority to do so.

11. Representations and Inducements

- 11.1 Each Party to this Deed of Amendment No 1 acknowledges that the other Party has not (nor has any person acting on its behalf) made any representation or other inducement to it to enter into this Deed of Amendment No 1 except for inducements expressly set out in this Deed of Amendment No 1.

12. Operation of this Deed of Amendment No 1

- 12.1 This Deed of Amendment No 1 contains the entire agreement between the Parties about its subject matter. Any previous understanding, agreement, representation or warranty, either oral or written, relating to that subject matter is replaced by this Deed of Amendment No 1 and has no further effect.
- 12.2 Unless stated otherwise in this Deed of Amendment No 1, any right that a person may have under this Deed of Amendment No 1 is in addition to, and does not replace or limit, any other right that the person may have.

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13. Severability

- 13.1 Any provision of this Deed of Amendment No 1 which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Deed of Amendment No 1 enforceable, unless this would materially change its intended effect.

14. Giving effect to this Deed of Amendment No 1

- 14.1 Each Party must do anything (including execute any document), and must ensure that its officers, employees and agents do anything (including execute any document), that the other Party may reasonably require to give full effect to this Deed of Amendment No 1 and the rights and obligations of the Party under it.

15. Contra proferentum

- 15.1 No rule of construction will apply in the interpretation of this Deed of Amendment No 1 to the disadvantage of one Party on the basis that that Party put forward or drafted this Deed of Amendment No 1 or any part of this Deed of Amendment No 1.

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BY THE DEPARTMENT OF HEALTH AND AGED CARE

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SIGNED, SEALED and DELIVERED
as a deed for and on behalf of the
COMMONWEALTH OF AUSTRALIA
acting through the Department of Health
ABN 83 605 426 759 on:

18 April 2017

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SIMON COTTERELL

Chris Teache

SIGNED, SEALED AND DELIVERED
as a deed by **LORICA HEALTH PTY**
LIMITED ABN 50 107 188 974 in
accordance with section 127 of the
Corporations Act 2001 (Cth) by or in the
presence of:

13 APRIL 2017

MICHAEL AITKEN

s47F

PAUL JOHN NICOLARAKIS

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