



Australian Government  
Department of Human Services

# Department of Human Services Agent and Access Point Program

## General Terms & Conditions

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## RECITALS

- A. The Australian Government Department of Human Services is committed to improving access to, and the quality of, services to Customers in rural, regional and remote Australia.
- B. Where the department is unable to directly provide such services it acts through agents, who are engaged by the department under a Contract which includes these Department of Human Services Agent and Access Point Program General Terms and Conditions ('T&Cs').
- C. The department's agents ('Contractors') may provide:
  - a. Access Point Services – which involve providing Customers access to self-service facilities provided by the department, as described in Schedule 2 to these T&Cs; and/or
  - b. Agent Services – which involves providing Customers the same facilities as an Access Point with the additional provision of face-to-face information and assistance, as described in Schedule 1 to these T&Cs.
- D. The department requires the Services to be delivered in a manner which is sensitive to the cultural needs of its Customers, including those from Indigenous communities or diverse cultural and linguistic backgrounds.
- E. The Contractor has fully informed itself on all aspects of the work required to be performed and has agreed to perform the Services for the department on the terms and conditions of this Contract.

## TERMS AND CONDITIONS

### 1. DEFINITIONS

#### 1.1 In the Contract, unless the contrary intention appears:

**'Activity Logs or Lists'** means unsanctioned lists of information relating to Customer contacts as referred to in clause 24 of these T&Cs;

**'Additional Agency'** means any Agency (as defined in the *Public Service Act 1999*) which has entered into an arrangement with the department for the delivery of some of that Agencies services as part of the Services;

**'Adjustment Note'** means a document detailing adjustments made to the consideration of the original supply (Contract Price) or the GST amount applicable to the original supply;

**'Approved Privacy Code' or 'APC'** has the same meaning as in the *Privacy Act 1988 (Cth)*;

**'Archives Act'** means the *Archives Act 1983 (Cth)*;

**'Authorised Deposit-taking Institution'** means an authorised deposit-taking institution in relation to which an authority under subsection 9(3) of the *Banking Act 1959* is in force; and, for the avoidance of doubt, includes a transferred body whose authority under subsection 9(3) of the *Banking Act 1959* has not been revoked;

**'Business Day'** means a day that is not a Saturday or a Sunday or a Public Holiday at the place where the Services are to be performed;

**'Centrelink'** means the Centrelink program administered by the department;

**'Child Support Agency'** means the Child Support program administered by the department;

**'Clause'** means a clause of the Contract;

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

**'Commonwealth Material'** means any Material provided by the department to the Contractor for the purposes of the Contract or which is copied or derived from Material provided to the Contractor by a Customer for use by the department;

**'Commonwealth Minister'** means the Minister of State or a Parliamentary Secretary performing responsibilities with respect to the department;

**'Commonwealth Record'** has the meaning given in the *Archives Act 1983 (Cth)* and includes any records, files, documentation and electronic information or data created in the course of, or for the purpose of, delivering the Services, but does not include the commercial, financial, accounting or personnel records of the Contractor;

**'CRS Australia'** means the CRS Australia program administered by the department;

**'Compliance Plan'** means a plan developed by the Contractor in accordance with clause 31 that specifies (amongst other things) the processes and procedures the Contractor will adopt to ensure its compliance with the Contract;

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

- (a) is by its nature confidential; or
- (b) is designated by the department as confidential; or
- (c) is any one or more of the following:
  - (i) 'protected information' for the purposes of section 23(1) of the *Social Security Act 1991 (Cth)*;
  - (ii) 'personal information' for the purposes of the Privacy Act;
  - (iii) any information provided to the Contractor, whether directly or via the department or the Australian Taxation Office; or
- (d) the Contractor knows or ought to know is confidential;

**'Contact Officer'** means a person authorised by the department to administer Agent and Access Point Program Contracts;

**'Contract'** means the Offer, the Letter of Acceptance, these T&Cs (including the relevant Schedule) and any Special Conditions;

**‘Contract Price’** means the fees and charges payable to the Contractor by the department under the Contract, as set out in the Offer and any Special Conditions;

**‘Contractor’** means the legal entity that makes an Offer, which is accepted by the department issuing a Letter of Acceptance, and, where the context permits, means the Staff of the Contractor;

**‘Contractor's Bank Account’** means the account with an Authorised Deposit-taking Institution specified in the department's 'Vendor Information Request' form or from time to time as Notified by the Contractor in writing to the department;

**‘Crimes Act’** means the *Crimes Act 1914* (Cth) and *Criminal Code Act 1995* (Cth);

**‘Customer’** means any person who is the recipient of a service, benefit, program or facility provided by the Commonwealth, under an enactment or otherwise which is delivered by the department;

**‘Service Centre’** means a department office for Customers to access a service, benefit, program or facility provided by the Commonwealth which is delivered by the department;

**‘Data’** means, in relation to a Customer, any data, information and associated details, including Personal Information and Protected Information;

**‘department’** means the Commonwealth of Australia as represented by the Department of Human Services;

**‘Department of Human Services Agent or Access Point Declaration of Confidentiality’** means a Deed of Confidentiality provided by the department for the purposes of clause 17.9 of these T&Cs;

**‘Equipment’** means the items specified in a Schedule and which are the property of the department provided to the Contractor to use in performing the Services;

**‘Family Assistance Office’** means the Family Assistance Office program administered by the department;

**‘FOI Act’** means the *Freedom of Information Act 1982* (Cth);

**‘GST’** means goods and services tax payable under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and associated taxation legislation;

**‘Incidentals Fee’** means the amount paid by the department as a contribution to expenses incurred in relation to provision of the Services including:

- (a) electricity;
- (b) cleaning;
- (c) postal charges; and
- (d) consumables;

**‘Intellectual Property’** means all copyright and all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, and circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world;

**'Information Privacy Principles' or 'IPP'** has the same meaning as in the Privacy Act;

**'Letter of Acceptance'** means the letter provided by the department to the Contractor accepting the Offer;

**'Material'** includes documents, equipment, software, goods, information and data stored by any means;

**'Medicare Australia'** means the Medicare program administered by the department;

**'Notice'** has the meaning specified in clause 39 of these T&Cs;

**'Notify'** means giving Notice and **'Notification'** has a corresponding meaning;

**'National Privacy Principles' or 'NPP'** has the same meaning as in the *Privacy Act 1988*;

**'Offer'** means the offer made by the Contractor to the department to provide the Services;

**'Party'** means the department or the Contractor;

**'Personal Information'** means information or an opinion provided by the department or the Customer for the purpose of the Contract (including information or an opinion included in a database), whether true or not, and whether recorded in material form or not, about a natural person whose identity is apparent, or may reasonably be ascertained, from the information or opinion;

**'Privacy Act'** means the *Privacy Act 1988* (Cth);

**'Privacy Commissioner'** means the Privacy Commissioner for the Commonwealth, as appointed under the Privacy Act 1988 (Cth) or equivalent office holder (if any) with jurisdiction over the Commonwealth;

**'Public Holiday'** means a day gazetted as a public holiday in the relevant State, Territory or location where the Services are to be performed and includes local community days in remote areas;

**'Record Authority'** means a document authorising the disposal of Commonwealth Records issued by the National Archives of Australia;

**'Remedy Notice'** means a Notice provided to the Contractor detailing the nature of a breach of the Contract and requiring the Contractor to remedy the breach within 30 days of receipt of the Notice;

**'Schedule'** means a schedule to these T&Cs and published as such on the department's website at [www.humanservices.gov.au](http://www.humanservices.gov.au) and includes Schedule 1 in respect of Agent Services and Schedule 2 in respect of Access Point Services;

**'Services'** means the functions as set out in the relevant Schedule and any Special Conditions;

**'Specified Personnel'** means the Contractor's Staff specified as such in the Offer or as Notified and not excluded under clauses 17.3 or 17.4 of these T&Cs;

**'Special Condition'** means any additional terms, conditions, or requirements attached to the Offer;

**'Staff'** means a Party's employees, agents, contractors, advisers or statutory office holders engaged in the performance of the Contract;

**'Subcontractor'** means a third party that the Contractor has engaged to deliver some or all of the Services;

**'T&Cs'** means these terms and conditions, known as the Department of Human Services Agent and Access Point Program General Terms and Conditions;

**'Term'** means the duration of the Contract as specified in clause 5; and

**'WHS Act'** means the *Work Health and Safety Act 2011* (Cth).

**Note:** All Commonwealth Acts referenced in these definitions and throughout the Contract are published online at <http://www.comlaw.gov.au/>

## 2. INTERPRETATION

2.1 In the Contract, unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa, and words importing a gender include all other genders;
- (b) if a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have a corresponding meaning;
- (c) the word 'includes' in any form is not a word of limitation;
- (d) headings are for ease of reference only and do not affect the interpretation of the Contract;
- (e) reference to a schedule, appendix, Special Conditions, or attachment is to a schedule, appendix, Special Conditions, or attachment in the Contract;
- (f) a reference to the Contract or another instrument includes any variation of any of them;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) the word 'person' includes a firm, body corporate, an individual, unincorporated association or an authority;
- (i) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking a novation) and assigns; and
- (j) a reference to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency.

## 3. PRECEDENCE WITHIN THE CONTRACT

3.1 If there is a conflict or an ambiguity as between the provisions of the several parts of the Contract, the following descending order of precedence will apply for the purpose of attempting to resolve that conflict or ambiguity:

- (a) Special Condition;
- (b) Clauses 1-40 of the T&Cs;

- (c) Schedule;
- (d) the Offer; and
- (e) Letter of Acceptance.

#### 4. FORMATION OF CONTRACTS

4.1 **Acceptance** - The Contract is formed and takes effect from the date of the Letter of Acceptance.

#### 5. TERM OF THE CONTRACT

5.1 **Term** – The term of the Contract is as stated in the Offer, unless sooner terminated, or extended.

5.2 **The department's option to extend** - The department may, subject to Contractor agreement, extend the Term of the Contract for one (1) further period of up to 12 months.

5.3 **Exercise of option** - If the department exercises its option to extend the Contract under clause 5.2 the department must Notify the Contractor in writing not less than 30 days prior to the end of the Term.

#### 6. THE SERVICES

6.1 **Contractor skills, qualifications and experience** - The Contractor warrants that it has the requisite skills, qualifications and experience to perform the Services.

6.2 **Services to be performed** - Subject to clause 13.1, the Contractor shall perform the Services effectively and at the times and in the manner and at the location specified in the Contract.

6.3 **Contractor premises** - The Contractor must provide secure and appropriate premises for the delivery of Services.

6.4 **Contractor to act in good faith** - The Contractor must perform the Services in good faith having regard to the interests and obligations of the department, any Additional Agency and their Customers.

6.5 **Agents for delivery of other services** - Where the Contractor is also contracted to, or has obligations to deliver services for, an organisation other than the department, the Contractor must not be selective in advising or publicising or displaying information or brochures or Material generally, and must ensure all Customers of the department have full, impartial access to all the Services.

#### 7. CONTRACT PRICE

7.1 **The department to pay Contract Price** - The department must pay the Contractor the Contract Price, in the manner specified in the Contract, for the provision of the Services by the Contractor.

7.2 **Invoices** - Receipt of a Tax Invoice/Invoice in the form contained in the Offer is sufficient for the department to initiate payment.

7.3 Subject to clause 7.4, once the Contract is executed and the Tax Invoice/Invoice is rendered to initiate payment in accordance with clause 7.2, the department will institute an automated schedule of payment(s) to the Contractor for Access Point Services or Agent Services, which are not dependent on the Contractor rendering additional, independent Tax Invoices/Invoices.

7.4 **Progress payments** - The department will be entitled to defer payment of an instalment until the Contractor has completed the part of the Services to which the payment relates to the satisfaction of the department.

7.5 **Repayment of a portion of the Contract price** - Where a portion of the Contract Price has been paid under the Contract in relation to Services which:

- (a) are not delivered due to the expiration or earlier termination of the Contract; or
- (b) in part or in full, are not delivered during the period in respect of which payment has been made,

the Contractor must, within 30 days of Notification by the department that a repayment is due, pay to the department an amount equal to the value of the Contract in relation to the undelivered Services specified in that Notice, and issue an Adjustment Note to the department.

7.6 If an amount specified in a Notice given under the Contract is not paid within 30 days from the date the Notice is given the department may, at its discretion:

- (a) recover the amount as a debt; or
- (b) offset the amount owed to the department against any future fees instalment of the Contract Price payable to the Contractor.

## 8. GST PRICES

8.1 **GST- inclusive prices** – Subject to clause 8.2, the Contract Price is the GST inclusive amount as specified in the Contract.

8.2 If the Contractor is not registered for GST, the Contract Price will be the GST exclusive amount as specified in the Contract and the Contractor will not be entitled to recover any additional amount on account of GST from the department.

8.3 **Contractor's warranties** - The Contractor warrants that:

- (a) it has complied with GST requirements including GST registration with the Australian Taxation Office if applicable; and
- (b) it will advise the department immediately in writing in the event that its GST registration status changes.

## 9. PAYMENT OF AMOUNTS TO COVER EXPENSES

9.1 **Input tax credit** - If either Party reimburses the other Party for any expense incurred in connection with supplies made under the Contract, the amount payable will equal the cost of the expense less the input tax credit claimed in connection with that expense, plus GST.

## 10. FAILURE TO NOTIFY DEPARTMENT OF CONTRACTOR'S ABN

- 10.1 **Failure to quote ABN** - Where the Contractor fails to notify the department of its ABN, the department will withhold from the payment to the Contractor, and remit to the Australian Taxation Office, the relevant 'no ABN withholding amount' withheld by the department.
- 10.2 **Issue of payment summary form** - The department will issue a payment summary form to the Contractor detailing the amounts paid and the no ABN withholding amount withheld by the department.

## 11. ELECTRONIC PAYMENT

- 11.1 **Payment to be electronic** - The department must pay the Contract Price to the Contractor by electronic funds transfer directly to the Contractor's Bank Account.
- 11.2 **Liability to pay** - The department's liability to pay the Contractor the Contract Price arises only upon the Contractor's advising the department in writing of all relevant details of the Contractor's Bank Account. If the Contractor changes any details of the Contractor's Bank Account, the department has no obligation to pay any part of the Contract Price until the Contractor advises the department of the change in writing. The Contractor must Notify the department of any such change to the Contractor's Bank Account no later than 14 days before a payment by the department is due ('Cut-off Date').
- 11.3 **Remittance advice** - The department must forward a Remittance Advice to the Contractor's Remittance Advice Address when it instructs its bank to make an electronic funds transfer to the Contractor.
- 11.4 **Tracing of miscarried payments** - The department will use reasonable endeavors to trace any payment directed by it to the Contractor's Bank Account that miscarries and ensure that the amount of the payment is promptly credited after the miscarriage of the payment comes to its attention.

## 12. PERFORMANCE MANAGEMENT

- 12.1 **Performance management** - The department will manage and review the provision of the Services by the Contractor in accordance with Appendix 2 of the Schedule.

## 13. TRAINING AND SUPPORT

- 13.1 **Training and support provisions** - The provisions relating to the department providing training and support are set out in Appendix 3 of the Schedule.

## 14. EQUIPMENT

- 14.1 **Contractor to maintain Equipment** - The Contractor will maintain and deal with the Equipment in the manner specified in Appendix 4 of the Schedule.

## 15. ENTIRE AGREEMENT AND VARIATION

- 15.1 **Entire agreement** - The Contract constitutes the entire agreement between the Parties and supersedes any previous agreements, arrangements, or understandings whether oral or in writing.
- 15.2 **Variation of Contract** - The Contract may be varied only by written agreement between the Parties.

## 16. SUBCONTRACTING

- 16.1 **No subcontracting without prior approval** - The Contractor is not permitted to subcontract the delivery of the Services to a Subcontractor without the prior written approval of the department.
- 16.2 In giving approval under clause 16.1, the department may impose such terms and conditions or process requirements as it reasonably thinks fit.
- 16.3 The Contractor, by subcontracting any part of the work under the Contract will not be relieved of its liabilities or obligations under the Contract, and will be responsible for all Subcontractors and any default in their performance.

## 17. SPECIFIED PERSONNEL

- 17.1 **Contractor to provide Specified Personnel** – The Contractor must provide at least two Specified Personnel to deliver the Services to ensure continuity of service in the event of absence or departure.
- 17.2 **Contractor's warranty** - The Contractor warrants that it has taken reasonable steps to ensure that the Specified Personnel are fit and proper persons to deliver the Services.
- 17.3 **Contractor's Acknowledgement** - The Contractor acknowledges and agrees that the department will conduct criminal history checks (at the department's expense) on all new Specified Personnel put forward under clause 17.1 and who will be providing Agent Services, and that further criminal history checks may be conducted in relation to any Specified Personnel and at any time during the Term. The Contractor acknowledges and agrees that where a person nominated as Specified Personnel refuses to comply with a criminal history check, that person will be immediately excluded from the Specified Personnel as under clause 17.4.
- 17.4 **Department right to exclude Specified Personnel** – The department may, at its absolute discretion, exclude some or all of the Specified Personnel provided by the Contractor under clause 17.1. Where such an exclusion would put the Contractor in breach of clause 17.1, the Contractor must provide alternative Specified Personnel to deliver the Services in accordance with clause 17.7.
- 17.5 **Services must be provided by Specified Personnel** - The Contractor must ensure, subject to clauses 17.4 and 17.6, that only the Specified Personnel detailed in the Offer perform the Services.
- 17.6 **The department may remove Specified Personnel** - In addition to its other rights under this clause 17, the department may at its discretion, acting reasonably, direct that any or all of the Specified Personnel be removed from the delivery of the Services. The Contractor must, upon receipt of such Notice, and at its own cost, promptly arrange for the removal of the personnel from providing the Services and for their replacement with personnel acceptable to the department.
- 17.7 In the event clause 17.6 or clause 17.4 is invoked, the department acknowledges that the Contractor may require an interim period to arrange replacement Specified Personnel. If this period is expected to extend beyond 24 hours, the department must be advised immediately so an interim service option can be implemented, most likely an assurance that Customers will retain access to the suite of self service products provided as a minimum until new Specified Personnel are engaged.
- 17.8 **Contractor may vary Specified Personnel** - The Contractor may change Specified Personnel provided that the department has approved the new or replacement

personnel and the Contractor has notified the department in accordance with clause 39. The department must not unreasonably withhold such approval.

- 17.9 Declaration of Confidentiality and training** - The Contractor must ensure that no Specified Personnel perform any of the Services unless the Specified Personnel have executed and given a Department of Human Services Agent or Access Point Declaration of Confidentiality to the department.
- 17.10** The Contractor must ensure that the Specified Personnel have or will have received training under the conditions set out in Appendix 3 of the Schedule prior to delivering the Services.
- 17.11 The department may terminate** - If the Contractor is unable to provide replacement personnel acceptable to the department within a reasonable time, the department may terminate the Contract in accordance with clause 36.

## **18. OWNERSHIP OF COMMONWEALTH RECORDS**

- 18.1** All Commonwealth Records transferred by the department or any Additional Agency to the custody of the Contractor will remain the property of the Commonwealth.
- 18.2** All Commonwealth Records created by the Contractor become the property of the Commonwealth immediately upon creation.
- 18.3** All Commonwealth Records in the custody of the Contractor at the end of this Contract will be dealt with in accordance with clause 19.5.
- 18.4** All Commonwealth Records in the custody of the Contractor are subject to the Commonwealth legislation applying to the management of records, including the:
- (a) Archives Act;
  - (b) FOI Act;
  - (c) Crimes Act; and
  - (d) Privacy Act.

## **19. MANAGEMENT OF COMMONWEALTH RECORDS**

- 19.1** The Contractor must comply with all records management policies as Notified by the department from time to time.
- 19.2** The Contractor must at all times comply with the requirements of the Archives Act and any Record Authority in respect of Commonwealth Records which are in the custody of the Contractor.

19.3 Subject to this clause 19, the Contractor must:

- (a) not transfer, or be a party to the transfer of, a Commonwealth Record, unless the transfer is authorised by the Commonwealth or is required by law or is otherwise permitted under the Archives Act;
- (b) not dispose of, destroy, delete, damage or alter any Commonwealth Record unless the Contractor has requested from the department, and subsequently received, a Record Authority authorising the destruction of that Commonwealth Record;
- (c) without limiting or being limited by clause 32 (Audit) and clause 33 (Access to Premises), and at no cost to the department:
  - (i) permit the department and/or any Additional Agency to access all Commonwealth Records in the Contractor's custody;
  - (ii) facilitate reasonable access to Commonwealth Records by a requesting Commonwealth Agency; and
  - (iii) assist the department to comply with laws providing for public access to Commonwealth Records. To avoid doubt the Contractor will not be the entity providing public access to the Commonwealth Records.

19.4 The Commonwealth may, by Notice to the Contractor, require the Contractor to return to the Commonwealth any Commonwealth Records in the custody of the Contractor. The Commonwealth will reimburse the Contractor for its reasonable costs associated with the return of Commonwealth Records.

19.5 When the Contract ends, the Commonwealth must arrange for the retrieval of all Commonwealth Records from the Contractor. The Commonwealth will bear the cost of the retrieval of Commonwealth Records.

19.6 If a Party's records are excluded from the application of the Archives Act, that Party's existing records remain subject to the Archives Act unless specifically excluded from its operation.

19.7 The department may immediately terminate the Contract for a breach by the Contractor of any of its obligations in this clause 19, or failure to comply with a Notice issued under clause 19.4.

## 20. INTELLECTUAL PROPERTY

20.1 The Intellectual Property in any Material created by the department as a result of, or in relation to, the Services vests in the department on creation.

20.2 The Contract does not alter or assign the Intellectual Property rights of either Party that exist as at the commencement of the Term.

20.3 For the avoidance of doubt, neither Party may assert ownership of all or any part of the other Party's Intellectual Property existing as at the commencement of the Term.

20.4 Any Intellectual Property contained in any Commonwealth Record, whether created by the Contractor or not, vests in the department on creation.

## 21. COMMONWEALTH MATERIAL

- 21.1 **Ownership of Commonwealth Material** - The Commonwealth remains the owner of all Commonwealth Material at all times.
- 21.2 **Arrangement upon termination** – Subject to any statutory obligations which requires the Contractor to retain a part of the Commonwealth Material, at the end of the Contract the Contractor must return all Commonwealth Material held by the Contractor to the department within 7 days.
- 21.3 **Use to be for Contract purposes only** - The Contractor must only use, reproduce, copy or supply Commonwealth Material for the provision of Services under the Contract and must comply with any restrictions on the use of Commonwealth Material as Notified from time to time by the department. The Contractor must not modify, adapt or exploit Commonwealth Material without obtaining the department's prior consent in writing.

## 22. CONTRACTOR TO ENSURE SECURITY OF INFORMATION

- 22.1 The Contractor must take all steps reasonably necessary to ensure that all Data, Personal Information, Confidential Information, Commonwealth Records and Commonwealth Material accessible and held by the Contractor for the purposes of the Contract is protected at all times from:
- (a) unauthorised access or use;
  - (b) unauthorised disclosure;
  - (c) use by a third party (other than as expressly permitted by the relevant Customer);
  - (d) misuse, damage or unauthorised destruction by any person; and
  - (e) damage caused by weather, fire or other natural phenomenon.
- 22.2 The Contractor must report all security incidents or breaches to the department, including those provided for in clause 22.1.
- 22.3 If a security incident or breach occurs and the Contractor fails to report to the department immediately after the Contractor becomes aware of the security incident or breach, the department may immediately terminate the Contract in accordance with clause 36.

## 23. PRIVACY ACT

- 23.1 **The department's Privacy Act obligations to be facilitated** - The Contractor acknowledges that it is a "contracted service provider" within the meaning of section 6 of the Privacy Act, and agrees in respect of the performance of its obligations under the Contract:
- (a) to use or disclose Personal Information obtained during the course of performing its obligations under the Contract, only for the purposes of the Contract;
  - (b) not to do any act or engage in any practice, that if done or engaged in by an agency, would breach an IPP contained in section 14 of the Privacy Act;

- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency under the Privacy Act;
- (d) to Notify individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (e) not to use or disclose personal information or engage in an act or practice that would breach section 16F of the Privacy Act (direct marketing), a NPP (particularly NPPs 7 to 10) or an APC, where that section, NPP or APC is applicable to the Contractor, unless:
  - (i) in the case of section 16F – the use or disclosure is necessary, directly or indirectly, to discharge an obligation of the Contract;
  - (ii) in the case of an NPP or an IPP – if the activity or practice is engaged in for the purpose of discharging, directly or indirectly; or
  - (iii) an obligation under the Contract, and the activity or practice which is required by the Contract is inconsistent with the NPP or IPP;
- (f) to comply with any reasonable direction by the department to observe any recommendation of the Privacy Commissioner relating to any behaviour of the Contractor that the Privacy Commissioner considers a breach under this clause 23;
- (g) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause 23;
- (h) to ensure that any person who may have access to Personal Information is aware of and undertakes to observe the IPPs; and
- (i) the Contractor must not adopt a department identifying number or code or device as the Contractor's identifier of any person.

**23.2 Procedure for handling complaints** - A complaint alleging an interference with the privacy of an individual related to any Services performed under the Contract will be handled by the department as follows:

- (a) where the department receives a complaint, it must immediately Notify the Contractor, only providing details of the complaint necessary for the Contractor to minimise the breach or prevent further breaches;
- (b) where the Contractor receives a complaint it must immediately Notify the department of the complaint but must not release to the department Confidential Information concerning the complainant without that person's permission;
- (c) after the department has given or has been given Notice in accordance with 23.1(a) or 23.1(b) above, it must keep the Contractor informed of all progress with the complaint as it relates to the Contractor in relation to the allegation; and
- (d) the department must give the Contractor 14 days written Notice of an intention to assume a liability, loss or expense in accordance with 23.1(c). The Notice must explain how the liability, loss or expense was assessed and the Contractor's proposed share of that liability.

**23.3 Survival of obligations** - The Contractor's and Specified Personnel's obligations under this clause 23 and the Privacy Act survive the Term.

## **24. COLLECTION OF INFORMATION**

**24.1 Information** - The Contractor must only collect information from Customers, as specified by the department in the Schedules.

**24.2** The Contractor must not collect information from Customers, Commonwealth Material or Confidential Information for inclusion in any unsanctioned Activity Logs or Lists except for the department's requirements as specified in the Schedules.

**24.3** The Contractor acknowledges that the collection of information from Customers, Commonwealth Material or Confidential Information for inclusion in Activity Logs or Lists may be considered unauthorised dealing in Confidential Information under clause 25.3.

## **25. DISCLOSURE OF INFORMATION**

**25.1 Disclosure of information must be approved** – Subject to clause 25.4, a Party (**Recipient**) must not, without the prior written consent of the other Party (**Discloser**), use or disclose any Confidential Information of the Discloser.

**25.2** For the avoidance of doubt, for the purpose of this clause 25, Confidential Information includes Confidential Information contained in Commonwealth Material.

**25.3** In giving written consent to use or disclose Confidential Information, the Discloser may impose such conditions as it thinks fit and the Recipient agrees to comply with these conditions.

**25.4 Permitted disclosures** - The obligations on the Parties under this clause 25 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by the Contractor to its Staff in accordance with the Contract and in order to comply with obligations, or to exercise rights, under the Contract;
- (b) is disclosed by the department in response to a request by any Commonwealth Minister or by a House or Committee of the Parliament of the Commonwealth of Australia; or
- (c) is authorised or required by law to be disclosed.

**25.5** Where a Party discloses Confidential Information to a third party pursuant to clauses 25.4(a) or 25.4(b), the disclosing Party must Notify the third party receiving the Confidential Information of the existence and content of this clause 25 and the sensitivity of the information being disclosed.

**25.6** The Contractor acknowledges and agrees that the department may disclose to any person the name of the Contractor, the Contract, or the fact that the Contractor is a party to the Contract with the department.

**25.7** Nothing in this clause 25 derogates from any obligation which the Contractor may have under the Privacy Act or under the Contract in relation to the protection of Personal Information.

**25.8 Unauthorised dealing in personal information** - The Contractor acknowledges and understands that, for the purposes of the Contract, it (and the Specified Personnel) are persons to whom:

- (a) Division 3 of Part 5 of the *Social Security (Administration) Act 1999* (Cth);
- (b) Division 2, Part 6 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth); and
- (c) Division 3 of Part 10 of the *Student Assistance Act 1973* (Cth),

apply. The Contractor acknowledges and undertakes to inform the Specified Personnel that they may be liable for two years' imprisonment if they intentionally deal with Confidential Information (being 'protected information') in an unauthorised manner.

**25.9 Freedom of information and access to documents**

- (a) In this subclause, "Document" and "Commonwealth Contract" have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- (b) The Contractor acknowledges that this Deed is a Commonwealth Contract.
- (c) Where the department or any Additional Agency has received a request for access to a Document created by, or in the possession of, the Recipient or any of its subcontractors that relates to the performance of this Contract (and not to the entry into the Contract), the department or any Additional Agency may at any time by written notice require the Contractor to provide the Document to the Authority and the Recipient must, at no additional cost to the Authority, comply with the notice within 7 days after receipt of that notice.
- (d) The Recipient must include in any subcontract relating to the performance of this Deed provisions that will enable the Recipient to comply with its obligations under this subclause.

**25.10 Survival of obligations** - The Contractor's and Specified Personnel's obligations under this clause 25 survive the Term.

## **26. COMPLIANCE WITH LAW AND COMMONWEALTH POLICIES**

**26.1 Compliance by Contractor** - The Contractor must, in carrying out the Contract, comply with relevant statutes, regulations, by-laws and requirements of the Commonwealth and any State or Territory or local authority.

**26.2 Commonwealth legislation** - The Contractor must, in carrying out the Contract, comply with the following laws of the Commonwealth:

- (a) *Crimes Act 1914* (Cth);
- (b) *Racial Discrimination Act 1975* (Cth);
- (c) *Sex Discrimination Act 1984* (Cth);
- (d) *Disability Discrimination Act 1992* (Cth); and
- (e) *Equal Opportunity for Women in the Workplace Act 1999* (Cth).

- 26.3 In order to enable the department to observe its reporting requirements the Contractor must provide such information the department may reasonably request from time to time.
- 26.4 **Compliance with regulations and security etc** - The Contractor must, when using the department's premises or facilities, comply with all security and office regulations and policies (including the department's smoke-free work place policy) in effect at those premises or in regard to those facilities, as Notified by the department.
- 26.5 **Employee Entitlements** - The Contractor is responsible for:
- (a) ensuring the adequacy of any workers' compensation for its Staff; and
  - (b) payment of any sick pay, holiday pay, PAYG, fringe benefit tax, payroll tax, compulsory superannuation contributions and other statutory charges to or for Staff.
- 26.6 **Fair Work Principles** - Clauses 26.7 to 26.9 apply only if the cost to the department of the Services during the Term may exceed \$80,000.
- 26.7 The Contractor must comply, and as far as practicable must ensure its Subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at [www.deewr.gov.au/fairworkprinciples](http://www.deewr.gov.au/fairworkprinciples)), including by:
- (a) complying with all applicable workplace relations, work health and safety, and workers' compensation laws;
  - (b) informing the department of any adverse court or tribunal decision for a breach of workplace relations law, work health and safety laws, or workers' compensation laws made against it during the Term, and any remedial action it has taken, or proposes to take, as a result of the decision;
  - (c) providing the department any information the department reasonably requires to confirm that the Contractor (and any Subcontractor) is complying with the Fair Work Principles; and
  - (d) participating in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and audits undertaken by the department, its nominees and/or relevant regulators.
- 26.8 Compliance with the Fair Work Principles does not relieve the Contractor from its responsibility to comply with its other obligations under the Contract.
- 26.9 The Contractor acknowledges that if it does not comply with the Fair Work Principles then, without prejudice to any rights that would otherwise accrue to the department, the department is entitled to publish details of the Contractor's failure to comply (including the Contractor's name) and to otherwise provide those details to other Commonwealth agencies.
- 26.10 **Commonwealth Fraud Control Guidelines** - The Contractor must comply, and as far as practicable must ensure its Subcontractors comply, with all relevant requirements of the Commonwealth Fraud Control Guidelines (available at <http://www.ag.gov.au>)

## 27. WORKPLACE HEALTH AND SAFETY

- 27.1 The Contractor warrants to the department that they have appropriate systems in place to ensure compliance with this clause 27.
- 27.2 The Contractor must ensure that the Services performed by it and any of its Staff comply with all applicable laws, standards, policies, that relate to the health and safety of the Contractor, Staff, department Staff and third parties.
- 27.3 The Contractor must comply with its obligations under any applicable work health and safety law, and must ensure, so far as is reasonably practicable, that its officers (as defined by applicable work health and safety law) and workers comply with their obligations under applicable work health and safety law. The other provisions of clause 27 do not limit this clause 27.3.
- 27.4 The Contractor must ensure, so far as is reasonably practicable, the health and safety of:
- (a) workers engaged, or caused to be engaged by the Contractor; and
  - (b) workers whose activities in carrying out work are influenced or directed by the Contractor,
- while the workers are at work in relation to the Contract.
- 27.5 The Contractor must ensure, so far as is reasonably practicable, that the health and safety of other persons (including department Staff) is not put at risk from work carried out under the Contract.
- 27.6 The Contractor must consult, cooperate and coordinate with the department in relation to the Contractor's work health and safety duties.
- 27.7 Without limiting clause 27.9(d), the Contractor must, on request, give all reasonable assistance to the department, by way of provision of information and documents, to assist the department and department Staff to comply with the duties imposed under the WHS Act.
- 27.8 The department may direct the Contractor to take specified measures in connection with the Contractor's performance of its obligations under the Contract or otherwise in connection with the Services that the department considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The Contractor must comply with the direction. The Contractor is not entitled to an adjustment to the Contract Price, or to charge additional allowances or expenses, merely because of compliance with the direction.
- 27.9 If an event occurs in relation to the Contractor's performance of its obligations under the Contract that leads, or could lead to the death of, or an injury or illness to, a person ('Notifiable Incident'), the Contractor must:
- (a) immediately report the matter to the department, including all relevant details that are known to the Contractor;

- (b) as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:
  - (i) its cause; and
  - (ii) what adverse effects (if any) it will have on the Contractor's performance of its obligations under the Contract, including adverse effects on risks to health and safety;
- (c) as soon as possible after the Notifiable Incident, take all reasonable steps to remedy any effects of the Notifiable Incident on health and safety;
- (d) as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to ensure that an event or circumstance of the kind that led to the Notifiable Incident does not recur;
- (e) within 3 Business Days after the Notifiable Incident, give the department a written report giving further details of the Notifiable Incident, including the results of the investigations required by clause 27.9(b) and a statement of the steps the Contractor has taken or that the Contractor proposes to take as required by clauses 27.9(b)(ii) and 27.9(d); and
- (f) within 3 months after the Notifiable Incident, give the department a written report giving full details of its actions in relation to the Notifiable Incident.

27.10 The Contractor's obligations under clause 27.9 are in addition to any reporting obligation that it has under a law.

27.11 The Contractor must fully co-operate, at its own cost, with any investigation by any government agency (including the department) with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.

27.12 The Contractor must not enter into any subcontract for the purpose of directly or indirectly fulfilling its obligations under the Contract unless such a subcontract obliges the Subcontractor to comply with equivalent provisions to those contained in this clause 27.

27.13 A word or expression in this clause 27 that is:

- (a) used or defined in an applicable work health and safety law; and
- (b) is not otherwise defined in this clause 27 or elsewhere in the Contract,

has, for the purposes of this clause 27, the meaning given to it under the applicable work health and safety law.

## 28. INDEMNITIES

28.1 **Contractor to indemnify** - The Contractor indemnifies the department from and against all loss (including legal costs and expenses on a solicitor/own client basis) or damage incurred or suffered by the department arising from:

- (a) any negligence, wilful or unlawful act or omission by the Contractor or its Staff in connection with the Contract;
- (b) any breach by the Contractor of its obligations under the Contract;

- (c) any misuse or disclosure by the Contractor or its Staff of Confidential Information or any breach of the Contractor's obligations under clauses 21 (Commonwealth Material), 22 (Security of Information), 23 (Privacy Act), 24 (Collection of Information), 25 (Disclosure of Information); and
- (d) if any fine, penalty or other charge is imposed on the department as a result of a breach of clause 26.2, the Contractor indemnifies the department in respect of that fine, penalty or other charge.

**28.2 Reduction where contribution by the department** - The Contractor's liability is reduced proportionately to the extent that an act or omission of the department or its Staff contributed to the loss or damage.

**28.3 Survival of indemnities** - All indemnities provided in the Contract survive the termination or expiration of the Contract.

## **29. INSURANCE**

**29.1 Obligations to insure** - The Contractor must maintain for the Term:

- (a) not less than \$5 million public liability insurance; and
- (b) workers compensation insurance as required by the law of the relevant State or Territory.

**29.2** The Contractor must, at the request of the department, provide the department with a copy of its certificates of insurance for the policies required by clause 29.1.

## **30. CONFLICT OF INTEREST**

**30.1 No conflict of interest** - The Contractor warrants that at the time of entering into the Contract either:

- (a) no conflict of interest, whether actual or potential, exists; or
- (b) all conflicts of interest, whether actual or potential, have been fully disclosed by the Contractor to the department providing sufficient details to enable the department to make an informed decision about the department's best interests and options.

**30.2 Notification during Term** - If, during the Term, a conflict or risk of a conflict arises the Contractor must, within 5 Business Days, Notify the department in writing of the conflict or risk and provide full details to enable the department to make an informed decision about the department's best interests and options.

**30.3 Contractor's steps to resolve the conflict of interest** - The Notice given by the Contractor to the department under clause 30.2 must include the steps the Contractor proposes to take to resolve the conflict of interest.

**30.4 The department may direct the manner of resolution** - If the department considers that those steps referred to in clause 30.3 are inadequate, it may direct the Contractor, by Notice, to resolve the conflict of interest in a manner proposed by the department within a time specified in the Notice.

**30.5 Conflict of Interest** - A reference to a conflict of interest includes the Contractor or a member of the Contractor's Staff being a person:

- (a) convicted of; or

(b) charged with,

an offence against:

(c) the *Crimes Act 1914* (Cth);

(d) the *Criminal Code* (Cth);

(e) any statute or common law of a State or Territory or foreign country involving:

(i) dishonesty of any kind; or

(ii) violence of any kind against an individual, animal or property; or

(iii) offensive behaviour or offensive language,

as the case requires.

## 31. COMPLIANCE PLAN

31.1 The Contractor must:

- (a) take all steps (including implementing systems, procedures and processes) necessary to give effect to its obligations under the Contract;
- (b) if directed by the department, develop and provide to the department a draft Compliance Plan within the period specified by the department;
- (c) if directed by the department, develop a final Compliance Plan within the period specified by the department that incorporates any reasonable requirements requested by the department after its review of the draft Compliance Plan; and
- (d) comply with any final Compliance Plan agreed to in writing by the department.

## 32. AUDITS AND COMPLIANCE REVIEW

32.1 The department, its nominees, the Australian National Audit Office or the Privacy Commissioner, or their respective nominees (the 'auditors' or 'reviewers'), may conduct audits and reviews (including through a planned schedule or random compliance testing) of the following:

- (a) the Contractor's operational processes, practices and procedures as they relate to the Contract;
- (b) the completeness and/or accuracy of the Contractor's records in relation to the performance of the Contract;
- (c) the Contractor's compliance with confidentiality, privacy, Intellectual Property and security obligations in the Contract;
- (d) the Contractor's compliance with any final Compliance Plan; and
- (e) any other matters reasonably determined by the department to be relevant to the performance of, or compliance with, the Contract.

32.2 The Contractor must participate co-operatively in audits and reviews conducted under clause 32.1.

- 32.3 Each Party must bear its own costs of any audits and reviews, unless the audit or review reveals material non-compliances with the Contract by the Contractor, in which case the department may require the Contractor to pay the department's reasonable costs of the audit or review.
- 32.4 Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of the department or the Auditor-General or the Privacy Commissioner, or a delegate of the department, the Auditor-General or the Privacy Commissioner. The rights of the department in connection with the Contract are in addition to any other function, power, right or entitlement of the department, the Auditor-General or the Privacy Commissioner or their delegates.
- 32.5 At the commencement of, or at any time during, an audit or review conducted in accordance with clause 32.1, the department may Notify the Contractor that a Suspension Order is in effect. While a Suspension Order is in effect, the department may, in whole or in part, suspend the Contractor's provision of Services.
- 32.6 The Notice issued in accordance with clause 32.5 will set out:
- (a) the date the Suspension Order takes effect; and
  - (b) the Services to be suspended.
- 32.7 At the conclusion of the audit or review, the department will Notify the Contractor that the Suspension Order no longer is in effect.

### 33. ACCESS TO CONTRACTOR'S PREMISES

- 33.1 For the purposes of clause 32.1, the Participant must, during Business Hours and after receiving reasonable Notice from the department, grant the auditors or reviewers access to the Contractor's premises to inspect and copy documents relating to the matters specified in clause 32.1, including any:
- (a) Commonwealth Material;
  - (b) Data;
  - (c) Confidential Information;
  - (d) Customer Information
  - (e) documentation and records, however stored, in the custody or under control of the Contractor directly relating to the Services; and
  - (f) other material relevant to the Services.

### 34. OTHER REPRESENTATION

- 34.1 **No general agency arrangement** - The Contractor is not an agent or representative of the department for any purpose other than those purposes necessary for the performance by the Contractor of the Services. The Contractor must not either:
- (a) hold itself out as an agent or representative; or
  - (b) permit, or encourage, or allow any of the Contractor's Staff to hold themselves out as agents or representatives,

for any other purpose.

## 35. DISPUTE RESOLUTION

- 35.1 **Attempt to negotiate** - Subject to clause 35.4, before resorting to external dispute resolution mechanisms, the Parties will attempt to settle by negotiation any dispute in relation to the Contract.
- 35.2 **Independent mediation** - If negotiations between the Parties fail, the Parties must submit the dispute to an independent mediator agreed between the Parties. The mediator will attempt to facilitate a resolution to the dispute and the Parties must cooperate fully with the mediation process.
- 35.3 **Costs of mediation** - Any costs associated with the appointment of a mediator in accordance with clause 35.2 must be shared on an equal basis between the Parties.
- 35.4 **Obligations remain during dispute** - Notwithstanding the existence of a dispute, each Party will continue to perform its obligations under the Contract, unless the dispute relates to termination of the Contract.
- 35.5 **Right to commence legal proceedings** - Notwithstanding clause 35.4, any Party may commence court proceedings relating to any dispute arising from the Contract at any time where that Party seeks urgent relief.

## 36. TERMINATION

- 36.1 **Termination by Notice** - Either Party, may terminate the Contract in whole or in part by giving 30 days written Notice of the termination to the other Party.
- 36.2 The department may terminate the Contract in whole or in part immediately by giving Notice to the Contractor if:
- (a) the Contractor breaches any provision of the Contract and, where the department considers that the breach is capable of remedy, the Contractor fails to remedy the breach within 30 days after receiving a Remedy Notice from the department requiring it to do so;
  - (b) the Contractor breaches a material provision of the Contract where that breach is not capable of remedy;
  - (c) the Contractor engages in fraudulent, unlawful or dishonest conduct in connection with the Contract;
  - (d) any event referred to in clause 36.4 happens to the Contractor;
  - (e) any representation or information provided by the Contractor in the Offer was, at the time it was submitted by the Contractor, or becomes, incorrect or misleading in any respect; or
  - (f) another term of the Contract (including a provision of a Schedule) provides the department with the right to terminate the Contract.
- 36.3 Without limitation, for the purposes of clause 36.2(b) each of the following constitutes a breach of a material provision:
- (a) a failure to comply with 17.5 (Services must be provided by Specified Personnel);
  - (b) a failure to comply with 21 (Commonwealth Material);

- (c) a failure to comply with 22 (Security of Information);
- (d) a failure to comply with clause 23 (Privacy Act);
- (e) a failure to comply with clause 24 (Collection of Information);
- (f) a failure to comply with clause 25 (Disclosure of Information);
- (g) a failure to comply with clause 26.7 (Fair Work Principles); and
- (h) a failure to Notify the department of a Conflict of Interest under clause 30 (Conflict of interest) or an inability to resolve a Conflict of Interest to the reasonable satisfaction of the department.

36.4 The Contractor must Notify the department immediately if:

- (a) there is any change in the direct or indirect beneficial ownership or control of the Contractor or its business;
- (b) it disposes of the whole or any part of its assets, operations or business, other than in the ordinary course of business;
- (c) it ceases to carry on business;
- (d) it ceases to be able to pay its debts as they become due;
- (e) any step is taken by a mortgagee to take possession or dispose of the whole or any part of its assets, operations or business;
- (f) any step is taken to enter into any arrangement between the Contractor and its creditors;
- (g) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Contractor's assets or business; or
- (h) where the Contractor is a partnership, any step is taken to dissolve that partnership.

36.5 The Contractor must notify the department immediately if any information or representation in the Contractor's Offer becomes incorrect or misleading in any respect.

36.6 Termination under this clause 36 does not affect any accrued rights or remedies of a Party.

## 37. WAIVER

37.1 **Parties may waive entitlements** - Either Party may waive an entitlement under the Contract, or forgive the other Party an obligation, provided the waiver is in writing signed by the Party giving the waiver.

## 38. APPLICABLE LAW

38.1 **Jurisdiction** - The laws of the Australian Capital Territory apply to the Contract. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the Australian Capital Territory.

## 39. NOTICES

39.1 **Notice to be given** - A Notice or other communication connected with the Contract ('Notice') must be in writing and signed:

- (a) by the department's Contact Officer, if given by the department; or
- (b) by a person authorised by the Contractor, if given by the Contractor, and

sent to the address specified in the Offer.

39.2 **Procedure where facsimile used** - Where a Notice is transmitted by facsimile, the transmitting Party must provide a copy of the original, by pre-paid post, to the receiving Party as soon as practicable after the transmission.

39.3 **Deemed receipt** - Where a Notice is transmitted by facsimile, it will be deemed to have been received by the receiving Party at the time indicated by the transmission confirmation printed by the transmitting facsimile machine.

39.4 **Procedure where email is used** – Where a Notice is transmitted by E-mail it will be deemed to have been received by the receiving Party on receipt of an electronic receipt of delivery.

## 40. NOTICE OF CHANGED DETAILS

40.1 The Contractor must inform the department within 14 days, in accordance with the Notice of provisions in this clause 40, of any changes to any material details, including the following:

- (a) changes in the Specified Personnel;
- (b) changes to bank account details;
- (c) changes to:
  - (i) street address;
  - (ii) postal address;
  - (iii) telephone number;
  - (iv) facsimile number; and
  - (v) e-mail address.