



Australian Government

**Australian Customs and
Border Protection Service**

CONTRACT FOR SERVICES NO. 1421660

BETWEEN

**COMMONWEALTH OF AUSTRALIA,
REPRESENTED BY THE AUSTRALIAN CUSTOMS
AND BORDER PROTECTION SERVICE
ABN 66 015 286 036**

AND

**TOLL REMOTE LOGISTICS PTY LTD
ABN 99 004 210 093**

FOR PORT SERVICES MANAGEMENT

Parties

This Contract is made between and binds the following parties:

1. The Commonwealth of Australia, acting through and represented by the Australian Customs and Border Protection Service, ABN 66 015 286 036. (**'ACBPS'**)
2. Toll Remote Logistics Pty Ltd ABN 99 004 210 093, a corporation having its office at Level 9, 145 Eagle Street, Brisbane, QLD 4000. (**'Service Provider'**) on the other part

Purpose

- A. ACBPS requires the provision of certain Services as specified in Schedule 2.
- B. The Service Provider has fully informed itself about the Services to be provided.
- C. ACBPS has agreed to engage the Service Provider to provide the Services upon the terms and conditions set out in this Contract its Schedules and Attachments.

Operative provisions

1. In consideration of the mutual promises contained in this document, the parties agree to the terms and conditions set out in this Contract, its Schedules and Attachments.
2. The parties acknowledge and agree that:
 - (a) ACBPS and the Department of Immigration and Border Protection (DIBP) are scheduled to merge into one Commonwealth entity on 1 July 2015; and
 - (b) the merger of ACBPS and DIBP will not affect the legal status of this Contract.
3. Notwithstanding clause 2 above, the Service Provider acknowledges and agrees that, on and from 1 July 2015 this Contract will be deemed to be amended such that references to ACBPS will be taken to be references to DIBP.

EXECUTED AS A CONTRACT

SIGNED on behalf of the Commonwealth
of Australia as represented by the
Australian Customs and Border Protection
Service by:

s. 22(1)(a)(ii)

(Printed name of Delegate)

Acting National Manager

Air and Marine Branch

Border Force Division

In the presence of

s. 22(1)(a)(ii)

(Printed name of Witness)

s. 22(1)(a)(ii)

(Signature of Delegate)

(Date)

s. 22(1)(a)(ii)

(Signature of Witness)

EXECUTED by Toll Remote Logistics Pty
Ltd ABN 99 004 210 093 in accordance
with the requirements of section 127 of the
Corporations Act 2001 (Cth) by:

s. 47F(1)

..... Director

(Printed name of Signatory)

Director/Company Secretary

s. 47F(1)

Company Secretary

(Printed name of Signatory)

Director/Company Secretary

s. 22(1)(a)(ii)

(Date)

07/04/15
15TG006558

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CONDITIONS OF CONTRACT

1. Interpretation

1.1 In this Contract, unless the contrary intention appears:

ACBPS	means the Commonwealth of Australia, represented by the Australian Customs and Border Protection Service and includes its employees, agents and contractors.
ACBPS Information	means any information about this Contract or any information or Material provided by, or obtained from, ACBPS under or in relation to this Contract.
ACBPS Material	means any Material: (a) provided by ACBPS to the Service Provider for the purposes of this Contract; or (b) derived at any time from the Material referred to in (a) above.
Acceptance	means written confirmation by ACBPS that the acceptance criteria or alternative acceptance formalities have been satisfied by the Service Provider in respect of an aspect of the Services that is subject to acceptance.
Alcohol test	means a test of a person's breath or blood to determine the presence or the amount of alcohol (if any) in the person's breath or blood.
Alcohol screening test	means a test of a person's breath to determine whether alcohol is present in the person's breath.
Business Day	in relation to the doing of any action in a place, means a weekday other than a public holiday in that place.
CEO's Order	means an order issued by the CEO of ACBPS under section 4B of the <i>Customs Administration Act 1985</i> (Cth).
Commencement Date	means the date specified in Item A [Commencement and Period] of Schedule 1.
Commonwealth	means the Commonwealth of Australia acting through and represented by the Australian Customs and Border Protection Service.
Confidential Information	In respect of ACBPS confidential information, means information that: (a) is by its nature confidential; and (b) is either: (i) designated by ACBPS as confidential; or

	(ii) information which the Service Provider knows or ought to know is confidential; but does not include information that: (c) is or becomes public knowledge other than by breach of this Contract or by any other unlawful means; (d) is in the possession of the Service Provider without restriction in relation to disclosure before the date of receipt from ACBPS; or (e) has been independently developed or acquired by the Service Provider. in respect of the Service Provider, confidential information means information that: (f) is by its nature confidential; and (g) is listed in Item J of Schedule 1; but does not include information that: (h) is or becomes public knowledge other than by breach of this Contract or by any other unlawful means; (i) is in the possession of the Service Provider without restriction in relation to disclosure before the date of receipt from ACBPS; or (j) has been independently developed or acquired by the Service Provider.
Contract	means this agreement under which the Services are to be provided to ACBPS, and includes all Schedules and attachments.
Contracted Person	includes agents, subcontractors, consultants, professional advisers and contracted staff, but does not include employees.
Contract Manager	means the person specified in Item I [ACBPS Contract Manager] of Schedule 1, or any substitute notified to the Service Provider by ACBPS.
Contract Material	means any Material: (a) created for the purposes of this Contract; (b) provided or required to be provided to ACBPS as part of the Services; or (c) derived at any time from the Material referred to in paragraphs a or b.
Coordinated Procurement Contracting	is the process to establish a single whole-of-government procurement contract for certain property or services as decided by the Australian Government on a case-by-case

	basis.
Customs worker	has the meaning in section 3 of the <i>Customs Administration Act 1985</i> (Cth) as determined by the CEO under section 3C of that Act.
Defects Liability Period	means the period specified in Schedule 2, if any.
Equipment	means the equipment specified in Schedule 2 and includes any component or part of that equipment.
Existing Equipment	means any equipment (including software, components and parts of components) located at the Sites, and which the Contractor knows or ought reasonably to know, is to be used in connection with the Equipment.
Force Majeure	Force Majeure Event means a circumstance beyond the reasonable control of the Contractor as a result of which it is prevented from or delayed in performing its obligations under this Contract (which for the purposes of this definition will not under any circumstances include any act or omission of the Contractor, any related body corporate or related party of any kind or any act or omission of any Subcontractor), including: (a) an act of God, fire, lightning strike, explosion, flood, earthquake, landslide or industrial action (other than industrial action specifically directed at the Contractor); or (b) riot, civil commotion, malicious damage, sabotage, acts of terrorism, war or revolution.
Harmful Code	any virus, disabling or malicious device or code, worm, Trojan, time bomb or other harmful or destructive code, but does not include any software lock or other technical mechanism that is included to manage the proper use of any software.
Instalment	means an instalment of fees payable under Item C [Fees] of Schedule 1.
Intellectual Property (IP)	includes: (a) all rights in relation to copyright; (b) all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and (c) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; but does not include:

	(d) Moral Rights; (e) the rights of performers; or (f) rights in relation to Confidential Information.
Key Personnel	means the Personnel specified in Item F [Key Personnel and Subcontractors] of Schedule 1.
Key Performance Indicators	means the Key Performance Indicators specified in Item 7 of Schedule 2, if any.
Law of Customs	has the meaning in section 3 of the <i>Customs Administration Act 1985</i> (Cth) and includes CEO's Orders, determinations and directions made under that Act.
Liability	means any liability (whether it is present or future, fixed or unascertained, actual or contingent), including for any Loss, irrespective of how or when the acts, events circumstances or things giving rise to the liability occurred or existed.
Losses	means any loss, damage (whether direct or indirect), liability, cost or expense including legal expenses of a solicitor and own client basis.
Material	means the subject matter of any category of Intellectual Property rights.
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.
Obligation	means any legal, equitable, contractual, statutory or other obligation, commitment, duty, undertaking or Liability, present or future.
Open Access Licence	means a licence to the public on broad open access terms that allows any member of the public to perform a wide range of acts in respect of the material subject to certain restrictions. An Open Access Licence includes any Department or Australian Government open access licence and any Creative Commons Attribution licence (see http://creativecommons.org.au/learn-more/licences).
Personal Information	has the same meaning as in the Privacy Act 1988.
Personnel	means a party's officers, employees, agents, subcontractors, or professional advisers engaged in, or in relation to, the performance or management of this

	Contract, and in relation to the Service Provider includes the Key Personnel.
PGPA Act	means the <i>Public Governance, Performance and Accountability Act 2013</i> .
Prohibited drug	has the meaning in section 3 of the <i>Customs Administration Act 1985</i> (Cth).
Prohibited drug test	has the meaning in section 3 of the <i>Customs Administration Act 1985</i> (Cth).
Protective Security Policy Framework	is Australia's protective security policy, organised in a tiered, hierarchical structure developed to be read in its entirety following the structure outlined in the diagram at http://www.protectivesecurity.gov.au/pspf/Pages/default.aspx
RAC	means a registered Australian Privacy Principle code as defined in section 26B of the <i>Privacy Act 1988</i>
Service Provider	includes the Personnel of the Service Provider.
Services	means the Services and any Equipment described in Item 1 [Services] of Schedule 2, and includes the provision to ACBPS of any Material specified in that item.
Site	means the ACBPS Service premises where the Services will be performed as set out in Item 2 [Site] of Schedule 2.
Small Business	means an enterprise that employs less than the full time equivalent of 20 persons on the day that this Contract is entered into.
Small to Medium Enterprise	is an Australian or New Zealand firm with fewer than 200 full time equivalent employees.
Subcontractor	means any subcontractor or third party engaged by the Service Provider to perform part of the Services and specified in Item F [Key Personnel and Subcontractors] of Schedule 1.
Tax Invoice	has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 and any regulations made pursuant to that Act.
Term of Contract	means the period of the Contract from the Commencement Date to the date on which this Contract expires set out Item A [Commencement and Period] of Schedule 1, unless this Contract is terminated under clause 21 or 22.
Warranty Period	means the period specified in Schedule 2, if any.

Worker	has the same meaning as in section 7 of the <i>Work Health and Safety Act 2011</i> (Cth).
Work Health and Safety Legislation or WHS Legislation	means any and all applicable occupational health and safety, work health and safety, dangerous goods, electricity safety or environmental protection related legislation together with associated regulations that are relevant to the Services and the safe manner in which those Services are provided or supplied.

- 1.2 In this Contract, unless the contrary intention appears:
- (a) a reference to an item is a reference to an Item in a Schedule to this Contract;
 - (b) words importing a gender include any other gender;
 - (c) words in the singular include the plural and words in the plural include the singular;
 - (d) clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - (e) words importing a person includes a partnership and a body whether corporate or otherwise;
 - (f) a reference to dollars is a reference to Australian dollars;
 - (g) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
 - (h) if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
 - (i) a reference to an attachment or a schedule is a reference to the attachment or Schedule to this Contract, including as amended or replaced from time to time by agreement in writing between the parties;
 - (j) a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form;
 - (k) if any conflict arises between them, the parts of this Contract take precedence in the following order:
 - (i) this Contract (excluding the Schedules and attachments);
 - (ii) the Schedules;
 - (iii) Attachments.
- 1.3 This Contract records the entire agreement between the parties in relation to its subject matter.
- 1.4 A variation of this Contract is binding only if agreed in writing and signed by the parties.
- 1.5 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.
- 1.6 This Contract is to be interpreted in accordance with the laws of the Australian Capital Territory. The parties submit to the jurisdiction of the courts of the Australian Capital Territory.
- 1.7 A provision of this Contract will not be interpreted to the disadvantage of a party solely on the basis that it proposed that provision.

2. Term of Contract

- 2.1 The terms of this Contract apply on and from the Commencement Date.
- 2.2 The Contract will remain in force for the Term of the Contract subject to:

- (a) earlier termination or expiry in accordance with the provisions of this Contract; or
- (b) extension in accordance with the procedures specified in Item A [Commencement and Period] of Schedule 1.

3. Provision of Services

3.1 The Service Provider agrees to:

- (a) perform the Services at the Site or other locations as set out in Item 2 [Sites] of Schedule 2 in accordance with the Project Plan at Schedule 2; and
- (b) perform the Services in a manner so as not to restrict the performance of, or otherwise adversely impact on, the operation of Existing Equipment or the Site at which they are working.
- (c) perform the Services specified in Item 1 [Services] of Schedule 2 in accordance with the Key Performance Indicators as specified in Item 7 of Schedule 2;
- (d) provide to ACBPS the Contract Material specified in Item B [Material] of Schedule 1;
- (e) adhere to and comply with security requirements specified in Schedule 4;
- (f) comply with all legal and regulatory requirements applicable to the Services, including any licensing, accreditations and WHS Legislation obligations;
- (g) adopt relevant best practice, including any ACBPS, Commonwealth or industry standards and guidelines specified in Item 4 [Standards and Best Practice] of Schedule 2;
- (h) comply with the time frame for the performance of the Services specified in Item A [Commencement and Period] of Schedule 1;
- (i) provide all labour, plant and materials required to perform the Services;
- (j) liaise with the Contract Manager as reasonably required and comply with directions of the Contract Manager that are consistent with the contract; and
- (k) keep abreast of all relevant new technology in relation to the Services and discuss with ACBPS any recommendations it may have for the implementation of new technology in relation to the Services.

4. Non-Exclusivity of Services

4.1 This Contract is not to be interpreted as providing the Service Provider with the right to be the sole provider of any Services to ACBPS or preventing ACBPS from seeking any Services from other suppliers.

5. Key Personnel

5.1 The Service Provider must ensure that where required, the Key Personnel identified in Item F [Key Personnel and Subcontractors] of Schedule 1:

- (a) hold and maintain an endorsed Organisational Security Assessment; and
- (b) are security cleared to the level specified in Item F [Key Personnel and Subcontractors] of Schedule 1,

prior to the Commencement Date or accessing any premises and or official or security classified material during the Term of the Contract, and:

- (c) have the skills, qualifications and experience to provide the Services efficiently; and
 - (d) perform the services in accordance with this Contract.
- 5.2 The Service Provider must also ensure that the Key Personnel, when using ACBPS premises or facilities, adhere to and comply with all security requirements, reasonable directions and applicable procedures relating to WHS Legislation and policies (including ACBPS smoke-free work-place policy) whether specifically drawn to the attention of the Service Provider or as might reasonably be inferred from the circumstances.
- 5.3 If Key Personnel are unable to perform the Services:
- (a) the Service Provider must notify ACBPS immediately; and
 - (b) ACBPS may terminate this Contract under clause 22 or request replacement personnel at its absolute discretion.
- 5.4 ACBPS may, at its absolute discretion, request the Service Provider to remove particular Key Personnel from performing the Services without providing reason.
- 5.5 If clause 5.3 or clause 5.4 applies the Service Provider must provide replacement Personnel acceptable to ACBPS at no additional cost and at the earliest opportunity.
- 5.6 If the Service Provider is unable to provide the replacement Personnel acceptable to ACBPS in accordance with clause 5.5, ACBPS may, at its absolute discretion, terminate this Contract.

6. Responsibility of Service Provider

- 6.1 In addition to Key Personnel, the Service Provider will provide the necessary number of appropriately qualified and experienced personnel to perform its obligations under the Contract.
- 6.2 The Service Provider is fully responsible for performing the Services and complying with this Contract, despite any:
- (a) involvement by ACBPS in performing the Services;
 - (b) payment made to the Service Provider on account of the Services;
 - (c) subcontracting of the Services; or
 - (d) acceptance by ACBPS of replacement Key Personnel.
- 6.3 The Service Provider is excused from performance of its obligations under the Contract during the period of any event of Force Majeure.

7. Service Provider Warranties

- 7.1 The Service Provider represents and warrants that:
- (a) it has all rights, title, licences, interests and property necessary to lawfully perform the Services;
 - (b) the Services and materials supplied by the Service Provider will be fit for purpose as set out in Item 1 [Services] of Schedule 2;
 - (c) the Services and materials supplied by the Service Provider will be complete, accurate and free from material faults;

- (d) it has systems able to meet designated information security standards for the electronic processing, storage, transmission and disposal of official information, as specified in the Australian Government Information Security Manual;
 - (e) it will not, nor will it suffer or permit any third party under its direction or control to negligently introduce into ACBPS' systems or any deliverables any Harmful Code; and
 - (f) if any Harmful Code is introduced, it will use all reasonable efforts promptly to report that introduction to ACBPS and, where that Harmful Code is introduced as a result of a breach of clause 7.1(d), it will:
 - (i) take all necessary action to eliminate the Harmful Code; and
 - (ii) promptly, at its own cost, repair any harm or destruction caused by that Harmful Code;
 - (g) it has the necessary expertise, experience, capacity, tools, equipment and facilities required to perform its obligations and responsibilities under this Contract at a high standard of industry practice; and
 - (h) any materials used in the provision of the Services:
 - (i) are newly manufactured;
 - (ii) will be free from any charge or encumbrance;
 - (iii) are fit for purposes set out in Item 1 [Services] of Schedule 2; and
 - (iv) comply with the requirements specified in this Contract.
- 7.2 The Service Provider also warrants that the Services:
- (a) comply with the requirements under the Work Health and Safety Legislation and Codes of Practice 2011;
 - (b) meet Work Health and Safety performance standards; and
 - (c) are safe and without risk to a person's health.

8. Knowledge Transfer

- 8.1 Subject to any qualification or provision to the contrary in Item K [Knowledge Transfer] of Schedule 1, the Service Provider must provide the following assistance to ACBPS on termination or expiration of this Contract:
- (a) transferring or providing access to ACBPS to all information stored by whatever means held by the Service Provider or under the control of the Service Provider in connection with this Contract; and
 - (b) making Key Personnel available for discussions with ACBPS as may be required. The time, length and subject of these discussions will be at the sole discretion of ACBPS, provided that any matter discussed is not considered to reveal any 'Commercial-in-Confidence' information of the Service Provider.

9. Ownership and Risk

- 9.1 The Service Provider transfers to ACBPS all rights, title and interest in any Materials used in the provision of the Services to ACBPS immediately upon the giving of a Certificate of Acceptance (if applicable) or Payment of the Fee, whichever occurs first.

- 9.2 Risk of loss of or damage to any such Materials resides with the Service Provider until the Materials have been delivered to ACBPS in accordance with this Contract.

10. Fees, Allowances and Assistance

- 10.1 ACBPS will:
- (a) subject to Acceptance by ACBPS (if applicable), pay the Fees in the Instalments (if any) specified in Item C [Fees] of Schedule 1;
 - (b) pay the allowances and meet the costs specified in Item C [Fees] of Schedule 1;
 - (c) make all payments in the manner specified in Item D [Invoicing and Payment] of Schedule 1; and
 - (d) provide the facilities and assistance specified in Item E [ACBPS Assistance] of Schedule 1.
- 10.2 Where ACBPS is obliged under the *Superannuation Guarantee (Administration) Act 1992* (Cth) (the SG Act) to provide superannuation on behalf of the Service Provider, ACBPS will pay the amounts due under the SG Act into the SG Act compliant fund nominated by the Service Provider as set out at Item C [Fees] of Schedule 1.
- 10.3 ACBPS will be entitled (in addition and without prejudice to any other right it may have) to defer payment for so long as the Service Provider has not completed, to the satisfaction of ACBPS, that part of the Services to which the payment relates.

11. Invoices and Payment

- 11.1 Invoices should be forwarded to the address specified in Item D [Invoices and Payment] of Schedule 1 and will be correctly rendered if in the form of a valid Tax Invoice within the meaning of GST legislation, is correctly addressed and calculated, and includes the following information:
- (a) title of the Services;
 - (b) name and position of the Contract Manager;
 - (c) this Contract number and any purchase order number;
 - (d) details of the particular Services for which payment is being claimed; and
 - (e) where explanation is necessary - documentation substantiating the amount being claimed.
- 11.2 ACBPS is not required to make any payment to the Service Provider in the absence of a correctly rendered invoice. Accordingly, an invoice which includes amounts that are not properly payable under the Contract or are incorrectly calculated is not a correctly rendered invoice.
- 11.3 Payments are to be made by direct credit in arrears unless otherwise stated in Item D [Invoices and Payment] of Schedule 1. The Service Provider is to provide the bank account details in Item D [Invoices and Payment] of Schedule 1 to allow invoices to be paid by direct credit.
- 11.4 The following clauses 11.5, 11.6 and 11.7 will only apply where:
- (a) the value of the Contract is less than \$1,000,000 (GST inclusive); and
 - (b) the amount of interest payable exceeds \$10.

11.5 For payments made by ACBPS more than 30 days after the amount became due and payable, ACBPS must pay the interest accrued on the payment.

11.6 Interest payable under clause 11.5 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 ACBPS effects payment as represented by the following formula:

SI = UA x GIC x D where:

SI = simple interest amount

UA = the unpaid amount

GIC = General Interest Charge daily rate; and

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

11.7 For the purpose of this clause 11:

(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) **the day that payment is made** is the day when ACBPS's Financial Management System generates a payment request into the banking system for the payment to the Service Provider.

12. Disputed Invoices

12.1 If ACBPS reasonably considers that an invoice exceeds the amount payable, or if the Service Provider has not performed any part of the Services to which that invoice relates to ACBPS's reasonable satisfaction, ACBPS may:

- (a) notify the Service Provider of the amount in dispute within ten (10) Business Days after receipt of the Tax Invoice;
- (b) request a credit note or adjustment note where necessary; and
- (c) process the invoice for payment once correctly rendered.

13. Taxes

13.1 Except as provided by this clause 13, the Service Provider must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

13.2 Unless otherwise indicated all fees for any supply made under the Contract is inclusive of any GST imposed on the supply.

13.3 If an amount on account of GST has been included in the consideration for a supply under this Contract and the supply is not a taxable supply for any reason, the supplier must refund to the recipient on demand the amount paid on account of GST.

13.4 The Service Provider must give ACBPS a tax invoice for any taxable supply made under this Contract before any consideration for that supply is payable to the Service Provider, and the Service Provider must give ACBPS an adjustment note for any amount on account of GST refunded to ACBPS at the same time the amount is refunded.

13.5 No party may claim from the other party under this Contract any amount for which the first party may claim an input tax credit.

- 13.6 The following terms have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999*: “GST”; “input tax credit”; “supply”; “taxable supply”; “tax invoice”.

14. ACBPS Material

- 14.1 ACBPS will provide to the Service Provider the ACBPS Material (if any) as specified in Item B [Material] of Schedule 1.
- 14.2 ACBPS grants or will procure a royalty-free, non-exclusive licence for the Service Provider to use, reproduce and adapt the ACBPS Material only for the purposes of this Contract.
- 14.3 The Service Provider must:
- (a) use ACBPS Material strictly in accordance with any conditions or restrictions set out in Item B [Material] of Schedule 1; and
 - (b) ensure that it complies with any direction given to the Service Provider from time-to-time by ACBPS in relation to the use of ACBPS Material.

15. Intellectual Property in Contract Material

- 15.1 Intellectual Property in Contract Material will vest in the party specified at Item B [Material] of Schedule 1.
- 15.2 Clause 15.1 does not affect the ownership of Intellectual Property in:
- (a) any ACBPS Material incorporated into Contract Material; or
 - (b) any Material owned by the Service Provider or a third party which is in existence at the Commencement Date and includes the Material specified as existing Material in Item B [Material] of Schedule 1.
- 15.3 The Service Provider grants to or will procure for ACBPS a perpetual, irrevocable, royalty-free, world-wide, non-exclusive, transferable licence (including a right of sublicense) to use, reproduce, publish, adapt, modify perform, distribute, communicate and exploit any existing Material referred to in clause 15.2(b), in conjunction with the Contract Material for any purpose.
- 15.4 The Service Provider agrees that the licence granted in clause 15.3 includes a right for ACBPS to licence the existing Material in conjunction with the Contract Material to the public under an Open Access Licence.
- 15.5 The Service Provider must, on request by ACBPS, create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 15.
- 15.6 The Service Provider warrants:
- (a) that it is entitled, or that it will be entitled at the relevant time to deal with the Intellectual Property in the Contract Material as provided in this clause 15; and
 - (b) that any use of Contract Material by ACBPS, or its customers, employees, officers, agents or contractors, will not infringe the Intellectual Property rights or Moral Rights of any person.

16. Moral Rights

- 16.1 For this clause 16, “Permitted Acts” means any of the following classes or types of acts or omissions:

- (a) using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- (b) supplementing the Contract Material with any other Material;
- (c) releasing the Contract Material to the public under an Open Access Licence; and
- (d) using the Contract Material in a different context to that originally envisaged,

but does not include false attribution of authorship.

16.2 If the Service Provider is a natural person and the author of the Contract Material, he or she:

- (a) consents to the performance of the Permitted Acts by ACBPS or any person claiming under or through ACBPS (whether occurring before or after the consent is given);
- (b) acknowledges that their attention has been drawn to the ACBPS general policies and practices regarding Moral Rights.

16.3 If clause 16.2 does not apply, the Service Provider must:

- (a) obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by ACBPS or any person claiming under or through ACBPS (whether occurring before or after the consent is given);
- (b) on request – provide the executed original of any such consent to ACBPS;
- (c) to ensure that each author's attention is drawn to the ACBPS general policies and practices regarding Moral Rights.

16.4 This clause 16 does not apply to any ACBPS Material incorporated in the Contract Material.

17. Dealing with Copies

17.1 This clause 17 applies to any document, device, article or medium ('Copy') in which ACBPS Material, Contract Material or ACBPS Confidential information is embodied.

17.2 Property in each Copy vests in ACBPS.

17.3 The Service Provider must establish and maintain procedures to handle, store and secure all Copies against loss and unauthorised access, use, modification or disclosure, in accordance with the minimum standards for that type of information as defined in the Australian Government *Protective Security Policy Framework* and specified in Schedule 4.

17.4 ACBPS reserves the right for it, or its third party, to undertake periodic inspections of premises to ensure compliance with Protective Security Policy Framework storage and handling requirements.

17.5 The Service Provider must, on expiration or termination of this Contract, ensure that all Copies are delivered to ACBPS or otherwise dealt with as directed by ACBPS, subject to any requirement of law binding on the Service Provider relating to such Copies.

18. Disclosure of Information

Service Provider's Confidential Information

- 18.1 Subject to clauses 18.7 to 18.9, ACBPS will not, without the prior written consent of the Service Provider, disclose the Service Provider's Confidential Information to a third party.

ACBPS Confidential Information not to be Disclosed

- 18.2 The Service Provider shall not disclose or make public any Confidential Information provided to the Service Provider by ACBPS or acquired or produced in connection with or by the performance of this Contract without the prior written approval of ACBPS.
- 18.3 In giving approval under clause 18.2, ACBPS may impose such terms and conditions as it thinks fit.
- 18.4 The Service Provider must take all reasonable steps to ensure that its Personnel do not make public or disclose information referred to in clause 18.2.
- 18.5 The Service Provider will report to ACBPS, any incidental or accidental contact with security classified material by its Personnel.
- 18.6 The Service Provider will not be in breach of this clause 18 to the extent that information is authorised or required by law to be disclosed.

Exceptions to ACBPS Obligations

- 18.7 The obligations on ACBPS under clause 18 will not be breached to the extent that the Confidential Information:
- (a) is disclosed by ACBPS to its Personnel solely in order to comply with obligations, or to exercise rights, under this Contract;
 - (b) is disclosed by ACBPS to its internal management Personnel, solely to enable effective management or auditing of Contract-related activities;
 - (c) is disclosed by ACBPS to the responsible Minister;
 - (d) is disclosed by ACBPS in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (e) is shared within ACBPS, or with another agency, where this serves the Commonwealth's legitimate interests;
 - (f) is authorised or required by law to be disclosed; or
 - (g) is in the public domain other than due to a breach of clause 18.
- 18.8 If ACBPS discloses Confidential Information to another person pursuant to clauses 18.7(a) to 18.7(e), ACBPS must notify the receiving person that the information is confidential.
- 18.9 In the circumstances referred to in clauses 18.7(a), 18.7(b) and 18.7(e), ACBPS will not provide the information unless the receiving person agrees to keep it confidential.

Period of confidentiality

- 18.10 The obligations under this clause 18 continue despite the expiry or termination of this Contract:

- (a) for information described in Item J [Service Provider's Confidential Information] of Schedule 1 – for the period set out in that item for that information;
- (b) for any information that the parties agree in writing after the Commencement Date is Confidential Information – for the period agreed by the parties in writing;
- (c) for the information described in clause 18.2 – indefinitely.

Deed of Confidentiality

- 18.11 If requested by ACBPS during the Term of the Contract, the Service Provider must arrange for its Personnel involved in the performance of the Services, to execute a Deed of Confidentiality in the form set out in Schedule 3.

No reduction in privacy obligations

- 18.12 This clause 18 does not detract from any of the Service Provider's obligations under the *Privacy Act 1988* (Cth), or under clause 19 in relation to the protection of Personal Information.

19. Protection of Personal Information

Interpretation of this clause

- 19.1 In this clause, "Information Commissioner" has the same meaning as that in the *Australian Information Commissioner Act 2010* (Cth).

Application of this clause

- 19.2 This clause 19 applies only to the extent that the Service Provider deals with Personal Information in providing the Services.

Obligations of Service Provider in relation to Personal Information

- 19.3 The Service Provider acknowledges that it is a 'contracted service provider' within the meaning of section 6 of the *Privacy Act 1988* (Cth) (Privacy Act), and agrees in respect of the provision of Services under this Contract:
- (a) to use Personal Information held or controlled by it in connection with this Contract only for the purposes of fulfilling its obligations under this Contract;
 - (b) to take all necessary measures to ensure that Personal Information in its possession or control in connection with this Contract is protected against loss and unauthorised access, use, modification or disclosure;
 - (c) to comply with the Australian Privacy Principles and any other relevant privacy principles contained in the *Privacy Act 1988* to the extent that those principles apply to the types of activities the Service Provider is undertaking under this Contract, as if it were an agency as defined in the *Privacy Act 1988*;
 - (d) to co-operate with any demands or inquiries made by the Contract Manager on the basis of the exercise of the functions of the Information Commissioner under the *Privacy Act 1988* including, but not limited to, a request from the Contract Manager to comply with a guideline or protocol issued by ACBPS or the Information Commissioner from time to time relating to the handling of Personal Information;

- (e) to ensure that an officer, employee, agent or subcontractor engaged by the Service Provider in the performance of the Services, who requires access to any Personal Information:
 - (i) is made aware of the obligations of the Service Provider set out in this clause;
 - (ii) will not collect, access, use, disclose, retain, destroy or de-identify Personal Information, except in performing a duty of employment or engagement; and
 - (iii) has entered into a subcontract with any person to whom they disclose Personal Information, imposing the same obligations on that person as are imposed on the Service Provider by this clause, including the requirement in relation to subcontracts;
 - (f) to comply with any directions, determinations or recommendations of the Contract Manager to observe any recommendation of the Information Commissioner relating to any acts or practices of the Service Provider that the Information Commissioner considers breach the obligation in this clause 19;
 - (g) to notify ACBPS immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 19;
 - (h) not to transfer Personal Information received, created or held by the Service Provider for the purposes of this Contract outside Australia, or to allow parties outside Australia to have access to it, without the prior written approval of the Contract Manager;
 - (i) to notify individuals whose Personal Information the Service Provider holds, that complaints about acts or practices of the Service Provider may be investigated by the Information Commissioner who has power to award compensation against the Service Provider in appropriate circumstances; and
 - (j) to comply with any request under section 95C of the *Privacy Act 1988* regarding a RAC..
- 19.4 Without limiting any other obligations set out in this clause 19, the Service Provider must comply with all applicable State and Territory privacy Laws, including all applicable State and Territory Law regulating the use of Personal Information.
- 19.5 The Service Provider agrees to indemnify ACBPS in respect of any loss, liability or expense suffered or incurred by ACBPS which arises directly or indirectly from a breach of any of the obligations of the Service Provider under this clause, or a subcontractor under the subcontract provisions referred to in clause 19.3.

20. Dispute resolution

- 20.1 A dispute arising under this Contract will be dealt with as follows:
- (a) the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
 - (b) within 7 Business Days after the party's receipt of the notice under clause 20.1(a), each party will nominate a representative not having any prior involvement in the dispute;
 - (c) the representatives will try to settle the dispute by direct negotiation between them;

- (d) failing settlement within a further 14 Business Days after the nomination of representatives under clause 20.1(b), the parties may agree to refer the dispute to an independent third person with power:
 - (i) to intervene and direct some form of resolution, in which case the parties will be bound by that resolution; or
 - (ii) to mediate and recommend some form of non-binding resolution;
 - (e) the parties will cooperate fully with any process instigated under clause 20.1(d) to achieve a speedy resolution;
 - (f) if a resolution is not reached within 28 Business Days of the dispute being referred under clause 20.1(d), either party may commence legal proceedings.
- 20.2 Where a dispute arises between the Service Provider and its Personnel that affects the performance of the Services, the Service Provider must notify the ACBPS Contract Manager of the dispute and must deal with the dispute in line with the procedures set out in Schedule 6.1 of the Fair Work Regulations.
- 20.3 Each party will bear its own costs of complying with this clause 20, and the parties will bear equally the cost of any third person engaged under clause 20.1(d).
- 20.4 Despite any dispute, the Service Provider must continue to perform the Services, unless requested in writing by ACBPS not to do so.
- 20.5 This clause does not apply to:
- (a) action by ACBPS under or purportedly under clause 21;
 - (b) action by either party under or purportedly under clause 22; or
 - (c) legal proceedings by either party seeking urgent interlocutory relief.

21. Termination for Convenience

- 21.1 ACBPS may, at any time by notice, terminate this Contract or reduce the scope of the Services immediately. This may be due to, but not limited to, a machinery of government change or due to the Services being approved by the Australian Government as a Coordinated Procurement Contracting arrangement.
- 21.2 The Service Provider must, and will ensure that any subcontractor agrees to, on receipt of a notice of termination or reduction:
- (a) stop or reduce work as specified in the notice;
 - (b) take all available steps to minimise loss resulting from that termination or reduction; and
 - (c) continue work on any part of the Services not affected by the notice.
- 21.3 If this Contract is terminated under clause 21.1, ACBPS will be liable only:
- (a) to pay any Instalment relating to Services completed before the effective date of termination;
 - (b) to reimburse any expenses (not covered under clause 21.3(a) which the Service Provider unavoidably incurs relating entirely to the Services.
 - (c) to pay any allowance and meet any costs unavoidably incurred under Item G [Insurance] of Schedule 1 before the effective date of termination;
 - (d) to provide the facilities and assistance necessarily required under Item E [ACBPS Assistance] of Schedule 1 before the effective date of termination.

- 21.4 ACBPS will not be liable to pay compensation under clause 21.3(a) and 21.3(b) in an amount which would, added to any fees already paid to the Service Provider under this Contract or due, or becoming due, together exceed the fees that would have been payable by ACBPS had the Contract otherwise expired on its Expiry Date.
- 21.5 If the scope of the Services is reduced under clause 21.1, ACBPS liability to pay fees or allowances, meet costs or provide facilities and assistance under clause 10 will reduce in accordance with the reduction in the Services.
- 21.6 If ACBPS exercises its rights under clause 21.1, the Service Provider must not be entitled to compensation for loss of prospective profits.

22. Termination for fault

- 22.1 If a party fails to satisfy any of its obligations under this Contract, then the other party, if it considers that the failure is:
- (a) not capable of remedy – may, by notice, terminate this Contract immediately;
 - (b) capable of remedy – may, by notice, require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate this Contract immediately by giving a second notice.
- 22.2 ACBPS may also by notice terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:
- (a) being a corporation – comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth), or has an order made against it for the purpose of placing it under external administration; or
 - (b) being an individual – becomes bankrupt or enters into a scheme of arrangement with creditors; or
 - (c) breaches any confidentiality, security, privacy or integrity obligations under this Contract or at law; or
 - (d) breaches any industrial law, occupational or work health and safety law or workers compensation law; or
 - (e) breaches the Lobbying Code of Conduct or the Australian Public Service Commission (APSC) Circular 2008/4, Requirements relating to the Lobbying Code of Conduct and Post Separation Contact with Government.

23. Security

- 23.1 The Service Provider must, and must ensure that its Personnel (including Key Personnel):
- (a) comply with all relevant security requirements specified in the Australian Government *Protective Security Policy Framework* and at Schedule 4, and ACBPS security procedures, as amended from time to time; and
 - (b) undertake the security training specified in Schedule 4 or as directed by the Contract Manager.
- 23.2 ACBPS may from time to time, in its absolute discretion, vary the security requirements as specified in clause 23.1 and the Service Provider must comply with any such variation.

- 23.3 If a variation under clause 23.2 is required by ACBPS, the Service Provider may apply to ACBPS for a variation in the Contract price where the variation requested by ACBPS materially affects the Services.
- 23.4 The Service Provider must not:
- (a) permit any of its Personnel to have any access to security classified information unless:
 - (i) that person(s) has been assessed by the ACBPS Organisational Suitability Assessment Team and cleared by the Australian Government Security Vetting Agency; and
 - (ii) the Contract Manager has given written authority for the Service Provider's Personnel to access the security classified information;
 - (b) transfer security classified information outside of Australia, without the prior written approval of the Contract Manager.
- 23.5 Service Provider Personnel who will be required, while carrying out work or performing duties to do one or more of the following:
- (a) enter secure areas in ACBPS buildings or places;
 - (b) work with ACBPS Personnel for extended periods;
 - (c) have access to official information or security classified information; or
 - (d) hold a particular kind of security clearance, the details of which have been notified to the Service Provider by the Contract Manager,
- must be authorised in writing by the Contract Manager to carry out that work or perform those duties.
- 23.6 The Service Provider must inform the Contract Manager immediately upon becoming aware that any unauthorised person has had access to security classified information. Failure to so inform the Contract Manager will constitute a breach of the Service Provider's obligations and ACBPS may terminate this Contract under clause 22.
- 23.7 The Service Provider must provide any information to the Contract Manager, as reasonably requested for ACBPS to undertake reasonable investigations for the purposes of clauses 23.5 and 23.6.
- 23.8 The Service Provider must ensure that all its Personnel for the purpose of this Contract:
- (a) are of good fame and character;
 - (b) are properly qualified for the tasks they are to perform; and
 - (c) will act, in all the circumstances, in a fit and proper manner while they are carrying out work or performing duties under this Contract.
- 23.9 The Contract Manager may, in his or her absolute discretion, withhold authorisation of Personnel.
- 23.10 The Contract Manager will notify the Service Provider in writing of:
- (a) the names of the Personnel authorised to carry out work or perform duties under this Contract, the type and level of clearance given in respect of each of those persons and the date from which, or the period during which, those clearances will be effective; and
 - (b) the names of any Personnel refused authorisation to carry out such work or perform such duties;

and the Service Provider must sign a copy of that notice, and return it to the Contract Manager as soon as possible as acknowledgment of receipt of the notice.

- 23.11 The Service Provider must advise the Contract Manager promptly in writing of any change in the circumstances of its Personnel that, in the Service Provider's reasonable opinion, is likely to affect the Contract Manager's assessment of the Personnel for the purpose of this clause 23.
- 23.12 The Contract Manager may, at any time, without any liability whatsoever to ACBPS, withdraw, limit or suspend an authorisation in respect of particular Personnel and, in such event, must notify the Service Provider accordingly.
- 23.13 Where the Contract Manager notifies the Service Provider under clause 23.12 the Service Provider must, if required by the Contract Manager and without inconvenience or cost to ACBPS, propose and make available another suitable person for authorisation under this clause 23 within a reasonable time.
- 23.14 The Service Provider must:
- (a) as required, and at no additional cost to ACBPS, supply written security reports to ACBPS in a manner and form as directed by ACBPS; and
 - (b) notify ACBPS immediately upon becoming aware of a security incident having occurred, and to promptly confirm the incident in writing to ACBPS.
- 23.15 For the purposes of this clause 23:
- (a) **security classified information** means official information that, if compromised, could have adverse consequences for ACBPS; and
 - (b) **official information** means any information developed, received or collected by or on behalf of ACBPS to which the Service Provider gains access under or in connection with this Contract, and includes the Contract Material and the terms of the contract; and
 - (c) **security incident** means a security breach, violation, contact or approach from those seeking unauthorised access to official information or security classified information.

24. Compliance with Legislation and Policy

- 24.1 The Service Provider must, in carrying out this Contract, comply with all relevant legislation of the Commonwealth or of any State, Territory or local authority, and in particular the:
- (a) *Archives Act 1983* (Cth) particularly section 24;
 - (b) *Auditor-General Act 1997* (Cth);
 - (c) Building Code 2013, in conjunction with the Supporting Guidelines for Commonwealth Funding Entities, February 2013;
 - (d) *Crimes Act 1914* (Cth) particularly sections 70 and 79;
 - (e) *Criminal Code Act 1995* (Cth) particularly section 91.1 and Part 10.7;
 - (f) *Customs Administration Act 1985* (Cth) particularly section 16;
 - (g) *Disability Discrimination Act 1992* (Cth);
 - (h) *Fair Work Act 2009* (Cth);
 - (i) *Migration Act 1958* (Cth);
 - (j) *Ombudsman Act 1976* (Cth);

(k) *Public Interest Disclosure Act 2013* (Cth);

(l) *Racial Discrimination Act 1975* (Cth);

(m) *Sex Discrimination Act 1984* (Cth),

and if applicable the:

(n) Australian Government ICT Sustainability Plan 2010-2015;

(o) Australian Government Information, Communications and Information Systems Security Manual;

(p) Australian Industry Participation Plans;

(q) Commonwealth Disability Strategy;

(r) Energy Efficiency in Government Operations (EEGO) policy (found at <http://www.climatechange.gov.au/government/initiatives/eego.aspx>);

(s) Indigenous Opportunities Policy which applies to all procurements which involve expenditure over \$5 million (\$6 million for construction) in places where there are significant Indigenous populations. For further information see <http://www.deewr.gov.au/Indigenous/Employment/Pages/IndigOpportunitiesPolicy.aspx>;

(t) National Packaging Covenant; and

(u) National Waste Policy.

24.2 As at the Commencement Date, the Service Provider warrants that it has:

- (a) not had a judicial decision against them (not including any decision under appeal) relating to employee entitlements, and have not paid the claim; and
- (b) not been subject to any adverse judgements for a breach of industrial laws, WHS Legislation or workers' compensation laws during the past two years and are not subject to any outstanding claims (not including decisions under appeal).

24.3 The Service Provider must comply with the Lobbying Code of Conduct and the Australian Public Service Commission (APSC) Circular 2008/4, Requirements relating to the Lobbying Code of Conduct and Post Separation Contact with Government. Any breach of the Lobbying Code of Conduct or the Australian Public Service Commission (APSC) Circular 2008/4, Requirements relating to the Lobbying Code of Conduct and Post Separation Contact with Government will be reported in accordance with ACBPS procedures.

24.4 The Service Provider acknowledges that:

- (a) ACBPS is required to publish the award of all contracts valued at \$10,000 (inclusive of GST) or more; and
- (b) ACBPS is required to publish on the Internet with access through its website, details of any contracts with a value of \$100,000 (inclusive of GST) or more

24.5 The Service Provider acknowledges that it is aware of the effect of section 16 of the *Customs Administration Act 1985* (Cth) ("section 16"), section 91.1 of the *Criminal Code Act 1995* ("section 91.1") and sections 70 and 79 of the *Crimes Act 1914* (Cth) ("sections 70 and 79") dealing with official information and official secrets respectively. The Service Provider must bring section 16, section 91.1 and sections 70 and 79 to the attention of its Personnel.

25. Workplace Gender Equality Act 2012 (Cth)

- 25.1 This clause applies only to the extent that the Service Provider is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012 (Cth)* (the WGE Act).
- 25.2 The Service Provider must comply with its obligations, if any, under the WGE Act.
- 25.3 If the Service Provider becomes non-compliant with the WGE Act during the Term of the Contract, the Service Provider must immediately notify the Contract Manager.
- 25.4 If the Term of the Contract exceeds 18 months, the Service Provider must provide a current letter of compliance within 18 months from the Contract Commencement Date and following this, annually, to the Contract Manager.
- 25.5 Compliance with the WGE Act does not relieve the Service Provider from its responsibility to comply with its other obligations under the Contract.
- 25.6 For the purposes of this clause 25:
- (a) **relevant employer** means a non-public sector employer (including higher education institutions, trade unions and not-for-profit organisations) of 100 or more employees in Australia.

26. Integrity and Professional Standards

- 26.1 The Service Provider acknowledges that it, and its employees and Contracted Persons, including Personnel and Key Personnel may be Customs workers.
- 26.2 The Service Provider will comply with the Law of Customs, and will ensure that its employees and Contracted Persons are aware of and comply with the Law of Customs.
- 26.3 The Service Provider acknowledges that the Law of Customs includes requirements relating to integrity and anti-corruption including:
- (a) mandatory reporting of serious misconduct, corrupt conduct and criminal activity;
 - (b) professional standards; and
 - (c) drug and alcohol testing.
- 26.4 The Service Provider agrees to assist and co-operate with ACBPS in administering the Law of Customs to ensure compliance by its employees and Contracted Persons.
- 26.5 The Service Provider will incorporate written terms in any agreement that it enters into with a Contracted Person, obliging such Contracted Person to:
- (a) comply with the Law of Customs, if they are a Customs worker;
 - (b) ensure that its employees and Contracted Persons are aware of and comply with the Law of Customs, if they are Customs workers; and
 - (c) ensure that it has the right to terminate or remove the involvement of an employee or Contracted Person in the performance of the Services, if so requested by ACBPS under this clause.
- 26.6 If the Service Provider or its employees or Contracted Persons, including Personnel and Key Personnel, are Customs workers and:
- (a) breaches this clause;
 - (b) fails at any time to comply with the Law of Customs;

- (c) fails to comply with a requirement to undergo an Alcohol screening test;
- (d) refuses to comply with a direction to undergo a drug or Alcohol test;
- (e) exceed the permissible blood alcohol concentration level specified under the Law of Customs;
- (f) return a verified positive prohibited drug test that indicates the presence of a prohibited drug which exceeds the testing cut-off levels specified under the Law of Customs;
- (g) fail to exercise any right it has to terminate the involvement of any of its employees or Contracted Persons in the performance of the Services, if so requested by ACBPS; or
- (h) fail to provide assistance when requested by ACBPS for the purpose of administering the Law of Customs as it relates to this Contract,

then ACBPS may, by written notice, in its absolute discretion:

- (i) require that the Service Provider immediately remove or terminate the involvement of specified employees or Contracted Persons, including Personnel and Key Personnel, in the performance of the Services, including exercising ACBPS's rights under clauses 5.3, 5.4 or 23.12 of this Contract;
- (j) immediately revoke its approval of a Subcontractor under clause 32 of this Contract; or
- (k) immediately terminate this Contract, whether or not the breach, failure or conduct is capable of being remedied, in accordance with clause 22,

without liability and at no additional cost to ACBPS.

26.7 If the Service Provider's employees or Contracted Persons, including Personnel and Key Personnel, are Customs workers and return a presumptive drug test that requires further investigation as it indicates the presence of a prohibited drug which exceeds the testing cut-off levels specified under the Law of Customs, then ACBPS may, by written notice:

- (a) require that the Service Provider suspend the involvement of the employee or Contracted Person in the performance of the Services for a specified period to enable a confirmatory test or verification test; and
- (b) require the provision of a suitable replacement for the specified period.

ACBPS will not be liable for any costs or charges relating to the suspension of any employee or Contracted Person under this clause, regardless of the results of the confirmatory test or verification test. If the Service Provider is unable to provide a suitable replacement for the duration of the suspension, ACBPS's liability to pay fees under this Contract will abate in accordance with the reduction of Services.

26.8 This clause will survive the expiration or termination of this Contract.

27. Conflict of interest

- 27.1 In this clause "Conflict" means any matter, circumstance, interest, or activity affecting the Service Provider or its Personnel which may or may appear to impact on security and or impair the ability of the Service Provider to provide the Services to ACBPS diligently and independently.
- 27.2 The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise.

27.3 If, during this Contract a Conflict arises, or appears likely to arise, the Service Provider must:

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

28. Audit and access

28.1 The Service Provider must:

- (a) give the Contract Manager, or any persons authorised in writing by the Contract Manager, access to premises where the Services are being performed; and
- (b) permit those persons to inspect and take copies of any Material relevant to the Services.

28.2 The rights referred to in clause 28.1 are subject to:

- (a) ACBPS providing reasonable prior notice;
- (b) the reasonable security procedures in place at the premises; and
- (c) if appropriate, execution of a deed of confidentiality by the persons to whom access is given.

28.3 The Auditor-General and the Information Commissioner are persons authorised for the purposes of this clause 28.

28.4 This clause 28 does not detract from the statutory powers of the Auditor-General or the Information Commissioner.

28.5 The Service Provider must keep complete, up-to-date records relating to this Contract or its performance. These records must be:

- (a) in accordance with all applicable Australian accounting standards; and
- (b) in sufficient detail to enable the amounts payable by ACBPS under this Contract to be determined.

29. Indemnity

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

29.2 The Service Provider indemnifies ACBPS from and against any:

- (a) cost or liability incurred by ACBPS;
- (b) loss of or damage to property of ACBPS; or
- (c) loss or expense incurred by ACBPS 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 ACBPS,

arising from either:

- (d) a negligent, wilfully wrongful or unlawful act or omission involving fault on the part of the Service Provider or its Personnel in connection with this Contract;

- (e) a claim made or threatened against ACBPS that the Contract Material or other deliverable of the Services infringes the Intellectual Property rights of a third party or Moral Rights (in Australia or anywhere in the world); or
 - (f) any negligent, wilfully wrongful or unlawful use or disclosure by the Service Provider, its officers, employees, agents or subcontractors of Personal Information that is held or controlled in connection with the Contract.
- 29.3 Despite any law relating to contracts or negligence to the contrary, the Service Provider's liability to indemnify ACBPS under this clause will be reduced proportionately to the extent that any wilfully harmful or negligent act or omission involving fault on the part of ACBPS contributed to the relevant cost, liability, loss, damage or expense, whether or not a breach of this Contract.
- 29.4 The right of ACBPS to be indemnified under this clause is in addition to, and not exclusive of, any other right, power or remedy provided by law, ACBPS is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.
- 29.5 This clause survives the expiration or termination of the Contract for no longer than seven (7) years after expiration or termination.

30. Liability

- 30.1 The liability of a party for breach of this Contract, or in tort, or for any other common law or statutory cause of action arising out of 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.
- 30.2 Despite any law relating to contracts or negligence to the contrary, the liability of a party (Party A) for any Losses incurred by another party to this Contract (Party B) will be reduced proportionately to the extent that:
- (a) any negligent act or omission of Party B (or of its subcontractors or Personnel); or
 - (b) any failure by Party B to comply with its obligations and responsibilities under this Contract,
- contributed to those Losses, regardless of whether legal proceedings are brought by Party A to recover those Losses in negligence or breach of contract.
- 30.3 The Liability of each Party arising out of or in connection with this Contract (including any indemnity) is, subject to clause 30.4, limited to the aggregate sum of the Management of Port Services Fee for a one (1) year period as set out at Item 10 [Pricing Schedule] of Schedule 2 [Services] per occurrence and limited in its entirety to the aggregate sum of the Fees as set out at Item 10 [Pricing Schedule] of Schedule 2 [Services].
- 30.4 Any limit on the Liability of each Party under clause 30.3 does not apply in relation to:
- (a) Liability relating to personal injury (including sickness and death);
 - (b) Liability relating to loss of, or damage to, tangible property;
 - (c) Any infringement of Intellectual Property rights;
 - (d) Any breach of any Obligation of confidentiality, security matter or privacy; or
 - (e) Any breach of any Law or any wilfully wrongful act or omission, including, in the case of the Contractor, any act or omission that constitutes repudiation of this Contract.

- 30.5 Notwithstanding any other clause in this Contract, in no circumstances shall the Service Provider be liable for any loss of profit, loss of revenue, loss of production, loss of goodwill or business reputation, loss or damage due to interruption of any commercial activity, or punitive or exemplary loss or damage arising out of or in connection with this Contract no matter how caused and regardless of whether such loss or damage was reasonably foreseeable or a party was actually told of the possibility of such loss.

31. Insurance

- 31.1 The Service Provider must:
- (a) effect and maintain the insurance specified in Item G [Insurance] of Schedule 1; and
 - (b) on request, provide proof of insurance acceptable to ACBPS.
- 31.2 The Service Provider must ensure that its subcontractors are insured as is appropriate (including with respect to the amount of insurance, types of insurance and period of insurance) given the nature of services or work to be performed by them, and must provide proof of subcontractors' insurance in accordance with clause 31.4.
- 31.3 If ACBPS requires the Service Provider or its subcontractors to effect and maintain insurance which is additional to the insurance specified in Item G [Insurance] of Schedule 1, or clause 31.2, ACBPS will make the request in accordance with clause 42 of the Contract.
- 31.4 The Service Provider must, upon request by ACBPS, provide proof that it has current insurance policies which comply with the requirements of this clause 31 to ACBPS,.
- 31.5 This clause 31 operates for as long as any obligations remain in connection with this Contract.

32. Subcontractors

- 32.1 The Service Provider must not subcontract the performance of any part of the Services without ACBPS prior written approval.
- 32.2 ACBPS has approved the subcontracting of the performance of parts of the Services to the persons, and subject to the conditions (if any), specified in Item F [Key Personnel and Subcontractors] of Schedule 1.
- 32.3 ACBPS may impose any terms and conditions it considers appropriate when giving its approval under clause 32.1.
- 32.4 The Service Provider must ensure that any subcontract for the performance of any part of the Services:
- (a) contains provisions equivalent to clauses 10, 11, 13, 15.1, 17.3, 24.1 and 26 of this Contract;
 - (b) the subcontractor has not had a judicial decision against them (not including any decision under appeal) relating to employee entitlements, and have not paid the claim; and
 - (c) the subcontractor has not been subject to any adverse judgments for a breach of industrial laws, WHS Legislation or workers' compensation laws during the past two years and are not subject to any outstanding claims (not including decisions under appeal).

- 32.5 The Service Provider acknowledges and agrees that:
- (a) ACBPS may disclose the names of all subcontractors engaged to carry out any of the Services; and
 - (b) they will inform all subcontractors that their participation in fulfilling any of the Services may be publicly disclosed.

33. Work Health and Safety

- 33.1 The main object of Work Health and Safety Legislation is to protect people against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work. People must be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from the Service Provider's performance of Services. Without limiting the obligation on the Service Provider to comply with and to achieve the object of Work Health and Safety Legislation, the Service Provider must:
- (a) perform all of the Services under the Contract in a safe manner and in accordance with the Work Health and Safety Risk Management Plan at Item 10 of Schedule 2, and continuously identify and control risks relevant to the Services and maintain an up to date Work Health and Safety Risk Management Plan;
 - (b) perform the Services under the Contract in a way that is without risk to the health, safety or welfare of any person;
 - (c) ensure that it complies with all Work Health and Safety Legislation requirements, including where the Services include a requirement to design, construct or commission plant or a structure, to provide ACBPS with such advice and to carry out such activities as are necessary to ensure that there is compliance by both the Service Provider and the Customer with their obligations under WHS Law with respect to a person who designs or constructs or commissions [plant](#) or a structure that is to be used at a [workplace](#);
 - (d) ensure that in the way the Services are provided under the Contract, all Workers who are engaged in connection with performing the Services comply with the requirements in this clause;
 - (e) at all times have documented safe work practices and procedures in place to provide the Services in a manner that is safe and without risk to the health or welfare of any person;
 - (f) ensure that there are processes in place to identify, assess and proactively control risks in the way that Services under the Contract are performed and provided;
 - (g) cooperate with and do all of the things that are necessary to enable ACBPS to comply with its Work Health and Safety Legislation obligations;
 - (h) ensure that its Workers are properly inducted where Services under the Contract are to be provided and also ensure that all Workers are provided with information, instruction, training or supervision to ensure their own health and safety and that their acts or omissions do not adversely affect the health and safety of other persons whilst at a place where Services are provided;
 - (i) ensure that its Workers take reasonable care for their own safety and wear appropriate protective clothing when providing the Services;

- (j) when requested by ACBPS provide evidence and demonstrate compliance with Work Health and Safety Legislation obligations;
 - (k) when requested by ACBPS, provide information about and verification of the safety systems in place where Services under the Contract are being provided. This includes the site specific safe work practices, policies and procedures in use for the work that is required in connection with the Services and how compliance with the safety system is audited and monitored;
 - (l) immediately inform ACBPS if as a result of performing any of the Services under the Contract the Service Provider was required to report any notifiable incident, safety related accident or incident, work related exposure or near miss incident to a safety regulator under Work Health and Safety Legislation; and
 - (m) promptly inform ACBPS where an inspector appointed under Work Health and Safety Legislation or any delegate or union representative entered or attended a site in relation to a work health or safety matter where Services under the Contract are being provided.
- 33.2 Without limiting the generality of this clause 33 to assist in meeting the object of Work Health and Safety Legislation to eliminate or minimise risk arising from the way Services under this Contract are provided, when requested by ACBPS, the Service Provider must conduct an audit of the way the Services are being carried out, including that by subcontractors, without risk to the health, safety or welfare of any person. The audit will be undertaken in a way that has been specified by ACBPS. The Service Provider agrees to perform the audit in the required manner and within the time specified by ACBPS.

34. Relationship of the parties

- 34.1 The Service Provider is not by virtue of this Contract an officer, employee, partner or agent of ACBPS, nor does the Service Provider have any power or authority to bind or represent ACBPS.
- 34.2 The Service Provider must:
- (a) not misrepresent its relationship with ACBPS;
 - (b) ensure that its Personnel do not misrepresent their relationship with ACBPS; and
 - (c) not engage in any misleading or deceptive conduct in relation to the Services.

35. Waiver

- 35.1 A failure or delay by a party to exercise any right or remedy it holds under this Contract or at law does not operate as a waiver of that right.
- 35.2 A single or partial exercise by a party of any right or remedy it holds under this Contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

36. Assignment and novation

- 36.1 The Service Provider must not assign its rights and obligations under this Contract without ACBPS prior written approval.

- 36.2 The Service Provider must consult ACBPS before entering negotiations with any other person regarding any arrangement that may require novation of the Contract.

37. Counterpart

- 37.1 This Contract may be executed in any number of counterparts which taken together will constitute one agreement.

38. Survival

- 38.1 Unless the contrary intention appears, the expiry or termination of this Contract will not affect the continued operation of any provision relating to:
- (a) licensing of Intellectual Property;
 - (b) disclosure of Confidential Information and ACBPS information;
 - (c) protection of Personal Information;
 - (d) audit;
 - (e) information security;
 - (f) an indemnity; or
 - (g) any other provision which expressly or by implication from its nature is intended to continue.

39. Notice

- 39.1 A notice under this Contract is effective only if it is in writing, and dealt with as follows:
- (a) if given by the Service Provider to ACBPS – addressed to the Contract Manager at the address specified in Item I [ACBPS Contract Manager] of Schedule 1, or as otherwise notified by ACBPS; or
 - (b) if given by ACBPS to the Service Provider – given by the Contract Manager (or any superior officer to the Contract Manager) and addressed to the Service Provider at the details specified in Item H [Service Provider's Address for Notices] of Schedule 1.
- 39.2 A notice is to be:
- (a) signed by the person giving the notice and delivered by hand; or
 - (b) signed by the person giving the notice and sent by pre-paid post; or
 - (c) transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.
- 39.3 A notice is deemed to be effected:
- (a) if delivered by hand – upon delivery to the relevant address;
 - (b) if sent by post – upon delivery to the relevant address;
 - (c) if transmitted facsimile– upon actual receipt by the addressee.
- 39.4 A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

40. Special Conditions

- 40.1 The Service Provider agrees to provide the Services to other Departments or agencies under terms and conditions that are consistent with this Contract. Any

Services that may be required by another Department or agency will result in an individual contract being entered into between the individual Department or agency and the Service Provider.

- 40.2 The Service Provider agrees that the individual contracts will be without impost or administrative overhead levied on ACBPS for this ability.
- 40.3 The Service Provider offers to provide the Services to any Nominated Agency in accordance with the requirements set out in this clause 40.4.
- 40.4 A Nominated Agency may request the supply of Services in accordance with clause 40.3 by giving the Service Provider a completed Agency Order Form (Schedule 8).
- 40.5 Each Agency Order Form agreed with the Service Provider in accordance with this Contract will create a separate contract between the Service Provider and
 - (a) the Commonwealth represented by the Nominated Agency (where that agency is subject to the PGPA Act; or
 - (b) the Nominated Agency,as the case requires, for the supply by the Service Provider of the requested Deliverables to the Nominated Agency. For the sake of clarity, the terms and conditions governing each such separate contract will be the same as the provisions of this Contract.

41. Access to Documents

- 41.1 In this clause 41, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).
- 41.2 The Service Provider acknowledges that this contract is a Commonwealth contract.
- 41.3 Where ACBPS has received a request for access to a document created by, or in the possession of, the Service Provider or any subcontractor that relates to the performance of this Contract (and not to the entry into the Contract), ACBPS may at any time by written notice require the Service Provider to provide the document to ACBPS and the Service Provider must, at no additional cost to ACBPS, promptly comply with the notice.
- 41.4 The Service Provider must include in any subcontract relating to the performance of this Contract provisions that will enable the Service Provider to comply with its obligations under this clause 41.

42. Additional Services

- 42.1 ACBPS may, during the Term of the Contract, request the Service Provider to provide any of the Additional Services specified in Item 5 [Additional Services] of Schedule 2 on the basis of the following procedure:
 - (a) ACBPS will provide specifications for Additional Services and request information on:
 - (i) whether the Additional Services can be provided by existing resources; and
 - (ii) additional costs associated with the Additional Services (if any).
 - (b) As a result of information provided under this clause 42, ACBPS may seek a written quotation including the following information:

- (i) details of any additional costs or resources required for the proposed Additional Services;
 - (ii) implementation details;
 - (iii) the effect of the proposed Additional Services on existing Services; and
 - (iv) the risks of the proposed Additional Services and how they would be managed.
- 42.2 The Service Provider will be required to provide any information or quotation sought under this clause 42 within a time period acceptable to ACBPS. ACBPS may, at its discretion, accept or reject any quotation sought under this clause 42.
- 42.3 In the event Additional Services are required, ACBPS shall complete the form shown at Schedule 7, and upon execution by both parties, the Additional Services shall take effect and be incorporated into the Contract.
- 42.4 The Service Provider shall provide any Additional Services in accordance with the terms and conditions of this Contract and at the rates specified for those Additional Services.
- 42.5 Payment of any Additional Services will be in accordance with clause 11.

43. Not Used

44. Risk Management Plan

- 44.1 The Service Provider must ensure it continuously identifies and controls risks relevant to the Contract and for this purpose must ensure that the Risk Management Plan as shown in Item 6 of Schedule 2 is continuously maintained up to date.
- 44.2 The Service Provider must immediately advise the Contract Manager of any actual or potential problems or risks in the provision of the Services, and of the Service Provider's suggested method of resolution.

45. Transition-In Plan

- 45.1 The terms:

Effective Date	means the [insert date] or such later date that the [Equipment is commissioned and fully operational, and the] Service Provider assumes full responsibility for the provision of the Services.
Transition-In Period	means the period between the Commencement Date and the Effective Date.
Transition-In Plan	means the plan contained in Item 8 Transition-In Plan at Schedule 2.

- 45.2 The Parties must comply with their obligations in the Transition-In Plan and must cooperate for the purpose of facilitating the smooth transition of the provision of the Services by the Service Provider in accordance with the Transition-In Plan.
- 45.3 The Service Provider may be required to perform some Services during the Transition-In Period. These Services will be specified in the Transition-In Plan and the Service Provider will be entitled to be paid for those Services as specified in Item C [Fees] of Schedule 1.

- 45.4 The Service Provider must:
- (a) from the Commencement Date, commence performance of its obligations under the Transition-In Plan; and
 - (b) from the Effective Date, assume full responsibility for the provision of the Services for the remainder of the Term of Contract.
- 45.5 Notwithstanding clause 45.4(a), ACBPS is not required to hand over provision of the Services to the Service Provider until the Service Provider has demonstrated to the satisfaction of ACBPS that it is ready to assume responsibility for the provision of the Services.
- 45.6 For the avoidance of doubt, ACBPS Personnel are not transferred to the Service Provider under or in relation to this Contract.

46. Transition-Out Plan

- 46.1 In this clause 46:

Transition-Out Period	means the period of 3 months commencing on the earlier of: (a) the date on which this Contract is terminated (in whole or in part) pursuant to clause 21 or 22; or (b) the date which is 3 months prior to the expiration of the Term of Contract.
Transition-Out Plan	means the plan contained in Item 9 [Transition-Out Plan] of Schedule 2.

- 46.2 Within 3 months after the Commencement Date, the Service Provider must (at no additional cost to ACBPS), in consultation with and for approval by ACBPS, review and finalise the draft Transition-Out Plan at Schedule 2.
- 46.3 The revised Transition-Out Plan will provide for the transition out of Services from the Service Provider to ACBPS or its nominee at the expiration or termination of this Contract (in whole or part).
- 46.4 The Transition-Out Plan must:
- (a) set out all the obligations to be performed by each Party in order to achieve the orderly transition and continuity of Services to ACBPS or another contractor;
 - (b) cover at a minimum the matters set out in this clause 46 and
 - (c) not be inconsistent with this clause 46.
- 46.5 The Service Provider must comply with the Transition-Out Plan and provide all reasonable assistance and cooperation necessary during the Transition-Out Period, to transfer the Services to ACBPS or an alternative service provider in a manner which ensures continued provision of the Services or services similar to the Services (as the case may be) in accordance with the Key Performance Indicators (if any). In particular the Service Provider must in accordance with a direction from ACBPS in writing:
- (a) deliver to ACBPS all ACBPS and Border Material and any other ACBPS property including all Contract Material;
 - (b) deliver to ACBPS all ACBPS Confidential Information;

- (c) provide all information including procedures, manuals and other documentation, and training at the fees specified in Item C [Fees] of Schedule 1, necessary for ACBPS or an alternative service provider to assume provision of services similar to the Services;
 - (d) continue the provision of the Services, for up to 180 calendar days after the termination or expiry of this Contract or such other date as is agreed by the parties, so as to ensure an orderly transition of services as requested by ACBPS;
 - (e) deliver to ACBPS all documents which are necessary to enable services similar to the Services to be provided by ACBPS internally or by another contractor in a manner which ensures orderly transition and continuity of service;
 - (f) perform its other obligations under the Transition-Out Plan;
 - (g) allow ACBPS or its nominee to audit compliance with this clause 46; and
 - (h) allow other contractors to access its premises (where relevant) to assist in the orderly transition of the Services.
- 46.6 If this Contract is terminated only in part, the obligations of the Service Provider under clause 21 or 22 in respect of that termination, apply only to the extent necessary to ensure the orderly transition to ACBPS or other service provider of services similar to the Services which are the subject of the terminated part of this Contract.
- 46.7 The Service Provider must regularly update the Transition-Out Plan to ensure it is at all times consistent with the Services and the Key Performance Indicators (if any), and facilitates the most efficient transition to an alternative service provider.
- 46.8 The parties will review the Transition-Out Plan annually and not less than 6 months prior to the scheduled expiration of this Contract to ensure that the Transition-Out Plan remains appropriate to the circumstances of ACBPS.
- 46.9 Where this Contract is terminated under either clause 21 or 22 but without limiting any damages that ACBPS may be entitled to, ACBPS will pay the Service Provider the fees specified in Item C [Fees] of Schedule 1 (if any) for the Services that the Service Provider provides in complying with its obligations under this clause 46.
- 46.10 The parties agree that the terms and conditions of this Contract (including the fees) apply to any Services performed by the Service Provider during any Transition-Out Period under this clause 46
- 46.11 The Service Provider agrees that it will not hinder in any way, the transition of the provision of services similar to the Services to a new contractor upon termination or expiration of this Contract or part of this Contract.

47. Complying with the APS Code of Conduct and Commonwealth Procurement Rules

- 47.1 In the event that the Services involve the Service Provider assisting with or otherwise being involved in any ACBPS procurement process, the Service Provider must:
- (a) at all times comply with the APS Code of Conduct and uphold the APS Values as if they were an APS employee under the Public Service Act 1999 (Cth);

- (b) comply with any requirement to make a specific Conflict of interest declaration in accordance with the procurement process documentation; and
 - (c) act in accordance with the Commonwealth Procurement Rules and any other relevant policies and ACBPS's Chief Executive's Instructions relating to procurement.
- 47.2 The Service Provider is to ensure it, at all times, acts in a manner consistent with the request for tender, or other request documentation issued to the market, and any probity plan or other tender evaluation plan applicable to the procurement process.
- 47.3 The Service Provider is not able to approve or authorise the expenditure of relevant money and must not represent itself as being able to do so.
- 47.4 For the purposes of this clause, 'relevant money' has the meaning given by the PGPA Act.

48. Not Used

49. Certificate of Acceptance

- 49.1 For all Services listed in Schedule 2 as being subject to Acceptance:
- (a) the Service Provider must offer conforming Services to ACBPS for Acceptance in accordance with Schedule 2;
 - (b) ACBPS will perform the acceptance tests reasonably required by ACBPS to determine if the Services and/or Equipment conform with the requirements of the Contract;
 - (c) if the acceptance tests indicate that the Equipment is fully operational or Services conform with the requirements of the Contract, ACBPS will issue a certificate of Acceptance within five (5) Business Days of the date of ACBPS's acceptance of the Service;
 - (d) the certificate of Acceptance constitutes an acknowledgement that the Contract requirements for the Services have been satisfied as at the date of Acceptance;
 - (e) if the acceptance tests indicate that the Services and/or Equipment do not conform with the requirements of the Contract:
 - (i) ACBPS will issue a notice of rejection of the Services;
 - (ii) the Service Provider shall, within 10 Business Days provide full written details to ACBPS of its proposed remedy to correct the Services;
 - (iii) ACBPS may require the Service Provider to retake possession of any item connected with the Services;
 - (iv) the Service Provider shall bear all costs associated with replacing or correcting rejected Services and of complying with the directions of ACBPS, andrejection of Services does not affect the obligation of the Service Provider to provide conforming Services.

50. Storage of Materials and Equipment

- 50.1 The Service Provider must only store on the Site, plant and materials required for the Services.

- 50.2 The Service Provider must not, without the prior approval of the Contract Manager, store any dangerous materials, explosives, corrosive or inflammable substances on the Site.
- 50.3 The Service Provider must provide the Contract Manager with a list of all substances referred to in clause 50.2, brought onto the Site by the Service Provider, together with the respective material safety data sheets.
- 50.4 The Service Provider assumes full risk for any goods, articles, tools, equipment or any property, belonging to the Service Provider or its employees, left on Site for safe-keeping.

51. Additional Warranties for Materials

- 51.1 The Service Provider warrants that it will:
- (a) obtain from the manufacturer of any goods or materials that form part of the Services all warranties generally made available by that manufacturer in the normal course of business ("Manufacturer Warranty"); and
 - (b) in respect of any Manufacturer Warranty:
 - (i) to the extent practicable and to the extent permitted by law, assign the benefit of that warranty to ACBPS; and
 - (ii) provide ACBPS with a copy of the terms and conditions of the warranty.
- 51.2 If, in the course of performing its obligations under this Contract, the Service Provider considers that a Manufacturer Warranty may have been breached, the Service Provider must immediately notify the ACBPS Representative.
- 51.3 The Service Provider agrees to use its best endeavours to exercise, or assist ACBPS in exercising, all available rights under a Manufacturer Warranty to the best advantage of ACBPS.
- 51.4 Without limiting any other rights of ACBPS and irrespective of any Manufacturer Warranties provided in respect of the goods or materials that form part of the Services, the Service Provider will promptly rectify any defect in the materials at no charge if ACBPS becomes aware of the defect and notifies the Service Provider of the defect during the Warranty Period.
- 51.5 The Service Provider will not be liable under clause 51.4 if the defect is the result of:
- (a) improper use or mismanagement of any goods or materials by ACBPS;
 - (b) use of any goods or materials in a manner not reasonably contemplated by the Service Provider;
 - (c) modification of any goods or materials in a manner not authorised by the Service Provider; or
 - (d) subjection of any goods or materials to unusual or non-recommended physical or environmental stress.

52. Documentation

- 52.1 The Service Provider will provide to ACBPS all documentation (including operating manuals, specifications, safety data sheets and the results of any research, testing and examinations carried out) necessary for ACBPS to make full and effective use of any Materials used in the provision of the Services. The Service Provider must provide a complete master copy set of all documentation

for the Site in which the Services are installed. The Service Provider must also maintain and keep up-to-date a duplicate master copy at all times.

- 52.2 The Service Provider will ensure that this documentation is the most current, accurate and up-to-date version available at the date of the certificate of Acceptance. If the documentation is revised or replaced for any reason, the Service Provider will supply ACBPS with all relevant revisions or replacements.

53. Co-operation with other contractors

- 53.1 The Service Provider must:
- (a) fully co-operate with other contractors of ACBPS;
 - (b) carefully co-ordinate the Services with the work being carried out or to be carried out by such other contractors; and
 - (c) use its best endeavours to facilitate the execution of the work to be carried out by such other contractors.

54. Make Good Provision

- 54.1 Where any work undertaken by the Service Provider results in damage to the building or fittings in or around the Site or the work area, they are to repair the damage to the same standard before it was damaged, at no cost to ACBPS. All repair works are to be done so that they are consistent with the appearance and quality of the surrounding area so that a reasonable person would not consider a repair to have been undertaken.
- 54.2 The Service Provider is to ensure that its Personnel wear appropriate protective clothing when providing the Services.
- 54.3 The Service Provider is to ensure that its Personnel are appropriately trained to perform the Services, and if necessary certified or hold current valid licences, for the use of any equipment required to perform the Services.
- 54.4 The Service Provider assumes full risk for the loss of or damage to any goods, articles, tools, equipment or any property, belonging to the Service Provider or its Personnel, left unattended on the Site.

55. Step In Rights

- 55.1 Without prejudice to any other right or remedy which ACBPS may have, if the Service Provider fails to provide the Services in accordance with this Contract and that failure prevents, hinders, degrades or delays the performance of any function that ACBPS in its discretion considers to be critical in the circumstances for more than 48 hours, ACBPS may, at its option take control of the part of the Services in question and may obtain services similar to the Services elsewhere or make any other arrangements considered necessary by ACBPS to maintain continuity of Services. ACBPS will, where practicable, give reasonable notice of its intention to take control in accordance with this clause.
- 55.2 The Service Provider will not be entitled to receive any fees that relate to Services performed by ACBPS or its nominee under clause 55.1.
- 55.3 ACBPS will pay any third party that it uses to provide Services in the exercise of its rights under clause 55.1 and may recover the difference between the substantiated reasonable fees paid to the third party service provider for the services and the fees that would otherwise have been payable to the Service Provider for those Services.

- 55.4 No action of ACBPS under clause 55.1 limits the Service Provider's liability to ACBPS with respect to any default or non-performance by ACBPS under this Contract.

56. Defects Liability Period

- 56.1 During and prior to the end of the Defects Liability Period, the Service Provider shall rectify all defects and omissions and any consequential effects to the satisfaction of ACBPS, who shall have the power to extend the Defects Liability Period in respect of any rectified Service.
- 56.2 The cost of the rectification undertaken by the Service Provider shall be borne by the Service Provider, unless the defect, omission or consequential effect does not arise as a result of any cause for which the Service Provider is responsible, in which event, the costs of such rectification shall be dealt with as if the rectification was a variation to the Services.
- 56.3 Should the Service Provider fail to rectify any such defect, omission or consequential effect, ACBPS may arrange to have the defect, omission or consequential effect rectified by others, and the costs incurred shall be a debt owed by the Service Provider to ACBPS

57. Not Used

58. Unconditional Financial Undertaking

- 58.1 ACBPS may require the Service Provider to provide security in respect of the Contract in the form of an unconditional and irrevocable financial undertaking (the "Security") from a guarantor approved by ACBPS. If required, the Security provided must be in a form acceptable to ACBPS and substantially in the form at Schedule 5, and be for the maximum aggregate sum and period as determined by ACBPS.
- 58.2 Where Security is required, ACBPS is not obliged to make any payments under the Contract, whether or not such payments are due, prior to receipt of the executed Security.
- 58.3 If ACBPS becomes entitled to exercise all or any of its rights to recover moneys under or in relation to the Contract, ACBPS may exercise all or any of its rights under the Security.

59. Performance Guarantee

- 59.1 The Service Provider may be required, at its expense, to provide to ACBPS, within 10 Business Days after the Commencement Date, a performance guarantee executed by a guarantor acceptable to ACBPS, guaranteeing the performance by the Service Provider of its obligations under this Contract, which must be substantially in the form of the performance guarantee appearing at Schedule 6.

SCHEDULE 1 - CONTRACT DETAILS

Item A. Commencement and Period

Title	Port Services Management
Commencement Date	1 January 2015
Time Frame	The Contract will continue for 4 years and end on 31 December 2018
Extension Provision	s. 47G(1)(a)

Item B. Material

Contract Material	The Contract Material produced by the Service Provider and where the Intellectual Property (IP) will vest is as follows: (i) any procedures, processes and registers that are created during the Term of the Contract and the IP will vest in ACBPS.
ACBPS Material	ACBPS will not provide any Material to the Service Provider under this Contract.
Existing Material	There is no Existing Material being provided by the Service Provider under this Contract

Item C. Fees

Fees	s. 47G(1)(a)
Allowances & Costs	

	s. 47G(1)(a)
Superannuation Details	This clause does not apply to this Contract.

Item D. Invoices & Payment

Invoices	Invoices will be issued by the Service Provider each month. Timing of Payments s. 47G(1)(a) Invoice Address National Pay and Accounts Centre PO Box 2809 MELBOURNE VIC 3001
Direct Credit Details	ACBPS will make payments by direct credit to: s. 47F(1)

Item E. ACBPS Assistance

Facilities & Assistance	s. 47G(1)(a)
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Item F. Key Personnel and Subcontractors

Key Personnel	The Service Provider agrees that the following work will be undertaken by cleared Key Personnel who have been assessed by the ACBPS Organisational Suitability Assessment Team and security cleared by the Australian Government Security Vetting Agency as follows: Service Provider Representative - Baseline: s. 47F(1) Nominated Personnel : s. 47F(1)
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Released by Department of Home Affairs
under the Freedom of Information Act 1982

	s. 47F(1)
Subcontractors	s. 47G(1)(a)

Item G. Insurance

The Service Provider must take out and maintain the following insurance:	The Service Provider must obtain and maintain the following insurances: (ii) public liability insurance for an amount not less than s. 47G(1)(a) or series of occurrences giving rise to a claim; (iii) workers' compensation in accordance with the relevant State or Territory legislation.
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Item H. Service Provider's Address for Notices

Service Provider	Name	s. 47F(1)
	ABN	99 004 210 093
	Title	Regional Manager, Defence & Government
	Physical address	Level 1 / 18 & 20 Brindabella Circuit Canberra Airport ACT 2609
	Postal address	Level 1 / 18 & 20 Brindabella Circuit Canberra Airport ACT 2609
	Email	s. 47F(1)

Item I. ACBPS Contract Manager

Contract Manager	Name	s. 22(1)(a)(ii)
	Title	Manager Marine Business
	Physical address	2 Constitution Ave. CANBERRA ACT 2600
	Postal address	5 Constitution Ave. CANBERRA ACT 2600
	Email	s. 22(1)(a)(ii) @customs.gov.au

Item J. Confidential Information

Note that *Commonwealth entities* are required to separate Confidential Information into the two categories below when reporting on AusTender the use of confidentiality provisions in contracts valued at \$10,000 (GST inclusive).

Commonwealth's Confidential Information

Contract Provision/Schedules or Attachments	Reason for Confidentiality	Period of Confidentiality
Nil	Nil	Nil

Contract Related Material	Reason for Confidentiality	Period of Confidentiality
Nil	Nil	Nil

Service Provider's Confidential Information

Contract Provision/Schedules or Attachments	Reason for Confidentiality	Period of Confidentiality
Nil	Nil	Nil

Contract Related Material	Reason for Confidentiality	Period of Confidentiality
Nil	Nil	Nil

Item K. Knowledge Transfer

If requirements for Knowledge Transfer are different to those specified in clause 8, specify the requirements here:

Requirement	Milestone

SCHEDULE 2 – SERVICES

s. 47G(1)(a)

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s. 47G(1)(a)

s. 47G(1)(a)

s. 47G(1)(a)

s. 47G(1)(a)

3. Project Plan

- 3.1 The Key Personnel will carry out the Services in accordance with the Project Plan at Attachment 1.

4. Standards and Best Practice

- 4.1 The Service Provider agrees to:
- (a) perform the Services with due skill, care, competence and diligence expected of a Service Provider experienced in work of a similar type to the Services;
 - (b) provide accurate progress reports, assessments and documentation if required; and
 - (c) ensure that the Services are carried out in accordance with relevant best practice, established procedures, requirements and other standard practices including any relevant Australian (or international standards).

5. Additional Services

- 5.1 ACBPS may, from time to time, during the Term of the Contract, require Additional Services, which may include, but is not limited to:
- (a) Additional quantities or frequency of the Services;
 - (b) Additional related services;
 - (b) Additional training;

- (c) Professional advice or consultation on topics related to the Services; and
- (d) Provision of the Services to other sites or business groups within ACBPS or to other Government agencies, together with adapting or modifying the Services to meet that particular site or business group's requirements.

6. Risk Management Plan

- 6.1 The Service Provider will be required to provide a finalised Risk Management Plan within two (2) weeks of the execution of the Contract. The Risk Management Plan will include the Service Provider's:
- (a) approach to risk that implements AS/NZ ISO 31000:2009 standards;
 - (b) Risk Register and process used;
 - (c) Key Personnel roles and responsibilities; and
 - (d) strategies to ensure the continual monitoring and identifying of risk during the Term of the Contract.

7. Key Performance Indicators

- 7.1 The Service Provider agrees to achieve the following Key Performance Indicators (KPIs) during the Term of the Contract.

s. 47G(1)(a)

s. 47G(1)(a)

8. Transition-In Plan

- 8.1 The Service Provider will ensure that the transition of the Services is in accordance with the Transition-In Plan at Attachment 2.

9. Work Health and Safety Risk Management Plan

- 9.1 The Service Provider will be required to deliver the Services in accordance with the Work Health and Safety Risk Management Plan at Attachment 3.

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10. Pricing Schedule

10.1 The rates payable for the performance of the Services, including rebates, are specified in the pricing table below:

Table 1: Management Service

S. 47G(1)(a)

Table 2: Port Services

S. 47G(1)(a)

S. 47G(1)(a)

S. 47G(1)(a)

S. 47G(1)(a)

Table 3: Other Port Costs - Waste

S. 47G(1)(a)

S. 47G(1)(a)

S. 47G(1)(a)

S. 47G(1)(a)

s. 47G(1)(a)

Table 4: Other Port Costs – Electricity, Water, Security, Crane and Forklift

Port	s. 47G(1)(a)
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S. 47G(1)(a)

S. 47G(1)(a)

S. 47G(1)(a)

S. 47G(1)(a)

s. 47G(1)(a)

Table 5: Training Costs

s. 47G(1)(a)

Table 6: Additional Costs

s. 47G(1)(a)

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SCHEDULE 3 - DEED OF CONFIDENTIALITY

This Deed of Confidentiality is made the [insert date].....day of [insert Month]..... of 20 [insert Year]

by [insert name of Individual name] of [insert registered business address] Confidant) in favour of and legally enforceable by the Commonwealth of Australia represented by the Australian Customs and Border Protection Service, ABN 66 015 286 036 (ACBPS).

RECITALS

- A. The Confidant may require access to ACBPS Confidential Information in performing any Services required under the Contract.
- B. ACBPS is willing to provide access to necessary Confidential Information strictly for the purpose of performing any Services required under the Contract and in accordance with this Deed.

AGREED TERMS

1. DEFINITIONS

Confidential Information	means: (a) information that is by its nature confidential; and (b) is described in Item J [Confidential Information] of Schedule 1 of the Contract; or (c) a party knows or ought to know is confidential, (d) but does not include: (e) information which is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligation (f) is in the possession of the Confidant without restriction in relation to disclosure before the date of receipt from the Commonwealth; or (g) has been independently developed or acquired by the Confidant.
Contract	means the Contract entered into between [insert name of Individual name], ABN [insert number] ACN [insert number], (Service Provider) of [insert registered business address] and ACBPS on [insert date]. Ref. No. 1421660.

2. NON-DISCLOSURE

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

3. COMPLIANCE WITH LEGISLATION

- 3.1 Without limiting anything contained in this deed, the Confidant acknowledges that it is aware of the following legislative provisions which may have application to its handling of Confidential Information:
- (a) Sections 70 and 79 of the *Crimes Act 1914* (Cth);
 - (b) Section 91.1 and Part 10.7 of the *Criminal Code Act 1995* (Cth);
 - (c) *Privacy Act 1988* (Cth);
 - (d) *Freedom of Information Act 1982* (Cth); and
 - (e) Section 16 of the *Customs Administration Act 1985* (Cth).

4. RESTRICTION ON USE

- 4.1 The Confidant must use the Confidential Information only as is legitimate and necessary for the purpose of the Confidant's dealings with ACBPS (whether directly or indirectly) in the performance of Contract and strictly in accordance with this deed.
- 4.2 The Confidant will not, without the prior written authorisation of ACBPS, disclose any Confidential Information to any person unless the disclosure is required by law. In giving its authorisation, ACBPS may notify the Confidant of conditions on the disclosure and the Confidant must comply with these conditions.
- 4.3 Where the Confidant is required by law to disclose the Confidential Information, the Confidant must:
- (a) use his or her best endeavours to notify ACBPS prior to disclosing the Confidential Information;
 - (b) provide full details of the relevant legal requirement and information to be disclosed; and
 - (c) take any reasonable action requested by, and reasonably cooperate with any action taken by, ACBPS to challenge, prevent or limit such disclosure.
- 4.4 The Confidant agrees to secure all Confidential Information against loss and unauthorised access, use, modification or disclosure.
- 4.5 The Confidant agrees to implement security procedures to ensure that it meets its obligations under this deed and will provide details of these procedures to ACBPS on request.

5. POWERS OF ACBPS

- 5.1 Immediately on request by ACBPS, the Confidant must deliver to ACBPS all documents in the Confidant's possession or control containing Confidential Information.
- 5.2 If at the time of such a request the Confidant is aware that documents containing Confidential Information are beyond the Confidant's possession or control, then the Confidant must provide full details of where the documents containing Confidential Information are, and the identity of the person who has control of them.
- 5.3 The Confidant agrees to notify ACBPS immediately, and provide full details, if the Confidant is aware or reasonable suspects that:

- (a) Confidential Information has, or might have been, accessed, used, modified or disclosed in any way other than as permitted under this deed or any other breach of this deed; or
 - (b) there has been any other breach of this deed.
- 5.4 The obligations arising out of this deed are in addition to any obligations of confidence at common law or equity.

6. PRIVACY ACT OBLIGATIONS

- 6.1 The Confidant agrees to abide by the provisions of the *Privacy Act 1988* (Cth), including the Australian Privacy Principles set out in that Act, and to comply with any directions, guidelines, determinations or recommendations of ACBPS to the extent that they are consistent with the Australian Privacy Principles..

7. SURVIVAL

- 7.1 This deed will survive the termination or expiry of any contract, agreement or arrangement of any kind between the Service Provider and the Confidant providing for the performance of the Services (whether directly or indirectly).

8. APPLICABLE LAW

- 8.1 This deed will be governed by, and construed in accordance with, the law of the Australian Capital Territory.
- 8.2 The Confidant submits to the jurisdiction of the Courts of that Territory.

Executed as a Deed Poll

Signed sealed and delivered by [insert name and address of Confidant]

.....	
(Signature of Confident)	
In the presence of:	
.....	
(Printed name of Witness)	(Signature of Witness)

SCHEDULE 4 – SECURITY REQUIREMENTS

In the performance of the Services, the Service Provider will be required to adhere to and comply with the respective security requirements contained in the Australian Government *Protective Security Policy Framework*. Those security requirements that relate to the Services are as follows:

Security Clearance Level

Baseline Vetting - A Baseline security clearance will allow the holder to access classified information and resources that are classified up to and including PROTECTED, including but not limited to an ACBPS email account if required and the ACBPS vessel sailing program and locations.

Personal Security

Each personnel that are employed to provide services under the contract are required to undertake a security awareness training session as directed by ACBPS.

Reporting Requirements

Reporting on any operational information, including the location of any ACBPS, the duration of any port visits and any schedules are to be treated as PROTECTED. All PROTECTED information is to be hand delivered to ACBPS officers.

SCHEDULE 5 – UNCONDITIONAL FINANCIAL UNDERTAKING

THIS DEED (“Undertaking”) is made this [insert day] day of [insert month] 20[insert year] by [insert name of Guarantor] ACN [insert number] ABN [insert number] (“Guarantor”)

in favour of the Commonwealth of Australia represented by the Australian Customs and Border Protection Service, ABN 66 015 286 036, (“ACBPS”)

“AGREEMENT”

1. At the request of [insert name of Service Provider] (“Service Provider”) and in consideration of the Commonwealth accepting this Undertaking, the Guarantor unconditionally and irrevocably, as a primary obligation, undertakes and covenants to pay to ACBPS, on demand, and without reference to the Service Provider and notwithstanding any notice given by the Service Provider to the Guarantor not to pay same, any sum or sums which may from time to time be demanded in writing by ACBPS to a maximum aggregate sum of [\$insert amount].
2. The Guarantor’s liability under this Undertaking is a continuing liability and continues until payment is made under this Undertaking of the said maximum aggregate sum or ACBPS notifies the Guarantor that this Undertaking is no longer required. The obligations of the Guarantor under this Undertaking are not affected by anything which, but for this provision, might operate to exonerate it from that liability in whole or in part and this Undertaking may be enforced against the Guarantor without the Commonwealth being required to exhaust any remedy it may have against the Service Provider. The Guarantor agrees that it is not to be discharged or released from this Undertaking by any arrangement made between the Service Provider and ACBPS.
3. The Guarantor acknowledges that it has received valuable consideration for entering into this Undertaking.
4. The Guarantor agrees to pay on demand to ACBPS interest on any amount payable by the Guarantor to ACBPS under this Undertaking from the time that amount becomes due for payment and during the period that it remains unpaid, calculated on daily balances at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), on a daily compounding basis.
5. The Guarantor must make payments to ACBPS under this Undertaking no later than 11:00am Canberra time on the date nominated by ACBPS and to an account of ACBPS which ACBPS designates by notice.
6. If a law requires the Guarantor to withhold or deduct taxes from a payment so that ACBPS would not actually receive for its own benefit on the due date the full amount provided for under this Undertaking, then:
 - (a) the amount payable is increased so that, after that deduction and deductions applicable to additional amounts payable, ACBPS is entitled to receive the amount it would have received if no deduction had been required;
 - (b) the Guarantor must make the deduction; and
 - (c) the Guarantor must pay the full amount deducted to the relevant authority in accordance with applicable law.
7. This Undertaking is governed by, and is to be construed in accordance with, the laws for the time being of the Australian Capital Territory and the parties agree that the courts of that Territory will have jurisdiction to entertain any action in

8. The Guarantor indemnifies ACBPS against, and must pay ACBPS on demand, the amount of all losses, liabilities, costs, expenses, stamp duty and goods and service taxes payable in connection with this Undertaking and in connection with preserving its rights under this Undertaking.
9. The parties have executed this Undertaking on the date set out above.

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SCHEDULE 6 - PERFORMANCE GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20

BETWEEN **COMMONWEALTH OF AUSTRALIA** represented by the Australian Customs and Border Protection Service (**the Commonwealth**)

AND [insert name of Guarantor] ACN [insert ABN of Guarantor] (**the Guarantor**)

RECITALS

- A. The Commonwealth wishes to procure certain specified services.
- B. [insert name of Service Provider] (ABN [insert Service Provider's ABN]) (**the Service Provider**) has agreed to supply services to the Commonwealth under the annexed contract (the **Contract**).
- C, The Guarantor agrees to provide the guarantees and indemnities appearing in this Deed.

AGREEMENT

- 1. The Guarantor guarantees to the Commonwealth the performance of the obligations undertaken by the Service Provider under the Contract on the conditions set out in this Deed.
- 2. If the Service Provider fails to execute and perform its obligations under the Contract, the Guarantor will, if required to do so by the Commonwealth, complete or cause to be completed the obligations set out in the Contract.
- 3. If the Service Provider breaches any of its obligations, and :
 - (a) the breach is not remedied by the Guarantor under this Deed; and
 - (b) the Contract is then terminated for default; or \
 - (c) the obligations of the Service Provider are unenforceable or disclaimed by a liquidator or trustee in bankruptcy, in whole or in part,the Guarantor will indemnify the Commonwealth against losses, damages, costs and expenses (including legal expenses on a solicitor and own client basis) directly incurred by reason of that default and pay such amount of losses, damages, costs and expenses directly to the Commonwealth.
- 4. The Guarantor agrees to pay interest to the Commonwealth on any amount payable by it to the Commonwealth under this Guarantee from when it becomes due for payment, during the period that it remains unpaid, on demand, or at times as calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the Taxation Administration Act 1953 (Cth), on a daily compounding basis.
- 5. The Guarantor must make payments to the Commonwealth under this Guarantee no later than 11:00am Canberra time on the due date to the account of the Commonwealth which the Commonwealth designates by notice.
- 6. If a law requires the Guarantor to withhold or deduct taxes from a payment so that the Commonwealth would not actually receive for its own benefit on the due date the full amount provided for under this Guarantee, then:
 - (a) the amount payable is increased so that, after that deduction and deductions applicable to additional amounts payable, the Commonwealth is

entitled to receive the amount it would have received if no deduction had been required;

- (b) the Guarantor must make the deduction; and
 - (c) the Guarantor must pay the full amount deducted to the relevant authority in accordance with applicable law.
7. The Guarantor will not be discharged, released or excused from this Deed by an arrangement made between the Service Provider and the Commonwealth with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by the Service Provider or by any forbearance whether as to payment, time, performance or otherwise. The guarantee by the Guarantor in this Deed to assume the obligations of the Service Provider will continue in force and effect until completion of all the Service Provider's obligations under the Contract or until the completion of the undertakings under this Deed by the Guarantor.
8. The undertakings of the Guarantor under this Deed will not exceed the obligations of the Service Provider under the Contract. Any liability of the Guarantor shall be coextensive, but not in excess of any liability of the Service Provider to the Commonwealth under the Contract. The Guarantor shall be entitled to all rights, privileges and defences otherwise available, to the Service Provider with respect to any such liability, including without limitation all provisions of the Contract relating to the limitation of liability and the resolution of disputes.
9. This Deed is subject to, and is to be construed in accordance with, the laws in force in the Australian Capital Territory and the parties agree that the courts of that Territory have jurisdiction to entertain any action in respect of, or arising out of, this Deed and the parties submit themselves to the jurisdiction of those courts.
10. For the purpose of this Deed, where an obligation of the Service Provider under the Contract has not been performed, the Service Provider will be taken to have failed to perform that obligation notwithstanding that the Service Provider has been dissolved or is subject to external administration procedures under chapter V of the Corporations Act 2001 (Cth) or any other law.
11. The guarantee in this Deed is a continuing guarantee to the Commonwealth until the obligations and liabilities of the Service Provider under the Contract have in all respects been performed, observed and discharged.
12. The following notice arrangements apply:
- (a) notice or other communication which may be given to or served on the Guarantor under this Deed will be deemed to have been duly given or served if it is in writing, signed on behalf of the Commonwealth and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Guarantor or its agent at any registered office of the Guarantor or posted to the Guarantor's address set out above or such other address as is notified in writing to the Commonwealth from time to time;
 - (b) a notice or other communication which may be given to or served on the Commonwealth under this Deed will be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Guarantor and is either delivered by hand, posted or faxed or a copy transmitted electronically to the Commonwealth at the address set out above or such other address as is notified in writing to the Guarantor from time to time;

- (c) a notice sent by post will be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent; and
 - (d) a notice sent by facsimile transmission or transmitted electronically will be deemed to have been given when the machine on which the notice is sent reports that the notice has been transmitted satisfactorily.
- 13. Until the obligations of the Service Provider have been performed in full, the Guarantor may not:
 - (a) share in any security interest or money received or receivable by the Commonwealth in relation to the guaranteed obligations, or stand in the place of the Commonwealth in relation to any security interest or right to receive money;
 - (b) take any steps to enforce a right or claim against the Service Provider relating to any money paid by the Guarantor to the Commonwealth under this Deed;
 - (c) have or exercise any rights as surety in competition with the Commonwealth;
 - (d) receive, claim or have the benefit of any payment (including a payment under a guarantee), distribution or security interest from or on account of the Service Provider or any other person; and
 - (e) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any agreement or document to which the Commonwealth is a party.
- 14. If the Service Provider is wound up or bankrupted, the Guarantor irrevocably authorises the Commonwealth to prove for all money that the Guarantor has paid under this Deed until the guaranteed obligations have been irrevocably performed in full. The Commonwealth is not obliged to do this.
- 15. If, after the Commonwealth applies any amount against any of the obligations of the Service Provider, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to bankruptcy, winding up or the protection of creditors:
 - (a) the rights of the Commonwealth are to be reinstated and will be the same in respect of that amount, or the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and
 - (b) the Guarantor shall immediately do anything (including the signing of documents) required by the Commonwealth to restore to the Commonwealth any guarantee to which it was entitled immediately before that application or the payment or transaction giving rise to it.
- 16. The Guarantor indemnifies the Commonwealth against, and shall pay the Commonwealth on demand, the amount of all losses, liabilities, costs, expenses, stamp duty and goods and service taxes payable in connection with this Guarantee and in connection with preserving its rights under this Guarantee.

SIGNED, SEALED AND DELIVERED)
by the **COMMONWEALTH OF**)
AUSTRALIA represented by the)
Australian Customs and Border)
Protection Service in the presence of:

.....

Signature of witness

.....

Commonwealth Representative

.....

Name of witness (print)

THE COMMON SEAL of [Guarantor])
was affixed in the presence of, and the)
sealing is witnessed by:)
)

.....

Secretary
Name (Printed)

.....

Director
Name (Printed)

SCHEDULE 7 – ADDITIONAL SERVICES FORM

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

1.	Contract variation number	
2.	Raised by	
3.	Details of Additional Service (use attachments if required)	
4.	Delivery date of Additional Service	
5.	Plan for implementing the Additional Service	
6.	Effect on Service Fees	
7.	Effect on Documentation	
8.	Impact on end users	
9.	Other relevant matters (eg transitional impacts)	

Customer

Name (print)

Position

Signature

Date

Service Provider

Name (print)

Position

Signature

Date

SCHEDULE 8 – AGENCY ORDER FORM

The Service Provider has offered under clause 40 of the Contract specified at item 1 below to provide the Deliverables to Nominated Agencies. The Nominated Agency specified in item 3 below accepts this offer on the terms and conditions set out in the Contract and in this Agency Order Form. If there is an inconsistency between this Agency Order Form and any other provisions of the Contract, the terms and conditions in this Agency Order Form will prevail to the extent of any inconsistency.

1.	Contract No. and description	
2.	Names of Parties to the Contract	
3.	Customer	<i>[Insert Nominated Agency name]</i> <i>A reference to [insert name of the contracting Agency] or the Customer in the Contract will be taken as a reference to [the Nominated Agency]</i>
4.	Commencement Date	
5.	Customer's details for Notices	Postal address: Physical address: Facsimile number: <i>Attention: [insert name and title of contact details of person to whom correspondence should be addressed]</i>
6.	Deliverables required (including any changes to the Scope of Licence)	<i>[attach additional pages if required]</i>
7.	Insert proposed terms and conditions of Nominated Agency (if any)	<i>[attach additional pages if required]</i>

Signed for and on behalf of the <i>[insert name of Customer]</i> by its duly authorised delegate in the presence of			
	←		←
Signature of witness		Signature of delegate	
Name of witness (print)		Name of delegate (print)	
		Position of delegate (print)	

NOTED for and behalf of by:	)))))))	
Name of Director (print)	)	Signature of Director
Signature of Witness		
Name of Witness (print)		

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