



**Australian Government**

**Attorney-General's Department**

**LEGAL SERVICES MULTI-USE LIST DEED**

Between

The Commonwealth of Australia as represented by the  
Attorney-General's Department

And

The Participant

**LEGAL SERVICES MULTI-USE LIST**

**APPLICATION FOR INCLUSION**

**PART 2**

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**THIS DEED** is made on..... (date)

Between:

The Commonwealth of Australia as represented by the Attorney-General’s Department, ABN 92 661 124 436, 3-5 National Circuit, Barton ACT 2600 (the Department);

And

{Insert Details of Participant}..... (the Participant)

**RECITALS**

- A. The Commonwealth has established a Legal Services Multi-Use List (LSMUL) from which Agencies may acquire Legal Services.
- B. The Participant applied for inclusion on the LSMUL.
- C. Having satisfied the Conditions for Participation, the Department appointed the Participant to the LSMUL on the terms set out in this Deed.
- D. The Participant acknowledges that the LSMUL will be administered in accordance with this Deed including the Operational Rules.
- E. At an Agency’s request, the Participant agrees to provide Legal Services to that Agency in accordance with the terms of this Deed.

**THE PARTICIPANT AGREES AS FOLLOWS:**

**1. Interpretation**

**1.1. Definitions**

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

<b>Agency or Agencies</b>	means any Commonwealth department, agency or body subject to the <i>Financial Management and Accountability Act 1997</i> (FMA Act) or the <i>Commonwealth Authorities and Companies Act 1997</i> (CAC Act), but does not include Government Business Enterprises (GBEs) prescribed
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	under Regulation 4 of the <i>Commonwealth Authorities and Companies Regulations 1997</i> and any agencies exempt from compliance with Appendix F of the Legal Services Directions under paragraph 13.1(a) of the Schedule to the Legal Services Directions;
<b>Agency Specific Agreements</b>	means any Agency specific terms and conditions of contract, other than the Default Terms and Conditions, an Agency may use from time to time to acquire Legal Services from a Participant of the LSMUL, and includes all associated documents, processes and procedures incorporated into those agreements;
<b>Application for Inclusion (AFI)</b>	means the application submitted by the Participant to the Commonwealth seeking inclusion on the LSMUL, of which Part 3 of the AFI forms Schedule 5 to this Deed;
<b>Business Day (in a place)</b>	a day that is not a Saturday, a Sunday or a public holiday in the place concerned, if no such location is specified or reasonably ascertainable, in Canberra, ACT, Australia;
<b>Commonwealth</b>	means the Commonwealth of Australia;
<b>Commonwealth Procurement Guidelines (CPGs)</b>	means the Commonwealth Procurement Guidelines or any successor document published by the Department of Finance and Deregulation, and as amended from time to time;
<b>Conditions for Participation</b>	means the Conditions for Participation set out in Part 1 of the AFI;
<b>Confidential Information</b>	means information that is by its nature confidential, but does not include information which is or becomes public knowledge other than by a breach of this Deed or law;
<b>Conflict</b>	means any matter, circumstance, interest, or activity affecting the Participant, its personnel or subcontractors which may or may appear to impair the ability of the Participant to provide the Legal Services to an Agency diligently and independently;
<b>Contract</b>	means a contract for the provision of Legal Services formed between a Participant and an Agency by the Agency issuing an Order to the Participant in accordance with this Deed;

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<b>Counsel</b>	means a barrister from the private bar, or a legal practitioner engaged as a barrister, briefed to advise or appear in tribunal or court proceedings, but does not include the Solicitor-General;
<b>Deed</b>	means this LSMUL Deed including any schedules, attachments or documents incorporated by reference;
<b>Default Terms and Conditions</b>	means the terms and conditions of contract provided for in Schedule 4 to this Deed;
<b>Existing Material</b>	means any Material in existence at the Operative Date and developed by the Participant or by a third party independently of this Deed. For the avoidance of doubt, existing material includes the Participants template precedents library;
<b>Intellectual Property</b>	<p>includes:</p> <ul style="list-style-type: none"><li>a. all copyright (including rights in relation to phonograms and broadcasts);</li><li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</li><li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</li></ul> <p>but does not include:</p> <ul style="list-style-type: none"><li>d. Moral Rights;</li><li>e. the non-proprietary rights of performers; or</li><li>f. rights in relation to Confidential Information;</li></ul>
<b>Legal Services</b>	means those professional services against each category of legal work that the Participant was appointed to the LSMUL to provide to Agencies on request, but does not include the services of Counsel or professional services obtained from a non-Australian service provider in respect of issues arising in jurisdictions outside of Australia;
<b>Legal Services Directions</b>	means the Commonwealth Attorney-General's Legal Services Directions issued under s 55ZF of the <i>Judiciary Act 1903</i> (Cth);

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<b>Legal Services Multi-Use List (LSMUL)</b>	means the multi-use list established by the Department to enable Agencies to acquire Legal Services;
<b>Legislation</b>	means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority;
<b>List Rates</b>	means the list rates in the Participant's AFI, amended from time to time in accordance with the Operational Rules;
<b>Material</b>	means anything in relation to which Intellectual Property rights arise;
<b>Moral Rights</b>	means the following non-proprietary rights of authors 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;
<b>Office of Legal Services Coordination (OLSC)</b>	means the Office of Legal Services Coordination in the Attorney-General's Department;
<b>Operative Date</b>	means the date the LSMUL was established or such other date as notified in writing by the Department;
<b>Operational Rules or Rules</b>	means the rules governing how the LSMUL will operate set out in Schedule 1 to this Deed, as may be modified from time to time by the Department;
<b>Order</b>	means an order issued by an Agency requesting the provision of specific Legal Services by the Participant, in the form set out in Schedule 3 or in the form or manner used by the requesting Agency.
<b>Participant</b>	means the party identified as the participant in this Deed;
<b>Performance Management Framework</b>	means the performance indicators, performance criteria, reporting requirements and management arrangements provided for in the Operational Rules;
<b>Personnel</b>	means: a. in relation to the Participant – any natural person who is a partner, officer, employee, agent or professional advisor of the Participant or of a subcontractor; and

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	b. in relation to an Agency – any natural person, other than a person referred to in paragraph (a), who is an officer, employee, agent or professional advisor (other than the Participant) of the Agency;
<b>Pro Bono work</b>	has the same meaning as ‘pro bono legal services’ as defined in the National Pro Bono Aspirational Target Statement of Principles developed by the National Pro Bono Resource Centre, as at 1 September 2008;
<b>Threshold Amount</b>	means the relevant procurement thresholds for Agencies set out in the Commonwealth Procurement Guidelines;
<b>Value Add Services</b>	means the value add services listed in the Participant’s AFI, or any value add services otherwise agreed to by the parties in a Contract;
<b>Valid Reason</b>	means, in respect of the rejection of an Order by the Participant: a. where the Participant would have a Conflict; b. where the Participant would have insufficiently skilled Personnel to perform the Legal Services within the timeframes required by the Agency; or c. any other reason accepted in writing by the Agency.

#### 1.2. Precedence

1.2.1. In the event that a conflict arises between the terms of this Deed, or the terms of this Deed and any Contract, the following order of priority shall apply:

- a. the terms of this Deed, excluding the Schedules;
- b. Schedule 1;
- c. Orders;
- d. Schedule 4 or an Agency Specific Agreement;
- e. Schedule 5;
- f. the other Schedules; then
- g. any other document incorporated by reference into this Deed.

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#### 1.3. Commencement

- 1.3.1 The terms of this Deed apply on and from the Operative Date or the date the last party signs this Deed, whichever date is later.
- 1.3.2 For avoidance of doubt, if:
- a. the Participant is selected for inclusion onto the LSMUL after the Operative Date; and
  - b. submits a signed Deed as part of their AFI,
- this Deed is binding on and from the date the Department signs this Deed.

#### 1.4. Transition Period

- 1.4.1. The Participant acknowledges that some Agencies may continue to acquire Legal Services in accordance with pre existing arrangements and that there may be a transition period in which these Agencies are not acquiring Legal Services from the LSMUL.
- 1.4.2. The terms and conditions attaching to any transition period will be solely determined by the Commonwealth.

### 2. Objectives of the Legal Services Multi Use List

- 2.1.1. The Participant acknowledges that the objectives of the LSMUL include:
- a. reducing barriers to entry into the Commonwealth legal services market;
  - b. gathering and disseminating information as to the performance of legal service providers in the provision of Legal Services to Agencies; and
  - c. supporting Agencies in their ongoing function as informed purchasers of Legal Services.
- 2.1.2. Subject to clauses 6.1.2 and 6.1.5, the Participant acknowledges and agrees to the Department collecting and using information as to the Participant's performance in provision of Legal Services to Agencies under this LSMUL and in disseminating that information to other Agencies within the Commonwealth in whatever form may be considered appropriate from time to time.
- 2.1.3. The Participant acknowledges and agrees that the Participant's details and information submitted in the AFI, including updates to that information, will be disclosed to Agencies for their use in relation to the LSMUL.

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### **3. Reliance on Claims Made in the Application for Inclusion**

- 3.1.1. The Participant's AFI has been accepted by the Department on the basis of the claims made by the Participant in that AFI, which forms part of this Deed.
- 3.1.2. The Participant warrants the veracity of the information (including any claims) provided:
- a. in the AFI; and
  - b. subsequently in connection to their ongoing participation on the LSMUL, and acknowledges that Agencies specifically rely on this information whenever purchasing Legal Services from the LSMUL.
- 3.1.3 Notwithstanding any other provision of this Deed, the Department may remove the Participant from the LSMUL, and terminate this Deed in accordance with clause 10, if it is found that the Participant provided false or misleading information.

### **4. Legal Services**

#### **4.1 Overview**

- 4.1.1 The Participant acknowledges that it is one of a number of suppliers on the LSMUL which may be requested by an Agency to provide Legal Services.
- 4.1.2 The Participant must comply with the Operational Rules as in force from time to time.

#### **4.2 Participation No Guarantee of Work**

- 4.2.1 An Agency:
- a. is not obliged to purchase or acquire any Legal Services or volume of Legal Services from the Participant;
  - b. may at any time purchase or acquire services the same as, or similar to, the Legal Services from another supplier on the LSMUL;
  - c. may at any time purchase or acquire services the same as, or similar to, the Legal Services from Counsel; and
  - d. may purchase or acquire Legal Services from any other supplier not on the LSMUL, subject to OLSC's prior written approval for an exceptional circumstances exemption under the Legal Service Directions.

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- 4.2.2 The Participant acknowledges and agrees that:
- a. the procurement of Legal Services from the LSMUL is entirely a matter for Agencies, and an Agency must conduct and make purchasing decisions in accordance with its relevant statutory obligations, including the FMA Act or the CAC Act, the Legal Services Directions and the Commonwealth Procurement Guidelines;
  - b. Agencies, in procuring Legal Services from the LSMUL, may impose additional conditions or requirements that Participants will be required to meet in order to be eligible to undertake work for that Agency or on specific matters. These conditions or requirements may include:
    - i. obtaining national or non-national security clearances;
    - ii. compliance with conflict of interest requirements; and /or
    - iii. any other matter of relevance to the Agency; and
  - c. all costs of participating in the LSMUL must be met by the Participant.

#### **4.3 Purchasing Legal Services**

- 4.3.1 Without limiting clause 4.2.2a, the Participant acknowledges that when an Agency requires Legal Services of the kind covered by this Deed, the Agency:
- a. subject to paragraph 4.3.1b:
    - i. may seek a quote from at least one supplier on the LSMUL for work estimated to be under the relevant Threshold Amount; or
    - ii. must seek a quote from two or more suppliers on the LSMUL for work estimated to be at or above the relevant Threshold Amount, except where the CPGs allow an agency to direct source the procurement to a single supplier; and
  - b. may otherwise procure Legal Services from one or more suppliers on the LSMUL in a manner consistent with the CPGs.
- 4.3.1 A request for a quote template is contained in Schedule 2. The use of this template by an Agency is not mandatory when procuring Legal Services from the LSMUL.
- 4.3.2 In seeking quotes, an Agency may but is not limited to:
- a. give suppliers (including the Participant) the opportunity to quote;

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- b. impose a timeframe for the receipt of a quote;
- c. seek quotes on a fixed price or other basis; and/or
- d. require the quote to be open for acceptance by the Agency for a minimum period of 30 days, or such other time as specified by the Agency.

#### **4.4 List Rates**

- 4.4.1 The Participant acknowledges that Agencies may seek or negotiate with the Participant rates below the List Rates or request innovative pricing arrangements when procuring Legal Services from the LSMUL.
- 4.4.2 The quoted amount provided by the Participant, or the agreed price for Legal Services, must not exceed the amount that would be produced had the quote or agreed price been calculated in accordance with the List Rates in effect at the time of the quote or agreed price, unless the Agency determines that the amount is overall of greater value for money (for example, blended rates may exceed a lawyer's hourly rate but provide overall value for money to the Agency).

#### **4.5 Contracts for Legal Services**

- 4.5.1 Subject to clause 4.5.7, a Contract for the provision of any Legal Services is not formed until an Agency issues an Order for the Legal Services.
- 4.5.2 An Agency will specify in the Order the precise Legal Services to be performed.
- 4.5.3 Each Order issued by an Agency will create a separate Contract between the Agency and the Participant in relation to the provision of the Legal Services specified in that Order.
- 4.5.4 The parties agree that the terms of each Contract will either be those set out in the Default Terms and Conditions or, where relevant, an Agency Specific Agreement.
- 4.5.5 The Participant acknowledges and agrees that when providing Legal Services to Agencies, it remains bound by the terms of this Deed and that no Agency Specific Agreements prevail over the operation or terms of this Deed, Schedule 1 and, to the extent set out in clause 4.5.6, the Default Terms and Conditions.
- 4.5.6 The Participant agrees that where an Agency proposes to use an Agency Specific Agreement to procure Legal Services from the LSMUL, the Participant must extend to that Agency terms no less favourable to the Commonwealth than those set out at clauses 4, 5, 8, 10, 13, 14, 16.1, 16.2 and 16.8 (as highlighted) in the Default Terms and Conditions.
- 4.5.7 The Participant may reject an Order for a Valid Reason.

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#### 5. Participants Warranty

5.1.1 The Participant warrants for the duration of this Deed that:

- a. it is a legal practitioner or practice, engaging in practice in Australia that complies with all applicable State or Territory laws governing the legal profession, and is subject to:
  - i. the regulation of the relevant State or Territory law society; or
  - ii. Part VIII B of the *Judiciary Act 1903* (Cth);
- b. it has professional indemnity insurance which:
  - i. meets the requirements of the relevant State or Territory law society; and
  - ii. is for an amount not less than AU\$10 million per event;
- c. it has public liability insurance for an amount of not less than AU\$10 million per event;
- d. it has workers compensation insurance as required by law;
- e. its nominated key Personnel in Australia involved with the delivery of Legal Services, are admitted and authorised to practise as required by the rules of the relevant State or Territory professional society, or the National Board on its establishment, as appropriate;
- f. it has the expertise, capacity and capability to deliver the Legal Services described in the AFI (as updated from time to time);
- g. it is financially viable; and
- h. it will comply with the Operational Rules as in force at any particular time.

#### 6. Performance Management Framework

6.1.1 The Participant acknowledges and agrees that its performance in providing Legal Services to Agencies under the LSMUL will be:

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- a. assessed and reported on by Agencies in accordance with the Performance Management Framework; and
  - b. collected and used by the Department and provided to Agencies on a confidential basis for the purpose of achieving the objectives of the LSMUL.
- 6.1.2 Without limiting clause 6.1.1.a, the Department acknowledges and agrees that information in relation to the Participant's performance in providing Legal Services to Agencies under the LSMUL is Confidential Information.
- 6.1.3 The Participant must, within thirty (30) days after the end of each financial year, report to the OLSC using the template approved from time to time by OLSC and published on the OLSC website, that specifies the matters to be reported, including the requirements to report on:
- a. the amount of Pro Bono Work undertaken by the Participant during that financial year; and
  - b. any other information requested in writing by OLSC on performance or information that is otherwise relevant to the operation of the LSMUL.
- 6.1.4 The Participant agrees that the Department may, with prior written notice on the OLSC website, change, update, modify or adapt the Performance Management Framework from time to time.
- 6.1.5 The Participant acknowledges and agrees that an Agency may impose additional performance management requirements and that information collected in relation to these additional performance requirements is Confidential Information and may be shared between Agencies on a confidential basis.

#### **7 Pro Bono Legal Work**

- 7.1.1 The Participant agrees to use their best endeavours to meet the target value of Pro Bono Work provided in their AFI.

#### **8 Value Add Services**

- 8.1.1 The Participant agrees to provide Agencies who obtain Legal Services from the Participant, using the LSMUL, any of the Value Added Services listed in their AFI, when requested by those Agencies to do so. The Participant acknowledges that this

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obligation is binding no matter if the Legal Services are procured using the Default Terms and Conditions or an Agency Specific Agreement.

#### **9. Administration of the LSMUL**

##### **9.1 Administration**

- 9.1.1 The Participant acknowledges and agrees that the Commonwealth, through the Department and the OLSC, will administer the LSMUL in accordance with this Deed. Contact details of the OLSC Deed manager can be located on the OLSC website.
- 9.1.2 To administer the LSMUL, the Participant acknowledges and agrees that the Participant's details and information submitted in the AFI, including updated information, will be disclosed to Agencies for their use in relation to the LSMUL.
- 9.1.3 The Participant acknowledges and agrees that the Department may change the Operational Rules from time to time. Notice of any change and the date of its effect will be advised on the OLSC website.
- 9.1.4 In administering the LSMUL, the Participant acknowledges and agrees that the Department may analyse and report on the data collected in relation to the operation of the LSMUL to a range of parties, including but not limited to Agencies, the responsible Minister and a House or a Committee of the Parliament of the Commonwealth of Australia.
- 9.1.5 The Participant must notify the Department immediately on becoming aware of:
- a. the existence of a Conflict in relation to any matter it is acting on or has been requested to act on for the Commonwealth;
  - b. any instances of non-compliance with the Legal Services Directions;
  - c. any disciplinary proceedings or orders made by a law society or other professional body against the Participant or its Personnel engaging in legal practice in Australia;
  - d. any non-compliance by the Participant or its Personnel with the *Equal Opportunity for Women in the Workplace Act 1999 (Cth)*;

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- e. any adverse comments or findings made by a court, commission, tribunal, law society or other statutory or professional body regarding the conduct or performance of the Participant or impacting on the professional capacity / capability of its Personnel to deliver Legal Services;
- f. any unsettled judicial decisions against it relating to unpaid employee entitlements; and
- g. any other significant matters involving the Participant or its Personnel that may adversely impact on an Agency's compliance with Australian Government policy and legislation.

#### **9.2 Confidential Information not to be disclosed**

- 9.2.1 Subject to clause 9.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- 9.2.2 In giving written consent to the disclosure of Confidential Information, a party may impose such conditions as it thinks fit, and the other party agrees to comply with these conditions.

#### **9.3 Exceptions to obligations**

- 9.3.1 The obligations on the parties under this clause 9 will not be taken to have been breached to the extent that Confidential Information:
  - a. is disclosed by a party to its advisers or employees solely in order to comply with obligations, or to exercise rights, under this Deed;
  - b. is disclosed to a party's internal management personnel, solely to enable effective management or auditing of Deed related activities;
  - c. is disclosed by the Department to the responsible Minister;
  - d. is disclosed by the Department, in response to a request by a House or a Committee of the Parliament of the Commonwealth;
  - e. is shared by the Department within the Department's organisation, or with another Agency, where this serves the Commonwealth's legitimate interests;

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- f. is authorised or required by law, including under this Deed, under a licence or otherwise, to be disclosed; or
  - g. is in the public domain otherwise than due to a breach of this clause 9.
- 9.3.2 Where a party discloses Confidential Information to another person pursuant to clauses 9.3.1.a to 9.3.1.e, the party will notify the receiving person that the information is confidential.
- 9.3.3 In the circumstances referred to in clauses 9.3.1.a, 9.3.1.b and 9.3.1.e, the Agency agrees not to provide the information unless the receiving person agrees to keep the information confidential.
- 9.3.4 To avoid doubt, clause 9.3.1.e includes the sharing of performance information between Agencies as envisaged by clause 6 of this Deed and disclosure of information in order to administer and meet the objectives of the LSMUL. Agencies will be informed that such information is Confidential Information and the Department will not be liable for any breach of confidentiality obligations by Agencies.

## **10 Termination of Deed, Reduction in Scope and Resignation from the LSMUL**

### **10.1 Termination for Default**

- 10.1.1 The Department may, with immediate effect, terminate this Deed for default, by written notice to the Participant, if the Participant:
  - a. breaches a warranty provided for in clauses 3 or 5 of this Deed;
  - b. becomes aware that Personnel of the Participant have committed a breach of national security or without written authorisation released Commonwealth Confidential Information to a third party;
  - c. is found to have provided false or misleading information to the Commonwealth in respect to any aspect of their participation on the LSMUL;
  - d. fails to comply with any requirement relating to the Legal Services Directions;

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- e. *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;
- f. *being an individual or partnership* – becomes bankrupt or enters into a scheme of arrangement with creditors;
- g. in the Department’s reasonable opinion, is no longer able to satisfy the Conditions for Participation;
- h. fails to comply with the Operational Rules; or
- i. in the Department’s reasonable opinion, no longer has the capacity and capability to provide Legal Services in accordance with this Deed.

10.1.2 The Department may terminate this Deed for default, with immediate effect, if the Participant fails, within thirty (30) days of being provided with a notice of breach, to remedy a breach of this Deed, other than a breach of a term the subject of clause 10.1.

10.1.3 If this Deed is terminated for Default:

- a. the Participant may no longer participate, from the date of the termination, in the LSMUL with respect to entering any new Contract to provide Legal Services to Agencies; and
- b. an Agency which is a party to an existing Contract with the Participant under the LSMUL may, at their discretion, terminate that Contract for default as well.

#### 10.2 Termination or Reduction for Convenience

10.2.1 The Department may terminate this Deed, or reduce the scope of participation on the LSMUL, for any reason on thirty (30) days prior written notice to the Participant.

#### 10.3 Resignation from the LSMUL

10.3.1 The Participant may terminate this Deed by resigning from the LSMUL on provision of 30 days prior written notice to the Commonwealth. Notice must be sent to the LSMUL Administrator at [lsmul@ag.gov.au](mailto:lsmul@ag.gov.au).

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#### 10.4 Effect of Termination, Reduction or Resignation

10.4.1 The termination or reduction in scope of this Deed, or resignation of the Participant from this Deed pursuant to clause 10.3, does not automatically terminate or otherwise affect the operation of any Contract entered into with an Agency pursuant to this Deed prior to the date of termination, reduction or resignation.

10.4.2 Where this Deed has been:

- a. terminated in accordance with this clause 10 or the Participant has elected to resign from the LSMUL, the Participant must not accept a new Order or an extension of an existing Contract entered into with Agencies prior to the date of termination or resignation; or
- b. reduced in scope in accordance with clause 10.2, the Participant must not accept a new Order or an extension of an existing Contract entered into with Agencies prior to the date of reduction where such Order or Contract relates to Legal Services for a category of legal work from which the Participant has been removed.

10.4.3 Upon notice of:

- a. termination or resignation, the Department will promptly remove the Participant from the LSMUL; or
- b. reduction in scope, the Department will promptly remove the Participant from one or more of the categories of legal work that the Participant was appointed to on the LSMUL.

#### 11 Compliance with Legislation and Policy

11.1.1 The Participant agrees to comply with any Legislation or legislative instrument applicable to its performance of this Deed or a Contract, in particular:

- a. the *Crimes Act 1914* (Cth);
- b. the *Criminal Code Act 1995* (Cth);
- c. the *Privacy Act 1988* (Cth);
- d. the *Racial Discrimination Act 1975* (Cth);

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- e. the *Sex Discrimination Act 1984* (Cth);
  - f. the *Disability Discrimination Act 1992* (Cth);
  - g. the *Age Discrimination Act 2004* (Cth);
  - h. the *Equal Opportunity for Women in the Workplace Act 1999* (Cth);
  - i. the *Occupational Health and Safety Act 1991* (Cth);
  - j. the *Freedom of Information Act 1982* (Cth);
  - k. the *Fair Work Act 2009* (Cth);
  - l. the *Auditor-General Act 1997* (Cth);
  - m. the *Competition and Consumer Act 2010* (Cth);
  - n. the *Judiciary Act 1903* (Cth); and
  - o. the Legal Services Directions.
- 11.1.2 When performing Legal Services for an Agency the Participant also agrees to comply with any Agency policies as notified to the Participant.

#### **12 Governing law**

- 12.1.1 This Deed is governed by, and construed according to, the law of the Australian Capital Territory.

#### **13 Notices**

- 13.1.1 Unless otherwise provided in this Deed, a notice must be in writing and delivered either by hand, or by post, or electronically to the address of the Department specified below or to the address specified in the AFI for the Participant.

##### **Department**

By hand:

Assistant Secretary, OLSC , Attorney-General's Department, **Attention LSMUL Administrator**

Post:

**Attention LSMUL Administrator**

3-5 National Circuit  
BARTON ACT 2600

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Electronically:

[lsmul@ag.gov.au](mailto:lsmul@ag.gov.au).

13.1.2 Subject to clause 13.1.3, a notice given in accordance with this clause 13 is deemed to be received if delivered by hand or electronically on receipt or, if sent by post, 5 Business Days after the date of posting.

13.1.3 A notice received after 5.00pm, 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.

#### **14 Variations**

14.1.1 With the exception of the Operational Rules, no variation to this Deed will be effective unless it is in writing and signed by the parties.

14.1.2 Variations will become effective on the date the last party signs the variation document.

#### **15 Dispute Resolution**

##### **15.1 Procedure for dispute resolution**

15.1.1 In this clause 15, a reference to a 'party' is a reference to the Participant or the Department, as the case may be.

15.2.1 The parties agree that a dispute arising under this Deed 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. the officer responsible for management of this Deed for each party will use genuine steps to resolve any dispute by direct negotiation in the first instance;
- c. if the dispute cannot be resolved, each party will nominate a representative not having any prior involvement in the dispute;
- d. the representatives will use genuine steps to try to settle the dispute by direct negotiation between them;
- e. failing settlement within 10 Business Days after the nomination of a representative in accordance with clause 15.2.1.c, 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

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- ii. to mediate and recommend some form of non-binding resolution;
- f. the parties will cooperate fully with any process instigated under clause 15.2.1.e in order to achieve a speedy resolution; and
- g. if:
  - i. a resolution is not reached within 20 Business Days after the dispute is referred to an independent third person in accordance with clause 15.1.1.e; or
  - ii. if no agreement as to an independent third person or resolution of dispute is reached following 30 Business Days commencing on the nomination of a representative in accordance with clause 15.2.1.c, either party may commence legal proceedings.

#### **15.2 Costs**

- 15.2.1 Each party will bear its own costs of complying with this clause 15, and the parties will bear equally the cost of any third person engaged under clause 15.2.1.e.

#### **15.3 Continued performance**

- 15.3.1 Despite the existence of a dispute, the Participant will (unless requested in writing by the Commonwealth not to do so) continue to perform any obligations under this Deed.

#### **15.4 Exemption**

- 15.4.1 This clause 15 does not apply to:
  - a. action by either party under or purportedly under any clause relating to termination, whether for convenience or for default;
  - b. legal proceedings by either party seeking urgent interlocutory relief; or
  - c. disputes in relation to the evaluation of a Participant by an Agency, which should be resolved between the Participant and the relevant Agency.

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**EXECUTED** as a Deed:

**Signed** for and on behalf of the  
**Commonwealth of Australia** as  
represented by the Attorney-General’s Department 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)

ON:

day of

20

**Executed by [insert company name of the Participant]**

**[insert ABN/ACN]** in accordance with Section 127 of the *Corporations Act 2001*.

Signature of director

Signature of director/company secretary  
(delete as applicable)

Name of director (print)

Name of director/company secretary (print)

ON: [insert date]

ON: [insert date]

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**OR**

**Executed by [insert partnership name of the Participant]  
[insert ABN] by**

Signature of partner

Signature of partner

Name of partner (print)

Name of partner (print)

ON: [insert date]

ON: [insert date]

**OR**

**Executed by [insert name of the Participant]  
[insert ABN, if applicable]**

Signature of participant

Signature of witness

Name of participant (print)

Name of witness (print)

ON: [insert date]

ON: [insert date]

**OR**

[Insert execution clause appropriate to nature of the Participant. Unused clauses should be deleted.]

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## SCHEDULE 1

### OPERATIONAL RULES

1. The Legal Services Multi-Use List (LSMUL) is managed on behalf of the Commonwealth of Australia (Commonwealth), by the Office of Legal Services Coordination (OLSC) in the Attorney-General's Department (Department) but can be accessed by any Agency in accordance with the Deed (including these Rules).
2. Subject to clause 3 below, Participants on the LSMUL must update (or confirm) the details provided in their AFI (including List Rates) on the anniversary of the Operation Date and whenever there is a significant change in any information provided as part of the application process (this may also including List Rates). Failure to update or supply required details may, at the Department's discretion, result in the termination or reduction in scope of the Deed and the Participant being removed from the LSMUL in accordance with clause 10.4.3 of the Deed.
3. Where a Participant seeks to change the List Rates, any increase in the rates must not exceed the annual percentage change of the Labour Price Index 6345 Private, Professional, Scientific and Technical Services published by the Australian Bureau of Statistics. The Participant must notify OLSC electronically of the new List Rates by providing an update of the rates table in Part 3 of the AFI. Unless otherwise agreed in writing by an Agency, new rates will not be applicable to any Contracts for Legal Services that were signed prior to the date of notification of the new List Rates.
4. Participants must maintain the capacity and expertise to deliver and provide professional services in the category of legal work that the Participant was appointed to the LSMUL to deliver. Where a Participant no longer has, or has a diminished capacity, capability or expertise to provide the relevant professional service in a category, the Participant must notify OLSC within 72 hours of becoming aware and amend their details accordingly. Participants may amend or update their details by submitting an amended AFI addressing only those aspects of the original AFI that have changed.
5. The Department may reassess a Participant's ability to satisfy the Conditions for Participation:
  - a. after each annual update of the Participant's details;

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- b. after any other update of the Participant's details; and
  - c. after any other event occurs, or information comes to the attention of the Department, which the Department considers may impact on the Participant's ability to meet the Conditions for Participation.
6. The Participant will be notified within 10 Business Days after the Department's decision to reassess its ability to satisfy the Conditions for Participation.
7. When removing a Participant from the LSMUL because this Deed is terminated or reduced in scope by the Department under clause 10 of the Deed, OLSC may at its absolute discretion impose restrictions or conditions on that Participant in relation to reapplying for inclusion.
8. Under the Performance Management Framework set out in the Legal Service Directions and this Deed, an Agency will be required to assess a Participant's performance when they provide Legal Services to an Agency.
9. At the conclusion of each relevant matter, or otherwise as agreed with OLSC, an Agency will assess a Participant's performance against the following criteria:
  - a. quality of service;
  - b. accuracy;
  - c. responsiveness;
  - d. understanding of Agency needs/requirements;
  - e. professionalism and experience of Personnel working on the matter; and
  - f. value for money.
10. A score will be provided by the Agency against each criterion with respect to the Participant's performance. The scoring scale is as follows:
  1. Did not meet needs / expectations;
  2. Met some needs / expectations;
  3. Met all needs / expectations; and

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4. Exceeded all needs / expectations.
11. Agencies are required to complete and submit to OLSC an evaluation form in the form requested by OLSC assessing the above criteria. This information is Confidential Information and will be shared with other Agencies on a confidential basis. An Agency may at its discretion, provide a copy of the completed evaluation form to the Participant.
12. The Performance Management Framework will not replace any process or arrangements that Agencies and Participants wish to use in order to deliver performance feedback. Any issues in relation to performance management and a Participant's performance evaluation should be resolved between the Agencies and Participants.
13. The Department may, at its discretion, vary or add new categories of legal work to the LSMUL to meet its operational requirements.
14. For variations to existing categories of legal work, it is anticipated that a Participant's ability to satisfy the Conditions for Participation would only be reassessed if the variation may impact on their ability to meet the Conditions for Participation.
15. For any new category of legal work, it is anticipated that an application for inclusion process would be required.
16. Notification of any variation to these Rules will be made available to the Participant via the OLSC website.

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## SCHEDULE 2

### REQUEST FOR QUOTE (RFQ) TEMPLATE

*Note: The use of this template by an Agency is not mandatory when procuring Legal Services from the LSMUL.*

<b>Insert name of Agency</b>	
<b>Agency file reference</b>	/
<b>RFQ Number</b>	
<b>Date of RFQ</b>	
<b>Agency Project Officer (Instructing Officer)</b>	
<b>Required response time for quote</b>	<Default is X Business Days>
<b>Work specification for Legal Services</b>	<Insert detailed description of Legal Services required, including relevant background material. List any documents attached to the RFQ>
<b>Proposed Order Commencement Date</b>	
<b>Proposed Order Term / Completion Date</b>	< Insert term> <with further period or periods, up to a maximum of [insert term], on the same terms and conditions of this RFQ>
<b>Timeframes/ Milestones</b>	<Insert proposed due date /milestones for Legal Services>
<b>Required qualifications and experience</b>	<Include details of mandatory/desired qualifications and experience>
<b>Specified Personnel</b>	<Insert any proposed any Specified Personnel or insert Not Applicable>
<b>Subcontractors</b>	<Insert details of proposed Subcontractors for pre-approval or insert Not Applicable>
<b>Location</b>	<Insert work site /s etc. or insert Not Applicable>
<b>Terms and Conditions</b>	<Default Terms and Conditions or Agency Specific Agreements>

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<b>Fees, Charges and Disbursements</b>	<Insert details of fee structure e.g. List Rates, fixed fee, and accommodation and travel (if applicable)>														
<b>Commonwealth Material</b>	<Insert details of any Commonwealth Material or insert Not Applicable>														
<b>Existing Material</b>	<Insert details of any Existing Material or insert Not Applicable>														
<b>Contract Material</b>	<Unless specified in the work specifications, insert details of any Contract Material>														
<b>Confidential Information</b>	<p>&lt;Include details in table below or insert Not Applicable</p> <p>Information on confidentiality provisions is available at:  <a href="http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html">http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html</a> &gt;</p> <table border="1"> <thead> <tr> <th><b>Agency Confidential information</b></th> <th><b>Period of Confidentiality</b></th> </tr> </thead> <tbody> <tr> <td>Agency data</td> <td>Indefinitely</td> </tr> <tr> <td>Any Personal Information held by the Agency</td> <td>Indefinitely</td> </tr> <tr> <td>Security Classified Information</td> <td>Indefinitely</td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th><b>The Service Provider Confidential information</b></th> <th><b>Period of Confidentiality</b></th> </tr> </thead> <tbody> <tr> <td>Information on the Service Providers performance</td> <td>Indefinitely</td> </tr> <tr> <td>List Rates (excluding the total value of the Contract)</td> <td>Indefinitely</td> </tr> </tbody> </table>	<b>Agency Confidential information</b>	<b>Period of Confidentiality</b>	Agency data	Indefinitely	Any Personal Information held by the Agency	Indefinitely	Security Classified Information	Indefinitely	<b>The Service Provider Confidential information</b>	<b>Period of Confidentiality</b>	Information on the Service Providers performance	Indefinitely	List Rates (excluding the total value of the Contract)	Indefinitely
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Information on the Service Providers performance	Indefinitely														
List Rates (excluding the total value of the Contract)	Indefinitely														
<b>Additional Security requirements</b>	<State any additional security requirements to the requirements contained in the Default Terms and Conditions, or that apply to particular aspects of work (e.g. Protected security clearance required) or insert Not Applicable>														

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<b>Additional Insurance Requirements</b>	<Insert additional requirements (if any) for relevant insurance e.g. Professional indemnity insurance for an insured amount of [ <i>\$ insert amount</i> ] per occurrence and not less than [ <i>\$ insert amount</i> ] in aggregate; Public liability insurance for an insured amount of [ <i>\$ insert amount</i> ] per occurrence and not less than [ <i>\$ insert amount</i> ] in aggregate; and Workers compensation insurance as required by law or insert Not Applicable. If Not Applicable is specified, the insurance requirements under the Deed will apply.>
<b>Other Requirements</b>	<Proposed Personnel performing the Legal Services may be required to sign a Deed and acknowledgements relating to confidentiality, security, moral rights, intellectual property and other relevant matters as required by the Agency. Any Contract will be conditional on this occurring.  <Insert any other relevant details, if any, for example - Special conditions -Reporting -Value Add Services -Performance and evaluation - particular requirements concerning activities that must be undertaken jointly with other existing Agency contractors>

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### SCHEDULE 3

#### ORDER TEMPLATE

*Note: The use of this template by an Agency is not mandatory when procuring Legal Services from the LSMUL.*

This Order is made in accordance with the Deed and needs to be read in conjunction with that document, including the Default Terms and Conditions or, where relevant, the Agency Specific Agreement and any attachments to this Order.

<Service Provider's Representative>

< Service Provider>

<Service Provider Address>

<Service Provider ABN or ACN>

Sent via <facsimile or email>: <Service Provider's fax number or email address>

<b>Insert name of Agency</b>	
<b>Agency file reference</b>	/
<b>Order Number</b>	
<b>Agency Project Officer (Instructing Officer)</b>	
<b>Work specification for Legal Services</b>	<Insert detailed description of Legal Services required, including relevant background material. List any documents attached to the order>
<b>Commencement Date</b>	
<b>Order Term</b>	[x] from the Commencement Date (initial term).  <The Agency may in its sole discretion extend the term of this Order beyond the initial term for a further period or periods, up to a maximum of [X months], on the same terms and conditions of this Order, by giving at least 1 months prior written notice to the Service Provider (or such shorter period of notice as the Service Provider may accept) prior to end of the initial term of this Order.>

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<b>Timeframes/ Milestones</b>	<Insert proposed due date /milestones for Legal Services>
<b>Specified Personnel</b>	<Insert proposed any specified Personnel or insert Not Applicable>
<b>Subcontractors</b>	<Insert details of pre-approved Subcontractors>
<b>Location</b>	<Insert work site /s etc. or insert Not Applicable>
<b>Terms and Conditions</b>	<Default Terms and Conditions or Agency Specific Agreements>
<b>Fees, Charges and Disbursements</b>	<Insert details of fee structure e.g. List Rates, fixed fee, and accommodation and travel (if applicable), including up to a maximum amount payable and when fees can be claimed (e.g. in installments against milestones or at the completion of the services)>
<b>Commonwealth Material</b>	<Insert details of any Commonwealth Material or insert Not Applicable>
<b>Existing Material</b>	<Insert details of any Existing Material or insert Not Applicable>
<b>Contract Material</b>	<Unless specified in the work specifications, insert details of any Contract Material>

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<p><b>Confidential Information</b></p>	<p>&lt;Include details in table below or insert Not Applicable</p> <p>Information on confidentiality provisions is available at:  <a href="http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html">http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html</a> &gt;</p> <table border="1" data-bbox="564 602 1307 898"> <thead> <tr> <th data-bbox="564 602 1054 703">Agency Confidential information</th> <th data-bbox="1054 602 1307 703">Period of Confidentiality</th> </tr> </thead> <tbody> <tr> <td data-bbox="564 703 1054 757">Agency data</td> <td data-bbox="1054 703 1307 757">Indefinitely</td> </tr> <tr> <td data-bbox="564 757 1054 844">Any Personal Information held by the Agency</td> <td data-bbox="1054 757 1307 844">Indefinitely</td> </tr> <tr> <td data-bbox="564 844 1054 898">Security Classified Information</td> <td data-bbox="1054 844 1307 898">Indefinitely</td> </tr> </tbody> </table> <table border="1" data-bbox="564 931 1307 1211"> <thead> <tr> <th data-bbox="564 931 1054 1032">The Service Provider Confidential information</th> <th data-bbox="1054 931 1307 1032">Period of Confidentiality</th> </tr> </thead> <tbody> <tr> <td data-bbox="564 1032 1054 1120">Information on the Service Providers performance</td> <td data-bbox="1054 1032 1307 1120">Indefinitely</td> </tr> <tr> <td data-bbox="564 1120 1054 1211">List Rates (excluding the total value of the Contract)</td> <td data-bbox="1054 1120 1307 1211">Indefinitely</td> </tr> </tbody> </table>	Agency Confidential information	Period of Confidentiality	Agency data	Indefinitely	Any Personal Information held by the Agency	Indefinitely	Security Classified Information	Indefinitely	The Service Provider Confidential information	Period of Confidentiality	Information on the Service Providers performance	Indefinitely	List Rates (excluding the total value of the Contract)	Indefinitely
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Information on the Service Providers performance	Indefinitely														
List Rates (excluding the total value of the Contract)	Indefinitely														
<p><b>Additional Security requirements</b></p>	<p>&lt;State any additional security requirements to the requirements contained in the Default Terms and Conditions, or that apply to particular aspects of work (e.g. Protected security clearance required) or insert Not Applicable&gt;</p>														
<p><b>Additional Insurance Requirements</b></p>	<p>&lt;Insert additional requirements (if any) for relevant insurance e.g. Professional indemnity insurance for an insured amount of [<i>\$ insert amount</i>] per occurrence and not less than [<i>\$ insert amount</i>] in aggregate; Public liability insurance for an insured amount of [<i>\$ insert amount</i>] per occurrence and not less than [<i>\$ insert amount</i>] in aggregate; and Workers compensation insurance as required by law or insert Not Applicable. If Not Applicable is specified, the insurance requirements under the Deed will apply &gt;</p>														

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<b>Other Requirements</b>	<p>&lt;Proposed Personnel performing the Legal Services may be required to sign a Deed and acknowledgements relating to confidentiality, security, moral rights, intellectual property and other relevant matters as required by the Agency. Any Contract will be conditional on this occurring.</p> <p>&lt;Insert any other relevant details, if any, for example</p> <ul style="list-style-type: none"><li>- Special terms</li><li>- Reporting</li><li>-Value Add Services</li><li>-Performance and evaluation</li><li>- particular requirements concerning activities that must be undertaken jointly with other existing Agency contractors&gt;</li></ul>
<b>Agency Representative</b>	<p><i>Title:</i> [Insert Details]</p> <p><i>(Currently:</i> [Insert Name])</p> <p><i>Physical Address:</i> [Insert Details]</p> <p><i>Postal Address:</i> [Insert Details]</p> <p><i>Fax number:</i> [Insert Details]</p> <p><i>Email:</i> [Insert Details]</p>
<b>Agency Address for Notices</b>	<p><i>Physical Address:</i> [Insert Details]</p> <p><i>Postal Address:</i> [Insert Details]</p> <p><i>Fax number:</i> [Insert Details]</p> <p><i>Email:</i> [Insert Details]</p>
<b>Agency Address for Invoices</b>	<Insert Details>

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<b>Service Provider Representative</b>	<i>Name:</i>	[Insert Details]
	<i>Title:</i>	[Insert Details]
	<i>Physical Address:</i>	[Insert Details]
	<i>Postal Address:</i>	[Insert Details]
	<i>Fax number:</i>	[Insert Details]
	<i>Email:</i>	[Insert Details]
<b>Service Provider Address for Notices</b>	<i>Physical Address:</i>	[Insert Details]
	<i>Postal Address:</i>	[Insert Details]
	<i>Fax number:</i>	[Insert Details]

Signed for and on behalf of  
Commonwealth of Australia  
as represented by the Department of  
[insert details] ABN [insert] by

\_\_\_\_\_  
*name and title of authorised officer*

\_\_\_\_\_  
*Signature of authorised officer*

Date

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## SCHEDULE 4

### DEFAULT TERMS AND CONDITIONS

The following terms and conditions apply where an Agency elects to use the Default Terms and Conditions for obtaining Legal Services and a Contract is created by the issue of an Order to the Service Provider by an Agency.

#### 1. Interpretation

---

##### 1.1 Definitions

1.1.1 In this Contract, unless the context indicates otherwise:

<b>Application for Inclusion (AFI)</b>	means the application submitted by the Participant to the Commonwealth seeking inclusion on the LSMUL, of which Part 3 of the AFI forms Schedule 5 to the Deed;
<b>Agency</b>	means the party identified in the Order;
<b>Agency's Representative</b>	means the contact officer identified in the Order;
<b>Business Day (in a place)</b>	means a day that is not a Saturday, a Sunday or a public holiday in the place concerned, if no such location is specified in an Order or reasonably ascertainable, in Canberra, ACT, Australia;
<b>Commencement Date</b>	means the date this Contract commences, as specified in the Order.
<b>Commonwealth</b>	means the Commonwealth of Australia;
<b>Conflict</b>	means any matter, circumstance, interest, or activity affecting the Service Provider, its personnel or subcontractors which may or may appear to impair the ability of the Participant to provide the Legal Services to an Agency diligently and independently;
<b>Confidential Information (of the Service Provider)</b>	means information that is by its nature confidential but does not include information which is or becomes public knowledge other than by a breach of this Contract;

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<b>Contract</b>	means this contract for the provision of Legal Services, formed between the Agency and the Service Provider by the Agency issuing an Order to the Service Provider;
<b>Contract Material</b>	means any Material: <ul style="list-style-type: none"><li>a. created for the purposes of this Contract;</li><li>b. provided or required to be provided to the Agency as part of the Ordered Services; or</li><li>c. derived at any time from the Material referred to in paragraph (a) or (b);</li></ul>
<b>Commonwealth Material</b>	means any Material: <ul style="list-style-type: none"><li>a. provided by the Agency to the Service Provider for the purposes of this Contract; or</li><li>b. derived at any time from the Material referred to in paragraph (a);</li></ul>
<b>Commonwealth Protective Security Policy Framework</b>	means the framework available for download at <a href="http://www.ag.gov.au/pspf">http://www.ag.gov.au/pspf</a> ;
<b>Counsel</b>	means a barrister from the private bar, or a legal practitioner engaged as a barrister, briefed to advise or appear in tribunal or court proceedings, but does not include the Solicitor-General;
<b>Deed</b>	means the LSMUL Deed between the Department and the Service Provider and including schedules, attachments or documents incorporated by reference, including the Participant's AFI;
<b>Department</b>	means the Commonwealth of Australia as represented by the Attorney-General's Department.
<b>Existing Material</b>	means any Material in existence at the Commencement Date and developed by the Service Provider or by a third party independently of this Contract. For the avoidance of doubt, existing material includes the Service Provider's template precedents library;
<b>GST</b>	has the meaning it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth);
<b>Intellectual Property</b>	includes:

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	<p>a. all copyright (including rights in relation to phonograms and broadcasts);</p> <p>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts; and</p> <p>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include:</p> <p>d. Moral Rights;</p> <p>e. the non-proprietary rights of performers; or</p> <p>f. rights in relation to Confidential Information;</p>
<b>Legal Services</b>	means those professional services against each category of legal work that the Service Provider was appointed to the LSMUL to provide and outlined in the Order, but does not include the services of Counsel;
<b>Legal Services Directions</b>	means the Commonwealth Attorney-General's Legal Services Directions issued under s 55ZF of the <i>Judiciary Act 1903</i> (Cth);
<b>Legal Services Multi-Use List (LSMUL)</b>	means the multi-use list established by the Department to enable Agencies to acquire Legal Services;
<b>Legislation</b>	means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.
<b>List Rates</b>	means the list rates in the Service Provider's AFI, amended from time to time in accordance with the Operational Rules;
<b>Material</b>	means any thing in relation to which Intellectual Property rights arise;
<b>Moral Rights</b>	means the following non-proprietary rights of authors of copyright Material: <p>a. the right of attribution of authorship;</p> <p>b. the right of integrity of authorship; and</p> <p>c. the right not to have authorship falsely attributed;</p>

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<b>Official Information</b>	means any information developed, received or collected by or on behalf of the Agency to which the Service Provider gains access under or in connection with this Contract, and includes this Contract Material and the terms of this Contract;
<b>Office of Legal Services Coordination (OLSC)</b>	means the Office of Legal Services Coordination in the Department;
<b>Operational Rules or Rules</b>	means the rules governing how the LSMUL will operate set out in Schedule 1 to the Deed, as may be modified from time to time by the Commonwealth;
<b>Order</b>	means the order issued by the Agency in accordance with the Deed requesting the provision of Legal Services by the Service Provider under which this Contract was formed;
<b>Ordered Services</b>	means the Legal Services required by the Agency to be provided in accordance with this Deed process and includes all: <ul style="list-style-type: none"><li>a. incidental services;</li><li>b. functions required for the proper provision of those services; and</li><li>c. the provision to the Agency of the Material specified in the Order;</li></ul>
<b>Payment Day</b>	means the day when the Agency's system generates a payment transfer into the banking system for payment to the Service Provider;
<b>Permitted Acts</b>	means any of the following classes or types of acts or omissions: <ul style="list-style-type: none"><li>a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution of authorship;</li><li>b. supplementing the Contract Material with any other Material; and</li><li>c. using the Contract Material in a different context to that originally envisaged;</li></ul> but does not include false attribution of authorship;

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<b>Personnel</b>	means: a. in relation to the Service Provider – any natural person who is a partner, officer, employee, agent or professional advisor of the Service Provider or of a subcontractor; and b. in relation to the Agency – any natural person, other than a person referred to in paragraph (a), who is an officer, employee, agent or professional advisor (other than the Service Provider ) of the Agency;
<b>Project Officer</b>	means the person identified as the Project Officer in the Order and is otherwise the officer responsible for providing instructions to the Service Provider;
<b>Service Provider</b>	means the party identified in the Order as providing the Legal Services;
<b>Small Business</b>	means an enterprise that employs less than the full time equivalent of 20 persons on the day that this Contract is entered into. If the enterprise forms part of a group, this test is applied to the group as a whole;
<b>Specific Agency Requirements</b>	means the specific agency requirements identified in the Order for Legal Services; and
<b>Specified Personnel</b>	means the persons specified to perform the work specified in the Order for Legal Services.

#### 1.2 Interpretation

1.2.1 In this Contract, unless the contrary intention appears, if any conflict arises between the terms specified through the Order and these terms and conditions or the terms of the Deed the following order of priority will apply:

- a. the terms of the Deed, excluding the Schedules;
- b. Schedule 1 of the Deed;
- c. the Order;
- d. this Contract;
- e. Schedule 5 of the Deed;
- f. the other Schedules of the Deed; then

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- g. any other document incorporated by reference into the Deed; then
- h. any other terms specified through the Order process.

#### **1.3 Commencement**

- 1.3.1 This Contract commences on and from the Commencement.

#### **2 Performance**

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##### **2.1 Ordered Services**

- 2.1.1 The Service Provider must :

- a. perform the Ordered Services:
  - i. strictly in accordance with the scope outlined in the Order;
  - ii. to a standard recognised as a high professional standard by professional legal advisers; and
  - iii. in accordance with the Legal Services Directions;
- b. comply with all applicable Agency, Commonwealth and industry policies, standards and guidelines;
- c. comply with the time frame for the performance of the Ordered Services specified through the Order process;
- d. submit invoices and any required supporting documentation in the manner specified in clause 3.1; and
- e. obtain all approvals and licences necessary to perform the Ordered Services in accordance with this Contract.

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

##### **2.2 Subcontractors**

- 2.2.1 The Service Provider must not subcontract the performance of any part of the Ordered Services without the Agency's prior written approval. Pre-approved subcontractors are listed in the Order.
- 2.2.2 The Agency may impose any conditions it considers appropriate when giving its approval under clause 2.2.1.

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#### **2.3 Specified Personnel**

- 2.3.1 The Service Provider agrees that the Specified Personnel will perform work in relation to the Ordered Services in accordance with this Contract.
- 2.3.2 If Specified Personnel are unable to perform the work as required under clause 2.3.1, the Service Provider agrees to notify the Agency immediately.
- 2.3.3 The Service Provider agrees, at the request of the Agency acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Ordered Services.
- 2.3.4 If clause 2.3.2 or clause 2.3.3 applies, the Service Provider will provide replacement Personnel acceptable to the Agency at no additional cost and at the earliest opportunity.

#### **2.4 Conduct at Agency premises**

- 2.4.1 The Service Provider must, when using the Agency's premises or facilities for the purposes of providing Ordered Services, comply with all reasonable directions and procedures relating to occupational health and safety and security in operation at those premises or facilities (including any smoke-free workplace policy) whether specifically drawn to the attention of the Service Provider or as might reasonably be inferred from the circumstances.

### **3 Fees**

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#### **3.1 Invoices**

- 3.1.1 The Agency and the Service Provider may establish invoicing arrangements that will apply to the Ordered Services under this Contract.
- 3.1.2 The Service Provider must submit a correctly rendered invoice to the Agency. An invoice is correctly rendered if, and only if:
- a. it is in accordance with the invoicing arrangement between the Agency and Service Provider (if any);
  - b. it is correctly addressed and calculated in accordance with this Contract;
  - c. it relates to the Ordered Services that have been accepted by the Agency;
  - d. it is for an amount which does not exceed the agreed price and which price has been determined by either:
    - i. applying rates that do not exceed the Service Provider's relevant List Rate; or

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- ii. applying rates that do exceed the Service Provider's relevant List Rate, if the Agency determines that the agreed price is overall of greater value for money (for example blended rates may exceed a lawyer's hourly rate but provide overall value for money to the Agency); and
  - e. it is a valid tax invoice in accordance with the *A New Tax System (Goods and Services Tax) Act 1999*.
- 3.1.3 If an invoice is not correctly rendered, the Agency will return it to the Service Provider for resubmission.

#### **3.2 Payment**

- 3.2.1 The Agency will pay the invoiced amount to the Service Provider within 30 days after receiving a correctly rendered invoice.
- 3.2.2 Where an Agency wishes to contest the whole or part of a correctly rendered invoice, the Agency will pay the Service Provider (within 30 days) the value of the invoice less the value of the contested amount. Once the contested amount/s has / have been resolved, any outstanding amounts relating to those elements will be paid within 30 days after the date the contested amount/s was / were resolved.

#### **3.3 Fees, allowances and costs**

- 3.3.1 Unless otherwise agreed in writing by an Agency, the Service Provider agrees that the agreed rates, as at the Commencement Date, will be fixed for the duration of this Contract.
- 3.3.2 Invoices for fees, allowances and costs which exceed the quoted amount inserted in the Order will not be paid by an Agency unless the parties vary, in writing, the total fees payable under this Contract.

#### **3.4 Taxes, duties and government charges**

- 3.4.1 Except as provided by this clause 3.4, the Service Provider agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.
- 3.4.2 Unless otherwise indicated, the fees and all other consideration for any supply made under this Contract is exclusive of any GST imposed on the supply.
- 3.4.3 If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.

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

#### 3.5 Superannuation

3.5.1 The parties acknowledge that the Agency is not required to make any superannuation contributions in connection with this Contract.

#### 3.6 Small Business

3.6.1 This clause 3.6 applies where the Service Provider is a Small Business, the total value of the Ordered Services for this Contract is \$1 million (GST inclusive) or less and the Agency is subject to the *Financial Management and Accountability Act 1997* (Cth).

3.6.2 If the Agency fails to pay the Service Provider an uncontested amount payable by it under this Contract within 30 days of receipt of a correctly rendered invoice, the Agency agrees to pay simple interest on the unpaid amount in accordance with the formula set out in clause 3.6.4.

3.6.3 Interest is payable by the Agency only when the amount of interest calculated using the formula exceeds \$10 and the Service Provider has issued a correctly rendered invoice in relation to the interest.

3.6.4  $SI = UA \times GIC \times D$  where:

- a. SI is the simple interest amount;
- b. UA is the unpaid amount;
- c. GIC is the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day; and
- d. D is the number of days from the day after payment was due up to and including the Payment Day.

## 4 Intellectual Property

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#### 4.1 Use of Commonwealth Material

4.1.1 The Agency agrees to provide Commonwealth Material to the Service Provider as specified in the Order or otherwise agreed by the Agency.

4.1.2 The Agency grants (or will procure) a royalty-free, non-exclusive licence for the Service Provider to use, reproduce and adapt Commonwealth Material for the purposes of this Contract.

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4.1.3 The Service Provider agrees to use Commonwealth Material strictly in accordance with any conditions or restrictions specified in the Order and any direction from the Agency.

#### **4.2 Rights in Contract Material**

4.2.1 Intellectual Property in all Contract Material vests or will vest in the Agency.

4.2.2 Clause 4.2.1 does not affect the ownership of Intellectual Property in:

- a. any Commonwealth Material incorporated into Contract Material; or
- b. any Existing Material.

4.2.3 The Service Provider grants to (or will procure for) the Agency a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit any Existing Material referred to in clause 4.2.2b, in conjunction with the Contract Material.

4.2.4 The Agency grants to the Service Provider a permanent, irrevocable, world-wide, royalty-free, non-exclusive licence, subject to clause 5, to use, reproduce, adapt, sublicense and exploit the Contract Material for the purpose of providing the Ordered Services.

4.2.5 The Service Provider warrants that:

- a. it is entitled; or
- b. it will be entitled at the relevant time,

to deal with the Intellectual Property in the Existing Material in the manner provided for in this clause 4.2.

#### **4.3 Moral Rights**

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

4.3.2 If clause 4.3.1 does not apply, the Service Provider agrees:

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

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

## **5 Confidentiality of Official Information and other security obligations**

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### **5.1 Interpretation**

- 5.1.1 In this clause 5:

<b>Official Resources</b>	includes: <ul style="list-style-type: none"><li>a. Official Information;</li><li>b. people who work for or with the Agency; and</li><li>c. assets belonging to (even if in the possession of contracted providers) or in the possession of the Agency;</li></ul>
<b>Security Classified Resources</b>	means Official Resources protected under the Commonwealth Protective Security Policy Framework which, if compromised, could have adverse consequences for the Agency; and
<b>Security Incident</b>	means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.

### **5.2 Confidentiality of Official Information**

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

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5.2.5 At the expiry or early termination of this Contract, unless instructed otherwise by the Agency, the Service Provider must immediately return all Official Information in its possession or control to the Agency.

#### **5.3 Other security obligations of Service Provider**

5.3.1 The Service Provider agrees:

- a. to comply with the Agency's security policies and the Commonwealth Protective Security Policy Framework or any replacement in force from time to time;
- b. to ensure that its Personnel wear a security or identification pass while on the Agency's premises;
- c. to ensure that all its Personnel who require access to Security Classified Resources have obtained the appropriate security clearance;
- d. to make its Personnel available to attend any security training provided by the Agency;
- e. to notify the Agency immediately if it becomes aware that a Security Incident has occurred and otherwise implement the Agency's procedures for Security Incident reporting as advised by the Agency from time to time;
- f. not to perform any part of the Ordered Services outside Australia without the Agency's prior written approval; and
- g. to comply with the additional security requirements specified through, the Order process or otherwise directed by the Agency, if any, and any variations or additions to those requirements as notified by the Agency from time to time.

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

#### **6 Privacy**

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##### **6.1 Interpretation**

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

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#### **6.2 Obligations of Service Provider in relation to privacy**

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

#### **7 Confidential Information of the Service Provider**

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#### **7.1 Confidential Information not to be disclosed**

- 7.1.1 Subject to clause 7.2, the Agency will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

#### **7.2 Exceptions to obligations**

- 7.2.1 The obligations on the Agency under this clause 7 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by the Agency to its Personnel solely in order to comply with obligations, or to exercise rights, under the Deed or this Contract;
  - b. is disclosed to the Agency internal management Personnel, solely to enable effective management or auditing of contract-related activities;
  - c. is disclosed by the Agency to the responsible Minister;
  - d. is disclosed by the Agency in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - e. is shared by the Agency within the Agency's organisation, or with another Commonwealth agency for any purpose;
  - f. is authorised or required by law to be disclosed; or
  - g. is in the public domain otherwise than due to a breach of this clause 7.

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- 7.2.2 Where the Agency discloses Confidential Information to another person pursuant to clauses 7.2.1a - 7.2.1e, the Agency will notify the receiving person that the information is confidential.
- 7.2.3 In the circumstances referred to in clauses 7.2.1a, 7.2.1b and 7.2.1e, the Agency agrees not to provide the information unless the receiving person agrees to keep the information confidential.

#### **8 Legal Services Directions**

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- 8.1.1 The Service Provider will, in relation to the Ordered Services it provides to the Agency, act in a manner that ensures the Agency remains in compliance with the Legal Services Directions.
- 8.1.2 The Service Provider will take all reasonable steps to ensure that it does not perform without proper authority such work proscribed under the Legal Services Directions, including tied work as described in the Legal Services Directions.
- 8.1.3 Where the Service Provider considers that the Ordered Services may involve work proscribed under the Legal Services Directions, for example tied work, the Service Provider will immediately notify the Agency in writing. The Agency reserves the right to:
- a. withdraw that part of the Ordered Services related to the proscribed work from the Service Provider; and
  - b. engage an approved legal service provider to undertake that part of the services related to proscribed work.
- 8.1.4 In the event that the Agency exercises its rights under clause 8.1.3, the Service Provider will hand over all files and documents relating to the work and cooperate fully in ensuring that the Agency and its nominated legal service provider are able to undertake the work effectively and efficiently.
- 8.1.5 When conducting litigation on behalf of the Agency, the Service Provider will ensure that the Agency remains compliant with the model litigant obligations under the Legal Services Directions.
- 8.1.6 The Service Provider will identify and advise the Agency of any significant issues that the Agency may need to report to the Commonwealth under the Legal Services Directions.
- 8.1.7 The Service Provider will inform the Agency immediately of, and promptly report to the Agency in writing, any breach or potential breach of the Legal Services Directions in relation to Ordered Services. Where the Service Provider is responsible for the

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relevant breach or potential breach of the Legal Services Directions, it will advise the Agency on remedial actions as appropriate at no cost to the Agency.

8.1.8 Where the Service Provider fails to comply with this clause 8, the Agency reserves the right not to pay the Service Provider for non-compliant work.

8.1.9 This clause 8 survives the expiration or termination of this Contract or the Deed.

#### **9 Termination or Reduction in Scope of Ordered Services**

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##### **9.1 Termination for convenience**

9.1.1 The Agency may by notice, at any time and in its absolute discretion terminate this Contract, or reduce the scope of any Ordered Services, immediately.

9.1.2 The Service Provider agrees, on receipt of a notice of termination or reduction:

- a. to stop or reduce work as specified in the notice;
- b. to take all available steps to minimise loss resulting from that termination or reduction; and
- c. to continue work on any part of any Ordered Services not affected by the notice.

9.1.3 In the event of termination under clause 9.1.1, the Agency will be liable only:

- a. to pay any fees due under a Contract relating to Ordered Services completed before the date of termination;
- b. to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Ordered Services not covered under clause 9.1.3a; and
- c. to pay any allowance and meet any costs unavoidably incurred under a Contract before the effective date of termination.

9.1.4 The Agency will not be liable to pay amounts under clause 9.1.3a and 9.1.3b which would, added to any fees already paid to the Service Provider under a Contract, together exceed the fees specified through the Order process.

9.1.5 In the event of a reduction in the scope of any Ordered Services, the Agency's liability to pay fees, allowances or costs under any relevant Contract will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Ordered Services.

9.1.6 The Service Provider will not be entitled to compensation for loss of prospective profits.

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#### 9.2 Termination for default

- 9.2.1 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; or
  - b. *capable of remedy* – may, by notice require that the failure be remedied within a reasonable time as specified in the notice and, if not remedied within that time, may terminate this Contract immediately by giving a second notice.
- 9.2.2 The Agency may also by notice terminate this Contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:
- a. fails to comply with any requirement relating to the Legal Services Directions;
  - b. *being a corporation* – comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration;
  - c. *being an individual or partnership* – becomes bankrupt or enters into a scheme of arrangement with creditors; or
  - d. is terminated for default, reduced in scope or resigns from the LSMUL under clause 10 of the Deed.

#### 9.3 Variation

- 9.3.1 The terms of this Contract, including any Specific Agency Requirements, may not be varied unless the Agency and the Service Provider have agreed to that variation in writing.
- 9.3.2 Any such variation is not a variation of the Default Terms and Conditions in Schedule 4 of the Deed.

## 10 Operational Clauses

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#### 10.1 Audit and access

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

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- b. to permit those persons to inspect and take copies of any Material relevant to the Ordered Services.

10.1.2 The rights referred to in clause 10.1.1 are subject to:

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

10.1.3 The Auditor-General, the FOI Commissioner, the Privacy Commissioner, and the Information Commissioner and their delegates are persons authorised for the purposes of this clause 10.1.

10.1.4 This clause 10.1 does not detract from the statutory powers of the Auditor-General, the FOI Commissioner, the Privacy Commissioner, or the Information Commissioner and their delegates.

#### **10.2 Inquiries**

10.2.1 The Service Provider agrees to provide free of charge all reasonable assistance requested by the Agency in respect of any inquiry concerning the Service Provider's performance of Ordered Services.

10.2.2 Without limitation to the generality of clause 10.2.1:

- a. the assistance to be provided by the Service Provider under clause 10.2.1 will include, as appropriate, the preparation of reports, the provision of documents or other Material, and making available relevant Personnel to provide information or answer questions on any matters relevant to or arising from this Contract which might reasonably be expected to be within the knowledge of the Service Provider; and
- b. an inquiry referred to in clause 10.2.1 will include any administrative or statutory review, audit or inquiry (whether within or external to the Agency), any requests for information or documents directed to the Agency and any inquiry conducted by Parliament or any Parliamentary committee.

10.2.3 The Project Officer will endeavour to notify the Service Provider as early as possible of any assistance required under clause 10.2.1, provided always that the Service Provider acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.

10.2.4 This clause 10.2 survives expiration or termination of this Contract.

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#### 10.3 Occupational health and safety

- 10.3.1 The Service Provider agrees, in carrying out this Contract, to comply with:
- a. all relevant Legislation, codes of practice and national standards relating to occupational health and safety; and
  - b. all applicable policies and procedures relating to occupational health and safety including those that apply to the Agency's premises when using those premises.
- 10.3.2 In the event of any inconsistency between any of the policies and procedures referred to in clause 10.3.1b, the Service Provider will comply with those policies and procedures that produce the highest level of health and safety.

#### 10.4 Extension of provisions to subcontractors and Personnel

- 10.4.1 In this clause 10.4:

<b>Requirement</b>	means an obligation, condition, restriction or prohibition binding on the Service Provider under this Contract.
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- 10.4.2 The Service Provider agrees to ensure that:
- a. its subcontractors and Personnel comply with all relevant Requirements; and
  - b. any contract entered into in connection with this Contract imposes all relevant Requirements on the other party.
- 10.4.3 The Service Provider agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the Agency.

#### 11 Reporting and Performance Measurement

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##### 11.1 Reports

- 11.1.1 The Service Provider must provide the Agency any reports specified in the Order.

##### 11.2 Performance measurement

- 11.2.1 An Agency will monitor the Service Provider's performance in delivering the Services by the use of any performance measurement assessment notified to the Service Provider from time to time, as the Agency, in its absolute discretion, deems appropriate.

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11.2.2 In addition, an Agency will complete evaluation forms in accordance with the Operational Rules. An Agency may at its discretion, provide a copy of the completed evaluation form to the Participant.

## **12 Dispute Resolution**

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### **12.1 Interpretation**

12.1.1 In this clause 12, a reference to a 'party' is a reference to the Service Provider or an Agency, as the case may be.

### **12.2 Procedure for dispute resolution**

12.2.1 The parties agree that 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. the officer responsible for management of this Contract for each party will use genuine steps to resolve any dispute by direct negotiation in the first instance;
- c. if the dispute cannot be resolved, each party will nominate a representative not having any prior involvement in the dispute;
- d. the representatives will use genuine steps to try to settle the dispute by direct negotiation between them;
- e. failing settlement within 10 Business Days after the nomination of a representative in accordance with clause 12.2.1.c, 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;
- f. the parties will cooperate fully with any process instigated under clause 12.2.1.e in order to achieve a speedy resolution; and
- g. if:
  - i. a resolution is not reached within 20 Business Days after the dispute is referred to an independent third person in accordance with clause 12.1.1.e; or

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- ii. if no agreement as to an independent third person or resolution of dispute is reached following 30 Business Days commencing on the nomination of a representative in accordance with clause 12.2.1.c, either party may commence legal proceedings.

#### **12.3 Costs**

- 12.3.1 Each party will bear its own costs of complying with this clause 12, and the parties will bear equally the cost of any third person engaged under clause 12.2.1.e.

#### **12.4 Continued performance**

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

#### **12.5 Exemption**

- 12.5.1 This clause 12 does not apply to:
  - a. action by either party under or purportedly under any clause relating to termination, whether for convenience or for default; or
  - b. legal proceedings by either party seeking urgent interlocutory relief.

## **13 Liability**

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#### **13.1 Proportionate liability regimes excluded**

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

#### **13.2 Indemnity**

- 13.2.1 The Service Provider indemnifies an Agency from and against any:
  - a. cost or liability incurred by the Agency;
  - b. loss of or damage to property of the Agency; or
  - c. loss or expense incurred by the Agency in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Agency,arising from either:
  - d. a breach by the Service Provider of this Contract; or

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- e. an unlawful or negligent act or omission of the Service Provider or its Personnel in connection with this Contract.
- 13.2.2 The Service Provider's liability to indemnify an Agency under clause 13.2.1 will be reduced proportionately to the extent that any unlawful or negligent act or omission of the Agency or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- 13.2.3 The right of an Agency to be indemnified under this clause 13.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Agency is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.
- 13.2.4 This clause 13 survives the expiration or termination of this Contract.

#### **14 Insurance**

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- 14.1.1 Without limiting the Service Provider's obligations under this Contract, the Service Provider must, and must ensure that any Subcontractor will, arrange and maintain the insurances specified in the Order for the term of this Contract or, in respect of professional indemnity insurance, the term of this Contract plus seven years.
- 14.1.2 An Agency will not have to reimburse the Service Provider for any extra premium in relation to additional insurances or additional level of coverage required under the Order.

#### **15 Notices**

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##### **15.1 Format, addressing and delivery**

- 15.1.1 A notice under this Contract is only effective if it is in writing, and dealt with as follows:
- a. *if given by the Service Provider to an Agency* – addressed to the Agency's Representative at the address specified in the Order or as otherwise notified by the Agency; or
  - b. *if given by an Agency to the Service Provider* – given by the Agency's Representative (or any superior officer to or authorised delegate of the Agency's Representative) and addressed (and marked for attention) as specified in the Order or as otherwise notified by the Service Provider.
- 15.1.2 A notice is to be:
- a. signed by the person giving the notice and delivered by hand; or

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- 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.

#### 15.2 When effective

15.2.1 A notice is deemed to be effected:

- a. *if delivered by hand* – upon delivery to the relevant address;
- b. *if sent by post* – upon delivery to the relevant address; or
- c. *if transmitted electronically* – upon actual receipt by the addressee.

15.2.2 A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

#### 16 General Provisions

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##### 16.1 Conflict of interest

16.1.1 The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict, except as disclosed in writing to the relevant Agency, exists or is likely to arise in the performance of the Ordered Services.

16.1.2 The Service Provider must use its best endeavours (including making all appropriate enquiries) to ensure that:

- a. a situation does not arise which may result in a Conflict; and
- b. any Personnel of the Service Provider does not engage in any activity or obtain any interests likely to conflict with or restrict the Service Provider in providing Services to an Agency fairly and independently.

16.1.3 If, a Conflict arises, or appears likely to arise, the Service Provider agrees:

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

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#### **16.2 Co-operation**

- 16.2.1 The parties intend to conduct themselves for the purposes of the performance of this Contract in the spirit of co-operation and good faith. For avoidance of doubt, the spirit of co-operation and good faith does not override or limit the provisions of this Contract.
- 16.2.2 An Agency will co-operate with the Service Provider by:
- a. making available, as reasonably requested by the Service Provider, management decisions and information that is necessary for the Service Provider to provide the Ordered Services, and
  - b. setting priorities for the Ordered Services.
- 16.2.3 The Service Provider must co-operate with any other service provider appointed by an Agency (including the Agency when it is providing services similar to or related to the Services in-house) to ensure the integrated and efficient carrying on of the Agency's operations and must provide such reasonable assistance to other service providers as the Agency may reasonably request, and at no additional cost to the Agency.
- 16.2.4 To ensure maximum efficiency in the delivery of Ordered Services, where an Agency provides services in-house, the Agency will co-operate with the Service Provider and where the Agency uses another service provider, the Agency will use its reasonable endeavours to ensure that the service provider co-operates with the Service Provider.

#### **16.3 Relationship of parties**

- 16.3.1 The Service Provider is not by virtue of this Contract an officer, employee, partner or agent of an Agency, nor does the Service Provider have any power or authority to bind or represent an Agency.
- 16.3.2 The Service Provider agrees:
- a. not to misrepresent its relationship with an Agency; and
  - b. not to engage in any misleading or deceptive conduct in relation to the Services.

#### **16.4 Waiver**

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

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16.4.2 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.

#### 16.5 Assignment

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

#### 16.6 Survival

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

- a. licensing of Intellectual Property;
- b. confidentiality;
- c. privacy;
- d. books and records;
- e. audit and access;
- f. security;
- g. an indemnity;
- h. Legal Services Directions;
- i. inquiries; or
- j. any other provision which expressly or by implication from its nature is intended to continue.

#### 16.7 Compliance with Legislation

16.7.1 The Service Provider agrees to comply with any Legislation applicable to its performance of this Contract, in particular:

- a. the *Crimes Act 1914* (Cth);
- b. the *Criminal Code Act 1995* (Cth);
- c. the *Privacy Act 1988* (Cth);
- d. the *Racial Discrimination Act 1975* (Cth);
- e. the *Sex Discrimination Act 1984* (Cth);
- f. the *Disability Discrimination Act 1992* (Cth);

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- g. the *Age Discrimination Act 2004* (Cth);
- h. the *Equal Opportunity for Women in the Workplace Act 1999* (Cth);
- i. the *Occupational Health and Safety Act 1991* (Cth);
- j. the *Freedom of Information Act 1982* (Cth);
- k. the *Fair Work Act 2009*;
- l. the *Auditor-General Act 1997* (Cth);
- m. the *Competition and Consumer Act 2010* (Cth);
- n. the *Judiciary Act 1903* (Cth); and
- o. the Legal Services Directions.

#### **16.8 Compliance with Fair Work Principles**

- 16.8.1 The Service Provider must comply, and as far as practicable must ensure its subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at [www.deewr.gov.au/fairworkprinciples](http://www.deewr.gov.au/fairworkprinciples)), including by:
- a. complying with all applicable workplace relations, occupational health and safety and workers' compensation laws;
  - b. informing the Agency of any adverse Court or Tribunal decision for a breach of workplace relations law, occupational health and safety laws or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
  - c. providing the Agency with any information the Agency reasonably requires to confirm that the Service Provider (and any subcontractor) is complying with the Fair Work Principles; and
  - d. participating in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.
- 16.8.2 Compliance with the Fair Work Principles does not relieve the Service Provider from its responsibility to comply with its other obligations under this Contract.
- 16.8.3 If the Service Provider does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Agency, the Agency, or any other Commonwealth agency, will be entitled to publish details of the Service

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Provider's failure to comply (including the Service Provider's name) and to otherwise provide those details to other Commonwealth agencies.

16.8.4 As far as practicable, the Service Provider must:

- a. not use a subcontractor in relation to a Contract where the subcontractor would be precluded from contracting directly with the Agency under the requirements of the Fair Work Principles; and
- b. ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations under clauses 16.8.1.

#### **16.9 Applicable Law**

16.9.1 This Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory, unless otherwise specified through the Order process.

16.9.2 The parties submit to the non-exclusive jurisdiction of the Australian Capital Territory.