



Australian Government
Department of Veterans' Affairs

Deed of Standing Offer for the provision of Rehabilitation Services

Commonwealth of Australia as represented by the
**Department of Veterans' Affairs & the
Repatriation Commission and the Military
Rehabilitation and Compensation Commission**

ABN 23 964 290 824

and

[Insert name of Contractor]

ACN/ABN **[Insert number]**

[Insert date] [20XX] (DRAFT)

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THIS DEED is made on **[Insert date]** [20**XX**]

BETWEEN:

1. **Commonwealth of Australia as represented by the Department of Veterans' Affairs & the Repatriation Commission and the Military Rehabilitation and Compensation Commission** ABN 23 964 290 824 of Gnabra Building, 21 Genge Street, Canberra ACT (Department);

and
2. **[Insert name of Contractor]** ACN/ABN **[Insert number]** of **[Insert address]** (Contractor).

RECITALS:

- (A) The Department requires the provision of certain services for the purposes of Rehabilitation Services under the Rehabilitation Program and Veterans' Vocational Rehabilitation Scheme (VVRS).
- (B) The Contractor has fully informed itself on all aspects of the work required to be performed and has represented that it has the skills and experience to perform that work.
- (C) The Department has agreed to engage the Contractor to provide the Services on the terms and conditions in this Deed and as set out in any Contract.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The meaning of the acronyms and defined terms used in this Deed and in any Contract is set out in Schedule 3 (Glossary) and Schedule 4 (Statement of Requirements).

1.2 **Rules of interpretation**

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

- (a) a word that suggests one gender includes the other genders;
- (b) a singular word includes the plural, and vice versa;
- (c) a reference to a person includes a body politic, body corporate or partnership;
- (d) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning;
- (e) headings are for convenience only and do not affect interpretation;
- (f) a reference to 'dollars', 'AUD' or '\$' is a reference to Australian dollars;
- (g) the word 'includes' in any form is not a word of limitation;
- (h) the meaning of general words is not limited by specific examples;
- (i) if the last day of any period for the doing of an action falls on a day which is not a Business Day, the action must be done no later than the end of the next Business Day;

- (j) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Deed;
- (k) a reference to any legislation, or legislative provision, includes any statutory modification, substitution or re-enactment of that legislation or legislative provision;
- (l) a reference to a 'party' is to a party to this Deed and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it, or a Contract or any part of it;
- (n) the Schedules and any Attachments form part of this Deed; and
- (o) a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

1.3 **Precedence of documents**

If there is any inconsistency between the terms of any document that forms part of the Deed, a descending order of precedence will be accorded to:

- (a) the agreed terms and conditions of the Deed and the Glossary;
- (b) Schedule 4 (Statement of Requirements);
- (c) the other Schedules;
- (d) any Attachments to the Schedules; and
- (e) documents incorporated by reference in this Deed,

so that the term in the higher ranked document will, to the extent of the inconsistency, prevail.

1.4 **Entire agreement**

To the extent permitted by law, this Deed and each Contract represents the entire agreement between the parties about its subject matter and replaces any previous understandings, agreements or representations.

1.5 **Multi-agency Access – Not used**

1.6 **Panel Review and Refresh**

- (a) Panel reviews will be undertaken at the sole discretion of the Department on an as needs basis.
- (b) A Panel review may result in the Department identifying a need to undertake a Panel refresh. A Panel refresh may be undertaken where the Department:
 - (i) identifies the need for one or more new Goods and/or Services; and
 - (ii) identifies the need to add existing or new Panel Members to one or more existing Goods and/or Services, due to:

- (A) Goods and/or Services being unavailable through existing Panel Members; or
 - (B) the Department's demand for the Goods and/or Services not being met by existing Panel Members;
- (iii) conducts one or more Panel reviews demonstrating that value for money is not being provided by existing Panel Members for the relevant Goods and/or Services; or
- (iv) specific skill sets required for the Goods and/or Services are unavailable from existing Panel Members.
- (c) A Panel refresh may result in one or more of the following:
 - (i) adding a new Goods and/or Services to the Panel;
 - (ii) adding one or more existing Goods and/or Services to the scope of an existing Panel Member's Services;
 - (iii) adding additional Panel Members;
 - (iv) removing one or more Panel Members;
 - (v) removing one or more Goods and/or Services from the Panel; or
 - (vi) removing one or more Goods and/or Services from the scope of one or more existing Panel Members' Services.
- (d) Any Panel refresh to add new Goods and/or Services or new Panel Members will be undertaken by the Department through an open approach to the market through AusTender. Existing Panel Members, including the Contractor, and new suppliers will be invited to respond. All responses to invitations to add Panel Members to an existing Goods and/or Services will be evaluated in accordance with the criteria used when evaluating responses to RFT **DVA-GEN 2022-23/039A**
- (e) Where a Panel Member does not respond to an invitation to participate in a Panel refresh, the Goods and/or Services offered under that Panel Member's Deed will remain unchanged for the purposes of the Panel refresh including the original term.
- (f) Any variations to the provision of the Goods and/or Services resulting from a Panel refresh will be limited to the extent that those changes affect Schedule 1 [Deed Details] and Schedule 5 [Fees and Payment] and must comply with clause 18.6.

2. **TERM**

2.1 **Commencement**

- (a) This Deed begins on the Commencement Date and (unless otherwise terminated earlier) continues for the duration of the Initial Deed Period (**Term**).

2.2 **Option to extend**

- (a) The Department may extend the Term for the Option Period(s), on the terms and conditions then in effect, by giving the Contractor notice in writing at any time prior to the expiration of this Deed, unless otherwise specified at item 3 of Schedule 1 (Deed Details).

- (b) Any extensions exercised in accordance with clause 2.2(a) take effect from the end of the Initial Deed Period.

3. FORMATION, SCOPE AND OPERATION OF THE DEED

3.1 Standing Offer

- (a) The Deed constitutes a standing offer for the Term during which the Department may, on an as-required basis, enter into a Contract with the Contractor in accordance with the process set out under clause 3.2.
- (b) The range of Services which the Contractor offers to the Department under this Deed are set out at Schedule 4 (Statement of Requirements).
- (c) The maximum Fees that will apply to all work performed under this Deed and any Contract are as set out in Schedule 5 (Fees and Payment).

3.2 Ordering Services

- (a) If the Department requires Services from the Contractor, the Department Representative may issue the Contractor with a Referral (Official Order) in writing, via an online system, Rehabilitation & Compensation Integrated Support Hub (R&C ISH) that generates an email to the Contractor. The Contractor must advise the Department in writing within 1 Business Day of the receipt of the Referral whether they accept or decline the Referral.
- (b) If the Department Representative issues a Referral/Official Order to the Contractor, the Referral/Official Order will form the Contract for the relevant Services.

3.3 Terms of a Contract

- (a) Unless otherwise expressly agreed in the Referral/Official Order, the terms of each Contract will be those set out in the following documents in a descending order of precedence:
 - (i) the terms and conditions of this Deed as applicable to the Contract;
 - (ii) the Referral/Official Order;
 - (iii) the attachments to this Deed as applicable to the Contract; and
 - (iv) any documents incorporated by express reference as part of the Contract,so that the term in the higher ranked document will prevail, to the extent any inconsistency between the terms of these documents arises.
- (b) A Contract begins on the Order Commencement Date and continues for the Order Term, unless the Contract is terminated earlier in accordance with clause 16 of this Deed or otherwise in accordance with the terms of the relevant Contract.
- (c) No Services must be provided by the Contractor, and no amount will become payable to the Contractor in respect of the Services, unless and until a Referral/Official Order has been issued by the Department Representative in accordance with clause 3.2(a).

3.4 No Assurance of Orders

- (a) The Department does not make any representations or in any way bind itself to place any specific number of orders, or any orders at all, during the Term.

- (b) Nothing in this Deed or any Contract is to be interpreted as providing that the:
 - (i) Contractor has the right to be the sole provider of the Services, or any part of the Services, to the Department; or
 - (ii) Department is prevented from seeking services that are similar to, or the same as, the Services from other suppliers.

4. **PROVISION OF SERVICES**

4.1 **Contractor to provide Services**

For each Contract formed in accordance with clause 3, the Contractor must provide the relevant Services in accordance with this Deed and the relevant Contract, including by:

- (a) achieving Milestones, and obtaining acceptance of any applicable Deliverables, by the relevant Milestone dates; and
- (b) achieving or exceeding any other performance requirements set out in Schedule 4 (Statement of Requirements).

4.2 **Transition In**

The Contractor must:

- (a) provide the Transition In Services and use reasonable endeavours to ensure minimal disruption to the Department's activities;
- (b) provide all assistance as reasonably required by the Department to ensure the orderly transfer from the Current Service Provider to the Contractor; and
- (c) use diligent efforts to identify and resolve, or assist the Department in the resolution of, any problems encountered in the timely completion of each transition task required for the provision of the Transition In Services.

4.3 **Acceptance and ownership of Deliverables**

- (a) The Department may accept or, where these do not comply with the requirements of this Deed or the relevant Contract, reject any Deliverable within 10 Business Days after the Deliverable is received.
- (b) If the Department rejects a Deliverable, the Department may require the Contractor to provide, at the Contractor's cost, replacement or rectified Deliverables which comply with the requirements of this Deed and the relevant Contract, within a period notified by the Department.
- (c) Title to the Deliverables passes to the Department upon acceptance of these in accordance with clause 4.3(a).

4.4 **Unsatisfactory performance**

- (a) If:
 - (i) the Contractor does not, in the reasonable opinion of the Department, provide any part of the Services within the timeframes or to the standard required by the Department; and
 - (ii) that failure is not remedied within 5 Business Days after the Contractor is given a notice requiring the unsatisfactory performance to be remedied,

the Department may in its discretion:

- (iii) direct the Contractor to remedy the failure, at the Contractor's expense, under the supervision of and in accordance with the directions of the Department;
 - (iv) require the Contractor to engage another person to perform the Services within a reasonable timeframe, at the Contractor's expense;
 - (v) step-in and perform the Services itself, at the Contractor's cost;
 - (vi) engage another person to perform the Services, at the Contractor's expense; or
 - (vii) terminate the relevant Contract in accordance with clause 16.2.
- (b) For the avoidance of doubt, this clause 4.4 does not limit any other remedy that the Department has in respect of unsatisfactory performance, including to recover any amounts calculated in accordance with any performance regime set out in the relevant Contract.

4.5 **Representations and warranties of the Contractor**

In performing its obligations under clause 4.1, the Contractor represents and warrants that:

- (a) **(standards)** the Services will comply with relevant Australian industry standards, best practices and guidelines, or where none apply, the relevant international industry standards, best practice and guidelines;
- (b) **(directions)** it will act in accordance with any reasonable directions provided by the Department from time to time;
- (c) **(personnel)** in providing the Services it will use appropriately qualified, skilled and experienced Personnel;
- (d) **(approvals, compliance)** it will obtain and maintain any licences, permits, registrations or regulatory approvals which are:
 - (i) required by law and necessary for the provision of the Services; or
 - (ii) otherwise specified as necessary at item 4 of Schedule 1 (Deed Details);
- (e) **(cooperation)** it will cooperate with the Department, and any other service providers to the Department where necessary, and otherwise act in good faith; and
- (f) **(fitness)** the Services provided will:
 - (i) conform to the requirements of and be provided in accordance with this Deed and the relevant Contract; and
 - (ii) be fit for purpose.

5. **FEES AND PAYMENT**

5.1 **Obligation to pay**

- (a) The Contract Fees:
 - (i) will be based on the Fees set in Schedule 5 (Fees and Payment), unless otherwise agreed; and

(ii) are payable in accordance with this Deed and the relevant Contract.

(b) The total invoiced amount for a Contract must not exceed the total amount of the Contract Fees payable, unless the parties vary the Contract Fees amount in advance in writing.

5.2 **Claims for payment**

(a) The Contractor may submit a claim for payment in accordance with this Deed and the relevant Contract.

(b) All claims for payment submitted under clause 5.2(a) must be:

(i) in the form of a correctly rendered invoice in accordance with clause 5.6; and

(ii) submitted to the Department Representative in accordance with Schedule 4 (Statement of Requirements).

5.3 **Payment**

(a) On receipt of a claim for payment, the Department Representative must either accept or reject the claim within a reasonable period.

(b) If a claim is approved under clause 5.3(a), the Department must pay the Contractor within 30 calendar days of receipt of the claim.

(c) If the Department Representative rejects a claim under clause 5.3(a), the Department Representative must, within a reasonable time of the receipt of the claim, notify the Contractor in writing of the:

(i) need to resubmit the claim;

(ii) reasons for rejection of the claim; and

(iii) any action to be taken by the Contractor for the claim to be rendered correct for payment.

5.4 **Late payment – Not used**

5.5 **Withholding payment**

If:

(a) the Contractor fails to provide a correctly rendered invoice in accordance with clause 5.6; or

(b) the Contractor's performance under this Deed or a Contract is in dispute,

the Department may:

(c) reject any related claim in accordance with clause 5.3(a); and

(d) withhold all or part of any payment due to the Contractor under the relevant Contract, until the relevant issue is resolved.

5.6 **Invoicing**

An invoice is correctly rendered if it meets the requirements of a valid tax invoice under the GST Law and:

- (a) bears a unique invoice number;
- (b) sets out the Contractor's name, ABN and the title of this Deed;
- (c) identifies the Referral/Official Order number and which part of the Services the invoice relates to;
- (d) specifies the total amount payable (including the amount of GST which is to be shown separately);
- (e) is correctly addressed and calculated in accordance with this Deed and the relevant Contract; and
- (f) provides the date of issue for the tax invoice.

5.7 **Right of the Department to recover money**

- (a) Without limiting the Department's other rights or remedies under this Deed or any Contract, if:
 - (i) the Department elects in accordance with this Deed or any Contract to recover an amount from the Contractor; or
 - (ii) the Contractor otherwise owes any debt to the Department in relation to the Deed or any Contract,the Department may do one or both of the following:
 - (iii) deduct the amount from payment of any claim; or
 - (iv) give the Contractor a notice of the existence of a debt recoverable which must be paid by the Contractor within 30 days after receipt of the notice.
- (b) If any sum of money owed to the Department is not received by its due date for payment, the Contractor must pay to the Department interest at the General Interest Charge Rate calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Contractor makes the required payment.

5.8 **Taxes**

Unless expressly stated otherwise:

- (a) all amounts payable, consideration provided or monetary limits in this Deed or any Contract are inclusive of any taxes, duties or other government charges; and
- (b) all taxes, duties or other government charges levied in connection with this Deed or any Contract are to be borne by the Contractor.

6. **GST**

6.1 **Interpretation**

In this clause 6, a word or expression defined in the GST Law has the meaning given to it in the GST Law.

6.2 **GST warranty**

The Contractor warrants that it is registered for GST and will immediately advise the Department if it ceases to be registered for GST.

6.3 **GST gross up**

If a party (**Supplier**) makes a supply under or in connection with this Deed or any Contract in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier, an additional amount equal to the GST payable on the supply (**GST Amount**).

6.4 **Reimbursements**

If a party must reimburse or indemnify another party for a Loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss, cost or expense, and then increased in accordance with clause 6.3.

6.5 **Exclusion of GST from calculations**

If a payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

6.6 **Adjustments**

- (a) If the GST payable by a Supplier on any supply made under or in connection with this Deed or any Contract varies from the GST Amount paid or payable by the Recipient under clause 6.3 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 6.3.
- (c) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 10 Business Days after becoming aware of the adjustment.
- (d) A party need not make a payment for a taxable supply made under or in connection with this Deed or any Contract:
 - (i) until it receives a tax invoice for the supply to which the payment relates; and
 - (ii) in the case of any tax invoice issued by the Contractor, unless the tax invoice complies with clause 5.6.

7. INTELLECTUAL PROPERTY

7.1 Ownership and licensing of Intellectual Property

- (a) Nothing in this Deed or any Contract affects the ownership of Background IP or Third Party IP.
- (b) The ownership and licensing model for Foreground IP of this Deed and any Contract is that set out in clause 7.2.

7.2 Department ownership of Foreground IP

- (a) Ownership of all Foreground IP vests on its creation in the Department.
- (b) Unless otherwise specified in a Contract, the Department grants the Contractor a limited, royalty-free, revocable, world-wide and non-exclusive licence to use, reproduce, adapt, communicate and further sub-licence (subject to the same restrictions (as a minimum) as the licences granted under this clause 7.2(b)) all Foreground IP solely for the purpose of performing its obligations under the relevant Contract.

7.3 Intellectual Property licence in Background IP

- (a) The Contractor grants to the Department a perpetual, irrevocable, royalty-free, fully-paid up, world-wide and non-exclusive licence to use, reproduce, adapt, communicate, exploit and further sub-licence the Contractor's Background IP in order to receive the full benefit of the Services.
- (b) The Department grants to the Contractor a licence to use the Department's Background IP in accordance with clause 10.5(e).

7.4 Third Party IP

The Contractor will use reasonable endeavours to ensure the Department is granted a licence in respect of any Third Party IP on the best available commercial terms.

7.5 IP Register – Not used

7.6 Intellectual Property warranty

- (a) The Contractor warrants and must ensure that:
 - (i) the Intellectual Property rights assigned or licensed to the Department under this clause 7 are sufficient to enable the Department to receive the full benefit of the Services contemplated under this Deed and any Contract; and
 - (ii) an activity permitted, or purportedly permitted, by or under a licence or assignment of Intellectual Property to the Department under this Deed or a Contract will not:
 - (A) infringe the Intellectual Property rights or Moral Rights of any person; or
 - (B) give rise to any liability to make royalty or other payments to any person.

- (b) The Contractor must notify the Department if it becomes aware of any challenge, claim or proceeding arising in respect of any Intellectual Property assigned or licensed to the Department under this Deed or any Contract or in respect of the Moral Rights of any person.

7.7 Moral Rights

The Contractor must use reasonable endeavours to obtain genuine consents in writing from its Personnel for the Contractor or the Department to use material created by those Personnel in the manner anticipated under this Deed or a Contract, including consent to the Specified Acts.

8. INDEMNITIES, RISK AND LIABILITY

8.1 Responsibility of Contractor

The Contractor is fully responsible for the performance of this Deed and any Contract and the Department will not be responsible for any aspect of the delivery of the Services.

8.2 Indemnity

- (a) The Contractor must indemnify the Department (and any of the Department's officers, employees or agents, for whom the Department holds the benefit of this indemnity on trust) and pay on demand the amount of any Loss arising out of or in connection with any:
 - (i) breach of this Deed or any Contract by the Contractor or its Personnel;
 - (ii) negligent, unlawful or wilfully wrongful act or omission of the Contractor or its Personnel; or
 - (iii) infringement or alleged infringement of a third party's Intellectual Property rights or Moral Rights where the infringement or alleged infringement arises out of any activity permitted or purportedly permitted under any assignment or licence referred to in clause 7 of this Deed or otherwise under this Deed or any Contract.
- (b) The Contractor's liability under clause 8.2(a) will be reduced proportionately to the extent that the Contractor demonstrates the Loss arose out of or as a consequence of any negligent, unlawful or wilfully wrongful act or omission of the Department or its officers, employees or agents.

8.3 Limitation of liability

- (a) Subject to clause 8.3(b), the liability of the Contractor to the Department arising out of the Contractor's performance of the Deed and any Contracts will be limited in aggregate to the amount specified in item 5 of Schedule 1 (Deed Details).

- (b) The limitation in clause 8.3(a) does not apply to liability of the Contractor for:
 - (i) personal injury or death;
 - (ii) loss of, or damage to, third party property or the Department's Property;
 - (iii) breach of any Intellectual Property rights, Moral Rights, confidentiality, privacy or security obligations; or
 - (iv) any Fraud, breach of legislation, unlawful (not including breach of this Deed or any Contract) or wilfully wrongful act or omission of the Contractor or its Personnel.

8.4 Performance guarantee – Not used

8.5 Bank guarantee – Not used

9. INSURANCE

9.1 Insurance policies

In connection with this Deed and the performance of any Contract, the Contractor must have and maintain for the Term, valid and enforceable insurance policies for:

- (a) workers compensation;
- (b) public and products liability; and
- (c) professional indemnity,

for the amounts specified at item 8 of Schedule 1 (Deed Details).

9.2 Evidence of insurance policies

The Contractor must provide the Department with a copy of the insurance policies or certificates of currency on written request by the Department.

10. DEED MANAGEMENT

10.1 Administration of the Deed

- (a) Each party must at all times during the Term ensure that it has nominated one suitably qualified administrator under this Deed. As at the Commencement Date the administrator for each party will be:
 - (i) for the Department, the Department Representative; and
 - (ii) for the Contractor, the Contractor Representative.
- (b) The Contractor must:
 - (i) liaise with the Department Representative as reasonably required; and
 - (ii) comply with reasonable directions of the Department Representative issued in accordance with this Deed or any Contract.
- (c) The giving of a direction by the Department Representative will not in any way reduce or otherwise affect the Contractor's obligations under this Deed or any Contract.

10.2 Notices

- (a) A notice, consent or other communication under this Deed or any Contract is only effective if it is in writing, and either:
 - (i) signed by the person giving the notice and sent by mail; or
 - (ii) transmitted electronically or by email, by the person giving the notice.
- (b) A notice that complies with clause 10.2(a) is regarded as given and received:
 - (i) if sent by mail, upon delivery to the relevant address; or
 - (ii) if sent by email, on the day on which it is transmitted or, if transmitted after 5:00pm, on the next Business Day.
- (c) A party's address and contact details are those set out in Schedule 1 (Deed Details), or as the party notifies the sender from time to time.

10.3 Specified Personnel

- (a) The Contractor must ensure that:
 - (i) performance of any Contract involves the use of the Specified Personnel; and
 - (ii) all Personnel are aware of and ensure compliance with the Contractor's obligations under this Deed and any relevant Contract.
- (b) Where Specified Personnel, are unable to undertake work in relation to a relevant Contract, including losing any required licensing or accreditation, the Contractor must:
 - (i) notify the Department Representative immediately; and
 - (ii) provide a suitable replacement acceptable to the Department at the earliest opportunity.
- (c) The Department may, by written notice to the Contractor, require the removal of any Personnel (including Specified Personnel) from the performance of a Contract. The Contractor must promptly arrange for the removal of such Personnel and for a suitable replacement acceptable to the Department at the earliest opportunity.
- (d) If the Contractor replaces any Personnel under this clause 10.3, they must do so at their own cost.

10.4 Subcontracting

- (a) The Contractor may Subcontract the whole or any part of the work under the Deed or any Contract.
- (b) The Contractor must provide details of any Subcontract it has entered into for the performance of this Deed or any Contract as requested by the Department.
- (c) The Department may impose such conditions (if any) it considers appropriate for any Subcontract, on reasonable grounds, at any time.
- (d) The Contractor must ensure that:
 - (i) each Subcontractor agrees that the Department may disclose the Subcontractor's name and the nature of the services being subcontracted, publicly; and
 - (ii) every Subcontract contains clauses that impose obligations on the Subcontractor and grant rights to the Department (either directly or through the Contractor) the same as those obligations imposed on the Contractor and those rights granted to the Department, under:
 - (A) clause 7 (Intellectual Property);
 - (B) clause 9 (Insurance);
 - (C) clause 10.4 (Subcontracting);
 - (D) clause 10.6 (Conflict of interest);
 - (E) clause 11 (Recordkeeping and audit);
 - (F) clause 12 (Confidentiality);
 - (G) clause 13.4 (Workplace Gender Equality);
 - (H) clause 13.7 (Modern Slavery Act);
 - (I) clause 13.8 (Elder Abuse);
 - (J) clause 13.9 (Child Safety and Vulnerable Persons);
 - (K) clause 13.10 (Freedom of Information);
 - (L) clause 13.12 (Privacy);
 - (M) clause 13.13 (Security); and
 - (N) clause 16 (Termination).
- (e) None of the following reduce or limit the Contractor's obligations or liabilities under or in relation to this Deed or any Contract:
 - (i) the Contractor Subcontracting any part of the work under this Deed or any Contract; or
 - (ii) an act or omission of a Subcontractor.

10.5 **Provision and use of Department Property**

- (a) Except as expressly provided for in this Deed or a Contract, the Department is not required to provide any Department Property to the Contractor to assist in the provision of the Services.
- (b) The Contractor must, and must ensure that its Personnel, only use the Department Property:
 - (i) for the purposes of the relevant Contract;
 - (ii) in a manner consistent with any applicable requirements for the Department Property, including any conditions set out in a Contract; and
 - (iii) for a purpose for which the Department Property was designed, manufactured or constructed.
- (c) The Contractor must:
 - (i) protect all Department Property from loss or damage;
 - (ii) maintain Department Property in good order; and
 - (iii) promptly return Department Property to the Department, upon request by the Department.
- (d) The Contractor will be liable for any loss of, or damage to, any Department Property whilst it is in the possession or control of the Contractor, whether or not the loss or damage arises due to the fault of the Contractor.
- (e) To the extent that the Contractor needs to use any Department Property to satisfy an express requirement of a Contract, the Department grants to the Contractor a limited, royalty-free, revocable, world-wide and non-exclusive licence to use, reproduce, adapt, communicate and further sub-licence (subject to the same restrictions (as a minimum) as the licence granted under this clause 10.5(e)) all Background IP in or related to the Department Property, solely for the purpose of the Contractor performing its obligations under the relevant Contract.
- (f) The Contractor must not, without the prior written approval of the Department Representative:
 - (i) modify Department Property; or
 - (ii) transfer possession or control of Department Property to any other person,except to the extent reasonably necessary to enable the Contractor to satisfy an express requirement of a Contract.
- (g) The Contractor acknowledges that Department Property remains, at all times, the property of the Department.

10.6 **Conflict of interest**

- (a) The Contractor warrants that as at the Commencement Date, to the best of its knowledge after making diligent inquiries, no conflict of interest exists or is likely to arise in relation to this Deed or any potential Contract, or any of its Personnel, that would impair its ability to impartially and objectively perform its obligations under this Deed or any Contract.

- (b) If during the performance of any Contract a conflict of interest arises or is likely to arise, the Contractor must:
 - (i) notify the Department immediately in writing;
 - (ii) provide full disclosure of all information relating to the conflict;
 - (iii) detail how the Contractor intends to resolve or manage the conflict; and
 - (iv) take such steps the Department reasonably requires to resolve or otherwise deal with the conflict.

10.7 **Delays**

- (a) In the event of an actual or potential Delay, the Contractor must:
 - (i) immediately notify the Department of the nature and consequences of the Delay;
 - (ii) develop and provide to the Department for approval a plan to work around or remove the problem in order to prevent, limit or rectify the Delay;
 - (iii) regularly update the Department in relation to the Delay as reasonably required by the Department; and
 - (iv) take all steps reasonably required by the Department to prevent, limit or rectify the Delay.
- (b) To the extent a Delay is caused by:
 - (i) an Unforeseen Event, then the provisions of clause 14 apply;
 - (ii) the Contractor (or its Personnel), any costs and expenses incurred by the Contractor to implement an approved workaround plan will be borne by the Contractor (this is without limitation to any other right or remedy of the Department under this Deed, any Contract or otherwise); or
 - (iii) the Department's (or any third party under the Department's control) failure to meet any of its obligations under this Deed or any Contract that are necessary for the Contractor to achieve a Milestone, then the relevant Milestone date will be extended by a period equal to the length of the Delay caused by the Department.
- (c) Clause 10.7(b)(iii) will only apply where the Contractor takes all reasonable steps to mitigate the effects of the Delay caused by the Department.

10.8 Liquidated damages – Not used

11. RECORDKEEPING AND AUDIT

11.1 Records of work

- (a) The Contractor must keep full and accurate records relating to the performance of its obligations under this Deed and any Contract.
- (b) The Contractor must maintain its records:
 - (i) in a manner that enables them to be conveniently and properly audited; and
 - (ii) for a period of at least 7 years from the date on which the records were created.

11.2 Access, inspection and audit

- (a) The Contractor must during the Term, or during the performance of any Contract:
 - (i) following the provision of reasonable notice; and
 - (ii) at reasonable times,permit the Department, or any person nominated in writing by the Department, to:
 - (iii) access the premises of the Contractor where a Contract is being performed;
 - (iv) inspect and copy documentation, books and records, however stored, in the custody or control of the Contractor which are relevant to the performance of this Deed or any Contract; and
 - (v) conduct audits relevant to the Contractor's performance under this Deed or any Contract.
- (b) The Contractor must provide all necessary facilities for the purpose of clause 11.2(a).
- (c) Without limiting clause 11.2(a), the Contractor acknowledges and agrees:
 - (i) that the Auditor-General has the power to conduct audits of the Contractor and Subcontractors in relation to the performance of this Deed and any Contract;
 - (ii) that the Auditor-General may give a copy of, or an extract from, a report on an audit in relation to this Deed or any Contract to any person who in the Auditor-General's opinion has a special interest in the report or the content of the extract; and
 - (iii) to provide the Auditor-General the same access and inspection rights as those provided to the Department under clause 11.2(a).
- (d) The Contractor must participate cooperatively in any audits conducted by the Department, its nominee or the Auditor-General (as the case may be). The participation in audits does not in any way reduce the Contractor's obligations under this Deed or any Contract.

11.3 Information Commissioner Investigations

- (a) The Contractor acknowledges and agrees that it may be subject to investigation by the Information Commissioner under the Privacy Act.
- (b) The Contractor acknowledges and agrees:
 - (i) that it will participate cooperatively in any investigation by the Information Commissioner; and
 - (ii) to provide the Information Commissioner the same access and inspection rights as those provided to the Department under clause 11.2(a).
- (c) The participation in an investigation conducted by the Information Commissioner does not in any way reduce the Contractor's obligations under this Deed or any Contract.

12. CONFIDENTIALITY

12.1 Use and disclosure of Confidential Information

Each party must not:

- (a) use any of the other party's Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Deed or any Contract; or
- (b) disclose any of the other party's Confidential Information except in accordance with clause 12.2.

12.2 Permitted disclosures

- (a) The restriction at clause 12.1 does not apply to a disclosure of Confidential Information to the extent that the disclosure is:
 - (i) required or authorised by law;
 - (ii) necessary for the conduct of any legal proceedings arising in connection with this Deed or any Contract;
 - (iii) made by the Department, a Minister or Parliament, in accordance with statutory or portfolio duties or functions or for public accountability reasons, including following a request by Parliament, a parliamentary committee or a Minister; or
 - (iv) to any of the following persons:
 - (A) a legal adviser, insurer, financier, auditor or accountant of a party to the extent required to enable them to perform those roles;
 - (B) a Related Body Corporate for internal management purposes; or
 - (C) any officers, employees or agents who need to know the information, in order to enable the person to exercise their rights or perform their duties under this Deed or any Contract.

- (b) If directed to do so by the Department, the Contractor must ensure all Personnel execute a Deed of Confidentiality in the form set out at Schedule 10 (Deed of Confidentiality) prior to disclosing any Confidential Information in accordance with clause 12.2(a)(iv)(C).

12.3 **Return or destruction of Confidential Information**

- (a) Subject to clause 12.3(b), on termination or expiry of this Deed or the relevant Contract, the Contractor must immediately:
 - (i) deliver to the Department all documents and other materials containing, recording or referring to Confidential Information; and
 - (ii) erase or destroy all electronic records containing or referring to the Confidential Information,which are in the possession, power or control of the Contractor or of any person to whom the Contractor has given access.
- (b) The Contractor may retain any documents containing Confidential Information where such documents are:
 - (i) retained in order to comply with any legal, professional or insurance obligations; or
 - (ii) stored in electronic backups or records that are produced in the normal course, where it is not reasonably practicable to destroy such backups or records.
- (c) Return or destruction of Confidential Information does not release the Contractor from its obligations under this clause 12.

13. **POLICY AND LAW**

13.1 **Compliance with laws and policies**

The Contractor must, and must ensure that its Personnel, comply with:

- (a) all applicable laws of the Commonwealth, any State, Territory or local authority in providing the Services; and
- (b) any applicable Commonwealth policies as set out in this Deed or a Contract or as notified by the Department Representative to the Contractor from time to time.

13.2 **Indigenous Procurement Policy**

- (a) It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see the Indigenous Procurement Policy, for further information).
- (b) The Contractor must comply with:
 - (i) the Indigenous Participation Plan; and
 - (ii) any directions issued by the Department in relation to the Contractor's implementation of the Indigenous Participation Plan.

- (c) The Contractor must provide a written report of its compliance with this clause 13.2 every year during the Term.
- (d) The Contractor must submit a written report to the Department via the IPPRS on its compliance with the Indigenous Participation Plan, as follows:
 - (i) at least once every quarter during the Term; and
 - (ii) after the end of the Term (End of Term Report).
- (e) The End of Term Report must identify whether the Contractor:
 - (i) met the Mandatory Minimum Requirements; and
 - (ii) complied with the Indigenous Participation Plan.
- (f) If the Contractor did not meet the Mandatory Minimum Requirements or did not comply with the Indigenous Participation Plan it must provide an explanation for its non-compliance.
- (g) Throughout the term of the Deed, the Contractor is responsible for managing the Contractor's access to the IPPRS reporting portal including by managing the:
 - (i) enabling of its authorised personnel's access; and
 - (ii) disabling of its authorised personnel's access.
- (h) The Contractor must comply with all reasonable directions issued by the Department in relation to the Contractor's implementation of the Indigenous Participation Plan.
- (i) If at any time the Department reasonably believes that the Contractor:
 - (i) may be or may become unable to comply with the Indigenous Participation Plan; or
 - (ii) is unlikely to meet the Mandatory Minimum Requirements as set out in the Indigenous Participation Plan,

the Department may require the Contractor to provide additional detail in relation to its implementation of and ability to comply with the Indigenous Participation Plan.
- (j) Without limiting its other rights under the Deed or at law, any material failure by the Contractor to:
 - (i) implement the Indigenous Participation Plan; or
 - (ii) comply with a direction issued by the Department under clause 13.2(h),

will be a breach of this Deed, and the Department may terminate this Deed in accordance with clause 16.2.
- (k) Notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that the reports it submits under clause 13.2(d):
 - (i) will be recorded in the IPPRS, a central database that is able to be accessed by Commonwealth entities and may be made publicly available;
 - (ii) will not be considered to be Contractor Confidential Information; and

- (iii) may be used by Commonwealth entities for any purpose, including for evaluation of an offer to provide Goods and / or Services to a Commonwealth entity.

13.3 Australian Industry Participation Plan

Not Used.

13.4 Workplace Gender Equality

- (a) This clause 13.4 applies only to the extent that the Contractor is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).
- (b) The Contractor must comply with its obligations, if any, under the WGE Act.
- (c) If the Contractor becomes non-complaint with the WGE Act during the Term of this Deed, the Contractor must notify the Department.
- (d) If the Term of the Deed exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months of the Commencement Date and following this, annually, to the Department.
- (e) Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under the Deed.
- (f) The Contractor must not enter into a Subcontract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the WGE Act.

13.5 Shadow Economy Procurement Connected Policy

- (a) The Contractor warrants that on the Commencement Date, it holds a satisfactory and valid Statement of Tax Record (**STR**).
- (b) The Contractor must during the Term (including any extension) and any Contract, and on request by the Department, provide to the Department a copy of a satisfactory and valid STR.
- (c) Without limiting its other rights under this Deed or at law, any failure by the Contractor to comply with the requirements outlined in clauses 13.5(a) and 13.5(b) will be a breach of this Deed.
- (d) The Contractor must not enter into a Subcontract with a proposed Subcontractor (or agree to a novation of a Subcontract to a proposed Subcontractor) if the total value of all work under the Subcontract is expected to exceed \$4 million (GST inclusive), unless the Contractor has obtained and holds any the following STR, as applicable to the proposed Subcontractor:

Item No.	If the proposed Subcontractor is:	STRs required
(a)	(b)	(c)
1.	A body corporate or natural person	a satisfactory and valid STR in respect of that body corporate or natural person.

Item No.	If the proposed Subcontractor is:	STRs required
(a)	(b)	(c)
2.	A partner acting for and on behalf of a partnership	a satisfactory and valid STR: (i) on behalf of the partnership; and (ii) in respect of each partner in the partnership that will be directly involved in the delivery of the Subcontract.
3.	A trustee acting in its capacity as trustee of a trust	a satisfactory and valid STR in respect of the: (i) trustee; and (ii) the trust.
4.	A joint venture participant	a satisfactory and valid STR in respect of: (i) each participant in the joint venture; and (ii) if the operator of the joint venture is not a participant in the joint venture, the joint venture operator.
5.	A member of a Consolidated Group	a satisfactory and valid STR in respect of: (i) the relevant member of the Consolidated Group who will be the Subcontractor; and (ii) the head company in the Consolidated Group.
6.	A member of a GST Group	a satisfactory and valid STR in respect of the: (i) GST Group member who will be the Subcontractor; and (ii) GST Group representative.
7.	An entity registered with the Australian Charities and Not-for-profits Commission, with a Charity or other Tax Concession	A satisfactory and valid STR in respect of that entity or person.

- (e) The Contractor must obtain and hold additional STRs in the following circumstances within 10 Business Days of the Contractor becoming aware of the circumstances arising:

Item No.	If the Contractor or Subcontractor is:	Additional STRs required
(a)	(b)	(c)
1.	A partner acting for and on behalf of a partnership	a satisfactory and valid STR in respect of any additional partner that becomes directly involved in the delivery of any Contract or Subcontract (as applicable).
2.	A trustee acting in its capacity as trustee of a trust	a satisfactory and valid STR in respect of any new trustee appointed to the trust.
3.	A joint venture participant	a satisfactory and valid STR in respect of any new: (i) participant in the joint venture; or (ii) operator of the joint venture.
4.	A member of a Consolidated Group	a satisfactory and valid STR in respect of any new head company of the Consolidated Group.
5.	A member of a GST Group	a satisfactory and valid STR in respect of any new representative for the GST Group.

- (f) The Contractor must provide the Department with copies of the STRs referred to in clause 13.5(d) or 13.5(e) within 5 Business Days after receiving a written request from the Department.
- (g) For the purposes of the Contract, an STR is taken to be:
- (i) **satisfactory** if the STR states that the entity has met the conditions, as set out in the Shadow Economy Procurement Connected Policy, of having a satisfactory engagement with the Australian tax system; and
 - (ii) **valid** if the STR has not expired as at the date on which the STR is required to be provided or held.

13.6 Work health and safety

- (a) The Contractor must, and must ensure that its Personnel, comply with all applicable WHS Legislation and any relevant Department policies and procedures relating to work health and safety.

- (b) The Contractor must:
 - (i) ensure, so far as is reasonably practicable, the health and safety of its Personnel while those Personnel are at work in relation to this Deed or any Contract;
 - (ii) consult, co-operate and coordinate with the Department in relation to its workplace health and safety duties;
 - (iii) on request, give all reasonable assistance to the Department, by way of provision of information and documents, to assist the Department and their officers comply with their duties under the WHS Act; and
 - (iv) comply with any direction of the Department relating to specified measures which the Department considers are reasonably necessary for work health and safety.
- (c) If an event happens in relation to the Contractor's performance of a Contract that leads, or could lead, to the death, injury or illness of a person (**Notifiable Incident**), the Contractor must:
 - (i) immediately notify the Department of the Notifiable Incident and provide all relevant details;
 - (ii) as soon as possible after the Notifiable Incident:
 - (A) formally investigate the Notifiable Incident to determine, so far as is possible, its cause and what adverse effects it will have on the Contractor's performance under the relevant Contract or any other Contracts, and health and safety; and
 - (B) report to the Department the outcomes of the formal investigation; and
 - (iii) take all reasonable steps to:
 - (A) remedy any effects of the Notifiable Incident on health and safety; and
 - (B) ensure that an event or circumstance of the kind that caused the Notifiable Incident does not recur.

13.7 Modern Slavery Act

- (a) The Contractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Services.
- (b) If at any time the Contractor becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the Deed or any Contract, the Contractor must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.
- (c) The Contractor must provide, and must ensure that each of its Subcontractors provides, any information reasonably required by the Department in relation to:
 - (i) the Contractor;
 - (ii) Subcontractors; and
 - (iii) the performance of this Deed, any Contracts and relevant Subcontracts,for the purposes of the Department satisfying its obligations as a reporting entity under the *Modern Slavery Act 2018* (Cth).
- (d) Within 10 Business Days of a written request from the Department, the Contractor must provide the information required under clause 13.7(a).

13.8 Elder Abuse

- (a) The Contractor acknowledges that the Department is committed to the reduction of Elder Abuse in accordance with the policy objectives of the Commonwealth, including those set out in the *National Plan to Respond to the Abuse of Older Australians [Elder Abuse] 2019 - 2023*.
- (b) The Contractor must not, and must ensure that its Personnel do not, engage in any form of Elder Abuse.
- (c) If the Contractor becomes aware of, or reasonably suspects, any instances of Elder Abuse committed by its Personnel (**Elder Abuse Incident**), the Contractor must immediately notify the Department of the Elder Abuse Incident and provide all relevant details.
- (d) If the Department becomes aware of, or reasonably suspects, an Elder Abuse Incident committed by the Personnel, the Department may:
 - (i) provide notice of this to the Contractor and require the Contractor to provide all relevant details; and
 - (ii) may commence its own investigation into the Elder Abuse Incident.
- (e) If a notice is issued in accordance with either clauses 13.8(c) or 13.8(d) the Contractor must:

- (i) as soon as possible after the Elder Abuse Incident:
 - (A) formally investigate the Elder Abuse Incident to determine, so far as is possible, its cause; and
 - (B) report to the Department the outcomes of the formal investigation;
 - (ii) comply with any directions of the Department relating to specified measures which the Department considers are reasonably necessary to address the Elder Abuse Incident; and
 - (iii) take all reasonable steps to:
 - (A) remedy the Elder Abuse Incident; and
 - (B) ensure that an event or circumstance of the kind that caused the Elder Abuse Incident do not recur.
- (f) If the Department considers that the Contractor:
- (i) failed to take reasonable steps to prevent the Elder Abuse Incident;
 - (ii) has failed to adequately remedy the Elder Abuse Incident,
- then the Department may terminate this Deed or any Contract in accordance with clause 16.2.

13.9 Child Safety and Vulnerable Persons

- (a) If any part of the Services involves the Contractor employing Personnel that are required by State or Territory law to have a working with children or Vulnerable Person check to undertake the Services or any part of the Services, the Contractor must:
 - (i) comply with all State, Territory or Commonwealth law relating to the employment or engagement of people who work or volunteer with children or Vulnerable Persons in relation to the Services, including mandatory reporting and working with children or Vulnerable Person checks however described; and
 - (ii) if requested, provide the Department at the Contractor's cost, an annual statement of compliance with this clause, in such form as may be specified by the Department.
- (b) When child safety or Vulnerable Persons obligations may be relevant to a Subcontract, the Contractor must ensure that any subcontract entered into by the Contractor for the purposes of fulfilling the Contractor's obligations under the Deed or any Contract imposes on the Subcontractor the same obligations regarding child safety or Vulnerable Persons that the Contractor has under the Deed. Each Subcontract must also require the same obligations (where relevant) to be included by the Subcontractor in any secondary subcontracts.

13.10 Freedom of Information

- (a) The Contractor acknowledges that:
 - (i) this Deed and any Contract may be a 'Commonwealth contract' within the meaning of the *Freedom of Information Act 1982* (Cth) (**FOI Act**); and

- (ii) accordingly the Contractor may be a 'contracted service provider' within the meaning of the FOI Act.
- (b) If the Department receives a request for a document under the FOI Act which:
 - (i) was created by or is in the possession of the Contractor (or its Personnel); and
 - (ii) relates to, or was created in, the performance of this Deed or any Contract (other than the entry into this Deed or the relevant Contract),then, if requested to do so by the Department in writing, the Contractor must provide a copy of the document to the Department at no additional cost to the Department.

13.11 **Archives Act**

- (a) The Contractor must not transfer, or permit the transfer of, ownership or allow the destruction of a Commonwealth Record without the prior written approval of the Department.
- (b) All Commonwealth Records must be protected at all times from unauthorised access, use, misuse, damage or destruction by a third party.
- (c) Commonwealth Records must be delivered to the Department after the expiry or termination of this Deed or the relevant Contract, as directed by the Department.

13.12 **Privacy**

- (a) The Contractor agrees:
 - (i) to collect, use or disclose Personal Information obtained during the course of performing its obligations under this Deed or any Contract only for the purposes of this Deed or the relevant Contract;
 - (ii) to maintain reasonable safeguards against loss, unauthorised access, use, modification or disclosure and other misuse of Personal Information held in connection with this Deed or any Contract;
 - (iii) not to commit any act, omission or engage in any practice which is contrary to the Privacy Act;
 - (iv) not to engage in any act or practice which if done or engaged in by an agency, would be a breach of an APP or a Registered APP Code;
 - (v) not to engage in an act or practice that would breach an APP or a Registered APP Code (where applied to the Contractor);
 - (vi) to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Deed or a Contract that are inconsistent with an APP or a Registered APP Code binding on a party);

- (vii) to notify the Department Representative immediately if the Contractor becomes aware of:
 - (A) an eligible data breach; or
 - (B) a breach or possible breach of any of the obligations contained in, or referred to in this clause 13.12 whether by the Contractor or its Personnel;
 - (viii) to notify the Department Representative promptly if the Contractor receives a complaint alleging an interference with the privacy of an individual by the Contractor or its Personnel;
 - (ix) to comply with any reasonable directions, guidelines, determinations or recommendations to the Contractor made by the Department in respect of privacy issues and the management of Personal Information; and
 - (x) to ensure that all Personnel required to deal with Personal Information for the purposes of this Deed or any Contract are made aware of the obligations of the Contractor set out in this clause 13.12.
- (b) Where indicated as required at item 13 of Schedule 1 (Deed Details), the Contractor must provide to the Department a Privacy Management Plan in accordance with the requirements set out in Schedule 4 (Statement of Requirements).
- (c) Without limiting any of the Contractor's obligations under this clause 13.12, the Contractor must
 - (i) notify the Department promptly of any requests the Contractor receives for access to Personal Information;
 - (ii) provide such further information that the Department requires to manage its obligations in relation to the request;
 - (iii) manage such requests to ensure steps to comply with APP11 are carried out appropriately; and
 - (iv) do all things necessary to assist the Department to respond to any notifiable privacy breaches, including Eligible Data Breaches, in accordance with the Privacy Act.
- (d) The Contractor's obligations in this Deed or any Contract are in addition to the Contractor's obligations (if any) under the Privacy Act and prevail to the extent of any lesser standard required under the Privacy Act.

13.13 **Security**

- (a) The Contractor must, and must ensure that its Personnel, perform all obligations under this Deed or any Contract in a manner consistent with:
 - (i) all relevant requirements in the Protective Security Policy Framework; and
 - (ii) any additional security requirements:
 - (A) specified in item 14 of Schedule 1 (Deed Details);
 - (B) specified in a Contract;
 - (C) applicable to a specific location of the Department where access to this location is needed for the performance of the Services; or
 - (D) as notified to the Contractor by the Department Representative from time to time.
- (b) The Contractor must ensure that its Personnel:
 - (i) undertake any security checks, Clearances or accreditations as required by the Department; and
 - (ii) access and use the Department's locations and systems solely, and only to the extent required, to supply the Services.
- (c) The Contractor must notify the Department of any changes to circumstances (including any changes in respect of its Personnel) which has or may affect the Contractor's capacity to supply the Services in accordance with the Department's security requirements.
- (d) The Contractor must notify the Department of any material breach of these physical and ICT security measures.
- (e) If the Contractor, or its Personnel, breach any of the Department's security requirements and this breach has a material adverse impact on the Department, the Department may terminate this Deed or any Contract in accordance with clause 16.2.

13.14 **Fraud**

- (a) The Contractor must not, and must ensure that its Personnel do not, engage in any Fraud in relation to the performance of this Deed or any Contract.
- (b) The Contractor must immediately notify the Department if the Contractor becomes aware of any actual or suspected Fraud in relation to the performance of this Deed or any Contract.
- (c) The Department may conduct an investigation in relation to any actual or suspected Fraud in relation to the performance of this Deed or any Contract. If the Department conducts an investigation in accordance with this clause 13.14(c), the Contractor must provide all reasonable assistance and comply with any direction given by the Department in relation to the investigation.

- (d) If an investigation conducted in accordance with clause 13.14(c) finds that the:
 - (i) the Contractor or any of its Personnel have committed Fraud; or
 - (ii) the Contractor failed to take reasonable steps to prevent Fraud by its Personnel;then,
 - (iii) the Contractor must indemnify the Department and pay on demand the amount of any Loss arising out of or in connection with the Fraud; and
 - (iv) the Department may terminate this Deed or any Contract in accordance with clause 16.2.

13.15 Criminal Code

- (a) The Contractor acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth).
- (b) The Contractor must ensure that any Subcontractor engaged in connection with this Deed or any Contract is aware of the information identified in this clause 13.15.

13.16 Public Interest Disclosure

- (a) Public officials (including service providers under a Commonwealth contract) who suspect wrongdoing within the Commonwealth public sector can raise their concerns under the *Public Interest Disclosure Act 2013* (PID Act). Prior to making a disclosure, refer to information available at:

<https://www.dva.gov.au/about-us/what-we-must-report/information-publication-scheme/public-interest-disclosure-scheme>
- (b) All public interest disclosure matters (relating to this Deed or any Contract) should be referred to:
 - (i) **Name:** Authorised Officer
 - (ii) **Email:** PID@dva.gov.au

14. UNFORESEEN EVENTS

14.1 Occurrence of Unforeseen Events

- (a) A party (**Affected Party**) is excused from performing its obligations under this Deed or any Contract to the extent it is prevented by circumstances beyond its reasonable control, including acts of God, natural disasters, acts of war, riots, strikes outside that party's organisation and the improper acts and omissions of the other party over which they have no control (**Unforeseen Events**).

- (b) For the purposes of clause 14.1(a) an Unforeseen Event does not include (in the case of the Contractor's breach or non-performance of this Deed or any Contract) lack of funds for any reason, any strike specific to its Personnel, any Fraud or theft, any Personnel becoming unavailable for any reason including illness, injury or death or any disruption caused by any person exercising a right of access, inspection or audit.

14.2 **Notice of Unforeseen Events**

- (a) When an Unforeseen Event arises or is reasonably considered by the Affected Party to be an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect this will have on performance.
- (b) An Affected Party must make all reasonable efforts to minimise the effects of Unforeseen Events on the performance of this Deed and any Contract.

14.3 **Termination**

- (a) If the Affected Party's performance of this Deed or the relevant Contract continues to be impacted by the Unforeseen Event for a period of more than 10 consecutive Business Days, the other party may terminate this Deed or the relevant Contract immediately by giving notice to the Affected Party.
- (b) If this Deed or any Contract is terminated under clause 14.3(a):
 - (i) each party will bear its own costs and neither party will incur further liability to the other; and
 - (ii) where the Contractor is the Affected Party, it will be entitled to payment for work performed prior to the Unforeseen Event.

15. **DISPUTE RESOLUTION**

15.1 **Procedure for dispute resolution**

If a dispute arises under this Deed or any Contract, the parties must act in good faith and use reasonable endeavours to resolve the dispute as follows:

- (a) the party claiming a dispute has arisen must give the other party notice setting out the details of the dispute;
- (b) during the 10 Business Days after notice of the dispute is given, the Department Representative and Contractor Representative must attempt to resolve the dispute;
- (c) if the dispute cannot be resolved within 10 Business Days, the parties must refer the dispute to a mediator if one of them requests this;
- (d) the parties:
 - (i) may agree on an independent third person to act as the mediator; or
 - (ii) if they cannot agree on an independent third person within 5 Business Days after a request made under clause 15.1(c), the chairperson of the Resolution Institute or the chairperson's nominee will appoint a mediator; and
- (e) if the parties have been unable to resolve the dispute within a further 20 Business Days following the appointment of a mediator, either party may commence legal proceedings.

15.2 Costs

Each party will bear its own costs of complying with this clause 15. The parties must equally pay the costs of any mediator.

15.3 Confidentiality

Any information or documents disclosed by a party under this clause 15:

- (a) must be kept confidential; and
- (b) may only be used in an attempt to resolve the dispute.

15.4 Breach of this clause

If a party breaches clauses 15.1, 15.2 or 15.3, the other party does not have to comply with that clause in relation to the dispute.

15.5 Exemption

This clause 15 does not apply to:

- (a) action under, or purportedly under, clause 16; or
- (b) legal proceedings commenced by either party seeking urgent interlocutory relief.

16. TERMINATION

16.1 Termination by the Contractor for default

Without limiting any other rights or remedies the Contractor may have against the Department arising out of or in connection with this Deed or any Contract, the Contractor may terminate this Deed or any Contract effective immediately by giving notice to the Department, if:

- (a) the Department breaches a material provision of this Deed or any Contract where that breach is not capable of remedy; or
- (b) the Department breaches any provision of this Deed or any Contract and fails to remedy the breach within 10 Business Days after receiving notice of the breach, or such longer period as may be specified in the notice of the breach.

16.2 Termination by the Department for default

- (a) Without limiting any other rights or remedies the Department may have against the Contractor arising out of or in connection with this Deed or any Contract, the Department may terminate this Deed or any Contract effective immediately by giving notice to the Contractor, if:
 - (i) the Contractor breaches a material provision of this Deed or a Contract where that breach is not capable of remedy;
 - (ii) the Contractor breaches any provision of this Deed or a Contract and fails to remedy the breach within 10 Business Days after receiving notice of the breach, or such longer period as may be specified in the notice of the breach; or

- (iii) an event specified in clause 16.2(c) happens to the Contractor, except to the extent that the exercise of a right under this clause 16.2(a)(iii) is prevented by law.
- (b) Without limitation, for the purposes of clause 16.2(a)(i), each of the following constitutes a breach of a material provision:
 - (i) the occurrence of an event or circumstance where this Deed or a Contract expressly states that the Department may terminate this Deed or the relevant Contract on that specific event or circumstance occurring;
 - (ii) breach of a warranty under clause 4.5; and
 - (iii) a failure to comply with:
 - (A) clause 10.6 (Conflicts of Interest);
 - (B) clause 12 (Confidentiality);
 - (C) clause 13.12 (Privacy); or
 - (D) clause 18.7 (Assignment and novation).
- (c) The Contractor must notify the Department promptly if any of the following events or circumstances are experienced by the Contractor:
 - (i) a Change of Control, where the prior written consent of the Department has not been obtained; or
 - (ii) an Insolvency Event.

16.3 Termination by the Department in relation to disrepute

- (a) The Contractor must promptly notify the Department if it becomes aware of, or reasonably suspects, any act, omission, situation or occurrence has occurred, or may occur, which will bring about any of the circumstances described in clauses 16.3(b)(i) to 16.3(b)(iii) and any circumstances specified in item 15 of Schedule 1 (Deed Details).
- (b) Where the Contractor, its Personnel or any Related Body Corporate of the Contractor engages in any act, omission, situation or occurrence (either in connection with this Deed, any Contract or otherwise) that in the Department's reasonable opinion:
 - (i) brings the Contractor or the Department into disrepute;
 - (ii) subjects the Contractor or the Department to scandal, contempt, embarrassment or public ridicule; or
 - (iii) will, or will tend to, shock, insult, or offend the community, public morals or public decency,

the Department may provide written notice of this to the Contractor and require the Contractor to provide, within 5 Business Days, reasons as to why this Deed or any Contract should not be terminated.

- (c) If the Contractor either:
 - (i) fails to provide reasons in response to the notice issued under clause 16.3(a), or fails to provide these within the specific timeframe; or
 - (ii) the Department is not reasonably satisfied with the reasons provided,the Department may terminate this Deed or any Contract by giving 10 Business Days' written notice to the Contractor.
- (d) In the event of termination under clause 16.3(c), the Department will be liable only for payments due in relation to work performed before the date the termination takes effect.
- (e) The parties agree that the mere fact that the Contractor is performing the Services will be deemed not to bring about the circumstances described in clauses 16.3(b)(i) to 16.3(b)(iii).
- (f) The Contractor agrees to meet the reasonable direct costs or expenses that the Department incurs in getting (but not the fees of) another contractor to deliver the Services because of the termination of this Deed or any Contract under clause 16.3.

16.4 Termination by the Department for convenience

- (a) The Department may, by notice to the Contractor, at any time and in its discretion:
 - (i) terminate; or
 - (ii) reduce the scope of,this Deed or any Contract for convenience. Such termination or reduction in scope will take effect on and from the time specified in the notice.
- (b) Following receipt of a notice of termination or reduction of scope issued under clause 16.4(a), the Contractor must:
 - (i) stop or reduce work in connection with any current Contracts in accordance with the notice;
 - (ii) comply with any other direction in the notice;
 - (iii) take all available steps to minimise Loss resulting from the termination or reduction; and
 - (iv) continue any work under any part of the Contract, or under any other Contracts, not affected by the notice.
- (c) In the event of termination or reduction of scope under clause 16.4(a), the Department will be liable only:
 - (i) for payments due in relation to work performed before the date the termination or reduction takes effect; and
 - (ii) any reasonable costs incurred by the Contractor that are directly attributable to the termination or reduction, and then only when the Contractor substantiates these amounts to the satisfaction of the Department Representative.

- (d) None of the other provisions of this Deed or any Contract limit the Department's ability to terminate or reduce the scope of this Deed or a Contract under this clause 16.4.

16.5 Termination does not affect accrued rights

The expiry or termination of this Deed or any Contract does not affect any accrued rights or remedies of a party.

17. TRANSITION OUT

17.1 General Obligations

The Contractor must during the Transition Out Period:

- (a) implement any Transition Out Services specified in the Services;
- (b) provide all reasonable assistance required by the Department to ensure the orderly transfer of the provision of the Services from the Contractor to:
 - (i) the Department; or
 - (ii) another service provider nominated by the Department;
- (c) transfer to the Department or another nominated service provider any Department Property held by the Contractor; and
- (d) use diligent efforts to identify and resolve, or assist the Department in the resolution of, any problems encountered in the timely completion of the transition out.

17.2 Transition Out Plan

- (a) If requested by the Department, the Contractor must within 60 Business Days prior to the end of the Term, submit a draft Transition Out Plan to the Department.
- (b) The Department will either accept or reject the draft Transition Out Plan, in accordance with procedure for the acceptance or rejection of Deliverables set out at clause 4.3.
- (c) The Transition Out Plan must include details of:
 - (i) any specific activities to occur during the Transition Out Period;
 - (ii) an explanation of how the Contractor will assist the Department in facilitating the orderly transfer of the provision of the Services from the Contractor to the Department or another service provider nominated by the Department;
 - (iii) the roles and responsibilities of Personnel for transition out activities;
 - (iv) how the Contractor will return any Department Property;
 - (v) any final payment arrangements; and
 - (vi) how risks will be managed during the Transition Out Period.

17.3 **Transition Out Period**

The Transition Out Period commences on the earlier of:

- (a) 3 months before the end of the Term; and
- (b) if this Deed or any Contract is terminated before the end of the Term, the date on which a party issues a termination notice,

and continues until:

- (c) if a notice of termination has not been issued, the end of the Term; and
- (d) if a notice of termination has been issued, 3 months after the date of the written notice of termination or such other period agreed between the parties.

18. **GENERAL**

18.1 **Nature of the relationship**

- (a) Neither party is the employee, agent or partner of the other party. Neither party, by virtue of this agreement, is authorised to bind or represent the other party.
- (b) The Contractor acknowledges that it:
 - (i) has entered into this Deed as an independent contractor;
 - (ii) under this Deed and any ensuing Contract, it gets paid to achieve specific outcomes;
 - (iii) supplies its own Personnel, Subcontractors and equipment for delivery of the Services;
 - (iv) bears the risks, including liability for defective work; and
 - (v) is not entitled (nor its personnel nor its subcontractors) to claim from the Department employment entitlements, including annual, sick or long service leave, workers' compensation, superannuation or pension benefits or to have the Department make contributions to a fund for the provision of superannuation or pension benefits to the contractor (nor its personnel nor its subcontractors) and acknowledges that the fees payable contain components to cover those benefits.
- (c) In all dealings related to this Deed, the parties agree to:

- (i) communicate openly with each other and cooperate in achieving the contractual objectives;
- (ii) act honestly and ethically;
- (iii) comply with reasonable commercial standards of fair conduct; and
- (iv) consult, co-operate and co-ordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health of workers and workplaces.

18.2 Counterparts

This Deed may be executed in counterparts, each of which will be deemed to be an original and all of which, taken together, constitutes one and the same agreement. The parties may exchange counterparts of executed copies of this Deed by electronic mail. The parties agree that the electronic receipt of such executed counterparts will have the same effect as if the parties had exchanged an original Deed executed by the parties.

18.3 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Deed, any Contract and any transactions contemplated by this Deed or any Contract.

18.4 Severability

- (a) As far as possible all provisions of this Deed and any Contract will be interpreted so as not to be illegal, invalid or otherwise unenforceable.
- (b) If any part of this Deed or any Contract is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of this Deed or the relevant Contract will not be affected and will be read as if that part had been severed.

18.5 Waiver

- (a) A failure or delay by a party to exercise any right or remedy it holds under this Deed, any Contract or at law, does not operate as a waiver of that right.
- (b) A single or partial exercise by a party of any right or remedy it holds under this Deed, any 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.

18.6 Variation

This Deed and any Contract may be varied:

- (a) in the case of minor amendments: by agreement of the parties via email; or
- (b) in all other cases: in writing, agreed and signed by both parties.

18.7 Assignment and novation

The Contractor may only:

- (a) assign its rights; or
- (b) novate its rights and obligations,

under this Deed or any Contract with the prior written consent of the Department.

18.8 Approvals and consents

Except where this Deed or any Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Deed or any Contract.

18.9 Survival

Unless the contrary intention appears, the following provisions (and any rights arising on or from expiry or termination of this Deed or any Contract) survive expiry or termination of this Deed or any Contract:

- (a) clause 5.7 (Right of the Department to recover money);
- (b) clause 7 (Intellectual Property);
- (c) clause 8 (Indemnities, risk and liability);
- (d) clause 11 (Recordkeeping and audit);
- (e) clause 12 (Confidentiality);
- (f) clause 13.12 (Privacy);
- (g) clause 13.13 (Security); and
- (h) any other provision which expressly or by implication from its nature is intended to survive expiry or termination of this Deed or any Contract.

18.10 Applicable law

- (a) This Deed or any Contract, and any dispute arising out of or in connection with this Deed or any Contract, is to be governed in accordance with the laws of the Australian Capital Territory.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

SCHEDULE 1**Deed Details**

Item No.	Description	Clause reference	Details	
(a)	(b)	(c)	(d)	
1.	Commencement Date	2.1	The date that the parties sign this Deed and, if signed on different dates, the date that the last party signs this Deed	
2.	Initial Deed Period	2.1	2 years	
3.	Option Period	2.2	Timing requirements for the exercise of the Option Period(s)	Prior to the end of the Initial Deed Period, the Department may exercise the Option Period by giving the Contractor thirty (30) calendar days written notice
			Number of Option Periods	2
			Duration of Option Period(s)	1 year
4.	Required licences, permits, registrations and approvals	4.5(d)	In accordance with Schedule 4 (Statement of Requirements)	
5.	Limitation of Liability	8.3(a)	Not used	
6.	Performance Guarantee	8.4	Required	No
			Guarantor	
7.	Bank Guarantee	8.5	Required	No
			Bank / Financial Institution	
			Maximum Liability	

Item No.	Description	Clause reference	Details	
(a)	(b)	(c)	(d)	
8.	Insurance amounts	9.1	Workers Compensation	As required by law.
			Public and Products Liability	\$10 million
			Professional Indemnity	\$5 million
			Professional Indemnity Insurance - International	\$20 million Worldwide, including USA and Canada
9.	Department Representative	10.1	Rehabilitation Contract Manager	
10.	Contractor Representative	10.1		
11.	Department notice details	10.2	Address	N/A
			Fax	N/A
			Email	REHAB.SEM@dva.gov.au
12.	Contractor notice details	10.2	Address	
			Fax	
			Email	
13.	Privacy Management Plan	13.12(b)	Required	Yes

Item No.	Description	Clause reference	Details	
(a)	(b)	(c)	(d)	
14.	Additional Security Requirements	13.13	Information / Cyber Security	<p>The Contractor may use a cloud based ICT system to store personal information collected on behalf of the Department in the delivery of services under this Deed provided that their ICT system:</p> <ul style="list-style-type: none"> a) is capable of certification in accordance with the Whole of Government Hosting Certification Framework, Information Security Manual, Protective Security Policy Framework; and b) Does not permit the offshore transfer of personal information collected on behalf of the Department; and c) Privileged accounts and technical support is conducted and held within Australia.
			Personnel Security	In accordance with Schedule 4 (Statement of Requirements)
			Physical Security	The Contractor must ensure that any documentation in its possession or control which contains Confidential Information is kept in locked offices or

Item No.	Description	Clause reference	Details	
(a)	(b)	(c)	(d)	
				locked filing cabinets when not in use.
15.	Additional notification requirements	16.3		Not applicable

SCHEDULE 2

Notice of Inclusion – Not used

SCHEDULE 3**Glossary****1. Acronyms**

- 1.1 In this Deed and any Contract, unless the contrary intention appears, the following acronyms are used:

Item No.	Acronym	Description
(a)	(b)	(c)
1.	AIP	Australian Industry Participation
2.	APP	Australian Privacy Principles
3.	ATO	Australian Taxation Office
4.	FOI Act	<i>Freedom of Information Act 1982 (Cth)</i>
5.	GST	Goods and Services Tax
6.	IP	Intellectual Property
7.	MEC	Multiple Entry Consolidated
8.	STR	Statement of Tax Record
9.	WGE Act	<i>Workplace Gender Equality Act 2012 (Cth)</i>
10.	WHS	Work Health and Safety

2. Definitions

- 2.1 In this Deed and any Contract, unless the contrary intentions appear, the following definitions are used.
- 2.2 Additional definitions are set out in Schedule 4 (Statement of Requirements) and should be read in conjunction with this Schedule 3 (Glossary).

Item No.	Defined Term	Definition
(a)	(b)	(c)
1.	Affected Party	has the meaning provided at clause 14.1.
2.	Attachment	means a document attached to the Deed or incorporated by reference in the Schedule, as amended from time to time.
3.	Australian Industry Participation Plan	means the plan at Schedule 14 (Australian Industry Participation Plan).
4.	Australian Privacy Principles	has the meaning provided in the Privacy Act.

Item No.	Defined Term	Definition
(a)	(b)	(c)
5.	Background IP	means any Intellectual Property, other than Third Party IP, that is: <ul style="list-style-type: none"> (a) in existence at the Commencement Date or subsequently brought into existence other than as a result of the performance of this Deed or any Contract; and (b) is embodied in, or attached to, the Services or is otherwise necessarily related to the functioning or operation of the Services.
6.	Business Day	means any day that is not a Saturday, Sunday, public holiday in the Australian Capital Territory or a national public holiday, where a 'national public holiday' is a public service holiday throughout Australia promulgated in the Australian Government Gazette.
7.	Change of Control	means: <ul style="list-style-type: none"> (a) a body corporate or other entity that Controls the Contractor, ceases to Control the Contractor; or (b) a body corporate or other entity that does not Control the Contractor comes to Control the Contractor.
8.	Clearance	Includes a police check, licence, registration, permit, exemption or other authorisation under state or territory law, or as required by the Department.
9.	Commencement Date	means the date of the last signature by the parties to this Deed, unless otherwise specified in item 1 of Schedule 1 (Deed Details).
10.	Commonwealth Record	means a Commonwealth record as defined in the <i>Archives Act 1983</i> (Cth).

Item No.	Defined Term	Definition
(a)	(b)	(c)
11.	Confidential Information	<p>means information that:</p> <ul style="list-style-type: none"> (a) identified as confidential in Schedule 8 (Confidential Information); (b) is by its nature confidential; or (c) the party knows or ought to know is confidential, including without limitation by reason of it carrying special markings indicating sensitivity or confidentiality, <p>but does not include information that:</p> <ul style="list-style-type: none"> (d) is or becomes public knowledge other than by breach of this Deed, any Contract or by any other unlawful means; (e) is in the possession of that person without restriction in relation to disclosure before the date of receipt; or (f) has been independently developed or acquired by that party.
12.	Consolidated Group	means a Consolidated Group or a MEC group as those terms are defined in section 995-1 of the <i>Income Tax Assessment Act 1997</i> (Cth).
13.	Contract	means an enforceable contract that is created when an Official Order is issued under the Deed.
14.	Contract Fees	means the amount payable by the Department to the Contractor for the provision of Services under a Contract.
15.	Contractor Representative	means the person nominated at item 10 of Schedule 1 (Deed Details).
16.	Control	<p>means, in respect of a body corporate, any of the following:</p> <ul style="list-style-type: none"> (a) the power to control the composition of the body corporate's board; (b) the power to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate; or (c) holding more than one-half of the issued share capital of the body corporate.

Item No.	Defined Term	Definition
(a)	(b)	(c)
17.	Current Service Provider	means a service provider who provides services to the Department, which are substantially similar to the Services, prior to the Commencement Date.
18.	Deed	means this deed between the Department and the Contractor, as amended from time to time, and includes its Schedules and any Attachments.
19.	Delay	means a failure to meet any obligation under a Contract which has a timeframe for performance.
20.	Deliverable	means any items or materials developed or supplied by the Contractor in the course of providing the Services.
21.	Department	means the Commonwealth of Australia as represented by the Department of Veterans' Affairs & the Repatriation Commission and the Military Rehabilitation and Compensation Commission ABN 23 964 290 824.
22.	Department Property	means all information, equipment, materials and facilities made available by the Department to the Contractor for the purpose of the Deed or any Contract.
23.	Department Representative	means the person nominated at item 9 of Schedule 1 (Deed Details).
24.	Elder Abuse	means any single or repeated act, or lack of appropriate action, that results in harm to an older person. Harm may arise in various ways including as a result of physical, psychological, emotional, sexual or financial acts or reflect intentional or unintentional neglect.
25.	Elder Abuse Incident	has the meaning provided at clause 13.8(c).
26.	Eligible Data Breach	has the meaning provided in the Privacy Act.
27.	Entitled Person	means a client of the Department from the veteran community who is eligible to receive the Services delivered by the Contractor.
28.	Fees	means the fees payable to the Contractor under this Deed as set out in Schedule 5 (Fees and Payment).
29.	Foreground IP	means all Intellectual Property, other than any Third Party IP, which is created under or otherwise in relation to this Deed or any Contract.

Item No.	Defined Term	Definition
(a)	(b)	(c)
30.	Fraud	means dishonestly obtaining a benefit from the Department or causing a Loss to the Department by deception or other means.
31.	General Interest Charge Rate	means the ATO sourced general interest charge rate determined under section 8AAD of the <i>Tax Administration Act 1953</i> (Cth) on the day payment is due, expressed as a decimal rate per day.
32.	Goods and/or Services	means the goods, services, work, activities, functions and responsibilities to be performed or provided by the Contractor under an Official Order.
33.	GST	has the meaning given by the GST Law.
34.	GST Amount	has the meaning provided at clause 6.3.
35.	GST Group	means a GST group formed in accordance with Division 48 of the GST Law.
36.	GST Law	has the meaning given in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).

37.	High Value Contract	<p>means an agreement where:</p> <ul style="list-style-type: none"> (a) the Services will be delivered in Australia; (b) the value of the Services is \$7.5 million (GST inclusive) or more; and (c) more than half the value of this Deed is being spent in one or more of the following industry sectors, listed in the Indigenous Procurement Policy: <ul style="list-style-type: none"> (i) building, construction and maintenance services; (ii) transportation, storage and mail services; (iii) education and training services; (iv) industrial cleaning services; (v) farming, fishing, forestry and wildlife contracting services; (vi) editorial, design, graphic and fine art services; (vii) travel, food, lodging and entertainment services; (viii) politics and civic affairs services; (ix) Financial instruments, products, contracts and agreements; (x) Mining and oil and gas services; (xi) Industrial production and manufacturing services; (xii) Environmental services; (xiii) Management and business professionals and administrative services (sub-category exemptions apply); (xiv) Engineering and research and technology based services; (xv) Financial and insurance services (sub-category exemptions apply); (xvi) Healthcare services; (xvii) Personal and domestic services;
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Item No.	Defined Term	Definition
(a)	(b)	(c)
		(xviii) National defence and public order and security and safety services (sub-category exemptions apply); or (xix) Organisations and clubs.
38.	Implementation Report	means the report provided in accordance with clause 13.3(c).
39.	Implementation Report Requirements	means the requirements for an Implementation Report set out in the <i>AIP Plan User Guide for developing an AIP Plan</i> .
40.	Indigenous Participation Plan	means the plan at Schedule 13 (Indigenous Participation Plan).
41.	Indigenous Procurement Policy	means the Indigenous Procurement Policy of the Commonwealth, as amended from time to time.
42.	Indigenous Procurement Policy Reporting Solution (IPPRS)	means the online portal where Contractors report on their progress against their Mandatory Minimum Requirements under the Commonwealth's Indigenous Procurement Policy.
43.	Initial Deed Period	means the period specified at item 2 of Schedule 1 (Deed Details).
44.	Information Commissioner	means the person appointed under section 14 of the <i>Australian Information Commissioner Act 2010</i> (Cth) as the Australian Information Commissioner.

Item No.	Defined Term	Definition
(a)	(b)	(c)
45.	Insolvency Event	<p>means, in respect of a person, the person:</p> <ul style="list-style-type: none"> (a) disposing of the whole or any part of its assets, operations or business other than in the ordinary course of business; (b) ceasing to carry on business; (c) being a body corporate: <ul style="list-style-type: none"> (i) ceasing to be able to pay its debts as and when they become due; (ii) entering into a scheme of arrangement or compromise under Part 5.1 of the <i>Corporations Act 2001</i> (Cth); (iii) having an: <ul style="list-style-type: none"> (A) administrator; (B) controller or managing controller (to the whole or any part of the body corporate's assets); or (C) liquidator, appointed under the <i>Corporations Act 2001</i> (Cth); or (d) being a natural person, he or she is declared bankrupt or assigns his or her estate for the benefit of creditors; or (e) being a partnership, any step is taken to dissolve that partnership.
46.	Intellectual Property	<p>means all present and future rights conferred by law in, or in relation to, any of the following:</p> <ul style="list-style-type: none"> (a) copyright; (b) rights in relation to a circuit layout, patent, registrable design or registered and unregistered trademarks (including service marks); and (c) any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world, whether registered or unregistered.

Item No.	Defined Term	Definition
(a)	(b)	(c)
47.	Loss	means any loss, damage, liability, compensation, fine, penalty, charge, cost or expense, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.
48.	Mandatory Minimum Requirements (MMR)	means the mandatory minimum Indigenous participation requirements imposed for High Value Contracts by the Indigenous Procurement Policy.
49.	Milestone	means any fixed date specified in a Contract to be met by the Contractor in performing its obligations under the relevant Contract.
50.	Modern Slavery	has the same meaning as it has in the <i>Modern Slavery Act 2018</i> (Cth).
51.	Moral Rights	means any of the following, the: (a) right of attribution of authorship; (b) right of integrity of authorship; and (c) right not to have authorship falsely attributed.
52.	Notice of Inclusion	means a notice in the form set out at Schedule 2 (Notice of Inclusion).
53.	Notifiable Incident	has the meaning provided at clause 13.6(c).
54.	Official Order	means the Referral issued to the Contractor under clause 3.2 and forms the Contract for the delivery of Services.
55.	Option Period	means the period(s) specified in item 3 of Schedule 1 (Deed Details).
56.	Order Commencement Date	means the date that the Department Representative issues the Official Order to the Contractor in accordance with clause 3.2(a).
57.	Order Term	means the timeframe specified in an Official Order for the delivery of the Services.
58.	Panel	means the panel for the provision of certain Goods and/or Services, consisting of entities which have signed deeds similar to this Deed for the provision of the Services.
59.	Panel Member	means an entity which has become a member of the Panel.

Item No.	Defined Term	Definition
(a)	(b)	(c)
60.	Personal Information	has the meaning provided in the Privacy Act.
61.	Personnel	means the Contractor's officers, employees, agents and Subcontractors, and the Subcontractor's officers, employees and agents.
62.	Privacy Act	means the <i>Privacy Act 1988</i> (Cth).
63.	Privacy Management Plan	means the plan required in accordance with clause 13.12(b) and Schedule 4 (Statement of Requirement).
64.	Protective Security Policy Framework	means the Protective Security Policy Framework of the Commonwealth, as amended from time to time.
65.	Recipient	has the meaning provided at clause 6.3.
66.	Related Body Corporate	has the meaning provided in the <i>Corporations Act 2001</i> (Cth).
67.	Registered APP Code	has the meaning provided in the Privacy Act.
68.	Schedules	means the schedules to this Deed, as amended from time to time.
69.	Services	means the services as described in Schedule 4 (Statement of Requirements) to be provided under a Contract. This definition includes any Deliverables or other items required to be delivered by the Contractor under a Contract.
70.	Shadow Economy Procurement Connected Policy	means the Shadow Economy Procurement Connected Policy of the Commonwealth, as amended from time to time.

Item No.	Defined Term	Definition
(a)	(b)	(c)
71.	Specified Acts	<p>means:</p> <p>(a) falsely attributing the authorship of any Deliverable, or any content in the Deliverable (including literary, dramatic, artistic works and cinematograph films within the meaning of the <i>Copyright Act 1968</i> (Cth));</p> <p>(b) materially altering the style, format, colours, content or layout of the Deliverable and dealing in any way with the altered Deliverable or infringing copies (within the meaning of the <i>Copyright Act 1968</i> (Cth));</p> <p>(c) reproducing, communicating, adapting, publishing or exhibiting any Deliverable including dealing with infringing copies, within the meaning of the <i>Copyright Act 1968</i> (Cth), without attributing the authorship; and</p> <p>(d) adding any additional content or information to the Deliverable.</p>
72.	Specified Personnel	means the Personnel specified in a Contract as Specified Personnel.
73.	Statement of Requirements (SOR)	means Schedule 4 (Statement of Requirements) to this Deed which defines and describes the Services and service delivery requirements.
74.	Statement of Tax Record	means a statement of tax record issued by the ATO.
75.	Subcontract	means a contract entered into between the Contractor and a Subcontractor by which some or all of the Services are provided.
76.	Subcontractor	means a person that, under a Subcontract, provides services to, or performs work for, the Contractor (whether directly or indirectly) in order for the Contractor to meet its obligations under this Deed or any Contract.
77.	Supplier	has the meaning provided at clause 6.3.
78.	Term	has the meaning provided at clause 2.1.

Item No.	Defined Term	Definition
(a)	(b)	(c)
79.	Third Party IP	means Intellectual Property that is owned by a party other than the Department or the Contractor or a Subcontractor and is: (a) embodied in, or attached to, the Services or any Deliverables; or (b) otherwise necessarily related to the functioning or operation of the Services or any Deliverables.
80.	Transition In Services	means any transition in activities specified in Schedule 4 (Statement of Requirements).
81.	Transition Out Period	means the period referred to in clause 17.3.
82.	Transition Out Plan	means the plan prepared and submitted in accordance with clause 17.2.
83.	Transition Out Services	means any transition out activities specified in Schedule 4 (Statement of Requirements) and the Transition Out Plan.
84.	Unforeseen Event	has the meaning provided at clause 14.1.
85.	Vulnerable Person	Means: (a) a child or children; or (b) an individual who is or may be unable to take care of themselves, or is unable to protect themselves against harm or exploitation by reason of age, illness, trauma or disability, or any other reason.
86.	WHS Act	means the <i>Work Health and Safety Act 2011</i> (Cth).
87.	WHS Legislation	means any of the following: (a) the WHS Act and the <i>Work Health and Safety Regulations 2011</i> (Cth); and (b) any corresponding WHS law as defined in section 4 of the WHS Act.

SCHEDULE 4

Statement of Requirements

Attached as a separate document

SCHEDULE 5

Fees and Payment

Refer to Attachment C of Schedule 4 (Statement of Requirements)

SCHEDULE 6

Not used

SCHEDULE 7

NOT USED

SCHEDULE 8

Confidential Information

1. DEPARTMENT'S CONFIDENTIAL INFORMATION

Item No.	Confidential Information	Period of Confidentiality
(a)	(b)	(c)
1.	All Entitled Persons' personal and sensitive information	Indefinitely
2.	All Entitled Persons' health information	Indefinitely
3.	Program documentation	Indefinitely

2. CONTRACTOR'S CONFIDENTIAL INFORMATION

Item No.	Confidential Information	Period of Confidentiality
(a)	(b)	(c)
1.		
2.		

SCHEDULE 9

IP Register – Not used

SCHEDULE 10

Deed of Confidentiality

This Deed Poll is made on [Insert date] by:

[Insert Confidant name] of [Insert address] (Confidant) in favour of the Commonwealth of Australia as represented by the [Department of Veterans' Affairs / Repatriation Commission / Military Rehabilitation and Compensation Commission] ABN 23 964 290 824 of Gnabra Building, 21 Genge Street, Canberra ACT (Department).

RECITALS:

- (A) The Department and the [Insert name of Contractor] (Contractor) have entered into a deed of standing offer dated [Insert date] for [Insert a description of the Services being provided] (Deed of Standing Offer).
- (B) The Confidant is [Insert a description of the relationship of the Confidant to the Contractor and their role in relation to the Deed of Standing Offer].
- (C) The Confidant agrees to take all necessary steps to ensure that the Confidential Information is kept confidential, and is used only for the Permitted Purposes.

AGREED TERMS

1. DEFINITIONS

In this Deed, unless the contrary intention appears:

Confidential Information means any information that is:

- (a) by its nature confidential; or
- (b) the Confidant knows or ought to know is confidential, including without limitation by reason of it carrying special markings indicating sensitivity or confidentiality,

but does not include information which:

- (c) is or becomes public knowledge other than by breach of this Deed;
- (d) is in the possession of the party without restriction in relation to disclosure before the date of receipt; or
- (e) has been independently developed or acquired by the Confidant.

Deed means this deed of confidentiality, dated [Insert execution date].

Deed of Standing Offer means the deed of standing offer referred to in paragraph (A) of the Recitals, as amended from time to time, and includes any contract entered into under the deed of standing offer.

Permitted Purposes means:

- (a) use of the Confidential Information by the Confidant for the purpose of performing their duties in relation to the Deed of Standing Offer; and
- (b) any other purpose that may be approved in writing by the Department from time to time.

Personnel means the Contractor's officers, employees, agents and Subcontractors, and the Subcontractor's officers, employees and agents.

Subcontractor means a person that, under a subcontract, provides services to, or performs work for, the Contractor (whether directly or indirectly) in order for the Contractor to meet its obligations under the Deed of Standing Offer.

2. **CONFIDENTIALITY UNDERTAKINGS**

2.1 The Confidant:

- (a) acknowledges and agrees that this Deed is for the benefit of the Department and is directly enforceable by the Department even though it is not a party to this Deed;
- (b) must ensure that the Confidential Information is kept confidential and secure from disclosure;
- (c) must only use the Confidential Information for the Permitted Purposes;
- (d) must not without the prior written consent of the Department, disclose or permit any person to disclose any of the Confidential Information to any person, other than as permitted under clause 2.2; and
- (e) must promptly notify the Department of any unauthorised possession, disclosure or use of the Confidential Information contrary to this Deed, and take all steps necessary to prevent the recurrence of such possession, disclosure or use.

2.2 Clause 2.1 does not apply to a disclosure of any Confidential Information to the extent that the disclosure is for any of the following purposes:

- (a) to any other Personnel for a Permitted Purpose;
- (b) as required or authorised by law; and
- (c) as necessary for the conduct of any legal proceedings.

2.3 The Confidant acknowledges that it may be provided with the ability to access the Department-held information (in addition to the Confidential Information) in connection with its performance of the Permitted Purposes, including through access to the Department information technology systems. Without limiting the Confidant's other obligations under this Deed or otherwise at law, the Confidant must not seek to access or use the Department-held information except to the extent strictly required to undertake the Permitted Purposes.

3. **RETURN OF CONFIDENTIAL INFORMATION**

Without limiting the Confidant's obligations at law, the Confidant must deliver to the Department, or destroy or erase, as required by the Department, all documents (including electronically stored or otherwise) in its possession or control which contain or relate to the Confidential Information on the earlier of:

- (a) the date specified in a notice given by the Department (acting reasonably); and
- (b) the time the documents and any other material are no longer required for the Permitted Purposes.

4. **VARIATIONS**

No term or provision of this Deed must be amended or varied unless such amendment or variation is agreed by the Department in writing.

5. **APPLICABLE LAW**

The laws of the Australian Capital Territory must apply to this Deed. The Confidant agrees to submit to the applicable jurisdiction of the courts of that Territory in respect of all matters arising out of this Deed.

EXECUTED as a **DEED POLL**

SIGNED, SEALED AND DELIVERED by
[Insert name of Confidant] in the
presence of:

Signature of Confidant

Signature of witness

Name

Address of witness

SCHEDULE 11

Not used

SCHEDULE 12

Not used

SCHEDULE 13

Indigenous Participation Plan

Attached as a separate document

SCHEDULE 14

Australian Industry Participation Plan

Not Used

EXECUTED as a DEED

SIGNED, SEAL AND DELIVERED for and on behalf of **THE COMMONWEALTH OF AUSTRALIA AS REPRESENTED BY THE DEPARTMENT OF VETERANS' AFFAIRS & THE REPATRIATION COMMISSION AND THE MILITARY REHABILITATION AND COMPENSATION COMMISSION** ABN 23 964 290 824 by its duly authorised officer, in the presence of:

Signature of authorised officer

Signature of witness

Name

Name

Note to Drafters: Ensure the appropriate execution block is included in the Deed. The execution block required will vary depending the type of legal entity the Contractor is. A number of options have been included for consideration below.

Option 1: Corporations Act company

Option 1 provides for execution by a company incorporated under the Corporations Act, in accordance with section 127 of the Corporations Act.

This requires execution by two directors of the company or a director and the company secretary.

SIGNED, SEALED AND DELIVERED by **[INSERT NAME OF CONTRACTOR]** ACN/ABN **[INSERT NUMBER]** in accordance with the requirements of section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/secretary

Name

Name

Option 2: Natural Person

Option 2 provides for execution by an individual, where the Contractor is a natural person.

SIGNED, SEALED AND DELIVERED by
[**INSERT NAME OF CONTRACTOR**] in
the presence of:

Signature of party

Signature of witness

Name

Option 3: Trustee of a trust

Execution block for a company executing the Deed in their capacity as the trustee of a trust.

SIGNED, SEALED AND DELIVERED
by [**INSERT NAME OF CONTRACTOR**]
ACN/ ABN [**INSERT NUMBER**] acting
as trustee of the [**INSERT NAME OF
THE TRUST**] in accordance with the
requirements of section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name