

SOUTH AUSTRALIAN PRODUCTIVITY COMMISSION

The Commission is inquiring into the efficiency and effectiveness of State Government goods and services procurement. The inquiry will examine the existing procurement framework and consider insights from other jurisdictions to identify reform options that improve procurement practices to positively impact on business and employment.

PURPOSE

The purpose of this paper is for the National Disability Services (NDS') BuyAbility Procurement Service to make a submission to the South Australian's Productivity Commission's examination of South Australia's existing procurement framework and to identify reform options to improve procurement practices to positively impact on business and employment.

This paper, in part, responds to the 'Draft Report. Inquiry into Government Procurement Stage 1', with a specific background response to **Information request 7.4**: "*To what extent are social enterprise and organisations like Buyability being considered by public authorities in South Australia? What are the impediments to considering these organisations in public sector procurement*".

In particular, it provides insights into the role of BuyAbility to support Government Social Procurement, with specific reference to the successful relationship with the NSW State Government to support improved work opportunities for people with disability.

BUYABILITY PROCUREMENT

BuyAbility Procurement is a program that started in 2011 (based from the Source America model in the USA – Refer <https://www.sourceamerica.org/> or <https://www.abilityone.gov/>), aimed at securing and managing contracts of work for disability enterprises.

Currently there are 173 Disability Enterprises with more than 600 locations across Australia, employing over 20,000 people with a disability, offering an array of quality products and services, and as per Abilityone, many of these products and services are routinely purchased by government, including:

- Commercial Cleaning
- Grounds maintenance / horticulture
- Car wash service.
- Plant Hire & Maintenance
- Printing
- Transport and logistics – Warehouse & distribution
- Mail services (mail digitisation) Digital Mailroom.

- Scanning / Shredding / File
- Supply of secure document destruction bins
- Admin / Reception / Labour Hire / Contingent Workers
- Packaging – ie Marketing material, Gift Bags etc
- Catering
- Waste Diversion, E-waste disposal & recycling
- Laundry / Dry cleaning

To date, this has resulted in BuyAbility engaging over 60 Disability Enterprises delivering over \$39 million in contracts and provided employment for over 1690 people with disability.

Refer *Attached Case Studies* for examples of contracts delivered by Disability Enterprises for the NSW State Government.

BuyAbility Procurement <https://buyability.org.au/business/> is a service of the National Disability Services involving a team of social procurement specialists committed to understanding and fulfilling Client procurement requirements. The BuyAbility Team has successfully worked in partnership with government and private enterprise buyers and procurement leads for more than 8 years.

The purpose of BuyAbility Procurement is to secure contracts of work with Government and Private Enterprise in line with the capabilities of Disability Enterprises. The team at BuyAbility Procurement work with stakeholders in various government departments and private organisations and maintain a pipeline of opportunities.

Operating a contract management approach, providing a platform for both potential client and supplier to interact via NDS. This is essentially the development of a “One Stop Shop”, where potential clients can ask NDS to source potential suppliers who fit their requirements (analyse capability and capacity), then NDS manages the contractual compliance.

The value of BuyAbility Procurement is:

- Affordable-** The client can procure high quality products and services at competitive prices
- Reliable-** Easy contract administration with proven processes and procedures, award and probity compliance
- Seamless-** Provides access to a national network of 600 Australian Disability Enterprise Outlets with the ability to aggregate multiple suppliers under the one contract
- Low Risk-** Risk management of contracts and suppliers

Social benefit- Creation of measurable social and economic benefit for thousands of people with significant disabilities

BuyAbility Procurement is free to Disability Enterprises and offer 3 channels to market for Disability Enterprises:

1. **Contract Management Service** -Experienced and dedicated team of social procurement specialists will provide a single point of contact for many opportunities across multiple service and product offerings, making communication simple and efficient. NDS holds a contract with the client and sub-contracts to disability enterprise/s. Disability Enterprises are engaged via a NDS' National Procurement Agreement and then each contract engagement has its own relevant schedule. BuyAbility Procurement:
 1. Ensures each specification/ scope is fully understood and analysed
 2. Ensures capacity and capability is guaranteed
 3. Ensures competitive market driven proposals are negotiated
 4. Provides a single point of contact making communication simple and efficient throughout the life of the contract.
 5. Manages the engagement from beginning to end, thereby simplifying the engagement for both department staff and Disability Enterprises.
 6. Ensures that the procurement principles of probity, value for money and ability to supply by suppliers etc., are adhered to.
 7. Aggregation of multiple disability enterprises in the one contract
2. **Disability Enterprise Marketplace (powered by VendorPanel)** A purpose built procurement platform providing opportunities for Disability Enterprises to quote directly with a buyer. This is currently under development.
 1. VendorPanel also have a social procurement offering called **Procure for Good which** provides access to the **Disability Enterprise Marketplace**, Social Traders panel, Supply Nation Panel and Kinaway Panel of suppliers.
3. **The BuyAbility Procurement Website** – A disability enterprise directory and search functionality (buyability.org.au/directory) enabling buyers to search via category of service and location to connect directly with Disability Enterprises across Australia.

BUYABILITY EXPERIENCE IN WORKING WITH NSW STATE GOVERNMENT

As mentioned above, BuyAbility Procurement commenced in NSW in 2011 and has established a significant partnership arrangement with the NSW State Government, as demonstrated by the fact that over 60 Disability Enterprises have or are delivering over \$39 million in contracts while providing employment for over 1690 people with disability.

This partnership has been underpinned and supported by key legislative changes and the establishment of formal procurement arrangements between BuyAbility and the NSW State Government.

Public Works and Procurement Regulation 2014

<https://www.legislation.nsw.gov.au/#/view/regulation/2014/62/part2/sec5>

The Public Works and Procurement Regulation 2014 simplifies the purchasing of goods and services from approved disability enterprises. Now NSW Government agencies may purchase goods and services directly from approved disability enterprises (or BuyAbility) on the basis of a single written quote. This includes goods or services provided through whole of government contracts.

Value for money must still be achieved. The section 5 of the legislation, which underpins this initiative, and other information can be found at:

<https://www.procurepoint.nsw.gov.au/policy-and-reform/goods-and-services/australian-disability-enterprises>

Formal Procurement Arrangements

NSW State Government has been a critical partner to creating employment opportunities for people with disability. In recognition of this successful partnership, the NSW Department of Industry & NDS' BuyAbility service received a NSW Premier's Award for Public Service 2018 in the job creation category. *The Premier's Awards for Public Service recognise excellence in the delivery of public services to the NSW community by the public sector, not-for-profit organisations and private businesses.*

This Award recognised the Department's innovative approach to increasing the rate of work participation for people with disability and providing sustainable long-term revenue streams for Australian Disability Enterprises across the state.

This was supported by the creation of a **Head Deed Agreement** (*see attachment for sample Head Deed Agreement*) between the Department of Industry with the National Disability Services (NDS) – BuyAbility Procurement, to act as its commercial partner and broker of services with disability enterprises across the state. The approach forms a key part of the

department's Disability Inclusion Action Plan. The partnership so far provides long-term employment for over 200 supported workers with total secured contracts of almost \$12 million.

This Head Deed Agreement allows for simple engagement throughout the Department via a Statement of Work referencing the Head Deed – the Head Deed (between NDS and the NSW Department of Industry) contains all of the usual terms and conditions required by the Department and the Statement of Work provides detail as to each specific project. NDS then sub-contracts with the Disability Enterprises) to deliver the contracted service. This arrangement not only facilitates ease of engagement and multiple contracts/engagements, it also mitigates risk for the State Government, whereby the contract is with the NDS and in turn NDS subcontracts to the Disability Enterprise.

This Head Deed Agreement arrangement has now been adopted with a number of other State Government Departments and private enterprises including NSW Department of Justice, NSW Department of Finance Service and Innovation, The Crown Right of Tasmania acting through the Department of Treasury and Finance and Brookfield Global Integrated Systems (BGIS) to name a few

Other points:

- Procurement Strategies & Target Spend
 - In wanting to further increase the engagement with disability enterprises some government departments and private organisations ask the following questions of their procurers:
 - Have you considered engaging Disability Enterprises for the proposed procurement?
 - If not why not?.
 - BuyAbility has been successful in negotiating with NSW Procurement in the introduction of a target spend with Disability Enterprises in the Facilities Management Category.
- Developing partnerships
 - A dual approach of pursuing strategic partnerships and addressing policy development has led to successful ongoing relationships between Government and Disability Enterprises.

Case Study Outsourcing of Print, Warehousing & Courier Services

– Sydney –

Organisations:
Flagstaff Group
& Flourish Australia

Client:
NSW Family and
Community
Services



BUYABILITY
SOCIAL
PROCUREMENT
SPECIALISTS



This 4 year contract which commenced in October 2013 incorporates the outsourcing of Printing, Warehousing and Courier Services; work previously performed in-house by NSW Family and Community Services (FACS).

The Contract was awarded to **BuyAbility Procurement** under the provisions of the "Public Works and Procurement Regulation 2014, and particularly Clause 5.

Clause 5 gives an exemption for government agencies to engage disability employment organisations without having to go through a competitive tender. **BuyAbility Procurement** arranged and managed a competitive bidding process on behalf of FACS.

The **BuyAbility Procurement** proposal was assessed by FACS under the NSW Government "Value for Money" guidelines and presented the opportunity to reduce the overall cost of the services for FACS.

Over 10 disability employment organisations were involved in the bidding process and two were successful – The Flagstaff Group for Printing and Flourish Australia for Courier and Warehousing services.

Over 20 Supported Employees (people with disability) are engaged in this contract.

The contract splits into two specific areas:

- **PRINTING**
- **COURIER SERVICES AND WAREHOUSING**

COURIER SERVICES

This service is carried out on behalf of FACS and includes delivery and pick up of printed documents and forms, internal mail and smaller assets (like laptops, printers etc.) to and from FACS offices across the Sydney Metropolitan Area.

This service requires a team of 3 including Supported Employees trained to drive the courier vans and also assist with back-up support, 5 days a week.

WAREHOUSING

Responsibilities include stock management and storage of bulk printed materials (generally standard forms and brochures).

Requests for material are picked and despatched directly to FACS customers from Flourish Australia's warehouse at Marrickville. Supported Employees receipt the incoming stock, pick it and prepare it for despatch.

PRINTING

All printed material, including business cards ordered by FACS, are printed by the Flagstaff Group at their premises just south of Wollongong.

An online portal was designed and set up by Flagstaff for FACS in September 2014 to facilitate a fast and user friendly ordering process. The portal manages both large and small volumes of varying complexity and graphic design including ad hoc printing requests.

Supported Employees assist in the printing and packing of the printed stock and perform graphic design work when required.

FACS Business Services Executive Director Albert Olley commented on the services...

"We have maintained a valuable partnership with Flagstaff for print services since 2009 and Flourish Australia for warehouse and courier services since 2014. The partnership has proven to provide a cost effective way of meeting our requirements in these areas.

The recent introduction of the Printing Services Portal is an innovative use of technology and enables an efficient method of requesting and tracking orders. Its ease of use has seen it already achieve a strong take up by users, one we are working with our internal customers to further increase.

For the volume of work, the outsourced service agreements have proven to be more efficient and cost efficient than doing it in-house. We look forward to continuing to work with the staff at Flagstaff and Flourish Australia into the future and thank you for your commitment to service excellence."

"...Printing Services Portal is an innovative use of technology and enables an efficient method of requesting and tracking orders."



Flourish Australia's Senior Manager Community Businesses James Herbertson says...

"This project has created the opportunity for Flourish Australia to expand into new areas of meaningful employment for people with a lived experience of a mental health issue through our Community Businesses. The roles created by this project in areas such as courier driving, pick-packing and dispatch have given our employees the means to participate in a work environment that closely resembles open employment. We believe this will help our employees develop skills that will ultimately allow them to move into the open labour market while creating other benefits such as social inclusion, economic gain and furthering a sense of purpose. Flourish Australia values the partnerships developed with FACS, Flagstaff and **BuyAbility Procurement** in creating opportunities such as this for the people who access our services."

The Flagstaff Group CEO Roy Rogers says...

"We'd like to sincerely thank the NSW Government and **BuyAbility Procurement** for supporting social procurement and actively working with us on this project. This project directly provides meaningful employment to people with disability and is a positive step forward in demonstrating how Disability Enterprises can provide quality goods and services to Government.

Employment and the dignity of work for our people not only helps them gain skills and economic independence, but also an increased sense of self-worth. It provides an opportunity for people with a disability to contribute to society and builds a sense of belonging and inclusion in our community."

"...provides meaningful employment to people with a disability and is a positive step forward in demonstrating how Disability Enterprises can provide quality goods and services to Government."



 www.buyability.org.au

 **Call 1300 043 517**

Formerly 'Disability Enterprise Procurement', **BuyAbility** is NDS's government endorsed service with the purpose of reducing the high rates of unemployment and underemployment of people with disability through socially responsible procurement opportunities in both the public and private sectors.

NDS National Disability Services

Case Study

Vehicle Logbook Data Entry

BUYABILITY
SOCIAL
PROCUREMENT
SPECIALISTS



Organisations:
SCIA

Client:
**Department
of Industry**



BuyAbility Procurement acted as contract manager on behalf of the Department of Industry and awarded the contract to Spinal Cord Injuries Australia (SCIA) due to their extensive capability and capacity in this type of work.

The contract scope required SCIA staff to capture relevant information from over 1700 vehicle running sheets each month and input the data into a spreadsheet for interpretation by the Department of Industry. Staff also enter key information into the NSW Government State Fleet centralised database.

OUTCOME

Following extensive negotiations and site visits between the Department's Integrated Fleet Services and Procurement team, **BuyAbility Procurement** and SCIA, a proposal was finalised which gave a "Value for Money" outcome for the Department and an initial 3 month contract commenced in July 2014 (with the possibility of further extensions).

The contract has allowed SCIA to employ 4 additional staff with disability. During the initial three months of the contract, SCIA's team have consistently completed all requirements set out in the specification, in full, on time, and to the complete satisfaction of the Department of Industry. The team working on the project enjoy the work and have been able to suggest good practice improvements to the Department.

The Department's Integrated Fleet Services team have been very impressed by the ease of doing business and the quality of work completed by SCIA. Due to this, they have subsequently awarded an extension of the contract and it continues in 2017.

The Department's Manager for this contract is the Senior Manager, Integrated Fleet Services.

ANALYSIS

The case study highlights the opportunity for NSW State Government Departments and in fact other organisations to potentially meet their business objectives, as well as providing contracts that lead to employment for people with disability.

The significant issue that has emerged from this particular case study is that people with disability have skills - and can deliver goods and services to the NSW Government standards.

The partnership in the case study, between Department of Industry, **BuyAbility Procurement** and SCIA has ensured meaningful and sustainable work opportunity for 4 people with disability who were previously unemployed. This clearly demonstrates that barriers to employment of people with a disability can be broken down, providing a positive impact for individuals and the communities in which they work.

 www.buyability.org.au

 **Call 1300 043 517**

Formerly 'Disability Enterprise Procurement', **BuyAbility** is NDS's government endorsed service with the purpose of reducing the high rates of unemployment and underemployment of people with disability through socially responsible procurement opportunities in both the public and private sectors.

NDS National
Disability
Services

Case Study Document Management and Scanning

BUYABILITY

SOCIAL
PROCUREMENT
SPECIALISTS



Organisations:
Flourish Australia

Client:
NSW Roads and
Maritime Services
(RMS)



BuyAbility Procurement facilitated this contract on behalf of Roads and Maritime via a 'Request for Quotation' process. Flourish Australia's quotation was accepted as they were able to deliver on all aspects of the work, including provision of a courier service and the capacity to complete the daily requirements. Up to five people with disability were engaged in the contract.

The contract is divided into three areas:

- 1 Couriers to collect the mail trays daily
- 2 Scanning of envelopes to record information on RMS system-TCMS
- 3 Document destruction

OUTCOME

In 2014, **Buy Ability Procurement** was contacted by RMS to discuss if there was a Disability Enterprise suitable who would be able to meet their requirements to outsource scanning of 1500 returned mail toll notices on a daily basis (450,000 annually) and be able to provide the facility to perform secure document destruction.

After a selection process, Flourish Australia was awarded the contract.

The criteria for the job included a courier collection of mail trays on a daily basis from RMS offices in Parramatta then delivery to their Marrickville site where they are unloaded to the scanning facility. Each letter is then individually scanned and entered into TCMS. Approximately 1500 letters are received on a daily basis.

The letters are scanned and once confirmed that they are recorded onto TCMS, are then shredded through a secure document destruction process. Flourish Australia started this work on a trial basis in October 2014.

Following successful completion of the trial period, Flourish Australia was awarded a 2 year Contract + 2 x 1 Year options to extend which started in February 2015.

RMS Renu Manchanda, Manager Toll Compliance Services, commented...

"Work to complete this essential part of the toll process is essential to ensure our customers continue to receive a high level of service."

RMS Peter Rigg, Manager Tolling Policy & Regulation, said...

"I am impressed with the professionalism and dedication of the staff from **BuyAbility Procurement** and Flourish Australia..They have shown they are committed to delivering for their customers"

Joy M., one of the Flourish Australia supported employees working on the project said...

"This job.....gives good experience in the operations of the computer"

 www.buyability.org.au

 **Call 1300 043 517**

Formerly 'Disability Enterprise Procurement', **BuyAbility** is NDS's government endorsed service with the purpose of reducing the high rates of unemployment and underemployment of people with disability through socially responsible procurement opportunities in both the public and private sectors.

NDS National
Disability
Services

Case Study

Dams Grounds Maintenance

Client:
Water NSW
Woronora and
Sydney Metro



BuyAbility Procurement acts as contract manager on behalf of Water NSW and awarded this contract to Flourish Australia (formerly Richmond PRA – Enterpraise) due to their extensive experience in large scale grounds maintenance. The contract was negotiated using value for money principles throughout.

The contract encompasses all of the five southern water supply dams - Avon, Nepean, Cataract, Cordeaux and Woronora. Work includes Lawn and Garden maintenance for all picnic grounds, gardens, pathways, helipads and Water NSW buildings. The contract commenced in Aug. 2011 and was initially a 2 year term with options to extend, all of which have been taken up.



OUTCOME

The 21 supported employees working on this project find the grounds maintenance of the dams one of the most satisfying jobs they do. The length of the contract means that Flourish Australia have been able to put into place a long term human resources development plan for their supported employees and supervisory staff.

Many of the supported employees have now been trained in Certificate III in Horticulture and WHS. They also learn how to work in teams and how to work to programmed timelines – all of which assists in promoting self confidence and independence. **BuyAbility Procurement**, Flourish and Water NSW have regular performance management meetings to evaluate the work carried out.

In the contract's six years of operation, the high quality of the work has been commented on by Water NSW staff and the general public visiting the picnic areas. Because of the high level of contract performance. Water NSW have also awarded a second contract to Flourish Australia, the Blue Mountains Catchment contract. Water NSW has also used other Disability Enterprises in varying roles in other catchment areas. The Water NSW manager of this project is the Senior Operations Works Supervisor.

ANALYSIS

The case study highlights the opportunity for Government organisations, or other organisations to potentially meet their business objectives, as well as providing contracts that lead to sustainable employment for people with disability.

The significant issue that has emerged from this particular case study is that people with disability have skills - and can deliver goods and services which meet all Government standards.

The partnership in the case study, between Water NSW, **BuyAbility Procurement** and Flourish Australia, has ensured meaningful and sustainable work for the employees who work on this contract.

Structures and barriers to employment of people with a disability can be broken down and managed. Creating positive outcomes for individuals and the communities in which they work.

 www.buyability.org.au

 **Call 1300 043 517**

Formerly 'Disability Enterprise Procurement', **BuyAbility** is NDS's government endorsed service with the purpose of reducing the high rates of unemployment and underemployment of people with disability through socially responsible procurement opportunities in both the public and private sectors.

NDS National
Disability
Services



Head Deed for Supply of Services

Department	NSW Department of Industry
Division	Corporate Service Partners
Contractor	National Disability Services Ltd
Services	Cleaning, waste management services, gardening, maintenance, document management services, and other general services as may be required from time to time

Table of Contents

Recitals	4
Contract Details	4
General Terms	6
1 Nature of this Deed	5
2 Term	5
3 Scope	6
4 Management of the Services	7
5 Program and delays	8
6 Supplier Personnel	8
7 Subcontracting	10
8 Acceptance	10
9 Reports, records and audits	11
10 Contract Price	12
11 Invoices and payments	12
12 Taxes and GST	13
13 Change control	14
14 Intellectual Property Rights	15
15 Confidentiality, publicity and privacy	16
16 Force Majeure Event	17
17 Warranties and representations	18
18 Liability	18
19 Insurance	19
20 Disputes	20
21 Termination	21
22 Events following termination or expiry	22
23 Notices	22
24 Assignment and novation	23
25 General	23
Execution	24

Schedule 1 – Dictionary	26
Attachment A – Subcontractor’s Statement	31
Attachment B – Statement of Work Form	33

Recitals

- A. The Department from time to time may require the provision of Services identified in this Deed and specified in a Statement of Work Form.
- B. The Supplier has agreed, on the terms set out in this Deed, to provide the Services by subcontracting to organisations which are approved disability employment organisations.

Contract Details

Department	Name	The Crown in right of the State of New South Wales acting through the Department of Industry (ABN 72 189 919 072).
	Division	Corporate Service Partners
	Address	161 Kite Street Orange NSW 2800
Supplier	Name	National Disability Services Limited
	Address	Level 19, 66 Goulburn Street, Sydney NSW 2000
	ABN	52 008 445 485
Date of this Deed	Date on which the last party executes this Deed	
Term <i>(Clause 2)</i>	Initial Term Commencement Date: 1 March 2017 Period: Five (5) years Extended Term Option: One Extended Term Period: Two years	
Services	Cleaning, waste management services, gardening, maintenance, document management services, and other general services to be provided from time to time.	
Insurance Policies <i>(Clause 19.1)</i>	Broadform public and products liability insurance for a minimum sum insured of \$20million for any single occurrence and unlimited in the aggregate as to the number of occurrences	

Notices (Clause 23)

If to the Department: Name: Caroline Myers
Position: Acting Director Strategic Procurement and Chief Procurement Officer
Address: 161 Kite St, Orange NSW 2800
Email: caroline.myers@industry.nsw.gov.au

If to the Supplier: Name: Helen Bednar
Position: National Business Manager
Address: Level 19, 66 Goulburn Street, Sydney NSW 2000
Email: helen.bednar@nds.org.au

General Terms

1 Nature of this Deed

1.1 Overview

This Deed consists of the following parts:

- (a) the Contract Details;
- (b) these General Terms; and
- (c) the Schedules and Attachments.

1.2 Priority

If there is any inconsistency between any of the parts of this Deed, the part listed higher in **clause 1.1** takes priority over any part listed lower in that clause, but only to the extent of the inconsistency.

1.3 Definitions and interpretation

The definitions used in this Deed and the rules of interpretation are set out in the Dictionary in **Schedule 1**.

1.4 Non-exclusivity and no minimum

- (a) There is no express or implied obligation on the part of the Department to obtain any services exclusively from the Supplier.
- (b) Nothing in this Deed requires the Department to:
 - (i) purchase, or offer to purchase, the Services from the Supplier or to use services supplied by the Supplier; or
 - (ii) place orders for Services or to acquire any minimum quantity of goods or services pursuant to this Deed.

2 Term

2.1 Initial Term

- (a) This Deed commences on the Commencement Date and continues for the period specified in the Contract Details (Initial Term) unless extended under **clause 2.2** (Extended Term) or terminated in accordance with this Deed.

- (b) The parties acknowledge that they commenced the activities contemplated under this Deed on the Commencement Date, despite this Deed not being finalised until the Date of this Deed specified in the Contract Details. This Deed is deemed to have applied to all activities which the parties have carried out in relation the Services from the Commencement Date.

2.2 Extended Term

- (a) The Department may extend this Deed for the period specified in the Contract Details in accordance with **clause 2.2(b)** (the **Extended Term**).
- (b) The Department may notify the Supplier, at any time before the last 3 months of the Initial Term or any Extended Term, that it wishes to extend this Deed, and if it does so the Initial Term or the Extended Term is extended by the Extended Term, on the terms and conditions in effect on the last day of the Initial Term or the Extended Term, as applicable.

3 Scope

3.1 Scope

The Supplier agrees to provide, and to ensure that its Supplier Personnel provide, the Services and the Deliverables to the Department in accordance with:

- (a) the Statement of Work;
- (b) Good Industry Practice;
- (c) all Departmental policies and procedures notified from time to time;
- (d) the terms of this Deed; and
- (e) all applicable laws and regulations.

3.2 Statements of Work

The parties agree that:

- (a) the Department may request the provision of Services by giving to the Supplier a completed Statement of Work Form;
- (b) each Statement of Work Form agreed with the Supplier and signed by the parties will create a separate contract between the Department and the Supplier (**Statement of Work**);
- (c) each Statement of Work incorporates and is governed by the terms of this Deed;
- (d) a Statement of Work may contain terms and conditions in addition to those in this Deed;
- (e) this Deed will prevail over any terms and conditions in a Statement of Work that directly conflict with this Deed, unless the Statement of Work expressly provides that the conflicting term or condition supersedes this Deed; and
- (f) additional or different terms or conditions only apply to the Statement of Work in which they are contained.

3.3 Cooperation with third parties

The Supplier must reasonably cooperate with other Departmental suppliers, contractors and consultants including:

- (a) complying with any reasonable direction of the Department; and

- (b) not interfering with, disrupting or hindering the work being carried out by them.
-

4 Management of the Services

4.1 The Department Representative and Supplier Representative

- (a) The Department will appoint a senior representative to act as the Department's principal point of contact for each Statement of Work.
- (b) The Supplier must appoint a senior representative to act as the Supplier's principal point of contact for each Statement of Work. The Supplier must ensure that the Supplier Representative has authority to make day to day decisions and to represent the Supplier in the performance of the relevant Statement of Work

4.2 Replacement of the Supplier Representative

If the Supplier wishes to replace the Supplier Representative it must give to the Department reasonable notice and must ensure that any replacement meets the requirements of **clause 4.1** (The Department Representative and Supplier Representative).

4.3 Management of the Services

- (a) The Supplier must:
 - (i) ensure that the Services are provided by the Supplier Personnel who are appropriately qualified, competent and experienced to provide the Services in accordance with this Deed;
 - (ii) ensure that the Services and Deliverables are supplied to meet the Specification and the Service Levels;
 - (iii) ensure that the Program is followed and that delays are notified and addressed as required by **clause 5** (Program and delays);
 - (iv) identify who will perform the Services, when each item is required, and how the Services will be executed and validated;
 - (v) co-ordinate the activities under this Deed and the functional outputs of all involved groups including subcontractors but excluding those activities which may be identified in the Statement of Work as being allocated to the Department or other Departmental contractors;
 - (vi) provide reports to the Department on such occasions and on such matters as the Department may require from time to time; and
 - (vii) prepare for and participate in scheduled quality assurance and audit check points and procedures.

4.4 Service Levels

- (a) The Supplier must monitor its performance against the Specification and the Service Levels and if requested by the Department, provide a written report measuring its compliance with the Specification and the Service Levels.
- (b) If the Supplier fails to meet the Service Levels then:
 - (i) the Supplier must promptly report that failure to the Department;
 - (ii) the Supplier must promptly take corrective action to remedy the failure and implement steps to ensure that it will not occur again; and
 - (iii) the Supplier must investigate the cause of the failure and report to the Department on the cause and the steps being taken to remedy that failure.

4.5 The Department's obligations

The Department will make available to the Supplier adequate information and access to the Site as necessary to perform the Services.

5 Program and delays

5.1 Compliance with the Program and extension of time

- (a) Subject to this **clause 5** (Program and delays), the Supplier must comply with the dates and times set out in the Program for the delivery of the Services.
- (b) If any event or circumstance occurs which the Supplier considers may delay the delivery of the Services or render the Supplier unable to achieve any Milestone as required by the Program, it must immediately notify the Department Representative and may request an extension of time.
- (c) The Department may consent to a request by the Supplier for an extension of time in relation to a delay provided that the Supplier provides the Department with a suitable plan indicating in detail the steps the Supplier proposes to take to minimise the impact of the delay.

5.2 Extension for the Department's delay or event outside Supplier control

The Supplier will be entitled to claim, and the Department is required to grant, a reasonable extension of time under the Program if the delay is caused by one or more of the following events:

- (a) a failure by the Department, or another Departmental contractor or supplier who is not managed by the Supplier, to carry out any tasks or requirements assigned to it or them in the Statement of Work as required by the Program (but not including any such failures which result from a prior failure of the Supplier to meet its obligations);
 - (b) a Force Majeure Event; or
 - (c) a direction or delay by the Department (except to the extent this results from a wrongful act or omission of, or a breach of this Deed by, the Supplier or any person for whom the Supplier is responsible).
-

6 Supplier Personnel

6.1 The Department's approval of Supplier Personnel

The Supplier must obtain the Department's prior approval of Supplier Personnel who will undertake Services in connection with this Deed.

6.2 Withdrawal of approval

The Department may at any time on reasonable grounds (which need not be proven) and without liability withdraw, limit or suspend its approval of a Supplier Representative or Supplier Personnel given under **clause 6.1** (The Department's approval of Supplier Personnel) by notifying the Supplier. If required by the Department, the Supplier must propose another person for approval within a reasonable time of receiving the notice. The Supplier must ensure that the replacement of Supplier Personnel under this clause is made without inconvenience or cost to the Department and without impact on the timing or delivery of the Services.

6.3 Key Personnel

Where the Contract Details or Statement of Work specify Key Personnel, the Supplier must ensure that all Key Personnel are available and assigned to providing the Services and performing the role identified for that person.

6.4 Change to Key Personnel

The Supplier must not change any Key Personnel's involvement in the provision of the Services and performance of this Deed unless:

- (a) they are incapacitated or unable to perform their role for any reason, or leave the Supplier's employment;
- (b) the Services which they were performing are complete; or
- (c) the Department gives prior written consent to the change.

6.5 Notice of change to Key Personnel

The Supplier must replace Key Personnel who cease to be involved in providing the Services under **clause 6.4(a)** or **6.4(c)** (Change to Key Personnel) with a person of equivalent skills and experience and who has been approved by the Department.

6.6 Compliance with the Department's policies

The Supplier must ensure that the Supplier Personnel, when on the Department's premises or Sites, when accessing the Department's facilities, computer systems and information and when otherwise carrying out the Services, comply with all requirements, policies and directions of the Department including in regard to:

- (a) conduct and behaviour;
- (b) protection of privacy;
- (c) use of IT systems;
- (d) work health and safety (including complying with the Department's work health and safety management plans and procedures);
- (e) security (including submitting to security checks as required by the Department); and
- (f) confidentiality (including, where requested by the Department, ensuring that the Supplier Personnel execute a deed of confidentiality in the form required by the Department).

6.7 Denial of access

- (a) If a member of Supplier Personnel breaches the requirements under this Deed, the Department may, at any time and for any period, refuse the person access to any or all Sites or other Departmental premises.
- (b) If it is appropriate and practicable to do so the Department will give the Supplier prior written notice of the refusal of access under **clause 6.7(a)** (Denial of access) to allow the member of Supplier Personnel to vacate the Site or premises.
- (c) The Supplier must replace any member of Supplier Personnel refused access under **clause 6.7(a)** (Denial of access) without inconvenience or cost to the Department and without impact on the timing or delivery of the Services.

6.8 Information about Supplier Personnel

If requested to do so by the Department, the Supplier must provide to the Department:

- (a) accurate information about the identity, qualifications, job history and character of each of the Supplier Personnel; and
- (b) a list of any of the Supplier Personnel with actual or proposed access to the Department's premises or data.

6.9 Criminal record search, investigation and other checks

If requested by the Department, the Supplier must provide a criminal record search of the Supplier Personnel and any other investigations and checks as the Department may reasonably request, and must provide the

results to the Department. The Department may, but is not required to, carry out such searches, investigations and checks itself, and the Supplier must provide all such assistance as the Department may reasonably require.

6.10 Removal of unsuitable Supplier Personnel

If, as a result of any investigation under **clause 6.9** (Criminal record search, investigation) or any breach of the security or privacy obligations contained within this Deed, the Department is of the reasonable opinion that any of the Supplier Personnel is unsuitable to undertake work in respect of this Deed, then the Department may request the Supplier to remove that person from the performance of this Deed. If the Department makes such a request, then the Supplier will provide replacement personnel reasonably acceptable to the Department within a reasonable time of the Department's request and without inconvenience or cost to the Department.

7 Subcontracting

7.1 Subcontracting to disability employment organisations

The parties acknowledge that the Supplier may subcontract its obligations under this Deed to disability employment organisations. The Department may give or withhold its approval of a particular subcontractor in its absolute discretion and may impose conditions on its approval.

7.2 Withdrawal of approval

The Department may at any time on reasonable grounds and without liability withdraw, limit or suspend its approval of a subcontractor by notifying the Supplier and giving reasons. If required by the Department, the Supplier must propose another subcontractor for approval within a reasonable time of receiving the notice. The Supplier must ensure that the replacement of a subcontractor under this clause is made without inconvenience or cost to the Department and without impact on the Program or delivery of the Services.

7.3 Responsibility for subcontractors

The Supplier must ensure that each subcontractor:

- (a) is a disability employment organisation approved under s.21B of the *Public Sector Employment and Management Regulation 2009*;
- (b) has the skills, resources and experience to carry out the work subcontracted to it; and
- (c) is engaged on terms consistent with this Deed.

The Supplier is responsible for all acts and omissions of its subcontractors as if they were those of the Supplier. The Supplier indemnifies the Department against all costs, expenses and liabilities incurred by the Department in connection with the acts or omission of any subcontractor.

8 Acceptance

8.1 Acceptance

Acceptance occurs:

- (a) if the Department notifies the Supplier in writing that the Department has accepted the Services or Deliverables;
- (b) if the Department notifies the Supplier in writing that the Department has accepted any rejected Services or Deliverable following its replacement, modification, rectification or redelivery by the Supplier in compliance with any instruction by the Department; or
- (c) if the Department fails to notify the Supplier of the rejection of the Services or Deliverable within 20 Business Days after completion of the Services or delivery of the Deliverable, as the case may be.

8.2 Rejection

- (a) The Department may reject any Services or Deliverables:
 - (i) that have not been ordered by the Department;
 - (ii) that do not comply with the Specification; or
 - (iii) that breach any Supplier warranties, including Services or Deliverables delivered in breach of the Supplier warranties set out in **clause 17**.
- (b) Without prejudice to any other rights which the Department may have, if the Department rejects any or part of the Services or Deliverables pursuant to **clause 8.2(a)**, The Department may:
 - (i) withhold any money payable or recover any money paid to the Supplier for the Services; and
 - (ii) exercise its rights under **clause 11.6** (Set off rights).

8.3 Suspension of Services

- (a) The Department may immediately suspend the performance of any or all of the Services at any time and for any reason by written notice to the Supplier.
- (b) If the Department suspends any of the Services under **clause 8.3(a)**, the Department may at any time give the Supplier a notice to resume performing the suspended Services.
- (c) On receipt of a notice of suspension under **clause 8.3(a)**, the Supplier must:
 - (i) stop work as specified in the notice;
 - (ii) take all available steps to minimise loss resulting from that suspension; and
 - (iii) continue work on any part of the Services not affected by the notice.
- (d) If the Department suspends any of the Services under **clause 8.3(a)**, the Department must pay any fees due for Services rendered in accordance with this Deed before the effective date of suspension, when due under the terms of this Deed.

9 Reports, records and audits

9.1 Reports

The Supplier must provide to the Department Representative the reports with the content and in the frequency and form (electronic or physical) if so required as set out in the Statement of Work.

9.2 Review meetings

The Supplier Representative must attend meetings with the Department Representative at a place and time to be notified to the Supplier by the Department Representative on the frequency required by the Department Representative.

9.3 Records and inspection

The Supplier must, and must ensure all subcontractors:

- (a) keep and maintain all necessary Records during the Term and 7 years thereafter;
- (b) make those Records available for inspection and/or audit as reasonably required by the Department, an auditor or advisor during normal business hours. Copies and extracts of any Records may be taken for these purposes;
- (c) permit the Department to inspect or appoint a third party to inspect the Supplier Personnel's premises to confirm compliance with this Deed; and

- (d) provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith and at the Supplier's sole cost.

9.4 Annual audit

The Department may conduct itself, or appoint a third party to conduct, an audit of the Supplier's performance and compliance with this Deed and the Statement of Works.

9.5 Costs

Unless expressly provided otherwise in this clause, the Department and the Supplier will each pay their own costs and expenses in connection with this **clause 9**.

10 Contract Price

10.1 Contract Price

The Contract Price is the full amount payable by the Department for the supply of the Services. Unless otherwise specified in a Statement of Work, the Supplier is not entitled to recover any expenses additional to the Contract Price.

10.2 Invoicing of Contract Price

The Supplier may invoice the Department for the Contract Price in the amounts and at the times set out in the Statement of Work. If the Department so requests, the Supplier shall provide a monthly consolidated invoice in respect of all Services under current Statements of Work, showing a breakdown of the Contract Price per Statement of Work.

11 Invoices and payments

11.1 Payment of invoices

The Department is not required to pay any amount to the Supplier unless it has received a correctly rendered invoice for that amount. Unless the Statement of Work specifies otherwise, the Department must pay each correctly rendered invoice within 30 days after receipt of that invoice.

11.2 Correctly rendered invoice

For the purposes of this Deed, an invoice is not correctly rendered unless:

- (a) the invoice is a Tax Invoice;
- (b) the amount claimed in the invoice is due for payment;
- (c) the amount claimed in the invoice is correctly calculated under this Deed;
- (d) the invoice includes a unique reference number and is set out in a manner that identifies the Services which the invoice covers and itemises each amount claimed to a level of detail satisfactory to the Department acting reasonably (and in any event, complies with any specific requirements in the Statement of Work);
- (e) the invoice is accompanied by documents, including timesheets, that adequately demonstrate to the Department the Services that were performed in accordance with this Deed and the basis on which the amounts are claimed;
- (f) the invoice is addressed to the Department using the address, contact details and other identifiers which the Department may require; and
- (g) the invoice is accompanied by a completed Subcontractor's Statement in the form set out in **Attachment A** in respect of the period to which the invoice relates.

11.3 Disputed invoices

Where the Department considers that an invoice is not correctly rendered the Department will issue to the Supplier within 10 Business Days after receipt of the invoice a notice setting out the reasons and identifying any amounts which are in dispute.

11.4 Amounts due to the Department

Each amount payable by the Supplier to the Department under an indemnity, warranty, reimbursement, or refund obligation, or default event under this Deed is a debt due and payable to the Department on demand. Any demand must attach any relevant verifying documentation and, if the amount payable is a taxable supply, must be a Tax Invoice. The Supplier must pay or credit the amount to the Department, at the Department's option, within 30 days after issue of the demand or the time otherwise set out in this Deed.

11.5 Payment by the Department of amounts due to third parties

The Department may (but is not obliged to) pay an amount owing by the Supplier to a third party who has supplied services or goods to the Supplier in connection with this Deed where:

- (a) the time for payment has passed;
- (b) the Department reasonably considers that supply to the Department of goods or services may be adversely affected by the non-payment; and
- (c) the Department has first given the Supplier not less than 5 Business Days' notice that it intends to make the payment.

Where the Department makes such a payment, the Supplier must credit or pay the amount to the Department as required by **clause 11.4** (Amounts due to Department) at the Department's option.

11.6 Set off rights

Without prejudicing any other rights available to the Department, the Department is entitled to set off against any amount due for payment by it to the Supplier any amount payable by the Supplier to the Department.

11.7 Payment does not affect other rights or obligations

Payment of money under **clause 11.1** (Payment of invoices) is not evidence:

- (a) that the Department accepts the Services or any Deliverable under this Deed;
- (b) of any waiver by or estoppel against the Department in relation to any right or action which the Department may have at any time against the Supplier;
- (c) that the Supplier has carried out its obligations under this Deed; or
- (d) of the value of any of the Services.

12 Taxes and GST

12.1 Indemnity

The Supplier indemnifies the Department against any costs or expenses that the Department suffers or incurs as a result of the Supplier failing to meet its obligations under any tax law.

12.2 GST

The parties agree that:

- (a) unless expressly stated otherwise, all amounts payable by the Department to the Supplier under this Deed are exclusive of GST;

- (b) if a supply under this Deed is subject to GST, and the consideration payable or to be provided for the supply is not inclusive of GST, the party receiving the supply must pay to the party making the supply an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate;
- (c) the additional amount is payable at the same time as the consideration for the supply is payable;
- (d) if the additional amount differs from the amount of GST payable by the party making the supply, the parties must adjust the additional amount; and
- (e) if a party is entitled to be reimbursed or indemnified under this Deed, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

13 Change control

13.1 Out of scope work

The Supplier is not required to carry out, and the Department is not required to pay any amount in respect of, services or goods outside the scope of this Deed unless and until a Change Notice has been executed by the parties as required by this **clause 13** (Change control).

13.2 Change request

Either party may request a change to:

- (a) the scope or description of any Services or Deliverables;
- (b) requirement of the Statement of Work or Specifications; or
- (c) any of the Service Levels,

(each a Change) by issuing a notice in writing to the other party.

13.3 Supplier to identify relevant Changes

If the Supplier becomes aware of any circumstances which indicate that a Change is required in order for the Department to achieve its objectives as specified in the Contract Details, Statement of Work or otherwise known to the Supplier, the Supplier must promptly notify the Department of those circumstances, in which case the Department may issue a request for a Change.

13.4 Change request by the Department

If a Change is requested by the Department (whether or not as a consequence of a notice from the Supplier under **clause 13.3** (Supplier to identify relevant Changes)), the Supplier must provide to the Department within 10 Business Days of receiving the notice of request, or such other period as the parties may agree, a Change Proposal which complies with **clause 13.7** (Requirements for Change Proposal).

13.5 Change request by Supplier

If the Change is requested by the Supplier, the Supplier must include a Change Proposal with the request for Change or at such later date as the parties agree.

13.6 Assistance from the Department

Where the Supplier requires information from the Department in order to properly prepare a Change Proposal, the Department will provide all such information reasonably requested within a reasonable period of the request.

13.7 Requirements for Change Proposal

- (a) Each Change Proposal must:

- (i) set out a full description of the Change;
 - (ii) specify all changes to the Contract Price, Specification, Service Levels, the Program and any other conditions which the Supplier reasonably requires in order to perform the Change and must detail reasons for those changes.
- (b) Any adjustment to the Contract Price must be based on the Time and Materials Rates if applicable, or if not applicable, be based on the change to the Supplier's actual direct costs as a result of the Change, including a reasonable profit allowance.

13.8 Acceptance or rejection of a Change Proposal

- (a) The Supplier must inform the Department fully of any and all risks relative to both the acceptance and rejection of a Change Proposal proposed or requested by the Supplier.
- (b) The Department may accept or reject a Change Proposal at any time within 20 Business Days of receiving the Change Proposal. Where the Department accepts a Change Proposal, the parties will execute a Change Notice on those terms and this Deed will be varied accordingly, with effect from the date of execution of the Change Notice.

14 Intellectual Property Rights

14.1 Intellectual Property Rights in Deliverables

Subject to **clause 14.2** (Pre-existing Intellectual Property Rights), the Supplier assigns and must procure that the Supplier Personnel assign to the Department all Intellectual Property Rights in all Deliverables on creation.

14.2 Pre-existing Intellectual Property Rights

Clause 14.1 (Intellectual Property Rights in Deliverables) does not affect the ownership of Intellectual Property Rights in any Pre-Existing Material. The Supplier grants the Department a perpetual, non-exclusive, non-transferable, irrevocable royalty-free licence to:

- (a) use, reproduce, add to, modify and communicate to the public any of the Pre-Existing Material which is incorporated into any Deliverable in any manner, anywhere in the world, for any purpose;
- (b) permit any person to assist the Department to do any of the things referred to in **14.2(a)** (Pre-existing Intellectual Property Rights); and
- (c) sublicense any of the rights described in **clause 14.2(a)** or **(b)** (Pre-existing Intellectual Property Rights) to any person,
- (d) but only as part of the use or exploitation of the Deliverables.

14.3 Intellectual Property warranty

The Supplier warrants that:

- (a) it will not infringe the Intellectual Property Rights or Moral Rights of any person in providing the Services or otherwise performing this Deed; and
- (b) the Deliverables, and their use, do not infringe and will not infringe, the Intellectual Property Rights or Moral Rights of any person.

14.4 Indemnity

The Supplier must (either directly itself or by procuring subcontractors to do so):

- (a) at the Department's request and sole option:
 - (i) defend at no cost to the Department, all Infringement Claims; or

- (ii) provide, at no cost to the Department, all reasonable assistance required by the Department to defend any Infringement Claim; and
- (b) indemnify the Department against all costs (including legal costs on a solicitor and own client basis), losses, damages and expenses that the Department may sustain or incur as a result of an Infringement Claim; and
- (c) satisfy any settlement of or judgement given in an Infringement Claim.

15 Confidentiality, publicity and privacy

15.1 Disclosure of Confidential Information

A party (**Recipient**) must not disclose the other party's (**Discloser's**) Confidential Information to any person except:

- (a) its Representatives requiring it for the purposes of this Deed or to enable the Recipient to obtain professional advice in relation to this Deed;
- (b) with the consent of the Discloser;
- (c) if the Recipient is required to do so by law or by a lawful requirement of any government or governmental body, authority or agency having authority over the Recipient or by a stock exchange; or
- (d) if the Recipient is required to do so in connection with legal proceedings relating to this Deed or other Deed between the parties.

15.2 Permitted disclosures

If the Recipient discloses the Discloser's Confidential Information under **clause 15.1(a)** or **15.1(b)** (Disclosure of Confidential Information) then:

- (a) it must use its best endeavours to ensure that persons receiving the Confidential Information from it do not disclose the information except in the circumstances permitted in **clause 15.1** (Disclosure of Confidential Information);
- (b) the Discloser may at any time require the persons receiving the Confidential Information to give written undertakings relating to the non-disclosure of the Confidential Information and the Recipient must arrange for all such undertakings to be given promptly; and
- (c) the Recipient must reserve the right to demand immediate delivery of all documents or other materials in its possession, power or control or in the possession, power or control of the third party who has received Confidential Information from it containing or referring to that Confidential Information.

15.3 Use of Confidential Information

The Recipient must not use the Discloser's Confidential Information except for the purpose of exercising the Recipient's rights or performing its obligations under this Deed or any other Deed between the parties.

15.4 Return of Confidential Information

On the Discloser's request, the Recipient must immediately deliver to the Discloser or destroy all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control; or in the possession, power or control of persons who have received Confidential Information from the Recipient except to the extent that:

- (a) the Recipient requires the Confidential Information for the purpose of performing its obligations or exercising its rights under this Deed or other Deed between the parties; or
- (b) the Recipient is otherwise entitled to retain the Confidential Information.

15.5 No disclosure of the terms of this Deed

Except as otherwise agreed or required by law, any regulatory authority or stock exchange, neither party may disclose the terms of this Deed to any person other than its Representatives on a confidential basis.

15.6 Disclosure of details of the Department contracts with the private sector

The Supplier acknowledges and agrees that the Department may be required by the *Government Information (Public Access) Act 2009* to publish certain information concerning this Deed, and that **clause 15.1(c)** applies to such publications by the Department.

15.7 Publicity

The Department will take sole responsibility for all media announcements regarding this Deed and the Services. The Supplier must refer any media enquiries to the Department. The Supplier may only make media announcements about this Deed or the Services with the express, written approval of the Department.

15.8 Compliance with privacy requirements

The Supplier must:

- (a) comply with the Department's privacy policy as notified in writing to Supplier from time to time as if it were bound by that policy;
- (b) comply with the *Privacy and Personal Information Protection Act 1998 (NSW)* and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by those laws;
- (c) comply with all directions by the Department:
 - (i) relating to the means by which the Department complies with the *Privacy and Personal Information Protection Act 1998 (NSW)*, the Department's privacy policy, and all other applicable laws, codes and privacy policies; and
 - (ii) co-operate with the Department in the resolution of any complaint alleging a breach of such laws, codes or privacy policy.

15.9 Provide information

At the Department's request, the Supplier will promptly provide all reasonable assistance to enable the Department to comply with its obligations under this Deed and at law, including providing details of any person (for example, a related body corporate or any other private sector entity in which the Supplier has an interest) that:

- (a) will be involved in performing any of the Supplier's obligations under this Deed; or
- (b) will receive a benefit under this Deed.

This clause survives the termination of this Deed for any reason whatsoever.

16 Force Majeure Event

16.1 No breach for Force Majeure Event

A party does not breach this Deed and is not liable to the other party for a delay or failure to perform an obligation to the extent it results from a Force Majeure Event.

16.2 Obligations of affected party

The party affected by the Force Majeure Event must notify the other party of the Force Majeure Event as soon as reasonably practicable and must take all reasonable steps to limit the effects of Force Majeure Event.

16.3 Delays and termination for Force Majeure Event

The parties will address any delay caused by a Force Majeure Event as required by **clause 5.2**. The Department may terminate this Deed for a Force Majeure Event under **clause 21.6** (Force Majeure).

17 Warranties and representations

17.1 Supplier's warranties and representations

The Supplier warrants and represents that:

- (a) its subcontractors will be disability employment organisations approved under s.21B of the *Public Sector Employment and Management Regulation 2009*, and that they will have the skills, resources and experience to carry out the Services subcontracted to them;
- (b) the Supplier has evaluated, and will evaluate, all technical aspects of the Program and the Statement of Work as they arise from time to time, and that it has, or its subcontractors have, and will have, the technical expertise to supply the Services;
- (c) all technical information supplied by the Department is for explanatory purposes only and does not relieve the Supplier of its obligations to supply and implement the Services;
- (d) it has obtained all consents and approvals required in order to meet its obligations under this Deed;
- (e) the Services and Deliverables will be supplied in accordance with the requirements of this Deed; and
- (f) the Services and Deliverables will be fit for the purposes for which they are sought.
- (g) it has, and will ensure that its subcontractors have:
 - (i) a work, health and safety management system in place;
 - (ii) the necessary resources in place to comply with the *Work Health and Safety Act 2011 (NSW)*, regulations, codes of practice and other instruments under that Act; and
 - (iii) taken all necessary measures to identify reasonably foreseeable hazards in relation to the Services which could potentially give rise to health and safety, and it has taken all necessary measures to assess and eliminate or control the risks arising from those hazards.

17.2 Notification of non-compliance

As soon as practicable after becoming aware of any matter which is likely to impact upon its ability to comply with a warranty or representation in this **clause 17** (Warranties and representations), the Supplier must give written notice to the Department detailing that matter and its likely impact on the Supplier's ability to comply with this **clause 17** (Warranties and representations).

18 Liability

18.1 The Department's liability

Subject to **clause 18.3** (No limitation):

- (a) the aggregate liability of the Department to the Supplier under or in respect of a Statement of Work whether in contract, tort (including negligence), statute or any other cause of action is limited to an amount equal to the Contract Price under that Statement of Work; and
- (b) The Department will not be liable to the Supplier under or in respect of this Deed whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

18.2 Supplier's liability

Subject to **clause 18.3** (No limitation):

- (a) the aggregate liability of the Supplier to the Department under or in respect of a Statement of Work whether in contract, tort (including negligence), statute or any other cause of action is limited to an amount equal to five times the Contract Price under that Statement of Work; and
- (b) the Supplier will not be liable to the Department under or in respect of this Deed whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

18.3 No limitation

Nothing in this Deed operates to limit or exclude:

- (a) liability that cannot by law be limited or excluded;
- (b) the liability of either party in respect of personal injury (including sickness and death) or real or tangible property loss or damage;
- (c) liability of a party in respect of a breach of **clause 14** (Intellectual Property Rights);
- (d) the Supplier's liability under **clause 14** (Intellectual Property Rights);
- (e) liability of either party for unlawful or illegal acts or conduct; or
- (f) the Department's liability to pay such of the Contract Price as is due and payable.

18.4 Consequential Loss Definition

- (a) Subject to (b) Consequential Loss:
 - (i) means any loss, not arising naturally, that is according to the usual course of things, from the breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the Deed, as the probable result of the breach; and
 - (ii) includes loss of profit.
- (b) Consequential Loss does not include:
 - (i) additional internal administrative and management costs and expenses;
 - (ii) expenditure or fees rendered unnecessary;
 - (iii) costs of procuring replacement Services;
 - (iv) additional costs to maintain the Services;
 - (v) legal fees on a full indemnity basis; or
 - (vi) any loss under this Deed that is required to be insured against or is the subject of an abatement.

19 Insurance

19.1 Insurance

The Supplier must obtain on terms reasonably approved by the Department and thereafter maintain, for the duration of this Deed, the policies of insurance listed in the Contract Details.

19.2 Evidence of insurance

On request by the Department, the Supplier must provide certificates of currency proving that the policies of insurance required under this Deed have been effected and are current. A certificate of currency provided under this section must be issued by the insurance company providing insurance and must contain all details reasonably requested by the Department, including a summary of all risks covered and any exclusions.

19.3 Supplier notification

The Supplier must notify the Department within two Business Days of any event which affects or may affect the Supplier's compliance with this **clause 19** (Insurance), including any cancellation of a policy or reduction of limit of coverage below that required by this Deed.

20 Disputes

20.1 Reasonable endeavours to settle

If a Dispute arises the parties undertake in good faith to use all reasonable endeavours to settle the Dispute expeditiously.

20.2 Dispute notice

Any party claiming that a Dispute has arisen may give a written notice to the other party.

20.3 Negotiation

If a Dispute is notified under **clause 20.2** (Dispute notice) each party must nominate a senior representative with appropriate authority to negotiate on behalf of the party to settle the Dispute. The representatives must endeavour to resolve the Dispute within 10 Business Days of the notice under **clause 20.2** (Dispute notice).

20.4 Further resolution process

If the Dispute is not resolved within the period referred to in **clause 20.3** (Negotiation), the parties' representatives will within a further 5 Business Days seek to agree on:

- (a) a process to resolve the Dispute, for example through further negotiations, mediation, conciliation, independent expert determination or mini trial; and
- (b) the procedure and timetable for any exchange of documents and other information in relation to the Dispute;
- (c) procedural rules and timetable for the conduct of the selected mode of proceedings;
- (d) a procedure for selection and compensation of any neutral person (who may or may not be employed by a party); and
- (e) whether the parties should seek the assistance of a dispute resolution organisation such as the Australian I Disputes Centre.

20.5 Court proceedings

If the representatives are unable to agree on a process for resolving the dispute in the period referred to in **clause 20.4** (Further resolution process) or the dispute has not been resolved within 10 Business Days (or such other period as the parties may agree) of the parties agreeing such a process, either party will be free to commence court proceedings relating to the Dispute.

20.6 Right to terminate

This **clause 20** (Disputes) does not affect either party's rights to terminate this Deed under **clause 21** (Termination) or pursuant to any other rights of termination contained in this Deed.

20.7 Interlocutory relief

This **clause 20** (Disputes) does not affect either party's right to commence court proceedings seeking interlocutory relief.

20.8 Parties to continue to perform

Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under this Deed.

21 Termination

21.1 Termination by the Department for cause

The Department may terminate this Deed immediately by notice to the Supplier if:

- (a) Breach of deed - the Supplier breaches this Deed and:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is capable of remedy and the Supplier fails to remedy the breach within 10 Business Days, or such longer time as the Department states, of receiving notice from the Department requiring the breach to be remedied;
- (b) Insolvency - the Supplier becomes insolvent, makes an assignment for the benefit of creditors, is the subject of winding up proceedings whether voluntary or compulsory otherwise than for the purpose of reconstruction and amalgamation, or a receiver is appointed to the Contractor by a court;
- (c) Wrongful assignment or novation - the Supplier assigns, novates or purports to assign or novate its rights otherwise than as permitted by this Deed; or
- (d) Change of Control - the Supplier undergoes a Change of Control.

21.2 Termination by the Department without cause

The Department may terminate this Deed, for any reason at its convenience, by giving not less than 60 days' written notice to the Supplier.

21.3 Statements of Work created prior to expiry or termination of this Deed

- (a) Subject to **clause 21.3(b)**, on expiry or termination of this Deed, the Supplier must fulfill all Statements of Work placed prior to expiry or termination of this Deed, unless the Department cancels or terminates the Statement of Work at its option without liability.
- (b) All Statements of Work will automatically terminate upon a termination under **clause 21.1(a)** (Insolvency).

21.4 Termination of Statements of Work

- (a) The Department may at any time terminate a Statement of Work, for any reason at its convenience, by providing 30 days' written notice to the Supplier.
- (b) The Department may terminate a Statement of Work immediately by notice to the Supplier if the Supplier breaches the terms of the Statement of Work and:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is capable of remedy and the Supplier fails to remedy the breach within 10 Business Days, or such longer time as the Department states, of receiving notice from the Department requiring the breach to be remedied.

21.5 Termination by Supplier for cause

The Supplier may only terminate a Statement of Work if the Department has failed to pay an amount due under that Statement of Work to the Supplier which is not the subject of a bona fide dispute within 40 Business Days of receiving a correct notice claiming that the amount is overdue and stating that the Supplier

proposes to exercise its rights under this **clause 21.5** (Termination by Supplier for cause) if payment is not made.

21.6 Force Majeure

If a delay or failure to perform a party's obligations due to a Force Majeure Event exceeds 20 Business Days, or if the Department reasonably considers the Force Majeure Event will not cease within that period, the Department may immediately terminate this Deed or a Statement of Work on notice to the Supplier.

22 Events following termination or expiry

22.1 Obligations on expiry or termination

On expiry or termination of this Deed for any reason, then without limiting any other rights the Department may have:

- (a) the Supplier must pay the Department any part of the Contract Price paid by the Department to the Supplier in advance for Services not yet supplied; and
- (b) the Supplier must provide reasonable assistance in the transition to alternative suppliers.

22.2 Remedies

- (a) If this Deed is terminated by the Department under **clause 21.1** (Termination by the Department for cause), then without limiting any other rights the Department may have, the Supplier must refund to the Department those amounts of the Contract Price paid by the Department relevant to the termination.
- (b) If this Deed is terminated by the Department under **clause 21.2** (Termination for convenience) the Department will be liable for the reasonable and unavoidable costs incurred by the Supplier that are directly attributable to the termination, provided that:
 - (i) the Supplier will have no claim for Consequential Loss, whether under the Deed or otherwise; and
 - (ii) the Supplier will not be entitled to payment or compensation which would together exceed the Contract Price which would have been payable under this Deed.

22.3 Survival

Clauses 11 (Invoices and payments), **12** (Taxes and GST), **14** (Intellectual Property rights), **15** (Confidentiality, Publicity, Privacy), **17** (Warranties and representations), **18** (Liability), **19** (Insurance), **22** (Events following termination or expiry), and **25** (General) survive the termination or expiry of this Deed, as do any rights and remedies accrued before termination or expiry.

23 Notices

23.1 Form

Unless stated otherwise in this Deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing and:

- (a) left at the address of the addressee; or
- (b) sent by prepaid post (airmail if posted to or from a place outside Australia) to the address of the addressee; or
- (c) sent by email to the email address specified in the Contract Details or as notified by the receiving party.

23.2 Time of receipt

A notice, consent, request or any other communication is deemed to be received:

- (a) if by hand delivery, when it is delivered;
- (b) if posted, the earlier of the date of receipt and seven Business Days after posting if within Australia or ten, if posted to or from a place outside Australia; and
- (c) if an email, the earlier of when the email is opened by the recipient and the next Business Day after the time at which it enters the recipient's system (provided that the sender does not receive a delivery failure or out of office message).

24 Assignment and novation

The Supplier must not assign its rights under this Deed or purport to novate its rights and obligations under this Deed without the prior written consent of the Department.

25 General

25.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Deed expressly states otherwise.

25.2 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

25.3 No liability for loss

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this Deed.

25.4 Remedies cumulative

The rights and remedies provided in this Deed are in addition to other rights and remedies given by law independently of this Deed.

25.5 Variation and waiver

A provision of this Deed or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

25.6 Indemnities

The indemnities in this Deed are continuing obligations, independent from the other obligations of the parties under this Deed and continue after this Deed ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Deed.

25.7 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

25.8 Costs

The parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Deed and other related documentation except for stamp duty.

25.9 Counterparts

This Deed may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

25.10 Governing law and jurisdiction

This Deed is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

25.11 Severability

If any part or provision of this Deed is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of this Deed will continue to operate.

25.12 Entire Deed

This Deed constitutes the entire Deed of the parties about its subject matter and supersedes any previous understandings or Deeds on that subject matter.

Execution

Executed as a deed for and on behalf of the Crown in right of the State of New South Wales acting through the **Department of Industry** by its authorised signatory but not so as to incur personal liability:

Before:

Signature

Signature of Witness

Name

Name of Witness

Title

Address of Witness

Date

Executed as a deed on behalf of **National Disability Services Ltd** by:

Signature of Director (1)

Signature of Director (2) or Company Secretary

Name of Director (1)

Name of Director (2) or Company Secretary

Date

Date

Schedule 1 - Dictionary

1 Definitions

1.1 Definitions

Acceptance means acceptance of the Services by the Department in accordance with **clause 8.1** (Acceptance). **Accepted** has a corresponding meaning.

Amount of the Consideration means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST Exclusive Market Value of that consideration as reasonably determined by the party making the supply.

Business Days means a day other than a Saturday, Sunday or public holiday in Sydney.

Change is defined in **clause 13.2** (Change request).

Change of Control occurs, in respect of an entity when:

- (a) a person who did not have Control of the entity at the Commencement Date acquires Control of the entity; or
- (b) a person who did have Control of the entity at the Commencement Date ceases to have Control of the entity.

Change Notice means a notice executed by the parties setting out an agreed Change and the variations to this Deed relating to that Change.

Change Proposal means a proposal issued by the Supplier detailing the variations which would be applicable to implement a Change.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Commencement Date means the date identified in the Contract Details as the Commencement Date.

Confidential Information in relation to the Department means the Department Confidential Information and in relation to the Supplier means the Supplier Confidential Information.

Consequential Loss has the meaning given in **clause 18.4** (Consequential Loss Definition).

Contract Details means the contract details set out at the front of this Deed.

Contract Price means the contract price set out in the Statement of Work, as varied from time to time under **clause 13** (Change control).

Control of an entity includes the direct or indirect power to:

- (a) direct the management or policies of the entity; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, Deeds, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.

Corporations Act means the *Corporations Act 2001 (Cwlth)*.

Deliverable means each item required to be produced by the Supplier or provided to the Department under this Deed.

Department Confidential Information means all Information disclosed (including inadvertently) by the Department or any of its Representatives in connection with this Deed, all Information disclosed by a third party which the Department is required to keep confidential and all Information in respect of Intellectual Property Rights owned by the Department including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Department or a third party to whom the Department owes an obligation of confidentiality;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary, computer modelling; and
- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

Department Representative means the person identified in the Contract Details as the Department Representative as varied by notice to the Supplier from time to time.

Discloser is defined in **clause 15.1** (Disclosure of Confidential Information).

Dispute includes any dispute, controversy, difference or Claim arising out of or in connection with this Deed or the subject matter of this Deed, including any question concerning its formation, validity, interpretation, performance, breach and termination.

Excluded Information means Information which:

- (a) is in or becomes part of the public domain otherwise than through breach of this Deed or an obligation of confidence owed to the Discloser; or
- (b) Recipient can prove was already known to it at the time of disclosure by Discloser or its Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) Recipient acquires from a source other than Discloser where such source is entitled to disclose it.

Extended Term has the meaning given in **clause 2.2(a)** (Term).

Force Majeure Event means any of the following causes provided that they are outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps:

- (a) act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning, storm, tempest, drought or meteor;
- (a) civil insurrection or militarily usurped power;

- (b) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (c) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or
- (d) a labour dispute other than a labour dispute that only involves the party's personnel.
- (e) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations.

General Terms means the general terms set out in **clauses 1 to 25** of this Deed.

Good Industry Practice means at any time, the exercise of that degree of care, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced contractor, to a customer like the Department, in the delivery of products and execution of services of a similar nature to the Services, seeking to comply with this Deed and applicable laws and regulations.

GST means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

GST Act means the *A New Tax Services (Services Tax) Act 1999*, as amended from time to time.

GST Exclusive Market Value has the meaning given to it in the GST Act.

Information means all information relating to or developed in connection with:

- (a) the business, technology or other affairs of the Discloser;
- (b) the Services, the Deliverables, a Statement of Work or this Deed;
- (c) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including without limitation, computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property owned or used by, or licensed to, the Discloser.

Infringement Claim means any Claim which would, if true, involve a breach of a warranty under **clause 14.3** (Intellectual Property warranty).

Initial Term has the meaning given in **clause 2.1** (Term).

Input Tax Credit has the meaning it has in the GST Act.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Key Personnel means the persons (if any) identified in the Contract Details or the Statement of Work as Key Personnel, as replaced from time to time under **clause 6.4** (Change to Key Personnel).

Milestone means a particular stage or event identified in the Program or otherwise in the Statement of Work.

Moral Rights has the meaning given in the *Copyright Act 1968 (Cwth)*.

Pre-Existing Material means any material provided by or on behalf of the Supplier under or in respect of this Deed that is existing at the date of this Deed, that was not developed specifically for the Department or in contemplation of this Deed and is:

- (a) incorporated with the Services, the Statement of Work, or any Deliverable; or
- (b) otherwise provided to the Department under this Deed.

Program means the program set out in the Statement of Work, as varied from time to time under **clause 5** (Program and delays) or **clause 13** (Change control).

Recipient is defined in **clause 15.1** (Disclosure of Confidential Information).

Records means records and documentation relation to this Deed and each Statement of Work.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor or subcontractor of that party.

Services means all services required to be provided by the Supplier under this Deed including those described in the Statement of Work.

Service Levels means the service levels and key performance indicators for the Services described in the Statement of Work.

Site means the location where the Services are to be performed as specified in the Statement of Work, as varied or updated from time to time by notice from the Department to the Supplier.

Specifications means the functional and technical specifications for the Services and the Deliverables set out in, or developed and approved by the Department as required by, the Statement of Work.

Statement of Work has the meaning given in **clause 3.2(b)**.

Statement of Work Form means the form in Attachment B.

Supplier Confidential Information means all Information, other than the Department Confidential Information, disclosed to the Department by the Supplier or any Representative of the Supplier for or in connection with this Deed including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Supplier;
- (b) information derived partly or wholly from the Information including without limitation any calculation, conclusion, summary, computer modelling; and
- (c) trade secrets and information which is capable of protection at law or equity as confidential information,

but excludes the Excluded Information.

Supplier Liability Cap means the Supplier Liability Cap set out in the Contract Details.

Supplier Personnel means employees, partners, agents and subcontractors of the Supplier, including the Key Personnel.

Supplier Representative means the representative appointed under **clause 4.1** (The Department Representative and Supplier Representative) for each Statement of Work and identified in the relevant Statement of Work, as replaced from time to time under **clause 4.2** (Replacement of the Supplier Representative).

Tax Invoice has the meaning given to it in the *GST Act*.

Term means the Initial Term and any Extended Term unless terminated earlier in accordance with this Deed.

Time and Materials Rates means the Time and Material Rates, if applicable, specified in a Statement of Work.

Unless the contrary intention appears, a reference in this Deed to:

- (a) **(variation or replacement)** a document (including this Deed) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, Schedule, Annexure or Attachment is a reference to a clause in, or a Schedule, Annexure or Attachment to, this Deed;
- (c) **(references to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person’s executors, administrators, successors and substitutes (including, persons taking by novation) and assigns;
- (h) **(reference to parties)** references to the parties include references to respective officers, employees and agents of the parties;
- (i) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (j) **(calculation of time)** a period of time that dates from a given day or the day of an act or event is to be calculated exclusive of that day;
- (k) **(corresponding meaning)** where an expression is defined, any other grammatical form of that expression has a corresponding meaning; and
- (l) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind.

1.2 Headings

Headings are included for convenience only and are not to affect the interpretation of this Deed.

Attachment A - Subcontractor's Statement



SUBCONTRACTOR'S STATEMENT REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B Workers Compensation Act 1987, Schedule 2 Part 5 Payroll Tax Act 2007, and s127 Industrial Relations Act 1996 where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:
(Business name)

of
(Address of subcontractor)

has entered into a contract with ABN:
(Business name of principal contractor) **(Note 2)**

Contract number/identifier **(Note 3)**

This Statement applies for work between:/...../..... and/...../..... inclusive, **(Note 4)**

subject of the payment claim dated:/...../..... **(Note 5)**

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. **(Note 6)**
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... **(Note 7)**
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Subcontractor is required to be registered as an employer under the Payroll Tax Act 2007, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature Full name.....

(g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.

Notes

1. This form is prepared for the purpose of section 175B of the Workers Compensation Act 1987, Schedule 2 Part 5 Payroll Tax Act 2007 and section 127 of the Industrial Relation Act 1996. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 Industrial Relations Act 1996, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the Industrial Relations Act 1996 defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the Industrial Relations Act 1996 states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the Industrial Relations Act 1996, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the Workers Compensation Act and clause 18 of Schedule 2 of the Payroll Tax Act 2007 a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 can be found at www.legislation.nsw.gov.au.

Attachment B - Statement of Work Form

Reference: [Insert name of services and location]

Background:

- A. The Department and the Supplier have entered into the Head Deed.
- B. The Department has requested, and the Supplier has agreed to provide, the Services on the terms set out in this Statement of Work Form which is governed by the Head Deed.
- C. This Statement of Work Form, which incorporates the Head Deed and any other documents referred to in this Statement of Work Form, constitutes a separate contract between the Department and the Supplier.

Details:

Head Deed reference	Head Deed for Supply of Services between the Department of Industry (“ the Department ”) and National Disability Services Ltd (“ the Supplier ”) dated [insert date]
Date of Statement of Work Form	[insert date]
Services	[Insert the name/type of Services eg: “Cleaning services”] which are described in further detail in this Statement of Work and the Specification.
Specification	[Insert title and details of the specification] a copy of which is attached to this Statement of Work Form.
Site	[insert location where Services will be performed]
Department’s Representative	Name: [insert name and position] Email: [insert] Mobile: [insert]
Supplier’s Representative	Name: [insert name and position] Email: [insert] Mobile: [insert]
Supplier’s Key Personnel	[insert names and positions, or N/A]
Subcontractor	Name of company: [insert] Contact person: [insert name and position] Telephone: [insert]
Start Date of Services	The Supplier must provide the Services on and from [insert date].
Period of Services	The Supplier must provide the Services for a period of [insert period] from the Start Date (“ Initial Period ”) unless the Initial Period is extended or the contract is terminated earlier in accordance with the Head Deed or this Statement of Work.

<p>Options to extend period</p>	<p>The Department may extend the Initial Period for <i>[insert number of options eg: two]</i> more extended periods of <i>[insert length of extended period eg: 12 months]</i> each (“Extended Periods”).</p> <p>To exercise these options, the Department must notify the Supplier at any time before the last 3 months of the Initial Period or an Extended Period that it wishes to extend the period of Services. The Initial Period or the Extended Period then is extended by the Extended Period, on the terms and conditions in effect on the last day of the Initial Period or the Extended Period, as applicable.</p>																		
<p>Contract Price</p>	<p>The Supplier is to be paid for the Services and Deliverables either at a fixed price or on a Time and Materials Rates basis as specified in the table below:</p>																		
	<p><i>[Choose the appropriate pricing for the particular Statement of Work, and delete the irrelevant options.]</i></p> <p>Option 1 - Fixed Lump Sum price</p> <p><i>[\$ insert amount]</i> plus GST</p> <p>Option 2 - Fixed Contract Price based on milestones</p> <table border="1" data-bbox="504 963 1449 1308"> <thead> <tr> <th>Milestone</th> <th>Payment</th> <th>Invoice Amount - % of Contract Price</th> </tr> </thead> <tbody> <tr> <td><i>[insert]</i></td> <td><i>[\$insert]</i></td> <td><i>[10%*]</i></td> </tr> <tr> <td></td> <td>\$</td> <td><i>[40%*]</i></td> </tr> <tr> <td></td> <td>\$</td> <td><i>[30%*]</i></td> </tr> <tr> <td>Acceptance</td> <td>\$</td> <td><i>[20%*]</i></td> </tr> <tr> <td>Total</td> <td>\$</td> <td><i>[100%*]</i></td> </tr> </tbody> </table>	Milestone	Payment	Invoice Amount - % of Contract Price	<i>[insert]</i>	<i>[\$insert]</i>	<i>[10%*]</i>		\$	<i>[40%*]</i>		\$	<i>[30%*]</i>	Acceptance	\$	<i>[20%*]</i>	Total	\$	<i>[100%*]</i>
Milestone	Payment	Invoice Amount - % of Contract Price																	
<i>[insert]</i>	<i>[\$insert]</i>	<i>[10%*]</i>																	
	\$	<i>[40%*]</i>																	
	\$	<i>[30%*]</i>																	
Acceptance	\$	<i>[20%*]</i>																	
Total	\$	<i>[100%*]</i>																	
	<p>OR</p> <p>Option 3 - Time and Materials Rates Basis</p> <table border="1" data-bbox="504 1429 1455 1630"> <thead> <tr> <th>Skills or Service</th> <th>Rates (Include GST)</th> <th>Materials (include GST)</th> </tr> </thead> <tbody> <tr> <td><i>[List skill categories]</i></td> <td><i>[List daily/ hourly rates]</i></td> <td><i>As quoted or Cost plus [x]</i></td> </tr> </tbody> </table> <p>If the Supplier is to be paid on a Time and Material Rates basis, the Supplier must provide to the Department on the last working day of each month (or other period agreed between the parties) a copy of all timesheets setting out the hours (or part thereof) worked by the Supplier in providing the Services during that month.</p>	Skills or Service	Rates (Include GST)	Materials (include GST)	<i>[List skill categories]</i>	<i>[List daily/ hourly rates]</i>	<i>As quoted or Cost plus [x]</i>												
Skills or Service	Rates (Include GST)	Materials (include GST)																	
<i>[List skill categories]</i>	<i>[List daily/ hourly rates]</i>	<i>As quoted or Cost plus [x]</i>																	
<p>Invoice timing</p>	<p>The Supplier must issue invoices to the Department at the following times: <i>[Insert details - eg: on completion of milestones/ or monthly]</i></p>																		

Date for payment of invoices	30 days after receipt of correctly rendered invoice.
Working hours	Normal working hours are from <i>[insert time]</i> until <i>[insert time]</i> , on Business Days, unless otherwise agreed with the Department.
Program	<i>[If the Services are to be Milestone based insert the program here or cross-reference the Specification if the program is in the Specification]</i>
Service Levels	<i>[Insert details of any service levels, or cross-reference the Specification if the service levels are in the Specification.]</i>
Deliverables – reports	<i>[Include a description of the content, frequency and form of reports required]</i>
Deliverables - other	<i>[Include a description of any other Deliverables to be provided other than reports]</i>
Special Conditions	<i>[Insert any additional terms applicable for this Statement of Work.]</i>

Execution:

Department

Signed for and on behalf of the Crown in right of the State of New South Wales acting through the **Department of Industry** by its authorised signatory but not so as to incur personal liability:

Name *Signature*

Title *Date*

Supplier

By entering into this agreement the signatory warrants that the signatory is duly authorised to execute this Statement of Work on behalf of **National Disability Services Ltd.**

Signed for and on behalf of **National Disability Services Ltd** by its authorised signatory: Before:

Signature of authorised signatory *Signature of Witness*

Name of authorised signatory *Name of Witness*

Date

Address of Witness

[ATTACH A COPY OF SPECIFICATION]

Attachment B - Statement of Work Form

Reference: **Description of Service/Project:**

Background:

- A. The Department and the Supplier have entered into the Head Deed.
- B. The Department has requested, and the Supplier has agreed to provide, the Services on the terms set out in this Statement of Work Form which incorporates, and is governed by, the terms of the Head Deed.
- C. The Head Deed, this Statement of Work Form and any other documents referred to in this Statement of Work Form, together constitute a contract between the Department and the Supplier.

Head Deed reference	Head Deed for Supply of Services between the Department of Industry, Skills and Regional Development, formerly the Department of Trade and Investment, Regional Infrastructure and Services (" the Department ") and National Disability Services Ltd (" the Supplier ") dated 17 March 2014
Date of Statement of Work Form	Date
Services	Description of Service/Project which are described in further detail in this Statement of Work and the Specification (reference to document used for Statement of Requirements). The Services do not include: List any exclusions
Specification	"Request for a Proposal to "name of service" , a copy of which is attached to this Statement of Work Form.
Site	Address
Department Representative	Name: Contact Email: email address Number: contact number
Supplier Representative	Name: Helen Bednar, National Business Manager Email: helen.bednar@nds.org.au Mobile: 0448 047 906
Subcontractor	Name of company: Name of Sub-Contractor ABN: ABN of Subcontractor Contact person: Sub-contractor contact

	<p>Email: email address of sub-contractor contact</p> <p>Mobile: Mobile number of Sub-contractor contact</p> <p>Telephone: Telephone number of Sub-Contractor contact</p>																
Start Date of Services	The Supplier must provide the Services on and from (start date of contract)																
Period of Services	The Supplier must provide the Services for a period of (duration of initial period of the contract in numbers and words) from the Start Date (“Initial Period”) unless the Initial Period is extended or the contract is terminated earlier in accordance with the Head Deed or this Statement of Work.																
Options to extend period	<p>The Department may extend the Initial Period for number of extensions in words and numbers more extended periods of ??? months each (“Extended Periods”).</p> <p>To exercise these options, the Department must notify the Supplier at any time before the last 3 months of the Initial Term or an Extended Period that it wishes to extend the period of Services. The Initial Period or the Extended Period then is extended by the Extended Period, on the terms and conditions in effect on the last day of the Initial Term or the Extended Period, as applicable.</p>																
Contract Price	<p>The Supplier is to be paid for the Services and Deliverables either at a fixed price as specified in the table below:</p> <p>The proposals include NDS management fee but exclude GST</p> <table border="1"> <thead> <tr> <th>Proposal Requirements</th> <th>Name of sub-contractor</th> </tr> </thead> <tbody> <tr> <td>Schedule “A” – Daily</td> <td>\$??? per month</td> </tr> <tr> <td>Schedule “B” - Weekly</td> <td>\$??? per month</td> </tr> <tr> <td>Schedule “C” – Periodic Cleaning and as Required</td> <td>\$??? per month</td> </tr> <tr> <td>Carpet Shampooing (see Note 1)</td> <td>\$??? per m2</td> </tr> <tr> <td>Hourly Rate (see Note 2)</td> <td>\$???</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td></td> <td></td> </tr> </tbody> </table> <p>The annualised value for Schedules “A-E” inclusive is \$??? GST exclusive.</p>	Proposal Requirements	Name of sub-contractor	Schedule “A” – Daily	\$??? per month	Schedule “B” - Weekly	\$??? per month	Schedule “C” – Periodic Cleaning and as Required	\$??? per month	Carpet Shampooing (see Note 1)	\$??? per m2	Hourly Rate (see Note 2)	\$???				
Proposal Requirements	Name of sub-contractor																
Schedule “A” – Daily	\$??? per month																
Schedule “B” - Weekly	\$??? per month																
Schedule “C” – Periodic Cleaning and as Required	\$??? per month																
Carpet Shampooing (see Note 1)	\$??? per m2																
Hourly Rate (see Note 2)	\$???																
Invoice timing	The Supplier must issue invoices to the Department at the following times: Monthly																
Invoice to	<p>Department of Industry</p> <p>Attention: _____</p> <p>Address: _____</p> <p>ABN: _____</p> <p>Email: _____</p>																
Date for payment of invoices	30 days after receipt of correctly rendered invoice.																

Working hours	Normal working hours are as described in Section 1.1 of the “Statement of Requirements – Part 1 – General Cleaning Specification”, on Business Days, unless otherwise agreed with the Department.
Program	As per the “Statement of Requirements”
Service Levels	As per the “Statement of Requirements”
Deliverables – reports	As per the “Statement of Requirements”
Other Deliverables	Not Applicable
Special Conditions	<p>Contract Price Review</p> <p>The Contract Price will be increased on the anniversary of the Start Date of the Services and thereafter on each subsequent anniversary of the Start Date by reference to the Consumer Price Index – “All Groups CPI: Sydney” using the following formula:</p> $A = B \times \frac{\text{CPI}(1)}{\text{CPI}(2)}$ <p>Where:</p> <p>A = The contract price after the adjustment B = The contract price before adjustment CPI(1) = The consumer price index for the quarter immediately preceding the review date CPI(2) = The consumer price index for the quarter immediately preceding the most recent earlier review date or, where there is no earlier review date, the quarter immediately preceding the start of the term.</p>

Department

Signed for and on behalf of the Crown in right of the State of New South Wales acting through the **NSW Department of Industry** its authorised signatory but not so as to incur personal liability:

Name

Signature

Title

Date

Supplier

By entering into this agreement the signatory warrants that the signatory is duly authorised to execute this State of Work on behalf of **National Disability Services Ltd.**

Signed for and on behalf of **National Disability Services Ltd** by its authorised signatory:

Before:

Signature of authorised signatory

Signature of Witness

Name of authorised signatory

Name of Witness

Date

Address of Witness

Specification: "**Name of Specification document**" (attached)