

HEAD AGREEMENT

BETWEEN

[COMPANY NAME]

ACN ([Company ACN])

ABN ([Company ABN])

AND

COMMONWEALTH OF AUSTRALIA

**FOR THE PROVISION OF
TELECOMMUNICATIONS SERVICES**

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THIS DEED (Head Agreement) is made theday of.....200...

BETWEEN

[Company Name] ACN [Company ACN], ABN [Company ABN] (“[Short Name]”)

AND

COMMONWEALTH OF AUSTRALIA ("Commonwealth") acting through the Australian Government Information Management Office (“AGIMO”)

PURPOSE:

- A. The Commonwealth is seeking to establish an open and competitive telecommunications environment in Commonwealth, State and local government networks in order to simplify access to government services.
- B. In order to participate in whole-of-government telecommunications business the Commonwealth expects that contractors will make a commitment to work towards efficient interoperability and interworking between carriage service providers, switch vendors, network managers and Customer Premises Equipment (CPE) providers. Interoperability will require interworking between current and future telecommunications systems including both public and private networks.
- C. AGIMO administers whole-of-government arrangements to facilitate Customers contracting for telecommunications services and [Short Name] has agreed to include its services and products in Schedule 5 for supply to Customers.
- D. This Head Agreement records the arrangement between the Commonwealth and [Short Name] for the supply of Services to Customers in accordance with the Standard Contract Terms.

WHAT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Head Agreement, unless the contrary intention appears:

Advisers means a Party’s agents, contractors or advisers engaged in, or in relation to, the performance or management of this Head Agreement;

Australian Government Information Management Office (AGIMO) means the administrative unit of the Commonwealth (or any administrative unit replacing that unit) responsible for administering whole of government business arrangements for telecommunications services and any agent appointed by that unit;

Charges means the charges payable for a Service provided by [Short Name] to a Customer as stated in Schedule 5;

Confidential Information in relation to a Party means:

- (a) The information described in Schedule 7; and
- (b) Information that is agreed between the Parties in writing after the date of this Head Agreement as constituting confidential information for the purposes of this Head Agreement;

Contract means a contract formed pursuant to clause 8;

Customer means:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation;
- (b) a body, established by the Commonwealth Parliament or either House of the Commonwealth Parliament, by the Governor-General or by a Minister of State of the Commonwealth;
- (c) any body which may exercise any of the powers of the Commonwealth under the Commonwealth Constitution;
- (d) any other body within the immediate circle of the Commonwealth as that term is defined in the *Telecommunications Act 1997*; or
- (e) a third party who provides telecommunications services to a body referred to in (a) to (d) but only to the extent that the Services are provided to that body;

Endorsed Supplier means a person who has in place an endorsed supplier arrangement with the Department of Finance and Administration for the supply of products and/or services to Customers;

Head Agreement means this Deed, the schedules to this Deed and any Guarantees or Undertakings put in place by [Short Name];

Official Order means the written document a Customer delivers to [Short Name] in accordance with clause 8 in a form substantially similar to that shown in Schedule 2 to form a contract for the provision of specified Services to the Customer;

Parties in this Head Agreement means the Commonwealth and [Short Name];

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

Services means the services listed in Schedule 5;

Standard Contract Terms means the terms and conditions set out in Schedule 1 to be incorporated into a Contract;

Third Party Interest means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or [Short Name] in connection

with the Head Agreement including without limitation any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest; and

Whole of Government Report means a report in accordance with clause 20.

1.2 In this Head Agreement, unless the contrary intention appears:

- (a) undefined words and expressions, if defined in the *Telecommunications Act 1997*, have the same meaning as in that Act;
- (b) a reference to a clause or schedule is a reference to a clause or schedule to this Head Agreement;
- (c) a reference to the singular include the plural and vice versa;
- (d) words importing a gender include any other gender;
- (e) a reference to a person includes a partnership and a body, whether corporate or otherwise;
- (f) reference to any legislation is a reference to that legislation as amended or replaced from time to time;
- (g) a reference to writing, or written, refers to any representation of words figures or symbols capable of being rendered in a visible form;
- (h) reference to any statute or other legislation (whether primary or subordinate) is a statute or other legislation of the Commonwealth as amended or replaced from time to time; and
- (i) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

1.3 This Head Agreement will be interpreted in accordance with the following order of priority:

- (a) the terms of this document excluding any Schedules;
- (b) Schedule 5;
- (c) the other Schedules attached to the Head Agreement; then
- (d) any Guarantees or Undertakings put in place in accordance with the Head Agreement.

1.4 Where [Short Name] consists of more than one person those persons will be jointly and severally liable in respect of any obligation under this Head Agreement or a Contract.

2. PROVISIONS OF THIS HEAD AGREEMENT THAT APPLY TO A CONTRACT

- 2.1 Any Contract with a Customer will be governed by:
- (a) the Standard Contract Terms applicable at the time the Contract is entered into, and
 - (b) the Official Order including any additional terms and conditions to the extent that they do not override the terms and conditions of this Head Agreement or the Standard Contract Terms.
- 2.2 Any function in this Head Agreement or a Contract given to AGIMO may be performed by the Chief Executive of AGIMO or by any person who is authorised to act with that person's authority.

3. TERM OF THE HEAD AGREEMENT

- 3.1 This Head Agreement commences on the last date it is signed by a Party and continues in force for a period of one year.
- 3.2 This Head Agreement shall thereafter be extended unless either Party gives at least 90 days written notice to the other Party that the Head Agreement shall terminate at the end of the 90 day notice period.
- 3.3 [Short Name] agrees not to enter into any new Contracts (or any other contractual arrangement for the provision of services within the scope of the Services or the Whole of Government Telecommunications Arrangement generally) or extend the period of any existing Contracts to continue after the Head Agreement has been terminated. This clause 3.3 survives the expiry or termination of this Head Agreement.

4. MAINTAINING CURRENCY OF SCHEDULE 5

- 4.1 The Services which [Short Name] offers to supply to a Customer under a Contract are set down in Schedule 5.
- 4.2 If [Short Name] wishes to supply to a Customer a telecommunication service that is not included in Schedule 5, [Short Name] must amend the Schedule to include that service before it supplies the service to the Customer.
- 4.3 When [Short Name] releases commercially a new telecommunications service consistent with or otherwise relating to the general nature of [Short Name] existing Services (in this clause the "new service") [Short Name] agrees to amend Schedule 5 to include that new service in it.
- 4.4 If the new service incurs a different price to [Short Name] existing Services [Short Name] agrees to negotiate with AGIMO in good faith to determine a price for the new service.
- 4.5 An amendment to Schedule 5 must occur in accordance with clause 5.

5. SERVICE OFFERINGS

- 5.1 Schedule 5 may be amended or replaced by [Short Name]. An amendment must contain a similar level of detail and information to that which was included in the Schedule being replaced.
- 5.2 The amended Schedule 5 takes effect from the date that it is approved by AGIMO which date is deemed to be 14 days after it is received by AGIMO unless AGIMO notifies [Short Name] that it does not approve of the amended Schedule and provides [Short Name] in writing with a detailed statement of the reasons for non-approval.

6. PRICING OF SERVICE OFFERINGS

- 6.1 [Short Name] represents to AGIMO that the Charges for a Service:
- (a) will not exceed the price for that Service as determined by reference to Schedule 5 including any applicable discount;
 - (b) will be no less favourable than the price paid by any other Customer of substantially the same Service from [Short Name] in substantially the same circumstances.
- 6.2 A Customer may negotiate with [Short Name] to pay a price less than the price determined by reference to Schedule 5 in respect of a Service in the circumstances of a particular transaction.
- 6.3 If [Short Name] makes a reduced price available to a Customer in the circumstances of a particular transaction, it must offer that reduced price to all Customers in similar circumstances with reference to quantity and/or duration of Service involved upon the next annual review of each Customer's Contract.
- 6.4 For the purpose of determining a reduced price, if [Short Name] makes available a reduced price for accumulated use and/or consumption of a Service or a group of Services, [Short Name] shall accumulate such use and/or consumption by all Customers.
- 6.5 [Short Name] must amend Schedule 5 by submitting to AGIMO the details of any particular transaction where a reduced price has been made available to a particular Customer such that it is clearly ascertainable in which particular transactions the reduced pricing is available and that amendment takes effect according to the procedure set out in clause 5.
- 6.6 AGIMO may reasonably request [Short Name] to amend Schedule 5, and [Short Name] will comply with such a request.
- 6.7 Any taxes charged by any person outside Australia and any importation duties and other importation charges are to be included in the price in Schedule 5 and [Short Name] will identify any other taxes imposed in Australia separately in Schedule 5.
- 6.8 For the avoidance of doubt, nothing in this clause 6 requires [Short Name] to apply reduced prices retrospectively, it being agreed by the Parties that a reduced price for

accumulated use/or consumption during a period in the past does not amount to applying a reduced price retrospectively.

7. RESERVED

8. FORMING A CONTRACT

- 8.1 In this clause 8 a "detail" means an item of information necessary to be stated in the Official Order under a provision of the Standard Contract Terms in order to give substance and meaning to the provision in question.
- 8.2 When a Customer wishes to acquire a Service, [Short Name] shall, subject to this Head Agreement, only provide that Service to the Customer on the basis of this Head Agreement, the Standard Contract Terms and the Official Order.
- 8.3 Every detail necessary to complete an Official Order must be agreed between the Customer and [Short Name] before the Official Order is placed. If the details are unable to be agreed, then [Short Name] must not accept the Official Order.
- 8.4 When an Official Order is accepted by [Short Name], a Contract is formed between the Customer and [Short Name] for the Service to which the Official Order relates.
- 8.5 The Contract comes into force on the date upon which [Short Name] accepts the completed Official Order unless the Official Order states that the Contract commences from some other time. [Short Name] agrees to supply the Service in accordance with this Head Agreement and the Contract.
- 8.6 The Commonwealth acknowledges and agrees that [Short Name] may conduct such negotiations with a Customer as [Short Name] and the Customer see fit, provided however, that such negotiations shall, to the extent they relate to Services, not be inconsistent with the processes set out in this Head Agreement. Such discussions may, however, without limitation, relate to services not expressly referred to in this Head Agreement.
- 8.7 Notwithstanding clause 8.6, AGIMO has the right to review:
- (a) any Contract prior to it being formed under clause 8.4; and
 - (b) any variation to any Contract prior to [Short Name] and the Customer agreeing such variation in writing.

9. NO ASSURANCE OR ORDERS

- 9.1 This Head Agreement does not mean that:
- (a) [Short Name] and their Related Bodies Corporate have the right to be the sole supplier of any Service to the Commonwealth or a Customer; or
 - (b) that any Official Order will be placed with [Short Name].

10. CUSTOMER MAY ENFORCE HEAD AGREEMENT

- 10.1 The Parties agree that a Customer who is a party to a Contract, may take the benefit of all the rights granted to AGIMO under this Head Agreement in its own name.

11. MINIMUM INSURANCE REQUIREMENTS

- 11.1 [Short Name] shall, and shall ensure that any subcontractor will, be and remain a beneficiary under, or shall arrange and maintain with a reputable insurance company while a Contract is in force:

- (a) a broad form public liability policy of insurance to the value of at least \$5 million in respect of each claim;
- (b) a broad form professional indemnity policy of insurance to the value of at least \$1 million in respect of each claim;

arising from the liability of [Short Name] under this Head Agreement or any Contract.

- 11.2 [Short Name] will, on request, produce to AGIMO satisfactory evidence that [Short Name] has effected and renewed a particular insurance policy.

12. CONFIDENTIALITY

12.1 Confidential Information not to be disclosed

Subject to clause 12.5, a Party must not, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to a third party.

- 12.2 In giving written consent to the disclosure of AGIMO's Confidential Information, AGIMO may impose such conditions as it thinks fit, and [Short Name] agrees to comply with these conditions.

12.3 Written undertakings

AGIMO may at any time require [Short Name] to arrange for:

- (a) its Advisers; or
- (b) any person with a Third Party Interest

to give a written undertaking in the form of Schedule 6 relating to the use and non-disclosure of AGIMO's Confidential Information.

- 12.4 If [Short Name] receives a request under clause 12.3, it must promptly arrange for all such undertakings to be given.

12.5 Exceptions to Obligations

The obligations on the Parties under this clause 12 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a Party to its Advisers or employees solely in order to comply with the Party's obligations, or to exercise the Party's rights, under this Head Agreement;
- (b) is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of Head Agreement-related activities;
- (c) is disclosed by AGIMO to its responsible Minister;
- (d) is disclosed by AGIMO in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is disclosed by AGIMO to a Customer or potential Customer, to the extent that the Customer or potential Customer needs to know the information for the purposes of a Contract;
- (f) is authorised or required by law to be disclosed;
- (g) is disclosed by AGIMO and is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property Rights in relation to that material form, has vested in, or is assigned to, AGIMO under this Head Agreement or otherwise, and that disclosure is permitted by that licence or otherwise; or
- (h) is in the public domain otherwise than due to a breach of this clause 12.

12.6 **Obligation on disclosure**

Where a Party discloses Confidential Information to another person:

- (a) pursuant to clauses 12.5(a) (b) or (e), the disclosing party must:
 - (i) notify the receiving party that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving party agrees to keep the information confidential; or
- (b) pursuant to clauses 12.5(c) or (d), the disclosing party must notify the receiving party that the information is Confidential Information.

12.7 **Additional Confidential Information**

The Parties may agree in writing after the date of this Head Agreement that certain additional information is to constitute Confidential Information for the purposes of this Head Agreement.

- 12.8 Where the Parties agree in writing after the date of the Head Agreement that certain additional information is to constitute Confidential Information for the purposes of this Head Agreement, this documentation is incorporated into, and becomes part of this Head Agreement, on the date by which both Parties have signed this documentation.

12.9 **Period of Confidentiality**

The obligations under this clause 12 continue, notwithstanding the expiry or termination of this Head Agreement:

- (a) in relation to an item of information described in Schedule 7 – for the period set out in that schedule in respect of that item; and
- (b) in relation to any information which the Parties agree in writing after the date of the Head Agreement is to constitute Confidential Information for the purposes of this Head Agreement – for the period agreed by the Parties in writing in respect of that information.

12.10 **No Reduction in Privacy Obligations**

Nothing in this clause 12 derogates from any obligation which [Short Name] may have either under the *Privacy Act 1988* as amended from time to time, or under this Head Agreement, in relation to the protection of Personal Information.

13. **VARIATION OF HEAD AGREEMENT**

- 13.1 This Head Agreement shall not be varied except by agreement in writing signed by AGIMO and [Short Name].

14. **APPLICABLE LAW**

- 14.1 This Head Agreement is to be governed by the laws in the Australian Capital Territory.

15. **ASSIGNMENT AND NOVATION**

- 15.1 Neither Party shall assign the whole or part of this Head Agreement without the prior written consent of the other Party
- 15.2 AGIMO shall not be obliged to consent to any novation. Where [Short Name] proposes to enter into an arrangement which will require novation in whole or in part of this Head Agreement it shall consult with AGIMO within a reasonable period prior to the proposed novation and provide AGIMO with all the information necessary to enable AGIMO to make an informed decision on whether or not to give its consent. AGIMO shall not unreasonably withhold such consent.
- 15.3 Any valid assignment or novation will also serve as an assignment or novation of the Customer's or [Short Name], as the case may be, rights and obligations under a Contract.

16. **WAIVER**

- 16.1 The failure of either Party to enforce this Head Agreement shall in no way be interpreted as a waiver of its rights under the Head Agreement.

17. ENTIRE AGREEMENT AND SEVERABILITY

17.1 This Head Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

17.2 If any provision or part of a provision of this Head Agreement is held to be illegal, unenforceable or otherwise invalid, that provision or part will be deemed to be severed from this Head Agreement and the remainder of this Head Agreement will continue in effect.

18. NOTICES

18.1 A notice under this Head Agreement is deemed to have been given if it is in writing and:

- (a) if it is delivered by hand, on the date upon which it is delivered;
- (b) if it is sent by post, on the day upon which it would be delivered in the normal course of post;
- (c) if transmitted electronically, when the sender receives confirmation of a successful transmission.

18.2 The address for service of notice of each Party is:

Address of the Commonwealth

Physical address

Chief Executive Officer
Australian Government Information Management Office
Burns Centre
28 National Circuit
FORREST ACT 2603
Attention: Manager Projects and Sourcing Strategy

Postal address

Chief Executive Officer
Australian Government Information Management Office
GPO Box 390
CANBERRA CITY ACT 2601
Attention: Manager Projects and Sourcing Strategy

Facsimile Number: (02) 6271 1659
Attention: Manager Projects and Sourcing Strategy

Address of [Short Name]:

Physical address

[Physical Address]

Postal address

[Postal Address]

Facsimile Number: [Fax]

Phone Number: [Telephone]

19. APPLICABLE STANDARDS

- 19.1 A product or Service supplied by [Short Name] to a Customer must comply with the applicable Australian or New Zealand standards (including but not limited to Standards Australia standards, and standards or codes made under the *Telecommunications Act 1997* or *Radiocommunications Act 1992*) or if there are no such standards, the applicable international standards (if any).

20. REPORTING REQUIREMENTS

- 20.1 [Short Name] shall provide to AGIMO with either:
- (a) two reports (“Whole of Government Report” and “Customer Report”) each month containing the information and in the format specified in Schedule 4; or
 - (b) detailed billing information in electronic format on a monthly basis, in a format and medium agreed by AGIMO in consultation with [Short Name].
- 20.2 The reporting requirements for the Whole of Government Report set out in Schedule 4 may be modified for particular Services by agreement in writing between AGIMO and [Short Name].
- 20.3 [Short Name] shall, if requested by AGIMO in writing, within one calendar month of the date of a Report, provide to AGIMO certification of the accuracy of the Whole of Government Report. The certificate of accuracy may be made by [Short Name] chief accounting officer or an independent auditor or such other officer as AGIMO may approve from time to time.
- 20.4 During the term of this Head Agreement, [Short Name] shall continue to work with AGIMO to provide relevant data in an appropriate format to assist AGIMO to identify savings made by the Commonwealth under this Head Agreement.

21. TERMINATION

- 21.1 If this Head Agreement expires or it is terminated:
- (a) the accrued rights of the Parties; and
 - (b) each Contract,

remains unaffected except to the extent that the Parties expressly agree otherwise.

22. EXISTING CONTRACTS

- 22.1 Subject to clause 22.2, where a Customer has entered into a contract with [Short Name] for the provision of goods and services that are similar to the Services described in Schedule 5 prior to the commencement date of this Head Agreement (the “Existing Contract”), the Existing Contract is preserved.
- 22.2 If more than 12 months has elapsed since the execution of this Head Agreement, or a Customer enters into a new Contract with [Short Name], or amends an Existing Contract, the Existing Contract is deemed:
- (a) to operate as if it were made pursuant to this Head Agreement; and
 - (b) as though its terms and conditions are those specified in clause 8.

23. GUARANTEE AND UNDERTAKING

- 23.1 If required by AGIMO, [Short Name] will:
- (a) arrange for a guarantor approved in writing by AGIMO to lodge with AGIMO a properly executed performance guarantee substantially in a form appearing in Schedule 3 Parts 1 or 2;
 - (b) provide security in the form of an unconditional and irrevocable financial undertaking from a guarantor approved in writing by AGIMO. The security provided shall be substantially in the form appearing in Schedule 3 Part 3; or
 - (c) arrange for any existing security in place for the purposes of the Endorsed Supplier arrangement to be extended with the Department of Finance and Administration’s consent to cover Contracts;
- for the benefit of AGIMO and any Customer under a Contract
- 23.2 AGIMO may require [Short Name] to increase or reduce the amount of a guarantee or undertaking from time to time.
- 23.3 All charges incurred in obtaining and maintaining the required security shall be met by [Short Name].
- 23.4 Where [Short Name] does not comply with a request from AGIMO to lodge or vary a Guarantee within 30 days AGIMO may terminate this Head Agreement. AGIMO may not make a claim for damages against [Short Name] alleging breach of this Head Agreement for [Short Name] failure to comply with this clause 23.4.

24. CIRCUMSTANCES BEYOND CONTROL

- 24.1 A Party is excused from performing its obligations to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for whatever

reason), such as acts of God, natural disasters, acts of war, riots, and strikes outside that Party's organisation. Where these circumstances arise, the affected Party will give notice of them to the other as soon as possible, identifying the effect they will have on its performance, and will make all reasonable efforts to minimise the effects.

- 24.2 If non-performance or diminished performance by the affected Party continues for a period which the other Party reasonably regards as commercially untenable, the other Party may terminate the Head Agreement. If the Head Agreement is terminated in these circumstances, each Party will bear its own costs and neither Party will incur further liability to the other.

Executed as a Deed

Signed sealed and delivered on behalf of)

COMMONWEALTH OF AUSTRALIA)

by _____)

full name of executing officer

signature of executing officer

in the presence of)

signature of witness

name of witness

Signed sealed and delivered)

on behalf of [Short Name] by the affixing of)

its Common Seal in the presence of)

Signature of director

Signature of director/secretary (delete which is inapplicable)

Full name of director

Full name of director / secretary

SCHEDULE 1 - STANDARD CONTRACT TERMS

1. Interpretation

In this Contract, unless the contrary intention appears:

Attachment means any attachment to an Official Order, which sets out the details of the specific Service to be provided to this Customer;

ACA means the Australian Communications Authority;

Advisers means a Party's agents, contractors or advisers engaged in, or in relation to, the performance or management of this Contract;

Australian Government Information Management Office (AGIMO) means the administrative unit of the Commonwealth (or any administrative unit replacing that unit) responsible for administering whole of government business arrangements for telecommunication services and any agent appointed by that unit;

Charges means the charges payable for a Service provided by [Short Name];

Confidential Information in relation to a Party, means:

- (a) the information described in the table of Confidential Information to the Official Order; and
- (b) information that is agreed between the Parties in writing after the date of this Contract as constituting confidential information for the purposes of this Contract;

Contract means the standard contract terms and includes the Official Order and Attachments;

Customer means the customer described in the Official Order;

Endorsed Supplier means a person who has in place an endorsed supplier arrangement with the Department of Finance and Administration for the supply of products and/or Services to Customers;

Head Agreement means the agreement between [Short Name] and the Commonwealth represented by AGIMO dated [/ /] as amended from time to time together with any undertakings or guarantees put in place under that Agreement;

Intellectual Property means all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how), databases, and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

Location means a location agreed between [Short Name] and the Customer in the Official Order to which a Service is made available;

Official Order means the written document the Customer delivers to [Short Name] in a form substantially similar to that shown in Schedule 2 to the Head Agreement to form a contract for the provision of Services to the Customer and the Official Order includes an Attachment to that document;

Parties to a Contract means the Customer and [Short Name];

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cwth);

Service means each service listed in Schedule 5 to the Head Agreement that is included in an Official Order;

Service Specifications means the functions, operational, performance or other characteristics of a Service in accordance with clause 3; and

Third Party Interest means any legal or equitable right, interest, power or remedy in favour of any person other than the Customer or [Short Name] in connection with the Contract, including without limitation any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.

1.2 In this Contract, unless the contrary intention appears:

- (a) any undefined words and expressions, if defined in the *Telecommunications Act 1997*, have the same meaning as in that Act;
- (b) a reference to the Contract includes a reference to the Official Order and any Attachment;
- (c) a reference to the singular includes plural and vice versa;
- (d) words importing a gender include any other gender;
- (e) a reference to a person includes a partnership and a body, whether corporate or otherwise;
- (f) a reference to writing, or written, refers to any representation of words figures or symbols capable of being rendered in a visible form;
- (g) reference to any statute or other legislation (whether primary or subordinate) is a statute or other legislation of the Commonwealth as amended or replaced from time to time;

- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (i) the headings are for convenience and are not to be used in the interpretation of the Contract.

1.3 The documents forming part of this Contract will be interpreted in the following order of priority:

- (a) the Head Agreement;
- (b) the completed Official Order;
- (c) any Attachment including additional terms and conditions that are not inconsistent with the Standard Contract Terms; and

in the event that if any of the following documents are incorporated into this Contract by reference in the Official Order

- (d) the [Short Name]'s response to the Customer's request for proposal;
- (e) the Customer's request for proposals for the Service.

2. Scope

2.1 **Objective** [Short Name] and the Customer agree that, in entering into this Contract, they intend doing whatever is reasonably necessary to successfully perform the required Service.

2.2 **Contract** This Contract comes into force on the date upon when the Official Order is accepted by [Short Name]. [Short Name] agrees that the Customer may take the benefit of all the rights granted to AGIMO under the Head Agreement, as may be amended from time to time.

2.3 **Co-operation** The Parties will co-operate fully with each other to ensure timely progress and completion of the Contract. Dependent on the nature and scope of the work to be done, they will hold meetings (for planning, review, issue resolution and the like) as necessary and report progress to one another on a regular basis so as to keep each other fully informed.

2.4 **Times and Length of Term** [Short Name] will commence the Service on the date set out in the Official Order and will continue to provide it for the period specified unless this Contract is sooner terminated as permitted by its terms and conditions.

2.5 **Renewal** Either Party may notify the other of its desire to renew for a further term by giving the other the period of notice required by the Official Order prior to the end of the existing period. The Parties will then in good faith seek to reach agreement on the basis on which the provision of the Service will be renewed.

2.6 **Agents and Employees** With the prior consent of the Customer, [Short Name] may enter into an agreement with an agent or employee of the Customer under the same terms and conditions which the Customer has agreed with [Short Name] in a Contract for the supply of a Service however, all payment and other obligations of an agent or employee of the Customer under such an agreement shall not, in any circumstance, accrue to the Customer or the Commonwealth.

2.7 **Benchmarking** The Customer reserves the right to have [Short Name]'s performance of the Services benchmarked by an independent third party from time to time during the Term to establish whether the Contractor's price and performance is at a level commensurate with best practices.

3. Specifications

3.1 **Source** Service Specifications for a Service are found in:

- (a) the description of the Service in Schedule 5 of the Head Agreement; and
- (b) the Customer's requirements as agreed between the Customer and [Short Name] in the Official Order.

3.2 **Amendments** The Service Specifications may be altered by agreement in writing, between the Customer and [Short Name].

4. Service

4.1 **Details of the Service** The Parties will describe in the Official Order:

- (a) the nature of the work to be done to provide the Services;
- (b) written functional and performance requirements of the Customer; and
- (c) details of the resources, products, other services and facilities required and the Party that is to provide them.

4.2 **Performance** In performing the Services, [Short Name] will:

- (a) supply the Service during the times, and at the standard, including the Service Specifications, included as part of the Official Order;
- (b) provide to the Customer records of all calls within the scope of the Services so as to assist the Customer in managing and making effective use of the Service;
- (c) monitor the performance and effectiveness of the way in which the Service is delivered and review it on a continuing basis with the Customer;
- (d) recommend improvements where necessary, to improve the Service; and
- (e) provide the Customer with such assistance as it may reasonably require at the end of this Contract to move to another service provider.

5. Other Responsibilities of [Short Name]

5.1 Supply as Agent [Short Name] agrees to supply as agent of the Customer from Endorsed Suppliers and upon the terms and conditions agreed to by the Customer products and services supplied by third parties as required for the purposes of this Contract. The products and services and details of the agency arrangement will be set out in the Official Order.

5.2 Responsibilities as Agent Unless otherwise provided in the Official Order [Short Name] will be responsible in respect of those products and services to:

- (a) determine the products and services required for this Contract;
- (b) obtain the best price for the Customer and other terms consistent with the requirements of the product and service and in accordance with the relevant Endorsed Supplier arrangement;
- (c) place the order with the supplier;
- (d) arrange for the delivery and installation;
- (e) discharge the obligations of the Customer in respect of any acceptance tests;
- (f) pay the supplier and discharge any other obligations required of the Customer to the supplier on behalf of the Customer;
- (g) arrange for any fault to be rectified in accordance with the terms of this Contract with the supplier.

5.3 Facilities and Assistance To enable timely progress and completion of the Official Order, [Short Name] will:

- (a) establish and maintain all necessary facilities for the effective conduct and management of its responsibilities;
- (b) provide all reasonable assistance required by the Customer;
- (c) comply with reasonable directions given by the Customer; and
- (d) obtain and hold for the Customer any approvals or licences required in respect of the Services.

5.4 Documentation [Short Name] will supply the documentation as specified in the Official Order. [Short Name] will supply the documentation, publications and aids it usually makes available to its customers without additional charge for the Service set out in the Official Order.

[Short Name] will supply documentation which is:

- (a) of a reasonable standard in terms of presentation, accuracy and scope;
- (b) the most current and up-to-date version available; and

- (c) in English with all key terms, words and symbols adequately defined or explained.

If any documentation is revised or replaced, [Short Name] will supply the Customer with revisions or replacements at no additional cost to the Customer where it usually so supplies them to its customers.

- 5.5 **Training** [Short Name] will provide the training, and at the price, set out in the Official Order.
- 5.6 **Invoice** Monthly in arrears or as otherwise provided for in the Official Order, [Short Name] will issue an invoice setting out the amounts then properly due to it by the Customer including any Goods and Services Tax (GST) for supplies made under this Contract and other applicable taxes .

[Short Name] will ensure that the invoice:
 - (a) contains sufficient detail to enable the Customer to identify the supply concerned, when it was supplied and the amount payable in respect of each item;
 - (b) is addressed in accordance with the Customer's requirements as stated in the Official Order, or as otherwise advised in writing; and
 - (c) is in a form that is acceptable to the Australian Taxation Office as a tax invoice in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act).
- 5.7 **Site Specification** Where necessary, [Short Name] will provide the environmental specifications of the Service it is supplying under an Official Order to permit the Customer to prepare the site to the extent set out in the Official Order.
- 5.8 **Insurance Requirements** [Short Name] will arrange and maintain with a reputable insurance company for the term of this Contract :
 - (a) any insurance required under the Head Agreement; and
 - (b) the additional insurance as stated in the Official Order.
[Short Name] will ensure that all specified insurance policies are maintained fully effective and will, on request, produce to the Customer satisfactory evidence to that effect.
- 5.9 **Security** [Short Name] shall ensure that all information and materials of the Customer in the custody of [Short Name] for purposes connected with this Contract shall be protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person.
- 5.10 [Short Name] shall comply with all security regulations or procedures or directions as may be given by the Customer from time to time regarding any aspect of security or access to the Customer's premises.

5.11 **Crimes Act 1914** [Short Name]:

- (a) acknowledges that it will inform any officer, employee, agent or sub-contractor who will have access to documents, materials or information, of the provisions of section 79 of the *Crimes Act 1914* relating to official secrets and to other legislation listed in the Official Order; and
- (b) undertakes that prior to giving such access the officer, employee, agent or subcontractor will first be required by the [Short Name] to provide the Customer with an acknowledgment that the person is aware of the provisions of the *Crimes Act 1914* and other relevant legislation.

6. Specific Responsibilities of Customer

- 6.1 **Payment** The Customer will pay the amounts owed by it on receipt of a correctly rendered invoice no later than 30 days of the date of the invoice or longer as agreed in the Official Order. The Customer will pay any amount due under this Contract electronically unless otherwise provided in the Official Order.
- 6.2 **Response to an Invoice** If the Customer disputes an amount in an invoice, pending resolution of the dispute, the Customer will pay the amounts not in dispute.
- 6.3 **Resources** The Customer will provide the resources it has agreed to provide as set out in the Official Order.
- 6.4 **Site** The Customer will prepare the site to permit performance of the Service to the extent set out in the Official Order.
- 6.5 **Access** The Customer will provide [Short Name] with access to the Customer's premises to the extent necessary to enable [Short Name] to fulfil its obligations. Where access is temporarily denied or suspended, the Customer will permit a resumption of access as soon as practicable.

7. Warranties – [Short Name]

- 7.1 **General** [Short Name] warrants that:
- (a) the Service conforms to the Service Specifications;
 - (b) it has the right to supply the Service;
 - (c) personnel it uses in providing a Service have the requisite skills and experience;
 - (d) the Service will not infringe the Intellectual Property rights of a third party;
 - (e) the Service complies with such other warranties as are in the Official Order.
- 7.2 **Warranty Period** When advised by the Customer of an error or a defect in a Service during the warranty period set out in the Official Order or during the first twelve months of this Contract, whichever is longer without limiting any other rights of the

Customer, [Short Name] will promptly do all that is required to ensure a Service meets the requirements of the Contract.

7.3 **Third Party Warranties** Where [Short Name] provides products or services supplied by a third party as part of the Services, [Short Name] assigns to the Customer, to the extent permitted by law, the benefits of the warranties given by the third party. The assignment of third party warranties to the Customer does not in any way relieve [Short Name] from the warranties undertaken by [Short Name] in the above.

8. Warranties - Customer

8.1 **General** The Customer warrants that, to the extent set out in the Official Order, any facilities (including items of hardware and software) it makes available to [Short Name] are suitable for enabling [Short Name] to fulfil its obligations.

9. Acceptance Tests

9.1 The work performed by [Short Name] as part of the Services may be tested by the Customer prior to acceptance. The acceptance tests must be carried out to demonstrate that the Services comply with the Service Specifications.

9.2 The acceptance criteria (if any) that will be used by the Customer shall be set out in the Official Order. If acceptance tests are not detailed in the Official Order, the Customer and [Short Name] will agree on the details of the testing to be conducted including:

- (a) the content of the test;
- (b) the time frame within which it is to be conducted;
- (c) the method for conducting it; and
- (d) the acceptance criteria

in sufficient time for the test to be performed before the Services are scheduled to be used.

9.3 **Test Requirements** The Customer will provide whatever is reasonably necessary for the conduct of the acceptance tests, including power, environment, consumables and data media.

9.4 **Delays** The acceptance tests must be conducted within a time frame previously agreed between the Parties unless the Parties otherwise reasonably agree to extend these dates to accommodate a delay caused by one of the Parties. The Party causing the delay will be responsible for the reasonable additional costs incurred by the other.

9.5 **Certificate of Acceptance** Where the Contract provides for acceptance testing as a condition of payment, the Customer will issue a certificate of acceptance within 5 working days after the satisfactory completion of the acceptance tests. The acceptance certificate will indicate the actual date of acceptance.

- 9.6 **Failure** If the Services to be tested fail any acceptance tests, the Customer may:
- (a) require further tests, at [Short Name]'s expense;
 - (b) accept the Services, on [Short Name] agreeing to deliver a work-around within a set time frame; or
 - (c) reject the Services.
- 9.7 **Additional Tests** The Customer may at any time during the acceptance testing period, require [Short Name] to carry out additional or different tests which are reasonably required to establish whether or not the Services comply with the specifications as provided for in clause 3.
- 9.8 The Customer will pay the costs of any additional or different tests except where the test was reasonably required to establish that the Service did not comply with the Service Specifications. In the latter situation, [Short Name] will pay the costs.
- 9.9 Failure by [Short Name] to successfully complete the acceptance tests within the prescribed time frame shall be deemed to be a failure to satisfy the acceptance criteria.

10. Personnel

- 10.1 **Provide Personnel** [Short Name] will provide such personnel as are necessary to perform its obligations under this Contract and for the period, as specified in the Official Order. If no personnel are specified in the Official Order, [Short Name] will provide the personnel necessary to enable it to fulfil its obligations under the Official Order. [Short Name] will use reasonable endeavours to ensure that the personnel it provides have the requisite skills and experience.

11. Intellectual Property

- 11.1 **Ownership** As between the Parties and unless otherwise specified in the Official Order the title to and Intellectual Property rights in the Services vests in [Short Name].
- (a) [Short Name] hereby grants to the Customer and its agents an irrevocable, non-exclusive licence for the term of this Contract to use the Intellectual Property in the Services in accordance with this Contract.
 - (b) Nothing in this clause will affect the rights of the Customer or any third party in any data transmitted via the Services.
- 11.2 [Short Name] warrants that acts done by the Customer in performance of its rights and obligations under this Contract in relation to the Services do not infringe the Intellectual Property rights of any person.
- 11.3 **Indemnity** If the Customer:
- (a) gives written notice as soon as practicable;

- (b) permits [Short Name], at [Short Name]'s expense, to handle all negotiations for settlement and, as permitted by law, to control and direct any litigation that may follow; and
- (c) provides all reasonable assistance;

[Short Name] will indemnify the Customer against a claim, made or threatened against the Customer, that the Service infringes an Intellectual Property right of a third party.

- 11.4 **Commonwealth Laws** In any negotiations or litigation under clause 11.3, [Short Name] shall have due regard to and comply with any relevant Commonwealth laws and policies, including but not limited to the 'Model Litigant' policy.
- 11.5 **Continued Use or Replacement** If a claim of infringement is made, or threatened, by a third party, the Customer will allow [Short Name], at the latter's expense, to:
- (a) obtain for the Customer the right to continued use of the Service; or
 - (b) replace or modify it so that the alleged infringement ceases but in such a way as to continue to provide the Customer with the same function and performance.
- 11.6 The indemnity referred to in this clause shall survive the expiration or termination of the Contract.

12. Confidential Information

12.1 Confidential Information not to be disclosed

Subject to clause 12.5, a Party must not, without the prior written consent of the other Party, disclose any Confidential Information of the other Party to a third party.

- 12.2 In giving written consent to the disclosure of the Customer's Confidential Information, the Customer may impose such conditions as it thinks fit, and [Short Name] agrees to comply with these conditions.

12.3 Written undertakings

The Customer may at any time require [Short Name] to arrange for:

- (a) its Advisers; or
- (b) any person with a Third Party Interest;

to give a written undertaking in the form of Schedule 6 to the Head Agreement between AGIMO and [Short Name], relating to the use and non-disclosure of the Customer's Confidential Information.

- 12.4 If [Short Name] receives a request under clause 12.3, it must promptly arrange for all such undertakings to be given.

12.5 Exceptions to Obligations

The obligations on the Parties under this clause 12 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a Party to its Advisers or employees solely in order to comply with the Party's obligations, or to exercise the Party's rights, under this Contract;
- (b) is disclosed to a Party's internal management personnel, solely to enable effective management or auditing of Contract-related activities;
- (c) is disclosed by the Customer to its responsible Minister;
- (d) is disclosed by the Customer in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Customer within the Customer's organisation, or with another customer or potential customer, to the extent that the other customer or potential customer needs to know the information for the purposes of a Contract;
- (f) is authorised or required by law to be disclosed;
- (g) is disclosed by the Customer and is information in a material form in respect of which an interest, whether by licence or otherwise, in the Intellectual Property Rights in relation to that material form, has vested in, or is assigned to, the Customer under this Contract or otherwise, and that disclosure is permitted by that licence or otherwise; or
- (h) is in the public domain otherwise than due to a breach of this clause 12.

12.6 Obligation on disclosure

Where a Party discloses Confidential Information to another person:

- (a) pursuant to clauses 12.5 (a) (b) or (e), the disclosing party must:
 - (i) notify the receiving party that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving party agrees to keep the information confidential; or
- (b) pursuant to clauses 12.5 (c) or (d), the disclosing party must notify the receiving party that the information is Confidential Information.

12.7 Additional Confidential Information

The Parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.

- 12.8 Where the Parties agree in writing after the date of the Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both Parties have signed this documentation.

12.9 **Period of Confidentiality**

The obligations under this clause 12 continue, notwithstanding the expiry or termination of this Contract:

- (a) in relation to an item of information described in the table of Confidential Information in the Official Order - for the period set out in that table in respect of that item; and
- (b) in relation to any information which the Parties agree in writing after the date of the Contract is to constitute Confidential Information for the purposes of this Contract - for the period agreed by the Parties in writing in respect of that information.

12.10 **No Reduction in Privacy Obligations**

Nothing in this clause 12 derogates from any obligation which [Short Name] may have either under the *Privacy Act 1988* as amended from time to time, or under this Contract, in relation to the protection of Personal Information.

13. **Privacy**

13.1 **Compliance** [Short Name] agrees to comply with:

- (a) the provisions of the *Privacy Act 1988* as if it were included in the definition of 'agency' under that Act;
- (b) the privacy provisions in legislation that affects or is administered by the Customer;
- (c) any directions made by the Privacy Commissioner;
- (d) the privacy procedures required by the Customer as set out in the Official Order; and
- (e) any other reasonable direction given by the Customer.

13.2 [Short Name]'s obligations in this clause 13 are in addition to, and do not restrict, any obligations it may have under the *Privacy Act 1988* as amended from time to time.

13.3 [Short Name] will take all reasonable steps to ensure its employees, agents or subcontractors engaged to perform work under the Contract do not disclose any Personal Information obtained during the course of such work.

13.4 **Survival** This clause 13 will survive the termination or expiration of this Contract.

14. **Guarantees and Undertaking**

14.1 **Security under Head Agreement** [Short Name] agrees that any performance guarantee and financial undertaking in place under the Head Agreement will apply to this Contract.

14.2 **Further Security** Except where the Customer wishes to secure a prepayment the Customer shall not require any further security from [Short Name] or any person associated with [Short Name] but the Customer may request AGIMO to adjust any performance guarantee or financial undertaking in place under the Head Agreement.

15. Indemnity

15.1 **General Indemnity** [Short Name] will at all times indemnify and hold harmless the Customer, including its officers, employees and agents (“those indemnified”) against any loss (including legal costs and expenses on a solicitor/own client basis), or liability, that has been reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any wilful or negligent act or omission of [Short Name], its officers, employees, agents or sub-contractors in connection with this Contract.

15.2 **Reduction in Liability** [Short Name]’s liability to indemnify the Customer under clause 15.1 shall be reduced proportionately to the extent that any act or omission of the Customer or its officers, employees or agents contributed to the loss or liability.

15.3 **Settlement** Those indemnified shall not settle any claim or demand without obtaining the prior written consent of [Short Name], such consent shall not be unreasonably withheld.

15.4 **Survival** The indemnity referred to in this clause shall survive the expiration or termination of this Contract.

16. Liability

16.1 **Governing Law** The liability of a Party to the other Party for breach of this Contract, or in tort, or for any other common law or statutory cause of action arising out of the operation of this Contract, shall be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

16.2 **Reduction in Liability** The liability of a Party under clause 16.1 shall be reduced proportionately to the extent that any failure of the other Party to comply with its obligations and responsibilities under this Contract causes or contributes to that liability, except to the extent that such failure is caused by, or contributed to, by any act or omission of the first Party

16.3 **Limitation of Liability** The liability of a Party in respect of each occurrence giving rise to an action described in clause 16.1 shall, except in relation to liability:

- (a) for personal injury (including sickness and death);
- (b) for an indemnity;

be limited to:

- (c) for loss of or damage to tangible property - \$10 million;

- (d) otherwise - \$50,000 or 12 months Contract Price, whichever is the greater amount, or any other amount as agreed in the Official Order being no less than 15% of 12 months Contract Price.

16.4 **Interpretation** In clause 16.3:

- (a) “occurrence” means either a single occurrence, or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be; and
- (b) “12 months Contract Price” means the total dollar amount likely to be payable by the Customer during the following 12 months if this Contract continued for that period.

17. Rebate

17.1 **Entitlement to a Rebate** Where, through the fault of [Short Name], [Short Name] fails to meet an obligation specified in this Contract by the date prescribed or to meet the Performance Factors set out in the Official Order the Customer may notify [Short Name] if it intends to rely on the remedy set out in this clause 17 and the date from which rebate will be applied.

17.2 **Rebate amount** The rebate amount may be specified in the Official Order.

17.3 **Claiming the rebate** The rebate will be deducted from the next invoice after it has been identified. Where the Customer has granted an extension of time under this Contract and has extended the rebate date, no rebate shall be chargeable for the period of that extension.

17.4 Exercise of rights pursuant of this clause 17 shall be without prejudice to any other right of action or remedy which has accrued or may accrue.

18. Liquidated Damages

18.1 **Requirement** Where, through the fault of [Short Name] or its Service, [Short Name] fails to meet an obligation specified in this Contract by the date prescribed in the Official Order and the Official Order specifies that liquidated damages are payable showing an amount for payment by [Short Name] as liquidated damages and the Customer notifies [Short Name] that it intends to rely on this remedy and the date from which the liquidated damages will be applied, [Short Name] shall pay the liquidated damages so claimed.

18.2 **Limitation** If no amount has been specified in the Official Order as the liquidated damages amount or no notice has been sent to [Short Name] under clause 18.1 - the liability of [Short Name] shall, in respect of the failure to meet the obligation, be determined in accordance with clause 17.

18.3 **Other remedies** Exercise of the rights pursuant to this clause 18 shall be without prejudice to any other right of action or remedy which has accrued or may accrue.

19. Problem Resolution

- 19.1 **Objective** The Parties agree to use their best endeavours to resolve by negotiation any issues that arise. Neither Party will resort to legal proceedings, except for urgent interlocutory relief, until the following process has been exhausted .
- 19.2 **Notification** When an issue arises (including a breach or an alleged breach) which is not resolved, or is sufficiently serious that it cannot be resolved, at the operational level, the Party concerned with the issue will notify the other. Management representatives of each of the Parties will endeavour to agree on a resolution.
- 19.3 **Mediation** Should the management representatives fail to reach a solution within 15 days, or such longer period as is agreed between them the Parties will seek to settle the matter by referring the issue to the AGIMO for mediation.
- 19.4 **Proceedings** If mediation fails, or either party states it does not wish to attempt settlement through a mediator either Party may commence arbitration or legal proceedings against the other as it sees fit.
- 19.5 **Continued Performance** Unless clearly prevented by the nature of the dispute the Parties will continue to perform under an Official Order while attempts are made to resolve it in line with this clause.

20. Termination

- 20.1 **Notice of Default** If a Party is in default under this Contract, the other Party may by notice in writing specify the relevant default and, where such default is capable of being remedied, require the other Party within 30 days or such reasonable lesser period as is specified in the notice, to remedy or commence to remedy the default promptly. An act of default may include a series of repeated breaches of this Contract, or a conflict of interest which significantly affects the interests of the Customer.
- 20.2 **Immediate Termination** A Party will be entitled, by notice in writing to the other Party, to terminate this Contract immediately, without prejudice to any right of action which has accrued including, any damages in consequence of such termination, where the Service fails acceptance or a Party:
- (a) fails, within the time specified, to comply with a notice under clause 20.1;
 - (b) assigns its rights otherwise than in accordance with this Contract or commits any other breach of a material term of this Contract; or
 - (c) where the other party commits an act of insolvency, or comes under any form of insolvency administration
- 20.3 **Determination** If:
- (a) the Australian Competition and Consumer Commission (“ACCC”) or the Australian Communications Authority (“ACA”) determines (including without limitation the ACCC issuing a competition notice or draft

competition notice); or

- (b) a court of law determines; or
- (c) a Queens or senior counsel of any Australian jurisdiction jointly appointed by the Parties determines

that this Contract or a clause of this Contract contravenes any provision of the *Telecommunications Act 1997 (Cth)* or the *Trade Practices Act 1974 (Cth)*, the Parties' obligations under this Contract may be immediately terminated by written notice by either Party to the other.

- 20.4 **No Claim** If this Contract is terminated pursuant to clause 20.3 neither Party may make any claim against the other Party for any loss, damage or costs resulting from termination of this Contract.
- 20.5 **Process on Receiving Determination** If a Party gives a notice under clause 20.3, it will use all reasonable endeavours to hold bona fide negotiations with the other Party for the purpose of agreeing upon amendments to this Contract which will, in a manner acceptable to the Parties, avoid further contravention of the laws referred to in clause 20.3.
- 20.6 If a Party receives an indication from the ACCC, ACA or a court of law that this Contract or a clause of this Contract contravenes or may contravene the law, it will use all reasonable endeavours to hold bona fide negotiations with the other Party for the purpose of agreeing upon amendments to this Contract which will, in a manner acceptable to the Parties, avoid contravention of the law.

21. Termination or Suspension with Compensation

- 21.1 **Termination by Notice** The Customer may terminate this Contract by written notice to [Short Name].
- 21.2 **Compliance with Notice** [Short Name] shall immediately comply with any directions given in the notice and shall do everything possible to mitigate its losses arising in consequence of termination.
- 21.3 **Indemnity** The Customer shall indemnify [Short Name] against any liabilities or expenses, including unamortised set up costs (but not damages for loss of prospective profits), which are reasonably and properly incurred by [Short Name] in connection with this Contract to the extent that those liabilities or expenses were incurred in consequence of termination of this Contract in accordance with this clause 21. *For better caution the amount indemnified includes the access fee, any termination payment, unexpired access, call charges and cancellation fee as set out in Schedule 5.*
- 21.4 **Balance of Price** If [Short Name] reduces the price of a Service to a Customer on the condition that the Customer take the Service over a certain period, and the Customer pays to [Short Name] the reduced price but before the expiry of this certain period the Customer terminates this Contract, the Customer shall pay to [Short Name] the difference between the price and the reduced price of the Service for the period

that the Customer actually took the Service.

21.5 **Subcontractors** [Short Name] shall, in each sub-contract to the value of \$20,000 or more reserve a right of termination on similar terms to this clause 21.

21.6 **Default** This clause 21 does not apply to termination or suspension occurring because of a default by [Short Name] as specified in clause 20.

22. Communication

22.1 **Electronic Commerce** Unless agreed otherwise in the Official Order the Parties will co-operate fully in doing business by electronic commerce.

22.2 **Notices** A notice under this Contract is deemed to have been given if it is in writing and:

- (a) if it is delivered by hand, on the date upon which it is delivered;
- (b) if it is sent by post, on the day upon which it would be delivered in the normal course of post;
- (c) if transmitted electronically, when the sender receives confirmation of a successful transmission.

to the other Party at the address for service set out in the Official Order as varied from time to time by notice

22.3 **Deemed Receipt** A notice or other communication is deemed to be received:

- (a) if sent by post, at the time it would have been delivered in the ordinary course of the post to the address to which it was sent;
- (b) if sent electronically or by facsimile, at the time the machine on which it has been sent records that it has been transmitted satisfactorily;
- (c) if delivered by hand the party who sent the notice holds a receipt for the notice signed by a person employed at the physical address for service or there is other evidence that the notice was delivered to the person referred to in the address.

23. General

23.1 **Subcontracting** [Short Name] may subcontract the work to be performed under this Contract. [Short Name], however, is in no way relieved of performing its obligations. [Short Name] will inform the Customer if a subcontractor is to be used. In addition, [Short Name] will ensure that the subcontractor is aware of the provisions of the Contract relevant to the part of the work to be performed by the subcontractor. In the Official Order the Customer may require that subcontractors be approved in advance, which approval shall not be unreasonably withheld.

23.2 **Assignment** Neither Party may assign the benefits under this Contract without the

prior written consent of the other Party, which consent will not be unreasonably withheld

The Customer shall not be obliged to consent to any novation in whole or in part of this Contract but where [Short Name] proposes to enter into an arrangement which will require novation in whole or in part of this Contract it shall consult with the Customer and AGIMO within a reasonable period prior to the proposed novation. The Customer shall not unreasonably withhold such consent where the novation is to a third party who has entered into a Head Agreement with the Commonwealth that is in similar terms to the head agreement between [Short Name] and AGIMO.

- 23.3 **Circumstances beyond Control** A Party is excused from performing its obligations to the extent it is prevented by circumstances beyond its reasonable control (other than the lack of funds for whatever reason), such as acts of God, natural disasters, acts of war, riots and strikes outside that Party's organisation. When these circumstances arise, the affected Party will give notice of them to the other as soon as possible, identifying the effect they will have on its performance, and will make all reasonable efforts to minimise the effects.

If non-performance or diminished performance by the affected Party continues for a period which the other party reasonably regards as commercially untenable, the other Party may terminate this Contract. If this Contract is terminated in these circumstances, each Party will bear its own costs and neither Party will incur further liability to the other.

- 23.4 **Waiver** A waiver by either Party of a breach will not be regarded as a waiver of any other breach. A failure to enforce a provision or acceptance by the Customer of less than the required Service will not be interpreted as a waiver.

- 23.5 **Applicable Law** This Contract will be governed by, and construed in accordance, with the laws in the Australian Capital Territory.

- 23.6 **Variation of the Contract** This Contract shall be varied only by agreement in writing signed by the Parties.

The Parties may vary the terms of any Official Order without AGIMO's approval so long as the change does not have the effect of altering the operation of these Standard Contract Terms.

The Parties shall not vary the terms of this Contract so as to alter the operation of these Standard Contract Terms, without AGIMO's prior review of such variation in accordance with the Head Agreement.

- 23.7 **Entire Agreement** This Contract constitutes the entire agreement of the Parties and supersedes all prior representations arrangements or understandings relating to its subject matter whether verbal or in writing.

- 23.8 **Conflict of Interest** [Short Name] warrants that, to the best of its knowledge, at the date of execution of this Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

[Short Name] will promptly notify the Customer in writing if a conflict of interest arises or appears likely to arise during the course of this Contract and will take action as directed by the Customer to avoid or minimise such conflict. Should a conflict arise which significantly affects the interests of the Customer, that conflict may be treated by the other party as a breach of Contract for the purposes of clause 20.

SCHEDULE 2 - OFFICIAL ORDER AND ATTACHMENT

FOR THE PURCHASE OF SERVICES FROM
[Company Name] (“[Short Name]”) ACN [Company ACN]

[Short Name]'s name and Address for Service of Notices:

Physical _____

Postal _____

Fax _____

1. Customer Name: _____

2. Customer Account Number: _____

3. Customer Address for Service of Notices:

Physical _____

Attention _____

Postal _____

Attention _____

Fax _____

Attention _____

Details of Services to be supplied are as indicated on the attached page (clause 1 and 4) including any specifications (clause 3).

Details of any warranties and warranty periods (clause 7.1, 7.2, 8.1)

Service Period (clause 2.4, and 4.1(a))

Performance standards and measures (clause 4.2)

Project plan with time of major deliverables and milestones (clause 4)

Renewal period (clause 2.5)

Items supplied by [Short Name] as Customers agent (clause 5.1)

Items to be supplied (clause 5.1)

Terms and conditions (clause 5.1)

Facilities and Assistance to be provided by [Short Name] (clause 5.3)

Documentation to be provided to the Customer (clause 5.4)

Training (clause 5.5)

Site Specification and preparation (clause 5.7, 6.4)

Other legislation (clause 5.11)

Acceptance Tests (clause 9.2)

Payment details (clause 6.1) including the Contract Price (clause 16.4)

Resources to be provided by the Customer (clause 6.3)

Personnel (clause 10.1)

Intellectual property ownership variation (clause 11)

Privacy procedures (clause 13.1)

Rebate (clause 17)

amount

Continued performance in case of a dispute (clause 19.5)

Liquidated Damages (clause 19.1)

Date (see reference to project plan above)

Amount

Subcontractors (clause 23.1)

CONFIDENTIAL INFORMATION OF THE PARTIES (Clause 12)

A. CUSTOMER'S CONFIDENTIAL INFORMATION

1. Contract Provisions/Schedules/Attachments

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

2. Contract-related material

Item	Period of Confidentiality
<i>[insert brief description of nature of information, without revealing content]</i>	

B. CONTRACTOR'S CONFIDENTIAL INFORMATION

1. Contract Provisions/Schedules/Attachments

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

2. Contract-related material

Item	Period of Confidentiality
<i>[insert brief description of nature of information, without revealing content]</i>	

The Customer acknowledges that it has relied on its own judgment to evaluate the suitability of the Services for its purposes. If this Official Order is accepted by [Short Name], the Services will be provided on the Standard Contract Terms attached to the Head Agreement between the Commonwealth of Australia represented by the AGIMO and [Short Name] dated The Customer consents to [Short Name] disclosing to the Commonwealth (through the AGIMO) and other Commonwealth customers, information in relation to the Services acquired pursuant to this Official Order.

Signed for and on behalf of the Customer by its authorised officer

Signature

Name of Authorised Officer

Title

Date of Signing

Acceptance

Signed for and on behalf of [Short Name] by its authorised officer

Signature

Name of Authorised Officer

Title

Date of Signing

SCHEDULE 3 - GUARANTEES

SCHEDULE 3 PART 1 CORPORATE GUARANTEE

THIS DEED OF GUARANTEE made theday of 200..

BETWEEN

COMMONWEALTH OF AUSTRALIA represented by the Australian Government Information Management Office ("AGIMO")

AND

.....
[insert Guarantor's name and ACN (YYY)]
("Guarantor")

PURPOSE:

- A. The Commonwealth of Australia and its agencies ("Customers") wish to procure telecommunications services and related services and products ("Services") from [Company Name]("[Short Name]").
- B. [Short Name] has in accordance with the Head Agreement between AGIMO and [Short Name] dated agreed to supply the Services to Customers pursuant to contracts to be entered into between [Short Name] and Customers under the Head Agreement("the Contracts").
- C. The Guarantor agrees to provide the guarantees and indemnities below in respect of all Contracts entered into under the Head Agreement between AGIMO and [Short Name] mentioned at point B above.

WHAT IS AGREED:

The Guarantor hereby guarantees to AGIMO and the Customers who have entered into a Contract with [Short Name] under the Head Agreement, the performance of the obligations undertaken by [Short Name] under each Contract on the following terms and conditions:

- (1) If [Short Name] (unless relieved from the performance of a Contract by Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings under a Contract the Guarantor will, if required to do so by AGIMO or the Customer, complete or cause to be completed the undertakings set forth in, and in accordance with the conditions of, the Contract.

If [Short Name] should commit any breach of its obligations under a Contract, and such breach is not remedied by the Guarantor pursuant to the foregoing sentence, and the

Contract is then terminated for default, the Guarantor shall indemnify AGIMO and the Customer against costs and expenses directly incurred by reason of such default.

- (2) Where the Guarantor consists of more than one legal person each of those persons agree to be bound jointly and severally by this Deed of Guarantee and AGIMO and the Customers may enforce this Deed of Guarantee against all or any of the persons who constitute the Guarantor.
- (3) The Guarantor shall not be discharged or released or excused from this Deed of Guarantee by an arrangement made between [Short Name] and AGIMO or a Customer with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by [Short Name] or by any forbearance whether as to payment, time, performance or otherwise.

The obligations of [Short Name] shall continue in force and effect until:

- (a) [Short Name] completes all its obligations under the Contracts put in place with Customers under the Head Agreement; or
 - (b) until the completion of the undertakings of this Deed of Guarantee by the Guarantor; and
 - (c) the Guarantor is released by AGIMO.
- (4) The obligations and liabilities of the Guarantor under this Deed of Guarantee shall not exceed the obligations and liabilities of [Short Name] under the Contracts.
 - (5) This Deed of Guarantee shall be subject to and construed in accordance with the laws in force in the Australian Capital Territory.
 - (6) Where [Short Name] has failed to perform under a Contract the obligations of the Guarantor will continue even though [Short Name] has been dissolved or has been made subject to external administration procedures under Chapter 5 of the Corporations Law or any other Law.
 - (7) The rights and obligations under this Guarantee will continue until all obligations of [Short Name] under the Contracts have been performed, observed and discharged.
 - (8) A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits it electronically (electronic mail) or by facsimile to the address last advised one of them to the other. Where the notice is given or served electronically, the sending party must confirm receipt by some other means.

A notice or other communication is deemed to be received if:

- (a) sent by post, at the time it would have been delivered in the ordinary course of the post to the address to which it was sent; or
- (b) sent electronically or by facsimile, at the time the machine on which it has been sent records that it has been transmitted satisfactorily; or
- (c) sent by a courier when it is delivered to the address for service and a

signature is obtained from a representative of the party to whom the notice is addressed.

The addresses for the purpose of this clause 8 are:

(a) Address of the Guarantor

Physical Address:

Attention:

Postal Address:

Attention:

Facsimile
Attention:

(b) Address of AGIMO

Physical Address:

Australian Government Information Management Office
Burns Centre
28 National Circuit
FORREST ACT 2603
Attention: Manager, Projects and Sourcing Strategy

Postal Address:

Australian Government Information Management Office
PO Box 390
CANBERRA CITY ACT 2601

Attention: Manager, Projects and Sourcing Strategy

Facsimile 02 6271 1659
Attention: Manager, Projects and Sourcing Strategy

IN WITNESS WHEREOF the parties have executed this Deed on the date first written.

SIGNED SEALED AND DELIVERED

for and on behalf of

COMMONWEALTH OF AUSTRALIA

by

[insert name of AGIMO representative]

[signature of representative]

in the presence of

[insert name and address of witness]

[signature of witness]

SIGNED SEALED AND DELIVERED

for and on behalf of

[insert name of Guarantor]

by its duly appointed Attorney

[insert Attorney's name]

[signature of Attorney]

under Power of Attorney

No. _____

[insert Attorney Number]

in the presence of

[insert name and address of witness]

[signature of witness]

SCHEDULE 3 PART 2 - GUARANTEE FOR A FIXED AMOUNT

THIS DEED OF GUARANTEE made theday of200..

BETWEEN

COMMONWEALTH OF AUSTRALIA represented by the Australian Government Information Management Office ("AGIMO")

AND

.....

.....

[insert each Director's name and address
("Guarantor")

PURPOSE:

- A. The Commonwealth of Australia and its agencies (“Customers”) wish to procure telecommunications services and related services and products (“Services”) from [Company Name] (“[Short Name]”).
- B. [Short Name] has in accordance with the Head Agreement between AGIMO and [Short Name] dated, agreed to supply the Services to Customers pursuant to contracts to be entered into between [Short Name] and Customers under the Head Agreement("the Contracts").
- C. The Guarantor agrees to provide the guarantees and indemnities below in respect of all Contracts entered into under the Head Agreement between AGIMO and [Short Name] mentioned at point B above.

WHAT IS AGREED:

The Guarantor hereby guarantees to AGIMO and the Customers who have entered into a Contract with [Short Name] under the Head Agreement, the performance of the obligations undertaken by [Short Name] under each Contract on the following terms and conditions:

- (1) If [Short Name] (unless relieved from the performance of a Contract by the Customer or by statute or by a decision of a tribunal of competent jurisdiction) fails to execute and perform its undertakings under a Contract the Guarantor will, if required to do so by AGIMO or the Customer, complete or cause to be completed the undertakings set forth in, and in accordance with the conditions of, the Contract. If [Short Name] should commit any breach of its obligations under a Contract, and such breach is not remedied by the Guarantor pursuant to the foregoing sentence, and the Contract is then terminated for default, the Guarantor shall indemnify AGIMO and the Customer against costs and expenses directly incurred by reason of such default.

- (2) Where the Guarantor consists of more than one legal person each of those persons agree to be bound jointly and severally by this Deed of Guarantee and AGIMO and the Customers may enforce this Deed of Guarantee against all or any of the persons who constitute the Guarantor.
- (3) The Guarantor shall not be discharged or released or excused from this Deed of Guarantee by an arrangement made between [Short Name] and AGIMO or a Customer with or without the consent of the Guarantor, or by any alteration, amendment or variation in the obligations assumed by [Short Name] or by any forbearance whether as to payment, time, performance or otherwise. The obligations of [Short Name] will continue in force and effect until:
- (a) [Short Name] completes all its obligations under the Contracts put in place with Customers under the Head Agreement; or
 - (c) until the completion of the undertakings of this Deed of Guarantee by the Guarantor; and
 - (c) the Guarantor is released by AGIMO.
- (4) The obligations and liabilities of the Guarantor under this Deed of Guarantee shall not exceed the obligations and liabilities of [Short Name] under the Contracts but are limited to \$.....**[Insert an amount per director or some other variation.]**
- (5) This Deed of Guarantee shall be subject to and construed in accordance with the laws in force in the Australian Capital Territory.
- (6) Where [Short Name] has failed to perform under a Contract the obligations of the Guarantor will continue even though [Short Name] has been dissolved or has been made subject to external administration procedures under Chapter 5 of the Corporations Law or any other Law.
- (7) The rights and obligations under this Guarantee will continue until all obligations of [Short Name] under the Contracts have been performed observed and discharged.
- (8) A notice or other communication is properly given or served if the party delivers it by hand, posts it or transmits it electronically (electronic mail) or by facsimile to the address last advised one of them to the other. Where the notice is given or served electronically, the sending party must confirm receipt by some other means.

A notice or other communication is deemed to be received if:

- (a) sent by post, at the time it would have been delivered in the ordinary course of the post to the address to which it was sent; or
- (b) sent electronically or by facsimile, at the time the machine on which it has been sent records that it has been transmitted satisfactorily; or
- (c) sent by a courier when it is delivered to the address for service and a signature is obtained from a representative of the party to whom the notice is

addressed.

The addresses for the purpose of this clause (8) are:

(a) Address of the Guarantor

Physical Address:

Attention:

Postal Address:

Attention:

Facsimile

Attention:

(b) Address of AGIMO

Physical Address:

Australian Government Information Management Office
Burns Centre
28 National Circuit
FORREST ACT 2603
Attention: Manager, Projects and Sourcing Strategy

Postal Address:

Australian Government Information Management Office
PO Box 390
CANBERRA CITY ACT 2601
Attention: Manager, Projects and Sourcing Strategy

Facsimile 02 6271 1659

Attention: Manager, Projects and Sourcing Strategy

IN WITNESS WHEREOF the parties have executed this Deed on the date first written.

SIGNED SEALED AND DELIVERED
for and on behalf of

COMMONWEALTH OF AUSTRALIA
By

[insert name of AGIMO representative]

[signature of representative]

in the presence of

[insert name and address of witness]

[signature of witness]

SIGNED SEALED AND DELIVERED
for and on behalf of

[insert name of Guarantor]

by its duly appointed Attorney

[insert Attorney's name]

[signature of Attorney]

under Power of Attorney

No. _____

[insert Attorney Number]

in the presence of

[insert name and address of witness]

[signature of witness]

SCHEDULE 3 -PART 3 - UNCONDITIONAL FINANCIAL UNDERTAKING

(Clause 23)

THIS DEED ("this Undertaking") made the day of 200..

BETWEEN

COMMONWEALTH OF AUSTRALIA represented by the Australian Government Information Management Office ("AGIMO")

AND

.....

("the Guarantor")

WHAT IS AGREED:

At the request of [Company Name] ("[Short Name]") and the Guarantor and in consideration of AGIMO accepting this Undertaking:

1. The Guarantor unconditionally undertakes and covenants to pay to AGIMO on demand without reference to [Short Name] and notwithstanding any notice given by [Short Name] to the Guarantor not to pay same, any sum or sums which may from time to time be demanded in writing by AGIMO to a maximum aggregate sum of \$.....00 .
2. The Guarantor’s liability under this Undertaking shall be a continuing liability and shall continue until payment is made under this Undertaking of the said maximum aggregate sum or AGIMO notifies the Guarantor that this Undertaking is no longer required.
3. This Undertaking shall be governed by and construed in accordance with the laws for the time being of the Australian Capital Territory.

IN WITNESS WHEREOF the parties have executed this Undertaking as a Deed on the date first written.

SIGNED SEALED AND DELIVERED
for and on behalf of

COMMONWEALTH OF AUSTRALIA
by

[insert name of AGIMO representative]

[signature of representative]

in the presence of

[insert name and address of witness]

[signature of witness]

SIGNED SEALED AND DELIVERED
for and on behalf of

[insert name of Guarantor]

by its duly appointed Attorney

[insert Attorney's name]

[signature of Attorney]

under Power of Attorney

No _____

[insert Attorney Number]

in the presence of

[insert name and address of witness]

[signature of witness]

SCHEDULE 4 - REPORTING REQUIREMENTS

Clause 20 of the Head Agreement

[Short Name] will provide AGIMO the following data in the format outlined below, and contained in an approved medium. Excel spreadsheets should be used unless otherwise agreed by AGIMO, (comma delimited ASCII files if it is impossible to produce output in Excel format). Please note that most popular spreadsheet packages are capable of producing output in Excel format.

[Short Name] will provide data on all Commonwealth Agencies use of any of their Services, and a summary report at a Whole-of-Government level in the same format. This data must be at an agency level; by product; split into charges which are eligible for discount and those which are not; and on a monthly basis. The non-eligible charges should be treated like another product called "Non-Eligible charges". For this category it is likely that fields, F, G, H, I, J will be equal to zero, and E will refer to expenditure rather than eligible expenditure.

The data should take the form of an Excel spreadsheet unless other arrangements are agreed between AGIMO and [Short Name].

From left to right, the columns would be:

COLUMNS A - K IN EXCEL SPREADSHEET	FIELD TYPE	PRECISE NAME
A. Carrier/Service Provider	(Text)	Carrier/SP
B. Date	(Date)	Date
C. Plan ID/Product Name	(Text)	Plan ID
D. Agency Name	(Text)	Ag Name
E. Eligible Expenditure	(Currency)	Elig Expend
F. Agency Discount in \$	(Currency)	Ag Disc \$
G. Agency Discount in %	(Percentage)	Ag Disc %
H. Whole of Government Discount in \$	(Currency)	WoG Disc \$
I. Whole of Government Discount in %	(Percentage)	WoG Disc %
J. The Discount Actually Provided or Paid to the Agency	(Currency)	Disc Provided/Paid
K. The Number of Calls in the Period	(Number)	No. Calls
L. The Number of Minutes in the Period	(Number)	No. Minutes

Notes:

- F, G, H, I, & J
A, C, D Should be net of any management fees or other costs.
These must be the standard abbreviations/acronyms used by AGIMO, a list can be supplied on request.
- K, L These should be used where the product is sold on a timed basis.
Where this is done by the hour (eg Internet) AGIMO should first be notified that the units are hours and then the same format can be

	used.
General	All (Currency) figures should be to a maximum of 2 decimal places.
General	All (Percentage) figures should be to a maximum of 4 decimal places EG: 35.65% = 0.3565
General	All fields must be filled in for every row

The Customer Report shall also provide the following details:

- (a) the name of each Customer;
- (b) the amount spent by each Customer on Services during the month; and
- (c) where there are different classes of Services, the amount spent by each Customer on each class of Service.

In the future, AGIMO will collect other types of information, for example aggregated call records. In this example calls between the same two regions might be aggregated into half hour blocks, which would then show the total number of calls, total number of minutes used, total cost of calls etc.

The aim of this type of information is to allow the Commonwealth to better understand current usage of telecommunications services and to plan for future requirements. Once aggregated into broad product groups this information will also allow the Commonwealth to better identify requirements to industry.

As AGIMO's information requirements broaden [Short Name] will be requested to provide additional summary data where applicable.

**SCHEDULE 5 - LIST OF SERVICES THAT MAY BE SUPPLIED UNDER
A CONTRACT**

SCHEDULE 6 - CONFIDENTIALITY UNDERTAKING

(clause 12.3 of the Head Agreement and clause 12.3 of Schedule 1)

THIS DEED dated the ____ day of _____ 200_

By

_____ (“the Recipient”)

In favour of

[Insert name of Customer or AGIMO] (“the Agency”)

PURPOSE

- A. The Agency is in possession of certain information that the Agency regards as sensitive Information, the improper use or disclosure of which would damage the Agency’s interests.
- B. The Recipient wishes to have access to the sensitive Information for the purpose of _____ (“the Specified Purpose”).
- C. The Agency requires, and the Recipient agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Information is protected from disclosure by the Recipient.
- D. The Agency has agreed to disclose the Information to the Recipient subject to the terms and conditions of this Deed.
- E. Once the Information has been provided to the Recipient subject to the obligations contained in this Deed, the information will be regarded by the parties as Confidential Information.

WHAT IS AGREED

1. ACKNOWLEDGEMENT

- 1.1 The Recipient acknowledges the truth and accuracy of the matters set out in items A to E above under the heading Purpose in every particular.

2. INTERPRETATION

2.1 In the interpretation of this Deed, unless the contrary intention appears:

Agreement means an agreement between the Agency and [Short Name] entitled....and dated

Confidential Information means the Information, which the Recipient has under this Deed agreed to protect and use only for the Specified Purpose;

Contact Officer means _____ whose contact particulars are as follows:

(a) telephone: _____;

(b) physical address: _____;

Attention: [position occupied by the Contact Officer]

(c) postal address _____

Attention: [position occupied by the Contact Officer]

(d) facsimile: _____;

Attention: [position occupied by the Contact Officer]

(e) email: _____;

Information means: *(describe specific information here)*

(a) ...

(b) ...

(c) ...

¹**Nominated Personnel** in relation to the Recipient means the natural persons set out below :

(a) _____;

(b) _____;

(c) _____;

(d) _____;

Notice means notice in writing given in accordance with this Deed;

¹ Where the Recipient is a legal entity, natural persons who will have access to the information must be listed as the Nominated Personnel

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; and

Recipient means the party described as the Recipient whose contact particulars are as follows:

- (a) telephone: _____;
- (b) physical address: _____;
- (c) postal address _____;
- (d) facsimile: _____;
- (e) email: _____;

Specified Purpose means the purpose set out in item B under the heading Purpose.

2.2 Unless the contrary intention appears:

- (a) monetary references are references to Australian currency;
- (b) the clause and subclause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its subclauses;
- (d) words in the singular number include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (g) a reference to a clause or subclause is a reference to a clause or subclause of this Deed;
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (i) a reference to writing means any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

3. RESTRICTION ON USE

3.1 The Recipient agrees to use the Confidential Information only for the Specified Purpose.

4. NON DISCLOSURE

4.1 Subject to clauses 3.1 and 4.3, the Recipient must not, without the prior written consent of

the Agency, disclose any Confidential Information to a third party.

- 4.2 In giving written consent to the disclosure of the Confidential Information, the Agency may impose such conditions as it thinks fit, and the Recipient agrees to comply with these conditions.
- 4.3 The obligations on the Recipient under this clause 4 will not be taken to have been breached to the extent that Confidential Information:
- (a) is disclosed by the Recipient to the Nominated Personnel solely for the Specified Purpose;
 - (b) is required by law to be disclosed; or
 - (c) is in the public domain otherwise than due to a breach of this clause 4.
- 4.4 Where the Recipient discloses Confidential Information to another person pursuant to clause 4.3(a) the Recipient must:
- (a) notify the receiving person that the information is Confidential Information; and
 - (b) not provide the information to the receiving person unless the receiving person agrees to keep the information confidential.
- 4.5 Nothing in this clause 4 derogates from any obligation which the Recipient may have either under the *Privacy Act 1988 (Cth)* as amended from time to time, or under this Deed, in relation to the protection of Personal Information.

5. UNCERTAINTY

- 5.1 If the Recipient is uncertain as to whether any information is Confidential Information, the Recipient will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Agency agrees in writing that the information is in the public domain.

6. POWERS

- 6.1 The Agency may demand (without needing to reduce the demand to writing) the delivery up to it of all documents in the possession or control of the Recipient containing the Confidential Information.
- 6.2 The Recipient must immediately comply with a demand under clause 6.1 at the Recipient's expense.
- 6.3 If the Agency makes a demand under clause 6.1, and the Recipient has placed or is aware that documents containing the Confidential Information are beyond their possession or control, then the Recipient must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose custody or control they lie.
- 6.4 In this clause 6, "documents" includes any document, device, article or medium, and

any other form of storage of information, whether visible to the eye or not.

- 6.5 The Recipient acknowledges that the Agency may take legal proceedings against the Recipient or third parties if there is any actual, threatened or suspected breach of this Deed, including proceeding for an injunction to restrain such breach.

7. INDEMNITY

- 7.1 The Recipient indemnifies the Agency against all costs, expenses, actions or claims directly or indirectly incurred or suffered by the Agency as a result of a breach of this Deed by the Recipient.
- 7.2 The indemnity in clause 7.1 extends to and includes all costs, damages and expenses incurred by the Agency in defending and or settling any such costs, expenses, actions, suits, proceedings, claims or demands (including legal costs and disbursements on a full indemnity basis).

8. NO EXCLUSION OF LAW OR EQUITY

- 8.1 This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

9. WAIVER

- 9.1 No waiver by the Agency of a breach of any covenant, obligation or provision contained or implied in this Deed shall operate as a waiver of another breach of the same or of any other covenant, obligation or provision.
- 9.2 None of the provisions or covenants of this Deed shall be taken either at law or in equity to have been varied, waived, discharged or released by the Agency unless by its express consent in writing.

10. REMEDIES CUMULATIVE

- 10.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies of the Agency.
- 10.2 Subject to the other covenants of this Deed, the obligations of the Recipient pursuant to this Deed are in addition to and not in derogation of any other obligation to the Agency under any other deed or agreement or at law.

11. VARIATIONS

- 11.1 No obligation or provision or covenant of this Deed may be waived or varied unless such waiver or variation is reduced to writing and signed by the Agency.

12. APPLICABLE LAW

The laws of the Australian Capital Territory apply to this Deed.

13. SURVIVAL

- 13.1 This Deed will survive the termination or expiration of any contract (whether between the parties directly or otherwise) referred to, envisaged or implied in the Specified Purpose.

14. NOTICES

- 14.1 A notice or other communication which may be given to or served on the Recipient under this Deed shall be deemed to have been duly given or served if it is in writing signed by the Agency and is either delivered by hand, posted or a copy transmitted electronically to the Recipient at any registered office of the Recipient or posted to the Recipient at the address set out for the Recipient in clause 2.1 or such other address as may be notified in writing to the Agency from time to time.
- 14.2 A notice or other communication which may be given to or served on the Agency under this Deed shall be deemed to have been duly given or served if it is in writing, signed by or on behalf of the Recipient and is either delivered by hand, posted or a copy transmitted electronically to the Agency, marked for the attention of the Contact Officer, at the address set out for the Contact Officer in clause 2.1 or such other address as may be notified in writing to the Recipient from time to time.
- 14.3 A notice sent by post shall be deemed to have been given at the time when, in due course of transmission, it would have been delivered at the address to which it is sent.
- 14.4 A notice sent by facsimile transmission shall be deemed to have been given when the machine on which the notice is sent reports in writing that the notice has been transmitted satisfactorily.

EXECUTED BY THE RECIPIENT AS A DEED

**SIGNED, SEALED AND
DELIVERED**

**SIGNED, SEALED AND
DELIVERED**

by:

Insert name of Recipient

Signature of Recipient

Date

In the presence of:

Name of Witness

Signature of Witness

Date

Signature by Recipient (where Organisation)

SIGNED, SEALED AND DELIVERED

for and on behalf of the Recipient.....

by:

Name Signatory

Signature of Recipient's representative

Date

In the presence of:

Name of Witness

Signature of Witness

Date

OR

THE COMMON SEAL OF

.....

was hereunto affixed by:

Person authorised to affix seal

Signature of person affixing seal

Date

In the presence of:

Name of Witness

Signature of Witness

SCHEDULE 7 - HEAD AGREEMENT CONFIDENTIAL INFORMATION

Clause 12

A. AGIMO'S CONFIDENTIAL INFORMATION

1. Head Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

2. Head Agreement-related material

Item	Period of Confidentiality
<i>[insert brief description of nature of information, without revealing content]</i>	

B. [SHORT NAME]'S CONFIDENTIAL INFORMATION

1. Head Agreement Provisions/Schedules/Attachments

Item	Period of Confidentiality
<i>[insert relevant items]</i>	

2. Head Agreement-related material

Item	Period of Confidentiality
<i>[insert brief description of nature of information, without revealing content]</i>	