



Parliament of Australia

Department of Parliamentary Services

Draft
Contract for the supply of Property

Contractor: Insert Company Name

ABN: Insert ABN

Supply of master keyed lock cylinders

Contract number: DPS05005

Table of Contents

1.	Glossary of terms and interpretation	1
1.1	General	1
1.2	Interpretation	5
2.	Engagement and Maintenance Services Contract	6
2.1	Engagement	6
2.2	Survival	6
2.3	Maintenance Services Contract	6
3.	Role of the Contractor	6
3.1	Property	6
3.2	Standard of care	7
3.3	Authority to act	7
3.4	Knowledge of DPS's requirements	7
3.5	Supply of Property	7
3.6	Supply Program	8
3.7	Review and revision of Supply Program	8
3.8	Notice of matters impacting on Property	8
3.9	Report	9
3.10	Coordination of Other Contractors	9
3.11	Statutory requirements	9
3.12	Specific DPS requirements	9
3.13	Conflict of interest	10
3.14	Quality assurance	11
3.15	Access to the Contractor's premises	11
3.16	Security	12
3.17	National Code of Practice for the Construction Industry	12
4.	Role of DPS	12
4.1	Information and Property	12
4.2	Additional information	12
4.3	Access	13
4.4	Making of decisions	13
5.	Intellectual Property and confidentiality	13
5.1	Contract Material	13
5.2	Contractor's obligations in relation to Contract Material	13
5.3	Third party copyright in Contract Material	14
5.4	Indemnity	14
5.5	Licence of Contractor's Material	14
5.6	Moral Rights	15
5.7	Confidentiality	15
5.8	Contractor's confidentiality	15
5.9	Privacy	17
6.	Representatives and Key People	17
6.1	Contractor's representative	17
6.2	DPS's representative	18
6.3	Key People	18
6.4	Removal of persons	19
7.	Payment	19
7.1	Prices and reimbursements	19

7.2	Invoice	19
7.3	Payment	19
7.4	Payment of amounts by Contractor.....	19
7.5	Set off	19
7.6	Books of account.....	19
7.7	Prices and reimbursements all inclusive	20
8.	Insurance and indemnity	20
8.1	Public liability insurance.....	20
8.2	Product liability insurance	20
8.3	Workers' compensation insurance	21
8.4	Liability unaffected.....	21
8.5	Inspection of policies by DPS	21
8.6	Failure to obtain insurance	21
8.7	Alteration of insurances	21
8.8	Indemnity	21
9.	Avoidance of conflict	22
9.1	Fairness and equity	22
9.2	Consent	22
9.3	Dispute notice	22
9.4	Representatives to meet	22
9.5	Reference to expert.....	23
9.6	Expert appraisal.....	23
9.7	Independent Expert.....	23
9.8	Determination	24
9.9	Costs of appraisal.....	24
9.10	Arbitration	24
9.11	Condition precedent	25
9.12	Continued performance.....	25
9.13	Part to survive termination.....	25
10.	Termination.....	25
10.1	Notice of breach.....	25
10.2	Termination for breach	25
10.3	Termination for insolvency	25
10.4	Termination not to affect rights.....	25
10.5	Procedure upon termination	26
11.	General	26
11.1	Entire agreement	26
11.2	Negation of employment	26
11.3	Subcontractors	26
11.4	Provision of subcontracts	26
11.5	Subcontracting not to relieve Contractor	27
11.6	Waiver.....	27
11.7	Costs.....	27
11.8	Notices	27
11.9	Deemed service	27
11.10	Transfer and assignment.....	28
11.11	Governing laws.....	28
11.12	Indemnity for breach.....	28
11.13	GST.....	29

Schedule 1 - Contract Particulars30
Schedule 2 - Statement of Requirement32
Schedule 3 - Prices and reimbursements.....33
Schedule 4 - Supply Program33
Schedule 5 - Maintenance Services Contract.....34

This Contract is made on the _____ day of _____ 200

between **Commonwealth of Australia**, acting through and represented by the **Department of Parliamentary Services ABN 52 997 141 147**, having an address for service as specified in the Contract Particulars;

and **Insert company name ABN insert ABN ("Contractor ")**, an Australian company having an address for service as specified in the Contract Particulars.

Recitals

A. DPS:

- (a) is a Commonwealth Parliamentary Department that provides a range of services and facilities for Members of Parliament and their staff, parliamentary employees and users of the buildings and grounds of Parliament House and the Parliamentary Precincts; and
- (b) to enable it to provide some of those services, requires the supply of the Property described in the Statement of Requirement.

B. The Contractor:

- (a) has considerable experience and expertise in supplying the Property; and
- (b) is able to meet the requirements of DPS under this Contract.

C. Following its consideration of, and reliance upon, the Contractor's Offer, DPS has agreed to engage the Contractor to supply the Property in accordance with the terms and conditions of this Contract.

Terms and Conditions

1. Glossary of terms and interpretation

1.1 General

Unless the context indicates otherwise, when used in this Contract, each word or phrase defined in this clause 1.1 has the meaning given to it in this clause 1.1.

"Business Day" means a weekday other than a public holiday in the Australian Capital Territory.

"Code" means, collectively, the National Code of Practice for the Construction Industry and the Industry Guidelines for Industrial Relations and Occupational Health and Safety under that Code.

"Commonwealth" means the Commonwealth of Australia and includes DPS.

"Commonwealth Confidential Information" means information of the Commonwealth that:

- (a) is, by its nature, confidential;
- (b) is designated by DPS as confidential;
- (c) is marked "Secret", "Classified", "Confidential", "Commercial-in-Confidence" or with any other description which would indicate that it is confidential; or
- (d) the Contractor knows, or ought to know, is confidential;

but does not include information, to the extent that:

- (e) by law is required to be disclosed; or
- (f) is, or becomes, public knowledge other than by:
 - (i) a breach of any undertaking by the Contractor; or
 - (ii) any other unlawful means.

"Consideration" has the meaning given to that term by the GST law.

"Contract" means the contractual relationship between the parties evidenced by this document including the Schedules and any annexures and attachments.

"Contract Date" means the effective date of this Contract being the date specified in the Contract Particulars.

"Contract Material" means all Material provided to the Contractor by DPS or brought, or required to be brought, into existence by the Contractor as part of, or for the purpose of, performing its obligations under this Contract but does not include the Contractor's Material.

"Contract Particulars" means the particulars set out in Schedule 1.

"Contractor's Material" means any Material, the Intellectual Property rights in which, are vested in the Contractor.

"Contractor's Offer" means the offer submitted by the Contractor in response to the Property RFT.

"Contractor's Representative" means the person specified in the Contract Particulars or such other person as nominated, from time to time, by the Contractor, and approved by DPS, to be the representative of the Contractor for the purposes of this Contract.

"Copyright Works" means all copyright works to be created by or on behalf of the Contractor and assigned or licensed to DPS under, or used in connection with, this Contract and includes the copyright works (if any) specified in the Contract Particulars.

"**DPS**" means the Department of Parliamentary Services, a Commonwealth parliamentary department, having authority to represent, and act on behalf of, the Commonwealth in relation to this Contract.

"**Fees**" means the fees, prices and reimbursements payable for the Property specified in, or ascertained in accordance with, Schedule 3.

"**GST**" has the meaning given to that term by the GST law.

"**GST law**" has the meaning given to that term by the *A New Tax System (Goods and Services Tax) Act 1999*.

"**Independent Expert**" means the independent expert specified in the Contract Particulars.

"**Intellectual Property**" includes copyright, all rights (including neighbouring and Moral Rights) in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts, trade secrets and know-how and all other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

"**Key People**" means the people specified in the Contract Particulars.

"**Maintenance Services Contract**" means a contract for the provision of services relating to the maintenance of the Property after installation, being substantially in the form of the draft Maintenance Services Contract comprising Schedule 5.

"**Material**" includes documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored by any means).

"**Moral Rights**" has the meaning given to that term by the *Copyright Act 1968*.

"**Operational Specifications**" means the specifications for the Property set out in the Statement of Requirement.

"**Other Contractor**" means a contractor or service provider appointed by DPS to supply property or services or carry out any work in conjunction with the provision of the Property by the Contractor but does not include the Contractor.

"**Parliament House Site Book**" means the publication produced by DPS (as amended from time to time) setting out the requirements of DPS for persons having access to Parliament House or the Parliamentary Precincts including those relating to:

- (a) conditions of access;
- (b) working procedures;

- (c) conduct;
- (d) emergency evacuation procedures; and
- (e) incident notification and reporting,

an electronic copy of which is available at the website specified in the Contract Particulars.

"Parliamentary Precincts" means the Parliamentary precincts as defined in section 4 of the *Parliamentary Precincts Act 1988*.

"Personal Information" has the meaning given to that term by the *Privacy Act 1988*.

"Project Officer" means the person specified in the Contract Particulars or such other person as nominated, from time to time, by DPS to be its representative for the purposes of this Contract.

"Property" means the property to be supplied by the Contractor under this Contract as specified in the Statement of Requirement.

"Property RFT" means the Request for Tender, Request for Quotation or other invitation to treat issued by DPS, particulars of which are set out in the Contract Particulars.

"Security Procedures" means all laws, regulations, policies and other procedures of the Commonwealth relating to security, confidentiality, privacy, conflict of interest, access to Commonwealth premises and information and protection of Commonwealth property and includes the requirements set out in the Parliament House Site Book and the *Commonwealth Protective Security Manual 2000* as amended, from time to time.

"Site" means the site described in the Contract Particulars.

"Specified Standards" means the quality and performance standards for the Property as specified in the Statement of Requirement.

"Statement of Requirement" means the document comprising Schedule 2 which sets out the requirements of DPS in relation to the Property as at the Contract Date.

"Subcontractor" means any subcontractor engaged by the Contractor to:

- (a) supply any part of the Property; or
- (b) carry out any work or do any other thing in relation to the provision of the Property.

"Supply Program" means the Contractor's program, comprising Schedule 4, for the supply of the Property under this Contract.

"Taxable Supply" has the same meaning given to that term by the GST law.

"Tax Invoice" has the same meaning given to that term by the GST law.

1.2 Interpretation

In this Contract:

- (a) headings are for convenience only and do not affect interpretation;
- and, unless the context indicates a contrary intention:
- (b) words denoting the singular number include the plural and vice versa;
 - (c) a reference to "person" includes individuals, firms, companies, associations (incorporated or not incorporated), corporations, governments, government and statutory bodies and other entities;
 - (d) references to Parts, clauses or Schedules are references to Parts, clauses or Schedules of this Contract;
 - (e) a reference to a Part means a group of clauses all commencing with the same whole number;
 - (f) references to this Contract and any other deed, agreement or instrument are deemed to include references to this Contract or that other deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (g) references to any party to this Contract include its successors or permitted assigns;
 - (h) words denoting any gender include all genders;
 - (i) reference to any legislation or to any section or provision of any legislation includes any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision, and ordinances, by-laws, regulations and other statutory instruments issued under that legislation, section or provision;
 - (j) a reference to property takes in every type of right, interest or thing which is legally capable of being owned and includes but is not restricted to, physical goods, equipment and real property, as well as intangibles such as intellectual property, contract options and goodwill;
 - (k) a reference to "\$" is to Australian currency;
 - (l) the words "including" and "includes", and other cognate expressions, indicate what is included without limiting what may be included;

- (m) no rule of construction applies to the disadvantage of a party on the basis that the party puts forward this Contract or any part of it;
- (n) whenever a party is required to indemnify the other, any indemnity will extend to the officers, employees and agents of the party to be indemnified;
- (o) an obligation of a party to do any act or thing may be satisfied by that party procuring another person to do that act or thing; and
- (p) an obligation of a party not to do any act or thing shall be construed to include an obligation of that party:
 - (i) not to permit that act or thing to be done; and
 - (ii) to use its best endeavours to prevent that act or thing being done by another person.

2. Engagement and Maintenance Services Contract

2.1 Engagement

DPS engages the Contractor, and the Contractor accepts that engagement, to supply the Property upon the terms and conditions of this Contract.

2.2 Survival

Any clause that:

- (a) imposes obligations on; or
- (b) confers rights upon;

a party after expiration or termination of this Contract, survives that expiration or termination.

2.3 Maintenance Services Contract

Following the supply of the Property, the Contractor must enter into the Maintenance Services Contract with DPS for the ongoing maintenance of the Property.

3. Role of the Contractor

3.1 Property

The Contractor must supply the Property in accordance with:

- (a) the terms and conditions of this Contract; and
- (b) so far as it is not inconsistent with those requirements, the Contractor's Offer.

3.2 Standard of care

The Contractor must:

- (a) exercise a high standard of skill, care and diligence in relation to the performance of its obligations under this Contract;
- (b) ensure that only qualified, experienced and competent personnel are engaged in relation to the performance of its obligations under this Contract;
- (c) exercise the utmost good faith in the best interests of DPS; and
- (d) keep DPS fully and regularly informed about all matters affecting, or relating to, the supply of the Property.

3.3 Authority to act

The Contractor is authorised by DPS to act on behalf of DPS only in relation to the matters set out or implied in this Contract.

Other than as expressly authorised, the Contractor has no authority to, and must not:

- (a) enter into any contracts, commitments or other legal documents or arrangements in the name, or on behalf, of DPS; nor
- (b) take any act or step to bind or commit DPS in any manner, whether as a disclosed agent of DPS or otherwise.

The Contractor is an independent contractor and is not, and must not purport to be, a partner, joint venturer or employee of DPS.

3.4 Knowledge of DPS's requirements

The Contractor must:

- (a) inform itself of DPS's requirements; and
- (b) (without limitation) refer to:
 - (i) the Statement of Requirement; and
 - (ii) the Property RFT.

3.5 Supply of Property

The Contractor must ensure that the Property:

- (a) is fit for its intended purpose;
- (b) meets the Operational Specifications and the Specified Standards; and

- (c) is supplied in a timely manner.

3.6 Supply Program

The Contractor warrants that its Supply Program will be adequate to satisfy:

- (a) the Statement of Requirement;
- (b) any other reasonable requirements of DPS in relation to the Property; and
- (c) the Contractor's obligations under this Contract.

3.7 Review and revision of Supply Program

The Contractor must:

- (a) at the request of DPS, submit the Supply Program to DPS for its review and evaluation; and
- (b) whether at the request of DPS or otherwise, make any amendments to the Supply Program which may be required for the Contractor to meet its obligations under this Contract.

Although DPS may review and approve the Supply Program, DPS is relying on the skill and expertise of the Contractor and no review, approval or recommendation in relation to the Supply Program will relieve the Contractor of, or alter or affect its responsibility for, the performance of its obligations under this Contract.

3.8 Notice of matters impacting on Property

If the Contractor becomes aware of any matter which:

- (a) is likely to change, or which has changed, the performance by the Contractor of its obligations under this Contract;
- (b) affects, or may affect, the Supply Program or the availability of the Property; or
- (c) involves any error, omission or defect in the Property;

the Contractor must promptly give written notice of that matter to DPS containing, as far as practicable in the circumstances:

- (d) particulars of the change, effect, error, omission or defect;
- (e) its likely impact; and

- (f) the Contractor's recommendation as to how to minimise its impact upon the provision of the Property.

3.9 Report

The Contractor must, at the request of DPS, submit a written report to DPS in a form, and covering such matters in respect of the performance of its obligations under this Contract, as may be reasonably required by DPS.

The Contractor must promptly and fully respond to any questions which DPS asks in relation to that report.

3.10 Coordination of Other Contractors

The Contractor must, in relation to the supply of the Property:

- (a) fully cooperate with each Other Contractor;
- (b) carefully coordinate and integrate the performance of its obligations under this Contract with the work, services and property to be performed or supplied by each Other Contractor;
- (c) avoid interfering with, disrupting or delaying the work, services and property performed or supplied by each Other Contractor; and
- (d) without limitation, provide whatever advice, support and cooperation is reasonably necessary to facilitate the due performance by each Other Contractor.

3.11 Statutory requirements

The Contractor must in supplying the Property or performing any of its other obligations under this Contract:

- (a) comply with the requirements of:
 - (i) all laws, ordinances, rules, codes, regulations, requirements and orders of any legislation or local authority relating to the supply of the Property or those other obligations; and
 - (ii) all relevant standards of Standards Australia;
- (b) obtain all relevant licences, permits, consents, approvals and certificates required for the supply of the Property or the performance of those other obligations and give the original copies of all relevant documents to DPS.

3.12 Specific DPS requirements

The Contractor warrants that it and its employees, agents and Subcontractors are, or before performing any work under this Contract will be, aware of the provisions and requirements of:

- (a) the *Equal Opportunity for Women in the Workplace Act 1999*;
- (b) the *Sex Discrimination Act 1984*;
- (c) the *Racial Discrimination Act 1975*;
- (d) the *Disability Discrimination Act 1992*;
- (e) the *Occupational Health and Safety (Commonwealth Employment) Act 1991*; and
- (f) the *Crimes Act 1914* (and in particular section 79),

and the Contractor must:

- (g) comply with its obligations under that legislation;
- (h) ensure that its employees, agents and Subcontractors comply with their obligations under that legislation; and
- (i) not do, or omit to do, anything which would cause DPS to be in breach of its obligations under that legislation.

The Contractor acknowledges receipt of a copy of the Parliament House Site Book and warrants that it will comply with the requirements of that document.

3.13 Conflict of interest

The Contractor:

- (a) warrants that, at the Contract Date, no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract; and
- (b) if, during the period that it is performing obligations under this Contract, any such conflict or risk of conflict of interest arises, must:
 - (i) notify DPS immediately in writing of that conflict or risk; and
 - (ii) do whatever is reasonably necessary to deal with that conflict or risk in a manner that will ensure that no loss or damage is suffered by DPS.

Without limiting the obligation of the Contractor under this clause 3.13, the Contractor must:

- (c) not enter into negotiations, with any person, in relation to a material issue directly opposed to, or which could have a material effect on, DPS's interests or operations;

- (d) not enter into operations or arrangements opposed to the Commonwealth's interests; and
- (e) implement the highest level of compliance with laws, authorities, rulings and policies, including rules of ethics and professional codes of conduct, relevant to the performance of any work under this Contract.

3.14 Quality assurance

The Contractor must:

- (a) plan, develop and implement a quality assurance system satisfactory to DPS in respect of the supply of the Property or the performance of its other obligations under this Contract; and
- (b) if requested by DPS, provide details of the quality assurance system which it proposes.

The Contractor will not be relieved of any responsibility for the performance of its obligations under this Contract and will remain solely responsible for those obligations notwithstanding:

- (c) the obligation of the Contractor to plan, develop and implement a quality assurance system; or
- (d) any review or approval of any part of the quality assurance system by DPS.

3.15 Access to the Contractor's premises

Without limiting the obligations of the Contractor, under clause 7.6, the Contractor must, at all reasonable times:

- (a) give to DPS, or to any persons authorised in writing by DPS, including the Australian National Audit Office or any other auditor nominated by DPS, access to premises, occupied by the Contractor or any Subcontractor, where any work in relation to the supply of the Property is being undertaken; and
- (b) permit DPS and those persons to:
 - (i) observe the performance of that work; and
 - (ii) inspect all Contract Material and all other accounts, records, documents and procedures relating to the performance by the Contractor of its obligations under this Contract.

3.16 Security

The Contractor must when:

- (a) having access to the Commonwealth's premises, facilities or information; or
- (b) supplying the Property or otherwise performing its obligations under this Contract;

comply with all Security Procedures including:

- (c) obtaining security clearances and confidentiality undertakings from all Key People, Subcontractors and each other employee or agent of the Contractor who is likely to have access to the Commonwealth's premises, facilities or information;
- (d) promptly reporting to the Project Officer, any breach of the Security Procedures;
- (e) taking all measures reasonably necessary to protect Commonwealth Confidential Information;
- (f) providing reasonable assistance to, and cooperation with, DPS, the Australian Federal Police, the Privacy Commissioner and other authorities nominated by DPS in relation to the investigation of any breach of Security Procedures; and
- (g) taking all other steps reasonably required to remedy any breach of Security Procedures.

From time to time, the DPS employee responsible for the administration of security may issue security regulations and directions prescribing the processes and procedures that the Contractor must comply with under this clause 3.16.

3.17 Not used

4. Role of DPS

4.1 Information and Property

DPS must, as soon as practicable, make available to the Contractor, all information, including documents and particulars, relating to DPS's requirements for the supply of the Property.

4.2 Additional information

If:

- (a) the Contractor, in its reasonable opinion, considers that any information, including documents or particulars, is required to enable it to supply the Property or perform its other obligations

under this Contract; and

- (b) that information is not provided by DPS;

then:

- (c) the Contractor must give notice in writing to DPS of the details of the information and the reason why it is required; and
- (d) DPS must, if, acting reasonably, it agrees that the information is required by the Contractor, use its best endeavours to arrange the provision of the required information.

4.3 Access

Subject to the requirements of the Contractor under clause 3.16, DPS must:

- (a) as soon as practicable, provide the Contractor with access to the Site and any other Commonwealth premises to enable the performance of any of its obligations under this Contract; and
- (b) so far as it is able, arrange access to any other property which may be necessary for the Contractor to perform those obligations.

4.4 Making of decisions

If:

- (a) the Contractor requests DPS to give any approval or make any decision in relation to the supply of the Property or the performance of any other obligations under this Contract; and
- (b) all information required to enable that approval or decision to be given or made is provided to DPS or is otherwise available;

DPS must, in such reasonable time as not to delay or disrupt the performance by the Contractor of its obligations under this Contract, give a decision on the required course of action.

5. Intellectual Property and confidentiality

5.1 Contract Material

Subject to any agreement to the contrary, the title to, and Intellectual Property rights in, or in relation to, all Contract Material, will, upon its creation, vest in the Commonwealth.

5.2 Contractor's obligations in relation to Contract Material

The Contractor must:

- (a) if requested by DPS to do so, bring into existence, sign, execute or

otherwise deal with any document which may be necessary to enable the vesting in the Commonwealth of all title to, and rights in, the Contract Material;

- (b) ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Contract or as otherwise approved by DPS; and
- (c) at the request of DPS:
 - (i) promptly deliver all Contract Material to DPS; and
 - (ii) execute whatever documents may be necessary to more effectually transfer to the Commonwealth, any Intellectual Property in the Contract Material.

5.3 Third party copyright in Contract Material

DPS will inform the Contractor of:

- (a) any Contract Material provided by it to the Contractor in which third parties hold the copyright; and
- (b) any conditions attaching to the use of that material because of that copyright.

The Contractor must use that material only in accordance with those conditions.

5.4 Indemnity

Without affecting any other indemnity under this Contract, the Contractor must indemnify DPS against:

- (a) all claims which may be brought or made against DPS by any person in respect of:
 - (i) any infringement of Intellectual Property rights by the Contractor, its Subcontractors or any of their officers, employees, servants or agents in the course of, or incidental to, performing obligations under this Contract;
 - (ii) the use by DPS of the Contract Material in breach of the conditions referred to in paragraph (b) of clause 5.3; or
 - (iii) any infringement by DPS of Intellectual Property rights in the exercise of its licence under clause 5.5;
- (b) all loss or damage that may be incurred in connection with those claims.

5.5 Licence of Contractor's Material

The Contractor grants to DPS, a perpetual, irrevocable, royalty-free,

non-exclusive licence (including a right of sublicense) to use, reproduce, adapt and exploit the Contractor's Material for any purpose relating to the supply of the Property or the exercise of any rights under this Contract.

5.6 Moral Rights

The Contractor:

- (a) warrants that, except as otherwise directed by DPS, it will obtain or procure from the authors of all Copyright Works, enforceable, irrevocable and unconditional written consents (severally "**Consent**"), which are expressed for the benefit of DPS and any subsequent owner or licensee of the Copyright Works, to do, or omit to do, anything which, but for the Consents, may infringe Moral Rights; and
- (b) without affecting any other indemnity under this Contract, must indemnify DPS against all claims, loss or damage that DPS may incur as a result of a breach of the warranty given by the Contractor under paragraph (a) of this clause 5.6.

5.7 Confidentiality

The Contractor must:

- (a) not, without the written consent of DPS:
 - (i) disclose or make public any Commonwealth Confidential Information; or
 - (ii) make any public announcement regarding this Contract or the supply of the Property;
- (b) at the request of DPS, procure its employees, agents and Subcontractors to enter into a deed, in a form reasonably required by DPS, to prevent unauthorised disclosure of Commonwealth Confidential Information.

5.8 Contractor's confidentiality

If the Contractor believes that the disclosure of any information, provided to DPS in relation to this Contract, might affect the Contractor's personal privacy or business affairs:

- (a) the Contractor may, at the time of providing that information, give notice to DPS:
 - (i) that it requests the information to be treated as confidential; and
 - (ii) specifying the legal justification for treating that information as confidential;
- (b) subject to this clause 5.8, and so far as its obligations under the

law and policy permit, DPS will give effect to the Contractor's request.

The Contractor acknowledges and consents to DPS disclosing any information provided by the Contractor, whether confidential or not, if:

- (c) that disclosure is required under legislation or by law;
- (d) that disclosure is required to meet DPS's reporting or accountability requirements, including:
 - (i) under the *Financial Management and Accountability Act 1997*;
 - (ii) to the Australian National Audit Office or any other auditor nominated by DPS;
 - (iii) in accordance with provisions that require reporting of agency agreements, Commonwealth contracts and standing offers in the *Commonwealth Purchasing and Disposals Gazette*;
 - (iv) to the Commonwealth Parliament (including parliamentary committees);
 - (v) in accordance with the *Requirements for Departmental Annual Reports*;
 - (vi) to the Commonwealth Ombudsman;
 - (vii) in accordance with its obligations under the *Freedom of Information Act 1982* (if any);
 - (viii) to the Equal Opportunity for Women in the Workplace Agency in accordance with the *Equal Opportunity for Women in the Workplace Act 1999*;
- (e) the information is, or becomes public knowledge, other than by breach of confidentiality or other unlawful means;
- (f) the disclosure is to DPS's Other Contractors, advisers or agents and, if the information is confidential, those persons are also under an obligation to keep it confidential; or
- (g) the disclosure:
 - (i) has been consented to by the Contractor; or
 - (ii) is reasonably necessary to enable DPS to exercise its rights or perform its obligations under this Contract.

5.9 Privacy

Without affecting any other obligation of the Contractor under this Contract or the *Privacy Act 1988*, the Contractor must:

- (a) use any Personal Information held or controlled by it in connection with this Contract only for the purposes for which it was collected;
- (b) take all reasonable measures to ensure the Personal Information in its possession or control in connection with this Contract is protected against loss and unauthorised access, use, modification or disclosure;
- (c) comply with the Information Privacy Principles contained in the *Privacy Act 1988* to the extent that the content of those principles apply to the types of activities the Contractor is undertaking under this Contract, as if the Contractor were an agency as defined in the *Privacy Act 1988*;
- (d) cooperate with any reasonable demands or inquiries made by DPS on the basis of the exercise of the functions of the Privacy Commissioner under the *Privacy Act 1988* including a request from DPS to comply with a guideline concerning the handling of Personal Information;
- (e) ensure that each person who has an access level which would enable that person to obtain access to any Personal Information is made aware of, and undertakes in writing, to observe the Information Privacy Principles and other obligations referred to in this clause 5.9;
- (f) comply, as far as practicable, with any policy guidelines laid down by the Commonwealth, or issued by the Privacy Commissioner, from time to time, relating to the handling of Personal Information; and
- (g) comply with any direction of DPS to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Contractor that the Privacy Commissioner considers breaches the obligations under this clause 5.9.

This clause 5.9 survives the expiration or termination of this Contract.

6. Representatives and Key People

6.1 Contractor's representative

The Contractor:

- (a) has nominated the Contractor's Representative as the person to act as its representative in relation to this Contract;

- (b) may, with the written consent of DPS, nominate another person to act as the Contractor's Representative; and
- (c) confirms that the Contractor's Representative:
 - (i) is authorised to act for and on behalf of; and
 - (ii) has the power and authority to bind;
 the Contractor for all purposes in connection with this Contract.

6.2 DPS's representative

DPS:

- (a) has appointed the Project Officer as the person to act as its representative in relation to this Contract;
- (b) may, from time to time, nominate another person to act as the Project Officer; and
- (c) confirms that the Project Officer is authorised to act for and on behalf of DPS for all purposes in connection with this Contract.

6.3 Key People

The Contractor must:

- (a) ensure that the Key People:
 - (i) are qualified, experienced and competent; and
 - (ii) perform all work (other than minor ancillary work) in relation to the Contractor's obligations under this Contract;
- (b) subject to paragraph (c), not replace the Key People without DPS's written approval; and
- (c) if any of the Key People die, become seriously ill or resign from the employment of the Contractor, replace them with persons:
 - (i) of at least equivalent qualifications, experience and competence; and
 - (ii) approved by DPS.

6.4 Removal of persons

DPS may, in its absolute discretion, give notice to the Contractor requiring it to remove any person from work in relation to the Contractor's obligations under this Contract.

The Contractor must, upon receipt of a notice under this clause 6.4, promptly arrange for the removal of that person from work and replace him or her with a person approved by DPS.

7. Payment

7.1 Prices and reimbursements

In consideration of the satisfactory supply of the Property, DPS will pay, to the Contractor, the prices and reimbursements specified in Schedule 3.

7.2 Invoice

The Contractor must submit to DPS, in accordance with Schedule 3, an invoice for payment due under this Contract.

7.3 Payment

DPS must, within 30 days of receipt of a correct invoice, pay the Contractor the amount due to the Contractor as approved by DPS.

If DPS does not approve any part of the payment claimed in the invoice, the Contractor may refer the matter for determination under Part 9.

7.4 Payment of amounts by Contractor

Before making payment to the Contractor, DPS may require the Contractor to provide a statement, signed by the Contractor, certifying that no amounts are due and owing by the Contractor to its Subcontractors or employees in respect of the supply of the Property.

If the Contractor fails to provide the statement, DPS may withhold payment of money due to the Contractor until the statement is received.

7.5 Set off

DPS may set off against the payment of any money due to the Contractor, any money payable by the Contractor to DPS, whether under this Contract or otherwise.

7.6 Books of account

The Contractor must, for the purposes of this Contract;

- (a) institute and maintain all proper books of account and operating and financial records (collectively "**records**") necessary to afford a full, complete and correct record and explanation of all transactions relating to the supply of the Property;
- (b) permit DPS and any persons authorised by it, including the Australian National Audit Office, to inspect and take copies of the records; and
- (c) if reasonably requested by DPS, have the records audited.

7.7 Prices and reimbursements all inclusive

Unless otherwise agreed by DPS, the prices and reimbursements payable under Schedule 3 include the cost of providing all work, materials, parts, plant and equipment necessary for the Contractor to supply the Property in accordance with this Contract.

8. Insurance and indemnity

8.1 Public liability insurance

For the whole of the period that the Contractor is performing obligations under this Contract, the Contractor, at its cost, must effect and have in place:

- (a) for a sum not less than any minimum sum insured specified in the Contract Particulars;
- (b) covering all loss or damage from risks, arising out of any act, omission or negligence of the Contractor, as reasonably specified by DPS; and
- (c) otherwise upon terms and conditions approved by DPS;

a public liability insurance policy.

8.2 Product liability insurance

Unless otherwise agreed in writing by DPS, the Contractor must maintain a current policy for product liability insurance;

- (a) for the period from the Contract Date until 7 years from the date of supply of the last of the Property under this Contract;
- (b) for a sum not less than any minimum sum insured specified in the Contract Particulars; and
- (c) covering all liability against loss or damage arising out of any defect in the Property including any loss or damage sustained by third parties as a result of use of the Property.

8.3 Workers' compensation insurance

The Contractor must, at its own cost, insure its liability (including its common law liability) as required under any applicable workers' compensation statute or regulation in relation to its employees engaged in the performance of any obligations under this Contract.

The common law cover required must be for the maximum amount allowed by law.

8.4 Liability unaffected

The Contractor's liability to DPS will not be limited or otherwise affected by the terms of any insurance policy required under this Part 8.

8.5 Inspection of policies by DPS

The Contractor must, at the request of DPS, make available for inspection by DPS:

- (a) the policies of insurance required under this Part 8; and
- (b) evidence of the currency or any renewal of those policies in the form of a schedule of cover.

8.6 Failure to obtain insurance

Without affecting any other rights of DPS, whether unless this Contract (including under clause 11.12) or otherwise, if the Contractor fails to effect or maintain any insurance required under this Part 8, DPS may:

- (a) effect the insurance; and
- (b) deduct the premiums paid from any money that may be, or become, payable to the Contractor or recover that amount as a debt due from the Contractor.

8.7 Alteration of insurances

The Contractor must not alter the terms (including the risks covered or the sum insured) of any insurance policy required to be maintained by it under this Part 8 without the prior written consent of DPS.

8.8 Indemnity

Without affecting any other indemnity or rights of DPS under this Contract, the Contractor must indemnify DPS against all claims, loss, damage or liability to any person in respect of death, bodily injury or property damage, to the extent that it arises out of:

- (a) any act, omission or negligence of the Contractor, its employees or Subcontractors;
- (b) any defect in the Property; or

- (c) any breach by the Contractor, its employees or Subcontractors of a duty of care owed to any person.

9. Avoidance of conflict

9.1 Fairness and equity

Each of the parties represents to the other that:

- (a) it will be fair and just in its dealings with the other;
- (b) whenever it is required to agree upon or negotiate with the other party, it will do so in good faith;
- (c) it will not exercise its rights capriciously, vexatiously or unreasonably; and
- (d) it has not engaged, nor will it engage, in deceptive or misleading conduct.

9.2 Consent

Whenever a party is requested by the other to give any consent under this Contract, unless there is an express indication to the contrary, that party:

- (a) must not unreasonably withhold or delay the giving of that consent; but
- (b) may impose reasonable conditions in relation to that consent.

9.3 Dispute notice

If a dispute or difference arises between the parties in respect of any fact, matter or thing arising out of, or in connection with, this Contract, either party may give a notice ("**Dispute Notice**") in writing to the other party specifying:

- (a) the dispute or difference;
- (b) particulars of the party's reasons for being dissatisfied; and
- (c) the position which the party believes is correct.

9.4 Representatives to meet

The dispute or difference identified in the Dispute Notice is to be referred to the Contract Authority and the Contractor's Representative (collectively, "**Representatives**") who must:

- (a) within 5 Business Days of service of a Dispute Notice, meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference; and
- (b) if they cannot resolve the dispute or difference, endeavour to

agree upon a procedure to resolve the dispute or difference.

9.5 Reference to expert

If the Representatives cannot resolve, or agree upon a procedure to resolve, the dispute or difference within 10 Business Days after the date a Dispute Notice is given, or within such longer period of time as the Representatives may agree in writing, the dispute or difference is to be submitted to an expert appraisal in accordance with clauses 9.6 to 9.9.

9.6 Expert appraisal

The expert appraisal:

- (a) is to be conducted by the Independent Expert;
- (b) is not an arbitration so that the Independent Expert may reach a decision from his or her own knowledge and expertise; and
- (c) unless otherwise agreed between the parties, must be concluded within 20 Business Days from the acceptance by the Independent Expert of his or her appointment.

9.7 Independent Expert

The Independent Expert may:

- (a) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (b) engage, and consult with, any legal or technical advisers;
- (c) examine documents, and, in the presence of the Representatives, interview witnesses and other persons;
- (d) without limitation, make directions for the conduct of the appraisal; and
- (e) make a determination (including any order as to the payment of costs of the determination) in the manner that he or she considers suitable;

and must:

- (f) be appointed under an agreement with the parties containing terms reasonably required by the Independent Expert, including:
 - (i) a release of any liability which the Independent Expert may otherwise incur for any act or omission, other than actual fraud, during the course of the appraisal; and
 - (ii) a term that the parties will pay the Independent Expert's costs;

- (g) before acceptance of appointment, warrant to the parties that he or she has no interest in the outcome of the appraisal or any other conflict of interest;
- (h) give an adequate opportunity to the parties to make submissions in relation to the dispute or other matter; and
- (i) not communicate with one party to the appraisal without the knowledge of the other.

9.8 Determination

The determination of the Independent Expert:

- (a) must be in writing;
- (b) will be final and binding unless a party gives notice of appeal ("**Appeal Notice**") to the other party within 5 Business Days of receipt of the determination; and
- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under any appeal procedure.

9.9 Costs of appraisal

If the Independent Expert does not make a determination as to the payment of the costs of a determination:

- (a) the parties must equally bear the costs of the Independent Expert (including the Independent Expert's costs of engaging and consulting advisers, if any); and
- (b) each party must bear its own costs and disbursements relating to the determination.

9.10 Arbitration

If an Appeal Notice is given, the dispute or difference must be determined by arbitration before a person to be:

- (a) agreed between the parties; or
- (b) failing agreement, within 10 Business Days after the giving of an Appeal Notice, appointed by the President for the time being of the Institute of Arbitrators, Australia; and

the rules for the Conduct of Commercial Arbitration of the Institute of Arbitrators, Australia will apply for the arbitration.

9.11 Condition precedent

It is a condition precedent to a party's entitlement to bring any court proceeding (other than for urgent interlocutory relief) in respect of a dispute that the parties have first complied with the procedures set out in this Part 9.

9.12 Continued performance

The parties must, unless otherwise agreed, continue to perform their obligations under this Contract despite the existence of a dispute to which this Part 9 applies.

9.13 Part to survive termination

This Part 9 will survive the termination of this Contract.

10. Termination

10.1 Notice of breach

If the Contractor commits a breach of this Contract, DPS may give written notice to the Contractor:

- (a) specifying the breach; and
- (b) directing its rectification in the period reasonably specified in the notice.

10.2 Termination for breach

If the Contractor fails to rectify the breach within the period specified in the notice issued under clause 10.1, DPS may, without prejudice to any other right of DPS, immediately terminate this Contract.

10.3 Termination for insolvency

Without affecting any other right which DPS may have, DPS may terminate this Contract, by notice in writing to the Contractor, if the Contractor becomes:

- (a) insolvent; or
- (b) an externally-administered body corporate;

as those terms are defined in section 9 of the *Corporations Act 2001*.

10.4 Termination not to affect rights

Any termination of this Contract under this Part 10, will not affect any rights that have accrued to DPS for any breach by the Contractor of this Contract, including any breach in consequence of which the termination was effected.

10.5 Procedure upon termination

Without affecting any other rights or obligations of the parties, upon termination of this Contract, the Contractor must:

- (a) cooperate with DPS;
- (b) hand to DPS, all Contract Material and all other information concerning this Contract held by the Contractor; and
- (c) if requested by DPS, meet with DPS and such other persons nominated by DPS with a view to providing DPS, or those other persons, with sufficient information to enable completion of any obligations of the Contractor under this Contract.

11. General

11.1 Entire agreement

This Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, made or entered into between the parties prior to the date of this Contract with respect to the subject matter of this Contract.

11.2 Negation of employment

The Contractor, its officers, employees, servants, Subcontractors and agents and any other persons engaged by the Contractor in relation to the performance of its obligations under this Contract will not, by virtue of this Contract or the performance of those obligations, become in the service or employment of DPS for any purpose.

11.3 Subcontractors

The Contractor must not, without the prior written consent of DPS, subcontract the supply of the Property (or any part of them) or the performance of any obligations of the Contractor under this Contract.

11.4 Provision of subcontracts

Except as otherwise agreed by DPS, the Contractor must ensure that any subcontract relating to the performance of its obligations under this Contract:

- (a) includes provisions substantially in accordance with the clauses of this Contract; and
- (b) reserves such rights to DPS as are secured to DPS under this Contract.

11.5 Subcontracting not to relieve Contractor

Any approval to subcontract given by DPS will not relieve the Contractor from any of its liabilities or obligations under this Contract.

Notwithstanding any approval to subcontract, the Contractor will be liable to DPS for the acts, defaults and neglects of any Subcontractor or any officer, employee, servant or agent of the Subcontractor as fully as if they were the acts, defaults or neglects of the Contractor.

11.6 Waiver

Failure by DPS to enforce a provision of this Contract will not be construed as a waiver by DPS of any right in respect of that provision, or any other provision of this Contract.

11.7 Costs

Each party must bear and pay its own costs and expenses of, and incidental to, the preparation and execution of this Contract.

11.8 Notices

Any notice to be given by one party ("**server**") to the other ("**receiver**") under the provisions of this Contract must be in writing and may (in addition to any other lawful or effective means of service) be given or served:

- (a) by being delivered personally to:
 - (i) in the case of service upon DPS, the Contract Authority; and
 - (ii) in the case of service upon the Contractor, the Contractor's Representative;
- (b) by being sent by prepaid post to the receiver's address for service specified in the Contract Particulars or such other address that is notified to the server by the receiver, from time to time; or
- (c) by being sent by facsimile transmission to the receiver's facsimile number specified in the Contract Particulars or such other number that is notified to the server by the receiver, from time to time.

11.9 Deemed service

A notice sent by:

- (a) prepaid post, will be deemed to have been received 2 Business Days after it was posted; and
- (b) facsimile transmission, will be deemed to have been received when the transmission was completed provided that the receiver does

not, within one Business Day of the completion of the transmission, advise the server that the facsimile transmission is not fully intelligible and requests a retransmission of the document.

11.10 Transfer and assignment

The Contractor must:

- (a) not assign, transfer, mortgage, charge or encumber any right or obligation under this Contract without the prior written consent of DPS, which consent DPS may give or withhold in its absolute discretion; and
- (b) agrees that any such assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Contractor from any obligation or liability under this Contract.

11.11 Governing laws

This Contract will be governed by, and construed in accordance with, the laws for the time being in force in the Australian Capital Territory and the parties submit to the jurisdiction of the courts of that Territory.

11.12 Indemnity for breach

Without affecting any other indemnity or rights under this Contract, if the Contractor is in breach of any of its obligations under this Contract:

- (a) the Contractor must indemnify DPS against all claims, loss or damage suffered by DPS as a consequence of that breach; and
- (b) if that breach involves the failure to pay any money or do any thing, DPS, without:
 - (i) affecting its other rights; or
 - (ii) being obliged to do so;
 may:
 - (iii) pay that money or do that thing and the Contractor must indemnify DPS for any loss or damage suffered as a consequence; and
 - (iv) set off any amount paid, against any sum owing by DPS to the Contractor.

11.13 GST

The parties acknowledge that any Consideration specified in this Contract is exclusive of GST and that a party ("**recipient**") providing that Consideration to the other party ("**supplier**") for any Taxable Supply made by the supplier under this Contract, must:

- (a) at the same time as the Consideration is provided for that supply;
- (b) but subject to the provision by the supplier to the recipient of a Tax Invoice for that supply;

pay to the supplier, an additional amount equal to the GST payable in respect of that supply, provided that, where the recipient is required to reimburse or pay to the supplier, an amount calculated by reference to a cost, expense or other amount paid or incurred by the supplier, the amount of reimbursement or payment will be reduced by the amount of any input tax credits to which the supplier is entitled for the acquisition relating to that cost, expense or other amount.

Schedule 1 - Contract Particulars

Contract Date: (Clause 1.1)	Insert date
Specified Copyright Works: (Clauses 1.1 and 5.6)	Insert details or None specified
Project Officer: (Clauses 1.1 and 6.2)	Insert name, position and contact details
Contract Authority: (Clauses 1.1 and 11.8)	Assistant Director Procurement Department of Parliamentary Services Parliament House CANBERRA ACT 2600
Contractor's Representative: (Clauses 1.1 and 6.1)	Insert name, position and contact details
Independent Expert: (Clauses 1.1 and Part 9)	A person agreed between DPS and the Contractor or, failing agreement within 14 days of negotiations, a person appointed by the President for the time being of the Institute of Arbitrators, Australia at the request of either party.
Key People: (Clauses 1.1 and 6.3)	Insert names
Property RFT: (Clause 1.1)	RFT05005
Site: (Clause 1.1)	The Parliamentary Precincts.

Websites:
(Clause 1.1)

Parliament House Site Book:
<http://www.aph.gov.au/JHD/about/index.htm>

Public liability insurance: Cover of \$10,000,000 for any one occurrence.
(Part 8)

Product liability insurance: Cover of \$Insert amount for any one occurrence.
(Part 8)

Service of notices on Contractor: Insert name and street address details
(Clause 11.8)
E-mail: Insert address
Fax: Insert number
Attention: Insert name

Service of notices on DPS: Department of Parliamentary Services
(Clause 11.8) Parliament House
CANBERRA ACT 2600
Fax: (02) 6277 5168
Attention: Assistant Director Procurement

Schedule 2 - Statement of Requirement

Schedule 3 - Prices and reimbursements

Schedule 4 - Supply Program

Include in here the date(s) on which Property is to be delivered, timeframes etc.

Schedule 5 - Maintenance Services Contract

Use this Schedule if a comprehensive maintenance agreement is required.

Signed for and on behalf of
Commonwealth of Australia by:

Authorised Signatory

Signature of Witness

Name (print)

Name (print)

Office of Signatory

EXECUTED in accordance with Section 127
of the *Corporations Act 2001* (Cth)

Signed for
Insert company name ABN Insert number by:

Director

Secretary/Director

Name (print)

Name (print)

