



NSW Government Legal Services Panel

Panel Deed

Between

**Transport for NSW as the Lead Agency on behalf of the State of NSW
(Lead Agency)**

ABN 18 804 239 602

and

XX Pty Ltd [Variable A]

(Service Provider)

ABN XXX [Variable B]

Transport for NSW

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Transport for NSW, ABN 18 804 239 602, (TfNSW) on behalf of the State of New South Wales

of 18 Lee Street, Chippendale NSW 2008 (a NSW Government Agency constituted under the *Transport Administration Act 1988* (NSW))

(Lead Agency)

and

[Variable A] ABN [Variable B]

of **[Variable C]**

(Service Provider)

Background

- A. The State through the Lead Agency wishes to coordinate the engagement of legal services by appointing a panel of suppliers to provide legal services to Agencies.
- B. The State also wishes to reduce external legal expenditure as much as possible over the term of the Panel through engaging and managing good value, high quality legal services.
- C. The Panel will be administered by TfNSW's Legal Practice Unit on behalf of the State.
- D. All Agencies will have access to the Panel, but each Agency will remain responsible for obtaining its own legal services. Each Agency is responsible for meeting any savings target applicable to it in the procurement of Legal Services.
- E. Agencies have discretion to retain legal services outside the Panel arrangement.
- F. This Agreement sets out the terms on which the State and the Service Provider have agreed that the Service Provider will:
 - (a) be appointed as a member of the Panel; and
 - (b) supply legal services as a member of the Panel,including the terms under which the Service Provider will supply Services to a Client in response to a Legal Services Contract.

Agreed terms

1. Definitions and Interpretation

1.1 Definitions

In this Agreement:

Agency means a department, agency, separate agency, statutory body, State-owned corporation of the NSW Government, other NSW Government business entity or local government body either in existence at the Commencement Date or that comes into existence during the Term.

Agency Contract Manager means the person specified as the Agency Contract Manager for a Client in the Service Level Agreement or as notified by the Lead Agency to the Service Provider from time to time in accordance with this Agreement. An Agency Contract Manager may be appointed on a whole of cluster basis.

Agreed Program is defined in clause 8.2.

Agreement means this deed and includes the schedules and any annexures to it or documents incorporated by reference.

Annual Assessment is defined in the Service Level Agreement.

Area of Law means an area of law specified in Schedule 2 in respect of a Sub-Panel, as amended from time to time in accordance with clause 4(c).

Authorisation means any authorisation, permit, consent, approval, resolution, licence, exemption, permission, recording, filing, registration, or waiver required by any government authority or by any law or regulation.

Business Day means a day which is not a Saturday, Sunday or public holiday (as defined under the *Public Holidays Act 2010* (NSW)).

Client is defined in clause 3.1.

Client Intellectual Property means any and all Intellectual Property Rights of the Client in any Material provided by the Client to the Service Provider for the purposes of any Legal Services Contract.

Client Satisfaction Survey is defined in the Service Level Agreement.

Commencement Date means the date set out in Item 2 of Schedule 1.

Confidential Information means any technical, scientific, commercial, financial or other information of, about, or in any way related to, the State, the Lead Agency or a Client, including any information designated by the State, the Lead Agency or a Client as confidential, which is disclosed, made available, communicated or delivered to the Service Provider in connection with this Agreement or a Legal Services Contract, and includes:

- (a) the terms of this Agreement and any Legal Services Contract;
- (b) any decisions or determinations made by the Lead Agency or any Client in respect of this Agreement or a Legal Services Contract;
- (c) Information relating to any Services undertaken pursuant to the Agreement or any Legal Services Contract;
- (d) any report or other Material provided by the Lead Agency to the Service Provider under this Agreement, including the results of any Client Satisfaction Survey conducted pursuant to this Agreement or in relation to any other service provider under the Panel arrangements;
- (e) State Intellectual Property;
- (f) Client Intellectual Property; and
- (g) the Contract Materials;

but excludes information:

- (h) which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement or a Legal Services Order;
- (i) which the Service Provider can demonstrate was in its possession prior to the date of this Agreement and in relation to which the Service Provider does not owe any obligation of confidence to the State or the

relevant Client;

- (j) which the Service Provider can demonstrate was independently developed by the Service Provider;
- (k) which is lawfully obtained by the Service Provider from another person entitled to disclose such information; or
- (l) which is disclosed pursuant to legal requirement or order.

Contract Intellectual Property is defined in clause 19.2

Contract Material means any Material created by or on behalf of the Service Provider in the course of or as a result of complying with its obligations under this Agreement or providing the Services to a Client under a Legal Services Contract, including any Material provided or required to be provided to the Lead Agency or a Client under this Agreement or under a Legal Services Contract.

Contract Year means a financial year during the Term and where this Agreement terminates or expires in any financial year prior to 30 June, includes that part of the relevant financial year to the date of termination or expiry.

Control means in relation to any Service Provider, the ability of any person directly or indirectly to exercise effective control over the Service Provider (including the ability to determine the outcome of decisions about the financial and operating and other policies of the Service Provider) by virtue of control or influence, or having the capacity to control or influence the composition of the board, or decision making, directly or indirectly, or by the holding of voting shares, units or other interests in or in respect of the Service Provider or by any other means.

Controller means, in relation to a change in Control of a Service Provider, the person or body corporate to whom Control will pass.

Core Legal Work means legal work which must be referred to the Crown Solicitor in accordance with Premier's Memorandum M2016-04 *NSW Government Core Legal Work Guidelines*

CPI means the 'Consumer Price Index' (All Groups, Sydney) or if that index is discontinued or materially altered, the substituted index agreed between the parties or if not agreed, as determined by the President of the Law Society of NSW to be an appropriate index reflecting the general level of monetary inflation in NSW.

Electronic Vendor Management System means the Lead Agency's online or other system which is designed to manage Panel arrangements including the performance of service providers under the Panel arrangements and engagement of, and reporting by, service providers.

Eligible Data Breach means any unauthorised access to, or disclosure of, or use of, or loss of, Confidential Information.

Eligible Entity means any entity listed as an eligible government buyer on buy.nsw.gov.au or similar NSW Government website.

Estimate is defined in clause 9.4(a).

Executive Contract Manager means the person nominated by the Lead Agency pursuant to clause 14.1(a)(i) or as notified by the Lead Agency to the Service Provider from time to time in accordance with this Agreement, or the delegate of that person.

Expiry Date means the date set out in Item 2 of Schedule 1.

GST has the meaning given to it in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Incident means :

- (a) in respect of a lawyer (as defined by s261 of the *Legal Profession*

Uniform Law (NSW)) employed or engaged by a Service Provider who undertakes work for a Client, a disciplinary matter, as defined in s 270 of the *Legal Profession Uniform Law (NSW)*;

- (b) in respect of a Service Provider, commencement of any legal proceedings within Australia or in any other jurisdiction involving:
 - (i) an offence in respect of which the maximum penalty is 12 or more months imprisonment or 100 or more penalty units;
 - (ii) failure to pay any taxes or duties imposed by the Commonwealth, any State or Territory of Australia or by any local authority;
 - (iii) the appointment of a liquidator or a receiver and manager or mortgagee's or chargee's agent, being subject to any form of insolvency administration or arrangement, or in the case of an individual, bankruptcy or entering into a scheme or arrangement with creditors; and
 - (iv) going into liquidation or the appointment of a receiver and manager or mortgagee's or chargee's agent is appointed or becoming subject to any form of insolvency, administration or arrangement, or in the case of an individual, becoming bankrupt or entering into a scheme or arrangement with creditors.

Indemnified Parties means in relation to any indemnity set out in any provision of this Agreement, the Indemnified Parties specified in that provision.

Information includes any statement, representation, estimate, prediction, advice, plans, drawings, inventions and ideas which may be:

- (a) oral, written, recorded or stored by electronic, magnetic, electromagnetic, or in other form, process, media or otherwise in a machine readable form; or
- (b) translated from the original form, re-compiled, made into a compilation, partially copied, modified, updated or otherwise altered.

Initial Insurance is defined in clause 26.1(d).

Intellectual Property Rights includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Key Performance Indicators are defined in the Service Level Agreement.

Law Enforcement Client means the following Agencies:

- (a) the NSW Police Force,
- (b) the New South Wales Crime Commission,
- (c) the Independent Commission Against Corruption, or
- (d) the Law Enforcement Conduct Commission,

Laws means the law in force in the State and the Commonwealth of Australia, including common law and legislation.

Legal Services Contract means the contract which arises between a Client and the Service Provider as provided by clause 7.2.

Legal Services Fees means the amount paid by a Client to the Service Provider with respect to Services under any Legal Services Contract and includes all expenses and disbursements (but excludes Counsel's fees).

Legal Services Order means an order for Services, submitted by a Client to the Service Provider in accordance with clause 7.1.

Licensed Intellectual Property means any and all Intellectual Property Rights incorporated or comprised in any Contract Materials specified in clause 19.9(a) but does not include the Pre-Existing Intellectual Property, the State Intellectual Property, the Client Intellectual Property or the Contract Intellectual Property.

Material includes anything in which Intellectual Property Rights can exist.

Minimum Service Standards are specified in item 2.1 of the Service Level Agreement.

Off-Panel Engagement means any engagement by a Client of a Service Provider to provide Services in an Area of Law to which the Service Provider is not appointed, but excludes engagements under clause 7.5.

Panel means the panel of suppliers appointed under this Agreement to provide legal services in one or more of the Areas of Law.

Panel Contract Manager means the person nominated by the Lead Agency pursuant to clause 14.1(a)(ii) or as notified by the Lead Agency to the Service Provider from time to time in accordance with this Agreement.

Panel Rules means the procurement rules governing engagement of legal services providers from the Panel, developed in accordance with the NSW Procurement Policy Framework issued by the NSW Procurement Board.

Personnel means any employee, officer, consultant or partner of a Legal Services Provider and their associated entities.

Pre-Existing Intellectual Property means any and all Intellectual Property Rights in any works, items or systems created by or the property of or licensed to the Service Provider either prior to the commencement of the provision of the Services, or after the commencement of the provision of the Services, but not in connection with this Agreement or any Legal Services Contract.

Previous Panel Engagement means a legal engagement that was commenced under a separate panel or agreement and has not transitioned to this Agreement.

Probity Event includes any:

- (a) Incident; and
- (b) event relating to the Service Provider, the Service Provider's Personnel and any sub-contractor of the Service Provider:
 - (i) giving rise to an actual, potential or perceived conflict of interest;
 - (ii) having a material adverse effect on the character, integrity, or honesty of a relevant entity or person, including a criminal charge or conviction and a breach of a confidentiality, privacy or security obligation;
 - (iii) having a material adverse effect on public confidence in the provision of legal services to the State, or to any Client; or
 - (iv) involving a material failure to achieve or maintain standards of ethical behaviour required by the State.

Pro Bono Services is defined in clause 12(a).

Rates means the rates set out in Schedule 4 (Fee Schedule) and adjusted under this Agreement.

Relationship Manager means the person nominated by the Service Provider pursuant to clause 14.1(a)(iii) or as notified by the Service Provider from time to time in accordance with this Agreement.

Request for Services means a request by a Client under clause 6.1 for Services.

Request for Proposal means the Request for Proposal and annexures,

schedules and attachments in relation to the provision of legal services under the Panel arrangements released 19 October 2020.

Service Level Agreement means Annexure B as amended from time to time in accordance with Item 3.3 of Annexure B or otherwise in accordance with the terms of this Agreement.

Services means the legal services in the Areas of Law nominated in Schedule 1, as varied from time to time under the terms of this Agreement and, in relation to a Legal Services Contract, includes the Services specified in the relevant Legal Services Order or provided under that Legal Services Contract and includes services incidental to or reasonably inferred from those services.

Services Brief means Attachment C to the Request for Proposal and which describes the Services.

Small Firm means a law firm having 10 or fewer partners (whether described as principal, solicitor-director or otherwise)

Staff Costs means Pay as You Go tax, withholding tax, superannuation contributions or charge amounts, fringe benefits tax, workers' compensation insurance premiums, payroll tax and any like taxes and charges (together with all interest or penalties payable by reference to those costs).

State means the Crown in right of the State of NSW.

State Intellectual Property means any and all Intellectual Property Rights of the State in any material provided by the State or any Client to the Service Provider for the purposes of this Agreement or any Legal Services Contract.

Sub-Panel means each Sub-Panel identified in Schedule 2, each comprising a number of Areas of Law and any new Sub-Panel added in accordance with clause 4.

Tender Documentation means the documentation submitted by the Service Provider in response to the Request for Proposal, including any revisions and clarifications submitted on behalf of the Service Provider to the Lead Agency.

Term means the term of this Agreement determined in accordance with clause 2, including any extension in accordance with that clause.

Volume Discount Amount means the percentage discount amount contained in the below table:

Threshold	Volume Discount
\$1 million	2%
\$10 million	3%
\$50 million	4%
\$75 million	5%

Volume Discount Calculation Date means:

- (a) for billings under the NSW Government Legal Services Panel, 1 July 2021;
- (b) for billings under the iCare Legal Services Panel for Personal Injury, 1 January 2021;
- (c) for billings under the iCare Legal Services Panel for General Lines, the commencement date of that panel; or
- (d) for any other legal billings, 1 July 2021.

Volume Discount Threshold means the threshold amount in clause 9.10 at which a Volume Discount Amount will be applied.

1.2 Interpretation - General

Unless expressed to the contrary, in this Agreement:

- (a) headings are for convenience only and do not affect interpretation;
- (b) words in the singular include the plural and vice versa;
- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (d) 'includes' in any form is not a word of limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation or a breach of this Agreement or a breach of any provision of this Agreement or a Legal Services Contract includes a breach of warranty or representation;
 - (v) '\$', 'dollars' or 'AUD' is a reference to the lawful currency of the Commonwealth of Australia;
 - (vi) a clause, schedule or annexure is a reference to a clause, schedule or annexure of this Agreement, and a reference to this Agreement includes all schedules and annexures to it;
 - (vii) a party or parties to this Agreement is a reference to the Lead Agency, the Service Provider or a Client to which clause 3.1 applies (as the case requires);
 - (viii) a party or parties to any Legal Services Contract is a reference to the relevant Client and the Service Provider;
 - (ix) the Lead Agency is a reference to Transport for NSW acting on behalf of the Crown in right of the State of NSW;
 - (x) where the Client is not a separate legal entity from the State or represents or acts as agent for the State, is a reference to the State, and all rights and obligations of that Client under this Agreement or any Legal Services Contract will be rights and obligations of the State, through that Client; and
 - (xi) a financial year is a reference to a consecutive period of 12 months commencing on 1 July and ending on the following 30 June; and
- (g) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

1.3 Interpretation – Parties

- (a) If a party consists of more than one person, this Agreement or the relevant Legal Services Contract binds each of them separately and any two or more of them jointly.

-
- (b) An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.

1.4 Scope of Agreement

- (a) This Agreement sets out the terms on which:
 - (i) the Service Provider is appointed as a member of the Panel as specified in Item 1 of Schedule 1; and
 - (ii) the Service Provider will supply Services to the Clients.
- (b) This Agreement and any relevant Legal Services Contract prevail over any terms and conditions put forward by the Service Provider in respect of the provision of Services.

1.5 Precedence

Where the terms of a Legal Services Contract are inconsistent with the terms of this Agreement, the following order of precedence will apply:

- (a) this Agreement;
- (b) the Legal Services Contract;
- (c) the Request for Proposal

2. Term

2.1 Initial Term

This Agreement commences on the Commencement Date and, unless terminated earlier in accordance with this Agreement, or extended in accordance with clause 2.2, will end on the Expiry Date.

2.2 Extension of term

- (a) The Lead Agency may elect, by written notice to the Service Provider not later than two months prior to the expiry of the then current Term, to extend the Term of this Agreement for a further period of three years, up to a maximum aggregate duration of 9 years, as set out in Item 2 of Schedule 1.
- (b) Any further term will be on the same terms and conditions as this Agreement (excluding this clause 2.2 following the exercise of any second three year extension).

3. Whole of Government procurement

3.1 Entities entitled to benefit of Agreement

- (a) The Service Provider acknowledges and agrees that the Lead Agency enters into this Agreement on its own behalf and on behalf of each:
 - (i) Agency; and
 - (ii) any Eligible Entity which is subsequently taken to be bound by this Agreement in accordance with clause 3.1(b),
(the Lead Agency and each such Agency or Eligible Entity each being a **Client**).
- (b) If at any time following the Commencement Date an Eligible Entity wishes to acquire Services from the Service Provider pursuant to this Agreement, that Eligible Entity will, upon the Panel Contract Manager giving written notice to the Service Provider of that fact, be bound by the terms of this Agreement from the date specified in the notice.
- (c) Each Client, upon the Commencement Date or, if applicable, the date on which they are subsequently taken to be bound by this Agreement

pursuant to clause 3.1(b):

- (i) can issue Legal Services Orders to the Service Provider in respect of Services under this Agreement; and
- (ii) will be taken to have agreed to be bound by, and have the benefit of, the terms of this Agreement applicable to Clients.

3.2 Liability to pay for Services

The Service Provider acknowledges that, notwithstanding anything else in this Agreement, each Client is solely responsible for any Legal Services Order placed by it under this Agreement, and neither the State, the Lead Agency, nor any other Agency will be liable for the acts or omissions of any other Client, including any liability for moneys owing to the Service Provider.

3.3 Services not included in Panel arrangements

- (a) The following legal services are outside the scope of the Panel arrangements:
 - (i) services provided by the Solicitor-General, the NSW Parliamentary Counsel's Office, the Director of Public Prosecutions, and Legal Aid;
 - (ii) Core Legal Work;
 - (iii) services identified by the Panel Rules as being outside the scope of Panel arrangements; and
 - (iv) engagements under the Regional and Rural Legal Services Panel.

3.4 Client not bound to acquire Services from Service Provider

- (a) A Client:
 - (i) is not obliged to issue any Legal Services Order to the Service Provider or to acquire any volume of Services from the Service Provider; and
 - (ii) may at any time acquire Services the same as, or similar to, the Services from another supplier on the Panel or from any other person on terms and conditions as the Client may require.
- (b) Neither this Agreement nor the appointment of the Service Provider to any Area of Law confers on the Service Provider any right to be the exclusive supplier of any of the Services or any other legal services to the State or any Client.
- (c) The Service Provider acknowledges that the Crown Solicitor's Office may be engaged under any Area of Law.

4. Panel Refresh

- (a) The Service Provider acknowledges that the Lead Agency will on an ongoing basis, monitor the performance of Panel members (including the Service Provider) and the market for legal services to ensure the scope and the nature of the Services offered by the Panel continues to meet Clients' evolving requirements.
- (b) Without limitation to any other term of this Agreement, the Lead Agency may in its absolute discretion periodically review the Panel arrangements, and may after 6 months from the Commencement Date and 4 months after the commencement of any option to extend the initial term, refresh the Panel arrangements via any means it thinks fit, including a public tender process.
- (c) As part of any refresh undertaken pursuant to clause 4(b), the Lead Agency may:

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- (i) vary the membership of any Area of Law;
 - (ii) vary the Areas of Law for any Sub-Panel and add or remove Areas of Law;
 - (iii) add suppliers to the Panel;
 - (iv) add, modify, expand or restrict the legal services to be provided under the Panel arrangements, including:
 - (A) the legal services to be provided by members of any Area of Law; or
 - (B) the Services to be provided by the Service Provider;
 - (v) if a public tender process has been used, remove service providers (including the Service Provider) from the Panel or from any Area of Law, as applicable.

5. Performance of Services

5.1 Appointment to provide Services

Upon entering into this Agreement, the Lead Agency, as the delegate of the State, appoints the Service Provider to provide Services under individual Legal Services Contracts entered into with any Client.

5.2 Minimum Services Standards and Key Performance Indicators

The Service Provider must provide the Services to a standard that reaches or exceeds the Minimum Service Standards and the Key Performance Indicators. In addition, the Service Provider must:

- (a) provide the Services in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of the Services;
- (b) deliver the Services with the utmost efficiency;
- (c) act in good faith and in the best interests of the Client in the provision of any Services to that Client;
- (d) keep the Lead Agency informed of all matters of which it ought reasonably be made aware, and provide such information in relation to the provision of the Services as may reasonably be required by the Lead Agency or by any Client with respect to the provision of any Services to that Client, including under any Legal Services Contract between the Service Provider and that Client; and
- (e) carry out its obligations and duties and complete the provision of the Services to the reasonable satisfaction of and in accordance with the requirements of:
 - (i) the Lead Agency under this Agreement; and
 - (ii) the relevant Client, with respect to any Legal Services Contract between the Service Provider and that Client.

5.3 Reliance on advice

The State acknowledges that, unless specifically stated otherwise, advice given by the Service Provider in the course of providing the Services:

- (a) is strictly limited to the matters stated in it and does not apply by implication to other matters;
- (b) is given as at the date of the communication containing that advice.

5.4 Responsibility Preserved

The Service Provider will remain fully responsible for the Services despite another Agency's, or any of its contractors' comment on, review of, approval of, acceptance of, or certificate issued in connection with the Services (or an Agency's failure to do so).

5.5 Use of Information

- (a) For the convenience of the Service Provider, a Client may provide (or may have provided) the Service Provider with information relevant to the provision of the Services. The Service Provider must:
 - (i) act with reasonable care in relying upon or using that information in connection with the provision of the Services; and
 - (ii) not rely on or use any part of that information for any purpose to the extent that a Client notifies the Service Provider that it is not to be so relied upon or used (including for the provision of the Services).
- (b) The Service Provider must promptly notify a Client if any information provided by that Client is inaccurate, or inadequate for the Service Provider to provide the Services, except where the Service Provider does not know and could not reasonably be expected to know that information is inaccurate or inadequate.

5.6 Inability to provide Services

If the Service Provider is unable or is likely to become unable, for whatever reason, to provide any or all of the Services in an Area of Law, the Service Provider must immediately notify any Client which has issued a Legal Services Order in respect of that Area of Law.

6. Requests for Services and quotes

6.1 Request for Services

- (a) During the Term, prior to issuing a Legal Services Order, a Client may provide the Service Provider either orally or in writing, a Request for Services.
- (b) A Client must have regard to the Panel Rules when selecting one or more Service Providers who will be provided with a Request for Services.
- (c) A Request for Services must detail the Services required by the Client as fully as possible and:
 - (i) may specify any personnel of the firm who must undertake the work, and the work to be performed by them;
 - (ii) may require the Service Provider to advise the Client whether the Service Provider has previously provided substantially similar advice to another Agency (or substantially similar advice on any aspect of the Services requested) and, if so, subject to any confidentiality obligations, the name of the Agency to whom the previous advice was provided.
- (d) Where a Request for Services requires the Service Provider to provide an Estimate, the Service Provider must comply with clause 9.4.

6.2 Request for Services where Client proposes fixed fee or maximum fee

If a Client requires the Service Provider to provide any Services on a fixed fee or maximum fee basis it must issue a Request for Services to the Service

Provider specifying the fixed fee or maximum fee proposed by the Client, in addition to the other matters required by clause 6.1(c).

6.3 Response to Request for Services

- (a) The Service Provider must provide a written response to any Request for Services, in terms requested by the Client, and must include confirmation that:
 - (i) any Personnel required to undertake the work are available or if they are not available, provide details of the Personnel whom the Service Provider proposes will provide the Services; and
 - (ii) the Service Provider has no conflict of interest in providing the Services, or details of any conflict of interest of the Service Provider.
- (b) On receipt of the Service Provider's response to the Request for Services, the Client may issue a Legal Services Order to the Service Provider. Subject to clause 7.2, a Legal Services Contract with respect to the Services is not created until the Client issues a Legal Services Order in accordance with clause 7.1.

6.4 Clients may seek quotes or alternative pricing arrangements

- (a) The Service Provider acknowledges that when a Client requires Services of the kind covered by this Agreement, the Client may, but is not obliged to seek quotes from the Service Provider and/or one or more other service providers on the Panel.
- (b) If a Client chooses to seek quotes as provided in clause 6.4(a), the Client may:
 - (i) seek quotes on a fixed fee or maximum fee, or other basis;
 - (ii) give service providers on the Panel an opportunity to quote on the basis of the rates set out in their respective agreements with the State in relation to the Panel, or in the case of the Service Provider, the Rates set out in this Agreement;
 - (iii) agree a price for any Services on another basis including by way of a reverse electronic auction or a fixed fee agreement; or
 - (iv) request the Service Provider to provide Services to it on the same terms as the Service Provider has provided similar Services to another Client.

7. Legal Services Contracts

7.1 Legal Services Order

- (a) Where a Client wishes to obtain Services, the Client will issue a Legal Services Order to the Service Provider.
- (b) A Legal Services Order must be substantially in the form of or otherwise in accordance with Annexure A as amended from time to time (by written notice given by the Panel Contract Manager to the Service Provider);

7.2 Formation of Legal Services Contract

A Legal Services Contract will be formed when the Legal Services Order is signed by the Service Provider.

7.3 Terms of Legal Services Contract

- (a) Subject to clause 7.2, a Legal Services Contract commences on the earlier of:
 - (i) commencement of work by the Service Provider; and

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- (ii) if any date is specified in the relevant Legal Services Order by the Client, on that date.
 - (b) A Legal Services Contract will consist of:
 - (i) the terms of this Agreement (with any consequential changes as are necessary to reflect the formation of the relevant Legal Services Contract) ;
 - (ii) the Legal Services Order (including any variation of the Rates, for example to reflect a fixed fee arrangement); and
 - (iii) any other document that is expressly incorporated as part of the Legal Services Contract.
 - (c) Except in respect of the Rates and the Term, where there is any inconsistency between the provisions of this Agreement and any Legal Services Contract, the provisions of this Agreement will prevail to the extent of that inconsistency.
 - (d) A Client may request a variation to a Legal Services Contract, including additional, varied or omitted Services and the Service Provider will be entitled to additional fees for additional or varied services, as agreed by the Client.
 - (e) Where Services are omitted from a Legal Services Order to which a lump sum or fixed fee arrangement applies, the Client and the Service Provider will agree the amount by which the lump sum or fixed fee will be reduced.
 - (f) The Client may provide, or engage others to provide, the omitted services.

7.4 Panel Engagement without Legal Services Order

Despite any other clause in this Agreement to the contrary, the Service Provider acknowledges that if a Client engages the Service Provider for Services without issuing a Legal Services Order, the Rates will apply and the Services will contribute to the calculation of the Volume Discount Threshold.

7.5 Panel engagement in area of law to which firm is not appointed

- (a) A Panel Firm may be engaged to provide Services in respect of an Area of Law to which they are not appointed, provided that they are appointed to another Area of Law under that Sub-Panel.
- (b) An engagement under clause 7.5(a) will contribute to the calculation of the Volume Discount Threshold and for reporting purposes.

8. Time for provision of services

8.1 Time requirements

The Service Provider must provide the Services requested under a Legal Services Order in accordance with:

- (a) the time stipulated in an Agreed Program;
- (b) if there is no Agreed Program, the time stipulated in the Legal Services Order; or
- (c) if there is no Agreed Program or time stipulated in the Legal Services Order, the Client's reasonable requirements notified to the Service Provider from time to time.

8.2 Agreed Program

If requested by a Client, the Service Provider must provide a program for the provision and completion of the Services, including dates by which

instructions, information or approvals are required and the Client will either:

- (a) approve the program; or
- (b) require the Service Provider to amend the program, and the Service Provider will so amend the program,

and the program will be the Agreed Program.

8.3 Suspension of Services

A Client may, for its sole convenience and at its absolute discretion, immediately suspend the provision of Services under any Legal Services Contract and related payment regardless of whether there has been any default by the Service Provider by written notice. A Client may only suspend payment in relation to those Services which are yet to be performed. Clause 10 will continue to apply in respect of previously performed Services.

8.4 Extension of Time

If Services are suspended by the Client, or the Service Provider is unavoidably delayed in providing the requested Services for any reason beyond the reasonable control of the Service Provider and its subcontractors, then the time for completion of the Services will be extended by a reasonable period, which the Client may notify to the Service Provider at any time. The Service Provider will have no claim for any delay or other costs unless otherwise agreed in writing.

9. Price for the Services

9.1 Fee Schedule

- (a) The Service Provider must ensure that Services are provided efficiently and that Personnel with appropriate expertise and experience perform the Services under each Legal Services Contract to ensure that a Legal Services Contract represents value for money.
- (b) Except as otherwise provided in this Agreement or otherwise as agreed with a Client, the Service Provider may only charge the Client amounts for the provision of the Services as set out in Schedule 4.
- (c) The Rates are fixed for the Term, except as adjusted in accordance with clause 16 and item 4 of Schedule 1.
- (d) Nothing in this Agreement prevents the Service Provider from charging a Client rates less than the Rates with respect to any Legal Services Contract.
- (e) Subject to clause 33, amounts charged by the Service Provider must be inclusive of all costs and expenses of the Service Provider in relation to the provision of the Services.

9.2 Secondments

Unless approved by the Client in writing, the Service Provider must charge a Client the maximum amount calculated using the formula for a secondment listed in item 10 of Schedule 1.

9.3 Expenses and other disbursements

- (a) The Service Provider may only charge a Client for expenses or other disbursements:
 - (i) on the basis of cost to the Service Provider without allowance for any profit or overhead
 - (ii) where the expenses or other disbursements are of a reasonable amount and have been reasonably incurred;

(iii) in accordance with Schedule 4.

- (b) A Client will not reimburse the Service Provider to the extent that it is entitled to any discount, refund, credit (including goods and services tax credit), reimbursement or other allowance in relation to the cost or expense.

9.4 Estimates of legal costs

- (a) The Service Provider must at no cost to a Client provide an estimate of the total legal costs for any Services required by the Client (**Estimate**):
- (i) upon receipt of any Request for Services in relation to those Services; and
 - (ii) unless the Service Provider has already provided an Estimate under clause 9.4(a)(i), as soon as practicable after receipt of a Legal Services Order.
- (b) A Service Provider will not be required to provide an Estimate if:
- (i) the Client has agreed in writing to waive the requirement to provide an Estimate; or
 - (ii) an alternative pricing arrangement has been agreed with the Client.
- (c) An Estimate must be provided to the Client in writing and:
- (i) include, if requested, details of:
 - (A) estimated time and Rates of Personnel providing the Services calculated in accordance with Schedule 4;
 - (B) estimated disbursements or expenses likely to be incurred in relation to the Services calculated in accordance with Schedule 4;
 - (C) estimated fees of counsel; and
 - (D) identify the amount of GST that will be payable.
- (d) Unless otherwise agreed between the Service Provider and the Client, Estimates must be provided within the following periods calculated from receipt of the Request for Services or Legal Services Order referred to in clause 9.4(a) as applicable:
- (i) for complex matters, within 5 Business Days; and
 - (ii) for other matters, within 2 Business Days.
- (e) In providing any Estimate, the Service Provider warrants to the Client that the Estimate:
- (i) has been prepared consistently with clause 9.4(c); and
 - (ii) is as accurate as is reasonably possible, given the information provided by the Client.
- (f) In this clause 9, unless otherwise specified, legal costs means the amount that the Client has been or may be charged by, or is or may become liable to pay to the Service Provider for the provision of the Services, including disbursements but not including interest.

9.5 Ongoing obligation in relation to Estimates

- (a) When the Service Provider becomes aware that the total legal costs of the Services under a Legal Services Contract will exceed any Estimate, it must notify the Client as soon as it becomes aware, and in any event no later than the time that the legal costs accrued or incurred reaches

80% of the Estimate.

- (b) A notice under clause 9.5(a) must specify:
 - (i) a revised Estimate for the Services, prepared in accordance with clause 9.4(c); and
 - (ii) the reason that the total legal costs in respect of the Services will exceed the original Estimate.
- (c) A Client may approve a revised Estimate in its sole and absolute discretion. Where a Client approves a revised Estimate, it must give written notice of approval to the Service Provider.
- (d) Where a Service Provider has provided an Estimate to a Client with respect to Services to be provided under a Legal Services Contract, the Client will not be liable to pay any amount to the Service Provider with respect to the Services which exceeds:
 - (i) the Estimate, or
 - (ii) where the Client has approved a revised Estimate, that revised Estimate.

9.6 Application of Volume Discount

The Service Provider acknowledges that the Volume Discount Amount will be applied to all legal billings under this agreement for the duration of the Term, unless specifically excluded by this section, once the applicable Volume Discount Threshold has been activated.

9.7 Activation of Volume Discount

- (a) The Service Provider acknowledges that all legal billings, unless specifically excluded by this section, that are billed to an Agency, whether under this Agreement, another NSW Government panel or any other contract or engagement, from the Volume Discount Calculation Date and calculated cumulatively for the duration of the Term, will contribute to the activation of the Volume Discount Threshold.
- (b) Activation of the Volume Discount Threshold will occur when the total amount of all legal billings, unless specifically excluded by this section, from the Volume Discount Calculation Date and calculated cumulatively for the duration of the Term, exceeds the relevant Volume Discount Threshold.

9.8 Exclusions for Activation of Volume Discount

The following fees and disbursements are excluded for the purpose of activating the Volume Discount Threshold:

- (a) Core legal engagements with Crown Solicitor's Office;
- (b) Third party disbursements, but not related entity disbursements;
- (c) Counsel fees.

9.9 Exclusions for Application of Volume Discount

The following fees and disbursements are excluded for the purpose of application of the Volume Discount Amount once the Volume Discount Threshold has been activated:

- (a) Third party disbursements, but not related entity disbursements;
- (b) Fees that are fixed by legislation;
- (c) Off-Panel Engagements;
- (d) Counsel fees;
- (e) Secondments;

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- (f) Core legal engagements with Crown Solicitor's Office;
 - (g) Previous Panel Engagements.

9.10 Volume Discount Threshold Amounts

The Service Provider acknowledges that the following Volume Discount Threshold amounts apply:

- (a) \$1,000,000
- (b) \$10,000,000
- (c) \$50,000,000
- (d) \$75,000,000

9.11 Most Favoured Pricing

The Service Provider must ensure that at all times during the Term that the Rates are no less favourable than any rates the Service Provider provides or offers to provide any other customer for equivalent or similar services of comparable volume and markets.

9.12 Capped Daily Rates

The Service Provider agrees that the fee charged for an individual lawyer on a date will not exceed the capped daily rate specified in the Fee Schedule.

9.13 Classification of Off-Panel Engagements

The Service Provider agrees that the Client will determine whether any engagement is classified an Off-Panel Engagement.

10. Invoicing and payment

10.1 Invoicing

- (a) The Service Provider must submit to the Client a tax invoice or tax invoices in respect of each Legal Services Contract:
 - (i) monthly;
 - (ii) if required by the Client, as soon as practicable after the completion of the Services; or
 - (iii) as otherwise provided for in the relevant Legal Services Order.
- (b) A tax invoice submitted pursuant to clause 10.1(a) must contain each of the matters specified in Item 5 of Schedule 1 and be sent to the address specified in a Legal Services Order, or as otherwise required by the Client.
- (c) No invoice may be submitted in respect of Services provided or disbursements incurred more than six months before the date that the invoice is submitted to the Client.

10.2 Payment of invoice

- (a) Subject to this clause 10.2, the Client will pay the invoiced amount to the Service Provider within 30 days of receipt of the invoice, in the manner specified in Item 6 of Schedule 1.
- (b) An invoice will not be paid until such time as the invoice is certified for payment by the Agency Contract Manager for the Client. An invoice will not be certified for payment unless the Agency Contract Manager of the Client is satisfied that it is correctly calculated with respect to the Services that are the subject of the relevant Legal Services Contract and the Service Provider is entitled to claim payment.

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- (c) If the Agency Contract Manager of the Client disputes the invoiced amount for any reason, the Client must pay the undisputed amount of the invoice (if any), and notify the Service Provider of the amount the Client believes is due for payment. If the Client and the Service Provider are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with clause 29.
 - (d) Payment of an invoice is not to be taken as:
 - (i) evidence or an admission that the Services have been provided in accordance with this Agreement and the applicable Legal Services Contract;
 - (ii) evidence of the value of the Services supplied; or
 - (iii) an admission of liability,but must be taken only as payment on account.

10.3 Fair payment

- (a) A Client will, on demand by the Service Provider, pay simple interest on a daily basis on any overdue amount, at the rate determined in accordance with Rule 6.12(8) of the *Uniform Civil Procedure Rules 2005* (NSW).
- (b) For the purposes of clause 10.3(a), overdue amount means an amount (or part thereof) that:
 - (i) is not, or is no longer, disputed in accordance with this Agreement;
 - (ii) is due and owing under a tax invoice (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) properly rendered by the Service Provider in accordance with this Agreement; and
 - (iii) has been outstanding for more than 30 days from the date of receipt of the invoice or the date that the amount ceased to be disputed, as the case may be.

11. Transitioning of Matters at Commencement of Term

Any legal services engagement between the Service Provider and an Agency in existence on the Commencement Date may transition to this Agreement at the discretion of the Client.

12. Records of Pro Bono Services

- (a) In this clause 12, **Pro Bono Services** has the meaning adopted by the Australian Pro Bono Centre of the University of NSW in its definition of “pro bono legal services”, as published from time to time.
- (b) If the Service Provider is not a Small Firm it is required to meet the National Pro Bono Target of 35 hours of pro bono work per lawyer per year.
- (c) The Service Provider must maintain records in relation to Pro Bono Services as are required to demonstrate its performance against the National Pro Bono Target and report on this performance to the Panel Contract Manager and the Service Provider must make these records available for inspection by, or provide copies to, the Executive Contract Manager upon reasonable request.
- (d) The provisions of clause 18 apply to any records referred to in this clause 12.

13. Cooperation with other service providers

- (a) The Service Provider must co-operate with the Crown Solicitor's Office and with any third party service provider appointed by the Client (including any other providers of legal services under the Panel arrangements) where this is necessary to ensure the integrated and efficient conduct of the Client's operations or where the Client otherwise instructs the Service Provider to do so.
- (b) The Service Provider must provide reasonable assistance to other service providers as the Client may request from time to time, provided that the Service Provider will be entitled with the prior written approval of the Client (which will not be unreasonably withheld) to charge for costs incurred as a direct result of providing the co-operation.

14. Contract management

14.1 Executive Contract Manager, Panel Contract Manager and Relationship Manager

- (a) For the purposes of ensuring a productive and efficient relationship between the Lead Agency, each Client and the Service Provider under this Agreement:
 - (i) the Lead Agency nominates the person specified in Item 3 of Schedule 1 as the Executive Contract Manager;
 - (ii) the Lead Agency nominates the person specified in Item 3 of Schedule 1 as the Panel Contract Manager; and
 - (iii) the Service Provider nominates the person or persons specified in Item 3 of Schedule 1 as its Relationship Manager and alternate.
- (b) It is the intention of the parties that subject to clause 29:
 - (i) all queries or issues of a day-to-day operational nature (including the submission of a Legal Services Order, the delivery of Services and the invoicing and payment relating to a Legal Services Contract) will be dealt with by the Service Provider and the relevant Client; and
 - (ii) all other queries, consents, approvals, complaints and disputes required or arising under or in connection with this Agreement (including, for the avoidance of doubt, all matters relating to contract management, the relationship of the parties and the overall operation of the Agreement) will be dealt with by the Panel Contract Manager (on the one hand) and the Relationship Manager (on the other hand).
- (c) The Lead Agency may, from time to time, nominate a replacement Executive Contract Manager or Panel Contract Manager by written notice to the Service Provider.
- (d) The Service Provider may from time to time nominate a replacement Relationship Manager or alternate by written notice to the Lead Agency.

14.2 Minimum Service Standards and Key Performance Indicators

- (a) The Service Provider's performance against the Key Performance Indicators will be tracked, monitored and reported on by the Lead Agency as set out in the Service Level Agreement.
- (b) The parties acknowledge and agree that the purpose of the Minimum Service Standards and the Key Performance Indicators is to ensure a minimum level of performance by the Service Provider, with the aim of continuous improvement in meeting the identified Key Performance Indicators (including measurable improvements in Client satisfaction, value, efficiency and productivity year on year), thereby increasing the

benefits to the State or both parties during the Term.

14.3 Reports and information to be provided by Service Provider

- (a) The Service Provider must provide to the Panel Contract Manager:
 - (i) all reports specified in this Agreement including the Service Level Agreement, in the format and containing the matters specified in, and at the times required by, this Agreement or the Service Level Agreement (or as otherwise advised by the Panel Contract Manager);
 - (ii) all information relating to the calculation of the Volume Discount Threshold and the application of the Volume Discount Amount, in a form specified by the Panel Contract Manager. This will include information related to legal services billings, professional fees, counsel fees and disbursements across the entirety of the NSW Government whether under this agreement, another NSW Government panel or any other contract or engagement; and
 - (iii) all other data or information that the Panel Contract Manager or an Agency Contract Manager may reasonably request to enable it to adequately assess the performance of the Service Provider under this Agreement or any Legal Services Contract, in the format required by the Panel Contract Manager or Agency Contract Manager.
- (b) The obligations of the Service Provider under clause 14.3(a) survive termination or expiry of this Agreement.
- (c) In addition to the obligations contained in clause 14.3(a), the Service Provider must, if so requested by the Panel Contract Manager, ensure that its Relationship Manager attends any meeting in respect of the Panel arrangements reasonably required by the Panel Contract Manager.
- (d) The Service Provider acknowledges that data provided by the Service Provider under this Agreement may be provided to other Clients.

14.4 Continuous improvement and value added services

- (a) The parties agree that they will work together during the Term to identify new measures or initiatives for mutual value enhancement in connection with the provision of the Services under this Agreement, including through the:
 - (i) identification of efficiencies in the provision of the Services;
 - (ii) implementation of any applicable technological improvements; and
 - (iii) utilisation of any applicable industry-wide productivity gains, with a view to achieving year on year improvements in value for both parties.
- (b) The Service Provider agrees, when requested by a Client, to provide:
 - (i) any of the Value Added Services listed in item 10 of Schedule 1, according to its capacity; and
 - (ii) Any additional Value Added Services proposed by the Service Provider in its response to the Request for Proposal.
- (c) Any value enhancing initiatives identified by the parties will be discussed and, if deemed appropriate, implemented by the parties as soon as practicable.

14.5 Use of Information Systems

- (a) The Service Provider acknowledges that it may be required to use an information system for the purpose of procurement of Services, invoicing of Services or reporting.
- (b) The information system may vary from time to time or between Agencies.

15. Performance Review

- (a) The Service Provider may be subject to performance review throughout the Term in accordance with the Service Level Agreement and this clause 15.
- (b) The Relationship Manager must be available to meet the Panel Contract Manager at least once in each Contract Year, and at other times as reasonably required by the Panel Contract Manager, to discuss contract management issues and review the Service Provider's performance under this Agreement, including to review the Service Provider's compliance with the Minimum Service Standards and the Key Performance Indicators as disclosed in the Annual Assessment performance report.
- (c) The Service Provider acknowledges that as part of any performance review, whether arising out of the Annual Assessment or otherwise, the Lead Agency may set a course of remedial action in a performance report for the Service Provider to follow and implement. The Service Provider must comply with the requirements of any performance report within the timeframes specified by the Lead Agency in that report. If the Service Provider does not comply with the requirements of the performance report, the Lead Agency may suspend or terminate the Service Provider's membership of the Panel under clause 24.1.
- (d) The Lead Agency may make available results of the Annual Assessment or other performance reviews to all Clients via the Electronic Vendor Management System or alternative means.

16. Price review

The price review mechanism set out in Item 4 of Schedule 1 applies. Any revised Rates calculated in accordance with the price review mechanism will take effect from the date specified in Item 4 of Schedule 1.

17. Materials to be provided by Service Provider

17.1 Form of Contract Materials

The Service Provider must ensure that all Contract Materials provided or required to be provided to the Lead Agency under this Agreement or to a Client as part of the Services under a Legal Services Contract, are provided in a form reasonably required by the Panel Contract Manager or the Agency Contract Manager, as applicable, including in the case of documents, in optical character recognition (OCR) form.

17.2 Provisions of advice to databases

The Service Provider must ensure that any advice which forms part of the Contract Material is provided to the Client on request to enable it to be included in any database of advices maintained by that Client or to the Panel Contract Manager for the purposes of any cross Agency database maintained by the State.

18. Access to records

18.1 Service Provider to retain records

- (a) The Service Provider must, for a period of seven years after the later of termination or expiry of this Agreement or the termination or expiry of any Legal Services Contract, keep true and particular accounts and records of all Services supplied under this Agreement and any Legal Services Contract, including, subject to the terms of this Agreement:
 - (i) copies of the Contract Materials;
 - (ii) any Materials provided by the State or any Client;
 - (iii) records of expenses or other disbursements of the Service Provider in the provision of Services by the Service Provider; and
 - (iv) all supporting materials used to generate and substantiate invoices submitted in respect of Services supplied under this Agreement or any Legal Services Contract.
- (b) Upon expiry of the period stated in clause 18.1(a), prior to the destruction of any records referred to in that clause, the Service Provider must, if required by the Agency Contract Manager, deliver to the Agency Contract Manager:
 - (i) any Materials provided by the State or any Client as specified by the Agency Contract Manager; and
 - (ii) copies of any other records referred to in clause 18.1(a);where these are public records for the purposes of the *State Records Act 1998* (NSW) provided that the Client must meet the Service Provider's reasonable direct cost of supplying any Materials or copies referred to in this clause 18.1(b). Materials or copies required to be delivered to the Agency Contract Manager under this clause 18.1(b) may be provided in electronic form.
- (c) If required by a Client, the Service Provider must comply with any relevant standard issued by the State Records Authority.

18.2 Right to access and audit

- (a) The Lead Agency and any Client, or their duly authorised representatives, will have the right, after giving reasonable notice, at any time during business hours, to inspect and/or audit the accounts and records of the Service Provider referred to in clause 18.1(a), for the purpose of auditing the Service Provider's compliance with this Agreement and any Legal Services Contract, including the provision of the Services, the calculation of any Legal Services Fees and the amount of any Counsel's fees. Such representatives will be entitled (at the expense of the Lead Agency or the Client, as applicable) to take copies of or extracts from any such accounts or records. Copies or extracts of accounts or records taken by, or provided to, such representatives may be in electronic form.
- (b) For the purposes of this clause 18.2, the Service Provider must grant, and where relevant must ensure that its sub-contractors grant, the Lead Agency and any Client or their duly authorised representatives, access at reasonable times and upon reasonable notice to any accounts or records related to this Agreement or any Legal Services Contract, and to any premises at which such accounts or records are held, for the purpose of accessing accounts or records of the Client only.
- (c) The Service Provider must ensure that any sub-contract entered into for the purposes of this Agreement or any Legal Services Contract contains an equivalent clause granting the rights specified in this clause 18 with respect to accounts or records and premises of the sub-contractor.

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- (d) The rights of the Lead Agency under clause 18.2(a) may be exercised with respect to this Agreement and any Legal Services Contract.
 - (e) The rights of a Client under this clause 18.2(a) may be exercised in relation to any Legal Services Contract between the Service Provider and the Client.
 - (f) At no additional cost to the State, the Lead Agency or any Client, the Service Provider must promptly take corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Service Provider has under this Agreement or any Legal Services Contract:
 - (i) provided any Services;
 - (ii) calculated any Legal Services Fees invoiced to the Client; or
 - (iii) otherwise not complied with its obligations under this Agreement or any Legal Services Contract.
 - (g) The right of access and audit granted under this clause 18.2 may be exercised by the Lead Agency and any Client at any time during the Term or in the seven year period following the expiry of the Term.
 - (h) For the avoidance of doubt, the Lead Agency or the relevant Client will be solely responsible for the costs of conducting any audit under this clause 18.2.
 - (i) Nothing in this Agreement or any Legal Services Contract reduces, limits or restricts in any way any statutory function, power, right or entitlement of any Agency with respect to the Service Provider's accounts or records. The rights of the Lead Agency or a Client under this Agreement or a Legal Services Contract are in addition to any other power, right or entitlement of such an Agency.

19. Intellectual Property Rights

19.1 Warranty and indemnity by Service Provider

- (a) The Service Provider warrants to each Client that it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the provision of the Services under this Agreement or any Legal Services Contract, including any assignment or licence of Intellectual Property Rights to the State or any Client under this clause 19.
- (b) The Service Provider indemnifies and will at all times keep the State and any Client indemnified against any loss, damage, claim, action or expense (including legal expense) arising out of or otherwise in connection with any breach or alleged breach by the Service Provider of the Intellectual Property Rights of any third person, relating to the provision of the Services under this Agreement or any Legal Services Contract or relating to the exercise by the State or a Client of its rights under any licence of Intellectual Property Rights granted by this clause 19.

19.2 Ownership of Contract Intellectual Property

- (a) Subject to clause 19.9(a), from the time of creation, any and all Intellectual Property Rights (excluding the Pre-Existing Intellectual Property, the State Intellectual Property, the Client Intellectual Property or the Licensed Intellectual Property) incorporated or comprised in the following Contract Material will vest in the Client:
 - (i) any Contract Material prepared or provided for publication or communication by or on behalf of the Client;
 - (ii) any Contract Material prepared or provided for use as precedents

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- by a Client; and
- (iii) any other Contract Material where a Client specifies in a Legal Services Order that it requires Intellectual Property Rights in that Contract Material to vest in the Client,
 - (iv) (which Intellectual Property Rights are referred to in this Agreement as Contract Intellectual Property).
- (b) The Service Provider irrevocably and unconditionally assigns to each Client free of additional charge, all right title and interest in and to the Contract Intellectual Property and the Service Provider must sign all documents and do all things reasonably required to ensure that such assignment is effected.
 - (c) Subject to the express terms of any Legal Services Order, a Client grants to the Service Provider free of additional charge a non-exclusive world-wide licence for the Term of this Agreement and any Legal Services Contract, subject to clause 28, to use, reproduce, adapt and modify the Contract Intellectual Property, and to sub-license its rights under this clause 19.2(c) solely for the purposes of providing the Services to the Client under this Agreement or the Legal Services Contract to which that Legal Services Order relates.

19.3 Moral Rights

The Service Provider warrants to each Client that:

- (a) all individuals who may have "moral rights" (as that expression is defined in the *Copyright Act 1968* (Cth)) in any documents provided as part of the Services or any works constructed in accordance with that material have validly provided their written consent (pursuant to sections 195AW and 195AWA of that Act); and
- (b) the consent referred to in paragraph (a) allows a Client (or others) to deal with that material or those works (including by way of destruction or alteration and without attribution of authorship) in such manner as the Client may decide without being held to have infringed any moral right of the individual

and indemnifies the Client from all loss and liability in relation to any breach of such warranties.

19.4 Existing Moral Rights

Where the Services relate to any change to or the use of any material in relation to which moral rights may exist, the Service Provider must, in providing the Services, consider the obligations imposed by the *Copyright Act 1968* (Cth) in relation to "moral rights" and ensure that nothing is done which may place a Client in breach of those obligations.

19.5 Ownership of existing Intellectual Property

- (a) All Pre-Existing Intellectual Property used by the Service Provider in connection with the provision of Services under this Agreement or any Legal Services Contract or the creation of Contract Intellectual Property remains the property of the Service Provider or its licensors.
- (b) All State Intellectual Property used by the Service Provider in connection with the provision of the Services under this Agreement or any Legal Services Contract remains the property of the State or the Client, as applicable.

19.6 Licence of State Intellectual Property

- (a) The State grants to the Service Provider free of additional charge, a non-exclusive, non-transferable, worldwide licence to use, reproduce, modify and adapt the State Intellectual Property to the extent necessary for the

purposes of carrying out the Service Provider's obligations under this Agreement or a Legal Services Contract.

- (b) The licence granted to the Service Provider under this clause 19.6 is for the Term or the term of any applicable Legal Services Contract.

19.7 Licence of Client Intellectual Property

Subject to the terms of any Legal Services Contract, the Client grants to the Service Provider free of additional charge, a non-exclusive, non-transferable, worldwide licence to use, reproduce, modify and adapt the Client Intellectual Property to the extent necessary for the purposes of carrying out the Service Provider's obligations under the relevant Legal Services Contract.

19.8 Licence of Pre-Existing Intellectual Property

The Service Provider irrevocably and unconditionally grants to the State and each Client, free of additional charge, a perpetual non-exclusive, worldwide licence to use, reproduce, adapt, modify, publish, communicate or exploit any Pre-Existing Intellectual Property to the extent that such Pre-Existing Intellectual Property forms part of or is integral to, any Contract Material and to sub-license its rights under this clause 19.8.

19.9 Licence of Licensed Intellectual Property

- (a) Subject to clause 19.9(b), the Service Provider irrevocably and unconditionally grants to the State and to each Client, free of additional charge, a perpetual, non-exclusive, world-wide licence to use, reproduce, adapt, modify, publish, communicate or exploit any and all Intellectual Property Rights (excluding Pre-Existing Intellectual Property, the State Intellectual Property or the Client Intellectual Property) in the following Contract Material for any purpose except commercial exploitation:
- (i) all Contract Material filed, or prepared or provided for use, in any litigation or other dispute resolution;
 - (ii) advice to a Client; and
 - (iii) any other Contract Material not within the scope of clause 19.2(a) and clauses 19.9(a)(i) and 19.9(a)(ii),

(which Intellectual Property Rights are referred to in this Agreement as **Licensed Intellectual Property**), and to sub-license its rights under this clause 19.9(a).

- (b) The licence granted by the Service Provider to each Client under clause 19.9(a) is limited to Licensed Intellectual Property with respect to Contract Materials created by or on behalf of the Service Provider in the course of or as a result of providing the Services to that Client under a Legal Services Contract with that Client, including any Contract Material provided or required to be provided to that Client under the Legal Services Contract.

19.10 Confidentiality obligations of Service Provider not affected

- (a) The provisions of clause 28 prevail over:
- (i) clause 19.2(c); and
 - (ii) any express term of the relevant Legal Services Order relating to the Contract Intellectual Property referred to in clause 19.2(a)(iii) or clause 19.2(c);

and to the extent of any inconsistency, nothing in this clause 19 will license the Service Provider to use, disclose or otherwise deal with any Confidential Information contrary to clause 28 or any other provision of this Agreement.

20. Failure to perform

- (a) Without limiting any other clause of this Agreement, or any other remedy a Client may have, if the Service Provider fails to provide or perform any of the Services in accordance with the requirements of a Legal Services Contract, the relevant Client will not be required to pay for those Services and may, by written notice to the Service Provider, require the Service Provider to:
 - (i) remedy any default (if the default is capable of being remedied) at the Service Provider's own expense; or
 - (ii) re-perform the Services (if the Services are capable of being re-performed by the Service Provider),
within the time specified in the notice (which must be reasonable having regard to the nature of the Services).
- (b) If the remedied or re-performed Services are remedied to the satisfaction of the Client, then the Client will pay the applicable Rates or Legal Services Fees for those remedied or re-performed Services (which the parties acknowledge may be less than the cost to the Service Provider of remedying or re-performing the Services).
- (c) If the default referred to in clause 20(a) is not capable of being remedied or the Services are not capable of being re-performed, or the Service Provider fails within the time specified to remedy the default or re-perform the Services, the Client may terminate the Legal Services Contract, in which case clause 24.4 will apply.

21. Warranties

The Service Provider warrants to the State and each Client that:

- (a) the Service Provider has the power to enter into this Agreement and perform its obligations under this Agreement and any Legal Services Contract;
- (b) the Service Provider has the necessary authorisations to perform its obligations under the Agreement and any Legal Services Contract and will use its best endeavours to maintain such authorisations for the Term of this Agreement and the term of any Legal Services Contract;
- (c) the provision of the Services will be carried out with all due care and skill and in accordance with all applicable standards, principles and practices;
- (d) the Service Provider and its Personnel have the accreditation to provide the Services as set out in the Tender Documentation, and Personnel required to be accredited who provide the Services will have that accreditation during the Term of this Agreement and any Legal Services Contract;
- (e) the Service Provider and its Personnel, agents and approved sub-contractors are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services in accordance with the Minimum Service Standards and the Key Performance Indicators;
- (f) whilst on premises owned or controlled by a Client, the Service Provider and its Personnel, agents and contractors will at all times comply with the Client's lawful directions and policies of which the Service Provider is notified or is otherwise aware, including any applicable work health and safety and security policies;
- (g) where the Client has, either expressly or by implication, made known to the Service Provider any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;

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- (h) the provision of the Services will not infringe any right of any third party (including any intellectual property right) or any Laws;
 - (i) all representations made by the Service Provider in or in connection with the Tender Documentation were and remain accurate and the Service Provider has and will maintain during the Term the quality assurance arrangements set out in the Tender Documentation; and
 - (j) the information contained in the Tender Documentation as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Service Provider, its Personnel and contractors is correct.

22. Conflicts of interest, Incidents and probity

22.1 Conflicts of interest

- (a) The Service Provider warrants that as at the Commencement Date and except as disclosed to the Lead Agency or the relevant Client, it does not, and will ensure that its Personnel and sub-contractors do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, their duties and interest under this Agreement or a Legal Services Contract.
- (b) During the term of this Agreement or the term of any Legal Services Contract:
 - (i) the Service Provider must immediately notify the Agency Contract Manager of the relevant Client of any matter or change in circumstances that may give rise to an actual, potential or perceived conflict of interest with respect to that Client and provide details of all circumstances relevant to the actual, potential or perceived conflict of interest; and
 - (ii) the State, the Lead Agency or a Client may notify the Service Provider that it believes an actual, potential or perceived conflict of interest has arisen in respect of the Service Provider.
- (c) Where the Service Provider, or the Panel Contract Manager or the Agency Contract Manager of the relevant Client gives notice under clause 22.1(b) the Service Provider must:
 - (i) provide any information reasonably requested by the Panel Contract Manager or the Agency Contract Manager of the relevant Client; and
 - (ii) take any steps reasonably required by the Panel Contract Manager or the Agency Contract Manager of the relevant Client to address the conflict of interest.
- (d) **Statutory land acquisition processes:** Panel Firms appointed to the Panel for this Area of Law may not act against the NSW Government in any compulsory acquisition matter without the approval of the Agency Contract Manager of the relevant Client.
- (e) The Service Provider agrees that failure to comply with this clause 22 will constitute a breach of a fundamental term of this Agreement and the Lead Agency may terminate this Agreement or a Client may terminate any Legal Services Contract with immediate effect.
- (f) For the purposes of providing notice under clause 22.1(b)(i), if the Service Provider cannot determine the applicable Agency Contract Manager, the Service Provider must seek direction from the Panel Contract Manager.

22.2 Pro Bono and conflicts of interest

The parties acknowledge that the State encourages lawyers to provide legal services on a pro bono basis and recognises that it is appropriate for providers of legal services, including the Service Provider, to act against the State and any Client in pro bono matters where there is no conflict of interest (or where the conflict is approved), and where to do so would not be in breach of the Service Provider's obligations under clause 22.1 or any other requirements of this Agreement or a Legal Services Contract with respect of any conflict of interest.

22.3 Incidents

- (a) The provisions of this clause 22.3 do not limit the obligations of the Service Provider under clause 22.4 in relation to Probity Events.
- (b) The Service Provider warrants that to the best of its knowledge, after making diligent inquiry, as at the Commencement Date it has disclosed to the Lead Agency or the relevant Client all Incidents which have occurred in the 2 years prior to the Commencement Date.
- (c) During the Term of this Agreement and the term of any Legal Services Contract, the Service Provider will immediately notify the Panel Contract Manager and the Agency Contract Manager of the relevant Client of any Incident, or any circumstance which might reasonably be considered an Incident, which has occurred since the Commencement Date.

22.4 Probity

- (a) During the Term of this Agreement and the term of any Legal Services Contract:
 - (i) if a Probity Event with respect to this Agreement or the provision of Services under any Legal Services Contract occurs, the Service Provider will immediately give written notice to the Panel Contract Manager and the Agency Contract Manager of the relevant Client of the Probity Event, and the notice must provide details of all relevant circumstances; and
 - (ii) the Lead Agency or a Client may give written notice to the Service Provider that it believes such a Probity Event has occurred.
- (b) Where the Service Provider or the Panel Contract Manager or the Agency Contract Manager of the relevant Client gives notice under clause 22.4(a), the Service Provider must:
 - (i) provide any information reasonably requested by the Panel Contract Manager or the Agency Contract Manager of the relevant Client; and
 - (ii) take any steps reasonably required by the Panel Contract Manager or the Agency Contract Manager of the relevant Client, to address the Probity Event, including procuring that the relevant Personnel or sub-contractor ceases to provide Services to the Client.

22.5 Specific requirements of the Client including probity plans

The obligations of the Service Provider under this clause 22 are in addition to any specific requirements of a Client in relation to any Legal Services Contract concerning conflicts of interest or probity. The Service Provider must comply with any other requirements of the Client with respect to conflicts of interest or probity in the provision of Services under a Legal Services Contract, including the requirements of any probity policy or probity plan, whether stated in the relevant Legal Services Order or otherwise.

22.6 Termination of this Agreement or Legal Services Contracts

Without limitation to any provision of this Agreement, where:

- (a) the Service Provider fails to comply with this clause 22; or
- (b) any actual, potential or perceived conflict of interest, Incident or Probity Event is not resolved to the satisfaction of the State, the Lead Agency or the relevant Client, including in any time the State, the Lead Agency or the relevant Client may require, then:
 - (i) the Lead Agency may by written notice to the Service Provider immediately exercise its rights under clause 24.1; and
 - (ii) the Client may immediately terminate any Legal Services Contract.

23. Change in Control

23.1 Change in Control Generally

- (a) The Service Provider must notify the Lead Agency in writing of any change in Control of the Service Provider (or of the ultimate holding company of the Service Provider, if applicable) of which it becomes aware.
- (b) Following receipt of a notice under clause 23.1(c), the Lead Agency may seek such further information as is reasonable in relation to the change in Control.
- (c) If a change in Control occurs:
 - (i) the Lead Agency may, by written notice to the Service Provider, remove the Service Provider from any Area of Law, or terminate this Agreement; and
 - (ii) any Client may terminate any Legal Services Contracts on foot.

Termination under this clause will take effect at any nominated time within 12 months after the change in Control.
- (d) In determining whether or not to take any action under clause 23.1(c), the Lead Agency may consider such information as it considers relevant or necessary, including:
 - (i) compliance by the Controller with Governmental policies including in relation to ethical employment standards;
 - (ii) insurance coverage maintained by the Controller;
 - (iii) the financial viability of the Controller; and
 - (iv) the likely ability of the Controller to satisfy the requirements set out in the Tender Documentation, and the obligations of the Service Provider under this Agreement and any Legal Services Contract.
- (e) For the purposes of 23.1(a), if a Service Provider is listed on a stock exchange, notice must be provided as soon as legally possible.

23.2 Mergers and Acquisitions

- (a) The Service Provider acknowledges that if the Service Provider:
 - (i) merges with another legal services provider; or
 - (ii) is acquired by another legal services provider; or
 - (iii) acquires another legal services provider,that appointment to an area of law under this Agreement does not

automatically transfer to the new legal entity and will be subject to a review by the Panel Contract Manager.

- (b) The Service Provider must notify the Panel Contract Manager of any proposed merger or acquisition as soon as practical.

23.3 Movement of personnel to another entity

- (a) In the event that a practice group, or a significant proportion of a practice group, where significant proportion refers to either the number of personnel or the collective experience of such personnel, transfers to another entity or Service Provider, appointment to an area of law under this Agreement does not automatically transfer to the other entity or Service Provider.
- (b) The Service Provider must notify the Panel Contract Manager of any personnel movement under clause 23.3(a) as soon as practical.

24. Termination

24.1 Grounds for termination by the Lead Agency

- (a) If:
 - (i) the Service Provider consistently fails to provide the Services in accordance with the Minimum Service Standards or the Key Performance Indicators or otherwise in accordance with the requirements of this Agreement;
 - (ii) the Service Provider fails to remedy, to the satisfaction of the Lead Agency, any breach of this Agreement (which in the reasonable opinion of the Lead Agency is able to be remedied) within 28 days after the date on which the Lead Agency issues the Service Provider a written notice requiring the Service Provider to remedy the breach;
 - (iii) suspension or termination is permitted under clause 15, clause 22.6, clause 23 or any other clause of this Agreement;
 - (iv) the Service Provider breaches any material provision of this Agreement and in the reasonable opinion of the Lead Agency such breach cannot be remedied;
 - (v) during the Term there is a change in governmental policy that affects the Lead Agency's ability to perform its obligations under this Agreement or which, in the reasonable opinion of the Lead Agency, has the effect of making the provision of Services under this Agreement unviable, inappropriate or otherwise unsuitable; or
 - (vi) an Incident or Probity Event occurs in relation to the Service Provider or any of its Personnel engaged in providing Services to a Client that is contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Service Provider into disrepute and as a consequence the Lead Agency believes that its continued association with the Service Provider will be prejudicial or otherwise detrimental to the reputation of the State;
 - (vii) the Service Provider:
 - (A) being a partnership, company or other composite body undergoes a change in its structure which, in the reasonable opinion of the Lead Agency, limits the capacity of the Service Provider to provide the Services or otherwise precludes or adversely affects the Service Provider's ability to

carry out its obligations and duties under this Agreement or under a Legal Services Contract; or

- (B) goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency, administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors,

then the Lead Agency may in its absolute discretion by written notice to the Service Provider immediately (or at such time within the immediately succeeding 12 months as specified in the notice):

- (viii) suspend, for such period as is specified in the notice, the Service Provider's membership of the Panel to the extent specified in the notice (including in respect of the provision of Services in any Area of Law);

(ix) terminate:

- (A) the Service Provider's membership of the Panel;
- (B) the Service Provider's membership, of the Panel to the extent that it relates to any Area of Law; and/or
- (C) this Agreement.

(b) In the event of suspension or termination of the Service Provider's membership of the Panel pursuant to this clause 24.1:

- (i) the Service Provider will not be entitled to receive any Legal Services Orders from any Client with respect to legal services within any of the Areas of Law to the extent to which and for the period in relation to which the suspension or termination applies; and
- (ii) the Service Provider will continue to perform its obligations under this Agreement, including the Service Level Agreement and under any Legal Services Contract;
- (iii) the suspension or termination will not prejudice any right of action or remedy which may have accrued to each party prior to such suspension or termination; and
- (iv) neither the State or any Client will be liable to the Service Provider in respect of any indirect or consequential loss, including any loss of profits or opportunity.

(c) Except to the extent required by the Client:

- (i) suspension or termination of the Service Provider's membership of the Panel pursuant to this clause 24.1; or
- (ii) termination of this Agreement

will not terminate a Legal Services Contract or release the Service Provider from its obligations to continue to perform the Services under any Legal Services Contract.

(d) Clause 24.1(a) does not limit the rights of the Lead Agency to suspend or terminate this Agreement under any other provision of this Agreement.

24.2 Termination of Legal Services Contract by the Client for convenience

- (a) A Client may immediately terminate a Legal Services Contract for convenience by giving the Service Provider written notice.

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- (b) Where a Legal Services Contract is terminated by a Client pursuant to clause 24.2(a), then the Client will pay to the Service Provider all amounts owing under the terms of the Legal Services Contract in respect of Services completed, and work in progress as at the date of termination, provided that such Services or work in progress have, in the reasonable opinion of the Client, been performed in accordance with the requirements of the relevant Legal Services Contract.
 - (c) Where a Legal Services Contract is terminated pursuant to clause 24.2(a) the Client will not be liable for any amount in excess of the total amount that would otherwise have been payable under the Legal Services Contract if it had not been terminated.

24.3 Termination of Legal Services Contract by the parties

- (a) Each of the parties to any Legal Services Contract may immediately terminate any Legal Services Contract by written notice to the other with a copy to the Panel Contract Manager if the other party fails to remedy, to the satisfaction of the notifying party, any breach of the Legal Services Contract within 14 days after the date on which the notifying party issues the other party a written notice requiring the other party to remedy the breach.
- (b) Clause 24.3(a) does not limit the rights of the parties to terminate a Legal Services Contract under any express provision of this Agreement, a Legal Services Contract or in accordance with the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*.
- (c) The Service Provider may immediately terminate this Agreement and/or a relevant Legal Services Contract if circumstances arise that the Service Provider reasonably believes could create conflict of interest for the Service Provider, or a risk that the Service Provider will violate its auditor independence obligations or other professional obligations, that the Service Provider, using reasonable endeavours, cannot satisfactorily mitigate.

24.4 Consequences of termination or expiry

- (a) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry (as the case may be).
- (b) Termination or expiry of a Legal Services Contract will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry (as the case may be).
- (c) Upon termination of this Agreement or a Legal Services Contract neither the State nor any Client will be liable to pay any compensation or other money to the Service Provider except as expressly provided for in this Agreement or that Legal Services Contract, as applicable.
- (d) Upon termination of any Legal Services Contract, the relevant Client must pay to the Service Provider all amounts owing under the Legal Services Contract in respect of Services that have been completed but not invoiced as at the date of termination or expiry (provided that such Services have been performed in accordance with this Agreement and the relevant Legal Services Contract).
- (e) In the event of termination of this Agreement or any Legal Services Contract neither the State nor any Client will be liable to the Service Provider in respect of any indirect or consequential loss, including any loss of profit or loss of opportunity.
- (f) Upon termination of this Agreement or any Legal Services Contract, the Service Provider must provide to the Lead Agency or the Client as applicable a copy of all Contract Materials not already provided under this Agreement or the Legal Services Contract.

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- (g) If this Agreement is terminated or expires and the Service Provider continues to provide the Services under a Legal Services Contract with the written consent of the Lead Agency following the expiration of the Term, it does so under a monthly arrangement:
 - (i) which either party may terminate with 1 months' notice to the other; and
 - (ii) otherwise on the same terms and conditions as this Agreement.

24.5 State and Client's rights not affected

Any termination of this Agreement by the Lead Agency or termination of a Legal Services Contract by a Client and any payment of money upon termination, including any payment under clause 24.4(d) shall not:

- (a) in any way prejudice the right of the State or any Client to claim and recover damages for any prior breach of contract by the Service Provider, and
- (b) preclude the State or any Client from recovering such other damages as the State may suffer or incur arising out of the termination of this Agreement.

24.6 Termination rights exhaustive

The rights of termination specified in this clause 24 are the only rights of termination available to the parties and any common law rights of termination are excluded.

25. Transition

25.1 Transitional assistance

The Service Provider acknowledges and agrees that on termination or expiry of this Agreement or a Legal Services Contract the Service Provider will provide all such transitional assistance as may be reasonably necessary or requested by the Lead Agency to facilitate the smooth transition of any relevant information, knowledge, systems or assets from the Service Provider to the Lead Agency or a relevant Client (or to a third party nominated by the Lead Agency) to enable the Lead Agency or the relevant Client to continue to obtain the benefit of such information, knowledge, systems or assets following the termination or expiry of this Agreement.

25.2 Client may require Transition Plan

- (a) Without limitation to the scope of clause 25.1, if required by any Client in respect of which the Service Provider provides substantial or ongoing Services, the Service Provider must prepare a written proposal specifying the tasks to be performed for the purposes of transition upon the expiration or termination of any relevant Legal Services Contract (**Transition Proposal**).
- (b) Within 30 days of the receipt of a request under clause 25.2(a), the Service Provider must submit the Transition Proposal to the Client for approval.
- (c) The Service Provider must make such amendments (including additions) to the Transition Proposal as may be required by the Client. Upon approval in writing by the Client, the Transition Proposal will become the Transition Plan.
- (d) A Client may give written notice to the Service Provider to prepare and submit to the Client, for approval, a Transition Proposal setting out variations to the Transition Plan as may be reasonably required to update the Transition Plan.

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- (e) Within 30 days of the date of receipt of a notice under clause 25.2(d), the Service Provider must submit the Transition Proposal to the Client for approval, and clause 25.2(c) will apply.
 - (f) The Service Provider must prepare any Transition Proposal or Transition Plan under this clause 25 at its own cost.
 - (g) Upon expiry or termination of this Agreement or termination of the Service Provider's membership of the Panel or any Area of Law, the Service Provider must carry out its obligations under the Transition Plan and cooperate with the Lead Agency and any Client, where applicable, for a period of up to 3 months, for the purposes of transitioning the provision of the Services to any new provider of legal services, or to the Lead Agency or the Client, as applicable.

25.3 Handover of Contract Material

As part of the Service Provider's transition obligations it must:

- (a) deliver any electronically stored Contract Material in the format or formats required by the Lead Agency or the Client, as applicable; and
- (b) provide access to all Contract Material held by the Service Provider, where this has not already been supplied to the Lead Agency or the Client, as applicable.

26. Insurance

26.1 Service Provider to maintain insurance

- (a) The Service Provider must (and must ensure that any sub-contractors appointed by it under clause 31) obtain and maintain the insurances specified in Item 7 of Schedule 1:
 - (i) on the terms;
 - (ii) for the risks identified;
 - (iii) for the period of time; and
 - (iv) for the amounts,
specified in item 7 of Schedule 1.
- (b) The Service Provider must effect professional indemnity insurance for the amount specified in Item 7 of Schedule 1. The Service Provider must maintain such insurance for the Term and for a period of 6 years from the later of the date on which the Term expires or the last date on which the Service Provider provides any Services under a Legal Services Contract.
- (c) The Service Provider must provide the Lead Agency with evidence of the currency of any insurance it is required to obtain, on or prior to submitting its first invoice under this Agreement, and otherwise in accordance with the Service Level Agreement and on request by the Lead Agency at any time during the Term.
- (d) Where any insurance the Service Provider is required to obtain and maintain expires during the Term (**Initial Insurance**), the Service Provider must provide the Lead Agency with evidence of the currency of relevant replacement insurance prior to the expiration of the Initial Insurance.
- (e) The Service Provider acknowledges that a Client may be unable to pay an invoice in the absence of a certificate of currency for the insurances required under this clause 26.

27. Security

- (a) In fulfilling its obligations under this Agreement or under any Legal

Services Contract, the Service Provider must:

- (i) comply with such Commonwealth, State or Territory legislation relating to matters of security as are set out in this Agreement or as may be advised by the Lead Agency or the Agency Contract Manager for the relevant Client from time to time; and
- (ii) comply with any specific security requirements specified in a Legal Services Order or as advised by a Client (including its Personnel or subcontractors undergoing any police checks, finger printing checks or other checks) prior to obtaining access to the Client's site, or providing any Services or fulfilling its obligations under a Legal Services Contract, including any security clearance requirements; and
- (iii) inform its Personnel and subcontractors of:
 - (A) the provisions of any relevant legislation relating to secrecy and security advised to it under clause 27(a); and
 - (B) the specific security requirements advised to it under clause 27(a)(ii);

and procure any necessary consent of its personnel or subcontractors.

- (b) If required by a Law Enforcement Client under clause 27(a)(ii), the Service Provider must, before commencing work on any Services:
 - (i) give the Client accurate information about the identity, job history, character and associates of its Personnel and subcontractors; and
 - (ii) a list of any of the Service Provider's Personnel and subcontractors with actual or proposed access to the Agency's sites or Confidential Information; and
 - (iii) not permit a person to commence work on any Services unless the Client has approved the person; and
 - (iv) make such arrangements for complying with security requirements as are appropriate; and
 - (v) obtain written approval from the Client to commence work on the Services.
- (c) A Law Enforcement Client requiring any investigations under clause 27(a)(ii) as it considers appropriate will undertake those investigations at the Law Enforcement Client's expense.
- (d) The Service Provider must notify the Law Enforcement Client promptly if the Service Provider becomes aware of any change in any of the matters under clauses 27(b) or 27(c) that may affect the suitability of the Service Provider's Personnel or subcontractors and must obtain any necessary consent from the relevant Personnel or subcontractor.
- (e) The Service Provider acknowledges that prior to being granted access to documents, Materials or information pursuant to this Agreement or a Legal Services Contract, any of its Personnel or subcontractors may first be required to provide the Service Provider with an acknowledgement that he or she is aware of any applicable legislation or security instructions. Nothing in this clause excuses non-compliance by the Service Provider or its Personnel with any applicable legislation.

28. Confidentiality and privacy

28.1 Service Provider's obligations of confidentiality

- (a) Except as permitted in clause 28.2, the Service Provider must not, and must make sure that its Personnel, agents, sub-contractors and advisers do not:

-
- (i) disclose any Confidential Information without the prior written consent of the Lead Agency or a Client, as applicable; or
 - (ii) use any Confidential Information,
except strictly for the purposes of carrying out the Service Provider's obligations under this Agreement or a Legal Services Contract.
- (b) In giving written consent to the disclosure of Confidential Information, the Lead Agency or the relevant Client may impose such conditions as it thinks fit.

28.2 Exceptions to Service Provider's obligations of confidentiality

The Service Provider may disclose the Confidential Information:

- (a) to its legal advisers, auditors and other advisers who require this information to provide advice to the Service Provider in relation this Agreement or a Legal Services Contract;
- (b) to its associated firms, for the purposes of checking for conflicts of interest;
- (c) to the Service Provider's Personnel or permitted sub-contractors who require this information for the purposes of this Agreement or the relevant Legal Services Contract, provided in each case that if required by the Panel Contract Manager or the Agency Contract Manager of the Client, before such disclosure occurs the Service Provider will obtain an undertaking executed by those persons to maintain the confidentiality of the Confidential Information, in such form as is reasonably required by the Lead Agency or the Client, as applicable;
- (d) subject to clause 28.5, if required to do so by Law, court order, a House of Parliament, or Committee of a House of Parliament; or
- (e) if strictly required in connection with legal proceedings relating to this Agreement, after notifying the Court of the obligations the Service Provider owes to the State or any Client in respect of the Confidential Information and where required by the Panel Contract Manager or the Agency Contract Manager of the Client, the Service Provider using its reasonable endeavours to have the relevant Confidential Information disclosed only on a confidential basis and any proceedings be held in camera (as appropriate).

28.3 Prevention of use or disclosure of Confidential Information

- (a) The Service Provider must take all reasonable precautions to prevent any unauthorised disclosure of Confidential Information, including the following precautions:
 - (i) the Service Provider must at all times ensure that all Confidential Information is protected from unauthorised access or use and from misuse, damage and destruction by any person and must take protective measures, including, but not limited to, administrative, physical and technical safeguards, that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of Confidential Information; and
 - (ii) except with the prior authority of the Lead Agency or the relevant Client, the Service Provider must not store any Confidential Information in any location outside of Australia; and
 - (iii) if Confidential Information is stored in any location outside Australia, as authorised, ensure that access is restricted to those Service Provider personnel with the appropriate authorisations who have a need for such access to enable the Service Provider to provide the Services or otherwise to comply with this

Agreement or the relevant Legal Services Contract.

- (b) The Service Provider must notify as soon as practicable, but no later than 72 hours, the Panel Contract Manager and if applicable the Agency Contract Manager of the relevant Client in writing of:
 - (i) any Eligible Data Breach including:
 - (A) the nature of the Confidential Information; and
 - (B) if known to the Service Provider, the person who has accessed or used the Confidential Information; and
 - (ii) any request from a foreign government or agency for access to Confidential Information (unless such notification is prohibited by law).
- (c) In the event that the Service Provider is aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach, or if the Service Provider receives a threat in relation to an Eligible Data Breach, the Service Provider must:
 - (i) carry out, within seven days, a reasonable and expeditious assessment of whether there are reasonable grounds to believe that the relevant circumstances amount to an Eligible Data Breach; and
 - (ii) provide written notice to the Panel Contract Manager of the outcome of the assessment, and if applicable, comply with the notification requirements of clause 28.3(b).
- (d) The Service Provider must:
 - (i) in the event of any Eligible Data Breach, comply with the directions of the Panel Contract Manager and the Agency Contract Manager of the relevant Client in relation to the measures to be taken, including in relation to:
 - (A) obtaining evidence about how, when and by who the Service Provider's information system and/or the Confidential Information has or may have been compromised, providing it to the Panel Contract Manager and Agency Contract Manager on request, and preserving and protecting that evidence for a period of up to 12 months;
 - (B) implementing any mitigating strategies to reduce the impact of any unauthorised use or dissemination of any Confidential Information or the likelihood or impact of any future similar incident; and
 - (C) preserving and protecting Confidential Information (including, as necessary, reverting to any backup or alternative site or taking other action to recover Confidential Information); and
 - (ii) in the event of a request from a foreign government or agency for access to Confidential Information, attempt to redirect any such foreign government or agency to request the access directly from the Lead Agency or the Client.

28.4 Confidentiality of Client Satisfaction Surveys

- (a) Without limitation to any other provision of this Agreement, the Service Provider acknowledges that any Client Satisfaction Survey conducted under this Agreement in relation to the Service Provider or any Client Satisfaction Survey conducted in relation to any other service provider under the Panel arrangements is Confidential Information.

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- (b) The Service Provider must not use or disclose Confidential Information with respect to any Client Satisfaction Survey other than pursuant to this clause 28.

28.5 Disclosure by Service Provider required by Law

- (a) Subject to the Service Provider first complying with clauses 28.5(b)(iii), 28.5(b)(iv) and 28.5(b)(v), the Service Provider may disclose Confidential Information that is required to be disclosed by Law, court order, a House of Parliament, or a Committee of a House of Parliament, but only to the extent of such requirements.
- (b) In the event that the Service Provider:
 - (i) is required by Law, court order, a House of Parliament, or a Committee of a House of Parliament to disclose all or any part of the Confidential Information; or
 - (ii) anticipates or has cause to anticipate that it may be so required, the Service Provider must as soon as possible (to the extent permitted by law):
 - (iii) notify the Agency Contract Manager of any relevant Client of such actual or anticipated requirements;
 - (iv) cooperate fully with any relevant Client to try to lawfully avoid or limit the scope of that disclosure; and
 - (v) take such steps as that Client reasonably requires to permit that Client to have a reasonable opportunity to oppose or to restrict such disclosure by lawful means.

28.6 Return of information by Service Provider

- (a) All Confidential Information will remain the property of the State or the relevant Client and all copies or other records containing the Confidential Information (or any part of it) must (except to the extent necessary to comply with requirements under law, the reasonable requirements of professional indemnity insurance or retained in automated business continuity procedures) be returned by the Service Provider to the Lead Agency or the relevant Client on request, or upon termination or expiry of this Agreement or the relevant Legal Services Contract.
- (b) Upon the occurrence of any of the events specified in clause 28.6(a), the Service Provider will not make any further use of, exploit or deal with in any way the relevant Confidential Information.
- (c) The Service Provider must not refuse to comply with, or delay in performance of, its obligations under clause 28.6(a) whether on the basis of any alleged lien, set off, proprietary or quasi proprietary right or any other claim or demand against the State or any Client or any other person.

28.7 Service Provider's Personnel, agents, sub-contractors and advisers

The Service Provider must procure that the Service Provider's Personnel, agents, sub-contractors and advisers do not do or omit to do anything that if done or omitted to be done by the Service Provider would be a breach of the Service Provider's obligations under this clause 28.

28.8 Specific confidentiality requirements of any Client

The obligations of the Service Provider under this clause 28 are in addition to any specific requirements of a Client in relation to any Legal Services Contract with respect to confidentiality of Confidential Information. The Service Provider must comply with any other requirements of the Client with respect to

confidentiality of Confidential Information in the provision of the Services under a Legal Services Contract, whether stated in the relevant Legal Services Order or otherwise.

28.9 Injunction for breach of obligations of confidentiality

The Service Provider acknowledges that the State, the Lead Agency or any relevant Client (as the case may be) will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Service Provider of this clause 28 and without the need on the part of the Lead Agency or the relevant Client to prove any special damage.

28.10 Public domain

Confidential Information will not be deemed to be in the public domain merely because it relates to other Information which may be in the public domain.

28.11 Service Provider's consent to disclosure of information

- (a) The Service Provider acknowledges that the Lead Agency or a Client may be required to publish certain information concerning this Agreement, in the case of the Lead Agency, or a Legal Services Contract, in the case of a Client, in accordance with the *Government Information (Public Access) Act 2009* (NSW).
- (b) The Service Provider consents to each relevant Agency publishing or otherwise disclosing or making available all such information as is necessary to comply the requirements of the *Government Information (Public Access) Act 2009* (NSW).
- (c) If the Service Provider reasonably believes that any part of this Agreement or a Legal Services Contract contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Service Provider should immediately notify in writing the Lead Agency, with respect to the Agreement, or the Client, with respect to a Legal Services Contract, identifying the provisions and providing reasons so that the relevant Agency may consider seeking to exempt those provisions from publication.

28.12 Privacy and personal information

Subject to any obligation that the Service Provider has under any applicable privacy laws, other laws and its professional obligations, where the Service Provider has access to personal information as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) in order to fulfil its obligations under this Agreement or a Legal Services Order, the Service Provider must, where collecting personal information on behalf of a Client, comply with the obligations as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) as if it were a Client.

28.13 Rights cumulative

The right of the State and any Client under this clause 28 are in addition to the right of the State and any Client at law or in equity, including under the *Legal Profession Uniform Law* (NSW).

29. Disputes

29.1 Notice of Disputes

If a party believes a dispute has arisen between the parties that party will provide the other party with notice of the general nature of the dispute:

- (a) in relation to the provision of Services or any other matter concerning the

rights and obligations of a Client or the Service Provider under a Legal Services Contract, the relevant Agency Contract Manager and the Service Provider's Relationship Manager; and

- (b) in relation to any other dispute concerning this Agreement, the Panel Contract Manager and the Service Provider's Relationship Manager.

29.2 Negotiation

The parties will use reasonable endeavours to attempt to resolve the dispute. If the dispute has not been resolved within 30 calendar days of the date of receipt of a notice served under clause 29.1, either party may, by written notice, refer the matter to expert determination in accordance with clause 29.3, otherwise either party may commence proceedings in a court of competent jurisdiction in respect of the dispute.

29.3 Expert Determination

If either party gives notice pursuant to clause 29.2, the expert determination is to be carried out as follows:

- (a) **Expert lists:** Within 5 Business Days after the date of the notice under paragraph 29.2, the parties must exchange written lists of proposed experts from whom the expert is to be chosen in order of preference.
- (b) **Selection of Expert:** A person that appears on both lists under clause 29.3(a) will be appointed as the expert to determine the dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 29.2 will be appointed.
- (c) **Nomination of Expert:** If no person appears on both lists, the parties must request the President of the NSW Law Society to nominate a person to act as the expert.
- (d) **Expert Determination Agreement:** The Lead Agency and the Service Provider must enter into an agreement with the expert on such reasonable terms as the expert may require.
- (e) **Reasonable assistance:** The Service Provider and Client will each provide the Expert with copies of all reports and other Materials relevant to the dispute, and all other information required to keep the Expert informed and able to carry out his or her function under this clause 29.3.
- (f) **Determination of the Expert:** The determination of the expert must be given to the parties in writing and will be final and binding upon the parties.
- (g) **Costs:** The parties must bear their own costs in connection with the expert determination proceedings and must pay an equal portion of the cost of the expert.

29.4 Continued Performance

- (a) Despite the existence of a dispute:
 - (i) the Service Provider must continue to provide the Services and perform its obligations under this Agreement and any Legal Services Contract;
 - (ii) each party must otherwise comply with its obligations under this Agreement and any Legal Services Contract, except that a Client will be under no obligation to make any payment in respect of any amounts which are in dispute; and
 - (iii) each party's rights under this Agreement and under any Legal Services Contract, including the rights of the Lead Agency to suspend or terminate the Service Provider's membership of the Panel or any Area of Law under clause 24.1, and of any Client to

terminate any Legal Services Contract will not be affected.

- (b) The State and any Client may make full use of all Contract Materials regardless of any dispute in existence between any Client and the Service Provider over any unpaid amounts owing to the Service Provider or any other matter and the Service Provider waives any lien or similar right which might otherwise be attached to such Contract Materials.

30. Compliance with Law and policies

30.1 Compliance with Law and policies in general

- (a) The Service Provider must, in performing its obligations under this Agreement and under any Legal Services Contract, comply with all Laws affecting or applicable to the provision of Services by the Service Provider.
- (b) The Service Provider is not required to do anything that would breach its professional or ethical obligations to the court or other clients.
- (c) The Service Provider must ensure that at all times throughout the Term and in relation to the provision of Services under a Legal Services Contract it complies with the obligations identified in Schedule 6 and with all other policies or amended policies notified to the Service Provider by the Lead Agency or a Client from time to time under this Agreement.

30.2 Briefing of counsel

- (a) The Service Provider acknowledges that in addition to the obligations under this Agreement in relation to compliance with government policies, the Service Provider agrees that Senior Counsel are only to be briefed by exception with approval of the Agency, and that any briefing of Senior Counsel is to be in accordance with Premier's Memorandum 2018-06 and in accordance with the current Attorney General's rates.
- (b) The Service Provider acknowledges that it is the expectation of the NSW Government that the Service Provider will only brief counsel from chambers which have adopted the [Bar Best Practice Guidelines](#) (which include appropriate sexual harassment and bullying procedures, and grievance procedures).
- (c) The Service Provider acknowledges that it is the expectation of the NSW Government that the Service Provider will only brief counsel who have explicitly committed to the NSW Bar Association's Gender Equitable Briefing policy (whether as individuals or through chambers adopting the policy).

31. Sub-contracting

- (a) Except as expressly provided in this Agreement, the Service Provider must not sub-contract to any third person any of its obligations under this Agreement without the prior written consent of the Client, which consent may be given or withheld by the Client in the Client's absolute discretion.
- (b) Except as expressly provided in this Agreement and any Legal Services Contract, the Service Provider must not sub-contract to any third person any of its obligations under that Legal Services Contract without the prior written consent of the Agency Contract Manager for the relevant Client, which consent may be given or withheld by the Agency Contract Manager in the Agency Contract Manager's absolute discretion (including as to any liability requirements).

32. Access and safety

32.1 Access to premises

If the Service Provider requires access to the premises of a Client in connection with the provision of the Services, that Client will, subject to its usual security requirements, permit the Service Provider reasonable access to the premises at such times as may be reasonably necessary to enable the Service Provider to provide the Services.

32.2 Obligations

When the Service Provider enters the premises of a Client, the Service Provider must and must ensure that its Personnel, agents and contractors use all reasonable endeavours to protect people and property; prevent nuisance and unnecessary noise and disturbance; and act in a safe and lawful manner and comply with the safety standards and policies of the Client (as notified to the Service Provider).

32.3 No occupier's liability

- (a) A Client and its officers, employees, agents and invitees will not be responsible for any damage done to the Service Provider's property or to that of any of the Service Provider's Personnel, agents or sub-contractors or for any personal injury sustained by any of the Service Provider's Personnel, agents or sub-contractors occurring on the Client's premises as a result of:
 - (i) the negligence or recklessness of such Personnel, agent or sub-contractors; or
 - (ii) if such Personnel, agent or sub-contractor has failed to comply with the occupational health and safety and security policies of the Client (as notified to the Service Provider).
- (b) In respect of cl 32.3(a) the Service Provider unconditionally and irrevocably releases each Client and its employees, agents and invitees from all such responsibility and agrees to indemnify each Client, its officers, employees, agents and invitees (**Indemnified Party**) against any loss that the Indemnified Party may suffer as a result of any third party bringing an action against that Indemnified Party in relation to any such circumstances, except to the extent that such circumstances were caused directly as a result of the Indemnified Party's negligence.

33. GST

33.1 Definitions

Terms used in this clause have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

33.2 Consideration is exclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

33.3 Recipient to pay an additional amount

If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in

accordance with this Agreement.

33.4 Reimbursement

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (reimbursable expense) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.

34. Staff Costs

- (a) The Service Provider will indemnify and keep indemnified each Client from all liability for the Staff Costs in any way relating to the Services.
- (b) If a Client is or becomes liable to pay any Staff Costs, that Client may deduct the amount of its liability for the Staff Costs from any amount due by the Client to the Service Provider, whether under this Agreement or otherwise.

35. Indemnity and limitation of liability

35.1 Indemnity

The Service Provider is liable for, and indemnifies a Client to whom it has provided Services against, all Liability arising out of or in connection with the breach of this Agreement and any Legal Services Contract by the Service Provider or its Personnel or the negligence or default of the Service Provider or its Personnel in relation to the delivery of the Services.

35.2 Exceptions to Indemnity

The liability and indemnity in clause 35.1 will not apply to the extent that such Liability:

- (a) is incurred as a result of the negligent act, omission or default of an Agency; or
- (b) includes:
 - (i) any cost, expense, loss or damage of an indirect or consequential nature;
 - (ii) any loss of profits, loss of goodwill, loss of revenue or loss of use of property; or
 - (iii) any loss arising from business interruption; or
- (c) exceeds the Liability of the Service Provider in contract or tort at general law.

35.3 Limitation of liability by contract

- (a) The aggregate liability of the Service Provider for all loss or damage sustained by the Agency from events arising out of or related to this Agreement (whether under statute, in contract or in tort, including for negligence, or otherwise) is limited to the Liability Cap. The Liability Cap is the amount set out in item 8 of Schedule 1.

35.4 Exceptions to Limited Liability

Nothing in clause 35.3 excludes or limits the Service Provider's liability:

- (a) in respect of:
 - (i) death or personal injury; or
 - (ii) any liability that cannot by law be limited or excluded.

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- (b) to the extent that the Service Provider is entitled to recover that liability from any other third party (including any subcontractor of the Service Provider), or would have been entitled to recover that liability but for any act or omission of the Service Provider or the application of clause 35.3.
 - (c) in relation to loss or damage in respect of which the Service Provider is, under this Agreement, required to obtain insurance, provided that any liability of the Service Provider to the Agency for such loss or damage will not exceed the higher of:
 - (i) the Liability Cap; and
 - (ii) the amount of insurance cover the Service Provider is required by this Agreement to carry in respect of such liability.

35.5 No Claims Against Service Provider's Employees

A Client must not make (and must ensure that any related third party does not make) any claim or commence or pursue any proceedings against any of the Service Provider's employees in respect of the Services.

35.6 General

- (a) Each indemnity under this Agreement is a continuing obligation, separate and independent from the other obligations of the party giving the indemnity and survives termination or expiry of this Agreement and any Legal Services Contract.
- (b) It is not necessary for a party to incur any expense or to make any payment before enforcing a right of indemnity confirmed by this Agreement.
- (c) If any indemnity payment is made by the Service Provider under this Agreement or any Legal Services Contract, the Service Provider must also pay to the Indemnified Party an additional amount equal to any GST which is payable by the Indemnified Party in respect of that indemnity payment.
- (d) The parties agree that each indemnity in this Agreement, to the extent to which it benefits an Indemnified Party as stated in that indemnity is held by the State or a Client, as applicable, for itself and on trust for each Indemnified Party and can be enforced by the State or the Client on behalf of itself and each Indemnified Party.

36. Notices

36.1 Giving a communication

A Legal Services Order, notice, demand, certification, process or other communication relating to this Agreement will (in addition to any other method permitted by law) be sent by email to the applicable recipient as follows:

- (a) to the Lead Agency: to the email address which is set out in Item 8 of Schedule 1 (or, where the notice or document is in relation to a Legal Services Contract, to the email address nominated in the relevant Legal Services Order);
- (b) to a Client: to the Agency Contract Manager to the email address which is nominated in the Service Level Agreement; and
- (c) to the Service Provider: to the email address which is set out in Item 8 of Schedule 1.

The Lead Agency, a Client or the Service Provider may change its email address for service under this clause 36.1 by written notice to the other parties from time to time.

36.2 Time of delivery

Unless an email bounce back or out of office message is received, a notice or document shall be taken to be delivered or served in accordance with the provisions of the Electronic Transactions Act 1999 (Cth) as if they applied to such notices.

36.3 After hours communications

If any notice or document is sent:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

37. General

37.1 Legal costs

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

37.2 Amendment

- (a) This Agreement may only be varied or replaced by a document executed by the Lead Agency and the Service Provider.
- (b) A Legal Services Contract may only be varied or replaced by a document executed by the relevant Client and the Service Provider.

37.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this Agreement or a Legal Services Contract does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right by the first party.

37.4 Severability

Any provision of this Agreement or a Legal Services Contract which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision shall, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

37.5 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

37.6 Set off

The State or a Client may set off against any sum owing to the Service Provider under this Agreement or any Legal Services Contract any amount then owing by the Service Provider to the State or that Client.

37.7 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in NSW.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of NSW and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

37.8 Assignment by the Service Provider

The Service Provider must not assign, novate or transfer or otherwise dispose of any of its rights, title or interest in or under this Agreement or any Legal Services Contract without the prior written consent of the State, or the Client, as applicable, which consent may be given, given on conditions or withheld in the State's or the Client's discretion.

37.9 Assignment by the State parties

The State and any Client may assign, novate, transfer or otherwise dispose of any of its rights, title or interest in or under this Agreement and any Legal Services Contract, as applicable, to any other Agency where required in the event of any State government restructure or other re-organisation.

The Service Provider will execute such documents and do such things as and when reasonably requested by the State to do so in order to enable or facilitate such assignment, novation or transfer or other disposal in accordance with this clause 37.9.

37.10 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

37.11 Entire understanding

- (a) This Agreement, including all Schedules and Annexures, together with the Tender Documentation, contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) Each Legal Services Contract formed pursuant to this Agreement contains the entire understanding between the parties as to the subject matter of that Legal Services Contract.
- (c) Except as otherwise provided in clause 37.11(a) or 37.11(b) (as the case requires):
 - (i) all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement or Legal Services Contract (as the case requires) are merged in and superseded by this Agreement or Legal Services Contract (as the case requires) and are of no effect; and
 - (ii) no oral explanation or information provided by any party to another:
 - (A) affects the meaning or interpretation of this Agreement or Legal Services Contract (as the case requires); or
 - (B) constitutes any collateral agreement, warranty or understanding between any of the parties.

37.12 Relationship of parties

- (a) Neither this Agreement nor any Legal Services Contract is intended to

create a partnership, joint venture, agency or employment relationship between the parties.

- (b) In providing the Services, the Service Provider acts as the Client's independent contractor and does not have any authority to act as the Client's agent or on its behalf, unless the Client expressly authorises the Service Provider to do so in writing.
- (c) In particular, without limitation, the Service Provider has no authority to enter into contracts, make representations or incur liabilities on behalf of the State or a Client.
- (d) The Service Provider must not purport to make any representation on behalf of the State or a Client except with the express written instructions of the State or that Client.
- (e) The Service Provider acknowledges that its engagement to carry out the Services does not entitle it to any employee benefits or entitlements other than as expressly set out in this Agreement.

37.13 Survivorship

- (a) Without limitation to any other provisions of this Agreement, any indemnity, warranty or representation given or made under this Agreement survives the termination or expiry of this Agreement.
- (b) In addition to any clause that expressly states that it survives, or that any rights or obligations of a party will survive termination or expiry of this Agreement, the following clauses of this Agreement survive the termination or expiry of this Agreement: clauses 1 [Definitions and Interpretation], 14.3 [Reports and information to be provided by Service Provider], 18 [Access to records], 19 [Intellectual Property Rights], 21 [Warranties], 24.4 [Consequences of termination or expiry], 25 [Transition], 26 [Insurance], 27 [Security], 28 [Confidentiality and privacy], 34 [Staff Costs], 35 [Indemnity and limitation of liability] and 37 [General].

Schedule 1 – Contract Details

1. Appointment to the Panel (clause 1.4)

Service Provider: [Variable A]
ACN/ABN: [Variable B]
Address: [Variable C]

The Service Provider is appointed to provide legal services in the following Areas of Law:

Sub-panel	Areas of law
[Variable D]	<ul style="list-style-type: none">• [Insert]• [Insert]
[Insert]	<ul style="list-style-type: none">• [Insert]• [Insert]
[Insert]	<ul style="list-style-type: none">• [Insert]• [Insert]

2. Term (clause 2)

Commencement Date: 1 July 2021
Expiry Date: 30 June 2024
Further terms: Three years + three years

3. Executive Contract Manager, Lead Agency's Panel Contract Manager and Relationship Manager (clause 14.1)

Executive Contract Manager

Name: Sally Webb
Title: Group General Counsel

Telephone/Mobile:
Email: Sally.webb@transport.nsw.gov.au

Lead Agency's Panel Contract Manager

Name: **Melissa Sloane**
Title: Principal Manager, Legal Practice

Telephone/Mobile:
Email: melissa.sloane@transport.nsw.gov.au

Service Provider's Relationship Manager

Name: **[Variable E]**
Title:

Telephone/Mobile:
Email:

Service Provider's Relationship Manager's Alternate

Name: **[Variable F]**
Title:

Telephone/Mobile:
Email:

4. Price review (clause 16)

4.1 CPI Adjustment

The Service Provider's Rates will be increased in accordance with the following formula on 1 July 2024 if Lead Agency exercises its option to extend and 1 July 2027 if the Lead Agency further exercises its option to extend:

$$\frac{IA \times \textit{latest CPI number}}{\textit{earlier CPI number}}$$

where:

IA is the amount of the Rates.

latest CPI number is the CPI number for the quarter ending on 31 March in the preceding Contract Year (**Year 1**); and

earlier CPI number is the CPI number for the quarter ending on 31 March three years prior to Year 1.

The adjustment provided in this item 4 will only be made where the latest CPI number is greater than the earlier CPI number

The Lead Agency will advise the Service Providers in writing of any increased Rates prior to 30 June of the relevant Contract Year.

4.2 Application of Adjustment

The CPI adjustment in this item 4 will take effect from 1 July following the

calculation of the CPI adjustment pursuant to this item 4, except that unless agreed in writing between a Client and the Service Provider, no increase in Rates will apply:

- (a) to any Services provided prior to the relevant 1 July; or
- (b) to vary any amount fixed or capped with respect to any Services under a Legal Services Contract.

5. Invoicing (clause 10.1)

5.1 Invoice requirements

Invoices must contain the information necessary to be a tax invoice for the purposes of the *A New Tax System (Services and Services Tax) Act 1999* (Cth) in addition to the following:

Invoice requirements include:

- the Service Provider's name
- the Service Provider's ABN
- the Client's ABN
- the date of issue of the tax invoice
- purchase Order number
- agency reference number
- matter name
- Legal Services Fees claimed, including details of Rates, lawyer, hours and expenses including detailed descriptions of the items to which they relate
- detailed descriptions of all disbursements claimed (including Counsel's fees) and records to substantiate them
- summary table containing a breakdown of professional fees, disbursements (exc. counsel fees), counsel fees, volume discount amount and total
- volume discount amount included as a separate line on the invoice (not embedded in the hourly rates)
- the total amount payable (including GST)
- the GST amount shown separately
- the total amount billed to date for the matter, including as a percentage to the most recent estimate
- the initial approved estimate for the matter
- the most recent approved estimate for the matter
- any other information as may reasonably be required by the Client or the Lead Agency.

If a Client elects to utilise electronic billing software, and the Service Provider has advised that it is able to issue invoices which are compatible with that software, the Service Provider will, if requested, ensure it provides invoices in a format which is compatible with the software of the Client.

5.2 Invoice Dispatch

All invoices must be sent electronically to the person(s) specified in the relevant Legal Services Order.

6. Payment (clause 10.2)

Payment for Services is to be made in accordance with the method specified in relevant Legal Services Order.

7. Insurance (clause 26.1(a))

Type of cover	Minimum indemnity limits (AUD)
Professional indemnity insurance	<p><i>Medium to large firms:</i> Professional indemnity insurance (approved under the Legal Profession Uniform Law (NSW) if the Service Provider is a law firm) of no less than \$10M (AUD) for any one claim with deductibles of no more than \$500k</p> <p><i>Small firms:</i> Professional indemnity insurance (approved under the Legal Profession Uniform Law (NSW) if the Service Provider is a law firm) of no less than \$2M (AUD) for each and every claim</p>
Workers compensation insurance	As required under the workers compensation legislation.
Public liability insurance	\$10 million per claim or any occurrence giving rise to a claim in any 12 month policy period

8. Limitation of liability (clause 35.3(a))

The liability cap is:

- (a) the limit of liability under the Solicitor Scheme under the Professional Standards Act 1994 (NSW) where that scheme applies; or
- (b) otherwise:
 - (i) in respect of Services provided under Sub-Panel 1 *Construction* specified in Schedule 2, \$50 million; or
 - (ii) in respect of any other Sub-Panel specified in Schedule 2, \$30 million; or
 - (iii) for a Small Firm, \$10 million.

9. Notice particulars (clause 36)

Lead Agency

Addressee: Panel Contract Manager
Legal Services
Transport for NSW

Email: Legal_Reporting@transport.nsw.gov.au

Service Provider

Addressee: [Variable C]
Address: [Variable E]
Email: [Variable E]

10. Value added services (clause 14.4)

Small Firms	<ul style="list-style-type: none">• An advice hot-desk for small ad-hoc requests.• Provision of newsletters or updates on legal reform for staff.
Mid-Sized Firms	<ul style="list-style-type: none">• An advice hot-desk for small ad-hoc requests.• Provision of newsletters or updates on legal reform for staff.• Provision of precedent documents for a small or fixed fee.• Use of or access to the Panel Firm's library or research facilities by staff.• Secondments of the Panel Firm's staff (at the discounted rate of cost plus on cost plus 10% margin) to Agencies, to cover extended absences of Agency staff or to address capacity issues.• CPD seminars or other professional development seminars/workshops provided by the firm, either specific to the Agency, or that Agency staff may attend (including in regional/rural areas of the State where relevant).
Large Firms	<ul style="list-style-type: none">• An advice hot-desk for small ad-hoc requests.• Provision of newsletters or updates on legal reform for staff• Provision of precedent documents for a small or fixed fee.• Use of or access to the Panel Firm's library or research facilities by staff.• Secondments of the Panel Firm's staff (at the discounted rate of cost plus on cost plus 10% margin) to Agencies, to cover extended absences of Agency staff or to address capacity issues.• CPD seminars or other professional development seminars/workshops provided by the firm, either specific to the Agency, or that Agency staff may attend (including in regional/rural areas of the State where relevant);• Reverse secondments (where members of an Agency's staff are seconded to the Panel Firm for short periods, for professional development purposes.

Schedule 2 – Sub-Panels and Areas of Law

Sub Panel	Area of Law (a)	Area of Law (b)	Area of Law (c)	Area of Law (d)	Area of Law (e)	Area of Law (f)	Area of Law (g)	Area of Law (h)
1 Construction	Construction	Major Infrastructure Projects	PPP's and associated transactions	Construction Related Dispute Resolution and Arbitration		-	-	-
2 Commercial Law	Commercial and contractual matters	Financial Services	Intellectual property	Information Technology	Competition	Taxation		
3 Planning, Property and Environment	Complex property advice, transactions and accreditation	Routine Property advice and transactions	Planning, environmental, heritage and natural resources	Statutory land acquisition	Crown Land and Local Government			-
4 Employment, Work Health and Safety	Employment and industrial relations	Visiting Practitioner Contract and Appointment D&A	NSW Police Specific Matters	Work health and safety	Discrimination		-	-
5 Government Regulatory and Administrative Law	Administrative law, statutory interpretation & governance advice	Statutory applications	Enforcement, Regulation and Prosecution		-	-	-	-
6 Litigation and Inquiries	Liability Litigation	General Litigation, Dispute Resolution and Debt Recovery	Inquiries		-	-	-	-
7 Legal Support Services	Document Discovery	Document Production Services	Automation Services	Digital Forensics	Process Serving	-	-	-

Schedule 3 – Core Legal Work – Services reserved to the Crown Solicitor

Premier's Memorandum 2018-06 requires agencies to refer certain legal matters, known as core legal work, to the Crown Solicitor. In limited circumstances, the Crown Solicitor may engage a Legal Services Provider to undertake this work.

Core Legal Work comprises legal matters which, because of their complexity, sensitivity or the need to be handled or managed centrally on behalf of the Government, must be referred to the Crown Solicitor's Office. In particular, legal matters of this nature include those which:

- (a) have implications for Government beyond an individual Minister's portfolio;
- (b) involve the constitutional powers and privileges of the State and/or the Commonwealth;
- (c) raise issues which are fundamental to the responsibilities of Government; or
- (d) arise from, or relate to, matters falling within the Attorney General's areas of responsibility.

Schedule 4 – Fee Schedule

1. Rates

- (a) Unless a Client and Service Provider agree to a price for any Services which is not based on hourly rates, the rates set out in the rates matrix (as adjusted under this agreement) will be the maximum rates that may be charged.
- (b) The Service Provider must not charge for any items listed in paragraph 3 below.
- (c) As an alternative to charging on the basis of the Rates, the Service Provider may agree with a Client to charge on an alternative basis, which may include:
 - (i) a price based on the agreed value of the Services to the Client; or
 - (ii) a fixed fee agreement for a particular type of Services for a defined period.

2. Disbursements

- (a) Clients will reimburse Service Providers for reasonable third party disbursements at cost, such as court fees, and lodgement fees.
- (b) The following principles apply to reimbursement of other third party disbursements (including Counsel's fees, airfares and accommodation):
 - (i) prior approval in writing of a category of expenses expected to be incurred on a matter is required from the Client;
 - (ii) for internal audit purposes, the Service Provider must provide appropriate evidence of the expenses claimed and the relationship the expense bears to the services provided;
 - (iii) prior approval is required where the expense is likely to be in excess of \$500; and
 - (iv) no service charge or administration charge is to be applied to any expenses, disbursements, or Counsel fees.

3. Non-chargeable items

Clients will not pay for:

- (a) Preparation of any fee estimate contemplated in clause 9.3 above.
- (b) Taxi travel, hire car travel, or other ride-sharing services charges.
- (c) Preparation of a detailed legal services delivery program for a highly complex matter.
- (d) Internal conferencing between lawyers unless pre-agreed by a Client.
- (e) Time spent travelling within the Sydney Metropolitan area for Panel Firms based in Sydney.
- (f) Time spent travelling to and from Sydney for Panel Firms located outside of the Sydney Metropolitan area.
- (g) Internal photocopying and printing of documents. Clients will reimburse for bulk printing or bulk photocopying at the rates charged to the Panel Firms by external providers, without mark up, and with the prior approval of the Client.
- (h) Meetings between a Client and/or the Lead Agency and the Panel Firm related to relationship management, performance review or information exchange.
- (i) Telephone charges, fax charges and postage.
- (j) Research undertaken by junior lawyers / paralegals at the request of

another lawyer in the Panel Law Firm unless the output of that research is shared with the Client.

- (k) Costs, or other administrative charges, associated with a Panel Firm complying with the reporting or administrative requirements of TfNSW or a Client.
- (l) Annual Audit Certificate.
- (m) Additional matter the Service Provider stated in its response to the Request for Proposal that it would not charge for.

4. Rates matrix

The tables on the following pages set out by Sub-Panel the maximum rates that may be charged.

[Rates Matrix to be inserted]

Schedule 5 – Compliance with Government Policies

1. Codes of conduct and ethics

- (a) Statement of business ethics – Finance, Services and Innovation

<https://www.finance.nsw.gov.au/about-us/business-ethics>

- (b) Agency code of conduct and ethics

A Client's code of conduct and ethics as in effect from time to time and displayed on the Client's website.

2. NSW Government Policies

In providing the Legal Services, the Panel Firm must, at its own cost, comply with relevant Government policies, procedures and guidelines and be aware of and ensure that consideration is given to the Agencies' obligations to comply with Government policies including the following:

- (a) NSW Government Code of Practice for Procurement

<https://www.procurepoint.nsw.gov.au/policies/nsw-government-procurement-information>

- (b) Attorney General's rates for Legal Representation as at 1 August 2019

<https://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/attorney-generals-rates-for-legal-representation.aspx>

- (c) Premier's Circular 2018-06 Briefing of Senior Counsel

<https://arp.nsw.gov.au/c2018-06-briefing-senior-counsel>

- (d) Premier's Memorandum 97-26 relating to Litigation Involving Government Agencies

<http://arp.nsw.gov.au/m1997-26-litigation-involving-government-authorities>

- (e) Alternative Dispute Resolution

<https://courts.nsw.gov.au/courts-and-tribunals/alternative-dispute-resolution/alternative-dispute-resolution-directorate.html>

- (f) Premier's Memorandum 2016-03 Model Litigant Policy for Civil Litigation and Guiding Principles for Civil Claims for Child Abuse

<http://arp.nsw.gov.au/m2016-03-model-litigant-policy-civil-litigation-and-guiding-principles-civil-claims-child-abuse>

- (g) Equitable Briefing Policy for Women Barristers

<https://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/eq-briefing-policy.aspx>

- (h) Premier's Memorandum No 2016-04NSW Government Core Legal Work Guidelines

<https://arp.nsw.gov.au/m2016-04-nsw-government-core-legal-work-guidelines>

- (i) NSW Government Cloud Policy

<https://www.digital.nsw.gov.au/policy/cloud-strategy-and-policy/cloud-policy>

- (j) Aboriginal Procurement Policy

<https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>

- (k) Small and Medium Enterprise and Regional Procurement Policy

<https://buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy>

- (l) Supporting Australian Disability Enterprises
<https://buy.nsw.gov.au/buyer-guidance/source/select-suppliers/australian-disability-enterprises>
- (m) Sustainability Considerations
<https://www.environment.nsw.gov.au/topics/sustainable-business-and-government/sustainability-in-government-agencies/government-resource-efficiency-policy>
- (n) NSW Government Digital Information Security policy
<https://www.digital.nsw.gov.au/policy/managing-data-information>

Signing Page

EXECUTED by the parties as a Deed.

SIGNED SEALED AND DELIVERED by [name] as delegate of
Transport for New South Wales
on [DATE]
in the presence of:

Witness

Delegate

Name printed

Name printed

A. Where the Service Provider is a corporation:

SIGNED SEALED AND DELIVERED by the SERVICE PROVIDER
on [DATE]
in accordance with section 127 of the Corporations Act

Secretary (or additional Director)

Director

Name printed

Name printed

B. Where the Service Provider is a sole trader:

SIGNED SEALED AND DELIVERED by the SERVICE PROVIDER
on [DATE]
in the presence of:

Witness

Contractor

Name printed

Name printed

C. Where the Service Provider is a Partnership:

SIGNED SEALED AND DELIVERED by the SERVICE PROVIDER

on [DATE]

by its authorised representative:

Witness

Representative

Name printed

Name printed

D. Where the Service Provider is a "sole director" corporation:

SIGNED SEALED AND DELIVERED by the SERVICE PROVIDER

on [DATE]

in accordance with section 127 of the Corporations Act

Witness

Sole Director and
Company Secretary

Name printed

Name printed

I am the sole Director and Company Secretary of the Service Provider and I occupy both offices.

Annexure A – requirements for Legal Services Order

NSW Government Legal Services Panel

[Agency Name] LEGAL SERVICES ORDER

Where you have provided an estimate of fees and disbursements, this has been included below. If you have not yet provided an estimate, please do so and proceed with the work once we have confirmed it is acceptable.

Legal Services Order Client Ref No:	
Service Provider Name:	
Client:	
NSW Government Cluster Name:	

1. SERVICES	
Matter name	
Scope of engagement	
Delivery timeframe	
Sub-Panel	
Area of Law	
Expense Type (mandatory field)	OPEX <input type="checkbox"/> CAPEX <input type="checkbox"/>
Advice <input type="checkbox"/> Transaction <input type="checkbox"/> Litigation <input type="checkbox"/>	
2. FEES	
Fixed fee/price	
Fee estimate	
Specific expenses and disbursements authorised by TfNSW (under clause 9.3 of the Panel Deed)	
Cap on expenses and disbursements	
3. SPECIAL TERMS	
Special Terms (if any)	
4. CLIENT'S REPRESENTATIVE	
Client's Representative	Internal Lawyer: Email: [NAME]@[agency].nsw.gov.au Mobile: [NUMBER]
5. INVOICING REQUIREMENTS	
<u>[Invoicing Requirements]</u>	
If costs will exceed initial estimate, please send revised estimate before exceeding to ensure prompt payment	

6. PANEL DEED CONDITIONS APPLY

Except as expressly provided above, any Legal Services Contract between the parties concerning this matter are governed by the terms and conditions of the Panel Deed, including the Rates specified in the Fee Schedule.

ACKNOWLEDGEMENT

The Service Provider has no actual, potential, perceived or apparent conflict of interest as defined in the Panel Deed, except as disclosed to the Client, in providing the services requested.

Signed on behalf of the Service Provider by:

Signature

Name

Date:

Please return the Legal Services Order to the Client's representative

