



Education &
Communities

Mail Services Contract

Between

The State of New South Wales by its
Department of Education ABN 40 300 173 822

and

Australian Postal Corporation trading as Australia Post
ABN 28 864 970 579



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Dated 1st day of March 2018

between:

The State of New South Wales by its Department of Education
ABN 40 300 173 822 of 35 Bridge Street, Sydney NSW 2000
(**Department**)

and

Australian Postal Corporation trading as **Australia Post** ABN 28 864 970 579 of 111
Bourke Street Melbourne, Victoria, 3000
(**Contractor**)

Recitals

- A. The Department wishes to acquire the Services from the Contractor.
- B. The Contractor has agreed with the Department to provide the Services in accordance with the terms set out in this Agreement.

General terms

1. Definitions and interpretation

- 1.1. In this Agreement, except where the contrary intention is expressed, these words have the following meaning:

Agreement means this document and includes the schedules and annexures.

Agreement Details means the details specified at Schedule 1 (**Agreement Details**).

Australia Post Authorised Holiday means the single annual authorised holiday as determined by the Contractor.

Business Day means a day that is not a Saturday, Sunday or any other day which is a gazetted public holiday in the place where an act is to be performed or a payment is to be made, or the Australia Post Authorised Holiday.

Commencement Date has the meaning given to it by item 1.1 Schedule 1 of the Agreement Details.

Confidential Information means all information disclosed by a party to the other party that is by its nature confidential, that the other party knows or ought to know is confidential. In relation to the Department, it also includes any

materials (such as reports) developed arising from or in relation to the provision of the Services. It does not include information which:

1. is lawfully in the public domain prior to its disclosure to a party by another person;
2. enters the public domain otherwise than as a result of an unauthorised disclosure;
3. is or becomes available to the receiving party from a third person lawfully in possession of it who has the lawful power to disclose the information to the receiving party on a non-confidential basis; or
4. was known by the receiving party before disclosure to it.

Contract Materials means any materials brought into existence as part of, or for the purpose of providing the Services including records, documents and information stored by any means.

Contract Manager means the Department's Level 1 Contact Person specified in item 1.13 of the Agreement Details.

Department Data means all data and information relating to the operations, facilities, customers, students, teachers, clients, Personnel, assets and programs of the Department in whatever form that information can exist and whether collected, entered into, stored in, generated by or processed as part of the provision of the Services.

Eligible Customers means a Government Department, an Agency or an Eligible non-Government Body if defined in Schedule 3, which requires a Service

Extended Term has the meaning given to it by item 1.3 Schedule 1 of the Agreement Details.

Force Majeure Event means any event beyond the reasonable control or contemplation of the parties including an act of God, fire, flood, or earthquake, national emergency (including terrorist acts) or war.

Initial Term has the meaning given to it by item 1.2 Schedule 1 of the Agreement Details.

Insolvent means any of the following in relation to the Contractor:

1. the Contractor becoming unable to pay its debts as and when they fall due;
2. the Contractor is taken to have failed to comply with a statutory demand;
3. an application for winding up is made regarding the Contractor and not stayed, withdrawn or dismissed within 14 days;
4. a winding up order is made against the Contractor;
5. a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed to the Contractor;

6. a mortgagee enters into the possession of any property of the Contractor;
7. it is subject to any arrangement, assignment, moratorium or composition, protection from creditors under any statute or dissolved, other than to carry out a reconstruction while solvent, subject to any approvals required under this Agreement;
8. notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
9. any actions of a substantially similar effect are taken in any jurisdiction.

Intellectual Property means all patents, copyright, moral rights, registered designs, registered and unregistered trademarks, trade secrets, know-how and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

Laws means the provisions of any statute, rule, regulation, proclamation, ordinance, by-law, present or future, whether local, state, federal, and includes generally accepted industry codes and standards.

Licenses and Consents means any licenses, consents, authorisations, recognitions, qualifications, approvals and permits required by applicable Laws and Regulatory Requirements to provide the Services and to perform obligations under this Agreement.

Order means a request for the provision of Services which satisfies the requirements for such a request set out under clause 4.

Performance Criteria means any minimum level for providing the Services that the Contractor is required to meet or exceed, as set out in Schedule 4 (Performance Criteria and Reporting Requirements).

Personnel of a person includes that person's employee, agent, officer, or contractor.

Price means the price payable for a specific Service as set out in Schedule 2 (Services and Prices).

Regulatory Requirements means:

1. any industry-wide non-statutory rule or obligation;
2. other non-statutory rules or a non-statutory mandatory code of conduct; or
3. any non-statutory rule of any industry body.

Related Body Corporate has the meaning given in section 9 of the *Corporations Act 2001*.

School Day means a day which is a Business Day and not a day that falls outside of the NSW Government Schools Term Dates on the NSW Board of Studies website <http://www.boardofstudies.nsw.edu.au/events/vacations.html>

Services means the Services described in Schedule 2 to be provided under this Agreement.

Site means the location where the Services are to be provided.

Specifications means:

1. any requirements set out in an Order in respect of the Services under that Order;
2. any requirements agreed to by the Department and the Contractor under and in accordance with the terms of this Agreement, including any specifications set out in Schedule 9 (Agreement Documents) and Schedule 2 (Services and Prices);
3. any specifications generally published or made publicly available by the Contractor which specifically relates to the Services; and
4. the specifications contained in all technical and user documentation relating to the Services; and,

to the extent of any inconsistency between the Specifications referred to in 1, 2, 3 and 4 directly above, the order of priority will be 1,2, 3, then 4.

Term means the Initial Term and any Extended Term, unless ended earlier according to this Agreement.

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

1. a reference to:
 - (i) the singular includes the plural and the plural includes the singular;
 - (ii) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Agreement;
 - (iii) a document (including this Agreement) includes any variation or replacement of it;
 - (iv) a statute, ordinance, code or other law includes a regulation or other statutory instrument made or issued under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (v) a person includes a partnership, body corporate, unincorporated association or an authority;
 - (vi) a party includes the party's executors, administrators, successors and permitted assigns;
 - (vii) dollars, Australian dollars, A\$ or \$ is a reference to the currency of Australia; and
 - (viii) time is a reference to Sydney time;

2. if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
3. if an act must be done on a given day which is not a Business Day, it must be done instead on the next Business Day;
4. the words include, including, for example or such as when introducing an example, do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind;
5. where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
6. headings and any index are for convenience only and do not form part of this Agreement or affect its interpretation;
7. a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement; and
8. unless the intention of the parties is clear and unless expressly provided otherwise, in the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of this Agreement, the order of priority in the interpretation of such term or terms will be in the order of:
 - (i) Schedule 3 (Special Terms);
 - (ii) Agreement Details;
 - (iii) the terms and conditions of this Agreement;
 - (iv) all other schedules to this Agreement;
 - (v) the Order.
9. if a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly. An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
10. a party which is a trustee is bound both personally and in its capacity as a trustee.

2. **Term**

- 2.1. This Agreement commences on the Commencement Date and continues for the Initial Term, unless terminated earlier in accordance with this Agreement.
- 2.2. The Department can extend this Agreement for the additional period or periods specified in the Agreement Details, by giving the Contractor at least 60 days' notice before expiry of the Initial Term or the then current Extended Term, as relevant.
- 2.3. If the Agreement is not formally extended or terminated, it will continue on a month to month basis whereby a 30 day notice to terminate is required.

3. **Non-Exclusivity**

- 3.1. This is a non-exclusive Agreement and the Department can acquire the Services or any part of the Services from a third party at any time.
- 3.2. The Contractor acknowledges that the Department is not obligated or required to, and has not represented and does not represent that it will, order any particular or minimum quantity of Services, or any Services at all, from the Contractor.

4. **Orders**

- 4.1. The Contractor will provide the Services as the Department may from time to time require in writing according to an order made in accordance with this clause 4 and this Agreement (**Order**).
- 4.2. The Contractor must not provide any Services unless the Department places an Order for those Services. An Order can be made using an agreed form and submitted to the Contractor by:
 - 1. in accordance with the Department's and/or the Contractor's electronic ordering system;;
 - 2. fax, email or by hand or
 - 3. any other method agreed by the Department which is in keeping with the NSW Government's financial and audit policies.
- 4.3. Unless agreed otherwise by the parties an Order must provide the following details:
 - 1. a purchase order number;
 - 2. a description of the Services;
 - 3. the fees for the Services;
 - 4. this Agreement reference number;
 - 5. the delivery times (which will be between the hours set out in item 1.11 Schedule 1 of the Agreement Details unless otherwise advised by the Department's Level 1 Contact Person);
 - 6. the Site and specific place on that Site (which will be at the administration block of the site unless otherwise advised by the Department's Level 1 Contact Person);
 - 7. address to which the Contractor's invoice is to be sent for payment if consolidated invoicing does not apply (refer to Agreement Details); and
 - 8. any agreed additional requirements.
- 4.4. If the Order is issued in incomplete form or not according to an approved process, the Contractor must obtain from the officer placing the Order the missing details and process required under clause 4.3, before the Contractor supplies the Services under that Order. Until the missing details and process are provided, the parties agree that the Order does not form a contract.

- 4.5. The Contractor must during the Term, accept and fulfil all Orders placed by the Department that are placed in accordance with this Agreement.
- 4.6. Subject to clause 4.4, the Contractor agrees that each time the Department places an Order for Services a separate contract is formed. The terms and conditions of such a contract are those appearing in:
 1. this Agreement, except for clauses 2, 3 and 4, provided that “Agreement” wherever appearing in this Agreement will be read as “Order”; and
 2. the Order.
- 4.7. The Contractor must not accept orders from the Department for any services that are not Services without the approval of the Department’s Level 2 Contact Person as set out in the Agreement Details, which may be given on conditions.

5. **Delivery**

- 5.1. The Contractor must provide the Services for the Sites specified in the Order.
- 5.2. The Department may add additional Sites, or remove any Sites, from this Agreement or any Order by providing the Contractor’s Level 1 Contact Person with at least 5 Business Days’ notice of the change to the Sites.
- 5.3. The Contractor will, as soon as practicable, notify the Department of any change to its performance of the Services which may have a material impact on the Services provided to the Department (e.g. to closure of any of the Contractor’s outlets or distribution centres).

6. **Performance criteria**

- 6.1. Without limiting any other obligation in the Agreement, the Contractor must provide the Services:
 1. in accordance with the Specifications and this Agreement, together with all services, functions and responsibilities not specifically described in this Agreement, but which are incidental to, or otherwise necessary for the Contractor to provide the Services;
 2. in a manner that meets or exceeds the Performance Criteria as set out in Schedule 4;
 3. in accordance with any applicable Order;
 4. in accordance with all relevant Australian industry standards, best practice and guidelines including any standards specified in the Specifications or item 1.4 Schedule 1 of the Agreement Details;
 5. with due care, skill and diligence, in a proper, professional and timely manner;
 6. in compliance with all applicable Laws and Regulatory Requirements, including without limitation those relating to the environment, occupational health and safety and hazardous materials;

7. in accordance with all relevant policies of the Department disclosed to the Contractor by the Department from time to time including but not limited to those set out at item 1.5 Schedule 1 of the Agreement Details or in the Specifications;
 8. in accordance with any reasonable directions given by the Department's Level 1 Contact Person or the Contract Manager from time to time;
 9. where no timing requirements are specified in the Specifications or otherwise under the Agreement, or notified by the Department, promptly and without undue delay in accordance with the Contractor's standards; and
 10. otherwise in accordance with the provisions of this Agreement.
- 6.2. The parties will undertake the performance monitoring activities as set out in Schedule 4 of this Agreement to determine whether the Contractor has provided the Services in a manner that meets the Performance Criteria.
- 6.3. If the Contractor fails to provide the Services in accordance with any of the Performance Criteria, or any other requirement under this Agreement or Order, the Contractor will, without prejudice to the Department's other rights, and at no additional cost to the Department, immediately:
1. advise the Contract Manager;
 2. investigate the underlying failure to provide the Services and meet the Performance Criteria or the requirement;
 3. take whatever action is reasonably necessary to minimise the impact on the provision of the Services and prevent the fault from recurring;
 4. correct the problem and provide the Services, meet the Performance Criteria or other requirement; and
 5. where requested, within 5 Business Days, or as otherwise agreed between the parties, prepare and deliver to the Department a detailed report identifying the reason for the failure, the impact of the failure on the provision of the Services and the mitigation strategies to avoid recurrence.
- 6.4. The Contractor must keep records of its provision of the Services to be measured by the Performance Criteria, including, if relevant, details and the timing of all initiations of problems, actions taken and the timing of response times, resolutions and closures.
- 6.5. If any part of the Services do not meet the Performance Criteria on 2 or more occasions in any 3 month period (or as otherwise agreed and set out in Schedule 4 (Performance Criteria and Reporting Requirements)), the Department can (in addition to its other rights) terminate this Agreement by written notice to the Contractor. Such termination does not require the Department to give any further notice or an opportunity to remedy.

7. **Personnel**

- 7.1. The Contractor must employ only such persons in respect of this Agreement who:

1. are skilled, qualified, experienced and trained in providing the Services or similar services; and
 2. hold all necessary Licences and Consents.
- 7.2. A principal at one of the Sites may request that the Contractor's Personnel engaged in providing the Services to that Site to undergo child protection screening including the Working with Children Check (the version current at the date of this Agreement is set out in Schedule 6 (Working with Children Check Form)). If such a request is made, the Contractor will ensure that those specified Personnel undergo the child protection screening (including providing the Department with any information it requires). If any of the Contractor's Personnel is identified as a prohibited person under any child protection legislation then they must not be engaged by the Contractor in connection with providing Services to the Department.
- 7.3. If the Department requests more than 20 Working with Children Checks in a calendar year, the Contractor may request the Department to provide staffing resources to assist the Contractor in arranging for the checks to be completed. If the Contractor makes such a request, the parties will work together in good faith to agree what assistance the Department will provide.
- 7.4. The Department will process all Working with Children Checks and will not request payment or reimbursement of any costs (including search fees) from the Contractor.
- 7.5. This clause 7 does not reduce the Contractor's obligations at law.
- 7.6. The Contractor must also ensure that its Personnel satisfactorily complete any other pre-engagement character clearance, as specified at item 1.6 of Schedule 1 of the Agreement Details or an Order, which can consist of:
1. identity verification (e.g. production of a passport, citizen certificate); and/or
 2. character assessment (e.g. disclosure of criminal convictions, consenting to a police records check to confirm any history of convictions).
- 7.7. If Personnel are unable or not suitable in the reasonable opinion of the Department to undertake the work assigned to them, the Contractor must promptly provide replacement Personnel acceptable to the Department at no additional charge.
- 7.8. The Department can at any time require the Contractor to arrange for its Personnel engaged in the performance of this Agreement to sign, within 14 days, a Contractor Personnel Deed in the form of Schedule 5 (Contractor Personnel Deed).
- 7.9. The Contractor must provide evidence of the Contractor's compliance with this clause 7 at the Department's request.
8. **Subcontractors**
- 8.1. The Contractor may subcontract any work under this Agreement without obtaining the prior consent of the Department.

8.2. The Contractor:

1. must ensure that each subcontractor is aware of all the terms and conditions of this Agreement that are relevant to the subcontractor's performance of any work;
2. will not be relieved of its liabilities and obligations arising out of this Agreement by subcontracting any work and is responsible for all the subcontractors' acts or omissions, even though the Department has consented to the engagement of the subcontractor;
3. must ensure that it has the right to terminate, in whole or part, any subcontract should the Department exercise its rights under clause 6.5, clause 17.2 and clause 22;
4. ensure that the Contractor's subcontractors take out and maintain:
 - (i) workers' compensation insurance in accordance with relevant Laws and Regulatory Requirements; and
 - (ii) the insurance policies the Contractor is required to obtain under clause 20 of this Agreement; and
5. must ensure that the subcontractor immediately ceases work upon the Contractor's receiving notice from the Department to not use that subcontractor that has been performing any work under this Agreement.

9. **Payment**

- 9.1. In consideration for the Contractor providing Services in accordance with this Agreement, the Department must pay the Contractor the fees in the amounts and at the times specified in Schedule 2 (Services and Prices) for an Order.
- 9.2. The Prices will be fixed for the Term, unless the parties have agreed and specified in Schedule 2 (Services and Prices) a price adjustment mechanism.
- 9.3. The parties agree, subject to the further provisions of this clause 9 that payment for the provision of the Services must be made within 30 days from receipt of a correctly rendered invoice, or within another time period as agreed by the parties.
- 9.4. An invoice will be a correctly rendered invoice for the purposes of this clause 9 where it is in the form of a tax invoice and:
 1. the amount claimed in the invoice is due for payment and correctly calculated in Australian dollars;
 2. the invoice is set out as an itemised account and enables the Department to ascertain what Services the invoice covers and the fees payable;
 3. the invoice is accompanied by documents that evidence that the Services have been accepted by the Department according to this Agreement (if required by the Agreement);
 4. the invoice is addressed to the officer designated to receive invoices as set out in the Order; and

5. the invoice complies with any requirements reasonably requested by the Department from time to time.
- 9.5. The Contractor must provide any further details in regard to an invoice that are reasonably requested by the Department.
- 9.6. The making of a payment is not an acknowledgment that the Services have been provided or accepted in accordance with this Agreement.
- 9.7. If the Department disputes the invoiced amount, the Department must:
 1. within 14 days notify the amount it believes is due for payment; and
 2. pay that amount and the liability for any outstanding claims must be determined in accordance with clause 21.
- 9.8. All prices stated in this Agreement are exclusive of GST, unless stated otherwise. If GST is imposed on any supply, the recipient of the supply must pay the supplier any GST on the supply after it receives a valid tax invoice.
- 9.9. The Contractor must not charge the Department for any fees, charges or expenses (including travel and accommodation, courier charges, and telecommunications charges) in addition to the fees payable under clause 9.1. The Department is under no obligation to pay any amount in excess of the fees payable under clause 9.1.
- 9.10. If the fees payable under clause 9.1 allow a component of pass-through expenses / disbursements, then the Contractor must demonstrate to the Department that the amounts are reasonable. The expenses / disbursements invoiced to the Department must not include any Contractor mark-up, overhead, administrative fee or margin, unless otherwise expressly agreed by the parties under this Agreement.
- 9.11. The Department can by written notice to the Contractor withhold payments to the Contractor without penalty if the Contractor fails to perform its obligations under this Agreement, until such obligations are completed in accordance with this Agreement.

10. **Management of this Agreement**

- 10.1. The Department and the Contractor have each nominated 2 levels of contact for the Contract as set out in items Schedule 1 (Agreement Details).
- 10.2. A party's Contact Person can be changed from time to time by notifying the other party's Level 1 Contact Person of the change in writing.
- 10.3. Any operational aspects relating to the provision of the Services under an Order should be dealt with between the Contractor's Level 1 Contact Person and the orderer, with escalations to be dealt with by the Department's relevant Level 1 Contact Person in relation to that Order.
- 10.4. The Contractor through its Level 1 Contact Person will:
 1. liaise with and report to the Contract Manager;
 2. confer with the Contract Manager not less than once every 3 months to identify Performance Criteria under this Agreement and how

performance to the date of such discussions does or does not comply with the provisions of this Agreement and, if not, what action is to be taken as a consequence thereof;

3. attend meetings and briefings with the staff of the Department as reasonably required by the Contract Manager; and
 4. set performance criteria and timeframes to accord with the requirements of the Department from time to time.
- 10.5. Reports by the Contractor to the Contract Manager must be in writing, unless otherwise permitted by the Contract Manager.
- 10.6. The Department and the Contractor must do all they reasonably can to co-operate in all matters relating to this Agreement, but their rights and responsibilities under this Agreement remain unchanged unless the parties agree in writing to vary them.
- 10.7. Each party must do all it reasonably can to avoid hindering the performance of the other under this Agreement.

11. **Warranties**

11.1. The Contractor undertakes that:

1. all Services will be provided in compliance with the requirements set out in clause 6.1;
2. the Contractor has all Licences and Consents required by applicable Laws and Regulatory Requirements in order to perform its obligations under this Agreement;
3. the Contractor has the expertise, skills, qualifications and resources required to perform its obligations under this Agreement;
4. to the best of its knowledge, no conflict of interest of the Contractor or its Personnel exists or is likely to arise in the performance of their obligations under this Agreement;
5. the provision of the Services (Contract Materials and any materials (including third party materials) by the Contractor in connection with the Services), and their use by the Contractor and the Department as contemplated by this Agreement, will not infringe the Intellectual Property rights of a third party;
6. the information provided by the Contractor as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its Personnel is correct and complete; and
7. any goods supplied as part of the Services have not been produced using the 'worst forms of child labour' as defined in the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182).

11.2. The Contractor undertakes that the Services will be provided with due care, skill and diligence, in a proper, professional and timely manner.

11.3. Without limiting any rights the Department may have under this Agreement, the Contractor will in accordance with the Performance Criteria at no cost to the Department

re-supply of any Mail Delivery and Collection Services, as defined in Schedule 2 item 2.3, which are in breach of the warranties set out in clauses 11.1.1 and 11.2.

11.4. The Contractor undertakes to the same extent as the Services, that any re-supply of services, provided in accordance with clause 11.3, from that re-supply of services.

11.5. Where the Contractor provides Services (in whole or part) that have been procured from a third party, the Contractor:

1. must as soon as reasonably practicable provide the Department with notification of any warranties from that third party;
2. must undertake the assignment of those third party warranties to the Department; and
3. will not be relieved from its obligations to comply with the Contractor's warranties under this Agreement.

12. **Security and access**

12.1. Where the Department provides the Contractor with access to Sites, the Contractor:

1. must ensure that all Personnel comply with the reasonable requirements and directions and any notified policies of:
 - (i) the Department including but not limited to those set out at item 1.5 Schedule 1 of the Agreement Details and in the Specifications or otherwise provided to the Contractor from time to time;
 - (ii) the individual Site to the extent they do not conflict with those described in clause 12.1.1(i);
2. is liable for any damage caused by the Contractor or its Personnel on Sites, and:
 - (i) the Department can repair such damage; and
 - (ii) all reasonable costs of repairing the damage will be reimbursed by the Contractor to the Department;
3. must ensure that its Personnel, wear:
 - (i) an identification pass while on Site as required by the Department or the individual Site; and
 - (ii) uniform / corporate attire so that the Personnel are reasonably identifiable with the Contractor by the Department or the Individual Site;

4. must not do anything that is, or can be, dangerous, annoying, or offensive, or that can interfere with the Department or other people using Sites; and
 5. use the Sites for the purpose of carrying out of obligations under this Agreement only.
- 12.2. The Contractor can be required to perform its work under this Agreement at Sites alongside other contractors of the Department. The Contractor will therefore coordinate its activities and cooperate with the other contractors as necessary to satisfy all occupational health and safety requirements and ensure the work performed by the other contractors and under this Agreement is performed as efficiently as possible.
- 12.3. The Contractor must comply, and must ensure that its Personnel comply, with the security requirements of the Department as set out at item 1.7 Schedule 1 of the Agreement Details, or as notified by the Department to the Contractor from time to time.

13. **Confidentiality**

- 13.1. Each party must keep the other party's Confidential Information confidential and not use it other than for the purpose of exercising its rights and performing its obligations under this Agreement.
- 13.2. Each party must establish and maintain reasonable measures to safeguard the other party's Confidential Information from unauthorised use or access. Each party must notify the other party immediately on becoming aware of any suspected or actual unauthorised use or disclosure of the other party's Confidential Information.
- 13.3. A party can disclose the other party's Confidential Information or to any of its officers, employees, agents, contractors and legal, financial and other professional advisers to the extent necessary to enable it to exercise its rights and perform its obligations under this Agreement. A party who makes a disclosure under this clause must first ensure that the person is bound by confidentiality obligations no less restrictive as the party's obligations in this Agreement.
- 13.4. A party can disclose the other party's Confidential Information to the extent it is required by any applicable Laws or government policy.
- 13.5. No piece or body of information will be regarded as in the public domain merely because it contains information in the public domain or is covered by a general disclosure which is in the public domain.

14. **Privacy**

- 14.1. The Contractor agrees it will comply with the Privacy and Personal Information Protection Act 1988 (NSW) (PPIP Act) including in respect of the provision of Services under this Agreement:
1. to use, access, retain or disclose personal information obtained during the course of providing the Services under the Agreement only for the purpose for which the personal information was acquired;

2. not to do any act or engage in any practice that would breach the Information Protection Principles in the PPIP Act (**IPPs**), or which if done or engaged in by the Department, would be a breach of that IPP;
 3. to comply with, carry out and discharge to the maximum extent possible, the obligations contained in the IPPs as if it were the Department carrying out and discharging those obligations;
 4. to notify the individuals whose personal information the Contractor holds, that complaints about acts or practices of the Contractor can be investigated by the Privacy Commissioner;
 5. to comply with all reasonable directions of the Department in relation to the care and protection of personal information held in connection with the Agreement and take all reasonable measures to ensure that such information is protected against loss, unauthorised access or use, modification or disclosure and against other misuse;
 6. to immediately notify the Department if the Contractor becomes aware of a breach of any of the obligations contained in, or referred to in, this clause, whether by the Contractor or any subcontractor;
 7. to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause;
 8. to ensure the Contractor's Personnel who are required to deal with personal information for the purposes of this Agreement are made aware of the obligations of the Contractor set out in this clause.
- 14.2. The Contractor must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same obligations as the Contractor has under this clause.

15. **Department Data**

- 15.1. Department Data is and will remain the property of the Department at all times, including after completion of the Agreement. Except as required by law, the Contractor must:
1. not use Department Data for any purpose other than directly in relation to the performance of its obligations under this Agreement;
 2. not, and must ensure that its Personnel will not, sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any Department Data;
 3. not make any Department Data available to a third party other than a subcontractor approved by the Department and then only to the extent necessary to enable the approved subcontractor to perform its part of the Contractor's obligations under this Agreement; and
 4. other than to the extent necessary to enable the Contractor to perform its obligations under this Agreement, not remove or transfer Department Data to any third party without obtaining the prior approval of the Department.

- 15.2. The Contractor must establish and maintain safeguards against the destruction, loss or alteration of any Department Data in the possession or control of the Contractor that:
1. are consistent with and no less rigorous than the measures that the Contractor would take to protect its own similar information; and
 2. comply with all applicable Laws and any reasonable procedures specified by the Department concerning the Department's data security.
- 15.3. The Contractor must return, delete or destroy Department Data to the Department immediately on termination or expiration of this Agreement or on request by the Department at any time. Any return of Department Data must be in the form reasonably nominated by the Department.
- 15.4. The Contractor must:
1. comply with all data security requirements in respect of access to Department Data as notified to it in writing from time to time;
 2. prohibit and prevent any person who does not have the appropriate clearance from gaining access to Department Data; and
 3. notify the Department immediately and comply with all reasonable directions of the Department if the Contractor becomes aware of the contravention of any of Department Data security requirements.

16. Providing information to other Government Agencies

- 16.1. The Department can make available to any government agency any information about the Contractor, including any information provided by the Contractor to the Department and any information relating to the Contractor's performance under this Agreement, or the Contractor's financial position.
- 16.2. For the purposes of complying with the Government Information (Public Access) Act 2009 (NSW), the Contractor requests that the Department's Procurement Directorate treats the Prices as commercial in confidence.
- 16.3. Despite clause 16.2, the Department's Procurement Directorate may make available the Prices internally, including its Sites, and according to clause 16.1. The Contractor acknowledges that the Department does not promise that the Prices will be kept confidential by the Sites. In fact it is unlikely that the Prices will be kept confidential by the Sites. The Department will not be liable if the Prices become public information as a result of disclosure by the Department (including its Sites).
- 16.4. The Contractor releases and indemnifies the Department, the State of New South Wales, and its Personnel from any and all loss, liability, damages, and expenses (including legal fees) suffered or incurred by any of them to the extent such loss, liability, damage and expense is suffered or incurred, as a result of disclosure of any of the Contractor's information by the Department to any other government agency in accordance with this clause 16 where such information is false or misleading.
- 16.5. Nothing in this Agreement shall restrict or limit the general obligation at law of the Department to mitigate any loss or damage which it may suffer as a result of an event that may give rise to a claim under the indemnity in clause 16.

17. **Force Majeure**

- 17.1. If a party is unable to carry out its obligations under this Agreement as a result of a Force Majeure Event, then that party's obligations will be suspended for the period of time they are affected provided it:
1. notifies the other party promptly of the event with reasonable details and the extent to which it is unable to perform its obligations; and
 2. attempts to overcome the event as quickly as possible.
- 17.2. The parties will then at the Contract Manager's request, meet in good faith to attempt to achieve a mutually satisfactory resolution to the problem. If this is unable to be resolved within the time required by the Contract's Manager then, in the case of the Force Majeure Event affecting the Contractor, the Department can terminate this Agreement immediately by notification in writing to the Contractor.
- 17.3. Where there is likely to be a delay in the Contractor discharging an obligation under this Agreement because of a Force Majeure Event, the Contractor can request a reasonable extension of time.
- 17.4. The Department may consent to a request for extension of time under clause 17.3 provided that:
1. the Contractor uses its best endeavours to minimise the delay and recover lost time; and
 2. where appropriate, the Contractor provides the Department with a plan indicating in detail the steps and strategies the Contractor proposes to take to minimise the impact of the Force Majeure Event and manage the consequences of the delay.
- 17.5. The Contractor will not be entitled to any increase in the fees payable under clause 9.1, or damages, costs or expenses in connection with the delay.

18. **Indemnity**

- 18.1. The Contractor will indemnify the Department and its Personnel against any and all loss, liability, damages, and expenses (including legal fees) suffered or incurred by any of them to the extent such loss, liability, damage and expense is suffered or incurred, as a result of the following:
1. act or omission of fraud or wilful or intentional direct breach of this Agreement by the Contractor or its Personnel;
 2. any breach by the Contractor or its Personnel of any applicable Laws and Regulatory Requirements or License and Consents;
 3. any claim alleging that the Services or any materials provided by the Contractor (including third party materials) in connection with the Services infringe the Intellectual Property rights of any person;
 4. personal injury (including sickness and death) caused by the Contractor or its Personnel under or in connection with this Agreement that is directly related to the provision of the Services; and

5. loss of or damage to property caused by the Contractor or its Personnel under or in connection with this Agreement (excluding Mail Items or any other goods or freight carried by the Contractor pursuant to this Agreement for which the Contractor accepts no liability).
- 18.2. Nothing in this Agreement shall restrict or limit the general obligation at law of the Department to mitigate any loss or damage which it may suffer as a result of an event that may give rise to a claim under the indemnity in clause 18.1.2.

19. **Limitation of liability**

- 19.1. To the maximum extent permitted by applicable Laws, the aggregate liability of a party to this Agreement for any loss or damage sustained by the other party in connection with this Agreement (whether arising in contract, tort (including negligence), statute, equity or otherwise) is limited to the amount specified in item Schedule 1 of the Agreement Details. For the avoidance of doubt, if item Schedule 1 of the Agreement Details is left blank, each party's liability is not limited for the purposes of this clause 19.
- 19.2. Neither party will be liable to the other for loss which is consequential upon another loss, an indirect loss including loss of income or revenue, a loss of profits or savings or any special, incidental, indirect, or consequential losses or damages of any kind.
- 19.3. The limitation of liability in clauses 19 and 19.2 will not apply to:
 1. any act or omission of fraud, or wilful or intentional direct breach of this Agreement by a party;
 2. any breach by a party of any applicable Laws and Regulatory Requirements or License and Consents;
 3. in relation to liability of the Contractor, any claim alleging that the Services or any Contract Materials provided by the Contractor (including third party materials) in connection with the Services infringe the Intellectual Property rights of any person;
 4. in relation to liability of the Contractor, breach of clauses 13, 14, 15 and 16;
 5. personal injury (including sickness and death) that is directly related to the provision of the Services; and
 6. loss of or damage to property (excluding Mail Items or any other goods or freight carried pursuant to this Agreement for which the Contractor accepts no liability).

20. **Insurance**

- 20.1. The Contractor must have and maintain the following insurances
 1. for the Term:
 - (i) public liability and product liability to the extent and in the amounts required as specified in item 1.9 Schedule 1 of the Agreement Details; and

- (ii) workers' compensation as required by law; and (these are called **Insurance Policies**).

20.2. If the amounts are not specified in Item 1.9 of the Agreement Details, the following minimum amounts shall apply;

Public Liability, \$20 million per claim, and

Product Liability, \$10 million per claim.

20.3. The Insurance Policies must be with insurers reasonably acceptable to the Department.

20.4. The Contractor must, on request by the Department, provide current relevant confirmation of insurance documentation including certificates of currency, certifying that it has insurance as required by this clause 20.

20.5. In relation to the Services, the Contractor must as soon as practicable notify the Department of any occurrence that can give rise to a claim under the public liability or product liability Insurance Policies and afterwards keep the Department fully informed of developments concerning the claim.

20.6. The requirements of this clause 20 do not affect the Contractor's liabilities in connection with this Agreement.

21. **Dispute resolution**

21.1. The parties must not commence legal proceedings unless the process in this clause 21 has been followed.

21.2. The parties must use all reasonable efforts in good faith to resolve any disputes that arise between them in connection with this Agreement.

21.3. Any communications or disputes relating to the operational aspects of the provision of the Services under an Order should be between the Contractor's Level 1 Contact Person and the Department's relevant Level 1 Contact Person in relation to that Order.

21.4. Any communications or disputes relating to the contractual aspects of this Agreement should be between the Contractor's Level 1 Contact Person and the Department's Level 1 Contact Person.

21.5. Any operational or contractual issues in relation to this Agreement that have not been satisfactorily resolved by the parties' Level 1 Contact Persons, and any other types of communications will be escalated for resolution to the parties' Level 2 Contact Persons.

21.6. If the parties are unable to resolve a dispute within 20 Business Days of the dispute being elevated to the parties Level 2 Contact Person, the parties will submit to a mediation according to the *Australian Commercial Dispute Centre Guidelines for Commercial Mediation*.

21.7. If the parties are unable to resolve a dispute within 60 Business Days of the notice to take the dispute to mediation being issued, either party can commence legal proceedings.

21.8. Nothing in this clause prevents either party from seeking urgent injunctive relief.

22. Termination

22.1. [Commercial-in-confidence]

22.2. [Commercial-in-confidence]

22.3. The Contractor will be entitled to payment for Services provided according to this Agreement up to the date of termination under clause 22.1. In relation to the termination of an Order where, if applicable, at the date of termination:

1. the Contractor has provided Services to date; and
2. the Contractor has implemented the disengagement plan in full.

22.4. For the avoidance of doubt, the Contractor is not entitled to any other compensation in addition to the payment under clause 22.3 as a result of or in relation to the Department's termination of this Agreement under clause 22.1.

22.5. The Department can terminate this Agreement or any Order immediately by notice to the Contractor if:

1. the Contractor, or a Related Body Corporate of the Contractor, becomes or threatens to become Insolvent; or
2. the Contractor fails to maintain performance in accordance with the measures in clause 4.3 of Schedule 4; or
3. the Contractor breaches this Agreement or any Order; and
 - (i) the breach cannot be remedied by the Contractor; or
 - (ii) if it can be remedied, the Contractor does not remedy it within 10 Business Days of being notified of the breach by the Department.

22.6. If the Department fails to pay the Contractor any amount in accordance with this Agreement, which is not in dispute, or materially breaches this Agreement, then the Contractor can by notice require the Department to remedy the breach within 20 Business Days of receiving the notice.

22.7. If within 20 Business Days of receiving the notice under clause 22.6, the Department fails to remedy the default, or fails to propose steps reasonably acceptable to the Contractor to do so, the Contractor can by notice terminate this Agreement.

22.8. If the Department terminates this Agreement according to this Agreement but has not specified whether or not Orders are terminated, the Contractor must provide written notice requesting the Department to specify whether or not such Orders are terminated (**Order Continuation Notice**).

22.9. If the Department:

1. responds to the Order Continuation Notice by specifying that such Orders are also terminated: such Orders are terminated according to this Agreement;
2. responds to the Order Continuation Notice by specifying that such Orders are not terminated, or fails to respond within 10 Business days of receiving the Order Continuation Notice: the Department's termination of the Agreement does not affect the Contractor's obligations to fulfil such Orders.

22.10. On termination of this Agreement or an Order the Contractor must:

1. in the case of termination of this Agreement, stop accepting new Orders for the provision of any Services;
2. dispose of or return any information or materials provided by the Department or its Personnel under this Agreement, including Department Data and the Department's Confidential Information, as reasonably directed by the Department; and
3. provide to the Department any Contract Materials.

22.11. Termination of this Agreement for any reason will be without prejudice to any rights which may have accrued before termination.

23. **Survival of clauses**

23.1. The following clauses will survive the termination or expiry of this Agreement:

1. clause 1 (Definitions and interpretation);
2. clause 11 (Warranties);
3. clause 13 (Confidentiality);
4. clause 14 (Privacy);
5. clause 15 (Department Data);
6. clause 16 (Providing information to other Government Agencies);
7. clause 18 (Indemnity);
8. clause 19 (Limitation of Liability);
9. clause 20 (Insurance);
10. clause 21 (Dispute resolution);
11. clauses 22.8 to 22.11 (Termination)
12. this clause 23 (Survival of clauses);
13. clause 25 (Notices);
14. clause 26 (Reporting and Records);

15. clause 27 (Publicity and Reputation);
16. clause 29(General); and
17. Schedule 1 (Agreement Details) to the extent it refers to clauses or Schedules that survive this Agreement.

24. **Agreement Administration**

- 24.1. Each party must nominate in the Agreement Details, their duly authorised representatives (being each party's Level 2 Contact Person).
- 24.2. Each party undertakes that their respective nominated representatives have the power and authority to provide such consents as are required and to issue instructions for the fulfilment of the terms of this Agreement.
- 24.3. Where the Department is required to give consent under the terms of this Agreement, it can do so at its absolute discretion and any conditions it requires.

25. **Notices**

- 25.1. A notice or other communication related to contractual issues under this Agreement (**Notice**) has no legal effect unless it is in writing and is sent to the party's relevant contact person, as set out in clauses 21.4 and 21.5 of this Agreement.
- 25.2. A Notice must be:
 1. sent by registered post to the address for service of the addressee, if the address is in Australia and the Notice is sent from within Australia;
 2. sent electronically via email to the party's relevant contact person, as set out in schedule 1; or
 3. delivered at the address for service of the addressee.
- 25.3. If a Notice is sent or delivered in a manner provided by clause 25.2, it must be treated as given to and received by the party to which it is addressed:
 1. if sent by registered post from within Australia to an address in Australia, on the 6th Business Day (at the address to which it is posted) after posting;
 2. if sent via email, on the 2nd Business Day after the original email; or
 3. if otherwise delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 25.4. A party can change its details for service by giving Notice of that change to each other party.
- 25.5. If the party to which a Notice is intended to be given consists of more than 1 person then the Notice is treated as given to that party if given to any of those persons.

26. **Reporting and Records**

- 26.1. The Contractor must provide to the Department the reports specified in the Agreement Details, the Specifications, Schedule 4 (Performance Criteria and Reporting Requirements) and Laws and Regulatory Requirements in the timeframe and format either as specified in the Agreement Details, Specifications and Laws and Regulatory Requirements or as required by the Department.
- 26.2. The Contractor must, including as required by Laws and Regulatory Requirements, keep accurate and detailed financial and service records and other information relevant to the performance of this Agreement. The Contractor must give the Department reasonable access to and copies of such records and information within a reasonable time of a written request from the Department. This clause applies for the Term and for a period of seven (7) years from the termination or expiry of the Agreement.

27. **Publicity and Reputation**

- 27.1. The Contractor must, before making a public announcement in connection with this Agreement or any transaction contemplated by it, obtain the Department's consent to the announcement, except if required by Laws or a regulatory body (including a relevant stock exchange).
- 27.2. If the Contractor is required by Laws or a regulatory body to make a public announcement in connection with this Agreement or any transaction contemplated by this Agreement the Contractor must, to the extent practicable, first consult with and take into account the reasonable requirements of the Department.
- 27.3. The Contractor must, and ensure that its Personnel, must:
 1. maintain the Department's good name and reputation;
 2. take no action which prejudices that good name and reputation; and
 3. not do, say or cause anything to be done which can denigrate the Department, or by the Contractor's association with or provision of the Services bring the Department into disrepute.

28. **Disclosure of Conflicts of Interest**

The Contractor must:

1. notify the Department in writing immediately upon becoming aware of the existence or possibility of a conflict of interest; and
2. comply with any reasonable direction given by the Department in relation to managing that conflict of interest.

29. **General**

- 29.1. Each party must pay its own legal costs and other expenses connected with the negotiation, preparation and execution of this Agreement.
- 29.2. The Contractor is liable for all taxes, duties and government charges imposed or levied in connection with the performance of this Agreement, except as otherwise specified in this Agreement.

- 29.3. Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Agreement.
- 29.4. If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.
- 29.5. This Agreement:
1. is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
 2. supersedes any prior agreement or understanding between the parties on anything connected with that subject matter.
- 29.6. An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.
- 29.7. Except as expressly stated in this Agreement, each party acknowledges that:
1. a waiver or consent under this Agreement is not effective unless it is in writing and signed by the parties entitled to give the waiver or consent;
 2. a waiver or consent can be given conditionally or unconditionally or withheld at the absolute discretion of the party entitled to give the waiver or consent;
 3. a waiver of a power or right or the giving of consent is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given;
 4. a party's failure or delay to exercise a power or right does not operate as a waiver of that power or right; and
 5. the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 29.8. A party cannot assign all or any of its rights under this Agreement without the prior written consent of each other party.
- 29.9. The law of New South Wales governs this Agreement. The parties submit to the exclusive jurisdiction of the courts of New South Wales and any courts which are entitled to hear appeals from them.

SIGNED as a deed.

Signed by and on behalf of
The State of New South Wales by its
Department of Education by its
authorised delegate *[insert name]* but
not so as to incur any personal liability in

Signed for the Contractor by:

Schedule 1 (Agreement Details)

[Commercial-in-confidence]

Schedule 2 (Services and Prices)

2.1 Definitions re Services

“**Core Services**” means the services that are available to the whole Department.

“**Corporate Sites**” means those Sites that provide administrative functions to the Department

“**External Mail**” means both letters and packages sent through the Australian postal network.

“**FOC**” means free of charge from Australia Post to the Department

“**Help Desk**” means the phone contact service provided by the Contractor in accordance with 3.4 of Schedule 3 to support the Department with any queries relating to this Agreement.

“**Mail Items**” includes letters and packages for the Australian postal network and those for delivery at international addresses.

“**Nominated Post Office**” means the Post Office(s) where the account for an individual site is held.

“**Reserved Services**” means activities that Australia Post has the exclusive right to engage in because of Section 29 of the Australian Postal Corporation Act 1989.

“**Retail Price**” means the standard retail price of the Contractor for the item as published in the Postal Charges Booklet from time to time.

“**School Services**” means the Services unique to school Sites;

“**Services**” has the same meaning as set out in clause 1.1 of the Agreement.

“**Service Register**” means a comprehensive list of all regular scheduled services being provided to each Department Site. The list must include the name of the site; the type of service provided and the frequency of service ordered. The list is created by the Contractor in conjunction with the Department and maintained by the Contractor’s Contact Person. The list must be submitted to the Department with monthly reports.

“**Sites**” has the same meaning as set out in clause 1.1 of the Agreement.

“**Site Office**” means the office location within the Site that is nominated by the Site as the point of delivery and collection of mail.

2.2 Schedule of Services and Prices

[Commercial-in-confidence]

2.3 Service Descriptions (refer to Schedule 9 for Processes)

Core Services

- **Mail Delivery and Collection** – means delivery of External Mail to a Site, including clearance of PO Box where applicable and collection of Mail Items from Sites for posting. DoE receives the mail delivery and collection service free of charge to Corporate Sites.
- **Post Office Box Rental** – means rental access to post office box or locked bags as required.
- **Parcel Post eParcel** - Australia Post parcel delivery service featuring online lodgement, manifest and label creation for the Department, including track and trace and reporting options.
- **Express Post eParcel** – Australia Post express parcel delivery service featuring online lodgement, manifest and label creation for the Department, including track and trace and reporting options. Express Post provides next business day delivery within the express post network.
- **Express Post Envelopes** – Express envelope service with next business day delivery within the Express Post domestic network.
- **Express Post Satchels** – Express satchel service with next business day delivery within the Express Post domestic network.
- **Parcel Post Standard** – parcel delivery service for regular parcels up to 22kg
- **International Mail** – means letters and parcels being sent outside of Australia.
- **Electronic Lodgement of Mailing Statements (eLMS)** – means lodgement of mail statements via an electronic gateway / web-based application.
- **Small Letters via Account** – Small letters include enveloped mail, lettersheets and unenclosed postcards.

School Services

- **School Mail Delivery and Collection** - means delivery of External Mail to school Sites on the School Service Register and at the frequency set out in the School Service Register including clearance of a PO Box where applicable and simultaneous collection of mail and packages from the school for posting.
- **Mail Holding Service**– means a two week or a seven week period where the Australia Post Delivery Centre holds all school addressed mail and delivers it all to the Site office promptly on day one of the new term.

Courier Services

- **Same Day Courier** – same day metropolitan courier service ex capital city.
- **Fixed price premium** - for single items via AIR 1, 3, 5, 10 & 20kg – next day delivery
- **Premium** – multiple items via AIR – next day delivery
- **Road Express** – Multiple items including pallets & Skids via Road service next day metro, 1-2 days regional (NSW only)
- Terms and conditions applicable to courier services are <https://startrack.com.au/legal/terms-and-conditions>. These terms and conditions prevail to the extent of any inconsistency with this Agreement.

2.4 Payment

2.4.1 [Commercial-in-confidence]

2.4.2 Subject to clause 2.4.3, any correctly rendered invoices received by the Department after 30 June 2018 that are not paid within 30 days of receipt will be subject to a late payment charge calculated as \$5.00 per invoice, plus 1.5% of the balance of the invoice due and payable. Both amounts will be payable for each month that the invoice remains outstanding.

2.4.3 The late payment fee will not be payable by any school site for invoices sent in November or December.

2.4.4 The Contractor's consolidated invoices must comply with Item 1.17 of Schedule 1. The Department may request a change to the consolidated invoicing requirements from time to time by notice in writing to the Contractor. The Contractor will notify the Department as soon as reasonably practicable if it is unreasonably burdensome or not technically feasible to meet the requirements set out in the notice, in which case the Contractor and the Department will cooperate to agree a mutually acceptable method of consolidated invoicing and until such time the invoicing requirements will remain unchanged.

2.4.5 The Contractor acknowledges that payment by the Department can be delayed if any line in the consolidated invoice is incorrect or any component does not comply with the Department's requirements which are in place at the time of execution of this agreement. The Department's requirements may change from time to time in agreement with the Contractor, and in forming its view about whether to agree, the Contractor will act reasonably. A return of any invoice due to incorrect billing should not affect any early payment discount or late payment penalty.

2.5 [Commercial-in-confidence]

2.6 [Commercial-in-confidence]

2.7 Additional terms

- 2.7.1 Where the Department wishes to increase the volume of Services purchased under the agreement, the Contractor will negotiate in good faith and agree in writing any reduced prices to reflect the total volume purchased. The agreed price will be taken to be a variation of the Agreement without having to comply with the variation procedures in this Agreement.
- 2.7.2 The Contractor warrants that if at any time during the Term of this Agreement, it receives any rebate, discount, commission or other subsidy in relation to any good that it purchases from its subcontractors or other third party suppliers, the benefit of such rebate, discount, commission or subsidy will be directly passed on to the Department under this Agreement.
- 2.7.3 Appendix 2 Summary Table of Services and Prices to be updated by the Contractor on the anniversary of the Commencement Date of the Agreement and as otherwise requested by the Department in line with price variations.

Schedule 3 (Special Terms)

3.1 Contract Performance Reviews

- 3.1.1 Meetings between Level 1 contacts as identified in Schedule 1 item 1.12 will be held on a regular basis under the terms of clause 10.4
- 3.1.2 Regular contract meetings will be an opportunity to raise issues that are arising from complaints received from within the Department and from the Help Desk, and consider overall performance within the KPI framework.
- 3.1.3. Contractor will be scored each month by Contract Manager according to each KPI set out in Schedule 4 using the scoring weights identified in section 4.3 of Schedule 4. The results will be presented in a score card in a format similar to the score card set out in section 4.4 of Schedule 4.

3.2 Account Management

- 3.2.1 The Contractor will at all times provide a single point of contact for the Department in the form of a dedicated Account Manager responsible for both the implementation and on-going support and management of the service who will be the level 1 contact for the contractor identified in Schedule 1 item 12.
- 3.2.2 The Contractor's Account Manager will always be directly responsible for managing the overall and on-going relationship with the Department including all contracts held between the Contractor and the Department.

3.3 Operations Manual

The Contractor will work with the Department to build an Operations Manual for delivery of services to the Department.

3.4 Customer Service Management

3.4.1 Help Desk

- i. A Help Desk will be made available specifically to address queries raised about any aspects of the delivery to the Department including mechanisms to manage standard queries and escalate issues, including the use of scripts that have been agreed by the Department.
- ii. The Help Desk will provide support to the Department's staff, Delivery Managers and Local Post Delivery Centres including supporting local Australia Post staff to understand and implement the range of services and administrative arrangements being managed by the Contractor for the Department.
- iii. The Help Desk will deliver the following minimum service levels:
 - a. Telephone support available from 8.30am to 5.00 pm
 - b. escalation of issues when a solution is not available

3.5 Change Procedures

In this clause these words have the following meaning:

Change Proposal has the meaning given by **clause 3.5.3**.

Change Register means a register in agreed form.

Change Request means a request by either party for a change to this Agreement.

3.5.1 Each Change Request must be individually sequentially numbered and provide the following details:

- (i) a complete description of the proposed change;
- (ii) the reason(s) for issuing the Change Request;
- (iii) any required date by which the proposed change must be made;
- (iv) the impact of the Change Request on the other party, including in the case of a Change Request issued by the Contractor, a breakdown of estimated costs to implement the Change Request; and
- (v) provision for signature by the authorised signatory of each party for acceptance of the Change Request.

3.5.2 Details of each Change Request must be entered on to the Change Register.

3.5.3 If the Department submits a Change Request to the Contractor, the Contractor must within 7 days of receiving the Change Request (or such other period as the parties agree), provide the Department with a change proposal detailing how the Contractor will implement the requested change, the impact of the requested change on any fees payable by the Department, the Services, proposed changes to resourcing and the Contractor's ability to meet its other obligations under the Agreement (**Change Proposal**).

3.5.4 The Contractor can only reject any Change Request from the Department if it can demonstrate to the Department's satisfaction that the proposed change would adversely affect the performance of the Services or that it is not technically feasible to implement. If the Department disputes the Contractor's refusal under this clause, the dispute will be resolved in accordance with clause 21.

3.5.5 A Contractor's proposals in relation to price variations in any Change Request or Change Proposal must be consistent with the Prices set out in Schedule 2 (Services and Prices), or if the Prices are not appropriate, then based on a reasonable market based price.

3.5.6 The Department must, after receiving a Change Request or a Change Proposal, as soon as reasonably practicable, notify the Contractor that it:

- i) accepts the Change Request or Change Proposal; or
- ii) wishes to negotiate the Change Request or the Change Proposal in which case the parties will negotiate the Change Request or the Change Proposal and if agreement cannot be reached within 21 days of commencing negotiations, then the Department can:

- iii) accept the Change Request or Change Proposal; or
- iv) reject the Change Request or Change Proposal;
- v) withdraws the Change Request made by the Department to which the Change Proposal relates; or
- vi) rejects the Change Request or Change Proposal (as the case may be), after acting reasonably, in which case the Agreement will continue unchanged.

3.5.7 Any accepted Change Request or Change Proposal that varies the clauses of the Agreement must be signed by an authorised signatory of each party after which it will vary and form part of the Agreement.

3.6 Orders by Eligible Customers

3.6.1 Subject to the Contractor and Eligible Customer agreeing the Prices the Contractor must satisfy any Order placed under this Agreement by an Eligible Customer.

3.6.2 Any variation to the terms (including the Specifications) of this Agreement that apply to any Orders placed by the Eligible Customer will be agreed between the Contractor and the Eligible Customer. The varied terms will not have any effect on Orders placed by Department or any other Eligible Customer.

3.6.3 The parties agree that any Eligible Customer that has placed an Order under this Agreement, although not a party to this Agreement, may take the benefit of, and enforce, this Agreement in respect of that Order in its own name. The Contractor acknowledges that the Department is not a party to the Order and is neither obligated to perform any acts, nor liable for any loss, liability, damages, and expenses (including legal fees) the Contractor accrues in connection with such an Order.

3.6.4 If at any time during the Term of this Agreement, the Contractor does not wish to supply a particular Service (or any of its Services) to a particular Agency or Eligible non-Government Body, whether in particular circumstances or generally, the Contractor will inform the Department and the Department will approve that request if there are genuine commercial reasons for the Contractor's request.

3.6.5 The Contractor must include and identify any Orders placed under this Agreement by an Eligible Customer in any reports to the Department in relation to the Services supplied under this Agreement, as required by the Department.

In this clause 3.6.5:

“Agency” means:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth, state or Territory legislation, or an instrument made under that legislation (including a local authority);
- (b) a body established by the Governor-General, a state Governor, or by a Minister of state of the Commonwealth, a state or a Territory; or
- (c) an incorporated company over which the Commonwealth, a state or a Territory exercises control.

“Government Department” means an administrative unit or department of the Commonwealth, a State or a Territory.

“Eligible Customers” means a Government Department, an Agency or an Eligible non-Government Body, which requires a Service.

“Eligible non-Government Body” means a body (including a private school) which is:

- (a) directly or indirectly, partially or entirely, funded by the Commonwealth, a State or a Territory; and/or
- (b) non-profit making.

3.7 Disengagement

3.7.1 The Contractor will, within 90 days of receipt of a request to do so, prepare and provide the Department with a proposed Disengagement Plan that will ensure the efficient disengagement and replacement of the Services in accordance with the requirements set out in Schedule 8 (Disengagement Plan). The parties will work together in good faith to complete and agree a Disengagement Plan. The Contractor may propose changes to the Disengagement Plan, throughout the Term or Extended Term to keep it up to date.

3.7.2 The Contractor must implement and comply with the requirements of the Disengagement Plan;

- (i) 90 days before the expiry of the Term or Extended Term; or
- (ii) from the date of any notice of termination of this Agreement or Order (as applicable),

unless otherwise agreed in the Disengagement Plan

Schedule 4 (Performance Criteria and Reporting Requirements)

4.1 Reporting Requirements

- 4.1.1 All reports will be submitted to the Contract manager with the frequency determined by the following Schedule.
- 4.1.2 Monthly reporting will be submitted on the 10th day of the month or if that day is not a working day, the first working day following that date.

Standard Criteria	Reporting Methodology	Reporting Frequency
KPI reporting for delivery and collection	As required for each KPI set out in Schedule 4.3. in a format and content to be agreed with the Department and to include Mail Collection and Delivery services.	Monthly
School Service Register	In a format to be notified by the Department	Monthly
Total Spend Analysis	Australia Post is to provide all sales occurred by DoE in a format to be notified by the Department.	Monthly
Customer Service Issues Log	In a format and with content agreed with the Department	Monthly
Invoices	As currently received	10 th Day of the Month
Client Satisfaction Survey	As agreed between the Contractor and the Department	6 monthly
Innovation Reporting	Innovation is a new service, service arrangement or administrative activity that adds value to the delivery of the contract for the Department. The requirement is one idea every six months to be issued to the Department for consideration. That includes research to the Department spend and innovation value, whether that be policy or spend driven. The format will be agreed between Australia Post and the Department.	6 monthly
Complaints and Business interruption	Notifying relevant Sites of any actual or potential service problems that the contractor is aware of, such as the potential for industrial action, serious complaints, Contractor Occupational Health and Safety complaints, and service deficiencies that have occurred in the past week.	Action as Required and capture in Customer Service Issue Log
Any other report	As agreed between the Contractor and the Department	As required from time to time

4.2 [Commercial-in-confidence]

4.3 General Key Performance Indicators

4.3.1 The following Key Performance Indicators will be used to assess the contract delivery

Please see **Appendix 3 Tab 4.3** for General Key Performance Indicators

4.4 Scorecard for General Key Performance Indicators

Please see **Appendix 3 Tab 4.4** for Scorecard for General Key Performance Indicators

Schedule 5 – NOT USED

Schedule 6 (Working With Children)

<http://www.kidsguardian.nsw.gov.au/child-safe-organisations/working-with-children-check>

Schedule 7 NOT USED

Schedule 8 (Disengagement Plan)

The Disengagement Plan will be developed according to the Agreement and must be consistent with the following content of this Schedule.

8.1 Objectives and Interpretation

The purpose of the Disengagement Plan is to set out actions to be performed to:

1. enable the Department or its nominee to provide all or part of the Services in substitution for the Contractor in the circumstances described in this Agreement or Order (as applicable); and
2. eliminate or minimise any disruption or deterioration of the provision of the Services or failure to achieve the Performance Criteria.

8.2 Contractor to Cooperate

1. The Contractor must provide all reasonable assistance requested by the Department in connection with transitioning of the provision of the Services to another provider.
2. Once transitioning of the provision of the Services is required, the Contractor must immediately cooperate with and assist the Department to develop and agree a timetable and transitioning process. In particular, the Contractor must specify the Contractor's Personnel and other resources it will commit to provide transition-out activities.

8.3 Knowledge transfer

1. The Contractor must transfer and provide access to the Department to all information belonging to the Department that is held (or stored by whatever means) by the Contractor or under the control of the Contractor.
2. The Contractor must make the Contractor's Personnel available for discussions with the Department as may be reasonably required. The time, length and subject of these discussions will be at the discretion of the Department, provided that any matter discussed is not considered to reveal any confidential information (outside the scope of the Services) of the Contractor. The parties will pay the costs of the transition as set out in the Disengagement Plan.

8.4 Information

The Contractor must provide, as reasonably requested by the Department all knowledge, information, records and documents (including electronic copies and backups) reasonably required by the Department to effect the transition to another provider, including:

1. procedures and operations manuals;
2. product information;
3. agreements with third party suppliers of goods and services; and
4. key support contact details for Contractor and third party supplier personnel.

Schedule 9 (Agreement Documents)

To the extent of any inconsistency between any document set out in this Schedule 9 (Agreement Documents) and another document set out in this Schedule, the more recent document in time will prevail.

Following Documents are to be attached at time of execution and updated promptly as changes occur.

A: Service Register -

B: Processes -

Schedule 9 – Agreement Documents

A: Service Register –

Please see Appendix 3: Tab 9.1 for School Service Register; Tab 9.2 for PO Box Service Register; and, Tab 9.3 for Corporate Service Register

.

Schedule 9 – Agreement Documents

B: [Commercial-in-confidence]

1. [Commercial-in-confidence]

2. PO Box Rental

- A. The Contractor will provide rental access to a PO Box for any Site at any time as required. Sites can arrange a PO Box by attending their nominated Post Office. A letter of authority and proof of identification is required to rent a PO Box.
- B. The contractor is responsible for identifying and reporting changes and adding PO Box services to the Service Register.

3. Parcel Post eParcel and Express Post eParcel

- A. No minimum revenue per pick-up will be applicable.

4 and 5. Express Post Satchels and Express Post Envelopes

- A. The Contractor will make available bulk purchase of Express Post satchels and Express Post Envelopes as identified in clause 2.2 (Schedule of Services and Prices) of Schedule 2 (Service and Prices) for use by all Sites.
- B. The Contractor will collect Express Post satchels and Express Post Envelopes for mailing from Sites and lodge these at the nearest Post Office or designated Express Post mail box. Alternatively Sites may choose to deposit the satchels at a Post Office or in a designated Express Post mail box.
- C. Express Post satchels and Express Post Envelopes are delivered in line with the requirements of the Australia Post Express Post Guarantee.

6. Small Letters via Account

- A. Australia Post products or services utilised and paid for via an Australia Post Business Charge Account.

7. Parcel Post Standard

- A. Domestic delivery service for items up to 22kg in weight, up to 105cm in length and up to 140cm in girth or circumference.
- B. Standard and Express delivery services are available.

8. International Mail

- A. A discount on the published price and a rebate on the contract costs will apply to the handling of International post including:

- International Letters
- International Parcels Small
- International Parcels Large

B. The discount and rebate is identified in the pricing schedule

[Commercial-in-confidence]

9. [Commercial-in-confidence]

10. [Commercial-in-confidence]

Account Management

11. Consolidated Invoicing (for school services only)

It has been agreed that individual eligible schools have their own subaccounts which are under one School Master Account. Every month one consolidated invoice against this School Master Account will be submitted to the Department via email. Along with the consolidated invoices the reports of supplier payment upload and school Sundry Tax Invoice upload will be emailed to the Department as excel spreadsheets in the format given by the Department. GST taxable transactions and GST free transactions need to be correctly identified in attached reports. In addition, any discount/rebate offered will be calculated and distributed back to school individual subaccount, and reflected in the monthly consolidated invoice.

12. Consolidated Invoicing (for corporate services only)

It has been agreed that individual corporate sites have their own subaccounts which are under one Corporate Master Account. Every month one consolidated invoice against this Corporate Master Account will be submitted to the Department via email. Along with the consolidated invoices the reports of supplier payment upload will be emailed to the Department as excel spreadsheets in the format given by the Department. GST taxable transactions and GST free transactions need to be correctly identified in attached reports. In addition, any discount/rebate offered will be calculated and distributed back to corporate individual subaccount, and reflected in the monthly consolidated invoice.

[Commercial-in-confidence]

Appendix 1 – [Commercial-in-confidence]

Appendix 2 – [Commercial-in-confidence]

Appendix 3 – [Commercial-in-confidence]