

CLAYTON UTZ

## Transformation Services Agreement

Department of Education and Communities  
DEC

Accenture Australia Holdings Pty Ltd  
Contractor

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Our reference 12277/80120236

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**Parties**                    **The State of New South Wales by its Department of Education and Communities (DEC)**  
**Accenture Australia Holdings Pty Ltd ABN 61 096 995 649 (Contractor)**

## **Background**

- A.        DEC has established the Learning Management and Business Reform (**LMBR**) Program (**Program**), and embarked on a journey to transform the way finance, human resource (**HR**) and student administration and learning management (**SALM**) services are delivered.
- B.        DEC wishes to engage a transformation services provider to manage and execute the implementation of the Program in its entirety and potentially provide services to maintain and operate the solutions and systems thereafter. This includes but is not limited to both the SALM and ERP implementations.
- C.        DEC envisages an initial pilot project (**Project**) under this agreement, split into Solution pilots for TAFE, Schools and State Office (Corporate). DEC envisages that the Solution pilots will each comprise a fully functional service delivery model, delivering a proportion of the complete Solution. Upon the successful conclusion of the pilots, DEC intends to move forward with full deployment under a separate agreement.
- D.        DEC issued a request for proposal (**RFP**) on 10 October 2011 in order to procure a transformation services provider to deliver a solution to DEC encompassing people, processes and technology.
- E.        DEC has selected the Contractor to supply the services.
- F.        This agreement sets out the terms and conditions applying to the provision of services for the pilots by the Contractor.

## **Operative provisions**

### **Part 1 - Introduction**

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#### **1.        Definitions and interpretation**

##### **1.1        Definitions**

In this agreement:

**[Omitted.]**

[Omitted.]

[Omitted.]

**Additional Disclosee** has the meaning given to it under clause 20.2.

[Omitted.]

[Omitted.]

**Assets** means all Equipment, Software, methodologies, tools, contracts and premises that form part of the Solution or are used by the Contractor to provide the Services.

[Omitted.]

[Omitted.]

[Omitted.]

**Australian Consumer Law** means Schedule 2 to the Competition and Consumer Act 2010 (Cth).

**Authorised Persons** has the meaning given to it under clause 13.1(b).

[Omitted.]

[Omitted.]

[Omitted.]

**Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney.

[Omitted.]

[Omitted.]

**Commencement Date** means, in relation to a Work Package, the date the Work Package will begin, as set out in the Work Package or otherwise agreed by the parties.

[Omitted.]

**Confidential Information** has the meaning given to it under clause 20.11(b).

**Conflict of Interest** means an activity or interest which is in conflict with providing the Services to DEC fairly and independently including because of the Contractor's or its Personnel's business interests, but does not include merely offering or providing services or software to other customers.

[Omitted.]

**Contract Material** means New Material and Existing Material.

[Omitted.]

**Contractor Representative** means the person specified as such in Schedule 1, or any other person notified as such by the Contractor to DEC.

**Contractor Supplied Assets or CSA** means the Assets that are to be supplied by the Contractor, as set out in Schedule 8.

[Omitted.]

[Omitted.]

**Core Application Software** means the ERP Software and the SALM Software.

[Omitted.]

**Data** means numbers, characters, images, or other information recorded in a form that can be printed, input into a CPU/processor, stored and processed there, or transmitted on some digital or analog channel on or in any storage media (of whatever nature) whether in a human or machine readable form.

**DEC Data** means all Data provided by DEC or created or obtained by the Contractor in the course of this agreement.

**DEC Default** means:

- (a) DEC's failure to meet an obligation under this agreement due to a breach, wilful misconduct or a negligent act or omission by a NSW Government Body or NSW Government Body Personnel;
- (b) a failure by DEC to meet an obligation agreed by DEC in an operational work plan (subject to clause 13.1(d)), such that if it were binding under this agreement it would amount to a failure under paragraph (a) of this definition; or
- (c) wilful misconduct or an unlawful or negligent act or omission by a NSW Government Body or NSW Government Body Personnel.

**DEC Facilities** means the facilities and services identified in section 1 of Schedule 7.

**DEC ICT Environment** means the hardware, software and other computer or data communications equipment DEC uses to carry out its operations and provide products and services, and includes the DEC Resources.

**DEC Interoperable Systems** means DEC systems that the Contractor will integrate with the Solution as set out in section 3 of Schedule 7.

**DEC Policies** means:

- (a) the policies identified in the Specifications; and
- (b) other policies notified to the Contractor after the Effective Date.

**DEC Representative** means the person specified as such in Schedule 1, or any other person notified as such to the Contractor by DEC.

**DEC Resources** means the DEC Facilities, DEC Interoperable Systems and DEC System Components.

**DEC System Components** means the components identified in section 2 of Schedule 7.

[Omitted.]

[Omitted.]

**Deliverable** means anything required to be delivered by the Contractor under this agreement, including the Solution (or a Release), Contract Material and the deliverables specified in the Specifications.

[Omitted.]

**Developed Software** means software that is to be developed under this agreement and includes developed data conversion software and customisations, modifications, enhancements and extensions to the Core Application Software. For clarity, Developed Software does not include customisations, modifications, enhancements or extensions to DEC Resources where they are made by or on behalf of the relevant third party vendor under the relevant Managed Third Party Contract.

**Discloser** has the meaning given to it under clause 20.11(a).

[Omitted.]

**Documentation** means documentation (in any format) required to be developed or supplied under this agreement by the Contractor or required to enable the Solution to be used by DEC in accordance with this agreement.

[Omitted.]

**Effective Date** means the date specified in Schedule 1.

**Electronic Incident** means any unauthorised action by a known or unknown person which, if successfully completed, attempted, or threatened, is reasonably considered by the Contractor to be one of the following: an attack, penetration, denial of service, disclosure of proprietary information, misuse of system access, unauthorised access or intrusion (hacking), virus intrusion, scan of the System, systems, networks, technology, content or websites of the NSW Government Bodies or the Contractor (or its subcontractors).

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person.

**Equipment** means any hardware, equipment and plant forming part of the Solution or used by the Contractor to provide the Services.

**ERP Software** means the ERP software as specified in section 2.1 of Schedule 7.

[Omitted.]

**Event of Insolvency** means:

- (a) a controller (as defined in section 9 of the Corporations Act 2001 (Cth)), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 5 Business Days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
  - (ii) winding up or deregistering a person; or



- (iii) proposing or implementing a scheme of arrangement, other than with the prior approval of DEC under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act 2001 (Cth);
- (d) any application (not withdrawn or dismissed within 5 Business Days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
  - (i) a moratorium of any debts of a person;
  - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
  - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the Corporations Act 2001 (Cth), a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act 2001 (Cth));
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

**[Omitted.]**

**Existing Material** means Material, other than New Material, that is:

- (a) incorporated in New Material by or on behalf of the Contractor; or
- (b) supplied or required to be supplied under this agreement by the Contractor.

**[Omitted.]**

**[Omitted.]**

**Expiry Date** means, in relation to a Work Package, the Expiry Date specified in the Work Package or, if no Expiry Date is specified, the date that all Services have been provided and other requirements of the Work Package have been met.

**[Omitted.]**

**Force Majeure Event** has the meaning given in clause 46.3.

**[Omitted.]**

**[Omitted.]**

[Omitted.]

[Omitted.]

**Health Privacy Principle** or **HPP** means the health privacy principles contained in the Health Records and Information Privacy Act 2002 (NSW).

**Information Protection Principle** or **IPP** means the information protection principles contained in the Privacy and Personal Information Protection Act 1998 (NSW).

**Intellectual Property Rights** includes all present and future rights in relation to copyright, trade marks, designs, patents, trade, business or company names, or other proprietary rights, or any rights to registration of such rights whether created before or after the date of this agreement, and whether existing in Australia or otherwise.

[Omitted.]

**Laws** has the meaning given to it under clause 43.3(a).

[Omitted.]

**Listing Rules** has the meaning given to it under clause 20.11(c).

[Omitted.]

[Omitted.]

**Material** means tangible and intangible information, documents, reports, software (including source and object code), inventions, data and other materials in any media whatsoever.

[Omitted.]

[Omitted.]

**Moral Rights** means the moral rights granted to creators under the Copyright Act 1968 (Cth), and any similar rights existing under foreign laws.

[Omitted.]

**NSW Government Body** means:

- (a) DEC (including the New South Wales Technical and Further Education Commission), including its agencies, institutes, schools, offices, bureaus, business units, groups, divisions, and any other New South Wales government education portfolio entities;
- (b) any Division of the Government Service as defined under the Public Sector Employment and Management Act 2002 (NSW);
- (c) a NSW Public Sector Service, whether in whole or in part (as defined under the Public Sector Employment and Management Act 2002 (NSW)), being:
  - (i) the Teaching Service (including any public school or TAFE in NSW);
  - (ii) the NSW Police Force;
  - (iii) the NSW Health Service;

- (iv) the service of either House of Parliament, or the President or Speaker, or the President and the Speaker jointly;
  - (v) any other service of the Crown;
  - (vi) the service of any other person or body constituted by or under an Act or exercising public functions, being a person or body that is prescribed, or that is of a class prescribed, for the purposes of the definition of Public Sector Service for the purposes of the Public Sector Employment and Management Act 2002;
- (d) a NSW Government Agency (as defined in the Interpretation Act 1987 (NSW));
  - (e) a government trading enterprise of this State (including a State Owned Corporation); and
  - (f) any Public Health Organisation as defined under the Health Services Act 1997 (NSW), including any public hospital in NSW.

**NSW Government Property** means any property or information of the NSW Government Bodies and includes:

- (a) information created or obtained by the Contractor in the course of this agreement from the NSW Government Bodies or that relates to the NSW Government Bodies;
- (b) the DEC Resources; and
- (c) the Contract Material.

**Operational Level Specification** means the specifications in paragraphs (e) to (g) of the definition of Specifications.

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

**Personnel** includes employees, officers, agents, contractors, sub-contractors and their respective Personnel. For clarity, in performing this agreement, the Contractor and its Personnel are not the Personnel of a NSW Government Body.

**Program** has the meaning given to it under paragraph A of the Background section.

**Project** has the meaning given to it under paragraph C of the Background section.

**[Omitted.]**

**Products** means the products referred to in clause 4.1 or elsewhere in this agreement, as varied from time to time under this agreement.

**[Omitted.]**

**[Omitted.]**

**Receiving Party** has the meaning given to it under clause 20.11(d).

**[Omitted.]**

**Related Entity**, of an entity, means any present or future corporation, institute, body or other entity:

- (a) controlled by, controlling or under common control with the first mentioned entity (and for this purpose control means:
  - (i) an ownership interest of at least 50%;
  - (ii) the right to control the composition of the Board of Directors;
  - (iii) the right to cast or control the casting of at least 50% of the maximum number of votes at a general meeting;
  - (iv) the right to at least 50% of the dividends or income; or
  - (v) the right to exercise reserve powers of direction or control in relation to conduct or activity); or
- (b) which the first mentioned entity is consolidated or amalgamated with or corporatised or merged into or to which all or substantially all of its assets or functions are transferred.

**Relationship Executive** in relation to a party, means the person specified as such in Schedule 1, or any other person notified as such by the party to the other party.

[Omitted.]

**Review** has the meaning given to it under clause 23.6(a).

[Omitted.]

**RFP** has the meaning given to it under paragraph D of the Background section.

[Omitted.]

**Senior Executive** in relation to a party, means the person specified as such in Schedule 1, or any other person notified as such by the party to the other party.

[Omitted.]

**Service Levels** means the service levels set out in the Specifications.

**Services** means the services referred to in clause 4.1 or elsewhere in this agreement, as varied from time to time under this agreement.

[Omitted.]

[Omitted.]

[Omitted.]

[Omitted.]

[Omitted.]

**Software Lock** has the meaning given to it under clause 25.3.

**Solution** means the fully integrated solution comprising people, process and technology conforming with the requirements in the Specifications. It includes:

- (a) organisational change;
- (b) training;
- (c) business processes;
- (d) communications and stakeholder management;
- (e) monitoring and benefits realisation; and
- (f) the System.

**Specifications** means:

- (a) specifications in clauses 1 to 46 of this agreement;
- (b) any variation to specifications under clause 19 (except under the Expedited Change Process);
- (c) specifications in the schedules of this agreement;
- (d) any change to an Operational Level Specification which is agreed in accordance with the Expedited Change Process;
- (e) specifications in Annexure A;
- (f) specifications in a Deliverable that has been Accepted by DEC; and
- (g) the Documentation,

and to the extent of any inconsistency between these specifications, the specifications listed earlier in this definition prevail over those listed later.

[Omitted.]

[Omitted.]

**Standards** has the meaning given to it under clause 43.3(b).

[Omitted.]

**Support Services** means the services described as such in the Specifications.

[Omitted.]

**Task** means a task forming part of the Services.

[Omitted.]

[Omitted.]

**Transition Out Services** means services referred to in clause 38.

[Omitted.]

**Use of the Solution by NSW Government Bodies** means:

- (a) an activity in relation to or involving use of the Solution by a NSW Government Body (or another person for purposes relating to a NSW Government Body); and

- (b) procurement, supply or receipt of services by a NSW Government Body in relation to or involving use of the Solution (including the provision of access to the Solution),

but does not include installation of the Solution by a person (other than a NSW Government Body) for its own use except as an incidental part of receiving services from a NSW Government Body.

[Omitted.]

[Omitted.]

[Omitted.]

**Virus** has the meaning given to it under clause 23.7.

[Omitted.]

[Omitted.]

**Year** means a year commencing on the Effective Date or an anniversary of the Effective Date.

## 1.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) to the extent of any inconsistency between the following documents, the inconsistency is resolved in the following descending order of precedence:

- (i) the clauses of this agreement;
- (ii) the schedules; and
- (iii) any other document incorporated into this agreement;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) **includes** in any form is not a word of limitation; and
- (l) a reference to **\$** or **dollar** is to Australian currency.

**1.3 [Omitted.]**

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**2. Commencement**

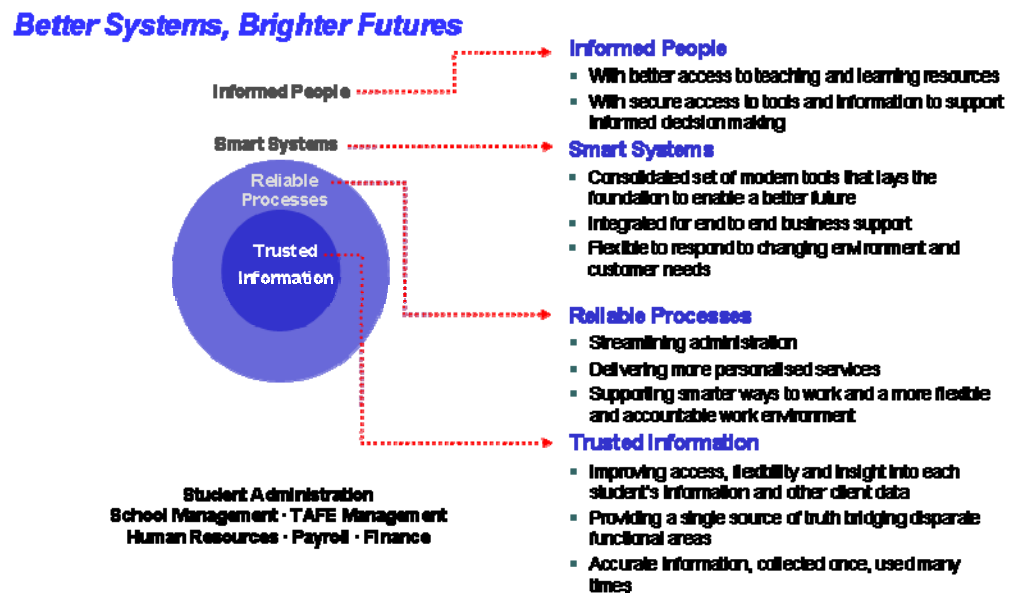
This agreement commences on the Effective Date.

## Part 2 – Services

### 3. Objectives of the agreement

DEC is engaging the Contractor to provide the Services to establish and pilot a Solution to assist DEC to achieve and maximise the benefit of the following project objectives:

- (a) realise the LMBR Program vision as described in the RFP. An overview of the 4 key areas of the LMBR program's vision is:



- (b) follow the corporate design principles for the Project, which are:

- (i) Standardise and Integrate
- A. Standardised processes across SALM, Finance, HR, Procurement, ITD, Assessment Management, Information Management etc
  - B. Standardise information, provide a common view of the student / employee
  - C. A common DEC application footprint
  - D. Integrated SALM, Finance and HR applications
- (ii) Simplify and Automate
- A. Design end-to-end processes
  - B. Single data entry
  - C. Single source of truth
  - D. Eliminate non value added activities
  - E. Automate repetitive tasks



- F. Eliminate duplicated tasks
- G. Challenge existing frameworks
- (iii) Value Focus
  - A. Reduce administrative effort required at Schools and TAFE
  - B. Reduce total cost of ownership
  - C. Share processes to realise economies of scale
  - D. Build flexibility and transparency into processes, tools and reporting capabilities
  - E. Retain applications that are robust and provide capability;
- (iv) Operating model
  - A. The pilot is a good representation of the FMO
  - B. High level of standardisation where appropriate
  - C. Centralised, decentralised and cluster service offering
  - D. Customer interaction should be delivered in a uniformed approach without compromising service delivery
  - E. Multi-channel service offering
  - F. Integrated, automated and user friendly solution
  - G. A single governance and service management approach
  - H. Clearly defined career opportunities, roles and responsibilities
  - I. High efficiency / high effectiveness value delivered
  - J. High quality low risk
  - K. Self-service is a key capability
- (v) Implementation
  - A. Minimise change impact to students / teachers
  - B. Minimise disruption to workforce / industrial relations
  - C. Limited touch approach per pilot
  - D. Integration of key systems only
  - E. Minimise impact on service delivery during the pilot phase
- (c) [Omitted.]
- (d) realise the benefits, objectives, intents and goals stated in the RFP.

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## **4. Scope of the agreement**

### **4.1 Contractor's obligations**

- (a) The Contractor will provide Services and Deliverables in accordance with the Specifications and the other requirements of this agreement.
- (b) In providing the Services, the Contractor must:
  - (i) perform the Services in a manner which aims to achieve the objectives set out in clause 3; and
  - (ii) perform its obligations and responsibilities by any applicable deadlines, Milestone Due Dates or timelines specified in this agreement, including the Program Plan or the Specifications.
- (c) [Omitted.]
- (d) Except as expressly provided in this agreement, the Contractor is responsible for providing all Contractor Personnel and any other facilities, systems, technical knowledge, expertise and all other resources necessary to provide the Deliverables and Services.
- (e) [Omitted.]
- (f) The Contractor will, and will ensure that its Personnel, provide the Deliverables and Services in Australia, unless and except to the extent specified in a Work Package or otherwise agreed by DEC. For clarity, this does not constitute agreement for the Contractor to transfer Personal Information outside Australia.

### **4.2 DEC's obligations**

Subject to the provisions of this agreement, DEC will:

- (a) pay the Contractor the Fees; and
- (b) provide or otherwise make available to the Contractor the DEC Resources in accordance with the Specifications.

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## **5. Contractor's assessment of scope and risk**

### **5.1 Assessment of scope of project and risks**

The Contractor warrants that prior to the date of this agreement it has done everything that would be expected of a prudent, competent and experienced contractor, service provider and project manager in:

- (a) assessing the scope of the Services and the risks that it is assuming under this agreement; and
- (b) [Omitted.]

### **5.2 Contractor's own investigations**

Without limiting clause 5.1, the Contractor warrants that prior to the date of this agreement it has:

- (a) examined the property to which it requires access to carry out the Services and has satisfied itself fully as to the conditions and access which may affect its performance of the Services;
- (b) informed itself completely of the nature of the Services and materials and expertise necessary for the Services; and
- (c) obtained all appropriate professional and technical advice on all matters and circumstances in respect of the matters referred to in this clause 5.2.

### **5.3 [Omitted.]**

### **5.4 Review by DEC**

Subject to clause [Omitted.] and any variation of this agreement, any review, inspection, testing, acceptance, or approval of, comment upon or input into, or any failure to do any of those things, by DEC of a Deliverable or Service will not relieve the Contractor of its responsibilities for the Deliverable or Service under this agreement or at law.

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## **6. Acceptance**

The procedures for acceptance of Deliverables and Services and the achievement of Milestones are set out in Schedule 5.

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## **7. Service Levels**

### **7.1 Contractor to ensure Service Levels are met**

The Contractor will ensure the Services meet the Service Levels.

### **7.2 [Omitted.]**

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## **8. DEC Resources**

### **8.1 Provision of DEC Resources**

- (a) DEC will provide or otherwise make available to Contractor the DEC Resources at the times reasonably required for the Project.
- (b) Where a Deliverable includes DEC Resources, the Contractor's obligation to provide the Deliverable is subject to DEC complying with clause 8.1(a).
- (c) DEC is open and expects the Contractor to recommend alternatives to DEC System Components or their configuration that would improve performance, reduce cost or simplify the DEC ICT Environment. Any variation will be managed through the change control process in Schedule 6.

### **8.2 Compliance and appropriate behaviour**

- (a) Where the Contractor has access to DEC's premises or the DEC ICT Environment, the Contractor will comply with DEC Policies (as if references to DEC Personnel include a reference to the Contractor and its Personnel) and directions and act in a responsible and businesslike manner on and around those premises and in the use of the DEC ICT Environment.

- (b) Where DEC changes a DEC Policy (including adding a new policy) after the Effective Date, DEC will provide the Contractor with reasonable notice of the changes.
- (c) Where the Contractor would incur material additional cost (and would not have incurred those costs as part of its other business operations) or would be materially delayed in the performance of its obligations in complying with a change under clause 8.2(b), it will notify DEC and the change to DEC Policy will then be dealt with as a variation in accordance with Schedule 6.

### **8.3 Contractor to limit use of DEC ICT Environment**

The Contractor will limit its use of the DEC ICT Environment and DEC Resources to no more than as is reasonably necessary to comply with its obligations to provide the Services. The Contractor warrants that under no circumstance will the Contractor or its Personnel interrupt the business operations of DEC unless it has the prior written consent of DEC.

### **8.4 Remote access**

Prior to granting a person remote access to the DEC ICT Environment, DEC may require that person to execute an access agreement in a form reasonably specified by DEC.

### **8.5 [Omitted.]**

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## **9. [Omitted.]**

**Part 3 – Financial arrangements**

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**10. [Omitted.]**

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**11. [Omitted.]**

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**12. [Omitted.]**

## Part 4 - Relationship management

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### 13. Relationship management

#### 13.1 DEC Representative

- (a) DEC appoints the DEC Representative to oversee the work of the Contractor. In carrying out this agreement, the Contractor will comply with the reasonable directions of the DEC Representative.
- (b) The DEC Representative may, from time to time during this agreement, determine the persons who are authorised to bind DEC in relation to this agreement (**Authorised Persons**).
- (c) Such determination will have force and effect from the date the DEC Representative provides the Contractor with written notification of such authorisation.
- (d) Any direction, consent, agreement, waiver, authorisation, determination, decision or other act of a person who is not an Authorised Person, the DEC Representative, DEC Relationship Executive or DEC Senior Executive is not binding on DEC.

#### 13.2 Contractor Representative

- (a) The Contractor appoints the Contractor Representative to represent the Contractor in connection with all matters relating to this agreement.
- (b) A direction given by DEC to the Contractor Representative will be regarded as having been given to the Contractor.
- (c) Matters within the knowledge of the Contractor Representative will be regarded as being within the knowledge of the Contractor.
- (d) If the DEC Representative makes a reasonable objection to the appointment of a person as the Contractor Representative, the Contractor must terminate the appointment and appoint another person, subject again to the reasonable objection of the DEC Representative.

#### 13.3 Relationship management services

The parties will comply with the relationship and project management requirements set out in Schedule 4 and the Specifications in performing this agreement.

#### 13.4 Meetings

The Contractor will hold meetings (including meetings relating to planning, review, and issue resolution) as reasonably required by DEC and report to DEC on a regular basis (and where necessary, on an urgent ad hoc basis) so as to keep DEC fully informed as to the progress of the Services, provide DEC with all information which it requires and as otherwise specified in the Specifications and Schedule 4.

## **13.5 Prioritisation**

- (a) Subject to clause 13.5(b), if DEC reasonably requests the Contractor to alter or reprioritise a particular Service or the manner in which such Service is to be provided, the Contractor will use its reasonable endeavours to meet that request and will consult with DEC in good faith to minimise the disruption to DEC's business.
- (b) Clause 13.5(a) does not apply where compliance by the Contractor would cause the Contractor to incur material additional cost or breach this agreement.

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## **14. [Omitted.]**

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## **15. [Omitted.]**

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## **16. [Omitted.]**

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## **17. Documentation**

### **17.1 Contractor to provide**

At all times the Contractor will ensure that DEC is supplied with Documentation that fully describes in a manner in which DEC can readily understand and apply, processes and procedures relevant to the Services and Deliverables (including Documentation specifically required by the Specifications).

### **17.2 Documentation requirements**

The Documentation will be:

- (a) in an electronic format reasonably required by DEC;
- (b) of a reasonable standard in terms of its presentation, accuracy and scope;
- (c) the most current up to date version available; and
- (d) in the English language,

and key terms, words and symbols must be adequately defined.

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## **18. Quality system**

### **18.1 Design and implementation**

- (a) The Contractor will have and modify for DEC's environment a quality plan and implement a quality system which complies with the Specifications for the management of all aspects of the Contractor's obligations under the agreement.
- (b) The Contractor will either supply DEC with the document and any updates, or alternately if the system is maintained in electronic form, provide DEC with remote electronic access.

- (c) The Contractor must appoint a quality assurance representative to ensure that its quality management system is developed, implemented and maintained in accordance with this agreement.
- (d) The quality assurance representative must be suitably qualified to effectively discharge his or her assigned duties and responsibilities.
- (e) The Contractor must collect, interpret and archive all records generated by its quality management system.

**18.2 [Omitted.]**

**18.3 Non-compliance**

- (a) Subject to clause 18.3(b), the Contractor will report to DEC or its nominated representatives within 5 Business Days on any non-compliance with the quality system, the reason for that non-compliance and the measures taken to prevent or mitigate the risk of recurrence.
- (b) Where the non-compliance is serious or public interest may result, the Contractor must provide DEC with a preliminary report within 1 hour of the event (or its discovery).

**18.4 No relief from obligations**

The Contractor will not be relieved of its liabilities or responsibilities under this agreement or otherwise according to law, nor will the rights of DEC whether under this agreement or otherwise according to law be affected by:

- (a) the implementation and compliance with the quality system; or
- (b) [Omitted.]

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**19. Change control**

- (a) The process for changing this agreement is set out in Schedule 6.
- (b) This agreement (including the Specifications) may only be varied by following that process.



## Part 5 – Information protection

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### 20. Confidential Information

#### 20.1 Receiving Party not to disclose Confidential Information

The Receiving Party undertakes to the Discloser that it will not disclose the Confidential Information received by it or permit it to be disclosed to a person or corporation (except if the Receiving Party is or becomes required to do so by statute (including Government Information (Public Access) Act 2009 (NSW)), rule (including the Listing Rules), regulation, judicial process or the like) unless the disclosure is made:

- (a) with the written consent of the Discloser; and
- (b) upon the basis that the confidentiality of the Confidential Information is the subject of a corresponding confidentiality obligation upon the terms provided in this clause.

#### 20.2 Exception for disclosure to Additional Disclosees

Nothing in clause 20.1 prevents the Receiving Party disclosing the Confidential Information received by it to the following persons (**Additional Disclosees**):

- (a) in the case of the Contractor, its officers, agents, professional advisers and approved subcontractors on a need to know basis for the purposes of this agreement; and
- (b) in the case of DEC:
  - (i) its officers, agents, professional advisers and contractors on a need to know basis;
  - (ii) to such persons as necessary to comply with government policy relating to the public disclosure of Confidential Information; and
  - (iii) any person for the purposes of Use of the Solution by NSW Government Bodies, provided that the Contractor's tools and methodologies identified in the Contractor Supplied Assets may only be disclosed on a need to know basis.

#### 20.3 Conditions on disclosure to Additional Disclosees

Confidential Information may only be disclosed by a Receiving Party to an Additional Disclosee on condition that:

- (a) the Additional Disclosee is made aware of the confidential nature of the information;
- (b) the confidentiality of the Confidential Information is the subject of corresponding confidentiality obligations upon the terms provided in this clause;
- (c) the Receiving Party uses all reasonable endeavours to ensure Additional Disclosees comply with the obligations imposed under clause 20.3(b); and
- (d) in the case of disclosure by the Contractor, the Contractor will provide to DEC upon request a list of the Contractor's Additional Disclosees and will on request by DEC

arrange for an Additional Disclosee to execute a document in the form of Schedule 11.

## **20.4 Breaches of confidentiality**

If a Receiving Party becomes aware of a suspected or actual breach of this clause by that party or an Additional Disclosee, the Receiving Party will:

- (a) immediately notify the Discloser of that suspected or actual breach; and
- (b) take reasonable steps, at its own expense, required to prevent or stop the suspected or actual breach.

## **20.5 Notification of disclosure by law**

If a Receiving Party is or becomes required by statute, rule (including the Listing Rules), regulation, judicial process or the like to disclose the Confidential Information received by it, that Receiving Party will if practicable, prior to the disclosure but in any event immediately following the disclosure, immediately notify the Discloser.

## **20.6 Return of Confidential Information**

Subject to clauses 20.4 and 20.5, the Contractor will, upon demand by DEC, return to DEC or destroy DEC Confidential Information and copies of the DEC Confidential Information received by the Contractor.

## **20.7 Injunctions**

The Receiving Party acknowledges that:

- (a) a breach of this clause would cause damage to the Discloser;
- (b) in the event of a breach or threatened breach of the terms of this clause by a Receiving Party the Discloser is entitled to an injunction restraining the Receiving Party from committing a breach of this clause without showing or proving actual damage sustained by the Discloser; and
- (c) the obtaining of an injunction is without prejudice to the rights of the Discloser to seek damages for loss suffered as a result of a breach of the provisions of this clause by the Receiving Party.

## **20.8 Use of Confidential Information**

- (a) The Contractor will not use or allow DEC Confidential Information to be used for a purpose other than the purposes of this agreement.
- (b) DEC will not use or allow the Contractors' Confidential Information to be used for a purpose other than the purposes of this agreement or Use of the Solution by the NSW Government Entities.

## **20.9 NSW Government Property**

NSW Government Property is the Confidential Information of the NSW Government Bodies and not of the Contractor. This does not affect rights and obligations of confidentiality in Existing Material except to the extent it is incorporated into New Material. For clarity, nothing in this clause limits or precludes in any way the Contractor's use of Existing Material outside the scope of this agreement.

## 20.10 This agreement

- (a) This agreement is the Confidential Information of both parties.
- (b) Pursuant to clause 20.1(a), DEC consents to the Contractor disclosing this agreement to Related Entities of the Contractor and their Personnel who have a need to receive the agreement for purposes related to the Contractor or its Related Entities.

## 20.11 Definitions

In this clause 20:

- (a) **Discloser** means the party providing or disclosing Confidential Information;
- (b) subject to clauses 20.9 and 20.10, **Confidential Information** means information of or provided by the Discloser to the Receiving Party that:
  - (i) by its nature is confidential and includes information or documents relating to shareholders and customers of the Discloser;
  - (ii) is designated by the Discloser as confidential; or
  - (iii) the Receiving Party knows or ought to know is confidential,but does not include information:
  - (iv) which at the time of first disclosure to the Receiving Party is in the public domain;
  - (v) which after disclosure to the Receiving Party comes into the public domain otherwise than by disclosure in breach of the terms of this clause;
  - (vi) which the Receiving Party can prove was in its possession at the time of first disclosure to it by the Discloser and was not acquired directly or indirectly from the Discloser;
  - (vii) which the Receiving Party received from a third party, provided that as far as the Receiving Party is aware (without the need for enquiry) it was not received directly or indirectly from the Discloser in breach of an obligation of confidence owed by the third party to another person and was not provided by the third party acting on the authority of the Discloser; or
  - (viii) which the Receiving Party can prove to the reasonable satisfaction of the Discloser was independently developed;
- (c) **Listing Rules** means the listing rules of Australian Stock Exchange Limited; and
- (d) **Receiving Party** means the party who receives Confidential Information from the Discloser.

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## 21. [Omitted.]

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## **22. Privacy**

- (a) The Contractor must comply with the obligations set out in Schedule 12 and any Laws relating to privacy.
- (b) The Contractor must immediately notify DEC when the Contractor becomes aware of or receives a complaint relating to a breach of this clause 22 by the Contractor or its Personnel.
- (c) [Omitted.]
- (d) [Omitted.]
- (e) This clause 22 will survive the termination or expiry of this agreement for a period of six years.

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## **23. Information security**

### **23.1 No unauthorised access**

The Contractor will, to the extent the System and NSW Government Property are within its possession or control, take all reasonable steps to ensure that no unauthorised party:

- (a) is allowed physical or electronic access to the System or NSW Government Property; and
- (b) prevents the Solution from being available.

This includes installing and maintaining adequate security features within the System.

### **23.2 Safeguarding DEC Data**

- (a) The Contractor will establish and maintain environmental, safety and facility procedures, data security procedures and other safeguards against the destruction, loss, unauthorised access or alteration of DEC Data in the possession of Contractor which are:
  - (i) no less rigorous than those maintained by the Contractor for its own information of a similar nature;
  - (ii) no less rigorous than accepted security standards in the industry, including those set forth in the Specifications; and
  - (iii) adequate to meet the requirements of the DEC Policies.
- (b) Within 6 months following the Effective Date and as subsequently requested by DEC but no more frequently than once each year, the Contractor will evaluate the then-current DEC security policy and will prepare and submit for DEC review and approval recommendations with respect to changes or modifications to such policy. The Contractor may charge Time and Materials for work performed under this clause in excess of the first 4 days of work.
- (c) The Contractor will maintain and enforce the then-current DEC security policy until any changes or modifications are approved by DEC for implementation.
- (d) The Contractor will adhere to DEC Data policies and testing requirements in the Specifications.

- (e) The Contractor will remove all DEC Data from any media taken out of service and will destroy or securely erase such media in accordance with DEC's policy and procedures manual.
- (f) In the event the Contractor discovers or is notified of a breach or potential breach of security relating to DEC Data within the Contractor's possession or control, the Contractor will immediately:
  - (i) notify DEC of such breach or potential breach;
  - (ii) investigate (with DEC's participation if so desired by DEC, subject to the Contractor's security and confidentiality guidelines and procedures) such breach or potential breach and perform a risk assessment, root cause analysis and develop a corrective action plan;
  - (iii) provide a written report to DEC of such risk assessment, root cause analysis and corrective action plan;
  - (iv) remediate the effects of such breach or potential breach of security; and
  - (v) provide DEC with such assurances as DEC reasonably requests that such breach or potential breach will not recur.

### **23.3 Reconstruction procedures**

As part of the Services, the Contractor is responsible for developing and maintaining procedures for the reconstruction of lost DEC Data which are:

- (a) no less rigorous than those maintained by DEC as set out in the DEC Policies; and
- (b) no less rigorous than those maintained by the Contractor for its own information of a similar nature.

### **23.4 Corrections**

- (a) The Contractor will restore to the most recent back up level, all destroyed, lost or altered DEC Data for which the Contractor has back up responsibility, using generally accepted data restoration techniques.
- (b) While the Contractor is performing infrastructure management services, the Contractor will correct to the most recent back up, at no charge to DEC, any destruction, loss or alteration of any DEC Data attributable to the failure of Contractor or Contractor Personnel to comply with Contractor's obligations under this agreement. Where the Contractor is not responsible for maintaining the back up, DEC will provide the back up to the Contractor.

### **23.5 Electronic Incident reporting**

- (a) The Contractor will report to DEC all known or suspected Electronic Incidents in relation to systems within its possession and control.
- (b) Where an Electronic Incident actually occurs, the Contractor will as soon as reasonably possible notify DEC's Representative at the telephone number specified in DEC's policy and procedures manual, and provide the following information to DEC (to the extent known to or ascertainable by the Contractor):
  - (i) the nature and impact of the Electronic Incident;

- (ii) actions taken by the Contractor;
  - (iii) the Contractor's assessment of immediate risk; and
  - (iv) the corrective measures to be taken by the Contractor, evaluation of alternatives, and next steps by the Contractor.
- (c) The Contractor will continue providing appropriate status reports to DEC regarding the resolution of the Electronic Incident and prevention of future Electronic Incidents.
- (d) In consultation with the Contractor, DEC may, in its reasonable discretion, require that the Contractor's ability to access, process, or store DEC Data be suspended, connectivity with the Contractor be terminated, or other appropriate action be taken pending such resolution, provided, that upon any such action by DEC, the Contractor will be relieved of its obligations under this agreement to the extent it is unable to perform under such circumstances and so notifies DEC.

## **23.6 Information security review**

- (a) The information security reviews (**Reviews**) may include physical inspection, external scan, internal scan, code review, process reviews (both business and technical), reviews of system configurations, and intrusion testing. To the extent software is required for a Review, off the shelf software will be used.
- (b) The parties will agree in advance the scope of the Review conducted by the Contractor. The scope of any Review conducted by DEC will be decided by DEC. Neither DEC or the Contractor will unreasonably withhold or delay its agreement to such scope, including with respect to any Reviews to be performed by third parties that DEC or its subcontractors have a contractual obligation to permit to conduct Reviews.
- (c) Where a Review is unscheduled, the party conducting the Review will give 5 Business Days' notice of the Review to the other party.
- (d) A Review will be conducted, at the expense of the party conducting the Review.
- (e) The party conducting the Review will promptly following a Review provide to the other party a report in reasonable detail summarising the results of the Review including:
- (i) dates and times;
  - (ii) subject systems; and
  - (iii) results of Review conducted.
- (f) Should any Review result in the discovery of security risks to the Assets in the Solution, the party performing such Review will promptly notify the other party of such risks, and, except where the Asset is a DEC Resource, the Contractor will respond to DEC in writing within 3 Business Days with the Contractor's plan detailing the reasonable measures it will take to promptly correct, repair, or modify the applicable Asset to eliminate such risks at no cost to DEC. Upon approval by DEC, the Contractor will implement such plan as quickly as practicable. Once the Contractor has implemented the plan, another Review of the Assets will be conducted at the Contractor's expense within a reasonable time required by DEC in order to confirm that the security risks identified in the previous Review have been

corrected, repaired or otherwise addressed and no further correction, repair or modification is required.

- (g) [Omitted.]
- (h) DEC, its auditors or its subcontractors may also perform Reviews on the Solution.
- (i) The Contractor grants permission to DEC and its subcontractors to perform such Reviews on the Solution. The Contractor acknowledges that to the extent any applicable Laws require DEC or a subcontractor to obtain the Contractor's consent or the consent of any of the Contractor's subcontractors in order to legally conduct the Reviews permitted under this clause, the Contractor hereby provides such consent to DEC and its subcontractors.
- (j) DEC acknowledges that to the extent a Review performed by DEC, auditors or its subcontractors involves intrusion detection testing or other network or database intrusion activity (e.g., ethical hacking) such Review may include the following risks:
  - (i) excessive amounts of log messages may be generated, resulting in excessive log file disk space consumption;
  - (ii) performance and throughput of the Solution and other DEC systems, as well as the performance and throughput of associated routers and firewalls, may be temporarily degraded;
  - (iii) some operating system data may be changed temporarily as a result of probing certain vulnerabilities; and
  - (iv) DEC computer system(s) may hang or crash, resulting in temporary system unavailability.
- (k) DEC agrees to accept any and all risks associated with such intrusion detection testing or other network or database intrusion activity as a part of DEC's Reviews and accepts all responsibility for the consequences of a system failure caused by its subcontractors (but not the Contractor) when performing such intrusion testing or activity as a part of its Reviews.
- (l) Where DEC requests the Contractor to assist with a DEC Review, the Contractor may charge at Time and Materials for assistance provided in excess of the first 10 days of work each year.
- (m) References in this clause 23.6 to DEC's auditors and subcontractors do not include Competitors.

### **23.7 Contractor to prevent Viruses**

The Contractor will take steps to ensure that no virus, worm, trojan horse or any other software or configuration that may cause an unauthorised change to the System (**Virus**) is allowed in or access to the System, as required by:

- (a) relevant DEC Policies; and
  - (b) the Contractor's own internal best practice,
- and to the extent of any inconsistency, the DEC Policies prevail.

## **23.8 Response to Viruses**

If a Virus is found in or to have had access to the System, the Contractor will immediately use its best efforts to eliminate the Virus and ameliorate its effect. If the Virus causes a loss of operational efficiency or data, the Contractor will mitigate and restore the loss as quickly as possible.

## **23.9 Best practice**

The Contractor will keep itself informed of security best practice and take steps to implement it.

## **23.10 Personnel**

The Contractor will ensure that its Personnel observe the requirements of this clause to the extent that they perform the obligations of the Contractor under this agreement.

## **23.11 [Omitted.]**

## **23.12 Other obligations**

This clause 23 does not limit the parties' other obligations under this agreement.

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## **24. Source code**

### **24.1 Source code**

The Contractor will, when the Developed Software is delivered to DEC, also deliver to DEC:

- (a) the Developed Software source code suitable for compilation together with Documentation providing sufficient information to allow DEC to use, maintain, modify and enhance the Developed Software; and
- (b) all source code for software tools used to assist the development of the Developed Software, including to control and test the Developed Software, where the software tools are created by or on behalf of the Contractor for the purpose of this agreement and where the software tools will be required to enable DEC to use, maintain, modify and enhance the Developed Software,

(collectively, **Source Code**) and the Source Code will be provided in a format and on a medium which is suitable for compilation and use by DEC.

### **24.2 Interim copies**

The Contractor will deliver interim copies of the Source Code to DEC at the times specified in the Work Package Plan or at any time upon request by DEC.

### **24.3 Use of tools and object libraries**

Where the Developed Software has been produced using software tools, object libraries or other devices or methodologies owned by the Contractor or another party, the Contractor will inform DEC as to the nature and use of those devices in the production of the Developed Software.



## **24.4 Provision of tools and object libraries**

Where the software tools, object libraries or other devices or methodologies are required to maintain, modify or enhance the or Developed Software, the Contractor will, if required by DEC, provide DEC with a licence to use those devices in accordance with clause[Omitted.].

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## **25. Software locks**

### **25.1 No software locks without consent**

The Contractor will ensure that the Developed Software and Contractor Licensed Software does not contain Software Locks without first obtaining the prior written consent of DEC.

### **25.2 Conditions on consent**

Where DEC provides consent under clause 25.1, the Contractor:

- (a) will not use a Software Lock to prevent DEC from using the Developed Software or Contractor Licensed Software including the functionality and performance required by the Specifications; and
- (b) will provide all information necessary to de-activate the Software Lock (in relation to any period required by DEC) immediately when requested by DEC.

### **25.3 Definition of Software Lock**

In this clause, a **Software Lock** means a mechanism (including but not limited to a software lock, software key or time bomb), the purpose of which is to disable or reduce the functionality or performance of all or any part of the Developed Software or Contractor Licensed Software, but does not include a security mechanism over which DEC has unconditional control.

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## **26. Public announcements**

### **26.1 Consent required**

The Contractor will not issue or make statements or comments to the public, the press or other persons or authorise a person to do those things, regarding this agreement or matters arising in relation to it (including referring to DEC as a reference site for the Contractor) without DEC's consent.

### **26.2 Disclosure required by law**

Clause 26.1 does not prevent the Contractor from disclosing information in relation to this agreement to its professional advisers or to comply with an applicable law or the requirements of a regulatory body including a relevant stock exchange.

## Part 6 – Risk management

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**27. [Omitted.]**

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**28. [Omitted.]**

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**29. [Omitted.]**

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**30. [Omitted.]**

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**31. Insurance**

**31.1 [Omitted.]**

**31.2 [Omitted.]**

**31.3 Term of insurance**

The Contractor will maintain insurance under this clause at all times during this agreement and where a policy is a "claims made" or "claims made and notified" policy, the Contractor will keep it in place for 3 years after the termination or expiration of this agreement.

**31.4 [Omitted.]**

**31.5 [Omitted.]**

**31.6 Cancellation**

Without limiting the Contractor's other obligations in this clause, if an insurance policy required by this agreement is cancelled, the Contractor will immediately notify DEC of what has occurred.

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**32. Limitation on notices and disclaimers**

The Contractor will not include in or on any NSW Government Property or Deliverable:

- (a) any Intellectual Property or confidentiality notice, statement, licence or restriction; that is inconsistent with the terms of this agreement; or
- (b) any disclaimer, assumptions or qualifications except as authorised by this agreement.

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### **33. Disclosure of matters affecting performance**

#### **33.1 Material adverse effects**

The Contractor warrants that it has disclosed in writing to DEC prior to the date of this agreement and will continue to disclose events actual or threatened which would have a material adverse effect on the Contractor's ability to perform its obligations under this agreement, including:

- (a) litigation or proceedings (actual or threatened) against the Contractor;
- (b) the existence of a breach or default or alleged breach or default of an agreement, order or award binding upon the Contractor; and
- (c) matters relating to the commercial, technical or financial capacity of the Contractor or its Personnel.

#### **33.2 Changes in credit rating**

The Contractor must immediately notify DEC of any changes in Accenture plc's credit rating during this agreement or if the Contractor reasonably expects its credit rating to change.

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### **34. [Omitted.]**

## Part 7 – Termination

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**35. [Omitted.]**

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**36. [Omitted.]**

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**37. [Omitted.]**

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### **38. Transition Out Services**

#### **38.1 Services provided by the Contractor**

- (a) On request by DEC, the Contractor will:
  - (i) provide DEC or its nominee with cooperation, assistance, advice, explanations and information reasonably requested by DEC; and
  - (ii) comply with DEC's reasonable directions,to ensure the completion and continuity of the functions and performance of the Services required to be provided under this agreement and to facilitate the orderly transfer of responsibility for the Services and Solution to DEC or its nominee. (**Transition Out Services**).
- (b) For clarity:
  - (i) the Services to be performed under this clause 38 are for the purposes of transition out only (but this does not limit the purpose for which DEC may use the Services or Deliverables provided); and
  - (ii) the Transition Out Services are provided subject to the terms of this agreement, including the confidentiality and intellectual property provisions in this agreement.

#### **38.2 Examples of Transition Out Services**

Transition Out Services that DEC may request under clause 38.1 include:

- (a) developing or modifying, together with DEC, a plan for the continuity and orderly transition of responsibility for the Solution to DEC or another person or the replacement of the Solution or some components of the Solution by DEC or another person;
- (b) providing technical information about the Solution, such as data formats and fields (including database schema), interface specifications and business rules;
- (c) providing data conversion assistance, including the extraction, transformation and the loading of the data;

- (d) providing access to equipment, systems and documentation;
- (e) delivering data, documentation, records or NSW Government Property in the Contractor's possession or control to DEC or its nominee;
- (f) providing reasonable training in relation to the Solution to DEC or its nominee;
- (g) arranging or procuring the secondment from time to time of suitably qualified personnel as are reasonably required by DEC in connection with the transition process and charge Fees at the Daily Rates;
- (h) using its best endeavours to cause any subcontractor of the Contractor or other third parties which are utilised by the Contractor in the provision of the Services or the Solution, to enter into agreements with DEC or its nominee on terms and conditions no less favourable than those offered to the Contractor;
- (i) subject to clause 38.2(j), novating or assigning or securing the novation or assignment of any contracts with the subcontractors of the Contractor or other third parties which are utilised by the Contractor in the provision of the Services or Solution or, in the case of licences for Contractor Licensed Software that are unable to be novated or assigned, granting DEC a sublicense of the Contractor Licensed Software on corresponding terms to those in the licence to the Contractor (amended only as needed to reflect the sublicense to DEC); and
- (j) granting DEC a licence in respect of Contractor Supplied Assets on the terms set out in Schedule 8, where applicable.

### **38.3 Time**

Unless otherwise agreed between the parties, the time required to carry out the Transition Out Services will be a reasonable time having regard to the amount of work required by the Contractor.

### **38.4 [Omitted.]**

## Part 8 - General

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### **39. NSW Government Property**

#### **39.1 Application of this clause**

This clause only applies to NSW Government Property provided to the Contractor or its Personnel by or on behalf of a NSW Government Body or otherwise in the custody or control of the Contractor or its Personnel.

#### **39.2 Property of NSW Government**

NSW Government Property remains the property of the relevant NSW Government Body and the Contractor will treat NSW Government Property accordingly, including:

- (a) ensuring that NSW Government Property, to the extent practicable, is marked, or otherwise signified as the property of the relevant NSW Government Body;
- (b) observing security measures reasonably required by DEC in relation to the NSW Government Property;
- (c) ensuring that third parties do not gain on-line or physical access to the NSW Government Property without DEC's consent; and
- (d) ensuring that NSW Government Property remains in Australia (except to the extent that this agreement expressly authorises the Contractor to access or take DEC Property out of Australia).

#### **39.3 Use of NSW Government Property**

- (a) The Contractor will not use or modify NSW Government Property except in the proper performance of this agreement or unless agreed in writing by both parties.
- (b) NSW Government Entities may use or disclose NSW Government Property for any purpose.

#### **39.4 [Omitted.]**

#### **39.5 Return of NSW Government Property**

- (a) The Contractor will hand over to the relevant NSW Government Body any NSW Government Property within 5 Business Days of a request by DEC from time to time during or after this agreement. For electronic Materials, the Contractor will provide them to DEC in a form agreed by the parties, and will also provide all related metadata (such as database schema). If the parties have not agreed by the expiry of the 7 day period, the Contractor will hand over NSW Government Property in electronic format, with related metadata, and on a media, all as reasonably required by DEC.
- (b) NSW Government Property will be returned to DEC by the Contractor when it is no longer required for the purposes of this agreement.

## **39.6 Liens and charges**

The Contractor:

- (a) has no lien, charge or other encumbrance over NSW Government Property even where DEC is in breach of its obligations under this agreement; and
- (b) will ensure that NSW Government Property remains free of liens, charges or other encumbrances of a third party.

## **39.7 Confidential Information**

This clause operates in addition to the confidentiality obligations under this agreement.

## **39.8 [Omitted.]**

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## **40. Access to Contractor premises**

- (a) The Contractor will on 48 hours' notice grant DEC or its nominees supervised access to premises occupied by the Contractor or its Personnel where the Services are being undertaken and will permit those persons to inspect the performance of the Services. The Contractor will cooperate to facilitate the inspection.
- (b) Prior notice of access is not required where the premises are DEC premises.
- (c) DEC is not entitled to perform an Audit under this clause 40.
- (d) In accessing the premises, DEC will ensure that its Personnel comply with reasonable security requirements of the Contractor made known to DEC.

## **41. [Omitted.]**

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## **42. Conflict of Interest**

### **42.1 No initial Conflict of Interest**

The Contractor warrants that, to the best of its knowledge, information and belief, at the date of this agreement, no Conflict of Interest of the Contractor or its subcontractors exists or is likely to arise in the performance of its obligations under this agreement.

### **42.2 Disclosing conflicts**

Where during the currency of this agreement, a Conflict of Interest or risk of Conflict of Interest arises, the Contractor will notify DEC immediately in writing of that Conflict of Interest.

### **42.3 Avoiding conflicts**

The Contractor will take reasonable measures to ensure that it and its Personnel do not, during the currency of this agreement engage in an activity or acquire an interest that would create a Conflict of Interest.

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## 43. Laws and Standards

### 43.1 [Omitted.]

### 43.2 Compliance of the Services and Deliverables

Where the Contractor becomes aware that the Services and Deliverables do not comply with, or provide functionality for DEC to achieve compliance with, the Laws and Standards referred to in the Specifications, the Contractor will notify DEC within 5 Business Days.

### 43.3 Definitions

In this clause:

- (a) **Laws** include:
  - (i) statutory laws, ordinances, regulations, by-laws and lawful requirements or directions made under or arising from or through the foregoing (eg the requirements of a mandatory code arising under a statute); and
  - (ii) the conditions of a licence, permit or the like issued under a statute or other law; and
- (b) **Standards** include:
  - (i) mandatory industry standards applicable to this agreement or the Services; and
  - (ii) other standards agreed by the parties.

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## 44. Child protection

- (a) The Contractor acknowledges that it is aware of the requirements of the Commission for Children and Young People Act 1998 and all related legislation (**Child Protection Legislation**).
- (b) The Contractor will ensure that all its Personnel involved in providing DEC with Deliverables and who have direct unsupervised contact with children and young people comply with the requirements of the Child Protection Legislation. For any of these Personnel, the Contractor must conduct, and ensure that its subcontractors conduct, a working with children check.
- (c) The Contractor must also develop ID cards and provide a sample for review by DEC. If the Contractor's standard ID cards are not adequate for this purpose, DEC will pay the Contractor's reasonable expenses in developing ID cards provided the expenses have been approved in advance by DEC.
- (d) Without limiting the generality of clause 44(b), the Contractor's Personnel working in direct unsupervised contact with children must disclose whether or not they are a *prohibited person* under any Child Protection Legislation including the completion of a prohibited employment declaration form as required by their employer and, if a *prohibited person*, must not commence, undertake or remain in *child-related employment* (with the expressions in *italics* being defined in the Child Protection Legislation).
- (e) At each performance review meeting with DEC, the Contractor must provide an updated listing of all of its Personnel engaged in child-related employment under



the agreement and include information on the status of their working with children check.

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## **45. Compliance Monitoring**

### **45.1 Compliance with ANZ-SME Content and SMEPP**

- (a) The Contractor acknowledges that it has submitted the value of ANZ-SME Content of the goods and services tendered by the Contractor.
- (b) Where the Contractor tenders and submits a SMEPP, the Contractor acknowledges that it is aware that reliance was placed by DEC on the SMEPP in the evaluation of the tender submitted by the Contractor and in DEC entering into this agreement with the Contractor.
- (c) The Contractor agrees to comply with the requirements and commitments provided for in the SMEPP tendered by the Contractor (copy at Schedule 10 of this agreement) and to take all steps reasonably required to enable DEC to monitor compliance by the Contractor with the SMEPP.
- (d) The Contractor and DEC agree that DEC may establish mechanisms to monitor compliance by the Contractor with the requirements and its commitments under the SMEPP.
- (e) The Contractor and DEC agree that non-compliance by the Contractor of its SMEPP commitments will constitute a breach of contract and entitle DEC to terminate this agreement for cause.
- (f) Further, the Contractor agrees that DEC may take into consideration non-compliance by the Contractor with the tendered SMEPP when evaluating tenders submitted by the Contractor in the future for other agreements and consents to DEC using information about its non-compliance with the tendered SMEPP in connection with other tenders and agreements.

### **45.2 Definitions**

In this clause,

**ANZ-SME Content** means the value added content sourced from Australia or New Zealand based small and medium enterprises. ANZ-SME content includes ANZ value added in supply chains by SMEs where such value addition can be demonstrated. It excludes overseas-based value addition and/or imported content. Goods not manufactured in New Zealand but imported via New Zealand and offered in a tender are not considered ANZ goods.

**SMEPP** means a SME Participation Plan - a plan submitted by tenderers in response to a tender. A SMEPP describes the nature of, or proposed nature of, tenderer's engagement with ANZ-SMEs. An important aspect of SMEPPs is SME capability development.

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## **46. Force majeure**

### **46.1 Suspension of obligations due to Force Majeure Event**

- (a) If a party is prevented from or delayed in performing an obligation by a Force Majeure Event, and promptly acts to mitigate or remove the Force Majeure Event and its effect, then, except for Force Majeure Events that can be dealt with by an extension of time under clause [Omitted.], the obligation is suspended during, but

for no longer than, the period the Force Majeure Event continues and any further period that is reasonable in the circumstances.

- (b) If suspension of the Contractor's obligations as a result of a Force Majeure Event continues for a period of not less than 20 Business Days, then notwithstanding any other provision of this agreement, DEC may terminate this agreement by giving 10 Business Days' written notice to the Contractor.

## **46.2 Payment**

- (a) Subject to clause 46.2(b), where the Contractor does not provide Services due to a suspension of its obligations under clause 46.1, DEC is not required to pay Fees for those Services.
- (b) Clause 46.2(a) does not apply where the relevant Force Majeure Event is the fault of DEC.

## **46.3 Force Majeure Events**

In this clause, **Force Majeure Event** means an event beyond the reasonable control of the affected party, but excluding an event which occurs or arises (directly or indirectly) as a result of the action of the Contractor or its Personnel or inaction of the Contractor or its Personnel and that inaction constituted a failure by the Contractor or its Personnel to act in accordance with industry practice.

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## **47. General**

### **47.1 Assignment**

- (a) Subject to clauses 47.1(b) and 47.1(c), neither party may assign, novate, transfer, mortgage, charge or otherwise deal with or dispose of any of its rights, title or interest in this agreement without the prior written consent of the other party, which consent must not be unreasonably withheld.
- (b) DEC may assign, novate, transfer, mortgage, charge or otherwise deal with or dispose of any of its rights, title or interest in this agreement without the consent of the Contractor for the purposes of engaging an outsourced service provider, subject to ensuring there are appropriate confidentiality undertakings and agreeing necessary amendments to this agreement.
- (c) The Contractor may assign, novate, transfer, mortgage, charge or otherwise deal with or dispose of any of its rights, title or interest in this agreement without the consent of DEC to a related body corporate for the purposes of an internal corporate reorganisation, subject to the guarantee under clause [Omitted.] continuing to apply.

### **47.2 Consents, determinations and exercise of rights**

A consent, determination or exercise of rights required or allowed under this agreement from a party may be exercised, not exercised, given or withheld, or may be exercised or given subject to conditions, as that party (in its absolute discretion) thinks fit, unless this agreement expressly provides otherwise.

### **47.3 Costs and expenses**

Except as otherwise provided in this agreement, each party will pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

#### **47.4 Counterparts**

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

#### **47.5 [Omitted.]**

#### **47.6 Entire agreement**

To the extent permitted by law, in relation to its subject matter, this agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

#### **47.7 Further assurance**

Each party will promptly do further acts and execute and deliver further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by the other party to give effect to this agreement. The Contractor will cooperate with DEC and its contractors and provide assistance reasonably required by them for purposes related to this agreement.

#### **47.8 Governing law**

This agreement is governed by and will be construed according to the laws of New South Wales.

#### **47.9 Indemnities**

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.
- (b) It is not necessary for a party to incur expense or to make a payment before enforcing a right of indemnity conferred by this agreement.

#### **47.10 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to proceedings which may be brought relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of proceedings, and any claim it may now or in the future have that proceedings have been brought in an inconvenient forum, if that venue falls within clause 47.10(a).

#### **47.11 Non-exclusivity**

The Contractor's appointment is non-exclusive, so DEC may acquire the Services or similar services (including services relating to the full deployment of the Solution should DEC decide to proceed with it) from other persons or perform the Services or similar services itself, including services which have been removed from or terminated under this agreement.

## **47.12 Non-waiver**

Failure or omission by a party to require strict or timely compliance with a provision of this agreement will not affect a right of that party to remedies it may have in respect of a breach of a provision.

## **47.13 Notices**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as set out in Schedule 1 (or as otherwise notified by that party to the other party from time to time);
- (c) must be signed by the party making it, which in the case of DEC is by the DEC Representative or Authorised Person or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 47.13(b); and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
  - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

## **47.14 Rights and remedies**

The rights of a party under this agreement are in addition to any other rights or remedies which that party will or may be entitled to against the other party at law or equity.

## **47.15 Relationship**

This agreement does not constitute a party as a partner, agent or legal representative of another party except as expressly provided in this agreement. In performing the Services under this agreement, the Contractor is acting and performing as an independent contractor.

**47.16 [Omitted.]**

**47.17 Severability**

If a provision (or part of a provision) of this agreement or the performance of, or compliance with, an obligation under this agreement:

- (a) is or becomes illegal or void or otherwise unenforceable; or
- (b) necessarily exposes either party to prosecution under a law,

then, that provision (or part provision) or performance or compliance, as the case may be, is severable from this agreement and the remainder of this agreement will remain on foot.

**47.18 Subcontracting**

- (a) The Contractor will not subcontract its obligations under this agreement without DEC's consent which will not be unreasonably withheld. Where DEC consents to a subcontractor and the Contractor subcontracts its obligations, the Contractor retains prime contract responsibility for all the obligations of the Contractor under this agreement.
- (b) DEC consents to the subcontractors listed in Schedule 9. The Contractor must engage those subcontractors to undertake the nominated roles in Schedule 9 and must not terminate or replace those subcontracts without DEC's consent.
- (c) [Omitted.]
- (d) If requested by DEC, the Contractor must obtain from a subcontractor a signed statutory declaration substantially in the form of Schedule 14.
- (e) Where the Contractor commits a material breach of this agreement due to the fault of a subcontractor, the Contractor will, if requested by DEC, replace that subcontractor with another subcontractor acceptable to DEC.

**47.19 Personnel**

The Contractor is liable (whether under this agreement or at law) for the acts or omission of the Contractor's Personnel as if they were the Contractor's own acts or omissions.

**47.20 [Omitted.]**

# Schedules

## Schedule 1 - Agreement Details

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### 1. Effective Date

Date of the agreement.

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### 2. Notices

DEC	Contractor
Department of Education and Communities Level 5, 725 George Street, Sydney, NSW 2000 Fax: +61 2 9243 8317 For the attention of: [Omitted.]	Accenture Australia Holdings Pty Ltd Level 3, 48 Pirrama Road, Pyrmont, NSW 2009 Fax: +61 2 9005 3900 For the attention of: [Omitted.] Cc: Legal

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### 3. Relationship management

#### 3.1 DEC

Representative	[Omitted.]
Relationship Executive	[Omitted.]
Senior Executive	[Omitted.]

#### 3.2 Contractor

Representative	[Omitted.]
Relationship Executive	[Omitted.]
Senior Executive	[Omitted.]

**Schedule 2 - [Omitted.]**



**Schedule 3 - [Omitted.]**

**Schedule 3A - [Omitted.]**

**Schedule 3B - [Omitted.]**

**Schedule 3C - [Omitted.]**



**Schedule 3D - Service Catalogue**

There are no items in the service catalogue as at the Effective Date. Items may be included subsequently by Variation.

## Schedule 4 - Governance Model

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### 1. Relationship management and reporting overview

A key critical success factor of the LMBR Program will be the realisation of a fully collaborative working approach and effective integration between DEC and the Contractor. Joint accountability will be assumed where possible, with the two parties working together to achieve a shared outcome.

The approach to be taken must allow flexibility for change and be linked to the implementation of a program management framework that supports the management of such change. For guidance regarding the LMBR Program management and governance frameworks please reference, Part B, Section 2.3.4 and Part C, Section 8 of the RFP.

The approach to be taken must also evidence understanding of the complex DEC stakeholder landscape and the diversity of environments within which those stakeholders operate. For further detail regarding envisaged impacts on stakeholders and those business engagement mechanisms that are currently in place please reference, Part B, Section 2.3.6 of the RFP.

DEC believes a successful Contractor relationship is based on several key tenets:

- (a) collaborative working;
- (b) high value to DEC;
- (c) adequate return for the Contractor;
- (d) mutual trust and respect;
- (e) good faith;
- (f) good cultural fit;
- (g) understanding of differing contexts and environments across DEC; and
- (h) open and honest communication between both parties.

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### 2. Operating principles

The following operating principles provide a uniting vision in support of the joint achievement of common goals. DEC will work collaboratively with the Contractor to:

- (a) ensure adoption of a value led approach;
- (b) ensure excellence of service provision to end users;
- (c) ensure readiness and maturity of the organisation to adapt to change; and
- (d) ensure clear identification and delineation of roles and responsibilities, which will be agreed as part of this agreement.

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## **3. Relationship management and reporting requirements**

### **3.1 Overview**

The Contractor team will work collaboratively with DEC's team to (including but not limited to):

- (a) ensure a clear understanding of business requirements, supporting pilot implementation and deployment of a high quality and robust Solution to support DEC's business needs;
- (b) ensure high customer satisfaction from operation of required services;
- (c) identify the earliest possible notification of potential service disruption or degradation and work collaboratively to minimise the impact on DEC;
- (d) continuously recommend improvements to the delivery of services where this would result in better serving DEC's business objectives;
- (e) develop the business rationale and benefits of any proposed changes and communicate these as appropriate;
- (f) identify and agree changes required;
- (g) participate in regularly scheduled meetings;
- (h) escalate risks and issues as early as possible and work to find a mitigation or resolution as quickly as possible; and
- (i) ensure sufficient and continued communication across the organisation, to stakeholders and with LMBR Program management frameworks.

### **3.2 Day-to-day management and meetings**

Mutually acceptable procedural, reporting, and communication approaches will be established to ensure efficient and effective delivery of services by the Contractor. They will be documented and maintained by the Contractor and approved by DEC. They will be modified and updated on an ongoing basis to reflect changes to the business operations relevant relationship.

The Contractor and DEC will agree upon additional points of contact and a reporting structure covering day-to-day operations and reviews of the Contractor's performance. The Contractor will liaise with DEC's nominated stakeholders and points of contact only. Reporting and reviews may include financial, governance and performance measure reviews as well as the resolution of any other issues that may arise. These reporting schedules will be documented and maintained by the Contractor in an online repository accessible to the management team of DEC. The Contractor must provide processes and procedures acceptable to DEC that can be used to manage the day-to-day relationship process and shall at a minimum include:

- (a) change control management procedures (for example, technical operational changes);
- (b) issue resolution process;
- (c) event reporting procedures;
- (d) performance measurement and reporting procedures;



- (e) reporting mechanism with up-to-date status of all ongoing projects and outstanding service requests;
- (f) trending analysis procedures;
- (g) incident / problem escalation procedures;
- (h) security management and reporting procedures;
- (i) disaster recovery and business continuity planning procedures; and
- (j) process improvements.

A regular meeting schedule will be required for the different reporting levels established to all of DEC's Contractor points of contact. To this end, the Contractor must provide a sample guide that can be used to manage the day-to-day relationship process. A meeting schedule will be agreed between DEC and Contractor. It is envisaged that this will align to the LMBR Program management and governance frameworks detailed in Part B, Section 2.3.4 of the RFP and Part C, Section 8 of the RFP.

The purpose of the meetings is to:

- (k) resolve issues;
- (l) resolve and implement price changes and amendments to this agreement;
- (m) monitor and revise client and Contractor responsibilities;
- (n) act on performance reports, including performance measure reports;
- (o) analyse workload trends and variances from the plan;
- (p) address personnel issues; and
- (q) review and monitor Work, Health and Safety.

### **3.3 Provision of information**

The Contractor is responsible for measuring, tracking, invoicing, and reporting services execution and delivery in accordance with and in support of DEC's requirements as detailed in Part B, Section 2.3.4 of the RFP and Part C, Section 8. DEC reserves the right to modify these requirements from time to time.

The reports identified below are indicative of DEC's requirements. The complete list, content and structure of the reports DEC will require will be developed in conjunction with the Contractor including, but not limited to, the artefacts suggested below:

- (a) incident and problem reports;
- (b) change outstanding report;
- (c) project management reports;
- (d) change management summary report;
- (e) overall monthly summary report;
- (f) performance measure exception reports;

- (g) security breaches and statistics;
- (h) project delivery services report;
- (i) project management and implementation performance reports;
- (j) program and project status reports; and
- (k) project/gate close report including key exit criteria (previously defined and agreed with DEC) to be reviewed and approved by DEC.

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## **4. Personnel of DEC**

DEC recognises that it must retain and continue to develop a team of professionals that throughout the term of this agreement:

- (a) dedicate sufficient time and resources to make the collaboration a success;
- (b) determine and protect the business interests of DEC;
- (c) have the authority to represent DEC to their Contractor counterparts;
- (d) manage DEC's strategic and tactical planning processes, including information technology linkage to business objectives, technology standards and architectures;
- (e) monitor Contractor performance against contracted performance measures; and
- (f) participate in knowledge management and knowledge transfer activities with the Contractor.

For further information regarding DEC's knowledge management requirements please refer to Part D1, Section 6.3 of the RFP.

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## **5. Contractor team and approach**

### **5.1 Overview**

It is envisaged that the Contractor will provide a parallel management team to make the relationship work effectively. For further information regarding the anticipated roles that DEC expects the Contractor to designate and manage the relationship with DEC please refer to Part C, Section 8 of the RFP. DEC requires a proficient and experienced Contractor representative as a primary point of contact to be in charge of DEC's contract arrangement throughout the term of this agreement.

The Contractor is required to provide a description of the organisation it will establish to manage DEC's relationship on a day-to-day basis. The Contractor is required to provide resumes showing demonstrated experience of the management team, including any key transition personnel for DEC's approval.

### **5.2 Movement of key personnel**

The Contractor will be required to minimise the turnover of staff assigned to DEC's account. This ensures consistency of service delivery and minimises learning curves. Any movement of key personnel must be submitted to DEC for approval in accordance with clause 15.5 of the agreement.

### **5.3 Experience of key personnel**

The Contractor is required to evidence the relevant experience of key personnel that will be assigned to DEC, detailing their domain, technical and business engagement competencies as related to the specific environments that exist within DEC. The Contractor must be able to provide services in a professional manner using only individuals of suitable training and skill, including but not limited to proficiency in the English language.

### **5.4 Cultural fit**

The Contractor is required to evidence understanding of the diverse stakeholder groups and operating environments within DEC and to outline a tailored approach to business engagement across these areas.

### **5.5 Innovation**

DEC recognises that its reform agenda and the overall business objectives of the LMBR Program will require innovation to support the management of key stakeholder relations. DEC expects that the Contractor can and will propose innovative solutions, practices and associated services to enable DEC to support this requirement.

To this end, the Contractor is required to outline a range of strategic options and innovations pertaining to relationship management and business engagement that should be considered by DEC.

**Schedule 5 - [Omitted.]**

**Schedule 6 - [Omitted.]**

**Schedule 7 - DEC Resources**

**1. DEC Facilities**

<b>Item</b>	<b>Description/specification</b>
Accommodation, computer and phone	Standard office accommodation for staff. DEC supplied computer, network access, email, internet and phone.
Facilities and stationery	Access to standard office facilities including photocopier, fax, printer. Provision of stationery.
Data centre	Data centre capacity for installation of development and production environments. Backup data centre capacity for installation of disaster recovery environments.
Network	Connectivity and access for the Contractor to support distributed development to DEC development environments and hosted SAP development environments.
Access	Access to DEC applications for development and testing.
Software	All development and production software licences. DEC's service management tools for logging and tracking work requests

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## 2. DEC System Components

### 2.1 ERP Software

SAP Area	Component
CRM	SAP CRM - Service: Interaction Centre
FI	SAP CO EC-PCA - Profit Centre Accounting
FI	SAP CO-OM - Overhead Cost Controlling
FI	SAP FI - New General Ledger
FI	SAP FI-AA - Asset Accounting
FI	SAP FI-AP - Accounts Payable
FI	SAP FI-AR - Accounts Receivable
FI	SAP FI-BL - Bank Accounting
FI	SAP FSCM - Financial Supply Chain Management
FI	SAP PS - Project Systems
FI	SAP PSM - Public Sector Management
FI	SAP TR-CM - Treasury and Cash Management
FI	SAP CO-PA - Profitability Analysis
HR	SAP CATS - Cross Application Time Sheet
HR	SAP ESS - Employee Self Service
HR	SAP MSS - Manager Self Service
HR	SAP OM - Organisation Management
HR	SAP PA - Personnel Administration
HR	SAP PD - Competency Management
HR	SAP PT - Personnel Time Management
HR	SAP PY - Payroll
MM	SRM - Self-Service Procurement
MM	SAP MM - Material Management
MM	SAP MM-IM - Inventory Management
BI IP	SAP BI-IP - Integrated Planning
BCS	SAP BCS - Business Consolidation
BI	SAP Business Intelligence
GRC	SAP GRC (RAR - Risk & Library Mitigation Control and SPM - Super User Privilege Management)
Netweaver	SAP Netweaver (Enterprise Portal and Process Integration)
Duet	Microsoft Duet

2.2 [Omitted.]

2.3 [Omitted.]

2.4 [Omitted.]

2.5 [Omitted.]

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## 3. DEC Interoperable Systems

### 3.1 Major School Applications

- (a) ASR – Annual School Report
- (b) CGP -Capital Grants Programs

- (c) CMSS – Class Management System for Schools Curriculum
- (d) K12 – Project financial planning
- (e) ECPC – Electronic Casual Pay Claims
- (f) ERN – Enrolment Registration Number and enhancements
- (g) MAZE – Agriculture schools finance system
- (h) OASIS -Office Automation & Schools Information System
- (i) PEPS – Permanent Employee Payroll System
- (j) PERS – Personnel system
- (k) Premier’s Sporting Challenge
- (l) Premier’s Reading Challenge
- (m) SMART – School Measurement Assessment & Reporting Tools
- (n) SRD – Schools Reference Database
- (o) TaLe – Teaching & Learning Exchange
- (p) VETAB – VETAB Online Services

### **3.2 Major TAFE Applications**

- (a) APS – Application Processing System
- (b) ATP – Apprentice and Trainee Training
- (c) CEM – Customer Enquiry Management
- (d) CIDO -Course Information Documents Online
- (e) CIS – Course Information System
- (f) CLAMS – Class Management System
- (g) DET Portal – Intranet access
- (h) DW – Data Warehouse
- (i) EATR – Electronic Authority To Run
- (j) ECRI – Electronic Cash Register Integration
- (k) EMP – Employer e-Services
- (l) Escape – Electronic Scope Registration
- (m) ESS – Employee Self Service
- (n) ETMS – Exams Timetable Management System
- (o) HOWEX – Handbook on the Web



- (p) Lattice – Integrate HR system
- (q) MEVI – Mainstream Enrolment via the Internet
- (r) NOCS – Notification of Change of Subscription
- (s) OLIV – Web based AVETMISS data validation
- (t) OLS – OTEN Learning Support
- (u) REMS – Resource Event Management System
- (v) SAM – Student Administration (OTEN)
- (w) SeS – Student e-Services Administration
- (x) SFA – Senior First Aid System
- (y) SIS – Student Information System
- (z) TAFE Card – TAFE Identity Card
- (aa) TIPA – TAFE Integrated Planning Application
- (bb) TIR – TAFE Interim Repository
- (cc) TISIMS -Temporary & International Students Information Management System
- (dd) TPD – Teacher Program Diary (eEC replacement)
- (ee) TPL – Training Plans System
- (ff) UG – Unit Guide System
- (gg) WEX – Workplace Experience DB

### **3.3 Major Corporate Applications**

- (a) AFS – Annual Financial Statement
- (b) AMS – Asset Management System
- (c) DDS – DET Directory Services
- (d) AT – Teacher Employment Application
- (e) DET Portal – Intranet access
- (f) Jobs3 – eRecruitment
- (g) Jobs@DET – Employment with DET
- (h) OMSEE2 – Online Management of School Entitlements
- (i) OMSEE4 – Online Management of Executive Entitlements
- (j) TRIM – Records management system
- (k) ESS – Employee Self service

- (l) EMAIL – Corporate email
- (m) STMS – Special Transport Management System
- (n) OTS – Online Transfer System
- (o) ETASS – Education and Training Employee Screening System
- (p) ICTC – ICT project prioritisation
- (q) RTS – Relief Teacher System
- (r) Esker – Corporate finance
- (s) SFS – School Financial System
- (t) CABS – Corporate Accounting Budget System
- (u) TeamSite – Enterprise content management
- (v) DW – Data Warehouse
- (w) IVETS -Integrated Vocational Education & Training System
- (x) VIP -Vocational Education & Training Information System
- (y) Skilling NSW – State Training portal
- (z) ePayment – RTO Statements online
- (aa) VETAB Online – VETAB Services Online
- (bb) SkillsOnline – Training, learning & assessment resources
- (cc) HERS – Higher Education Register System
- (dd) HEW – Higher Education Web Enquiry
- (ee) CEPS – Casual Employee Payroll System
- (ff) PEPS – Permanent Employee Payroll System
- (gg) PERS – Personnel system
- (hh) Jobz -Teachers’ Merit Selection
- (ii) Emperor
- (jj) My PL@DET
- (kk) TVET – TVET Management System
- (ll) LMS – Leave Management System

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**4. [Omitted.]**

**Schedule 8 - [Omitted.]**

**Schedule 8A - [Omitted.]**

**Schedule 8B - [Omitted.]**

**Schedule 9 - [Omitted.]**



**Schedule 10 - [Omitted.]**

## Schedule 11 - Deed of Confidentiality

Deed of Confidentiality dated \_\_\_\_\_

By [insert Additional Disclosee name] [insert ABN] [insert address]  
(Additional Disclosee)

For the benefit of The State of New South Wales by its Department of Education and  
Communities (DEC)

### Recitals

- A. Accenture Australia Holdings Pty Ltd ABN 61 096 995 649 (**Accenture**) has entered into a transformation services agreement with DEC dated [insert] (**Transformation Services Agreement**).
- B. The Additional Disclosee is an officer, agent, professional adviser or approved subcontractor of Accenture under the Transformation Services Agreement.
- C. The Transformation Services Agreement allows Accenture to disclose Confidential Information to the Additional Disclosee on a need to know basis for the purposes of the Transformation Services Agreement.
- D. Improper use or disclosure of Confidential Information would severely damage DEC's ability to perform its governmental and statutory functions.
- E. DEC requires, and the Additional Disclosee agrees, that it is necessary to take all reasonable steps (including the execution of this deed) to ensure that Confidential Information is kept confidential.

### Agreed Covenants

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## 1. Interpretation

### 1.1 Definitions

In this deed:

**Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney.

**Confidential Information** means information which is DEC's Confidential Information as defined in the Transformation Services Agreement, namely, information of or provided by DEC to Accenture (which, for the purposes of this definition, includes the Additional Disclosee) that:

- (a) by its nature is confidential and includes information or documents relating to shareholders and customers of DEC;
- (b) is designated by DEC as confidential; or
- (c) Accenture knows or ought to know is confidential,



but does not include information:

- (d) which at the time of first disclosure to Accenture is in the public domain;
- (e) which after disclosure to Accenture, comes into the public domain otherwise than by disclosure in breach of the terms of this clause;
- (f) which Accenture can prove was in its possession at the time of first disclosure to it by DEC and was not acquired directly or indirectly from DEC;
- (g) which Accenture received from a third party, provided that as far as Accenture is aware (without the need for enquiry) it was not received directly or indirectly from DEC in breach of an obligation of confidence owed by the third party to another person and was not provided by the third party acting on the authority of DEC; or
- (h) which Accenture can prove to the reasonable satisfaction of DEC was independently developed.

**Listing Rules** means the listing rules of Australian Stock Exchange Limited.

## **1.2 General**

Unless the contrary intention appears:

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

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## **2. Non-disclosure**

- (a) The Additional Disclosee must not disclose the Confidential Information to any person without the prior written consent of DEC.
- (b) DEC may grant or withhold its consent in its absolute and unfettered discretion.
- (c) If DEC grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, DEC may require that the Additional Disclosee procure the execution of a deed in these terms by the person to whom the Additional Disclosee proposes to disclose the Confidential Information.

- (d) If DEC grants consent subject to conditions, the Additional Disclosee must comply with those conditions.

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### **3. Restriction on use**

The Additional Disclosee will use the Confidential Information only for the purposes of the Transformation Services Agreement.

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### **4. Breaches of confidentiality**

If the Additional Disclosee becomes aware of a suspected or actual breach of this clause by the Additional Disclosee, the Additional Disclosee will:

- (a) immediately notify DEC and Accenture of that suspected or actual breach; and
- (b) take reasonable steps, at its own expense, required to prevent or stop the suspected or actual breach.

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### **5. Notification of disclosure by law**

If the Additional Disclosee is or becomes required by statute, rule (including the Listing Rules), regulation, judicial process or the like to disclose the Confidential Information received by it, the Additional Disclosee will if practicable, prior to the disclosure but in any event immediately following the disclosure, immediately notify DEC and Accenture.

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### **6. Return of Confidential Information**

Subject to clauses 4 and 5, the Additional Disclosee will, upon demand by DEC, return to DEC or destroy Confidential Information and copies of the Confidential Information received by the Additional Disclosee.

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### **7. Injunctions**

The Additional Disclosee acknowledges that:

- (a) a breach of this deed would cause damage to DEC;
- (b) in the event of a breach or threatened breach of the terms of this deed by the Additional Disclosee DEC is entitled to an injunction restraining the Additional Disclosee from committing a breach of this deed without showing or proving actual damage sustained by DEC; and
- (c) the obtaining of an injunction is without prejudice to the rights of DEC to seek damages for loss suffered as a result of a breach of the provisions of this deed by the Additional Disclosee.

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### **8. Survival**

This deed survives both the termination or expiration of the Transformation Services Agreement between DEC and Accenture and the termination or expiration of the Additional Disclosee's agreement with Accenture.

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## 9. No exclusion of law or equity

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

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## 10. Variation and waiver

- (a) This deed shall not be varied either in law or in equity except by agreement in writing signed by DEC and the Additional Disclosee.
- (b) A waiver by one party of a breach of a provision of this deed by another party shall not constitute a waiver in respect of any other breach or of any subsequent breach of this deed. The failure of a party to enforce a provision of this deed shall not be interpreted as a waiver of that provision.

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## 11. Applicable law

The laws of the State of New South Wales govern this deed and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

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## 12. Remedies cumulative

### 12.1 Rights cumulative

The rights and remedies provided under this deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

### 12.2 Other instruments

Subject to the other covenants of this deed, the rights and obligations of the parties pursuant to this deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.

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## 13. Notices

- (a) A notice or other communication which may be given to or served on either party under this deed is deemed to have been duly given or served if it is in writing, signed by the party giving the notice (**First Party**) and is either delivered by hand, posted, sent via facsimile or a copy transmitted via electronic mail or other electronic means to the other party at the address set out on the first page of this Deed or such other address as is notified in writing to the First Party from time to time.
- (b) Such notice or other communication is deemed to have been duly received:
  - (i) if delivered by hand – at the time when the First Party holds a receipt for that document signed by a person apparently employed at that address for service;
  - (ii) if sent by post – at the time when, in the ordinary course of the post, it would have been delivered at the address to which it is sent;
  - (iii) if sent via facsimile – at the time when the machine on which the notice is sent reports in writing that the notice has been transmitted satisfactorily; or

(iv) if sent via electronic mail or other electronic means – at the time when the other party acknowledges receipt by any means.

(c) If delivery or receipt of a notice or communication occurs on a day other than a Business Day or is later than four 4.00 pm (Sydney local time) it will be taken to have duly occurred at 9.00 am (Sydney local time) on the next Business Day.

**Executed** as a deed.

**Executed** by **[Insert name of Additional Disclosee and ABN]** in accordance with section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/director

**Schedule 12 - [Omitted.]**

**Schedule 13 - Moral Rights Consent Form**

I, .....  
[insert full name, position, address],

give the following irrevocable consent to The State of New South Wales by its Department of Education and Communities ("DEC") in relation to any Work delivered or required to be delivered to DEC under the Transformation Services Agreement in which I have any Moral Rights:

- 1. I agree that I may not be attributed as author of the Work; and
- 2. I agree that DEC may undertake the following types of acts or omissions in relation to the Work, whether occurring before or after the date of this consent:
  - (a) the alteration, amendment, deletion or modification of the Work; and
  - (b) any dealing with, or changes to, the Work,

which might otherwise constitute an infringement of my Moral Rights.

I also agree that this consent extends to any licensees and successors in title to DEC in respect of such Work as well as to any persons authorised by DEC to do acts which might otherwise constitute an infringement of my Moral Rights.

In this consent the following words have the following meanings:

**Intellectual Property Rights** includes all present and future rights in relation to copyright, trade marks, designs, patents, trade, business or company names, or other proprietary rights or any rights to registration of such rights whether created before or after the date of the Transformation Services Agreement, and whether existing in Australia or otherwise.

**Transformation Services Agreement** means the Transformation Services Agreement between DEC and Accenture Australia Holdings Pty Ltd ABN 61 096 995 649 dated [insert].

**Moral Rights** means the moral rights granted to creators under the Copyright Act 1968 (Cth) and any similar rights existing under foreign laws

**Work** means any invention, discovery, design, improvement, formula, process, technique, literary or artistic work, or any other item in which Intellectual Property Rights subsist or are capable of subsisting.

**SIGNED** by [Insert name of Contractor Personnel] on this \_\_\_\_\_ day of \_\_\_\_\_ 201\_:

=  
In the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Signature of witness

**Schedule 14 - Subcontractor statutory declaration**

*Oaths Act (NSW), 1900 Ninth Schedule*

I, \_\_\_\_\_ do solemnly and sincerely declare that to the best of my knowledge and belief:

- 1. [insert full Subcontractor company name and its ACN/ABN] (**Subcontractor**) has been selected as subcontractor to, Accenture Australia Holdings Pty Ltd ABN 61 096 995 649 (**Contractor**) under a Transformation Services Agreement between The State of New South Wales by its Department of Education and Communities (**Customer**) and the Contractor dated [insert date of Transformation Services Agreement].
- 3. The Subcontractor will offer to enter into an agreement with the Contractor in connection with the Transformation Services Agreement on terms that are not inconsistent with the terms of the Transformation Services Agreement in so far as those terms are relevant to the Subcontractor.
- 4. As at the date of this Statutory Declaration there are no reasons of which I am aware that would prevent the Subcontractor's agreement with the Contractor from being performed in a manner that would allow the satisfactory and timely performance of that subcontract.

And I make this solemn declaration, as to the matter aforesaid according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.

**Sworn** at  
this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
Deponent

Before me:

\_\_\_\_\_  
A Solicitor of the Supreme Court of New South Wales  
holding a current Practising Certificate under Part 2.3  
of the Legal Profession Act 2004

**Schedule 15 - [Omitted.]**



**Signed** as an agreement.

**Signed** for and on behalf of the **State of New South Wales by its Department of Education and Communities** by Adrian Piccoli MP, Minister for Education

---

in the presence of:

---

Signature of Witness

---

Print Full Name of Witness

**Executed** by **Accenture Australia Holdings Pty Ltd ABN 61 096 995 649** in accordance with section 127 of the Corporations Act 2001 (Cth):

---

Signature of director

---

Full name of director

---

Signature of company secretary/director

---

Full name of company secretary/director

CLAYTON UTZ

# Transformation Services Agreement

Department of Education and Communities  
DEC

Accenture Australia Holdings Pty Ltd  
Contractor

## Annexure A - Specifications

Clayton Utz  
Lawyers  
Level 28, Riparian Plaza 71 Eagle Street Brisbane QLD 4000 Australia  
GPO Box 55 Brisbane QLD 4001  
T +61 7 3292 7000 F +61 7 3221 9669

**[www.claytonutz.com](http://www.claytonutz.com)**

Our reference 12277/80120236

Legal\305532610.12

This is Annexure A to the Transformation Services Agreement between The State of New South Wales by its Department of Education and Communities and Accenture Australia Holdings Pty Ltd ABN 61 096 995 649 dated ..... 2011

**State of New South Wales by its Department of Education and Communities**

**Accenture Australia Holdings Pty Ltd ABN 61 096 995 649**

\_\_\_\_\_  
Adrian Piccoli MP, Minister for Education

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/director

**Annexure A - [Omitted.]**

**Annexure A1 - [Omitted.]**

**Annexure A2 - [Omitted.]**

**Annexure A3 - [Omitted.]**

**Annexure A4 - [Omitted.]**



**Annexure A5 - [Omitted.]**

**Annexure A6 - [Omitted.]**