

**CONTRACT**

CONTRACT IN RELATION TO CONSULTANCY SERVICES FOR THE DESIGN,  
DOCUMENTATION AND MANAGEMENT OF THE REPLACEMENT OF THE  
BUILDING MANAGEMENT AND CONTROL SYSTEM AT THE HIGH COURT  
BUILDING

High Court of Australia  
ABN 69 445 188 986

Name of Consultant  
ABN

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## CONTRACT

CONTRACT IN RELATION TO CONSULTANCY SERVICES FOR THE DESIGN, DOCUMENTATION AND MANAGEMENT OF THE REPLACEMENT OF THE BUILDING MANAGEMENT AND CONTROL SYSTEM AT THE HIGH COURT BUILDING

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### Date

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This contract is made on XXXX July 2013

### Parties

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This contract is made between and binds the following parties:

Commonwealth of Australia (Commonwealth) represented for the purposes of this contract by the **High Court of Australia** ABN 69 445 188 986 of Parkes Place, Parkes, Canberra ACT 2600 (High Court).

**Consultant Name** ABN of Registered Business address (Service Provider).

### Context

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This contract is made in the following context:

- A. The High Court requires the provision of certain consultancy services.
- B. The Service Provider has fully informed itself about the requirement and has agreed to provide the Services.
- C. The parties have agreed that the Service Provider will perform the Services for the High Court on the terms and conditions set out in this contract.

### Operative Provisions

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#### 1. Interpretation

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##### 1.1. Definitions

1.1.1. In this contract, unless the context indicates otherwise:

**Business Day (in a place)** means a weekday other than a public holiday in the place specified or, if no place is specified, in the State or Territory specified in Item 23 [Applicable Law]

**Commencement Date** means the date on which this contract is made, unless otherwise specified in Item 4 [Commencement and

	Timeframe]
<b>Commonwealth Material</b>	means any Material: <ul style="list-style-type: none"> <li>a. provided by the High Court to the Service Provider for the purposes of this contract or</li> <li>b. derived at any time from the Material referred to in paragraph a</li> </ul>
<b>Confidential Information (of the Service Provider)</b>	means information that is by its nature confidential and is described in Item 18 [Service Provider's Confidential Information].
<b>Contract Material</b>	means any Material: <ul style="list-style-type: none"> <li>a. created for the purposes of this contract</li> <li>b. provided or required to be provided to the High Court as part of the Services or</li> <li>c. derived at any time from the Material referred to in paragraphs a or b</li> </ul>
<b>GST</b>	has the meaning that it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)
<b>High Court</b>	includes any department, agency or authority of the Commonwealth which is from time to time responsible for administering this contract
<b>Instalment</b>	means an instalment of fees payable under clause 9 in relation to part of the Services
<b>Intellectual Property</b>	includes: <ul style="list-style-type: none"> <li>a. all copyright (including rights in relation to phonograms and broadcasts)</li> <li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts and</li> <li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,</li> </ul> but does not include: <ul style="list-style-type: none"> <li>d. Moral Rights</li> <li>e. the non-proprietary rights of performers or</li> <li>f. rights in relation to Confidential Information</li> </ul>
<b>Material</b>	means any thing in relation to which Intellectual Property rights arise
<b>Moral Rights</b>	means the following non-proprietary rights of authors of

copyright Material:

- a. the right of attribution of authorship
- b. the right of integrity of authorship and
- c. the right not to have authorship falsely attributed

**Official Information**

means any information developed, received or collected by or on behalf of the High Court to which the Service Provider gains access under or in connection with this contract, and includes the Contract Material and the terms of the contract

**Personnel**

means:

- a. in relation to the Service Provider: any natural person who is an officer, employee, agent or professional advisor of the Service Provider or of its subcontractors and
- b. in relation to the High Court: any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the High Court.

**Project Officer**

means the person specified (by name or position) in Item 6 [Project Officer] or any substitute notified to the Service Provider.

**Services**

means the services described in Item 1 [Services] and includes the provision to the High Court of the Material specified in Item 2 [Required Contract Material].

**Specified Personnel**

means the Personnel specified in Item 8 [Specified Personnel] as required to perform all or part of the work constituting the Services.

**1.2. Interpretation**

1.2.1. In this contract, unless the contrary intention appears:

- a. words importing a gender include any other gender
- b. words in the singular include the plural and words in the plural include the singular
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer
- d. words importing a person include a partnership and a body whether corporate or otherwise
- e. a reference to dollars is a reference to Australian dollars

- f. a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment of that legislation or legislative provision
- g. if any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning
- h. a reference to an Item is a reference to an Item in Schedule One
- i. the Schedules and any attachments form part of this contract
- j. if any conflict arises between the terms and conditions contained in the clauses of this contract and any part of the Schedule (and attachments if any), the terms and conditions of the clauses prevail
- k. if any conflict arises between any part of the Schedule and any part of an attachment, the Schedule prevails
- l. a reference to the Schedule (or an attachment), is a reference to the Schedule (or an attachment) to this contract, including as amended or replaced from time to time by agreement in writing between the parties and
- m. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

### **1.3. Guidance on construction of contract**

- 1.3.1. This contract records the entire agreement between the parties in relation to its subject matter.
- 1.3.2. As far as possible all provisions of this contract will be construed so as not to be void or otherwise unenforceable.
- 1.3.3. If anything in this contract is void or otherwise unenforceable then it will be severed and the rest of the contract remains in force.
- 1.3.4. A provision of this contract will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

### **1.4. Commencement**

- 1.4.1. The terms of this contract apply on and from the Commencement Date.

## **2. Provision of Services**

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### **2.1. Principal obligations of Service Provider**

- 2.1.1. The Service Provider agrees to:
  - a. perform the Services as specified in Item 1
  - b. provide to the High Court the Material specified in Item 2 [Required Contract Material]



- c. adopt relevant best practice, including any High Court, Commonwealth or industry standards and guidelines specified in Item 3 [Standards and Best Practice]
- d. comply with the time frame for the performance of the Services specified in Item 4 [Commencement and Timeframe] and
- e. submit invoices, and any required supporting documents, in the manner specified in Item 5 [Invoicing and Payment].

## **2.2. Liaison with Project Officer**

2.2.1. The Service Provider agrees:

- a. to liaise with the Project Officer as reasonably required and
- b. to comply with directions of the Project Officer that are consistent with this contract.

## **2.3. Subcontractors**

2.3.1. The Service Provider agrees not to subcontract the performance of any part of the Services without the High Court's prior written approval.

2.3.2. The High Court may impose any conditions it considers appropriate when giving its approval under clause 2.3.1.

2.3.3. The High Court has approved the subcontracting of the performance of the parts of the Services to the persons, and subject to the conditions (if any), specified in Item 7 [Subcontractors].

## **2.4. Specified Personnel**

2.4.1. The Service Provider agrees that the Specified Personnel will perform work in relation to the Services in accordance with this contract.

2.4.2. If Specified Personnel are unable to perform the work as required under clause 2.4.1, the Service Provider agrees to notify the High Court immediately.

2.4.3. The Service Provider agrees, at the request of the High Court acting in its absolute discretion, to remove Personnel (including Specified Personnel) from work in relation to the Services.

2.4.4. If clause 2.4.2 or clause 2.4.3 applies, the Service Provider will provide replacement Personnel acceptable to the High Court at no additional cost and at the earliest opportunity.

## **2.5. Responsibility of Service Provider**

2.5.1. The Service Provider is fully responsible for the performance of the Services and for ensuring compliance with the requirements of this contract, and will not be relieved of that responsibility because of any:

- a. involvement by the High Court in the performance of the Services

- b. subcontracting of the Services
- c. acceptance by the High Court of Specified Personnel or
- d. payment made to the Service Provider on account of the Services.

### **3. Fees, allowances and assistance**

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#### **3.1. Principal obligations of High Court**

The High Court agrees to pay the fees in the Installments (if any) specified in Item 9 [Fees]

- a. pay the allowances and meet the costs specified in Item 10 [Allowances and Costs]
- b. make all payments in the manner specified in Item 5 [Invoicing and Payment] and
- c. provide facilities and assistance as reasonably requested.

#### **3.2. High Court's rights to defer payment**

- 3.2.1. The High Court will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any Instalment if and for so long as the Service Provider has not completed, to the satisfaction of the High Court, that part of the Services to which the Instalment relates.

#### **3.3. Taxes, duties and government charges**

- 3.3.1. Except as provided by this clause 3.3, the Service Provider agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this contract.
- 3.3.2. Unless otherwise indicated, the fees and all other consideration for any supply made under this contract is exclusive of any GST imposed on the supply.
- 3.3.3. If one party (supplier) makes a taxable supply to the other party (recipient) under this contract, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 3.3.4. No party may claim or retain from the other party any amount in relation to a supply made under this contract for which the first party can obtain an input tax credit or decreasing adjustment.

#### **3.4. Superannuation**

This contract is entered into on the understanding that the High Court is not required to make any superannuation contributions in connection with the contract, unless stated to the contrary in Item 9 [Fees].

## **4. Intellectual Property**

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### **4.1. Use of Commonwealth Material**

- 4.1.1. The High Court agrees to provide Material to the Service Provider as specified in Item 11 [Use of Commonwealth Material].
- 4.1.2. The High Court grants (or will procure) a royalty free, non-exclusive licence for the Service Provider to use, reproduce and adapt the Commonwealth Material for the purposes of this contract.
- 4.1.3. The Service Provider agrees to use the Commonwealth Material strictly in accordance with any conditions or restrictions set out in Item 11 [Use of Commonwealth Material], and any direction from the High Court.

### **4.2. Rights in Contract Material**

- 4.2.1. Intellectual Property in all Contract Material vests or will vest in the High Court.
- 4.2.2. Clause 4.2.1 does not affect the ownership of Intellectual Property in:
  - a. any Commonwealth Material incorporated into Contract Material or
  - b. any Material in existence at the Commencement Date and specified in Item 12 [Existing Material].
- 4.2.3. The Service Provider grants to (or will procure for) the High Court a permanent, irrevocable, royalty free, world wide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt and exploit any existing Material referred to in clause 4.2.2.b, in conjunction with the Contract Material.
- 4.2.4. The Service Provider agrees, on request by the High Court, to create, sign, execute or otherwise deal with any document necessary or desirable to give effect to this clause 4.2.
- 4.2.5. The Service Provider warrants that:
  - a. it is entitled or
  - b. it will be entitled at the relevant time,to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause 4.2.

### **4.3. Moral Rights**

- 4.3.1. In this clause 4.3:

- Permitted Acts** means any of the following classes or types of acts or omissions:
- a. using, reproducing, adapting or exploiting all or any part of the Contract Material, with or without attribution or authorship
  - b. supplementing the Contract Material with any other

Material

- c. using the Contract Material in a different context to that originally envisaged and
- d. the acts or omissions, specifically set out in Item 13 [Moral Rights]

but does not include false attribution of authorship.

4.3.2. Where the Service Provider is a natural person and the author of the Contract Material, he or she:

- a. consents to the performance of the Permitted Acts by the High Court or any person claiming under or through the High Court and
- b. acknowledges that their attention has been drawn to the High Court's general policies and practices regarding Moral Rights as described in Item 13 [Moral Rights].

4.3.3. Where clause 4.3.2 does not apply, the Service Provider agrees:

- a. to obtain from each author a written consent which extends directly or indirectly to the performance of the Permitted Acts by the High Court or any person claiming under or through the High Court (whether occurring before or after the consent is given) and, on request, to provide the executed original of any such consent to the High Court and
- b. to ensure that each author's attention is drawn to the High Court's general policies and practices regarding Moral Rights as described in Item 13 [Moral Rights].

4.3.4. This clause 4.3 does not apply to any Commonwealth Material incorporated in the Contract Material.

## **5. Confidentiality of Official Information and other security obligations**

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### **5.1. Interpretation**

5.1.1. In this clause 5:

- |                                      |   |
|--------------------------------------|---|
| <b>Official Resources</b>            | includes: <ul style="list-style-type: none"><li>e. Official Information</li><li>f. people who work for or with the High Court and</li><li>g. assets belonging to (even if in the possession of contracted providers) or in the possession of the High Court</li></ul> |
| <b>Security Classified Resources</b> | means Official Resources that, if compromised, could have adverse consequences for the High Court and   |
| <b>Security</b>                      | means a security breach, violation, contact or approach   |

**Incident** from those seeking unauthorised access to Official Resources.

## **5.2. Confidentiality of Official Information**

- 5.2.1. The Service Provider will not, without prior written authorisation of the High Court, disclose any Official Information to any person (unless required to do so by law).
- 5.2.2. The Service Provider is authorised to provide Official Information to those Personnel and subcontractors who require access for the purposes of this contract.
- 5.2.3. The Service Provider agrees, on request by the High Court at any time, to arrange for the Personnel and subcontractors referred to in clause 5.2.2 to give a written undertaking in a form acceptable to the High Court relating to the use and non-disclosure of Official Information.
- 5.2.4. The Service Provider agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

## **5.3. Other security obligations of Service Provider**

- 5.3.1. The Service Provider agrees:
  - a. to ensure that all Personnel that require access to Security Classified Resources have obtained the appropriate security clearance
  - b. to make its Personnel available to attend any security training provided by the High Court
  - c. to notify the High Court immediately if it becomes aware that a Security Incident has occurred and otherwise implement the High Court's procedures for Security Incident reporting as advised by the High Court from time to time
  - d. not to perform the Services outside Australia without the High Court's prior written approval and
  - e. to comply with the additional security requirements specified in Item 16 [Security Requirements], if any, and any variations or additions to those requirements as notified by the High Court from time to time.
- 5.3.2. The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 5 and will provide details of these procedures to the High Court on request.

## **6. Privacy**

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### **6.1. Interpretation**

- 6.1.1. In this clause 6:

**Information** has the same meaning as it has in the *Privacy Act 1988*

**Privacy Principle** (Cth).

**6.2. Obligations of Service Provider in relation to privacy**

6.2.1. The Service Provider agrees, in providing the Services:

- a. not to do any act or engage in any practice which, if done or engaged in by the High Court, would be a breach of an Information Privacy Principle and
- b. to comply with any directions, guidelines, determinations or recommendations referred to in, or relating to the matters set out in, Item 17 [Privacy Directions, Guidelines, Determinations or Recommendations], to the extent that they are consistent with the Information Privacy Principles.

6.2.2. The Service Provider agrees to notify the High Court immediately if it becomes aware of a breach or possible breach of any of its obligations under this clause 6.

**Note:** for information about the *Privacy Act 1988* (Cth) see the fact sheet referred to in Item 22 [Applicable Legislation].

**7. Dealing with Copies**

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**7.1. Interpretation**

7.1.1. In this clause 7:

**Copy** means any document, device, article or medium in which Commonwealth Material, Contract Material, or Official Information is embodied.

**7.2. Actions at end of contract**

7.2.1. The Service Provider agrees, on expiration or termination of this contract, to deal with all Copies as directed by the High Court, subject to any requirement of law binding on the Service Provider.

**8. Confidential Information of the Service Provider**

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**8.1. Confidential Information not to be disclosed**

8.1.1. Subject to clause 8.2, the High Court will not, without the prior written authorisation of the Service Provider, disclose any Confidential Information of the Service Provider to a third party.

**8.2. Exceptions to obligations**

8.2.1. The obligations of the High Court under this clause 8 will not be taken to have been breached to the extent that Confidential Information:

- a. is disclosed by the High Court to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this contract

- b. is disclosed to the High Court internal management Personnel, solely to enable effective management or auditing of contract related activities
- c. is disclosed by the High Court to the responsible Minister
- d. is disclosed by the High Court in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia
- e. is shared by the High Court within the High Court's organisation, or with another agency, where this serves the Commonwealth's legitimate interests
- f. is authorised or required by law to be disclosed or
- g. is in the public domain otherwise than due to a breach of this clause 8.

8.2.2. Where the High Court discloses Confidential Information to another person pursuant to clauses 8.2.1.a to 8.2.1.e, the High Court will notify the receiving person that the information is confidential.

8.2.3. In the circumstances referred to in clauses 8.2.1.a, 8.2.1.b and 8.2.1.e, the High Court agrees not to provide the information unless the receiving person agrees to keep the information confidential.

### **8.3. Period of confidentiality**

8.3.1. The obligations under this clause 8 in relation to an item of information described in Item 18 [Service Provider's Confidential Information] continue for the period set out there in respect of that item.

## **9. Liability**

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### **9.1. Proportionate liability regimes excluded**

9.1.1. To the extent permitted by law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Service Provider under or in connection with this contract.

### **9.2. Indemnity**

9.2.1. The Service Provider indemnifies the High Court from and against any:

- a. cost or liability incurred by the High Court
- b. loss of or damage to property of the High Court or
- c. loss or expense incurred by the High Court in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the High Court,

arising from either:

- a. a breach by the Service Provider of this contract or
- b. an act or omission involving fault on the part of the Service Provider or its Personnel in connection with this contract.

- 9.2.2. The Service Provider's liability to indemnify the High Court under clause 9.2.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of the High Court or its Personnel contributed to the relevant cost, liability, loss, damage or expense.
- 9.2.3. The right of the High Court to be indemnified under this clause 9.2 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the High Court is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

## **10. Dispute resolution**

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### **10.1. Procedure for dispute resolution**

- 10.1.1. The parties agree that a dispute arising under this contract will be dealt with as follows:
- a. the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute
  - b. within 5 Business Days each party will nominate a representative not having any prior involvement in the dispute
  - c. the representatives will try to settle the dispute by direct negotiation between them
  - d. failing settlement within a further 10 Business Days, the parties may agree to refer the dispute to an independent third person with power:
    - i. to intervene and direct some form of resolution, in which case the parties will be bound by that resolution or
    - ii. to mediate and recommend some form of non-binding resolution
  - e. the parties will co-operate fully with any process instigated under clause 10.1.1.d in order to achieve a speedy resolution and
  - f. if a resolution is not reached within a further 20 Business Days, either party may commence legal proceedings.

### **10.2. Costs**

- 10.2.1. Each party will bear its own costs of complying with this clause 10, and the parties will bear equally the cost of any third person engaged under clause 10.1.1.d.

### **10.3. Continued performance**

- 10.3.1. Despite the existence of a dispute, the Service Provider will (unless requested in writing by the High Court not to do so) continue to perform the Services.

### **10.4. Exemption**

- 10.4.1. This clause 10 does not apply to:



- a. action by the High Court under or purportedly under clause 11.1
- b. action by either party under or purportedly under clause 11.2 or
- c. legal proceedings by either party seeking urgent interlocutory relief.

## **11. Termination or reduction in scope of Services**

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### **11.1. Termination for convenience**

11.1.1. The High Court may by notice, at any time and in its absolute discretion, terminate this contract or reduce the scope of the Services immediately.

11.1.2. The Service Provider agrees, on receipt of a notice of termination or reduction:

- a. to stop or reduce work as specified in the notice
- b. to take all available steps to minimise loss resulting from that termination or reduction and
- c. to continue work on any part of the Services not affected by the notice.

11.1.3. In the event of termination under clause 11.1.1, the High Court will be liable only:

- a. to pay any Instalment relating to Services completed before the effective date of termination
- b. to reimburse any expenses the Service Provider unavoidably incurs relating entirely to Services not covered under clause 11.1.3.a
- c. to pay any allowance and meet any costs unavoidably incurred under Item 10 [Allowances and Costs] before the effective date of termination and

The High Court will not be liable to pay amounts under clause 11.1.3.a and 11.1.3.b which would, added to any fees already paid to the Service Provider under this contract, together exceed the fees set out in Item 9 [Fees].

11.1.4. In the event of a reduction in the scope of the Services under clause 11.1.1, the High Court's liability to pay fees or allowances, meet costs or provide facilities and assistance under clause 3 will, unless there is agreement in writing to the contrary, reduce in accordance with the reduction in the Services.

11.1.5. The Service Provider will not be entitled to compensation for loss of prospective profits.

### **11.2. Termination for fault**

11.2.1. If a party fails to satisfy any of its obligations under this contract, then the other party - if it considers that the failure is:

- a. *not capable of remedy*: may, by notice, terminate the contract immediately or

- b. *capable of remedy*: may, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate the contract immediately by giving a second notice.
- 11.2.2. The High Court may also by notice terminate this contract immediately (but without prejudice to any prior right of action or remedy which either party has or may have) if the Service Provider:
  - a. *being a corporation*: comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001* (Cth), or has an order made against it for the purpose of placing it under external administration or
  - b. *being an individual*: becomes bankrupt or enters into a scheme of arrangement with creditors.

## **12. Notices**

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### **12.1. Format, addressing and delivery**

- 12.1.1. A notice under this contract is only effective if it is in writing, and dealt with as follows:
  - a. *if given by the Service Provider to the High Court*: addressed to the Project Officer at the address specified in Item 19 [High Court's Address for Notices] or as otherwise notified by the High Court or
  - b. *if given by the High Court to the Service Provider*: given by the Project Officer (or any superior officer to the Project Officer) and addressed (and marked for attention) as specified in Item 20 [Service Provider's Address for Notices] or as otherwise notified by the Service Provider.
- 12.1.2. A notice is to be:
  - a. signed by the person giving the notice and delivered by hand or
  - b. signed by the person giving the notice and sent by pre-paid post or
  - c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

### **12.2. When effective**

- 12.2.1. A notice is deemed to be effected:
  - a. *if delivered by hand*: upon delivery to the relevant address
  - b. *if sent by post*: upon delivery to the relevant address
  - c. *if transmitted electronically*: upon actual receipt by the addressee.
- 12.2.2. A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

## **13. General provisions**

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### **13.1. Work health and safety**

- 13.1.1. The Service Provider agrees, in carrying out this contract, to comply with:
- a. all relevant legislation, codes of practice and national standards relating to work health and safety and
  - b. all applicable policies and procedures relating to work health and safety including those that apply to the High Court's premises when using those premises.
- 13.1.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 13.1.1.b, the Service Provider will comply with those policies and procedures that produce the highest level of health and safety.

### **13.2. Audit and access**

- 13.2.1. The Service Provider agrees:
- a. to give the Project Officer, or any persons authorised in writing by the Project Officer, access to premises where the Services are being performed and
  - b. to permit those persons to inspect and take copies of any Material relevant to the Services.
- 13.2.2. The rights referred to in clause 13.2.1. are subject to:
- a. the High Court providing reasonable prior notice
  - b. the reasonable security procedures in place at the premises and
  - c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.
- 13.2.3. The Auditor-General and the Privacy Commissioner are persons authorised for the purposes of this clause 13.2.
- 13.2.4. This clause 13.2 does not detract from the statutory powers of the Auditor-General or the Privacy Commissioner.

**Note:** for information about the *Auditor-General Act 1997* (Cth) see the fact sheet referred to in Item 22 [Applicable Legislation].

### **13.3. Insurance**

- 13.3.1. The Service Provider agrees:
- a. to effect and maintain the insurance specified in Item 21 [Insurance] and
  - b. on request, to provide proof of insurance acceptable to the High Court.
- 13.3.2. This clause 13.3 continues in operation for so long as any obligations remain in connection with the contract.

#### **13.4. Extension of provisions to subcontractors and Personnel**

13.4.1. In this clause 13.4:

**Requirement** means an obligation, condition, restriction or prohibition binding on the Service Provider under this contract.

13.4.2. The Service Provider agrees to ensure that:

- a. its subcontractors and Personnel comply with all relevant Requirements and
- b. any contract entered into in connection with this contract imposes all relevant Requirements on the other party.

13.4.3. The Service Provider agrees to exercise any rights it may have against any of its subcontractors, Personnel or third parties in connection with a Requirement in accordance with any direction by the High Court.

#### **13.5. Conflict of interest**

13.5.1. In this clause 13.5:

**Conflict** means any matter, circumstance, interest, or activity affecting the Service Provider, its Personnel or subcontractors which may or may appear to impair the ability of the Service Provider to provide the Services to the High Court diligently and independently.

13.5.2. The Service Provider warrants that, to the best of its knowledge after making diligent inquiry, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Services.

13.5.3. If, during the period of this contract a Conflict arises, or appears likely to arise, the Service Provider agrees:

- a. to notify the High Court immediately
- b. to make full disclosure of all relevant information relating to the Conflict and
- c. to take any steps the High Court reasonably requires to resolve or otherwise deal with the Conflict.

#### **13.6. Relationship of parties**

13.6.1. The Service Provider is not by virtue of this contract an officer, employee, partner or agent of the High Court, nor does the Service Provider have any power or authority to bind or represent the High Court.

13.6.2. The Service Provider agrees:

- a. not to misrepresent its relationship with the High Court and
- b. not to engage in any misleading or deceptive conduct in relation to the Services.

**13.7. Waiver**

- 13.7.1. A failure or delay by a party to exercise any right or remedy it holds under this contract or at law does not operate as a waiver of that right.
- 13.7.2. A single or partial exercise by a party of any right or remedy it holds under this contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

**13.8. Variation**

- 13.8.1. A variation of this contract is binding only if agreed in writing and signed by the parties.

**13.9. Assignment**

- 13.9.1. The Service Provider cannot assign its obligations, and agrees not to assign its rights, under this contract without the High Court's prior written approval.

**13.10. Survival**

- 13.10.1. Unless the contrary intention appears, the expiry or earlier termination of this contract will not affect the continued operation of any provision relating to:
  - a. licensing of Intellectual Property
  - b. confidentiality
  - c. privacy
  - d. audit
  - e. security
  - f. an indemnity

or any other provision which expressly or by implication from its nature is intended to continue.

**13.11. Compliance with Legislation**

- 13.11.1. In this clause 13.11:

**Legislation** means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority.

- 13.11.2. The Service Provider agrees to comply with any Legislation applicable to its performance of this contract.
- 13.11.3. The Service Provider acknowledges that its attention has been drawn to the fact sheet referred to in Item 22 [Applicable Legislation] which provides details of some Legislation that may be applicable to the performance of the contract.

**13.12. Applicable law**

- 13.12.1. This contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the State or Territory specified in Item 23 [Applicable Law].
- 13.12.2. The parties submit to the jurisdiction of the courts of that State or Territory.

## **SCHEDULE 1 CONTRACT DETAILS**

### **1. Services**

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It will be the responsibility of the Service Provider to provide the following services to assist the Court to replace the existing Building management and control system (BMCS) in the High Court of Australia building with minimal or no interruption to the Courts Administration. The existing BMCS controls the operation of the HVAC plant and equipment. As well as controlling the HVAC plant and equipment, the replacement BMCS shall have the capacity to also control lighting, elevators, hydraulics and standby generator plant and provide detailed energy monitoring and reporting.

#### **STAGE 1 – Documentation of Existing System**

- Undertake a review of available information to understand the existing equipment and the interfaces between the BMCS, building services and system operators. This will include an assessment of the condition of the existing interfaces to the BMCS and their suitability for reuse with a new system. This will include the preparation of schematic drawings to show the interface between the BMCS and other equipment.
- Identify and document additional building services which could be controlled and monitored by the BMCS, especially those that would improve energy management and monitoring, and the required interfaces to connect the BMCS to this equipment.
- Examine the current operation of the HVAC plant and equipment and suggest optimisation strategies to ensure that the most efficient operation of the existing HVAC plant.
- Prepare a preliminary design report outlining the above for client review and approval.
- Liaise with the Property Project Officer, the Marshall and the outsourced facilities maintenance provider.

#### **STAGE 2 - Design and Documentation of Replacement BMCS**

- Prepare a staging plan to install the new BMCS for client approval.
- Following client approval of the preliminary design report and staging plan, prepare detailed documentation, including specifications and drawings, suitable for tender and issue to the High Court for use in the tender process.

#### **STAGE 3 - Tender and Installation Services**

Following client approval of the detailed design and documentation:

- Answer questions from contractors during the tender phase.
- Assist the Court with the technical evaluation of the tenders.
- Provide responses to technical queries associated with the installation of the BMCS and any associated systems.
- During commissioning certify the BMCS and associated systems are installed and operating in accordance with the specifications.
- Prepare a list of any outstanding defects to be addressed post practical completion.

#### STAGE 4 – Post Installation Services

- Liaise with the Court and the contractor to ensure that any outstanding defects are addressed as soon as possible after practical completion.
- Provide advice to the Court on technical issues which may arise during the defects liability period.

#### **2. Required Contract Material** (see clause a)

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- Preliminary design report
- Staging plan
- detailed documentation suitable for tender

#### **3. Standards and Best Practice** (see clause 2.1.1.c)

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The Service Provider is to comply with and implement the following standards:

- National Construction Code
- Building Code 2013
- Australian Government Implementation Guidelines (revised September 2005)
- Quality Assurance ISO9001.
- High Court Values and Code of Conduct.

#### **4. Commencement and Timeframe** (see clause 2.1.1.d)

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Contract commencement – by 15 August 2013.

Stage One - Project Investigation to be completed by 15 September 2013.

Stage Two - Design documentation to be completed by 30 October 2013.

Tender for supply and installation of a replacement BMCS close 28 November 2013.

Tender evaluation completed by 20 December 2013.

Stage Three – Practical completion of the BMCS installation to be completed by 30 April 2014.

Stage Four – Defects liability ends twelve months after practical completion.



**5. Invoicing and Payment**  
(see clauses 2.1.1.e & 3.1.b)

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Invoices will be issued by the Service Provider at the end of each stage.

Invoices must include the following information:

- a. the words “tax invoice” stated prominently
- b. the Service Provider’s name
- c. the Service Provider’s ABN
- d. the High Court’s name and address
- e. the date of issue of the tax invoice
- f. the title of this contract and the contract number or purchase order number (if any)
- g. details of fees, allowances and costs including the items to which they relate
- h. the total amount payable (including GST)
- i. the GST amount shown separately and
- j. written certification in a form acceptable to the High Court that the Service Provider has paid all remuneration, fees or other amounts payable to an employee, agent or subcontractor performing Services under this contract.

All claims for allowances or costs must be supported by receipts or other documentation which clearly substantiate the Service Provider’s entitlement to those allowances or costs.

All invoices must be addressed to the Project Officer.

The due date for payment by the High Court is 20 Business Days after delivery of a correctly rendered invoice.

Payment will be effected by electronic funds transfer (EFT) to the following bank account of the Service Provider:

**6. Project Officer**  
(see clause 2.2)

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The Project Officer is the person for the time being holding, occupying or performing the duties of Property Project Manager, currently John Ryan, available on telephone number 02 6270 6875 or via the address and facsimile number set out in Item 19 [High Court’s Address for Notices] .

**7. Subcontractors**  
(see clause 2.3)

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Not applicable

**8. Specified Personnel**  
(see clause 2.4)

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Name	Role

**9. Fees**

(see clause 3.1, & 11.1)

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Lump Sum Fees ( excluding GST)

<i>STAGES</i>	
Documentation of Existing System	
Design and Documentation of Replacement BMCS	
Tender and Installation Services	
Post Installation Services	
<b><i>Total (excluding GST)</i></b>	

FEES ARE INCLUSIVE OF:

- All costs to provide the service including phone, fax, photocopying, courier service etc. unless identified below.
- Attendance at client review meetings in Canberra as required.
- Provision of hard and soft copy documentation for design reviews, approvals, tender and construction as necessary.

**10. Allowances and Costs**

(see clauses a & 11.1.3.c)

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Any additional expenses are to be submitted for approval, prior to incurring expenditure.

The Service Provider is permitted to use the Commonwealth Material for the purposes of the contract but will generally be required to return it afterwards.

**11. Use of Commonwealth Material**

(see clause 4.1.3)

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'Not Applicable'

**12. Existing Material**  
(see clause 4.2.2)

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Operating manuals

Building drawings

**13. Moral Rights**  
(see clause 4.3)

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'Not Applicable'

**14. Permitted Acts**

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'Not Applicable'

**15. High Court policy on Moral Rights**

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'Not Applicable'

**16. Security Requirements**  
(see clause 5)

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no additional requirements

**17. Privacy Directions, Guidelines, Determinations or Recommendations**  
(see clause 6.2.1.b)

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'Not Applicable'

**18. Service Provider's Confidential Information**  
(see clause 9)

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Nil

**19. High Court's Address for Notices**  
(see clause 12.1.1.a)

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**Physical address**

High Court of Australia building  
Parkes Place East, .Parkes ACT

**Postal address**

PO Box 6309 Kingston ACT 2604

**Email**

john.ryan@hcourt.gov.au

**20. Service Provider's Address for Notices**  
(see clause 12.1.1.a)

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**Physical address**

**Postal address**

**Email**

**21. Insurance**

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**(see clause 13.3)**

- i. workers' compensation as required by law
- ii. public liability insurance to a value of \$20 million and
- iii. professional indemnity insurance to a value of \$2 million.

**22. Applicable Legislation**

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**(see clause 13.11.3)**

Commonwealth legislation that may apply to Australian Government contractors – July 2007, available at:

[http://www.ags.gov.au/publications/agspubs/factsheets/No1\\_August2010.html](http://www.ags.gov.au/publications/agspubs/factsheets/No1_August2010.html)

**23. Applicable Law**

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**(see clause 13.12)**

Australian Capital Territory

SIGNED for and on behalf of High Court of Australia by: )

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\_\_\_\_\_  
*Signature*

In the presence of:

\_\_\_\_\_

*Name of witness*

\_\_\_\_\_

*Signature of witness*

SIGNED for and on behalf of )

by: )

)

\_\_\_\_\_

*Name*

\_\_\_\_\_

*Signature*

In the presence of:

\_\_\_\_\_

*Name*

\_\_\_\_\_

*Signature of witness*