

# Loan, Security, Settlement & Recovery Legal Services

Between

**Indigenous Business Australia**

and

**[insert name of Services Provider]**

*Drafting Note: this is a draft document only. IBA reserves the right to amend or replace this document*



## Details

**Interpretation** - definitions are at the end of the General terms

| <b>Parties</b>           | <b>IBA and Panel Provider</b>  |   |
|--------------------------|--|---|
| <b>IBA</b>               | Name   | Indigenous Business Australia                 |
|                          | ABN  | 25 192 932 833                                |
|                          | Address  | Level 21, 66 Goulburn Street, Sydney NSW 2000 |
|                          | General Counsel  | Shanti Rama                                   |
|                          |  | Telephone: 02 9207 6375                       |
|                          | Email Address  | Legal.Services@iba.gov.au                     |
| <b>Panel Provider</b>    | Name   | [insert]                                      |
|                          | ACN  | [insert]                                      |
|                          | Address  | [insert]                                      |
|                          | Telephone  | [insert]                                      |
|                          | Attention  | [insert]                                      |
|                          | Email Address  | [insert]                                      |
| <b>Background</b>        | <p>IBA's Housing Solutions and Business Solutions teams offer a range of housing and business loan financing products, and has customers located Australia wide.</p> <p>IBA issued a Request for Tender (<b>RFT</b>) seeking a legal services provider to assist with loan, securities, settlements and recovery work, and to develop a long term and evolving working relationship with a strong focus on customer service, streamlined delivery and business value.</p> <p>IBA selected the Panel Provider as the successful respondent to the RFT.</p> <p>IBA and the Panel Provider agree to collaborate on the terms of this agreement.</p> |   |
| <b>Governing law</b>     | New South Wales  |   |
| <b>Date of agreement</b> | See Signing page   |   |

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## 1 Appointment

### 1.1 Selection and appointment

IBA appoints the Panel Provider to assist with the Services on the terms of this agreement. The Panel Provider accepts the appointment and will undertake the Services in the manner contemplated in this document and any Statements of Work.

### 1.2 Non-exclusivity

The appointment of the Panel Provider pursuant to clause 1.1 is on a non-exclusive basis. The Panel Provider acknowledges and agrees that IBA may in its sole discretion engage other parties to provide any of the Services at any time.

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## 2 Term

### 2.1 Term of the master services agreement

This agreement operates as a master services agreement, and commences on the Commencement Date and continues (subject to its terms) for the Term or such other period as is agreed between the parties in writing, unless earlier terminated under clause 12.

### 2.2 Expiry of Particular Services

If at the expiry of the Term there is an open Particular Service, that Particular Service will continue (and the terms of this agreement will continue to that Particular Service) until the Service(s) under that Particular Service are completed or if that Particular Service is terminated under clause 12.

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## 3 Services

### 3.1 Instruction of Services

Provider

- (a) If IBA requires a Service from the Panel Provider under this agreement, an IBA staff member will email the appropriate Key Personnel of the Panel Provider with the relevant details of the instruction or proposed Particular Service.
- (b) The Key Personnel for the Panel Provider will confirm the Fee for the Particular Service as set out in the Proposal, and will include an estimate for expected disbursements and GST (**Total Estimated Fee**).
- (c) The IBA staff member will seek internal approval of the Total Estimated Fee, and may request further information from the Panel Provider before obtaining such approval.
- (d) If the Total Estimated Fee is approved by IBA, the IBA staff member will respond to the Panel Provider with instructions to proceed (together with any other directions) for the Particular Service.
- (e) The parties may agree, from time to time, to use template instruction forms to assist the process of instructing a Particular Service.
- (f) For the avoidance of doubt, other than the Fees, all other terms and conditions contained in the Proposal are expressly excluded from application to this agreement.

*Drafting Note: IBA requires internal delegate's approval for total costs of a Particular Service before it is incurred, which includes disbursements and GST. If a fee/disbursement goes above the approved amount, further approval is needed from the IBA delegate.*

**3.2 Terms of the Particular Service**

For each instruction of a Particular Service, it will be treated as a separate work order. The parties agree:

- (a) the Particular Service commences on the date IBA instructs the Panel Provider to proceed, and continues until the Particular Service is completed unless terminated earlier in accordance with this agreement;
- (b) the terms of this agreement applies to each Particular Service, unless expressly stated otherwise and mutually agreed;
- (c) no modification, amendment or waiver of a Particular Service will be effective unless it is agreed in writing by the parties; and
- (d) each Particular Service will be governed by the laws of New South Wales, unless expressly stated otherwise.

**3.3 Out of scope services**

During the Term the parties may agree in writing for the provision of additional services or variations to the Services by the Panel Provider. These are to be documented as follows:

- (a) if specific to a particular matter or transaction: in the relevant correspondence relating to a Particular Service or by separate agreement;
- (b) if globally to the Services or fees in the Proposal: by deed of variation.

**3.4 Pricing for out of scope services**

If:

- (a) the Proposal specifies a price or rate for the agreed additional services, then that price or rate will apply in respect of the provision of those additional services;
- (b) the Proposal does not specify a price or rate for the additional services, then the price or rate will be as agreed between the parties in writing.

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**4 Payments to Panel Provider**

Unless the parties otherwise expressly state in writing for a Particular Service, the Fee for a Service is payable as follows:

**4.1 Payment for hourly rates**

Subject to clause 4.4, if the Panel Provider's Rate for a Service is described in the Proposal as an hourly or daily rate, IBA will pay the Fee to the Panel Provider monthly in arrears during the term of the applicable Particular Service.

**4.2 Payment for fixed amounts**

Subject to clause 4.4, if the Panel Provider's Rate for a Service is described in the Proposal as a fixed amount, IBA will pay the Fee to the Panel Provider in one lump sum on the completion of the Service under the applicable Particular Service by the Panel Provider to the satisfaction of IBA.

**4.3 Payment for milestones**

Subject to clause 4.4, if the Panel Provider's Rate for a Service is described in the Proposal in respect of milestones, phases or stages, IBA will pay the Fee to the Panel Provider on the completion of each milestone, phase or stage to the satisfaction of IBA.

**4.4 Timing**

IBA will pay Fees on receipt of a properly rendered tax invoice submitted by the Panel Provider with 30 day payment terms, which details:

- (a) the Particular Service reference or IBA customer number (if applicable);
- (b) the Services performed during the relevant period;
- (c) the dates and times on and during which the Services were performed;
- (d) (if applicable) any milestones or steps met during the relevant period; and
- (e) the Fee payable in respect of the relevant period,

to the satisfaction of IBA, acting reasonably. Where requested by IBA, the Panel Provider must:

- (a) complete and submit time sheets recording the provision of the Services; and
- (b) provide additional information as required to assess a claim for payment.

**4.5 Payment not evidence**

No payment made by IBA to the Panel Provider under this agreement is evidence that the Services have been provided according to this agreement.

**4.6 Amount to be paid**

Subject to clause 22.1 or if otherwise expressly agreed in writing for a Particular Service, the Panel Provider acknowledges that the Panel Provider's Rate is not subject to variation for any reason.

**4.7 Costs capped**

- (a) The Panel Provider agrees and acknowledges that the Fee for a Service is capped at the amount given in the Proposal, and that amount is the maximum amount that IBA will be required to pay for the provision of that Service by the Panel Provider.
- (b) The Panel Provider must provide adequate and timely notice to IBA's Key Personnel when a Fee reaches 80% of the fixed fee limit for a Particular Service.
- (c) Any additional Fees payable for additional services must be expressly agreed in writing by the parties before being incurred.
- (d) If requested by IBA, the Panel Provider will specify reasons for any additional Fees, before being incurred.

**4.8 Disbursements**

IBA will reimburse the Panel Provider for usual legal disbursements and expenses that are properly incurred and are standard practice for the particular Service (such as title searches, registration fees, court filing fees) provided that:

- (a) the Panel Provider had included the disbursements and expenses in the Total Estimated Fee under clause 3.1(b). If the actual disbursement or expense exceeds the estimated amount, IBA's internal consent is required before the excess amount is payable by IBA;
- (b) the expense has been reasonably and actually incurred in performing the Service;

- (c) the Panel Provider, upon IBA's request, produces documentary evidence of the expense to IBA's satisfaction; and
- (d) IBA receives a properly rendered tax invoice submitted by the Panel Provider with 30 day payment terms which details the out of pocket expenses incurred in providing the Services during the relevant period.

#### **4.9 Out of pocket expenses**

Any expenses that:

- (a) are not standard disbursements; or
- (b) are of a nature specific to the transaction (such as travel expenses, stamp duty),

require IBA's written consent before these are incurred. IBA will only reimburse the Panel Provider for these expenses if clauses 4.8(b) to (d) are complied with in respect of these expenses.

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## **5 Panel Provider's responsibility**

### **5.1 Services**

In performing the Services, the Panel Provider must:

- (a) exercise a high level of skill and care in conformity with accepted professional standards;
- (b) act promptly to facilitate the timely and expeditious completion of the Services;
- (c) subject to clause 6, not subcontract or delegate the provision of all or any part of the Services. However, the Panel Provider may, at its own cost but subject to clause 9, obtain advice, professional services and assistance from other lawyers, consultants or professions;
- (d) comply with all applicable laws, codes and standards, including applicable work health and safety law;
- (e) immediately notify IBA of any illness of or injury to any Key Personnel or Representatives which may result in the Panel Provider being unable to provide the Services in whole or in part or to the standard required by this agreement;
- (f) immediately notify IBA of:
  - (i) all threatened or actual litigation, proceedings, judicial or administrative enquiries, investigations, claims or allegations, which may have a material effect on the ability of the Panel Provider to perform the Services, by another person or body, against or in any way involving the Panel Provider;
  - (ii) any act, behaviour, conduct or activity of the Panel Provider which may adversely affect the Panel Provider's credit worthiness, integrity, character or reputation; or
  - (iii) any act, behaviour, conduct or activity of the Panel Provider which has attracted negative publicity or attention or generated public or media criticism either inside or outside of Australia;

- (g) comply with all procedures, rules, regulations, standards of conduct, other ethical standards, business methodologies and lawful directions of IBA including when using IBA's premises or equipment or dealing with its personnel or clients;
- (h) demonstrate behaviour consistent with the standards outlined in the IBA Values and Code of Conduct;
- (i) perform the Services in a manner which does not pose any avoidable health or physical safety risk to any person;
- (j) ensure that IBA can make full use of the Services or the relevant part of it for the purposes for which it is intended without being in breach of any work health and safety laws; and
- (k) not do anything that is likely to adversely affect the reputation of IBA (including by making of disparaging remarks about IBA, its personnel or services).

## 5.2 Other requirements

The Panel Provider must use all reasonable efforts to inform itself of IBA's requirements for the Services, and for that purpose the Panel Provider must liaise with the relevant IBA Key Personnel regularly throughout the term of the applicable Particular Service.

## 5.3 Australian Consumer Law

- (a) Where the Panel Provider is providing Services to which the Australian Consumer Law applies and a warranty against defects is communicated to IBA, then this clause 5.3 applies.
- (b) The Panel Provider's Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, IBA is entitled:
  - (i) to cancel its contract with the Panel Provider; and
  - (ii) to a refund for the unused portion, or to compensation for its reduced value.
- (c) IBA is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure IBA is entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel its contract and obtain a refund for the unused portion of the contract.
- (d) In this clause 5.3, **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any variations from time to time.

## 5.4 Additional information

If the Panel Provider believes that the information, documents or other particulars provided to it are insufficient to enable the Panel Provider to provide the Services under a Particular Service, the Panel Provider must immediately notify IBA's Key Personnel, who will take such action (if any) as they consider necessary to enable the Panel Provider to provide the Services.

## 5.5 Audit

The Panel Provider must allow reasonable access by IBA to any documentation in connection with the Services for the purpose of satisfying themselves of:

- (a) the quality of the Services;

- (b) the rate of progress of the Services;
- (c) compliance with relevant laws, standards and codes, including work health and safety laws;
- (d) compliance with all procedures, rules, regulations, standards of conduct, other ethical standards, business methodologies and lawful directions of IBA; or
- (e) other aspects or matters concerning the provision of the Services as the IBA may think necessary or appropriate.

In exercising their rights under this clause, IBA will act reasonably and for the purpose only of attempting to ensure the accurate, timely and economic provision of the Services.

#### **5.6 Accounts, books and records**

The Panel Provider must at its own cost:

- (a) keep, maintain and audit adequate accounts, books and records, in accordance with Accounting Standards and Australian legal record management standards in relation to the Services;
- (b) allow IBA to inspect the accounts, books and records kept in relation to the Services in accordance with clause 5.6(a); and
- (c) retain for a period of seven years after termination or expiration of this agreement all accounts, books and records relating to the Services.

#### **5.7 Timing**

If the Panel Provider becomes aware of any matter which it believes will or may change the timing, nature or scope of the Services:

- (a) under a Particular Service: it must immediately notify the Contract Manager and provide all relevant details, including the extent or likely extent of the change; or
- (b) under the Proposal: it must notify IBA's General Counsel, and provide all relevant details, including the extent or likely extent of the change.

#### **5.8 Other Representatives**

- (a) The Panel Provider acknowledges that IBA may from time to time appoint other advisers, agents, consultants or contractors with whom, together with IBA, the Panel Provider is required to work co-operatively and harmoniously in order to facilitate the expeditious provision of the Services.
- (b) If, in the provision of the Services, the Panel Provider recommends to IBA to engage third parties, these engagement contracts are to be approved by IBA and entered into between IBA and the third party directly or the Panel Provider as agent for IBA and the third party as agreed between the parties.

#### **5.9 Documentation**

The Panel Provider must create and provide all documentation expressly and impliedly required to give effect to the Services, except to the extent that IBA has directed the Panel Provider to use IBA's templates for a Service.

**5.10 Compliance with instructions**

- (a) The Panel Provider must promptly comply with any reasonable instructions from IBA or the Contract Manager regarding the provision of the Services.
- (b) If there is a conflict between the instructions given to the Panel Provider by any IBA personnel, the Panel Provider must immediately inform the Contract Manager and the Contract Manager must resolve that conflict.

**5.11 Conflict of Interest**

The Panel Provider must notify IBA in writing of any potential, perceived or actual conflict of interest that has or could have the potential to impact on the Panel Provider's ability to provide the Services, and the Panel Provider must comply with any reasonable direction given by IBA in relation to the management of the potential, perceived or actual conflict.

**5.12 Proceeding with services despite dispute**

The Panel Provider must proceed with the provision of Services with diligence and otherwise in accordance with this agreement, despite any dispute or proceedings that may arise between the parties.

**5.13 Survival**

The obligations in clauses 5.5 and 5.6 will survive the expiry or termination of this agreement.

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**6 Panel Provider's personnel**

**6.1 Adequate resources**

The Panel Provider must procure and maintain at all times adequate resources and Representatives to discharge its duties and obligations under this agreement.

**6.2 General obligations**

The Panel Provider must ensure that its Key Personnel, Third Party Collaborators and Representatives have the necessary skills, expertise, qualifications and training for the purposes of providing the Services and comply with the terms of this agreement.

**6.3 Third Party Collaborators**

If during the Term, the Panel Provider uses a Third Party Collaborator that is not listed in the Proposal, the Panel Provider must as soon as reasonably practicable notify IBA.

**6.4 Third Party Collaborator's responsibilities**

The Panel Provider agrees that:

- (a) IBA is not responsible for any payment to Third Party Collaborators;
- (b) all Provider's Third Party Collaborators must have all necessary insurances including professional indemnity and public liability insurance; and
- (c) the Panel Provider remains responsible for the performance of the Services by the Third Party Collaborator, and ensuring the Third Party Collaborator:
  - (i) complies with clause 5 as if the Third Party Collaborator was the Panel Provider; and
  - (ii) maintains confidentiality and complies with conflict of interest obligations under clause 5.11.

**6.5 Key personnel**

Through the Term, the Panel Provider's Key Personnel must maintain the nature and extent of their involvement and designated role in providing the Services unless IBA otherwise agrees in writing. Consent will not be unreasonably withheld by IBA.

**6.6 Replacement of Third Party Collaborators or Key Personnel**

Without prejudice to any other rights IBA may have, IBA may at any time, acting reasonably, require the Panel Provider to remove or replace its Key Personnel, Third Party Collaborators or Representatives in connection with the provision of Services. IBA must act reasonably when exercising its rights under this clause.

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**7 Performance Measures and Reporting**
**7.1 Regular meetings**

- (a) The parties agree to conduct regular meetings to discuss on-going Particular Services and operational matters (as reasonably required) between the relevant Key Personnel of IBA and the Panel Provider.
- (b) Once every six months (or at such other intervals as agreed by the parties), the Key Personnel designated as 'Relationship' contacts in Items 6 and 7 of Schedule 1, will meet (by video conference or in person) to discuss how the Services are being performed overall and to manage the on-going relationship between the parties.
- (c) The Performance Measures may be used by the parties to guide discussions and measure delivery of the Services and customer satisfaction.
- (d) Provider

**7.2 Reporting**

The Panel Provider agrees to provide monthly reports to IBA (or at such other intervals as agreed between the parties), which includes the following information:

- (a) current matters/Particular Services;
- (b) fees and disbursements to date for each Particular Service;
- (c) name of the Panel Provider's Key Personnel and/or Third Party Collaborators working on each Particular Service;
- (d) any other information reasonably required by IBA, e.g. for any Modern Slavery or ESG reporting purposes.

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**8 General obligations of IBA**
**8.1 Provision of information**

In relation to each Particular Service, IBA will, as soon as practicable, make available to the Panel Provider all relevant information and documents reasonably required by the Panel Provider in connection with its performance of the Particular Service.

If requested by IBA, any information provided to the Panel Provider under this clause 8.1 must be returned to IBA immediately.

**8.2 Directions and decisions**

IBA will provide necessary directions and make decisions in a timely manner, so as not to delay the performance and provision of the Services.

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## **9 Confidentiality**

### **9.1 Disclosure of Confidential Information**

The Panel Provider must not, and must procure that its Representatives and Third Party Collaborators do not, disclose any Confidential Information to any person except:

- (a) Representatives of the Panel Provider requiring the information for the purposes of this agreement or the applicable Particular Service; or
- (b) with the consent of IBA which consent may be given or withheld in its absolute discretion; or
- (c) if disclosure is required by law or by a stock exchange; or
- (d) if disclosure is required in connection with legal proceedings relating to this agreement or a Particular Service.

### **9.2 Disclosure by recipient of Confidential Information**

In disclosing information under clause 9.1 (a) or 9.1 (b), the Panel Provider must, and must procure that its Representatives and Third Party Collaborators, use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 9.1.

### **9.3 Use of Confidential Information**

The Panel Provider must not, and must procure that its Representatives and Third Party Collaborators do not, use the Confidential Information except for the purpose of exercising its rights or performing its obligations under this agreement or Particular Service.

### **9.4 Excluded Information**

Clauses 9.1, 9.2 and 9.3 do not apply to the Excluded Information, subject to any privacy laws or regulations.

### **9.5 Return of Confidential Information**

- (a) The Panel Provider must, and must procure that its Representatives and Third Party Collaborators, on the request of IBA, immediately deliver to IBA or destroy, at IBA's discretion, all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it under clause 9.1(a) or 9.1(b).
- (b) If any Confidential Information must be retained by the Panel Provider by law or regulatory authority, the confidentiality obligations under clause 9.1 continue in respect of such information.

### **9.6 No disclosure of terms of this agreement**

Except as otherwise agreed or duly required by law or any regulatory authority, no party will disclose the terms of this agreement to any person other than its employees, accountants, auditors, financial advisers or legal advisers on a confidential basis or, in the case of IBA, to the extent it forms the view that the disclosure is necessary or appropriate having regard to its functions and accountability to the relevant Commonwealth minister or the Commonwealth Parliament.

### **9.7 Secrecy**

The Panel Provider, its Representatives and Third Party Collaborators are required to comply with the secrecy obligations in section 191 of the *Aboriginal and Torres Strait*

*Islander Act 2005 (Cth) (ATSI Act)*. Nothing in this agreement in any way affects any entitlement of IBA or limitation or restriction imposed on IBA or the Panel Provider or any Representatives under the ATSI Act.

**9.8 Termination**

The obligations in this clause 9 will survive the termination or expiry of this agreement.

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**10 Relationship between the parties**

**10.1 Principal and contractor**

- (a) The relationship between IBA and the Panel Provider is that of principal and independent contractor, and nothing in this agreement constitutes the Panel Provider or any Key Personnel, a partner, joint venturer, employee, servant or agent of IBA.
- (b) The Panel Provider warrants and represents that the Key Personnel has been made aware of, and agrees to, the extent of the relationship under clause 10.1(a).

**10.2 Panel Provider's employees**

- (a) The Panel Provider and IBA acknowledge that any Representative or Third Party Collaborator of the Panel Provider (including the Key Personnel) is at all times an employee or contractor of the Panel Provider and not of IBA.
- (b) The Panel Provider is solely responsible and liable for that Third Party Collaborator's and Representative's remuneration, superannuation contributions, payroll tax and PAYG tax, leave entitlements, workers' compensation premiums, supervision, all the statutory and other legal obligations and for any claims by the Representative or Third Party Collaborator under unfair dismissal, general protection or workplace injury laws as their employer or by whom they are engaged (as applicable).
- (c) The Panel Provider is solely responsible for verifying the Representative's and Third Party Collaborator's right to work in Australia.
- (d) The Panel Provider acknowledges that no Representative of the Panel Provider or Third Party Collaborator are an employee of IBA.

**10.3 No authority**

The Panel Provider will not, and the Panel Provider must ensure its Representatives and Third Party Collaborator do not, pledge the credit of IBA or make any representation that it or they or any of them have authority to represent or bind IBA.

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**11 Dispute resolution**

**11.1 Disputes**

All Disputes must be resolved in accordance with this clause 11.

**11.2 Notice of Dispute**

Written notice of any Dispute setting out full details of the Dispute must be given to the other party.

**11.3 Referral to senior representatives**

If the Contract Manager and a representative of the Panel Provider are unable to resolve the Dispute the subject of a written notice given under clause 11.2 within 10

Business Days after notice is given, either party may refer the Dispute to the senior representatives of the parties, being the Chief Executive Officer of IBA and the chief executive officer or equivalent of the Panel Provider.

#### **11.4 Litigation**

If the senior representatives of the parties are unable to resolve a Dispute referred to them under clause 11.3 within 10 Business Days, either party may, after giving written notice to the other party, commence litigation regarding the Dispute.

#### **11.5 Condition precedent to litigation**

Service of the notices under, and compliance with the process outlined in this clause 11 are conditions precedent to the commencement of any litigation in respect of a Dispute.

#### **11.6 Dispute resolution not to delay performance of the Services**

Despite the other provisions of this clause 11, the Panel Provider must continue to perform the Services and its other obligations under this agreement.

#### **11.7 Interlocutory relief**

Nothing in this clause prevents either party from seeking urgent interim or interlocutory relief.

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## **12 Termination**

### **12.1 Termination by IBA for cause**

IBA may terminate this agreement or a Particular Service k (as may be applicable) immediately by notice in writing if:

- (a) the Panel Provider is or becomes Insolvent;
- (b) in IBA's view, acting reasonably, the Panel Provider, the Panel Provider's Representative or Key Personnel, or Third Party Collaborator have demonstrated:
  - (i) serious misconduct; or
  - (ii) behaviour inconsistent with the IBA Values and Code of Conduct, as if the IBA Values and Code of Conduct applied to the Panel Provider, and that behaviour is capable of being remedied but has not been done so to the satisfaction of IBA, acting reasonably, within 7 days of receipt of written notice from IBA identifying the behaviour and its inconsistency with the IBA Values and Code of Conduct;
- (c) the Panel Provider, Third Party Collaborator or any Key Personnel of the Panel Provider cease to hold any practising certificate, registration, qualification or professional indemnity insurance required for the Panel Provider to perform the Services where IBA requires them to be performed;
- (d) the Panel Provider materially fails to comply with any timetable which has been agreed between IBA and the Panel Provider for the completion of any tasks required under this agreement or Particular Service; or
- (e) the Panel Provider breaches any other provision of this agreement or Particular Service and that breach is not remedied to the satisfaction of IBA within 30 days of receipt of written notice from IBA identifying the breach and requiring its remedy.

**12.2 Termination by Panel Provider for cause**

The Panel Provider may terminate this agreement or a Particular Service (as may be applicable) immediately by notice in writing if:

- (a) any payment due by IBA to the Panel Provider under this agreement or Particular Service is not paid in full within 30 days of the due date, and remains unpaid 14 days after the Panel Provider has sent a reminder for payment to IBA; or
- (b) IBA breaches any provision of this agreement and that breach is not remedied within 30 days of written notice to IBA by the Consultant identifying the breach and requiring that the breach be remedied.

**12.3 Effect of termination of this agreement on a Particular Service**

If a party terminates this agreement under clause 12.1 or 12.2 (**Non-defaulting Party**) but does not expressly terminate any open Particular Service, the Non-defaulting Party may, at its discretion, terminate an open Particular Service at any time. Otherwise, the open Particular Service will continue until the Services are completed.

**12.4 Consequences of termination**

If either party terminates this agreement or Particular Service, then in addition to that right:

- (a) IBA may take possession of all documents and materials referred to in clause 9.5;
- (b) the Panel Provider must deliver promptly to IBA all material (written, electronic or otherwise) prepared in connection with this agreement or Particular Service (as applicable);
- (c) IBA will pay the Panel Provider for any Services provided to the effective date of termination unless:
  - (i) the Services were provided in part or in whole without a required qualification, practicing certificate, registration or licence;
  - (ii) IBA has reported the Panel Provider to the relevant authorities for suspected fraud; or
  - (iii) the Services provided materially departed from the Proposal without authorisation from IBA;
- (d) the Panel Provider will reimburse IBA for any Fee paid by IBA in advance for Services that had not been provided by the Panel Provider as at the effective date of termination;
- (e) IBA may use all documents prepared by the Panel Provider under this agreement or Particular Service (as applicable) for any other purpose in connection with the Services;
- (f) the accrued rights and liabilities of the parties are not affected;
- (g) the parties are to be regarded as discharged from any further obligations under this agreement; and
- (h) either party may pursue any additional or alternative remedies provided by law.

**12.5 Survival**

The relevant parts of this clause 12 will survive the expiry or termination of this agreement or Particular Service (as applicable).

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**13 Suspension of Services****13.1 Suspension of Services**

IBA may at any time direct the Panel Provider to suspend the performance of all or any part of the Services.

**13.2 Resuming performance after suspension**

IBA may at any time direct the Panel Provider to resume the performance of the Services or the relevant part.

**13.3 Suspension costs**

Subject to clause 13.5, IBA must pay the Panel Provider the reasonable and non-cancellable costs incurred by it in:

- (a) keeping its Representatives or Third Party Collaborators on standby for any open and impacted Particular Service; and
- (b) demobilising and remobilising its Representatives or Third Party Collaborator for any open and impacted Particular Service.

**13.4 Agreeing or determining suspension costs**

The amount payable under clause 13.3 must be:

- (a) agreed by IBA and the Panel Provider; or
- (b) failing agreement, determined by the Contract Manager, acting reasonably and considering the views of the Panel Provider as well as current market practices.

**13.5 No suspension costs**

If IBA gives a direction under clause 13.1 as a result of a breach by the Panel Provider of its obligations under this agreement or Particular Service, the Panel Provider is not entitled to any payment under clause 13.3.

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**14 Machinery of government changes****14.1 Assignment or novation**

Notwithstanding any other clause of this agreement, in the event of machinery of government changes, IBA may (but is not obliged to) assign or novate its rights under this agreement to a Commonwealth Entity other than IBA.

**14.2 Consent to assignment or novation**

By entering into this agreement, the Panel Provider consents to the assignment or novation of this agreement or Particular Service to the relevant Commonwealth Entity.

**14.3 Execution of documents**

At the request of IBA, the Panel Provider agrees to execute such documents as IBA reasonably requires the Panel Provider to execute in order to give effect to the assignment or novation.

#### 14.4 Commonwealth Entity

For the purposes of this clause 14, **Commonwealth Entity** has the meaning given to it in the *Public Governance, Performance and Accountability Act 2013* (Cth).

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## 15 Indemnity

### 15.1 Scope

The Panel Provider indemnifies IBA and its officers and employees on demand against all Claims resulting from any of the following:

- (a) the enforcement of this agreement or Particular Service;
- (b) the personal injury to or death of any person or damage to property in connection with the performance of this agreement or any Particular Service;
- (c) breach by the Panel Provider or any of its Representatives or Third Party Collaborator of the Panel Provider's obligations under this agreement and any Particular Service;
- (d) negligent act or omission by the Panel Provider, any of its Representatives or Third Party Collaborators;
- (e) breach of any law by the Panel Provider, any of its Representatives or Third Party Collaborators; or
- (f) claim by any Representative of the Panel Provider (including the Key Personnel) in relation their employment or engagement, including any claims regarding underpayment or claims made under the *Fair Work Act 2009* (Cth).

### 15.2 Reduction of liability for IBA fault

The liability of the Panel Provider under clause 15.1 is reduced to the extent that the Claim was caused or contributed to by the fraud, negligence, mistake, or wilful misconduct of IBA or its agents or employees.

### 15.3 IBA to mitigate

IBA will, to the extent practicable, take reasonable steps to mitigate its loss in circumstances where clause 15.1 applies.

### 15.4 Employees and officers

The indemnity given in clause 15.1 in favour of persons not a party to this agreement or Particular Service is intended to be, and is, directly enforceable by each of those persons, and this agreement operates as a deed poll in favour of those persons.

### 15.5 Continuing obligation

The indemnity in clause 15.1 is a continuing obligation, separate and independent from the other obligations of the Panel Provider and survives the termination or expiry of this agreement and any relevant Particular Service. It is not necessary for IBA to incur any expense or make any payment before enforcing its rights under clause 15.1.

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## 16 Insurance

### 16.1 General

The Panel Provider must take out and maintain (and require its Third Party Collaborators to take out and maintain) the insurances described in **Schedule 2**. Insurance effected by

the Panel Provider pursuant to this clause 16 must be noted to include the interest of IBA.

**16.2 Events affecting insurance**

The Panel Provider must notify IBA of any event which could affect its insurance cover, including any event by virtue of which any insurance cover may be or has been cancelled, avoided or allowed to lapse or the rate of premium or the excess increased.

**16.3 No effect on obligations**

The requirement to effect and maintain insurance in this clause 16 does not limit the Liability or obligations of the Panel Provider under this agreement.

**16.4 Evidence of policies**

If requested by IBA, the Panel Provider must provide documentation certifying that it has, and it's Third Party Collaborate has, the insurance it is required to have and maintain in clause 16.1.

**16.5 Survival of obligations**

The obligations in this clause 16 will survive the expiry or termination of this agreement.

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**17 Privacy**

**17.1 General**

The Panel Provider agrees, in respect of personal information held in connection with this agreement or any Particular Service:

- (a) to comply with the Privacy Act and other legislation regarding privacy in force from time to time that is applicable to IBA or the Panel Provider;
- (b) to use personal information only for the purposes of fulfilling its obligations under this agreement and any applicable Particular Service;
- (c) not to disclose the information without the written authority of IBA except for the purposes of fulfilling its obligations under this agreement or any applicable Particular Service. The Panel Provider must immediately notify IBA where it becomes aware that a disclosure of personal information may be required by law;
- (d) to ensure that an employee of the Panel Provider or any Third Party Collaborator requiring access to any personal information is under a legal obligation not to access, use, disclose or retain the information except in performing their duties of employment or retention and is informed that failure to comply with this undertaking may be a criminal offence and may also require the Panel Provider to take disciplinary action against the employee or Third Party Collaborator as the case may be;
- (e) to notify IBA immediately if the Panel Provider becomes aware of a breach of this clause 17 by itself, its Representative or by any Third Party Collaborator; and
- (f) to notify IBA immediately if the Panel Provider becomes aware of or suspects, any Data Breach whether the personal information is in the control or possession of the Panel Provider or a third party the Panel Provider or Third Party Collaborator has provided the personal information to or directed IBA to provide personal information to, and provide full details of the Data Breach.

**17.2 Data Breach**

If the Panel Provider becomes aware of or suspects, any Data Breach relating to IBA, its Confidential Information or the Services, whether the personal information is in the control or possession of the Panel Provider or of a third party the Panel Provider or Third Party Collaborator has provided the personal information to or directed IBA to provide personal information to, the Panel Provider must:

- (a) immediately notify IBA of the Data Breach or suspected Data Breach;
- (b) fully co-operate with IBA and promptly upon request, provide access to the Panel Provider's/Third Party Collaborator's systems and/or documentation in connection with any assessment or investigation of the Data Breach by or on behalf of IBA;
- (c) notify IBA of actions taken to remedy the Data Breach; and
- (d) fully cooperate with IBA in relation to any provision, notification or publication of a statement in respect of the Data Breach under sections 26WK and 26WL of the Privacy Act.

**17.3 Data held outside Australia**

Where IBA discloses personal information to the Panel Provider (or a third party at the direction of the Panel Provider) outside Australia, the Panel Provider must comply with clauses 17.1 and 17.2 as if the Panel Provider were subject to the Privacy Act, excluding Australian Privacy Principle 1 if the Panel Provider does not have an Australian link.

**17.4 Third parties**

Where IBA discloses personal information to a third party at the direction of the Panel Provider (including to a Third Party Collaborator), the Panel Provider must use its best endeavours to ensure that the third party complies with clauses 17.1, 17.2 and if applicable, clause 17.3.

**17.5 Survival of obligations**

The obligations in this clause 17 will survive the expiry or termination of this agreement.

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**18 Modern Slavery Laws****18.1 Warranties**

The Panel Provider warrants that, to the extent applicable, it complies with and will continue to comply with all Modern Slavery Laws, including by taking reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Services.

**18.2 Remedial action**

If at any time the Panel Provider becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the Services (including by its Third Party Collaborator), the Panel Provider must, as soon as reasonably practicable, take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

**18.3 Cooperation**

The Panel Provider will:

- (a) provide evidence of its compliance with clause 18.1 upon request by IBA, including completing any investigation, review or questionnaire and providing any declaration, attestation or certificate of compliance requested by IBA; and
- (b) procure from its own suppliers and subcontractors, a statutory declaration regarding modern slavery matters if required by IBA, acting reasonably.

#### 18.4 Interpretation

In this clause:

**Modern Slavery** has the meaning given to it in the *Modern Slavery Act 2018* (Cth).

**Modern Slavery Laws** means the *Modern Slavery Act 2018* (Cth) and any legislation of the Commonwealth or a State relating to Modern Slavery or similar matters including the *Modern Slavery Act 2018* (NSW).

## 19 Security

### 19.1 Compliance with security requirements

The Panel Provider must, and must ensure that its Third Party Collaborators, comply with:

- (a) any security and other requirements specified in **Schedule 4**; and
- (b) the Australian Government Protective Security Policy Framework (outlined at [www.protectivesecurity.gov.au](http://www.protectivesecurity.gov.au)) and the Australian Government Information Security Manual (outlined at [www.asd.gov.au](http://www.asd.gov.au)), as updated from time to time (as applicable to the Services).

### 19.2 Obligation to notify

The Panel Provider must:

- (a) notify IBA promptly (but no later than 72 hours) after the Panel Provider becomes aware of a confirmed or suspected Security Incident;
- (b) promptly investigate each Security Incident and escalate internally in accordance with the Panel Provider's security policies and industry best practice;
- (c) promptly take all reasonable steps (including directions reasonably requested by IBA) to limit, stop, or otherwise remedy, and prevent the recurrence of, each Security Incident; and
- (d) provide IBA prompt access to the Panel Provider's and Third Party Collaborator's personnel to the extent reasonably required by IBA to satisfy it as to the extent and nature of the Security Incident and its rectification (including the results of a post-incident review).

### 19.3 Other security requirements

The Panel Provider must promptly:

- (a) upon IBA's request (no more than once in any given calendar year), confirm in writing its compliance with clauses 19.1 and 19.2; and

- (b) comply with any additional security requirements notified by IBA to the Panel Provider from time to time. IBA will give the Panel Provider as much notice as reasonably practicable of any additional security requirements.

**19.4 Security audit**

- (a) The Panel Provider must, upon 10 days' written notice by IBA, make available to it:
  - (i) the Panel Provider's (and the Third Party Collaborator's, if applicable) personnel, systems and equipment;
  - (ii) copies of any certifications, reports or tests (including the executive summary portion of penetration or vulnerability tests) and data breach and cyber incident response plans; and
  - (iii) any other information reasonably requested by IBA,

to demonstrate the Panel Provider's compliance with its obligations under clauses 19.1 and 19.2.

- (b) If IBA reasonably believes that the Panel Provider's Consultant's (and the Third Party Collaborator's, if applicable) responses do not adequately demonstrate the Panel Provider's or Third Party Collaborator's compliance with its legal obligations or this agreement, IBA may conduct, or instruct a third-party auditor to conduct on its behalf, an audit of the Panel Provider's (and the Third Party Collaborator's, if applicable) security compliance.
- (c) Before conducting a security audit in accordance with clause 19.4, IBA must provide the Panel Provider with at least thirty (30) days' prior written notice.

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**20 Intellectual property**

**20.1 Title**

Subject to this clause, the title to and Intellectual Property Rights in or in relation to all:

- (a) Service Material; and
- (b) any IBA Data or any other information provided to the Panel Provider by IBA, vests in IBA.

**20.2 Documents necessary to vest title**

If requested by IBA, the Panel Provider will bring into existence, sign, execute or otherwise deal with any document which may be necessary to enable the vesting of that title or those rights in IBA.

**20.3 Panel Provider's intellectual property**

The Panel Provider agrees to:

- (a) grant to IBA a royalty free, perpetual, sub-licensable, non-assignable licence to use the Panel Provider's Intellectual Property Rights to the extent that use of

the Panel Provider's Intellectual Property Rights is necessary for the provision or use of the Services or any part of the Services; and

- (b) obtain and grant to IBA all necessary Intellectual Property Rights to enable them to lawfully use the Service Material as contemplated by this agreement or Particular Service, including any third party material.

#### 20.4 Moral rights

- (a) To the extent permitted by applicable Laws and for the benefit of IBA, the Panel Provider must use its best endeavours to ensure that each of the Representatives and Third Party Collaborator used by the Panel Provider in the production or creation of the Services and Service Material gives genuine consent in writing, to the use of the Service Material for the Specified Acts, even if such use would otherwise be an infringement of their Moral Rights.

- (b) In this clause 19.4, **Specified Acts** means:

- (i) not attributing the authorship of any Service Material, or any content in the Service Material (including literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
- (ii) materially altering the style, format, colours, content or layout of the Service Material and dealing in any way with the altered Service Material;
- (iii) reproducing, communicating, adapting, publishing or exhibiting any Service Material; and
- (iv) adding any additional content or information to the Service Material.

#### 20.5 Pre-existing rights

Nothing in this clause 19 alters the ownership of Intellectual Property Rights existing before the date of this agreement or documents developed independently of the provision of the Services.

#### 20.6 IBA Material

The Panel Provider must not, and must ensure that Third Party Collaborators and personnel do not:

- (c) take any IBA Data or any other Material provided by IBA in accordance with this agreement or Particular Service outside of Australia; or
- (d) allow any IBA Data or any other Material provided by IBA in accordance with this agreement or Particular Service to be accessed from outside Australia,

without IBA's prior written consent.

#### 20.7 Survival

This clause 19 will survive the expiry or termination of this agreement.

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## 21 Notices

### 21.1 Form

Unless expressly stated otherwise in this agreement or an applicable Particular Service, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing, signed by the sender (if an

individual) or an Authorised Officer of the sender and marked for the attention of the relevant Key Personnel or, if the recipient has notified otherwise, then marked for attention in the way last notified.

## **21.2 Delivery**

A notice or other communication must be:

- (a) left at the address set out or referred to in the Details; or
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details; or
- (c) sent by email to the email address of the relevant person of IBA or the Panel Provider (as the case may be); or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed email address, then the notice or other communication must be sent to that address or email address.

## **21.3 When effective**

A notice or other communication takes effect from the time it is received unless a later time is specified.

## **21.4 Receipt - post**

If sent by post, a notice or other communication is taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

## **21.5 Receipt - email**

If sent by email, a notice or other communication is taken to be received at the time it is sent.

## **21.6 Receipt - general**

Despite clauses 21.4 and 21.5, if a notice or other communication is received after 5.00pm in the place of receipt or on a non-Business Day, it is to be taken to be received at 9.00am, on the next Business Day.

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## **22 Miscellaneous**

### **22.1 Waiver and variation**

A provision of or a right created under this agreement or Particular Service may not be waived or varied except in writing signed by the party or parties to be bound.

### **22.2 Supervening legislation**

Any present or future legislation which operates to vary the obligations of the Panel Provider and IBA in connection with this agreement or Particular Service with the result that IBA's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### **22.3 Severability**

A term or part of a term of this agreement or Particular Service that is illegal or unenforceable may be severed from this agreement and the Particular Service, and the

remaining terms or parts of the terms of this agreement or Particular Service continue in force.

**22.4 Approvals and consent**

IBA may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this agreement or applicable Particular Service expressly provides otherwise.

**22.5 Remedies cumulative**

The rights, powers and remedies provided in this agreement and applicable Particular Service are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement or applicable Particular Service.

**22.6 Further assurances**

At IBA's request the Panel Provider must, at its own expense execute and cause its successors to execute documents and do everything else necessary or appropriate to bind the Panel Provider and its successors under this agreement and applicable Particular Service.

**22.7 Assignment**

The Panel Provider must not dispose of, or declare a trust over, its rights or obligations under this agreement or a Particular Service without the written consent of IBA.

**22.8 Costs of Panel Provider**

Except to the extent that this agreement provides otherwise, the Panel Provider's costs and expenses in complying with its obligations under this agreement and any Particular Service are payable by the Panel Provider and are not recoverable from IBA.

**22.9 Entire agreement**

This agreement, any Particular Service, and the attachments incorporated into it by reference constitute the entire agreement between the parties about its subject matter and, to the extent permitted by law, supersedes all prior representations, agreements, statements and understandings between the parties, whether verbal or in writing. This clause does not exclude the parties' rights in respect of representations that cannot be excluded by law.

**22.10 Governing law**

This agreement and the transactions contemplated by this agreement are governed by the law in force stated in the Details, unless a Particular Service expressly provides otherwise.

**22.11 Inconsistency with ATSI Act**

To the extent that a provision of this agreement or Particular Service would impose on IBA or the Panel Provider an obligation which is inconsistent with a limitation or restriction imposed on IBA or the Panel Provider under ATSI Act, IBA or the Panel Provider (as the case may be) is not obliged to comply with the obligation under this agreement or applicable Particular Service.

**22.12 Benefits**

The Panel Provider agrees that undertakings in this agreement and in any Particular Service in favour of persons not a party to this agreement or Particular Service are intended to be, and are, directly enforceable by each of those persons, and this agreement operates as a deed poll in favour of those persons.

### 22.13 Counterparts

This agreement may be executed in any number of counterparts, and all counterparts together will be regarded as one instrument. A party may sign any one counterpart. This agreement may be delivered by email and the parties may rely on an electronic signature as though it were an original signature.

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## 23 GST

### 23.1 Consideration GST exclusive

Unless expressly stated otherwise in this agreement or applicable Particular Service, all amounts payable or consideration to be provided under this agreement and Particular Service are exclusive of GST.

### 23.2 Payment of GST

If GST is payable on any supply made under this agreement or Particular Service, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be) is to be provided. However:

- (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;
- (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
- (c) this clause does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

### 23.3 Reimbursements

If a party is required under this agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

### 23.4 Definitions

Unless the context otherwise requires, a term which has a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning when used in this clause.

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## 24 Personal Property Securities Act

Each party agrees that:

- (a) if IBA determines that a security interest for the purposes of the *Personal Property Securities Act 2009* (Cth) ("**PPSA**") arises in connection with this agreement or the Services, IBA may make any registration or notification under the PPSA in connection the security interest and the Panel Provider may not make an amendment demand in respect of that registration;
- (b) to the extent the law permits:

- (i) IBA need not comply with, and the Panel Provider may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of; and
- (ii) the Panel Provider waives its rights to receive any notice that is required by the PPSA (but this does not prohibit IBA from giving such a notice); and
- (c) despite anything else in this agreement, neither party may disclose any information in connection with this agreement under section 275(4) of the PPSA unless section 275(7) of the PPSA applies.

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## 25 Interpretation

### 25.1 Definitions

The following words have these meanings in this agreement unless the contrary intention appears:

**Accounting Standards** means the standards of that name maintained by the Australian Accounting Standards Board (created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.

**Authorised Officer** means a person appointed by a party to act as an Authorised Officer for the purposes of this agreement and includes, in the case of IBA, the Contract Manager.

**Business Day** means a day other than a Saturday, Sunday or public holiday in the capital city of the jurisdiction shown in the Details.

**Claim** means any allegation, debt, cause of action, Liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or ascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Confidential Information** means all confidential, sensitive, non-public or proprietary information regardless of how the information is stored or delivered, provided by IBA to the Panel Provider or its Representatives before, or accessed by the Panel Provider or its Representatives, on or after the date of this agreement, which relates to the business, technology or other affairs of IBA and includes (without limitation) contact names including third parties, personal information and health information of IBA employees and customers.

**Commencement Date** is defined in Item 1 in **Schedule 1**.

**Contract Manager** means:

- (a) in relation to a Particular Service - the instructing person or Key Personnel at IBA in respect of the Service under the applicable Particular Service; or
- (b) in relation to this agreement generally – the General Counsel of IBA, as noted in the Details; or
- (c) such other person as may be notified by IBA to the Panel Provider.

**Controller** has the meaning it has in the *Corporations Act 2001* (Cth).

**Data Breach** means any unauthorised access to, or disclosure of, personal information or loss of personal information where unauthorised access to, or disclosure of, the information is likely to occur.

**Dispute** means any dispute, controversy, difference or Claim between the parties as to:

- (a) as to the construction of this agreement or a Particular Service; or
- (b) the rights or obligations of a party under this agreement a Particular Service; or
- (c) any other matter arising out of or relating to this agreement, Particular Service or the Services including any question regarding the existence, validity or termination of this agreement or a Particular Service.

**Excluded Information** means Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach of this agreement or an obligation of confidence owed to IBA; or
- (b) the Panel Provider can prove by contemporaneous written documentation was already known to it at the time of disclosure by IBA (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the Panel Provider acquires from a source other than IBA or any Related Entity or Representative of IBA where such source is entitled to disclose it.

**Fee** means the fees, charges and expenses payable to the Panel Provider, calculated in accordance with the Panel Provider's Rate and includes (subject to clauses 4.5 and 4.6) all fees and expenses of the Panel Provider including those paid to or on behalf of Representatives and Third Party Collaborator engaged by the Panel Provider (including the Key Personnel) in the performance of its obligations under this agreement and a Particular Service.

**Harmful Code** includes any virus, disabling or malicious device or code, worm, trojan, time bomb or other harmful or destructive code.

**IBA Data** means all information, personal information, or Material that relates to IBA, its business, operations, customers, personnel or property and whether:

- (a) provided to the Panel Provider for the purposes of;
- (b) transmitted, received, or stored in connection with; or
- (c) processed, generated, compiled, or modified through, performing or using the Services (or any part of the Services).

**IBA Values and Code of Conduct** means the IBA Board policy of that name as published on the IBA website and updated from time to time.

A person is **Insolvent** if

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth));
- (b) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other

than to carry out a reconstruction or amalgamation while solvent on terms approved by IBA);

- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (e) it is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which IBA reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Intellectual Property Rights** means copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts, and any other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Key Personnel** means the people named in Items 6 and 7 in **Schedule 1**, and as may be updated from time to time by email by one party to the other party.

**Liability** means all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses (including legal costs and expenses on a solicitor client basis) of whatsoever nature or description irrespective of when the acts, events or things giving rise to the liability occurred.

**Material** means any data (including meta data), documented methodology or process, documentation or other material in whatever form, and the subject matter of any category of intellectual property rights.

**Moral Rights** means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth).

**Panel Provider's Rate** means the fixed fee, hourly or daily rate for a particular Service as described in the Proposal.

**Particular Service** means a matter, transaction, Service or work order as requested by IBA.

**Performance Measures** means the framework in **Schedule 2**, as may be varied from time to time.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Proposal** means the [describe document] to provide the Services to Indigenous Business Australia prepared by the Panel Provider and dated [insert date], a copy of which is included at **Annexure A**.

**Receiver** includes a receiver or receiver and manager.

**Related Entity** has the meaning given to it in the *Corporations Act 2001* (Cth).

**Representative** of a party includes an employee, agent, officer, director, auditor, adviser, partner, consultant or sub-contractor of that party.

**Security Incident** means any actual or suspected misappropriation of, or unauthorised access to, loss, modification, or disclosure or use of, IBA Data, or any other compromise, failure or breach of the security, confidentiality, or integrity of IBA Data.

**Services** means the services generally outlined in Item 3 of **Schedule 1** and more expressly specified in the Proposal, to be to be provided to IBA's program area referred to in Item 4 of **Schedule 1** in the States/Territories listed in Item 5 of **Schedule 1**.

**Service Material** means any Material created by Panel Provider, Third Party Collaborator, its subcontractors or Representatives for the purpose of or as a result of performing its obligations under this agreement and any Particular Service.

**Term** means the term of this agreement, as stated in Item 2 in Schedule 1 (but subject to clause 12).

**Third Party Collaborators** means any third party law firms, legal practitioners, conveyancers, settlement agents or other agents that the Panel Provider engages or directs to assist in any of the Services.

## 25.2 References

- (a) a reference to this agreement or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a gender includes other genders;
- (e) the word **person** includes a firm, a body corporate, partnership, an unincorporated association, governmental or local authority or agency or other entity;
- (f) word 'include', or another grammatical form of it, is not a word of limitation;
- (g) a reference to a person includes a reference to a person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (h) a reference to any thing is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (i) an agreement in favour of two or more persons is for the benefit of them jointly and severally; and
- (j) an agreement, representation, warranty or obligation on the part of two or more persons binds them jointly and severally;

- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it.

### **25.3 Priority of contract documents**

If there is an inconsistency between any of the documents forming part of this agreement or a Particular Service, those documents must be interpreted in the following order of priority to the extent of any inconsistency:

- (a) terms and conditions relating to a Particular Service (if any);
- (b) terms and conditions in this agreement;
- (c) schedules and attachments to this agreement;
- (d) any attachments to the schedules or attachments; and
- (e) other documents mentioned in this agreement that are to be observed by the Panel Provider.

### **25.4 Headings**

Headings are inserted for convenience and do not affect the interpretation of this agreement.

DRAFT

## Schedule 1 - Key Terms

The following information can be provided by way of email correspondence

| Item No. | Term   |  |
|----------|--|--|
| 1.       | <b>Commencement Date:</b>  | [insert]   |
| 2.       | <b>Term:</b>   | 5 years  |
| 3.       | <b>General description of Services:</b>                                | [Loan Origination services]<br>[Security Origination services]<br>[settlements]<br>[Recovery and Enforcement Services]<br><i>Refer to Annexure A for fuller description of Services and Fees</i> |
| 4.       | <b>IBA's program area:</b>   | [Housing Solutions] [Business Solutions]   |
| 5.       | <b>States &amp; Territories where Services will be delivered</b>       | [Queensland] [ New South Wales] [Victoria]<br>[South Australia] [Western Australia] [Northern Territory] [Tasmania]  |
| 6.       | <b>IBA - Key Personnel</b>   |  |
|          | <ul style="list-style-type: none"> <li>Relationship contact</li> </ul> | [insert name]<br>[insert email address]<br>[insert phone number]   |
|          | <ul style="list-style-type: none"> <li>Operational contact</li> </ul>  | [insert name]<br>[insert email address]<br>[insert phone number]   |
| 7.       | <b>Panel Provider – Key Personnel</b>                                  |  |
|          | <ul style="list-style-type: none"> <li>Relationship contact</li> </ul> | [insert name]<br>[insert email address]<br>[insert phone number]   |
|          | <ul style="list-style-type: none"> <li>Operational contact</li> </ul>  | [insert name]<br>[insert email address]<br>[insert phone number]   |
| 8.       | <b>Name and address of Third Party Collaborators</b>                   |  |
|          | <ul style="list-style-type: none"> <li>Key Personnel</li> </ul>        | [insert name]<br>[insert email address]<br>[insert phone number]   |
|          |  |  |

## Schedule2 - Performance Measures

### Performance Management framework

Below are standards to measure performance and manage the day-to-day operations and relationship between IBA and the Panel Lawyer in relation to the Services (**Performance Measures**).

The Performance Measures are a guide only and not exhaustive. These may be varied by the parties at any time. Guide to Ratings are further below.

| Performance Measure   | IBA's rating out of 5 | IBA's comments | Panel Lawyer's comments |
|---|-----------------------|----------------|-------------------------|
| <b>Legal Expertise</b>  |                       |                |                         |
| <p>Factors to consider:</p> <ul style="list-style-type: none"> <li>• legal advice is relevant, accurate, succinct, practical and solutions/recommendations offered where applicable</li> <li>• the capability and availability of Panel Lawyer's personnel in providing the Services</li> <li>• preparation of documentation to high level of accuracy</li> <li>• if enforcement action is required or likely to occur, appropriate dispute resolution / litigation strategies were advised or taken</li> <li>• the Services were delivered that met IBA's needs</li> </ul> |                       |                |                         |
| <b>Communication</b>  |                       |                |                         |
| <p>Factors to consider:</p> <ul style="list-style-type: none"> <li>• proactive and effective communication with IBA</li> <li>• responsiveness</li> </ul>  |                       |                |                         |
| <b>Turnaround times</b>   |                       |                |                         |
| <p>Factors to consider:</p> <ul style="list-style-type: none"> <li>• effective management of timelines &amp; deadlines met</li> <li>• instructions or information sought from IBA in a timely manner, and not at the last minute</li> </ul>   |                       |                |                         |
| <b>Customer Service</b>   |                       |                |                         |
| <p>Factors to consider:</p> <ul style="list-style-type: none"> <li>• understanding of IBA's needs</li> <li>• service provision managed diligently</li> <li>• adequate and timely supervision of Panel Lawyer's team by senior staff (where necessary)</li> <li>• service delivery in a culturally sensitive and appropriate manner</li> <li>• reports provided on time, with all required information*</li> <li>• reasonable assistance provided when a query or concern raised by IBA relating to Panel Lawyer's performance of the Services</li> </ul>                    |                       |                |                         |
| <b>Fee management</b>   |                       |                |                         |
| <p>Factors to consider:</p> <ul style="list-style-type: none"> <li>• effective budget management</li> <li>• matters routinely falling within fixed fees (i.e. no fee creep)</li> <li>• adequate and timely notice given to IBA as fees reach 80% of fixed fee limit</li> <li>• adequate and timely notice given to IBA before any extra fees are incurred</li> </ul>  |                       |                |                         |

|  |  |  |  |
|--|--|--|--|
| <ul style="list-style-type: none"> <li>adequate reasons are provided to IBA for any fee increases</li> <li>estimated disbursements given in Total Estimated Fee (as per clause 3.1) are reasonably accurate, and additional IBA approvals do not need to be routinely sought for excess or unanticipated disbursements.</li> </ul> |  |  |  |
| <b>Training and Add-on services - where applicable</b>   |  |  |  |
| <p>If Training or Add-on Services provided, factors to consider:</p> <ul style="list-style-type: none"> <li>if training provided to Panel Lawyer’s staff or Add-on service provided - it has improved Service delivery</li> <li>if training provided to IBA staff, has improved Service delivery and benefitted staff</li> </ul>   |  |  |  |

**Guide to Ratings – for each Performance Measure**

| <b>Assessment Rating Scale</b>  | <b>Score</b> |
|---|--------------|
| <p><b>Outstanding</b></p> <ul style="list-style-type: none"> <li>Panel Lawyer has significantly exceeded expectations, and Performance Measure met to a very high standard</li> <li>Panel Lawyer has gone above and beyond in delivering the Performance Measure, efficiently and value for money</li> <li>Low risk to IBA</li> </ul> | 5            |
| <p><b>Very Good</b></p> <ul style="list-style-type: none"> <li>Performance Measure have been delivered to an excellent standard</li> <li>Service is sound and is low risk to IBA</li> </ul>   | 4            |
| <p><b>Good</b></p> <ul style="list-style-type: none"> <li>Performance Measure has been met to the standard expected</li> <li>Service and delivery is solid</li> <li>Overall, low risk to IBA</li> </ul>   | 3            |
| <p><b>Workable but lacking</b></p> <ul style="list-style-type: none"> <li>Performance Measure has largely been met, but inconsistent.</li> <li>Minor shortcomings and/or deficiencies giving rise to a lack of complete satisfaction in performance</li> <li>Medium risk to IBA</li> </ul>  | 2            |
| <p><b>Poor</b></p> <ul style="list-style-type: none"> <li>Performance is inadequate in most or all areas. Service delivery has not met minimum standards reasonably expected</li> <li>Unsatisfactory service, which negatively impacts IBA customers or IBA’s relationship with customer.</li> <li>High risk to IBA</li> </ul>        | 1            |
| <p><b>Failure</b></p> <ul style="list-style-type: none"> <li>Performance measure not met, or Services not met.</li> <li>Highly unsatisfactory service, which negatively impacts IBA customers or IBA’s relationship with customer</li> <li>Extremely high risk to IBA</li> </ul>  | 0            |

## Schedule 3 - Insurance

The Panel Provider shall take out and maintain the following insurance policies in accordance with this agreement:

- (a) Professional indemnity insurance with a limit of not less than \$20 million per Claim and in the aggregate [and in compliance with [insert State/Territory] Law Society and Model Participation Rules of ARNECC].
- (b) General liability insurance covering Liability arising from premises, operations, independent contractors, personal injury, products completed operation, and Liability assumed under an insured contract on an occurrence basis, with a limit of not less than \$20 million for each occurrence and in the aggregate.
- (c) Worker's compensation insurance as required by the relevant State or Territory legislation if the Panel Provider engages employees, in the performance of the Services.
- (d) Cyber liability and privacy protection insurance covering liability for data breaches with a limit of not less than \$10 million for each claim.

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## Schedule 4 - Security requirements

The Panel Provider agrees to comply with the following security requirements at no additional cost to IBA:

### 1 Security clearances

- (a) IBA may, from time to time, notify the Panel Provider of the level of security or access clearance applicable to the Third Party Collaborator or Representatives, and the date from which, or the period during which, that clearance will be effective and the Panel Provider must comply with and ensure its Representatives and Third Party Collaborator act in accordance with that notice.
- (b) The Panel Provider is responsible for all costs associated with obtaining security clearances.

### 2 Security measures

The Panel Provider must, and must ensure Third Party Collaborator:

- (a) incorporate and use, security measures in the provision of the Services to protect IBA Data in the Panel Provider's and Third Party Collaborator's possession or control that are no less rigorous than accepted industry standard;
- (b) comply with any requirements of IBA's security policies and procedures that are notified by IBA to the Panel Provider from time to time;
- (c) implement, maintain, and enforce appropriate administrative, technical, and physical safeguards, and take all necessary steps to:
  - (i) ensure the security and confidentiality of IBA Data at all times;
  - (ii) detect and protect against anticipated vulnerabilities, threats or hazards to the security or integrity of IBA Data; and
  - (iii) protect against and respond to Security Incidents;
- (d) provide to IBA, upon request, details of the Panel Provider's and Third Party Collaborator's security controls and measures;
- (e) has a data breach and cyber incident response plan that complies with the *Cyber Incident Response Plan Guidance* published by the Australian Signals Directorate available at [Cyber Security Incident Response Planning: Practitioner Guidance | Cyber.gov.au](https://www.cyber.gov.au/cyber-security/cyber-incident-response-plan) (**Cyber Incident Response Plan**), and provide a copy of the Cyber Incident Response Plan to IBA;
- (f) keeps the Cyber Incident Response Plan up-to-date, and provides the updated plan to IBA;
- (g) IBA Data is not accessed from or stored outside Australia unless expressly permitted by the Customer in writing; and
- (h) limit access to IBA Data only to the Panel Provider's personnel or Third Party Collaborator who need to know the information in order to provide the Services.

**3 Harmful Code**

- (a) The Panel Provider and Third Party Collaborator must undertake reasonable efforts to detect, prevent and appropriately respond to the introduction of any Harmful Code into its systems including by:
- (i) implementing practices and procedures that are consistent with industry best practice for an engagement similar to the Services;
  - (ii) use of appropriate and up-to-date virus detection software for preventing and detecting Harmful Code; and
  - (iii) without limiting paragraphs (c) or (d) pro-actively informing itself of developments in threats of Harmful Code, and taking reasonable precautions against such known threats.
- (b) If the Panel Provider and/or Third Party Collaborator becomes aware that any Harmful Code is found to have been detected and the detected Harmful Code has, or there are reasonable grounds to suspect it may have, affected any IBA Data or otherwise affects the Panel Provider's or Third Party Collaborator's (as the case may be) ability to perform the Services or comply with its obligations under this agreement, the Panel Provider must in addition to its obligations under clause 19.2:
- (i) provide, and provide regular updates of, all information known by the Panel Provider and/or Third Party Collaborator (as the case may be) and as reasonably requested by IBA in relation to the Harmful Code, its manner of introduction and the effect the Harmful Code has had or is likely to have; and
  - (ii) retain evidence and logs regarding the incident to help in determining the cause, damage and likely source.

# Signing page

EXECUTED as a deed

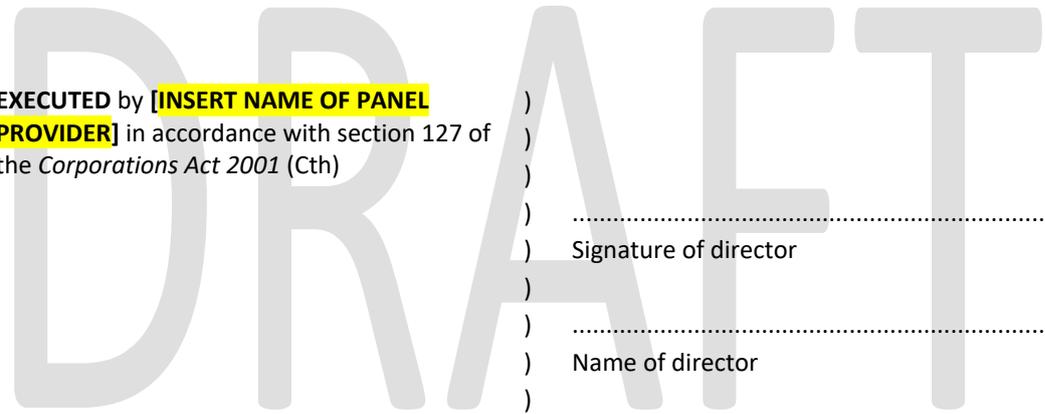
Executed under the common seal of )  
**INDIGENOUS BUSINESS AUSTRALIA ABN 25** )  
**192 932 833** by authority of the Board in the )  
presence of: )  
)

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Full Name of Authorised Representative

\_\_\_\_\_  
Office Held  
Date:

EXECUTED by **[INSERT NAME OF PANEL** )  
**PROVIDER]** in accordance with section 127 of )  
the *Corporations Act 2001* (Cth) )



) .....  
) Signature of director

) .....  
) Name of director

) .....  
) Signature of director/secretary

) .....  
) Name of director/secretary

) .....  
) Date

# Annexure A - Proposal

Insert Services and Fee Schedule

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