

# **CONTRACT-OUT: AUDIT SERVICES AGREEMENT**

**The Commonwealth of Australia,  
represented by the Australian  
National Audit Office  
("ANAO")**

**("Contractor")**

**For**

**Australian River Co Limited**

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## PART 1 – DETAILS

The Contractor agrees to provide *Audit Services* to the Commonwealth of Australia, represented by the Australian National Audit Office (**ANAO**), on the following terms:

### A. The Contractor

Name			
		ACN	ABN

Address		
		Postcode
(Notices will be sent to this address)		

Contact person:			
Tel:	Fax:	email address:	

For payment purposes:	Bank account name:		
	BSB and account number:	Fax number for remittance advice:	
(Please see clause 4 for invoicing procedure)			

### B. ANAO (ABN: 33 020 645 631)

Address	19 National Circuit	
	Barton ACT	Postcode: 2600
(Notices will be sent to this address)		

Contact Officer	John Jones		
	Tel: 6203 7636	Fax: 6203 7491	email address: john.jones@anao.gov.au
(The Contact Officer is responsible for administering the agreement and supervising performance of the <i>Audit Services</i> )			

### C. Term of agreement

Period from  to

Option  Years  
(Exercise of the option is at the sole discretion of the ANAO)

## D. Specified personnel


Can the Contractor use people other than the specified personnel to perform the *Audit Services*?:  
YES

## E. ANAO assistance to be provided

Nil
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## F. Insurance

Type:	Minimum amount (\$AUD):
Professional indemnity insurance	\$2 million
Public liability insurance	\$2 million
Workers' compensation insurance	In accordance with applicable State or Territory legislation

Number of years Contractor is required to retain these insurances after the end of this agreement:

6

## G. Fees and Expenses

### Fees and expenses

	Year ending 30 November 2009	Year ending 30 November 2010	Year ending 30 November 2011
Audit Partner			
Audit Manager			
Audit Senior			
Auditors			
Specialist Staff - IT professionals			
<b>TOTAL HOURS</b>			
Out-of-pocket expenses			
<b>TOTAL (inclusive of GST)</b>			

### Invoicing

The Contractor will invoice the ANAO in accordance with an agreed billing schedule.

### Superannuation guarantee

The fees and expenses in this Part G exclude any superannuation guarantee contributions which may be payable under clause 3.7.

## H. Confidential Provisions of this agreement (if any)

Clauses	Nil
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## PART 2 - TERMS AND CONDITIONS

### 1 Term

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- 1.1 The term of this agreement is set out in Part C of the *Details*.
- 1.2 The ANAO may renew this agreement for the period described in Part C of the *Details*, by reasonable notice to the Contractor.

### 2 Services

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- 2.1 The Contractor will provide the ANAO with the *Audit Services* described in Schedule 1 at the *Site*.
- 2.2 Unless specified otherwise, the *Audit Services* include the provision of information to the ANAO to answer any questions the ANAO has on the *Contract Material*. This information will contain a level of detail reasonably satisfactory to the ANAO.
- 2.3 The Contractor will continuously seek to improve the quality, effectiveness and efficiency (including cost-effectiveness) of the *Audit Services* and will inform the ANAO of any reduced costs as they occur.

#### Performance standards

- 2.4 The Contractor will perform the *Audit Services*:
  - (a) with due care, skill and diligence to a professional or industry best practice standard and in a timely manner;
  - (b) in accordance with the practices and standards set out in the Australian National Audit Office Gazetted Auditing Standards and any reasonable directions of the ANAO;
  - (c) in accordance with the provisions relating to auditor appointment, independence and rotation in Part 2M.4 of the *Corporations Act 2001*, (if applicable).
  - (d) in accordance with the *Auditor-General Act 1997*, the *Commonwealth Authorities and Companies Act 1997*, the *Financial Management and Accountability Act 1997* and other applicable law; and
  - (e) in accordance with the ANAO *Code of Conduct*, which incorporates the Australian Public Service Code of Conduct set out in section 13 of the *Public Service Act 1999*.
- 2.5 The Contractor will ensure that the ANAO is fully informed about matters which are the subject of the *Audit Services* from time to time.

- 2.6 Without limiting clause 2.5, if the Client is required to comply with the *Corporations Act 2001*, the Contractor must comply with the Australian Securities & Investments Commission Regulatory Note 34 *Auditors' obligations: reporting to ASIC*, including by reporting to the ANAO Signing Officer (as nominated to the Contractor from time to time) all significant and non-significant contraventions of that Act immediately and in writing.
- 2.7 The Contractor warrants that:
- (a) all information, reports and *Contract Material* provided to the ANAO in relation to this agreement will be correct, complete and not misleading; and
  - (b) in performing the *Audit Services*, it will not bring the reputation of the ANAO into disrepute; and
  - (c) all software used to perform the *Audit Services* will be *Date Capable*.
- 2.8 The Contractor should be aware that giving false or misleading information to the ANAO is a serious offence under the *Criminal Code Act 1995*.

## Personnel

- 2.9 The Contractor will ensure the people listed in Part D of the *Details* (if any) perform the *Audit Services*.
- 2.10 Other people may be involved in providing the *Audit Services* if this is indicated in Part D, but the Contractor will ensure that the people listed in that Part have overall responsibility for providing the *Audit Services*.
- 2.11 If any of the specified personnel cannot perform the *Audit Services*, the Contractor will inform the ANAO as soon as possible. Within 5 days of notifying the ANAO of the unavailability of the specified person the Contractor will find a replacement of equivalent expertise acceptable to the ANAO.
- 2.12 If the Contractor fails to provide acceptable replacement personnel within that time, the Commonwealth may terminate this Contract in accordance with the provisions of clause 14.1.

## 3 Payment

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- 3.1 The ANAO will pay the Contractor the fees described in Part G of the *Details*.
- 3.2 The fees are fixed, and the amount payable will not increase regardless of the whether additional hours are worked.
- 3.3 All amounts shown in Part G are inclusive of *GST*.

## Expenses

- 3.4 The ANAO will reimburse the Contractor for the expenses described in Part G of the *Details*. The Contractor may not charge

the ANAO any amount for which the Contractor can obtain an input tax credit.

- 3.5 Otherwise, the fees are inclusive of all costs and expenses incurred by the Contractor.

### **Warranty**

- 3.6 The Contractor warrants that it is registered for *GST*.

### **Superannuation**

- 3.7 If the Contractor is an individual and is not within an exemption provided for under the *Superannuation Guarantee Charge Act 1992* or the *Superannuation Guarantee (Administration) Act 1992*, then in addition to the payment of fees and reimbursement of expenses under this clause 3, the ANAO will meet its obligations to provide a minimum amount of superannuation support in accordance with that legislation.

## **4 Invoicing procedure**

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- 4.1 The Contractor will give the ANAO an invoice as described in Part G of the *Details*, addressed to:

The Finance Section  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

- 4.2 The Contractor will include the following information in invoices:
- (a) the name and date of this agreement and purchase order number;
  - (b) details of the work that is the subject of the invoice, including the period of time during which the work was carried out;
  - (c) substantiation of expenses to the reasonable satisfaction of the ANAO;
  - (d) payment method (the ANAO prefers direct credit); and
  - (e) contact person (including address, email address and telephone number) for accounts queries.
- 4.3 The invoices will be in the form of a valid *Tax Invoice*.
- 4.4 The ANAO will pay correctly rendered invoices within 30 days of receipt, subject to performance of the *Audit Services* in the relevant period to the ANAO's reasonable satisfaction.

## 5 Contractor's obligations

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### Safety and security

- 5.1 The Contractor will:
- (a) comply with the occupational health and safety and security policies in place at the *Client's Site* when performing the *Audit Services* on those premises and keep the ANAO informed of any security incidents likely to affect the performance of the *Audit Services*;
  - (b) comply with the security policies of the Australian National Audit Office;
  - (c) when using ANAO premises, comply with all directions issued by the ANAO to the Contractor in relation to occupational health, safety and security;
  - (d) if requested by the ANAO, provide security information about the personnel who will perform the *Audit Services*;
  - (e) ensure the prompt removal of any personnel from the *Client's Site* if requested by the ANAO; and
  - (f) provide suitable replacement personnel if the ANAO, on reasonable grounds, denies access to anyone, or requests removal of a person permitted access, to the *Site* to perform the *Audit Services*.
- 5.2 The Contractor will provide the ANAO with reports on the progress of the *Audit Services* as reasonably required by the ANAO.

### Additional security requirements

- 5.3 The Contractor will comply with any additional security requirements notified by the ANAO from time to time during the term of this agreement.
- 5.4 Any costs associated with the Contractor's compliance with clause 5.3 will be borne by the Contractor.

### IT Security

- 5.5 For the avoidance of doubt, in this clause 5 "security" includes the Contractor's IT security.

### Reporting

- 5.6 The Contractor will not provide any information regarding the *Audit Services* to the *Client* without the ANAO's prior written consent.

### Record keeping

- 5.7 The Contractor will maintain all *Documents* necessary to provide a complete record and explanation of progress with the *Audit Services*, and details of the location of the *Contract Material*, ("**Records**"). The Records will:

- (a) be kept in a manner that permits them to be conveniently and properly reviewed and/or audited;
- (b) comply with any applicable Australian accounting and auditing standards; and
- (c) be complete and up-to date.

5.8 The Contractor will keep the Records for at least 3 years after the expiration or termination of this agreement.

### **Contract Material and ANAO Documents**

5.9 The Contractor will:

- (a) give all the *Contract Material* to the ANAO within 30 days of the date of the audit report;
- (b) ensure the Contract Material is provided in a format, either:
  - (i) an electronic copy on CD-Rom, in the form kept in the Contractor's audit software; or
  - (ii) another electronic form, reasonable expected to be utilised by commonly available programs (this would include Microsoft or Adobe products); or
  - (iii) a printed copy of A4 paper, (noting that some functionality of the audit software may be lost in printed form and will need to be provided in addition);
- (c) keep any *ANAO Documents* in its possession safe, and return them to the ANAO on:
  - (i) expiry of this agreement or, if no term is shown in Part C of the *Details*, on completion of the *Audit Services*; or
  - (ii) termination of this agreement.

However, the Contractor may retain one copy of that material and those documents for its records; and

- (d) comply with any standards prescribed by the ANAO from time to time for the creation, care, access, storage, preservation and return or legal destruction of its records (including Contract Material and ANAO Documents).

5.10 The Contractor will ensure that all *Contract Material* adequately demonstrates the nature of the *Audit Services*, and provides evidence that supports all conclusions, findings and opinions.

5.10A If 5.9(b) (i) then the Contractor will provide the ANAO with a copy of its audit software with the first *Contract Material* to be provided under clause 5.9(a), and provide any updates to that software promptly after installation on the Contractor's system.

- 5.10B The ANAO may install the software on a single machine that is separate from the ANAO's main computer network or on the main computer network (with acceptable access controls), and used for audits of Commonwealth departments, agencies and other bodies in which the Contractor is engaged as an auditor ("**Relevant Clients**"). Access to the network/machine is to be limited to the Auditor-General, the ANAO and its contracted auditors from time to time of the Relevant Clients (including the Contractor).
- 5.10C The Contractor licences the software to the ANAO on the terms of Schedule 3.

### **Inspection and audit**

- 5.11 The Contractor will promptly give the ANAO or other auditor nominated by the ANAO, including the ANAO's independent auditor, a copy of any of the Records, on request.
- 5.12 If the ANAO considers appropriate, the ANAO or other auditor nominated by the ANAO, may enter the Contractor's premises and inspect and copy any of the Records, at reasonable times and on reasonable notice.
- 5.13 The Contractor will promptly give the ANAO or other auditor, the assistance they reasonably require in conducting any such audits. This may include giving full access to computer equipment and software used in connection with the *Audit Services*.

### **Subcontracting**

- 5.14 The Contractor will not subcontract all or any part of the *Audit Services* without the written consent of the ANAO, which will not be unreasonably withheld.
- 5.15 The Contractor entering into a subcontract does not relieve the Contractor from liability for the performance of any of its obligations under this agreement.

### **Conflict of interest**

- 5.16 The Contractor warrants that no conflict of interest exists or is anticipated relevant to the performance of the *Audit Services*.
- 5.17 A conflict of interest will arise if the Contractor is not capable of exercising objective and impartial judgment in the performance of the *Audit Services*, or may reasonably be perceived not to be capable of exercising objective and impartial judgment in the performance of those services, for any reason.
- 5.18 For example, a conflict of interest may arise if the Contractor is engaged to provide advice to, or perform services for:
- (a) the *Client*;
  - (b) a person related to the *Client* in the reasonable opinion of the ANAO; or
  - (c) a person in a contractual relationship with the *Client*.

- 5.19 The Contractor may not undertake any work for the *Client* or a person referred to in clause 5.18 (a) or (b), or any other work that gives rise to a conflict of interest or perceived conflict of interest, during the term of this agreement, without the prior written consent of the ANAO.
- 5.20 The Contractor will be entitled to undertake such work only if it satisfies the ANAO (in the ANAO's absolute discretion) that:
- (a) there is no conflict, or that appropriate measures have been taken to manage the conflict so that the Contractor is able to perform the Services with objective and impartial judgment; and
  - (b) there is no breach of Division 3 of Chapter 2M of the *Corporations Act 2001* (Cth) ("**Auditor Independence Provisions**").
- 5.21 Nothing in this clause limits the Contractor's obligations under the Auditor Independence Provisions.

## **6 ANAO obligations**

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### **Access and security checks**

- 6.1 The ANAO will ensure the *Client* gives the persons listed in Part D of the Details:
- (a) access to the *Site* and documents relevant to the audit; and
  - (b) reasonable assistance in relation to the audit,
- to the extent required to perform the *Audit Services*.
- 6.2 The ANAO may at its discretion, conduct security checks of the people providing the *Audit Services*.

### **Assistance**

- 6.3 The ANAO will provide the assistance described in Part E of the *Details* (if any).
- 6.4 Where software is included in the assistance the ANAO provides, the ANAO grants a non-exclusive, non-transferable, royalty-free licence to the Contractor for the term of this agreement to use the software for the purposes of this agreement.

### **Confidentiality of contract provisions**

- 6.5 The ANAO will keep confidential the provisions of this agreement (if any) described in Part H of the *Details*, except:
- (a) in equivalent circumstances to those described in clause 10.1; or

(b) in response to a request from a House of the Commonwealth Parliament or a Commonwealth Parliamentary committee.

6.6 Other than the provisions referred to in clause 6.5, the terms of this agreement are not confidential to the Contractor.

### **Third party actions**

6.7 If the Contractor is called on as a witness, or joined with the ANAO as a party, in relation to a third party action because of the Contractor's role as a professional advisor when it had not acted negligently, wrongfully or wilfully, the ANAO will meet the reasonable costs of the Contractor in the action.

## **7 Intellectual property**

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7.1 The ANAO will own the *Intellectual Property* in any *Contract Material* produced by the Contractor in the course of providing the *Audit Services*, subject to clause 7.2.

7.2 The Contractor will continue to own all *Intellectual Property* it had prior to the development of the *Contract Material*, and will also own the *Intellectual Property* in any methodologies it develops or refines for the purpose of providing the *Audit Services*, unless otherwise agreed.

### **Warranties**

7.3 The Contractor warrants that the ANAO's use of the *Contract Material* will not infringe the *Intellectual Property* or *Moral Rights* of any person.

7.4 The Contractor indemnifies the ANAO against all loss, liability or expense arising out of or in connection with a claim by a third party that the ANAO's, or its employees', agents' or contractors', use of the *Contract Material* infringes their *Intellectual Property* or *Moral Rights*.

7.5 In this clause, "use" includes run (in the case of software), copy, modify, adapt, develop or integrate.

## **8 Moral Rights**

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### **Moral Rights consent**

8.1 To the extent permitted by applicable laws, and for the benefit of the ANAO, the Contractor will use its best endeavours to ensure that each of the personnel used by the Contractor and any subcontractor consents in writing to the use of the *Contract Material* for the Specified Acts, even if the use would otherwise be an infringement of their *Moral Rights*.

### **Third party consents**

- 8.2 If the Contractor includes any *Third Party Material* in the *Contract Material*, the Contractor will use its best endeavours to obtain the consent of the holder of the *Moral Rights* in the *Third Party Material* for the Specified Acts, even if the use would otherwise be an infringement of their *Moral Rights*.

### **Moral Rights notification**

- 8.3 The Contractor will notify the ANAO if the Contractor fails to obtain the consent referred to in clauses 8.1 and 8.2 from a person within a reasonable time, and will not use any material produced by that person in the performance of the *Audit Services* without the ANAO's consent.

### **Specified Acts**

- 8.4 In this clause, 'Specified Acts' means:
- (a) failure to identify the authorship of any part of the *Contract Material* (including without limitation literary, artistic, musical and dramatic works and cinematograph films within the meaning of the *Copyright Act 1968*);
  - (b) materially altering the content, layout, colours, format, resolution or style of any part of the *Contract Material*;
  - (c) reproducing, communicating, adapting, publishing or exhibiting the *Contract Material* without identifying the authorship; and
  - (d) adding additional content or information (including without limitation *ANAO Documents* or any other material) to the *Contract Material*.

## **9 Insurance**

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The Contractor will:

- (a) maintain the insurances described in Part F of the *Details* while providing the *Audit Services*, and for at least the period shown in Part F of the *Details* after the completion of the *Audit Services*; and
- (b) provide evidence of the insurances, and their currency, acceptable to the ANAO on request.

## **10 Confidential information and privacy**

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### **Confidential information**

- 10.1 The Contractor will not use any *Confidential Information* of the ANAO for any purpose other than the provision of the *Audit Services*, or disclose any *Confidential Information* of the ANAO except:

- (a) to employees, legal advisers, auditors and sub-contractors requiring the information for the purposes of this agreement;
  - (b) with the consent of the ANAO;
  - (c) if the Contractor is required to do so by law or a stock exchange; or
  - (d) as strictly required in connection with legal proceedings relating to this agreement.
- 10.2 In the case of use or disclosure under clause 10.1(c) or (d), the Contractor will give the ANAO as much notice of the use or disclosure as is reasonably practicable in the circumstances.
- 10.3 The Contractor will ensure employees and sub-contractors performing the *Audit Services* sign a deed of confidentiality in the form of Schedule 2, if required by the ANAO, before undertaking any work. If the Contractor is an individual, the Contractor will sign the deed of confidentiality in the form of Schedule 2.
- 10.4 The signed deeds will be provided to the ANAO on request.
- 10.5 Subject to clauses 6.5 and 6.6, the ANAO will take reasonable steps to maintain the confidentiality of any proprietary or confidential information of the Contractor. The ANAO will give the Contractor as much notice of intended use or disclosure as is reasonably practicable in the circumstances.

## Privacy

- 10.6 The Contractor will:
- (a) use personal information provided by the ANAO or collected by the Contractor under this agreement, only for the purposes of performing its obligations under this agreement;
  - (b) not disclose any such information without the ANAO's consent;
  - (c) comply with the Information Privacy Principles applying to Commonwealth agencies under the *Privacy Act 1988*; and
  - (d) include equivalent requirements (including this clause 10.6(d)) in any subcontract entered into for the provision of any of the *Audit Services*.
- 10.7 In addition to these obligations, the Contractor will comply with any applicable requirements of the National Privacy Principles applying to the private sector under the *Privacy Act*.

## **System security**

- 10.8 The Contractor will:
- (a) maintain reasonable safeguards against loss, unauthorised access, use, modification or disclosure and other misuse of personal information held in connection with this agreement; and
  - (b) not list or index that information by government identifiers except by ABNs.

## **Notification of infringement**

- 10.9 If the Contractor becomes aware of any infringement or alleged infringement of its obligations under this clause, or the corresponding obligations of any subcontractor, the Contractor will:
- (a) notify the ANAO immediately; and
  - (b) comply with any reasonable directions from the ANAO with respect to remedying that infringement.

## **11 Archives Act 1983**

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- 11.1 The Contractor will not transfer, or permit the transfer of, custody or the ownership of any Commonwealth record (as defined in the *Archives Act 1983*) without the prior approval of the ANAO and the Australian Archives.
- 11.2 If the ANAO authorises the transfer of custody of Commonwealth records to the Contractor, the Contractor will comply with the requirements of the *Archives Act 1983*.
- 11.3 The Contractor will comply with any reasonable direction given by the ANAO for the purpose of transferring the Commonwealth records to the custody of the Australian Archives or providing the Australian Archives with full and free access to those records.

## **12 Indemnity**

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- 12.1 Subject to section 55 of the *Auditor-General Act 1997*, the Contractor indemnifies the ANAO against any loss, liability and expense arising out of or in connection with any unlawful, wilfully wrongful or negligent act or omission of the Contractor or its employees, officers, agents or subcontractors, except to the extent of any unlawful, wilfully wrongful or negligent act or omission of the ANAO, as substantiated by the Contractor.
- 12.2 Any liability a party has to the other for breach of this agreement, or under an indemnity in this agreement, is reduced to the extent the other party caused or contributed to the breach or to the application of the indemnity.

## **13 Dispute Resolution**

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## Notice of dispute

- 13.1 If a dispute between the ANAO and the Contractor arises in connection with this agreement, then either party may provide a notice of dispute in writing to the other party, adequately identifying, and providing details of, the dispute.
- 13.2 The ANAO and the Contractor will continue to perform this agreement regardless of the notification of a dispute under clause 13.1.
- 13.3 Within 7 days of the service of a notice of dispute under clause 13.1, the parties will meet at least once to attempt to resolve the dispute. Each party will be represented by a person having authority to agree to a resolution of the dispute.

## Referral to mediation

- 13.4 If the dispute has not been resolved within 7 days of the notice of dispute under clause 13.1, then either party may, within a further 7 days, notify the other party that the dispute will be referred to mediation. That party will, at the same time, notify the Australian Commercial Disputes Centre (ACDC) that the dispute has not been resolved and that the dispute is referred to mediation.
- 13.5 The parties will then follow the procedures in the ACDC Guidelines for Commercial Mediation to the extent those procedures are not inconsistent with this clause 13.
- 13.6 If the dispute is not resolved within 40 days after the date of the referral to the ACDC under clause 13.4, and the mediation has not been terminated in accordance with the ACDC guidelines, then the mediation will terminate.
- 13.7 A party may not commence legal proceedings in relation to a dispute notified under clause 13.1:
  - (a) for a period of 10 business days from receipt of that notice; or
  - (b) if the dispute has been referred to mediation under clause 13.4, until the meditation is terminated.
- 13.8 Nothing in this clause prevents a party commencing legal proceedings for urgent, interim or interlocutory relief.

## 14 Termination

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### For default

- 14.1 The ANAO may terminate this agreement immediately by notice to the Contractor if the Contractor:
  - (a) breaches any provision of this agreement and fails to remedy the breach within 14 days of receiving notice from the ANAO to do so; or
  - (b) becomes *Insolvent*.

- 14.2 If the ANAO terminates this agreement under clause 14.1, it may require the Contractor to repay on demand any payments made in advance.
- 14.3 The Contractor will meet the reasonable direct costs or expenses the ANAO may incur in procuring similar services from another supplier in connection with terminating this contract under clause 14.1, or itself perform the *Audit Services*.

#### **Without default**

- 14.4 The ANAO may terminate this agreement in whole or in part at any time by notice to the Contractor.
- 14.5 The ANAO will pay the Contractor a proportion of the fees described in Part G of the Details, for *Audit Services* provided to the date of termination in accordance with clause 3, but is not liable for any loss of profit or other losses or costs suffered or incurred by the Contractor as a result.
- 14.6 If the ANAO terminates the agreement in part, the fees will be reduced proportionately to reflect the reduction in *Audit Services*.
- 14.7 The ANAO has an unfettered discretion to terminate this agreement in accordance with clause 14.4.

## **15 Notices**

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- 15.1 A notice or any other communication in connection with this agreement will be:
  - (a) in writing;
  - (b) marked for the attention of the person described in Part A of the *Details*; and
  - (c) left at the address of the addressee, sent by post to the street address of the addressee, sent by facsimile to the facsimile number of the addressee or by email to the email address of the addressee which is specified in Part A of the *Details*.
- 15.2 A communication is taken to be received:
  - (a) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting;
  - (b) in the case of facsimile, at the time the machine on which it has been sent records that it has been transmitted satisfactorily; and
  - (c) in the case of email, when it is delivered to a system from which the addressee can retrieve it.

## 16 Miscellaneous

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### Entire agreement

- 16.1 The *Details* and these terms and conditions constitute the entire agreement of the parties about their subject matter. Any prior agreement, undertakings and negotiations on that subject matter cease to have any effect.

### No agency or partnership

- 16.2 Nothing in this agreement constitutes either party as the employee, agent, partner or joint venturer of the other.

### Assignment of rights

- 16.3 The Contractor may not assign any of its rights under this agreement without the ANAO's written consent, which will not be unreasonably withheld.

### Unavoidable delay

- 16.4 If a party is delayed in performing an obligation under this agreement, the other party will not exercise the rights and remedies available to it if the delay:

- (a) is caused by an act or event beyond the reasonable control of the first party; and
- (b) continues for less than one month; and
- (c) was not reasonably foreseeable at the time this agreement was entered into,

provided that if the Contractor seeks to rely on this clause, the Contractor will:

- (d) promptly advise the ANAO of the delay and its cause;
- (e) comply with any directions of the ANAO about the delay; and
- (f) take all reasonable action to mitigate the delay.

- 16.5 The Contractor will not be entitled to any costs incurred by the Contractor as a result of the delay.

### Variation of agreement

- 16.6 This agreement may only be varied if the ANAO and the Contractor agree in writing.

### Waiver

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

- 16.8 The giving of consent, approval or instruction by the ANAO will not diminish the Contractor's obligations under this agreement.

## Consents

- 16.9 Where this agreement makes provision for the ANAO's consent to something occurring, that consent may be granted, withheld, or conditions applied to it, in the ANAO's unfettered discretion unless otherwise stated.

## Indemnities

- 16.10 The indemnities in this agreement extend to all legal costs and expenses incurred by the party on the higher of a solicitor and own client basis and a full indemnity basis.
- 16.11 Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination of this agreement.
- 16.12 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

## Costs and stamp duty

- 16.13 Each party will bear its own costs of entering into this agreement.
- 16.14 The Contractor will pay any stamp duty payable in connection with this agreement (including any fines and penalties).

## Counterparts

- 16.15 This agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

## Applicable law

- 16.16 This agreement is governed by the law in force in the Australian Capital Territory.

## 17 Definitions and interpretation

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### Definitions

- 17.1 In this agreement:

**ANAO Documents** means all *Documents*:

- (a) owned by, or licensed to, the ANAO; or
- (b) provided by or on behalf of the *Client* to the Contractor.

**Audit Services** means the services described in Schedule 1.

**Client** means any organisation that is subject to an audit which forms part or all of the *Audit Services*.

**Confidential Information** means all information relating to the business, technology, financial or other affairs of the ANAO which:

- (a) is by its nature confidential;

- (b) is designated by the ANAO or the *Client* as confidential; or
  - (c) the Contractor knows or ought to know is confidential,
- other than *Excluded Information*. *Confidential Information* includes:

- (i) *ANAO Documents*;
- (ii) *Contract Material*;
- (iii) information referred to in section 70 of the *Crimes Act 1914*;
- (iv) “personal information” as defined in the *Privacy Act 1988*; and
- (v) information referred to in section 36 of the *Auditor-General Act 1997*.

**Contract Material** means:

- (a) the audit report and other deliverables under this agreement; and
- (b) any other material developed for the purpose of performing the *Audit Services*, including the Contractor’s working papers for the *Audit Services* and other *Documents* and equipment.

**Date Capable** means, in respect of software, that the software can correctly process all dates, can continue to operate and function properly on all dates and can continue to be compatible with any other product regardless of date.

**Details** means Part 1 of this agreement.

**Documents** means data, information and other documents (including electronic documents).

**Excluded Information** means 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 the owner of the information;
- (b) the disclosing party can prove by contemporaneous written documentation was already known to it at the time of disclosure (unless that knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the recipient acquires from a source (other than the *Client* or the ANAO) entitled to disclose it.

**GST** has the same meaning as in the *GST Law*.

**GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999*.

**Insolvent** means being an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001*) or having a controller (as defined in the *Corporations Act 2001*) appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or similar effect happen under the laws of any jurisdiction.

**Intellectual Property** 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 and artistic fields.

**Moral Rights** means the right of attribution, the right against false attribution and the right of integrity of authorship as defined in the *Copyright Act 1968* (Cth).

**Site** means the *Client's* location as set out in Schedule 1.

**Tax Invoice** has the same meaning as in the *GST Law*.

**Third Party Material** means material owned by a third party that is provided to the Commonwealth as part of the *Contract Material*.

## Interpretation

17.2 In this agreement:

- (a) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (b) the verb "include" (in all its parts, tenses and variants) is not used as, nor is it to be interpreted as, a word of limitation;
- (c) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (d) headings are inserted for convenience and do not affect the interpretation of this agreement;
- (e) a reference to "law" includes legislation, regulations and other subordinate laws;
- (f) a reference to an Act, standard or other document is a reference to that Act, standard or other document as amended or replaced;
- (g) if the Contractor is a partnership, references to the Contractor include all partners from time to time jointly, and each of them severally; and

(h) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

17.3 Clauses 5.3, 5.7, 5.8, 5.9, 5.11, 5.12, 6.5, 7, 8, 10 and 12 survive termination or expiry of this agreement.

## **18 Liability Limitation**

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18.1 The parties acknowledge that Australian professional standards legislation may apply to limit the Contractor's liability under or in connection with this agreement.

18.2 The Contractor will not be liable for any failure or delay in providing services which is caused by circumstances beyond its control.

# Execution page

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**SIGNED** by \_\_\_\_\_ )  
as authorised representative for )  
**COMMONWEALTH OF AUSTRALIA** )  
as represented by the **ANAO** in the )  
presence of: )  
..... )  
Signature of witness )  
..... )  
Name of witness (block letters) )  
..... )  
Address of witness )  
..... )  
Occupation of witness )

.....  
By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of the ANAO.

**Date:**

**SIGNED** by \_\_\_\_\_ )  
as authorised representative for the )  
**CONTRACTOR** in the presence of: )  
..... )  
Signature of witness )  
..... )  
Name of witness (block letters) )  
..... )  
Address of witness )  
..... )  
Occupation of witness )

.....  
By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of the Contractor.

**Date:**

## Schedule 1

## Description of Audit Services

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### 1.1 Audit Services

- (a) The Services to be provided by the successful contractor (Contractor) shall be in respect of the provision of audit services of the financial statements of Australian River Co Limited for the ANAO for the years ending 30 November 2009, 2010 and 2011 with an option for a further 2 years, or until the Auditor-General ceases to be the auditor whichever is the earlier, and shall include attest audit coverage if applicable.
- (b) In addition to the attest audit coverage the Services provided shall include reasonable services which a professional auditor would normally supply. These may include the provision of advice on the effectiveness and efficiency of internal control and accounting systems, reviewing investment and provisioning procedures, providing interpretation of relevant new or revised accounting standards, legislation, review of printer's proofs and annual report etc.

### 1.2 Outcomes and Reporting

- (a) The outcome of the auditing Services shall be recommendations to the Auditor-General on the form and content of the auditor review reports to be issued on the financial statements.
- (b) A report shall be made to the Auditor-General stating that all relevant audit procedures, including any requested by the Auditor-General, have been satisfactorily completed.
- (c) Working papers are to be made available in case the ANAO Signing Officer requires them or the audit is selected for examination as part of the ANAO Quality Assurance requirements. Additionally, the ANAO will require the contractor to give all the associated working papers to the ANAO at the completion of each year's financial statement audit and on the expiry or termination of the contract. Note however, that the contractor may keep a copy for its own records.
- (d) In addition the following material would be expected to be prepared on behalf of the ANAO for submission by ANAO as the auditor:
- Engagement letter detailing risks to ARCo's Audit Committee in December/January each year;
  - Closing reports on significant issues and the results of the review and audit to ARCo's Audit Committee – at the time the Audit Committee considers the final statements in February/March each year;
  - Management letter addressing internal control matters in respect of ARCo (if applicable) by February/March each year;
  - A short report for inclusion in the ANAO's report to Parliament on the results of the annual audit of financial statements (where required), and
  - A Signing Officer Review Memorandum (SORM) is required to be completed.

- (e) Prior to the signing of the audit report, or by request in writing, for each financial year for the duration of the contract, the Contractor will provide the ANAO with a report on any work undertaken by the Contractor that comes within clause 5.19 (including work approved by the ANAO) in the form provided by the ANAO from time to time (see attached example).

### **1.3 Audit Methodology**

- (a) The audit methodology to be used is ..... methodology; and
- (b) The nominated Quality Assurance Partner is to review the audit approach and all deliverables prior to their finalisation.

### **1.4 Collection of Personal Information – Privacy Requirements**

When collecting personal information the Contractor will:

- (a) only use lawful and fair means, and not intrude to an unreasonable extent on the personal affairs of the individual concerned;
- (b) take reasonable steps to inform the individual of:
  - (i) the purpose for which the information is being collected;
  - (ii) any law that authorises or requires the information to be collected;
  - (iii) any person, body or agency it is the Contractor's usual practice to disclose this kind of information to ("Other Body"); and
  - (iv) (if known) any person, body or agency it is any Other Body's usual practice to pass this kind of information to;
- (c) take reasonable steps to ensure that the information collected is relevant to the purpose, up-to-date and complete;
- (d) where lawful and practical, give individuals the option of remaining anonymous; and
- (e) obtain the express consent of the individual before collecting any sensitive information.



## Schedule 2

## Deed of Confidentiality (clause 10.3)

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THIS DEED POLL is made in favour of the COMMONWEALTH OF AUSTRALIA (“**Commonwealth**”) and the AUDITOR-GENERAL

BY "**the Specified Person**"

### RECITALS

- A The Commonwealth requires the provision of *Audit Services*.
- B. The performance of the *Audit Services* requires access to information by the Specified Person which is confidential to the Commonwealth or the Auditor-General.

### COVENANTS

#### 1. INTERPRETATION

##### 1.1 In this Deed Poll:

"**ANAO Documents**" has the same meaning as in the Contract.

"**Audit Services**" means the services specified in the Contract.

"**Confidential Information**" means all information relating to the business, technology, financial or other affairs of the ANAO which:

- (a) is by its nature confidential;
- (b) is designated by the ANAO as confidential; or
- (c) the Specified Person or the Contractor knows or ought to know is confidential,

other than *Excluded Information*. *Confidential Information* includes:

- (i) *ANAO Documents* and *Contract Material*;
- (ii) information referred to in section 70 of the *Crimes Act 1914*;
- (iii) "personal information" as defined in the *Privacy Act 1988*; and
- (iv) information referred to in section 36 of the *Auditor-General Act 1997*.

"**Contractor**" means .....

"**Contract**" means the agreement between the Commonwealth and the Contractor dated ...../...../.....

"**Contract Material**" has the same meaning as in the Contract.

"**Excluded Information**" means information which:

- (d) is in or becomes part of the public domain other than through breach of this Deed or an obligation of confidence owed to the owner of the information;
- (e) the disclosing party can prove by contemporaneous written documentation was already known to it at the time of disclosure (unless that knowledge arose from disclosure of information in breach of an obligation of confidentiality); or

(f) the recipient acquires from another source entitled to disclose it.

2. NON DISCLOSURE

2.1 The Specified Person will not copy, reproduce or disclose any of the *Confidential Information* without the prior written consent of the Commonwealth, which consent the Commonwealth may grant or withhold in its absolute discretion.

3. RESTRICTION ON USE

3.1 The Specified Person will not use the *Confidential Information* for any purpose other than the performance of the *Audit Services*.

4. SECURITY

4.1 If requested by the Commonwealth, the Specified Person will cooperate in any security checks the Commonwealth wishes to make of the Specified Person (including by providing information usually requested in such circumstances).

5. ACKNOWLEDGMENT

5.1 The Specified Person acknowledges that it is aware of, and will comply with, all relevant statutory and other obligations and standards of performance applicable to the *Audit Services*.

6. INTELLECTUAL PROPERTY

6.1 The Commonwealth will own the intellectual property in materials developed or created by the Specified Person in the course of performing the *Audit Services*.

7. DELIVERY UP OF DOCUMENTS

7.1 The Commonwealth may, at any time, demand, either orally or in writing, the delivery to the Commonwealth of all documents in the possession or control of the Specified Person which contain *Confidential Information*.

7.2 Upon receipt of a demand under clause 7.1, the Specified Person will deliver the relevant documents to the Commonwealth as soon as reasonably possible.

8. CONFLICT OF INTEREST

8.1 The Specified Person warrants that no conflict of interest exists or is anticipated relevant to the performance of the *Audit Services*.

8.2 If such a conflict arises, the Contractor will notify the Commonwealth immediately. The Commonwealth will decide in its absolute discretion whether the Specified Person may undertake the conflicting work or not.

9. SURVIVAL OF OBLIGATIONS

9.1 The obligations in this Deed are perpetual.

SIGNED SEALED AND DELIVERED  
by the Specified Person in the presence of

_____	)	_____
Signature of Witness	)	Signature of Specified Person
	)	
	)	
_____	)	_____
Name of Witness	)	Name of Specified Person
	)	

Date:

SIGNED SEALED AND DELIVERED  
by the Specified Person in the presence of

_____	)	_____
Signature of Witness	)	Signature of Specified Person
	)	
	)	
_____	)	_____
Name of Witness	)	Name of Specified Person
	)	

Date:

SIGNED SEALED AND DELIVERED  
by the Specified Person in the presence of

_____	)	_____
Signature of Witness	)	Signature of Specified Person
	)	
	)	
_____	)	_____
Name of Witness	)	Name of Specified Person
	)	

Date:

## Schedule 3

## Licence terms for audit software

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*[To be inserted following discussions with the successful tenderer]*