

CONTRACT

CONTRACT IN RELATION TO CONSULTANCY SERVICES FOR THE DESIGN AND DOCUMENTATION OF A REPLACEMENT HEATING VENTILATION AND AIRCONDITIONING SYSTEM FOR THE HIGH COURT OF AUSTRALIA BUILDING

High Court of Australia
ABN 69 445 188 986

Name of Service Provider
ABN

CONTENTS

1.	Interpretation	1
1.1.	Definitions	1
1.2.	Interpretation	3
1.3.	Guidance on construction of contract	4
1.4.	Commencement	4
2.	Provision of Services	4
2.1.	Principal obligations of Service Provider	4
2.2.	Liaison with Project Officer	5
2.3.	Subcontractors	5
2.4.	Specified Personnel	5
2.5.	Responsibility of Service Provider	5
3.	Fees, allowances and assistance	6
3.1.	Principal obligations of High Court	6
3.2.	High Court's rights to defer payment	6
3.3.	Taxes, duties and government charges	6
3.4.	Superannuation	6
4.	Intellectual Property	7
4.1.	Use of Commonwealth Material	7
4.2.	Rights in Contract Material	7
4.3.	Moral Rights	7
5.	Confidentiality of Official Information and other security obligations	8
5.1.	Interpretation	8
5.2.	Confidentiality of Official Information	9
5.3.	Other security obligations of Service Provider	9
6.	Privacy	9
6.1.	Interpretation	9
6.2.	Obligations of Service Provider in relation to privacy	10
7.	Dealing with Copies	10
7.1.	Interpretation	10
7.2.	Actions at end of contract	10
8.	Confidential Information of the Service Provider	10
8.1.	Confidential Information not to be disclosed	10
8.2.	Exceptions to obligations	10
8.3.	Period of confidentiality	11
9.	Liability	11
9.1.	Proportionate liability regimes excluded	11
9.2.	Indemnity	11

10.	Dispute resolution	12
10.1.	Procedure for dispute resolution	12
10.2.	Costs	12
10.3.	Continued performance	12
10.4.	Exemption	12
11.	Termination or reduction in scope of Services	13
11.1.	Termination for convenience	13
11.2.	Termination for fault	13
12.	Notices	14
12.1.	Format, addressing and delivery	14
12.2.	When effective	14
13.	General provisions	15
13.1.	Work health and safety	15
13.2.	Audit and access	15
13.3.	Insurance	15
13.4.	Extension of provisions to subcontractors and Personnel	16
13.5.	Conflict of interest	16
13.6.	Relationship of parties	16
13.7.	Waiver	17
13.8.	Variation	17
13.9.	Assignment	17
13.10.	Survival	17
13.11.	Compliance with Legislation	17
13.12.	Applicable law	18
	Schedule 1 Contract Details	19
1.	Services	19
2.	Required Contract Material	21
3.	Standards and Best Practice	22
4.	Commencement and Timeframe	23
5.	Invoicing and Payment	23
6.	Project Officer	24
7.	Subcontractors	24
8.	Specified Personnel	24
9.	Fees	24
10.	Allowances and Costs	25
11.	Facilities and Assistance	
12.	Required Commonwealth Material	
13.	Use of Commonwealth Material	25
14.	Existing Material	25
15.	Moral Rights	25
16.	Security Requirements	25
17.	Privacy Directions, Guidelines, Determinations or Recommendations	25
18.	Service Provider's Confidential Information	26
19.	High Court's Address for Notices	26

20. Service Provider's Address for Notices	26
21. Insurance	26
22. Applicable Legislation	26
23. Applicable Law	26

CONTRACT

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Date

This contract is made on XXXX November 2013

Parties

This contract is made between and binds the following parties:

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

Service Provider Name ABN XXXX of Registered Business address (Service Provider).

Context

This contract is made in the following context:

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

Operative Provisions

1. Interpretation

1.1. Definitions

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

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

Commencement means the date on which this contract is made, unless

Date	otherwise specified in Item 4 [Commencement and Timeframe]
Commonwealth Material	means any Material: <ul style="list-style-type: none"> a. provided by the High Court to the Service Provider for the purposes of this contract or b. derived at any time from the Material referred to in paragraph a
Confidential Information (of the Service Provider)	means information that is by its nature confidential and is described in Item 18 [Service Provider's Confidential Information].
Contract Material	means any Material: <ul style="list-style-type: none"> a. created for the purposes of this contract b. provided or required to be provided to the High Court as part of the Services or c. derived at any time from the Material referred to in paragraphs a or b
GST	has the meaning that it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)
High Court	includes any department, agency or authority of the Commonwealth which is from time to time responsible for administering this contract
Instalment	means an instalment of fees payable under clause 3 in relation to part of the Services
Intellectual Property	includes: <ul style="list-style-type: none"> a. all copyright (including rights in relation to phonograms and broadcasts) b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts and c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include: <ul style="list-style-type: none"> d. Moral Rights e. the non-proprietary rights of performers or f. rights in relation to Confidential Information
Material	means any thing in relation to which Intellectual Property rights arise

Moral Rights	means the following non-proprietary rights of authors of copyright Material: a. the right of attribution of authorship b. the right of integrity of authorship and c. the right not to have authorship falsely attributed
Official Information	means any information developed, received or collected by or on behalf of the High Court to which the Service Provider gains access under or in connection with this contract, and includes the Contract Material and the terms of the contract
Personnel	means: a. in relation to the Service Provider: any natural person who is an officer, employee, agent or professional advisor of the Service Provider or of its subcontractors and b. in relation to the High Court: any natural person, other than a person referred to in paragraph a, who is an officer, employee, agent or professional advisor of the High Court.
Project Officer	means the person specified (by name or position) in Item 6 [Project Officer] or any substitute notified to the Service Provider.
Projects	means the projects specified in Schedule 2.
Services	means the services described in Item 1 [Services] and includes the provision to the High Court of the Material specified in Item 2 [Required Contract Material].
Specified Personnel	means the Personnel specified in Item 8 [Specified Personnel] as required to perform all or part of the work constituting the Services.

1.2. Interpretation

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

- a. words importing a gender include any other gender
- b. words in the singular include the plural and words in the plural include the singular
- c. clause headings are for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer

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

1.3. Guidance on construction of contract

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

1.4. Commencement

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

2. Provision of Services

2.1. Principal obligations of Service Provider

- 2.1.1. The Service Provider agrees to:
 - a. perform the Services as specified in Item 1

- b. provide to the High Court the Material specified in Item 2 [Required Contract Material]
- c. adopt relevant best practice, including any High Court, Commonwealth or industry standards and guidelines specified in Item 3 [Standards and Best Practice]
- d. comply with the time frame for the performance of the Services specified in Item 4 [Commencement and Timeframe] and
- e. submit invoices, and any required supporting documents, in the manner specified in Item 5 [Invoicing and Payment].

2.2. Liaison with Project Officer

2.2.1. The Service Provider agrees:

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

2.3. Subcontractors

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

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

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

2.4. Specified Personnel

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

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

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

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

2.5. Responsibility of Service Provider

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

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

3. Fees, allowances and assistance

3.1. Principal obligations of High Court

The High Court agrees to

- a. pay the fees in the Installments (if any) specified in Item 9 [Fees]
- b. pay the allowances and meet the costs specified in Item 10 [Allowances and Costs]
- c. make all payments in the manner specified in Item 5 [Invoicing and Payment] and
- d. provide facilities and assistance as reasonably requested.

3.2. High Court's rights to defer payment

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

3.3. Taxes, duties and government charges

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

3.4. Superannuation

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

4. Intellectual Property

4.1. Use of Commonwealth Material

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

4.2. Rights in Contract Material

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

4.3. Moral Rights

- 4.3.1. In this clause 4.3:

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

Material

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

but does not include false attribution of authorship.

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

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

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

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

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

5. Confidentiality of Official Information and other security obligations

5.1. Interpretation

5.1.1. In this clause 5:

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

Incident from those seeking unauthorised access to Official Resources.

5.2. Confidentiality of Official Information

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

5.3. Other security obligations of Service Provider

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

6. Privacy

6.1. Interpretation

- 6.1.1. In this clause 6:

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

Privacy Principle (Cth).

6.2. Obligations of Service Provider in relation to privacy

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

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

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

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

7. Dealing with Copies

7.1. Interpretation

7.1.1. In this clause 7:

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

7.2. Actions at end of contract

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

8. Confidential Information of the Service Provider

8.1. Confidential Information not to be disclosed

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

8.2. Exceptions to obligations

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

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

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

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

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

8.3. Period of confidentiality

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

9. Liability

9.1. Proportionate liability regimes excluded

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

9.2. Indemnity

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

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

arising from either:

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

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

10. Dispute resolution

10.1. Procedure for dispute resolution

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

10.2. Costs

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

10.3. Continued performance

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

10.4. Exemption

- 10.4.1. This clause 10 does not apply to:

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

11. Termination or reduction in scope of Services

11.1. Termination for convenience

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

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

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

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

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

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

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

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

11.2. Termination for fault

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

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

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

12. Notices

12.1. Format, addressing and delivery

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

12.2. When effective

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

13. General provisions

13.1. Work health and safety

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

13.2. Audit and access

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

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

13.3. Insurance

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

13.4. Extension of provisions to subcontractors and Personnel

13.4.1. In this clause 13.4:

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

13.4.2. The Service Provider agrees to ensure that:

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

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

13.5. Conflict of interest

13.5.1. In this clause 13.5:

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

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

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

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

13.6. Relationship of parties

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

13.6.2. The Service Provider agrees:

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

13.7. Waiver

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

13.8. Variation

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

13.9. Assignment

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

13.10. Survival

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

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

13.11. Compliance with Legislation

- 13.11.1. In this clause 13.11:

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

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

13.12. Applicable law

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

SCHEDULE 1 CONTRACT DETAILS

1. Services

It will be the responsibility of the Service Provider to develop a Master Plan for the upgrade and replacement of the existing HVAC system to improve energy efficiency, maintain agreed internal environmental conditions and develop a staged approach to undertaking these works. The Service Provider will assist the High Court to manage the installation and undertake regular reviews during the 12 months following practical completion to ensure that the system is operating as designed, maintaining suitable environmental conditions and achieving agreed reductions in energy consumption.

The consultancy will consist of four phases. These are:

1. Review of the existing system and development of a Master Plan for the staged upgrade and replacement of the existing system;
2. Detailed design, documentation and preparation of tender specifications and drawings;
3. Management of the installation phase of the works, including assisting the High Court with the selection of contractors; and
4. Review the operation of the system during the 12 months defects liability period following the practical completion of each stage of the project to fine tune the system to ensure it is performing in accordance with the specifications.

Phase 1

During this phase, the Service Provider shall:

- Assist the High Court to identify issues with the operation of the existing HVAC system and determine agreed environmental performance parameters required in all areas of the building to achieve the High Court's current operating requirements. Review the existing system operation with an emphasis on improvements to energy efficiency and the replacement of aging assets which are approaching the end of their economic life.
- Items to be considered during the review include, as a minimum, zoning and the location of sensors within each zone, set points, chiller sizing, incorporation of outside air and economy cycles, air flow rates, duct sizes, fan motor and pump types and sizing, the potential for heat recovery systems, control strategies and the physical location and configuration of plant and equipment.
- Undertake thermal modelling of the High Court building, to determine the effectiveness of proposed options for system improvement. The High Court has original drawings of the building but does not have CAD drawings. The Service Provider must allow for the development of suitable drawings to enable thermal

modelling of interior of the building. The Service Provider shall also undertake all necessary testing, e.g. air flow monitoring, water flows, thermal imaging, etc. required to fully understand the existing system.

- Develop an options paper for consideration by the High Court. The paper shall provide a summary of the existing HVAC system, its operational problems and propose options to improve or replace the current system, including proposals to maintain conditions within the large volume areas of the building, specifically the public foyer and the three court rooms. The paper shall include a concept design and analysis of each option listing its advantages and disadvantages, risks, potential installation issues and cost estimates.
- Upon approval of a preferred option by the Court, the Service Provider shall develop a building HVAC Master Plan, outlining the final recommended system, and identifying a staged approach to achieving this, with minimal disruption to the ongoing operation of the High Court. This will include a detailed installation programme, breaking the project into discrete work packages which can be separately designed and installed while still working towards the agreed Master Plan. Cost estimates for each stage of the project shall be refined and estimates shall have an accuracy of 20%. The Master Plan shall also identify any WHS or potential construction issues associated with undertaking work within existing plant rooms, etc. It will include a summary of any ancillary works required to allow safe and compliant access during installation and/or ongoing maintenance.

Phase 2

Following client approval of the Master Plan, the Service Provider shall, for each stage of the installation:

- prepare detailed documentation, including specifications and drawings, suitable for tender and issue to the High Court for use in the tender process.
- Present drawings and specifications for review and approval by the High Court at the 50%, and 90% design stages and prepare pre-tender cost estimates
- assist the Court to set environmental and energy performance targets that are reasonable, achievable and measurable. Throughout the following phases of the project, the Service Providers shall review and re-evaluate the targets.
- assist the Court to obtain the involvement of all key stakeholders to ensure that the design solutions are maintainable and cost effective.

Phase 3

During Phase 3, the Service Provider shall:

- Answer questions from contractors during the tender phase.
- Assist the Court with the technical evaluation of the tenders.
- Provide responses to technical queries associated with the installation of the HVAC and any associated systems.

- During commissioning certify the HVAC and associated systems are installed and operating in accordance with the specifications.
- Prepare a list of any outstanding defects to be addressed post practical completion.
- Assist the project officer to ensure the coordination of site activities and witnessing by the contractor, the project officer and other relevant High Court employees.
- Assist the project officer in the creation of the HVAC maintenance contract and a maintenance regime that is easy to understand
- Assist in the training of the operating and maintenance staff to ensure that there are adequately trained operation and maintenance staff in place prior to handover. This will include direction and guidance in the use of the HVAC interface through a demonstration to the facilities maintenance team.
- Manage the testing and demonstration of key interfaces and systems

It is envisaged that a superintendent/project manager shall be appointed to administer the installation contracts. The Service Provider shall not be responsible for the administration of the installation contractors but will provide technical input as outlined above.

Phase 4

During this phase the Service Provider shall:

- Liaise with the Court, the Superintendent/Project Manager and the contractor to ensure that any outstanding defects are addressed as soon as possible after practical completion.
- Provide advice to the Court on technical issues which may arise during the defects liability period.
- Assist in logging energy use during the first twelve months operation and review this against the energy design targets. Undertake ongoing reviews of the environmental and energy performance targets, monitoring the system and fine tuning as required to optimise system performance.
- Assist the High Court and the HVAC contractor with system fine tuning.
- Assist the High Court to develop and undertake occupant satisfaction surveys.
- Undertake a review of all commissioning records and documentation to ensure all relevant information has been supplied by the HVAC contractor.
- Provide monthly on-site professional presence, with informal walkabouts to identify actual or emerging issues which would otherwise go unrecorded, and to witness how the building is used by the occupants.
- Conduct monthly review meetings involving the High Court and the design and construction teams to review the operation of the building and ensure it is operating as designed.

2. Required Contract Material

(see clause 1.1)

Stage 1 Outputs

- Option study report

- HVAC Master Plan
- Meetings as required with the High Court stakeholders, including, as a minimum, the Property Project Manager, Marshall and outsourced facilities maintenance manager.

Stage 2 Outputs

- Environmental and energy targets
- 50% Design Review, including presentation to High Court stakeholders
- 90% Design Review, including presentation to High Court stakeholders
- Pre-tender estimates
- Drawings and specifications for tender

Stage 3 Outputs

- Responses to RFI's during the tender and construction of the works
- For construction documentation
- HVAC maintenance contract and maintenance program
- Training program for key staff in the operation of the system

Stage 4 Outputs

- As installed documentation
- A report of the actual energy and environmental performance against the agreed targets.

3. Standards and Best Practice

(see clause 2.1.1.c)

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

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

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

Contract commencement – by 25 November 2013.

Phase One – Option study to be completed by 28 February 2014.

- Master Plan to be completed by 5 April 2014.

Phase Two – In accordance with the agreed Master Plan.

Phase Three – In accordance with agreed Master Plan.

Phase Four – Defects liability ends twelve months after practical completion of each stage of the construction works.

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

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

Invoices must include the following information:

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

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

All invoices must be addressed to the Project Officer.

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

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

6. Project Officer
(see clause 2.2)

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

7. Subcontractors
(see clause 2.3)

Sub-contractor	Role	Contact Person

8. Specified Personnel
(see clause 2.4)

Name	Role

9. Fees

(see clause 3.1, & 11.1)

Lump Sum Fees (excluding GST)

<i>PHASE</i>	<i>\$ (GST Exclusive)</i>
Phase 1	
Phase 2	
Phase 3	
Phase 4	
Total (excluding GST)	

Schedule of Rates (excluding GST)

Position	Hourly Rate

FEES ARE INCLUSIVE OF:

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

10. Allowances and Costs

(see clauses 0 & 11.1.3.c)

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

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

11. Use of Commonwealth Material

(see clause 4.1.3)

'Not Applicable'

12. Existing Material

(see clause 4.2.2)

Operating manuals

Building drawings

13. Moral Rights

(see clause 4.3)

14. Permitted Acts

'Not Applicable'

15. High Court policy on Moral Rights

16. Security Requirements

(see clause 5)

no additional requirements

17. Privacy Directions, Guidelines, Determinations or Recommendations

(see clause 6.2.1.b)

'Not Applicable'

18. Service Provider's Confidential Information

(see clause 9)

Nil

19. High Court's Address for Notices

(see clause 12.1.1.a)

Physical address

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

Postal address

PO Box 6309 Kingston ACT 2604

Email

john.ryan@hcourt.gov.au

20. Service Provider's Address for Notices

(see clause 12.1.1.a)

Physical address

Postal address

Email

21. Insurance

(see clause 13.3)

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

22. Applicable Legislation

(see clause 13.11.3)

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

http://www.ag.gov.au/publications/agspubs/factsheets/No1_August2010.html

23. Applicable Law

(see clause 13.12)

Australian Capital Territory

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

Signature

In the presence of:

Name of witness

Signature of witness

SIGNED for and on behalf of)
by:)
)

Name

Signature

In the presence of:

Name

Signature of witness