

CONTRACT

CONTRACT IN RELATION TO THE SUPPLY, INSTALLATION AND
COMMISSIONING OF IP BASED PABX

High Court of Australia
ABN 69 445 188 986

Name of Service Provider
ABN

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CONTRACT

CONTRACT IN RELATION TO CONSULTANCY SERVICES FOR THE SUPPLY, INSTALLATION AND COMMISSIONING OF IP BASED PABX.

Date

This contract is made on Day Month 2016

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 Service Provider to supply, install and commission new equipment as described in the 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 24 [Applicable Law]

Commencement Date means the date on which this contract is made, unless 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 19 [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
Date of Acceptance	means the date on which the notice of acceptance by the High Court is provided to the Service Provider. This will be on satisfactory completion of Stage 4 – Cutover Training and Post Installation Support.
Goods	means the provision to the High Court of goods described in Item 2 [Required Contract Material] and hardware and software as described in Item 9 [Fees] required for the supply, installation and commissioning of the IP-PABX services at the High Court.
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 6.1.1a 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:

- 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.

Services means the provision to the High Court of services described in Item 1 [Services].

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 1
- 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. Provide the goods and perform the Services as specified in Item 1 [Services]
 - b. provide to the High Court the Material specified in Item 2 [Required Contract Material] and Goods and Services as described in Item 9[Fees]
 - 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 supply, installation and commissioning 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. Quality

3.1. Quality

3.1.1. The Supplier must supply, install and commission the Goods to the High Court in accordance with this contract. In performing its obligations under this contract the Supplier must exercise skill, care and diligence to a professional standard.

3.1.2. The Goods must:

- a. be new
- b. be fit for the purpose for which they are required
- c. be free from defects in materials and workmanship
- d. be free from defects in performance
- e. be at least of merchantable quality and
- f. meet the specifications (if any) set out in Item 9(a) [Equipment Schedule].

3.1.3. The Supplier must ensure that any item used in or incorporated into the Goods performs in accordance with the item manufacturer's instructions and to any ratings or limits applying to the item.

3.1.4. The Supplier must have and maintain a quality system certified to a standard acceptable to the High Court and must apply that quality system to the production, supply, installation and commissioning of the Goods.

3.1.5. At all reasonable times during the term of this contract the Supplier must permit the Project Officer to enter its premises and inspect its quality systems and their application to the performance of the Supplier's obligations under this contract.

3.2. Latent defects

3.3. Delivery and Delay

- 3.3.1. The Supplier must take all reasonable steps to prevent and to minimise any delay in delivery of the Goods.
- 3.3.2. As soon as practicable, but not later than 24 hours after it becomes evident to the Supplier that it will be delayed in delivery of the Goods the Supplier must notify the Project Officer of the cause and nature of the delay in performing the work and must describe the steps it will take to contain the delay.
- 3.3.3. The Supplier must notify the Project Officer of the length of any delay in performing the work as soon as it can be calculated.
- 3.3.4. The Supplier may, by notice in writing to the Project Officer, claim a postponement of the time for delivery of the Goods.
- 3.3.5. The Supplier is not entitled to a postponement of the time for delivery of the Goods unless:
- a. the Supplier has complied with clauses 3.3.2 and 3.3.3 in relation to the delay in performing the work relied on in its claim
 - b. the delay was not caused in whole or part or exacerbated by the Supplier but was caused by an act or omission under this contract by the High Court
 - c. the Supplier demonstrates to the satisfaction of the Project Officer that this contract cannot be performed in such a way as to meet the time for delivery
 - d. the Supplier has complied with all directions of the Project Officer in respect of the delay in performance and
 - e. the Supplier has taken all reasonable steps to reduce the duration and impact of the delay in performing the work.
- 3.3.6. A postponement of the time for delivery must not exceed, but may be less than, the delay in performing the work.
- 3.3.7. If the Supplier is entitled to a postponement of the time for delivery of the Goods, the Project Officer will grant the postponement and will promptly notify the Supplier in writing of the postponed delivery time.
- 3.3.8. If the Project Officer determines that the Supplier is not entitled to a postponement of the time for delivery of the Goods, they will promptly notify the Supplier in writing of their determination.
- 3.3.9. Whether or not the Supplier has claimed a postponement of the time for delivery of the Goods, the Project Officer may, by notice in writing to the Supplier, postpone the time for delivery.
- 3.3.10. The Supplier must not in any event be entitled to postponement costs.

4. Acceptance of Goods

4.1. Acceptance

- 4.1.1. The Project Officer will, within 30 Business Days after the Goods are delivered or otherwise offered for acceptance, either accept or reject the Goods by giving written notice to that effect to the Supplier.
- 4.1.2. The Project Officer may reject Goods:
- a. outright, in which case the Project Officer will give the Supplier a notice of rejection of the rejected Goods or
 - b. conditionally, in which case the Project Officer will advise the Supplier in writing of the rejection and the extent to which the Goods do not conform to this contract and will require the Supplier to correct or replace the rejected Goods.
- 4.1.3. Where the Supplier is required to correct or replace rejected Goods, the Supplier must, within two Business Days after receipt of advice under clause 4.1.2.b, by written notice provide the Project Officer with full details of the action it proposes to take to correct or replace the Goods.
- 4.1.4. Following receipt of the Supplier's notice under clause 4.1.3, the Project Officer will either:
- a. instruct the Supplier in writing to complete any course of action proposed by the Supplier within a specified time or
 - b. issue a notice of rejection of the rejected Goods.
- 4.1.5. Within five Business Days after receipt of a notice of rejection, the Supplier must, at its expense, retake possession of the rejected Goods.
- 4.1.6. If, within the time specified in the instruction, or within such further time as the Project Officer may in its discretion allow, the Supplier resubmits the Goods as conforming to the requirements of this contract, the Project Officer may exercise the rights under clause 4.1.2 as if the Goods had been submitted by the Supplier for the first time.
- 4.1.7. Any action of the Supplier in correction or replacement of the Goods or in complying with the directions of the Project Officer under this clause will be at the Supplier's expense and will not entitle the Supplier to claim postponement of the time for delivery of the Goods.

4.2. Replacement, refund or repair

If the High Court rejects any Goods, the Supplier must, without prejudice to the High Court's rights otherwise arising under this contract or the general law, comply with any requirement of the High Court to:

- a. replace, without cost to the High Court, the rejected Goods with Goods in all respects in accordance with this contract

- b. refund any payment for the rejected Goods or
 - c. repair the Goods, on site or otherwise, to the satisfaction of the High Court
- and, in the case of a or b, must remove the rejected Goods at the Supplier's expense.

4.3. Passing of property

Property in, and risk of loss or damage to, the Goods will only pass to the High Court upon formal acceptance by it of the Goods.

4.4. Non payment

The High Court will not be liable to pay for:

- a. any rejected Goods or
- b. any damage done to or costs arising from inspection or rejection of the Goods.

5. Warranty and Maintenance

5.1. Warranty period

5.1.1. For the purposes of clause 5.2, the "Warranty Period" specified in Item 11 [Warranty and Maintenance] commences on the date of acceptance of the Goods, and will be valid for five years, with 2 X 1 year renewal options exercisable at the High Court's discretion.

5.2. Remedy of defects

5.2.1. The Supplier warrants the Goods for the Warranty Period will be and remain free from defects in design, materials and workmanship.

5.2.2. If the High Court, within a reasonable time after acceptance, gives notice of any defect or omission discovered in Goods during any Warranty Period, the Supplier must, during the Warranty Period, remedy those defects by repair, replacement or modification.

5.2.3. The Supplier must meet all costs of and incidental to the discharge of the warranty, including any packing, freight, disassembly and reassembly costs.

5.2.4. Where the Supplier fails to rectify a defect covered by warranty within 30 days after notification by the Project Officer, the High Court may perform, or have performed, the necessary remedial work and all costs and outgoings incurred must be reimbursed to the High Court by the Supplier.

5.2.5. The rights and remedies provided in this clause are in addition to, and do not limit, any other rights of the High Court under this contract or otherwise.

5.3. Notification of Defects by Supplier

If, at any time after acceptance of any Goods, the Supplier becomes aware of any defect in the Goods which adversely affects, or is likely to adversely affect, the operation of the Goods or the safety of personnel, the Supplier must promptly give notice of the defect to the High Court and will give a fully documented confirmation of the notice within 20 days after so becoming aware.

6. Fees, allowances and assistance

6.1. Principal obligations of High Court

- 6.1.1. Make all payments in the manner specified in Item 5 [Invoicing and Payment] and
- a. the High Court agrees to pay the fees in the Instalments (if any) specified in Item 9 [Fees]
 - b. pay the allowances and meet the costs specified in Item 10 [Allowances and Costs]
 - c. provide facilities and assistance as reasonably requested.

6.2. High Court's rights to defer payment

- 6.2.1. 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.

6.3. Taxes, duties and government charges

- 6.3.1. Except as provided by this clause 6.3, 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.
- 6.3.2. 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.
- 6.3.3. 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.
- 6.3.4. 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.

6.4. 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].

7. Intellectual Property

7.1. Use of Commonwealth Material

- 7.1.1. The High Court agrees to provide Material to the Service Provider as specified in Item 12 [Use of Commonwealth Material]
- 7.1.2. 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.
- 7.1.3. The Service Provider agrees to use the Commonwealth Material strictly in accordance with any conditions or restrictions set out in Item 12 [Use of Commonwealth Material].

7.2. Rights in Contract Material

- 7.2.1. Intellectual Property in all Contract Material vests or will vest in the High Court.
- 7.2.2. Clause 7.2.1 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 13 [Existing Material].
- 7.2.3. The Service Provider grants to (or will procure for) the High Court a permanent, irrevocable, royalty free, worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, adapt and exploit any existing Material specified in Item 2 [Required Contract Material] and through the commissioning of Services specified in Item 9 [Fees].
- 7.2.4. 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 7.2.
- 7.2.5. 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 7.2.

7.3. Moral Rights

- 7.3.1. In this clause 7.3:

- 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 14 [Moral Rights]

but does not include false attribution of authorship.

7.3.2. 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 14 [Moral Rights].

7.3.3. Where clause 7.3.2 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 14 [Moral Rights].

7.3.4. This clause 7.3 does not apply to any Commonwealth Material incorporated in the Contract Material.

8. Confidentiality of Official Information and other security obligations

8.1. Interpretation

8.1.1. In this clause 8:

- | | |
|--------------------------------------|---|
| Official Resources | includes: <ul style="list-style-type: none"> a. Official Information b. people who work for or with the High Court and c. 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 Incident means a security breach, violation, contact or approach from those seeking unauthorised access to Official Resources.

8.2. Confidentiality of Official Information

- 8.2.1. 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).
- 8.2.2. The Service Provider is authorised to provide Official Information to those Personnel and subcontractors who require access for the purposes of this contract.
- 8.2.3. The Service Provider agrees, on request by the High Court at any time, to arrange for the Personnel and subcontractors referred to in clause 8.2.2 to give a written undertaking in a form acceptable to the High Court relating to the use and non-disclosure of Official Information.
- 8.2.4. The Service Provider agrees to secure all Official Information against loss and unauthorised access, use, modification or disclosure.

8.3. Other security obligations of Service Provider

- 8.3.1. 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 17 [Security Requirements], if any, and any variations or additions to those requirements as notified by the High Court from time to time.
- 8.3.2. The Service Provider agrees to implement security procedures to ensure that it meets its obligations under this clause 8 and will provide details of these procedures to the High Court on request.

9. Privacy

9.1. Interpretation

- 9.1.1. In this clause 9:

Information Privacy Principle has the same meaning as it has in the *Privacy Act 1988* (Cth).

9.2. Obligations of Service Provider in relation to privacy

9.2.1. 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 18 [Privacy Directions, Guidelines, Determinations or Recommendations], to the extent that they are consistent with the Information Privacy Principles.

9.2.2. 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 9.

10. Dealing with Copies

10.1. Interpretation

10.1.1. In this clause 10:

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

10.2. Actions at end of contract

10.2.1. 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.

11. Confidential Information of the Service Provider

11.1. Confidential Information not to be disclosed

11.1.1. Subject to clause 11.2, 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.

11.2. Exceptions to obligations

11.2.1. The obligations of the High Court under 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 11.
- 11.2.2. Where the High Court discloses Confidential Information to another person pursuant to clauses 11.2.1.a to 11.2.1.e, the High Court will notify the receiving person that the information is confidential.
- 11.2.3. In the circumstances referred to in clauses 11.2.1.a, 11.2.1.b and 11.2.1.e, the High Court agrees not to provide the information unless the receiving person agrees to keep the information confidential.
- 11.3. Period of confidentiality**
- 11.3.1. The obligations under this clause 11 in relation to an item of information described in Item 19 [Service Provider's Confidential Information] continue for the period set out there in respect of that item.

12. Liability

12.1. Proportionate liability regimes excluded

- 12.1.1. 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.

12.2. Indemnity

- 12.2.1. 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.

- 12.2.2. The Service Provider's liability to indemnify the High Court under clause 12.2.1 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.
- 12.2.3. The right of the High Court to be indemnified under this clause 12.2 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.

13. Dispute resolution

13.1. Procedure for dispute resolution

- 13.1.1. 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 13.1.1.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.

13.2. Costs

- 13.2.1. Each party will bear its own costs of complying with this clause 13, and the parties will bear equally the cost of any third person engaged under clause 13.1.1.d.

13.3. Continued performance

- 13.3.1. 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.

13.4. Exemption

- 13.4.1. This clause 13 does not apply to:

- a. action by the High Court under or purportedly under clause 14.1
- b. action by either party under or purportedly under clause 14.2 or
- c. legal proceedings by either party seeking urgent interlocutory relief.

14. Termination or reduction in scope of Services

14.1. Termination for convenience

14.1.1. 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.

14.1.2. 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.

14.1.3. In the event of termination under clause 14.1.1, 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 14.1.3.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 14.1.3.a and 14.1.3.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].

14.1.4. In the event of a reduction in the scope of the Services under clause 14.1.1, 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.

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

14.2. Termination for fault

14.2.1. 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.
- 14.2.2. 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.

15. Notices

15.1. Format, addressing and delivery

- 15.1.1. 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 20 [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 21 [Service Provider's Address for Notices] or as otherwise notified by the Service Provider.
- 15.1.2. 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.

15.2. When effective

- 15.2.1. 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.
- 15.2.2. 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.

16. General provisions

16.1. Work health and safety

- 16.1.1. 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.
- 16.1.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 16.1.1.b, the Service Provider will comply with those policies and procedures that produce the highest level of health and safety.

16.2. Audit and access

- 16.2.1. 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.
- 16.2.2. The rights referred to in clause 16.2.1. 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.
- 16.2.3. The Auditor-General and the Privacy Commissioner are persons authorised for the purposes of this clause 16.2.
- 16.2.4. This clause 16.2 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 23 [Applicable Legislation].

16.3. Insurance

- 16.3.1. The Service Provider agrees:
- a. to effect and maintain the insurance specified in Item 22 [Insurance] and
 - b. on request, to provide proof of insurance acceptable to the High Court.
- 16.3.2. This clause 16.3 continues in operation for so long as any obligations remain in connection with the contract.

16.4. Extension of provisions to subcontractors and Personnel

16.4.1. In this clause 16.4:

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

16.4.2. 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.

16.4.3. 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.

16.5. Conflict of interest

16.5.1. In this clause 16.5:

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.

16.5.2. 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.

16.5.3. 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.

16.6. Relationship of parties

16.6.1. 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.

16.6.2. 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.

16.7. Waiver

16.7.1. 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.

16.7.2. 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.

16.8. Variation

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

16.9. Assignment

16.9.1. 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.

16.10. Survival

16.10.1. 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.

16.11. Compliance with Legislation

16.11.1. In this clause 16.11:

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

16.11.2. The Service Provider agrees to comply with any Legislation applicable to its performance of this contract.

16.11.3. The Service Provider acknowledges that its attention has been drawn to the fact sheet referred to in Item 23 [Applicable Legislation] which provides details of some Legislation that may be applicable to the performance of the contract.

16.12. Applicable law

- 16.12.1. 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 24 [Applicable Law].
- 16.12.2. 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 provide goods and services to High Court for the supply, installation and commissioning of a new IP-PABX system in replacement of the Court's current PABX platform and to provide telephony services consistent with the existing levels of service and functionality with little or no interruption to the Court's Administration.

In providing this service, the Service Provider will supply, install and commission an IP-PABX in the High Court of Australia building in Canberra, which will accommodate, without any major changes to its architecture, the integration of telephony equipment at the Brisbane, Melbourne and Sydney offices at a later stage. The Service Provider will be responsible for overall design integrity and ensure all design elements and components are compatible, and that they perform to the standards that the Court accepts.

STAGE 1 - Project Investigation & Requirements Discovery

- Finalise and confirm the Court's telephony, voicemail and fax requirements, build a clear understanding of project objectives and provide a project return brief.
- Undertake review of the Courts telephony environment, voice traffic volumes and patterns the capacity planning, dimensioning and specification of a fit for purpose IP-PABX platform for the Court.
- Liaise with Project Officer.

STAGE 2 – IP-PABX Platform Dimensioning and Final Design

- Provide an integrated fit for purpose IP-PABX platform design for the Court's review and final approval.
- Develop project program, staging plan, and identify work packages for the supply, install and commission the IP-PABX platform as specified in the IP-PABX design.
- Develop final project cost estimates for the supply, install and commission the IP-PABX platform as proposed in the design.
- Develop performance standards to deliver telephony services consistent with the Court's peak voice traffic volumes, availability targets and end user functionality.

STAGE 3 – Supply, Installation and Commissioning

- Supply, install and commission the IP-PABX platform and associated telephony, voicemail and fax services consistent with the Court's final requirements, the approved fit for purpose IP-PABX design and agreed performance standards.
- Prepare and conduct acceptance tests.
- Review acceptance test outcomes and perform final commissioning the IP-PABX over to the existing trunk lines.
- Provide as built documentation

STAGE 4 – Cutover Training and Post Installation Support

- Document installation defects and oversight rectification.
- Formalised IP-PABX system administration training for the Court's ICT staff.
- Provide user manuals, documentation, and training that is sufficient and appropriate for the effective operation of the IP-PABX platform.
- Group training for Court staff in the use of the new telephony services.

2. Required Contract Material

- Fit for purpose IP-PABX design documentation with detailed information on the proposed IP-PABX platform including hardware specifications sufficient to procure IP-PABX systems and services.
- Provide a detailed itemised hardware quote based on the design documentation. All hardware quoted must include 5 years 24 x 7 x 4 hour manufacturers' onsite maintenance and support, with costing for 2 X 1 year renewal options.
- Detailed consultancy services itemised quote with information on qualification and experience relating to resources to be used on the project.
- Project program and staging plan
- Project and work package cost estimates
- Performance standards and acceptance tests
- As built documentation
- Proposed IP-PABX platform management and voice application services administration material.
- Telephony Handset training for end users.

3. Standards and Best Practice

(see clause 2.1.1.c)

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

- 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)

TBA

5. Invoicing and Payment

(see clauses 2.1.1.e & 6.1.1a)

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

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 Service Provider’s nominated bank account.

6. Project Officer

(see clause 2.2)

The Project Officer is the person for the time being holding, occupying or performing the duties of ICT Systems Project Manager, available via the contact details set out in Item 20 [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, & 14.1)

(a) **Lump Sum Fees** (excluding GST)

	Days Effort	Fees (\$)
Stage 1 – Project Investigation and Requirements Discovery		
Stage 2 – IP-PBX Platform Dimensioning and Final Design		
Stage 3 – Supply, Installation and Commissioning		
Stage 4 – Cutover Training and Post Installation Support		
Total (excluding GST)		

Fees should clearly state any travel costs.

(b) **Equipment Costs** (excluding GST)

	Units Required	Unit Cost (\$)
IP-PABX Core Platform, Voice Boards, OEM Hardware and Server Software	TBA	
IP-PABX Management Suite, AD Integration Agent and Redundancy Application Licences	TBA	
High Availability Application Licences	TBA	
Voice Mail with 5 concurrent ports and Lotus Notes integration Licences	100 - 120	
User Licence – IP Ports	120 -150	
User Licence – Digital Ports	10 ~ 20	
User Licence – Analogue and Fax Ports	12 ~ 20	
User Licence – Cordless (DECT) Ports	~ 3	
Basic IP Handsets	120 -150	
Executive IP Handsets with programmable add on display module	10 - 20	
Digital Handsets	10 ~ 20	
Cordless (DECT) Handsets	~ 3	
Group Conference Units	~ 3	
Total (excluding GST)		

Equipment costs should clearly include:

- detailed pricing schedule and technical documentation for each major piece of equipment as attachments;
- unit price of proposed equipment;
- volume discounts and or variation to the unit price based on equipment numbers purchased to be provided where applicable.

(c) **Warranty, Maintenance Fees** (excluding GST)

	Warranty Period	Fees (\$)
IP-PABX Platform Warranty	5 Years	
IP-PABX Platform Warranty Renewal Options	2 X 1 year renewal	
Telephony Handset Warranty	5 Years	
Telephony Handset Warranty Renewal Options	2 X 1 year renewal	
IP-PABX Support Services	5 Years	
IP-PABX Support Services – Renewal Options	2 X 1 year renewal	

The warranty to include 5 years 24 x 7 x 4 hour manufacturers' onsite maintenance and support, with costing for 2 X 1 year renewal options.

(d) **Schedule of Consultancy Rates – Installation and Commissioning**
(excluding GST)

Position	Hourly Rate (\$)

(e) **Time and Material Cost** (excluding GST)

	Hourly Rate (\$)
Business Hours: Monday – Friday (9am – 5pm) excluding public holidays NSW/ACT	
After Hours: Mon – Friday (5pm – 9am) exc public holidays NSW/ACT	
Remote Jobs – Business Hours	
Remote Jobs – After Hours	
On-site Jobs – Callout Fee Business Hours	
On-site Jobs – Callout Fee After Hours	
On-site Jobs – Business Hours Rate	
On-site Jobs – After Hours Rate	
On-site Customer Training Rate	

Rates should clearly state any travel costs.

FEES ARE INCLUSIVE OF:

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

10. Allowances and Costs
(see clauses 6.1.1.b & 14.1.3.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. Warranty and Maintenance
(see clauses 5.1.1)

The service period commences on the Date of Acceptance and continues for a period of 5 years (initial term) with 2 X 1 year renewal options exercisable at the High Court's discretion.

12. Use of Commonwealth Material
(see clause 7.1.3)

Not Applicable

13. Existing Material
(see clause 7.2.2)

Existing system documentation

Building drawings

14. Moral Rights
(see clause 7.3)

Not applicable

15. Permitted Acts

Not applicable

16. High Court policy on Moral Rights

Not applicable

17. Security Requirements
(see clause 8)

no additional requirements

18. Privacy Directions, Guidelines, Determinations or Recommendations
(see clause 9.2.1.b)

Not applicable

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

TBA

20. High Court's Address for Notices
(see clause 15.1.1.a)

Physical address	High Court of Australia building Parkes Place East, .Parkes ACT
Postal address	PO Box 6309 Kingston ACT 2604
Email	TBA

21. Service Provider's Address for Notices
(see clause 15.1.1.b)

Physical address

Postal address

Email

22. Insurance

(see clause 16.3)

- i. workers' compensation as required by law
- ii. public liability insurance to a value of \$10 million and
- iii. professional indemnity insurance to a value of \$2 million.

23. Applicable Legislation

(see clause 16.11.3)

Commonwealth legislation that may apply to Australian Government contractors – November 2015, available at:

http://www.ags.gov.au/publications/fact-sheets/Fact_sheet_No_1.pdf

24. Applicable Law

(see clause 16.12)

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