



Australian Government
Department of Social Services

CONTRACT

Number: 90012749

Between: COMMONWEALTH OF AUSTRALIA

represented by the Department of Social Services

ABN 36 342 015 855

and Publicis Communications Australia Pty Ltd t/a N2N Communication

ABN 86 001 720 921 ACN 001 720 921

for:

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This Contract is dated August 2020

Parties

This Contract is made between and binds the following parties:

COMMONWEALTH OF AUSTRALIA (**the Commonwealth**) represented by and acting through the Department of Social Services, ABN 36 342 015 855 (**the Department**)

AND

Publicis Communications Pty Ltd t/a N2N Communication, ABN 86 001 720 921, ACN 001 720 921, a company incorporated pursuant to the *Corporations Act 2001* and having its registered address at 21 Harris Street, Pyrmont, NSW 2009 (**the Supplier**)

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INTERPRETATION

1 INTERPRETATION

1.1 Definitions

In this Contract, unless the context otherwise indicates:

Applicable WHS law means any applicable work health and safety law, including any corresponding WHS law (as defined in section 4 of the WHS Act and Regulation 6A of the *Work Health and Safety Regulations 2011*)

Business Continuity Plan means a plan referred to in clause 2.8

Business Day means a weekday other than a public holiday in the Australian Capital Territory

Commencement Date means the date on which this Contract is signed by the last party to do so, unless otherwise specified in Item C [Commencement and Timeframe]

Commonwealth Material means any Material:

- a. provided by the Department to the Supplier for the purposes of this Contract or
- b. copied or derived at any time from the Material referred to in paragraph a

Completion Date means the date by which all Services are completed unless otherwise specified in Item C [Commencement and Timeframe]

Conflict means a conflict of interest, risk of a conflict of interest, or an apparent conflict of interest arising through the Supplier (including its Personnel) or the Supplier's immediate family, relatives, business partners, associates or friends, engaging in any activity or obtaining any interest that is likely to or may appear to impair, interfere with or restrict the Supplier in providing the Services to the Department diligently, fairly and independently

Contact Officer means a person specified (by name or position) in Item P [Contact Officers], or any substitute notified by a party from time to time

Contract means this agreement including the Schedule and any attachment(s)

Contract Material means any Material:

- a. created for the purposes of this Contract
- b. provided or required to be provided to the Department as part of the Services or
- c. copied or derived at any time from the Material referred to in paragraphs a or b

Critical Services means Services identified in Item A [Services and Subcontractors] as being critical services

Department includes any department or agency of the Commonwealth which is from time to time responsible for administering this Contract

Department Confidential Information means information that:

- a. is described in Item K [Confidential Information] as being Department Confidential Information
- b. the Department identifies, by notice in writing after the Commencement Date, as confidential information for the purposes of this Contract

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- c. is protected information as defined in section 23(1) of the *Social Security Act 1991* (Cth), under Division 2 of Part 6 of *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth), under the *Social Security (Administration) Act 1999* (Cth), under sections 16 and 16AA of the *Child Support (Registration and Collection) Act 1988* (Cth), under sections 150 and 150AA of the *Child Support (Assessment) Act 1989* (Cth), section 6 of the *Paid Parental Leave Act 2010* (Cth), or other Commonwealth legislation or
- d. the Supplier knows, or ought to know, is confidential

Existing Material means any Material in existence prior to the Commencement Date, which is:

- a. incorporated in
- b. supplied with, or as part of or
- c. required to be supplied with, or as part of,

the Contract Material, and includes Material identified as Existing Material in Item G [Existing Material]

GST has the same meaning as it has in section 195-1 of the *GST Act* (Cth)

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

Instalment means an instalment of fees payable under clause 3 in relation to part of the Services

Intellectual Property Rights means all in intellectual property rights which may subsist in Australia or elsewhere, whether or not they are current or future or registered or capable of being registered, including without limitation in relation to, copyright, designs, trade marks (including unregistered marks), business and company names, domain names, database, circuit layouts, patents, inventions, discoveries, know-how, trade secrets and confidential information, but excluding Moral Rights

Interest means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the *Taxation Administration Act 1953* (Cth), calculated on a simple basis

Material includes documents, equipment, software (including source code and object code), goods, information and data stored by any means, including all copies and extracts of the same

Moral Rights mean the following rights of an author 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,

as defined in the *Copyright Act 1968* (Cth)

Non-critical Services means Services identified in Item A [Services and Subcontractors] as being non-critical services

Personal Information has the same meaning as it has in section 6 of the *Privacy Act 1988* (Cth)

Personnel means a party's officers, employees, agents or professional advisers engaged in, or in relation to, the performance or management of this Contract

Security Classified Information means information which contains Personal Information or is classified by the Department as 'Top Secret', 'Secret', 'Confidential', 'Protected', 'In-Confidence' or marked with a Dissemination Limiting Marker

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Services means the services described in Item A [Services and Subcontractors] and includes the provision to the Department of the Material specified in Item B [Contract Material]

Specified Personnel means the Personnel (including Subcontractors) if any, specified in Item N [Specified Personnel] as required to perform all or part of the work constituting the Services

Subcontractor means a subcontractor engaged by the Supplier in accordance with clause 2.6

Supplier includes (where the context permits) the Personnel, volunteers and bailees of the Supplier

Supplier Confidential Information means information that:

- a. is described in Item K [Confidential Information] as Supplier Confidential Information or
- b. the Department agrees in writing after the Commencement Date is Supplier Confidential Information for the purposes of this Contract

Term means the term of this Contract, which is from the Commencement Date until the Completion Date and

WHS Act means the *Work Health and Safety Act 2011* (Cth).

1.2 Interpretation

1.2.1 In this Contract, unless the contrary intention appears:

- a. words importing a gender include the other gender
- b. words in the singular include the plural and vice versa
- c. clause headings or words in bold format are for convenient reference only and have no effect in limiting or extending the language of provisions
- 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. unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, and 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 the Schedule
- i. the Schedule and any attachments form part of this Contract and
- j. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

INTERPRETATION

1.2.2 In the event of any conflict or inconsistency between any part of:

- a. the terms and conditions contained in the clauses of this Contract
- b. the Schedule
- c. the annexures, if any or
- d. documents incorporated by reference, if any,

then the material mentioned in any one of paragraphs a to d has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

1.3 Guidance on construction of this Contract

1.3.1 This Contract records the entire agreement between the parties in relation to its subject matter, and supersedes any prior negotiations and communications whether written or oral.

1.3.2 A variation of this Contract is binding only if agreed in writing and signed by authorised representatives of both parties.

1.3.3 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.

1.3.4 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 the right, unless such failure or delay is expressed in writing by the party to be a waiver of the right or remedy.

1.3.5 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 that it has not fully exercised the right.

1.3.6 This Contract is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory, and the parties submit to the jurisdiction of the courts of the Australian Capital Territory.

1.3.7 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 Negation of employment, partnership and agency

1.4.1 The Supplier is not, by virtue of this Contract or for any purpose, an officer, employee, partner or agent of the Commonwealth, nor does the Supplier have any power or authority to bind or represent the Commonwealth.

1.4.2 The Supplier agrees not to:

- a. misrepresent its relationship with the Commonwealth or
- b. engage in any misleading or deceptive conduct in relation to the Services.

PROVISION OF SERVICES

2 PROVISION OF SERVICES

2.1 Commencement

2.1.1 Unless otherwise provided for in this Contract, the terms of this Contract apply on and from the Commencement Date and, unless terminated earlier, expire on the Completion Date.

2.2 Obligations of the Supplier

2.2.1 The Supplier must:

- a. perform the Services as specified in Item A [Services and Subcontractors]
- b. provide to the Department the Material specified in Item B [Contract Material]
- c. perform the Services to a high standard and adopt relevant best practice, including any Department, Commonwealth or industry standards and guidelines specified in Item M [Standards and Best Practice]
- d. comply with the timeframe for the performance of the Services specified in Item C [Commencement and Timeframe] and
- e. submit invoices, and any required supporting documents, in the manner specified in Item F [Invoices].

2.3 Liaison with the Department's Contact Officer

2.3.1 The Supplier must liaise and comply with the directions of the Department's Contact Officer, as reasonably requested from time to time.

2.4 Conduct at Department premises

2.4.1 The Supplier must, when using the Department's premises or facilities, comply with all reasonable directions and Departmental procedures relating to workplace harassment, occupational health (including the Department's smoke free work place policy), section 13 of the *Public Service Act 1999* (Cth), the *Work Health and Safety Act 2011* (Cth), the Department's Codes of Conduct, safety and security, including the Department's internet access and usage guidelines in effect at those premises or in regard to those facilities, as notified by the Department or as might reasonably be inferred from the use to which the premises are being put. These obligations are in addition to those detailed at clause 7.

2.5 Specified Personnel

2.5.1 The Supplier must ensure that the Specified Personnel perform the Services, or part thereof, in accordance with this Contract.

2.5.2 If Specified Personnel are unable or unwilling to perform the Services, or part thereof provided under clause 2.5.1, the Supplier must notify the Department immediately.

2.5.3 The Department may, at its absolute discretion, request the Supplier to remove Personnel (including Specified Personnel) from undertaking the Services or any part of the Services.

2.5.4 If clause 2.5.2 or clause 2.5.3 applies, the Supplier must provide replacement Personnel acceptable to the Department at no additional cost and within five (5) Business Days unless a longer period has been agreed with the Department in writing.

2.5.5 If the Supplier is unable or unwilling to provide acceptable replacement Personnel within the timeframe specified at clause 2.5.4, then in addition to any other right the Department has under clause 16.2, the Department may terminate this Contract immediately.

PROVISION OF SERVICES

2.6 Subcontracting

- 2.6.1 The Supplier may only subcontract the performance of any obligations under this Contract to a Subcontractor listed in:
- a. Item A [Services and Subcontractors or
 - b. for whom the Department has given its prior written approval
- provided the Subcontractor is compliant with their obligations (if applicable) under the *Workplace Gender Equality Act 2012* (Cth).
- 2.6.2 In giving its approval for the engagement of a Subcontractor pursuant to clause 2.6, the Department may impose any terms and conditions it thinks fit.
- 2.6.3 The Supplier agrees not to enter into any subcontract with another party unless the Supplier is satisfied that:
- a. the arrangement in no way conflicts with or detracts from the rights and entitlements of the Department under this Contract
 - b. such party is financially viable and has the relevant expertise necessary for the proper performance of the activity in question and
 - c. such party has all the appropriate types and amounts of insurance in order to perform its work in relation to this Contract.
- 2.6.4 The Supplier must ensure that any subcontract for the performance of any part of the Services is in writing and imposes on the Subcontractor the same obligations that the Supplier has under this Contract, including provisions equivalent to clauses 2.4, 2.5, 2.6, 2.9, 2.10, 4, 5, 6, 7, 8, 9.1.6, 11, 16 and 17. The Supplier is responsible for ensuring that the Subcontractor complies with those terms.
- 2.6.5 The Supplier must, within five (5) Business Days of entering into a subcontract approved by the Department in accordance with clause 2.6, provide the Department with written notice of the legal name of the Subcontractor and identifying details of the Subcontract.
- 2.6.6 The Supplier must obtain the express consent of the Subcontractor to the disclosure of the Subcontractor's identity (including their Personal Information if the Subcontractor is an individual) to the Department. The consent obtained must extend to allow the Department to use and disclose the Subcontractor's identity, the existence and nature of the Subcontract for reporting purposes.
- 2.6.7 The Department may revoke its approval of a Subcontractor by giving written notice to the Supplier. On receipt of the notice the Supplier must, at its own cost, promptly cease using that Subcontractor and arrange their replacement with Personnel or another subcontractor acceptable to the Department.
- 2.6.8 If the Department revokes its approval of a Subcontractor pursuant to clause 2.6.7, the Supplier remains liable under this Contract for the past acts or omissions of that Subcontractor as if they were a current Subcontractor.
- 2.6.9 The Supplier agrees to promptly provide a copy of any subcontract to the Department if so requested.

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2.7 Responsibility of the Supplier

- 2.7.1 The Supplier 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 Department in the performance of the Services, unless such involvement materially impacts on the Supplier's ability to perform the Services in accordance with this Contract
 - b. payment made to the Supplier on account of the Services
 - c. subcontracting of the Services or
 - d. acceptance by the Department of replacement Personnel.

2.8 Business Continuity

- 2.8.1 If specified in Item A [Services and Subcontractors] the Supplier must ensure that a Business Continuity Plan in accordance with this clause 2.8 is maintained for the Term.
- 2.8.2 If the Services are specified as being Critical Services in Item A [Services and Subcontractors], the Supplier must ensure that that the Business Continuity Plan is in accordance with the requirements below for Critical Services.
- 2.8.3 In the event that:
- a. the Services are specified as being Non-critical Services in Item A [Services and Subcontractors] or
 - b. there is nothing specified in Item A [Services and Subcontractors] regarding a Business Continuity Plan,
- the Supplier must ensure that the Business Continuity Plan is in accordance with the requirements below for Non-critical Services.
- 2.8.4 The Supplier must review and update the Business Continuity Plan at least quarterly during the Term.
- 2.8.5 The Business Continuity Plan must be developed in accordance with and be consistent with the Standards Australia Handbook HB292-2006 "*A Practitioner's Guide to Business Continuity Management*".
- 2.8.6 The Supplier must comply with, and must ensure that all Subcontractors comply with, the Supplier's risk management strategies and Business Continuity and risk management plans in the performance of the Services.
- 2.8.7 The Business Continuity Plan must contain:
- a. if the Services, or part thereof, are Non-critical Services –
 - i. strategies to provide for the ongoing provision of the Services to the Department
 - ii. processes, resources and interdependencies required or desirable to ensure the ongoing provision of Services to the Department
 - iii. maximum acceptable outages for any business process, beyond which the Services would not be delivered to the Department in accordance with the requirements of this Contract
 - iv. names and contact details, including out of hours contact details, for all Personnel whose expertise is required to enable provision of the Services
 - v. the details and locations of both physical and electronic records necessary to enable ongoing provision of the Services to the Department

PROVISION OF SERVICES

- vi. strategies to enable the continued performance of the Services in the event of an incident disrupting the Supplier's business, including recovery teams, action plans and event escalation processes and
 - vii. any other requirements listed in Item A [Services and Subcontractors].
- b. if the Services, or part thereof, are Critical Services –
- i. strategies to provide for the ongoing provision of the Services to the Department
 - ii. a description of the key business processes required to enable delivery of the Services, including:
 - A. each key business objective
 - B. each key business output
 - C. alignment of the key business processes with the key business activities and
 - D. a demonstrated understanding of the key activities, resources and inter-dependencies
 - iii. a business impact analysis which includes:
 - A. names and contact details, including out of hours contact details, for all Personnel whose expertise is required to enable provision of the Services
 - B. concerns, priorities and expectations for all key business processes required to enable delivery of the Services
 - C. maximum acceptable outages for any business process, beyond which the Services would not be delivered to the Department in accordance with the requirements of this Contract
 - iv. establishment of continuity treatments and response and recovery strategies, which must include:
 - A. the establishment of recovery teams
 - B. action steps to be taken in respect of each business process to enable the continued performance of the Services in the event of an incident disrupting the Supplier's business
 - C. event escalation processes
 - D. document recovery management processes
 - v. testing, review and maintenance of the Business Continuity Plan, including:
 - A. review and update the names and contact details, including out of hours contact details, for all Personnel whose expertise is required to enable provision of the Services
 - B. ensuring critical records are backed-up and securely stored off-site (and in accordance with the requirements of clause 7)
 - C. ensuring supply, service and equipment availability is sufficient to allow for the ongoing provision of the Services and

PROVISION OF SERVICES

- D. unannounced assembly of recovery teams to practice response procedures, which must occur at least annually during the Term and the results of which must be reported in writing to the Department within 20 Business Days of the testing occurring, such report to include the results of the testing and any impact on the Business Continuity Plan as a result of the testing and

vi. any other requirements listed in Item A [Services and Subcontractors].

- 2.8.8 Without limiting or qualifying the Commonwealth's other rights under this Contract, the Commonwealth may at its discretion audit or arrange for accredited third parties to audit, the Supplier's compliance with the requirements of this clause.
- 2.8.9 Without prejudice to any other right or remedy which the Department may have, if the Supplier fails to meet any of the minimum contractual and regulatory delivery requirements required for the Business Continuity Plan or this Contract (that relate to the Business Continuity Plan), the Department may do any or all of the following:
 - a. seek damages as a result of that failure
 - b. in addition to any other right the Department has under clause 16 of the Contract, terminate this Contract immediately and / or
 - c. obtain the Services elsewhere or make any other arrangements considered necessary to maintain the continuity of Services at the cost of the Supplier.

2.9 Work Health and Safety

- 2.9.1 The Supplier must ensure that the Services and the work conducted by the Supplier and any of the Supplier's Personnel complies with all Applicable WHS laws, standards and policies, and requirements of this Contract, that relate to the health and safety of the Supplier, the Supplier's Personnel, the Department's personnel and third parties.
- 2.9.2 The Supplier must comply with the Supplier's obligations under any Applicable WHS law, and must ensure, so far as is reasonably practicable, that the Supplier's officers (as defined by Applicable WHS law) and workers comply with their obligations under the Applicable WHS law. The other provisions of clause 2.9 do not limit this sub-clause.
- 2.9.3 The Supplier must ensure, so far as is reasonably practicable, the health and safety of:
 - a. workers engaged, or caused to be engaged by the Supplier and
 - b. workers whose activities in carrying out work are influenced or directed by the Supplier,
 while the workers are at work in relation to this Contract.
- 2.9.4 The Supplier must ensure, so far as is reasonably practicable, that the health and safety of other persons (including the Department's employees, contractors, subcontractors and agents) is not put at risk from work carried out under this Contract.
- 2.9.5 The Supplier must consult, cooperate and coordinate with the Department in relation to the Supplier's work health and safety duties. Prior to commencement of the Contract, the Department and the Supplier will identify and potential Work Health and Safety issues anticipated to arise during the term of this Contract and assign management of each issue identified to the party best able to manage it. The Supplier will provide the Department with a plan for approval. Throughout the Contract term, the Department and the Supplier will proactively identify and cooperate to manage any Work Health and Safety issues that arise.
- 2.9.6 Without limiting the other clauses of this Contract, the Supplier must, on request, give all reasonable assistance to the other, by way of provision of information and documents, to assist the Department and the Department's officers (as defined in the WHS Act) to comply with the duties imposed under the WHS Act.

PROVISION OF SERVICES

- 2.9.7 The Department may direct the Supplier to take specified measures in connection with the Supplier's work under this Contract or otherwise in connection with the Services that the Department considers reasonably necessary to deal with an event or circumstance that has, or is likely to have, an adverse effect on the health or safety of persons. The Supplier must comply with the direction. The Supplier is not entitled to an adjustment to the fees, or to charge additional allowances or expenses, merely because of compliance with the direction.
- 2.9.8 If an event occurs in relation to the Supplier's work under this Contract that leads, or could lead, to the death, or an injury or illness to, a person (Notifiable Incident), the Supplier must:
- a. immediately report the matter to the Department, including all relevant details that are known to the Supplier
 - b. as soon as possible after the Notifiable Incident, investigate the Notifiable Incident to determine, as far as it can reasonably be done:
 - i. its cause and
 - ii. what adverse effects (if any) it will have on the Supplier's work under this Contract, including adverse effects on risks to health and safety
 - c. as soon as possible after the Notifiable Incident, take all reasonable steps to remedy any effects of the Notifiable Incident on health and safety
 - d. as soon as possible after the Notifiable Incident, take all reasonable steps (including by instituting procedures and systems) to ensure that an event or circumstance of the kind that led to the Notifiable Incident does not recur
 - e. within 3 business days after the Notifiable Incident, give the Department a written report giving further details of the Notifiable Incident, including the results of the investigations required by clause 2.9.8b and a statement of the steps the Supplier have taken or that the Supplier propose to take as required by clauses 2.9.8.c and 2.9.8d and
 - f. within 3 months after the Notifiable Incident, give the Department a written report giving full details of its actions in relation to the Notifiable Incident.
- 2.9.9 The Supplier's obligations under clause 2.9.8 are in addition to any reporting obligation that the Supplier has under a written law.
- 2.9.10 The Supplier must fully co-operate, at the Supplier's own cost, with any investigation by any government agency (including the Commonwealth) with respect to a Notifiable Incident, including parliamentary inquiries, boards of inquiry and coroner's investigations.
- 2.9.11 The Supplier must not enter into any subcontract for the purpose of directly or indirectly fulfilling the Supplier's obligations under this Contract unless such a subcontract obliges the subcontractor to comply with equivalent provisions to those contained in this clause 2.9.
- 2.9.12 A word or expression in this clause 2 that is:
- a. used or defined in an Applicable WHS law and
 - b. is not otherwise defined in this clause 2.9 or elsewhere in this Contract,
- has, for the purposes of this clause 2.9, the meaning given to it under the Applicable WHS law.

FEES, EXPENSES AND ASSISTANCE

2.10 Workplace Gender Equality

- 2.10.1 This clause 2.10 applies only to the extent that the Supplier is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).
- 2.10.2 The Supplier must comply with its obligations, if any, under the WGE Act.
- 2.10.3 If the Supplier becomes non-compliant with the WGE Act during the Term of the Contract, the Supplier must notify the Department Contact Officer.
- 2.10.4 If the Term of the Contract exceeds 18 months, the Supplier must provide a current letter of compliance within 18 months from the Contract Commencement Date and following this, annually, to the Department Contact Officer.
- 2.10.5 Compliance with the WGE Act does not relieve the Supplier from its responsibility to comply with its other obligations under the Contract.

2.11 Public Interest Disclosure

- 2.11.1 Public officials (including service providers under a Commonwealth contract) who suspect wrongdoing within the Commonwealth public sector can raise their concerns under the *Public Interest Disclosure Act 2013* (PID Act). Prior to making a disclosure, refer to the information available at: <http://www.ombudsman.gov.au/about/making-a-disclosure/information-for-disclosers>.
- 2.11.2 All Public Interest Disclosure matters (relating to this Contract and procurement) should be referred to an authorised officer for public interest disclosures as published on the Department's website: <https://www.dss.gov.au/about-the-department/policies-legislation/public-interest-disclosure-procedure>.

2.12 Complaints Handling

- 2.12.1 Any complaints relating to this procurement should be referred to the Complaints Handling Officer, email: complaints@dss.gov.au.

3 FEES, EXPENSES AND ASSISTANCE

3.1 Fees, expenses and assistance

- 3.1.1 The Department will:
- a. pay the Supplier the fees in the Instalments (if any) specified in Item D [Fees]
 - b. pay the expenses and meet the costs specified in Item E [Expenses and Costs]
 - c. make all the payments in the manner specified in Item F [Invoices] and
 - d. provide the facilities and assistance specified in Item J [Facilities and Assistance].
- 3.1.2 The Supplier must submit invoices for payment in the manner specified in Item F [Invoices].
- 3.1.3 Subject to clauses 3.1.4 and 3.2 if:
- a. the amount of fees payable is less than \$1 million (GST inclusive) and
 - b. the Department pays an Instalment more than thirty (30) days from the receipt by the Department of a correctly rendered tax invoice in the manner specified in Item F [Invoices]

the Department will pay Interest to the Supplier for each day from the day after payment was due up to and including the day that payment of the Instalment was made by the Department.

FEES, EXPENSES AND ASSISTANCE

- 3.1.4 The Department will not be required to make a payment of Interest pursuant to clause 3.1.3 if the amount of Interest calculated in accordance with clause 3.1.3 is less than ten dollars (\$10).

3.2 Department's right to defer payment

- 3.2.1 The Department will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any payment (including an Instalment) if and for so long as the Supplier has not completed, to the satisfaction of the Department, that part of the Services to which the payment relates.
- 3.2.2 If the Department exercises its rights under clause 3.2.1, the Supplier must continue to perform any obligations under this Contract unless the Department directs otherwise in writing.

3.3 Overpayments

- 3.3.1 If an overpayment occurs at any time and for any reason (including where an invoice is found to have been incorrectly rendered after payment) the Department may issue the Supplier with a written notice requiring repayment of the full amount of the overpayment.
- 3.3.2 The Supplier must pay to the Department the full amount of the overpayment specified in the notice referred to in clause 3.3.1 in the manner specified in the notice, and within thirty (30) days of the date of the notice.
- 3.3.3 The Department may, at its sole and absolute discretion, recover the overpayment from the Supplier by offsetting that overpayment against any amount subsequently due to the Supplier under this Contract.
- 3.3.4 If the Supplier fails to repay the full amount of an overpayment in accordance with a notice given pursuant to clause 3.3.1, the Department may (at its sole discretion) require that Interest be paid on the amount after the expiry of the thirty (30) days' notice referred to in clause 3.3.2, until the amount is paid to the Department in full.
- 3.3.5 The Supplier must provide the Department with an adjustment note if required by the GST Act, including where the Supplier repays to the Department some or all of the fees or expenses.

3.4 Taxes, duties and government charges

- 3.4.1 Except as provided by this clause 3.4, the Supplier must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.
- 3.4.2 The following terms have the meanings respectively given to them in the GST Act:
- Consideration
 - input tax credit
 - supply
 - tax invoice and
 - taxable supply.

INTELLECTUAL PROPERTY RIGHTS

- 3.4.3 Unless otherwise indicated, the fees and all other consideration for any supply made under this Contract include any GST imposed on the supply.
- 3.4.4 If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Contract, on receipt of a tax invoice from the supplier the recipient must pay without setoff, subject to the terms of this Contract, the full amount inclusive of GST.
- 3.4.5 No party may claim from the other party under this Contract any amount for which the first party may claim an input tax credit.
- 3.4.6 If one party is required to reimburse or pay to the other party an amount calculated by reference to a cost, expense or an amount paid or incurred by that party (the reimbursement amount):
- a. the reimbursement amount will be reduced by an amount equal to the value of any input tax credits to which the party being reimbursed is entitled in respect of that cost, expense or amount and
 - b. after making the adjustment under clause 3.4.6a, where the supply under this Contract is a taxable supply, the reimbursement amount will be increased by the rate of the GST.

3.5 Survival

- 3.5.1 This clause 3 survives the expiration or earlier termination of this Contract.

4 INTELLECTUAL PROPERTY RIGHTS

4.1 Rights in Commonwealth Material and Existing Material not affected

- 4.1.1 This clause 4 does not affect the ownership of the Intellectual Property Rights in any Commonwealth Material or Existing Material.

4.2 Intellectual Property Rights in Contract Material

- 4.2.1 All Intellectual Property Rights in the Contract Material vests in the Department on creation.
- 4.2.2 The Supplier must deliver all Contract Material to the Department by the Completion Date, unless otherwise specified in Item B [Contract Material] or otherwise directed by the Department's Contact Officer.
- 4.2.3 To the extent that the Supplier needs to use any of the Contract Material for the purpose of performing its obligations under the Contract, the Department grants to the Supplier a non-exclusive, non-transferable, irrevocable, royalty-free licence for this Contract Term to exercise the Intellectual Property Rights in the Material for the sole purpose of fulfilling its obligations under this Contract. The licence in this clause is subject to any conditions or limitations of third parties that the Department notifies to the Supplier.
- 4.2.4 The Supplier grants to the Department, or must, prior to delivering any Services, procure for the Department at no additional cost, a perpetual, irrevocable, non-exclusive, world-wide, transferable licence (including the right to sublicense) in respect of the Intellectual Property Rights in Existing Material in conjunction with the Contract Material, including the right to commercialise.

4.3 Commonwealth Material

- 4.3.1 To the extent that the Supplier needs to use any of the Commonwealth Material for the purpose of performing its obligations under a Contract, the Department grants to the Supplier, subject to any direction by the Department, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, modify, adapt, publish, broadcast and communicate the Commonwealth Material for the duration of the Contract and solely for the purposes of the Contract.

INTELLECTUAL PROPERTY RIGHTS

4.3.2 The Supplier must ensure that the Commonwealth Material is used and held strictly in accordance with any conditions or restrictions set out in Item I [Use of Commonwealth Material], and any direction from the Department.

4.3.3 The Supplier must, on or before the Completion Date, destroy or return to the Department all Commonwealth Material in its possession, or in the possession of its Personnel, unless otherwise specified in Item I [Use of Commonwealth Material] or otherwise directed by the Department's Contact Officer.

4.4 Existing Material

4.4.1 The Supplier must, at the time of or prior to delivering any Services, notify the Department in writing of the details of all Existing Material comprised in those Services, including the owner of the Existing Material.

4.4.2 The Supplier must obtain all necessary copyright and other Intellectual Property Rights permissions before making any third party material available as Existing Material for the purposes of this Contract.

4.5 Ownership of copies

4.5.1 In this clause 4 'Copies' means copies of any documents, devices, articles or media including digital copies.

4.5.2 Unless agreed otherwise in Item I [Use of Commonwealth Material], Copies of Commonwealth Material made by or on behalf of the Supplier will be owned by the Department upon creation and the Intellectual Property Rights in the Copies will vest in the Department upon creation.

4.5.3 The Supplier must establish and maintain procedures to secure all Copies against loss and unauthorised access, use, modification or disclosure, and must adhere to the Commonwealth's reasonable requirements in relation to the security of Copies, including those specified in Item L.

4.6 Intellectual Property Warranty

4.6.1 The Supplier warrants that:

- a. the Services and the use of the Services by any person will not infringe the Intellectual Property Rights of any person and
- b. it has the necessary rights to grant the licences set out in this clause 4.

4.7 Moral Rights

4.7.1 In this clause 4.7, 'Permitted Acts' means any of the following classes or types of acts or omissions:

- a. using, reproducing, communicating, adapting, modifying, publishing or exploiting all or any part of the Contract Material or Existing Material, with or without attribution of authorship
- b. supplementing the Contract Material or Existing Material with any other Material
- c. materially altering the style, format, colours, content or layout of the Contract Material or Existing Material and dealing in any way with the altered Contract Material or Existing Material
- d. using the Contract Material or Existing Material in a different context to that originally envisaged and
- e. the acts or omissions specifically set out in Item H [Moral Rights] of the Statement of Work,

but does not include false attribution of authorship.

CONFIDENTIAL INFORMATION

4.7.2 Where the Supplier is a natural person and the author of the Contract Material or Existing Material, he or she consents to the performance of the Permitted Acts by the Department or any person claiming under or through the Department.

4.7.3 If clause 4.7.2 does not apply, the Supplier must:

- a. obtain from each author of Contract Material and Existing Material a written consent which extends directly or indirectly to the performance of the Permitted Acts by the Department or any person claiming under or through the Department (whether occurring before or after the consent is given) and
- b. on request, provide the executed original of any such consent to the Department.

4.8 Survival

4.8.1 This clause 4 survives the expiry or earlier termination of the Contract.

5 CONFIDENTIAL INFORMATION**5.1 Interpretation**

5.1.1 In this clause 5, 'Third Party Interest' means any legal or equitable right, interest, power or remedy in favour of any person other than the Commonwealth or the Supplier in connection with the Contract, including, without limitation, any right of possession, receivership, control or power of sale, and any mortgage, charge, security or other interest.

5.2 Department Confidential Information

5.2.1 Subject to clause 5.2.5, the Supplier must not, without the prior written consent of the Department, disclose any Department Confidential Information to a third party.

5.2.2 The Supplier must not transfer any of the Department Confidential Information outside Australia or allow persons outside Australia to have access to that Material without the prior written consent of the Department.

5.2.3 The Department may impose any conditions it considers appropriate when giving consent under this clause 5.2 and the Supplier must comply with these conditions.

5.2.4 The Supplier must, on request by the Department at any time, arrange for:

- a. its Personnel
- b. Subcontractors or
- c. any person with a Third Party Interest,

to promptly give a written undertaking in a form acceptable to the Department relating to the use and non-disclosure of the Department Confidential Information.

5.2.5 The Supplier will not be taken to have breached its obligations under this clause 5.2 to the extent that the Department Confidential Information is:

- a. subject to clause 5.2.2, disclosed by the Supplier to its Personnel or Subcontractors solely in order to comply with obligations, or to exercise rights, under this Contract
- b. subject to clause 5.2.2, disclosed by the Supplier to its internal management Personnel, solely to enable effective management or auditing of Contract-related activities
- c. authorised or required by law to be disclosed
- d. in the possession of the Supplier without restriction in relation to the disclosure before the date of receipt by the Department or
- e. in the public domain otherwise than due to a breach of this clause 5.

CONFIDENTIAL INFORMATION

- 5.2.6 Where the Supplier intends to disclose Department Confidential Information to another person pursuant to clauses 5.2.5a – 5.2.5c, it must (where reasonably practicable) notify the Department's Contact Officer of its intention to disclose the Department Confidential Information prior to its disclosure, or as soon as possible thereafter if notification could not occur prior to disclosure for reasons beyond the Supplier's control.
- 5.2.7 Where the Supplier discloses Department Confidential Information to another person pursuant to clauses 5.2.5a – 5.2.5c, the Supplier must notify the receiving person that the information is confidential.
- 5.2.8 The Supplier must not disclose Department Confidential Information in the circumstances referred to in clauses 5.2.5a and 5.2.5c unless the receiving person agrees to keep the information confidential.

5.3 Supplier Confidential Information

- 5.3.1 Subject to clause 5.3.2, the Department must not, without the prior written consent of the Supplier, disclose any Supplier Confidential Information to a third party.
- 5.3.2 The Department will not be taken to have breached its obligations under this clause 5.3 to the extent that the Supplier Confidential Information is:
- a. disclosed by the Department to its Personnel solely in order to comply with obligations, or to exercise rights, under this Contract
 - b. disclosed by the Department to its internal management Personnel, solely to enable effective management or auditing of Contract-related activities
 - c. disclosed by the Department to the responsible Minister
 - d. disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia
 - e. shared by the Department within the Department's organisation
 - f. shared by the Department with another government agency, where this serves the Commonwealth's legitimate interests
 - g. authorised or required by law to be disclosed
 - h. in the possession of the Department without restriction in relation to the disclosure before the date of receipt by the Supplier or
 - i. in the public domain otherwise than due to a breach of this clause 5.

5.4 Additional Confidential Information

- 5.4.1 The parties may agree in writing after the date of this Contract that certain additional information is to be Supplier Confidential Information for the purposes of this Contract.

5.5 Protected Information

- 5.5.1 Protected Information is protected by law. The Supplier must not disclose Protected Information to any person except in accordance with the relevant legislation and a Public Interest Certificate, if any.
- 5.5.2 The Supplier must not transfer any Protected Information outside Australia or allow persons outside Australia to have access to Protected Information.

PROTECTION OF PERSONAL INFORMATION

- 5.5.3 The Supplier must, on request by the Department at any time, arrange for:
- a. its Personnel;
 - b. Subcontractors; or
 - c. any person with a Third Party Interest,
- to promptly give a written undertaking in a form acceptable to the Department relating to the use and non-disclosure of Protected Information.
- 5.5.4 The Supplier will not be taken to have breached its obligations under this clause 5.5 to the extent that the Protected Information is authorised or required by law to be disclosed. The Supplier must notify the receiving person that the information is Protected Information.
- 5.5.5 Where the Supplier intends to disclose Protected Information to another person under clause 5.5.4, it must (where reasonably practicable) notify the Department's Contact Officer of its intention to disclose the Protected Information prior to its disclosure, or as soon as possible thereafter if notification could not occur prior to disclosure for reasons beyond the Supplier's control.

5.6 Period of confidentiality

- 5.6.1 The obligations under this clause 5 continue, notwithstanding the expiry or termination of this Contract:
- a. in relation to an item of information described in Item K [Confidential Information] – for the period set out in Item K [Confidential Information] in respect of that item
 - b. in relation to any item of information referred to in clause 5.4 – for the period agreed by the parties in writing in respect of that item and
 - c. in relation to Protected information for as long as required or provided for by the legislation.

5.7 No reduction in privacy obligations

- 5.7.1 This clause 5 does not detract from any of the Supplier's obligations under the *Privacy Act 1988* (Cth), or under clause 6, in relation to the protection of Personal Information.

6 PROTECTION OF PERSONAL INFORMATION

6.1 Application of this clause

- 6.1.1 This clause 6 applies only to the extent that the Supplier deals with Personal Information in providing the Services under this Contract.

6.2 Interpretation

- 6.2.1 In this clause 6, the following terms have the same meaning as they have in the *Privacy Act 1988* (Cth) (the Privacy Act).

agency

Australian Privacy Principles (APPs)

contracted service provider

Eligible Data Breach and

registered APP code (APPC).

PROTECTION OF PERSONAL INFORMATION

6.3 Obligations of Supplier in relation to Personal Information

6.3.1 The Supplier acknowledges that it is a contracted service provider and agrees, in providing Services under this Contract:

- a. to use or disclose Personal Information obtained in the course of providing Services under this Contract only for the purposes of this Contract
- b. to carry out and discharge the obligations contained in the APPs as if it were an agency
- c. not to do any act or engage in any practice which, if done or engaged in by an agency, would be a breach of an APP
- d. not to engage in an act or practice that would breach an APP or an APPC (where applied to the Supplier), unless that act or practice is explicitly required under this Contract
- e. to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Contract that are inconsistent with an APP or an APPC binding on a party to this Contract)
- f. to notify the Department immediately if the Supplier becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 6, whether by the Supplier or its Personnel
- g. to comply with any directions, guidelines, determinations or recommendations notified to the Supplier by the Department and
- h. to ensure that all Personnel required to deal with Personal Information for the purposes of this Contract are made aware of the obligations of the Supplier set out in this clause 6.

6.3.2 In accordance with clause 2.6.4, the Supplier must ensure that any subcontract entered into by the Supplier for the purpose of fulfilling its obligations under this Contract imposes on the Subcontractor the same obligations that the Supplier has under this clause (including this requirement in relation to subcontracts).

6.4 Notifiable Data Breaches

6.4.1 If the Supplier becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation any Personal Information held by the Supplier as a result of this Contract or its provision of the Services, the Supplier agrees to:

- a. notify the Department in writing. Such notice must:
 - i. be delivered as soon as possible, which must be no later than within three (3) days of becoming aware;
 - ii. include a description of the breach, including the date when the breach occurred;
 - iii. provide contact details for the officer responsible for managing the breach;
 - iv. provide any other relevant information about what steps the Supplier has taken or intends to take to rectify or minimise the impact of the breach; and
- b. unless otherwise directed by the Department, carry out an assessment in accordance with the requirements of the Privacy Act.

SECURITY

- 6.4.2 Where the Supplier is aware that there are reasonable grounds to believe there has been, or where the Department notifies the Supplier that there has been, an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of this Contract or its provision of Services, the Supplier must:
- a. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom the Personal Information relates;
 - b. unless otherwise directed by the Department, take all other action necessary to comply with the requirements of the Privacy Act; and
 - c. take any other action as reasonably directed by the Department.

6.5 Handling of complaints

- 6.5.1 A complaint alleging an interference with the privacy of an individual in respect of any Services performed under this Contract will be handled by the parties in accordance with the following procedures:
- a. where the Department receives a complaint alleging an interference with the privacy of an individual by the Supplier or any Subcontractor, it must immediately notify the Supplier of only those details of the complaint necessary to minimise any breach or prevent further breaches of the privacy provisions of this Contract
 - b. where the Supplier receives a complaint alleging an interference with the privacy of an individual by the Supplier or any Subcontractor, it must immediately notify the Department of the nature of the complaint but must only release to the Department confidential information concerning the complainant with that person's consent
 - c. after the Department has given or been given notice in accordance with (a) or (b) above, it must keep the Supplier informed of all progress with the complaint as relates to the actions of the Supplier in connection with the allegation of an interference with the privacy of an individual and
 - d. the Department will give the Supplier fourteen (14) days written notice of an intention to assume a liability, loss or expense in accordance with this clause 6, including in that notice an explanation of how that liability, loss or expense was assessed and the Supplier's proposed share of that liability.

6.6 Termination for breach of this clause

- 6.6.1 If the Supplier breaches this clause 6, in addition to any other right the Department has under clause 16.2, the Department may terminate this Contract immediately.

7 SECURITY

7.1 Security Requirements

- 7.1.1 The Supplier must ensure that all Supplier Personnel and Subcontractors safeguard any keys or passes that are provided to the Supplier for the purposes of this Contract.
- 7.1.2 The Supplier must ensure that access to Contract Material and other Material related to the Services is restricted to those Personnel and Subcontractors who require access to perform their functions.
- 7.1.3 The Supplier must, as and when reasonably requested by the Department, participate in security reviews by the Department (or the Department's authorised representative) and provide security reports to the Department, to demonstrate compliance with this clause 7.

SECURITY

- 7.1.4 The Supplier must, and must ensure that all Supplier Personnel and Subcontractors, comply with:
- a. all security requirements specified in Item L [Security Requirements], which may include (but are not limited to):
 - i. appropriate security clearance classification for those Personnel and Subcontractors who will have access to Security Classified Information
 - ii. specifications in relation to the handling, storage, transmission and disposal of all hard copies of Security Classified Information
 - iii. specifications in relation to the transition of security arrangements at expiry or earlier termination of the Contract, to ensure that all electronic and hard copies of Security Classified Information are removed from the control of the Supplier
 - iv. specifications in relation to the Supplier's premises and facilities at which Security Classified Information may be stored or handled
 - v. specifications in relation to the Supplier's systems, to ensure those systems meet designated information security standards for the electronic processing, storage, transmission and disposal of Security Classified Information and
 - b. any variations or additions to these security requirements that the Department notifies the Supplier.

7.1A Cyber-security

- 7.1A.1 The purpose of clauses 7.1A.1, 7.1A.2 and 7.1A.3 is to set out the Supplier's obligations in respect of information and Materials of the Department:
- a. in respect of which the Supplier has custody or control for purposes connected with this Contract or
 - b. which are accessed, transmitted or stored using or on the Supplier's information systems or equipment under this Contract
- (in this clause, 'Department Data').
- 7.1A.2 The Supplier must:
- a. do all things that a reasonable and prudent entity would do to ensure that all Department Data is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person
 - b. provide protective measures for the Department Data that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of, the Department Data
 - c. without limiting clauses 7.1A.2.a or 7.1A.2.b, comply with all security regulations or procedures or directions as are specified in this Contract or given by the Department from time to time regarding any aspect of security of, or access to, the Department's information, material or premises and

SECURITY

- d. unless this Contract or the Department in writing expressly states that it is not required, develop for acceptance by the Department a Commonwealth Data Protection Plan ('CDPP') that sets out how the Supplier and the Department will deal with and discharge their obligations in respect of Department Data (including Personal Information) during the provision of the Services. The CDPP must:
 - i. be consistent with the requirements of this Contract (including clauses 7.1A.2.a and 7.1A.2.b)
 - ii. be consistent with the requirements of the *Privacy Act 1988* (Cth)
 - iii. specifically deal with cybercrime risks, including unauthorised access
 - iv. be consistent with the Australian Government's Protective Security Policy Framework (PSPF) and Information Security Manual (ISM) and
 - v. set out the steps and processes that the Supplier and the Department will follow to protect the Department Data from unauthorised access, use, misuse, destruction or loss,

and once accepted, the CDPP will form part of the Contract and the Supplier must comply with it unless the Department otherwise agrees in writing.

7.1A.3 If the Supplier becomes aware of any actual or suspected:

- a. action taken through the use of computer networks that result in an actual or potentially adverse effect on the Supplier's information system and/or Department Data residing on that system ('Cyber Incident') or
- b. any other unauthorised access or use by a third party or misuse, damage or destruction by any person ('Other Incident'),

the Supplier must:

- i. notify the Department in writing immediately (no longer than 12 hours) after becoming aware of the Cyber Incident or Other Incident) and
- ii. comply with any directions issued by the Department in connection with the Cyber Incident or Other Incident, including in relation to:
 - (A) notifying the Australian Cyber Security Centre, or any other relevant body, as required by the Department
 - (B) obtaining evidence about how, when and by whom the Supplier's information system and/or the Department Data has or may have been compromised, providing this evidence to the Department upon request, and preserving and protecting evidence as instructed by the Department or for a period of at least 12 months
 - (C) implementing any mitigation strategies to reduce the impact of the Cyber Incident or Other Incident or the likelihood or impact of any future similar incident and
 - (D) preserving and protecting Department Data (including as necessary reverting to any backup or alternative site or taking other action to recover Department Data).

7.1A.4 The Supplier must, if required in Item O [Insurance] in Schedule E, take out and maintain insurance to protect against the risks of a Cyber Incident, and comply with the provisions of clause 9 in respect of that insurance.

AUDIT AND ACCESS

7.1A.5 The Supplier must ensure that:

- a. all subcontracts and other supply chain arrangements, which may allow or cause access to Department Data, contain no provisions that are inconsistent with clauses 7.1A.1, 7.1A.2, 7.1A.3 or 7.1A.4, or 7.1A.5 and
- b. all Personnel and any Subcontractors who have access to Department Data comply with clauses 7.1A.2 and 7.1A.3.

7.2 Third party access to Security Classified Information

- c. Not applicable.

7.3 Notification

7.3.1 The Supplier must notify the Department immediately (no longer than 12 hours) after it becomes aware or has reason to suspect that a breach of the Supplier's security obligations under the Contract has occurred.

7.4 Unauthorised disclosure

7.4.1 The Supplier acknowledges that unauthorised disclosure of information held by the Commonwealth is subject to the sanction of criminal law under sections 70 and 79 of the *Crimes Act 1914* (Cth) and section 91.1 of the *Criminal Code Act 1995* (Cth).

7.5 Supplier fully responsible

7.5.1 The Supplier remains fully responsible for ensuring that all security requirements under the Contract are met.

7.6 Termination for breach of this clause

7.6.1 If the Supplier breaches this clause 7, in addition to any other right the Department has under clause 16.2, the Department may terminate this Contract immediately.

8 AUDIT AND ACCESS

8.1 Audit and access

8.1.1 The Supplier agrees that:

- a. the Department, including any persons authorised in writing by the Department
- b. the Department's Contact Officer, or any person authorised in writing by the Department's Contact Officer
- c. the Department's auditors
- d. the Auditor-General or a delegate of the Auditor-General (for the purposes of performing the Auditor-General's statutory functions)
- e. the Information Commissioner, and their respective delegates and
- f. the Commonwealth Ombudsman,

have the right of access to the premises of the Supplier at all reasonable times, to:

- g. require the provision by the Supplier (including its Personnel and Subcontractors) of records and information in a data format and storage medium accessible by the Department by use of the Department's existing computer hardware and software
- h. inspect and copy Material, including Contract Material, documentation, records, accounts and financial Material, however and wherever stored, in the custody or under the control of the Supplier (including its Personnel and Subcontractors) for purposes associated with this Contract or any review of performance under this Contract

AUDIT AND ACCESS

- i. require assistance from the Supplier in respect of any inquiry into or concerning the Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Department, and any inquiry conducted by Parliament or any Parliamentary committee and
- j. inspect any Department assets located on the premises of the Supplier which:
 - i. come into existence as a result of the Contract or
 - ii. are provided to the Supplier as a result of the Contract.

8.1.2 In the case of documents or records stored on a medium other than in writing, the Supplier will make available on request such reasonable facilities as may be necessary to enable a legible reproduction to be created at no additional cost to the Department.

8.1.3 In exercising the rights granted by this clause 8, the Department will provide reasonable prior notice (except where it believes that there is an actual or apprehended breach of the law), use reasonable endeavours to not interfere with the Supplier's performance of the Services under the Contract in any material respect and will endeavour to comply with the Supplier's reasonable security procedures.

8.2 Delay

8.2.1 If, in the Supplier's reasonable opinion, there is likely to be a significant delay in the Supplier discharging an obligation under the Contract because of a cause beyond the reasonable control of the Supplier and as a direct result of the Department's action under this clause 8, the Supplier may request a reasonable extension of time, providing written justification for the extension.

8.2.2 The Department will consider any request under clause 8.2.1 in good faith.

8.3 Costs

8.3.1 Each party must bear its own costs of any audit or access as a result of clause 8.1.

8.4 Supplier to comply with Auditor-General's requirements

8.4.1 The Supplier must do all things necessary to comply with the requirements of the Auditor-General, Information Commissioner, or their delegates' requirements, provided such requirements are legally enforceable and within the power of the Auditor-General, Information Commissioner, or their delegates.

8.5 No reduction in responsibility

8.5.1 The requirement for access as specified in clause 8.1 does not in any way reduce the Supplier's responsibility to perform its obligations in accordance with the Contract.

INSURANCE

8.6 No restriction

8.6.1 Nothing in this Contract reduces limits or restricts in any way any function, power, right or entitlement of the Auditor-General, Information Commissioner, or their delegates. The rights of the Department, Auditor-General, Information Commissioner, and their delegates under this Contract are in addition to any other power, right or entitlement of the Auditor-General, Information Commissioner, Privacy Commissioner, Freedom of Information Commissioner, or their delegates.

8.7 Freedom of Information

8.7.1 In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

8.7.2 This clause 8.7 only applies to the Contract if it is a 'Commonwealth contract'.

8.7.3 Where the Department has received a request for access to a document created by, or in the possession of, the Supplier or any Subcontractor that relates to the performance of the Contract (and not to the entry into the Contract), the Department may at any time by written notice require the Supplier to provide the document to the Department and the Supplier must, at no additional cost to the Department, promptly comply with the notice.

8.7.4 The Supplier must include in any subcontract relating to the performance of this Contract provisions that will enable the Supplier to comply with its obligations under clause 8.7.

8.8 Survival

8.8.1 This clause 8 applies for Term of this Contract and for a period of seven years from the termination or expiry of this Contract.

9 INSURANCE

9.1 Insurance requirements

9.1.1 The Supplier must:

- a. effect and maintain, or cause to be effected and maintained, the insurance specified in clause 9.1.2 from the Commencement Date until:
 - i. the Supplier no longer has any obligations to perform Services in connection with the Contract if the relevant insurance policy is an occurrence policy and
 - ii. seven years after the Supplier no longer has any obligations to perform Services in connection with the Contract if the relevant insurance policy is a claims made policy
- b. ensure that, if required in Item O [Insurance] in Schedule E, the insurance cover provided by the insurance contract extends to cover any third party liability of the Department arising from acts or omissions of the Supplier (including its Personnel) made in connection with this Contract, where there was fault on the part of the Supplier (or its Personnel)
- c. on request provide proof of insurance acceptable to the Department, which may (at the Department's sole discretion) include a certificate of currency issued by the insurer, copy of the insurance policy or right to inspect the insurance policy.

9.1.2 The Supplier must effect and maintain, or cause to be effected and maintained:

- a. professional indemnity insurance for an amount of not less than ten (10) million dollars each claim and in the aggregate for all claims with one right of reinstatement
- b. public liability insurance for an amount of not less than ten (10) million dollars each and every occurrence

INDEMNITY

- c. workers' compensation as required by law and, in jurisdictions which permit common law workers' compensation claims outside the statutory workers' compensation scheme, top-up workers' compensation insurance for fifty (50) million dollars per claim and
 - d. the additional insurances specified in Item O [Insurance], if any.
- 9.1.3 The Supplier must promptly notify the Commonwealth if, in relation to the insurance policy referred to in clause 9.1.2a:
 - a. the limit of the insurance policy is materially depleted during the term of this Contract, by claims unrelated to this Contract
 - b. any material claims are made under the insurance policy and
 - c. any claims are made under the insurance policy which could involve the Commonwealth.
- 9.1.4 If directed by the Commonwealth, the Supplier agrees to exercise the right of reinstatement referred to in clause 9.1.2a.
- 9.1.5 If any insurance policy required under this clause 9 insures multiple insureds, that policy must provide that the acts, omissions or non-disclosures of one insured will not be imputed to any other insured for the purposes of determining rights to coverage. In the case of public liability insurance, the insurance policy must also provide that the insurer will insure the liability of one insured to another.
- 9.1.6 The Supplier must require all Subcontractors to effect and maintain, or cause to be effected and maintained, the insurances required by this clause 9 as appropriate given the nature of the Services to be provided by the Subcontractor.
- 9.1.7 For the avoidance of doubt, this clause 9 does not relieve the Supplier of its obligations under any other provisions of this Contract.

10 INDEMNITY**10.1 Supplier Indemnity**

- 10.1.1 The Supplier indemnifies the Commonwealth, its officers, employees and agents (those indemnified) from and against any:
 - a. loss or liability incurred by those indemnified
 - b. loss of or damage to the property of those indemnified or
 - c. loss or expense incurred by those indemnified in dealing with any claim against them, including legal costs and expenses on a solicitor / own client basis and the cost of time spent, resources used, or disbursements paid by those indemnified,
 arising from:
 - a. any act or omission by the Supplier, its Personnel or Subcontractors, in connection with this Contract, where there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, or expense
 - b. any breach by the Supplier, its Personnel or Subcontractors, of obligations or warranties under this Contract
 - c. any use or disclosure by the Supplier, its Personnel or Subcontractors, of Personal Information held or controlled in connection with this Contract or
 - d. the use by those indemnified of the Contract Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights (including Moral Rights) in Contract Material.

CONFLICT OF INTEREST

- 10.1.2 The Supplier agrees that the Commonwealth will be taken to be acting as agent or trustee for or on behalf of those indemnified from time to time.
- 10.1.3 The Supplier's liability to indemnify the Commonwealth under this clause 10 will be reduced proportionately to the extent that any fault on the part of those indemnified contributed to the relevant loss, damage, expense or liability.
- 10.1.4 The right of the Commonwealth to be indemnified under this clause 10 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Commonwealth is not entitled to be compensated in excess of the amount of the relevant cost, loss, damage, expense or liability.

10.2 Professional Standards Schemes

- 10.2.1 If a cost, loss, damage, expense or liability is limited by Professional Standards Scheme, the Supplier's civil liability for such cost, loss, damage, expense or liability is then determined by the relevant scheme.

10.3 Survival

- 10.3.1 This clause 10 survives the expiration or earlier termination of this Contract.

11 CONFLICT OF INTEREST

- 11.1.1 The Supplier warrants that, to the best of its knowledge and having made diligent inquiries, at the Commencement Date no Conflict exists or is likely to arise in the performance of the Services.
- 11.1.2 If, during the period of this Contract, a Conflict arises or appears likely to arise, the Supplier agrees to:
 - a. notify the Department immediately
 - b. make full disclosure of all relevant information relating to the Conflict
 - c. propose steps to take for managing, resolving or otherwise dealing with the Conflict and
 - d. take any steps the Department reasonably requires, which may include those proposed by the Supplier pursuant to clause 11.1.2c, to resolve or otherwise deal with the Conflict.
- 11.1.3 At any time during the period of this Contract, the Department may require the relevant Personnel and Subcontractors to execute a conflict of interest declaration in the form specified by the Department.
- 11.1.4 The Supplier must not, and must ensure that its Personnel do not, engage in any activity or obtain any interest during the course of this Contract that is likely to conflict with, or restrict, the Supplier providing the Services to the Department fairly and independently.
- 11.1.5 If the Supplier fails to notify the Department of a Conflict under this clause 11, or is unable or unwilling to resolve or deal with the Conflict as required, the Department may terminate this Contract pursuant to clause 16.2.

DISCLOSURE BY THE SUPPLIER

12 DISCLOSURE BY THE SUPPLIER

- 12.1.1 The Supplier warrants that, as at the date of this Contract and having made reasonable inquiries of its Personnel and Subcontractors, it is not aware of any:
- a. matter relating to the commercial, financial or legal capacity or status of the Supplier that has not been disclosed to the Department and may affect the ability of the Supplier to perform the Services
 - b. litigation, proceedings, judicial or administrative enquiry, investigation, claim or allegation, actual or threatened, and whether admitted or contested, by another person or body (including regulatory bodies such as the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission, the Australian Stock Exchange or equivalent bodies), against or in any way involving the Supplier or any settlement in respect of any such matter
 - c. proven or alleged breach or default under any law, regulation, agreement, order or award binding on the Supplier
 - d. judicial decision against the Supplier (not including decisions under appeal) relating to employee entitlements, for which the Supplier has not paid the claim or
 - e. any criminal or other act or any other behaviour, conduct or activity of the Supplier which may:
 - i. materially and adversely affect the Supplier's credit worthiness, integrity, character or reputation or
 - ii. attract or have attracted negative publicity or attention or generate public or media criticism either inside or outside of Australia,

and which was not disclosed to the Department prior to execution of this Contract.

13 COMPLIANCE WITH LAWS AND POLICIES

13.1 Compliance with Laws

- 13.1.1 The Supplier agrees, in carrying out this Contract, to comply with all relevant legislation of the Commonwealth and any State, Territory or local authority, and in particular:
- a. the *Crimes Act 1914* (Cth)
 - b. the *Racial Discrimination Act 1975* (Cth)
 - c. the *Sex Discrimination Act 1984* (Cth)
 - d. the *Disability Discrimination Act 1992* (Cth)
 - e. the *Workplace Gender Equality Act 2012* (Cth)
 - f. *Age Discrimination Act 2004* (Cth);
 - g. the *Charter of United Nations Act 1945* and the *Charter of United Nations (Dealing with Assets) Regulations 2008*
 - h. the *Archives Act 1983* (Cth)
 - i. the *Competition and Consumer Act 2010* (Cth)
 - j. the *Criminal Code Act 1995* (Cth)
 - k. the *Fair Work Act 2009* (Cth)
 - l. the *Work Health and Safety Act 2011* (Cth) and
 - m. any other occupational health and safety legislation applicable to the Supplier.

COMPLIANCE WITH LAWS AND POLICIES

13.2 Criminal Code Act 1995

- 13.2.1 The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the *Criminal Code Act 1995* (Cth).

13.3 Compliance with the Commonwealth's Policies and Guidelines

- 13.3.1 The Supplier acknowledges that it complies with obligations specified under the Australian Government's Lobbying Code of Conduct as published by the Australian Public Service Commission.
- 13.3.2 The Supplier must, and must ensure its Personnel, comply with the Commonwealth's policies and guidelines which:
- a. are notified to the Supplier by the Department from time to time or
 - b. the Supplier knows or ought to know apply to the Contract.
- 13.3.3 If the Supplier can demonstrate compliance with a particular Commonwealth policy, which has been notified by the Department after the Commencement Date, will significantly increase the cost of the Contract, the parties will negotiate in good faith to resolve the issue.

14 ASSIGNMENT AND NOVATION

- 14.1.1 The Supplier must consult the Department before entering negotiations with any other person regarding any arrangement that might require novation of this Contract. For the avoidance of doubt, the Department is under no obligation to consent to any novation of the Contract.
- 14.1.2 The Supplier cannot assign its obligations, and agrees not to assign its rights, under this Contract without the Department's prior written approval

15 DISPUTE RESOLUTION

- 15.1.1 Subject to clause 15.1.3, the parties agree not to commence any legal proceedings in respect of any dispute arising under this Contract, which cannot be resolved by informal discussion, until the procedure provided by this clause 15 has been used.
- 15.1.2 The parties agree that any dispute arising during the course of this Contract will be dealt with as follows:
- a. the party claiming that there is a dispute will send the other party a written notice setting out the nature of the dispute
 - b. the parties will try to resolve the dispute through direct negotiation by persons to whom they have given authority to resolve the dispute
 - c. failing settlement within ten (10) Business Days of the receipt of the written notice, the parties may agree to refer the dispute to mediation or some alternative dispute resolution procedure and
 - d. if:
 - i. there is no resolution of the dispute
 - ii. there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure or
 - iii. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within fifteen (15) Business Days of the submission, or extended time as the parties may agree in writing before the expiration of the fifteen (15) Business Days,

DISPUTE RESOLUTION

then either party may commence legal proceedings.

- 15.1.3 This clause 15 does not apply if:
- a. either party commences legal proceedings for urgent interlocutory relief
 - b. action is taken by the Department under, or purportedly under, clauses 3.3, 7.6 or 16.1
 - c. action is taken by either party under, or purportedly under, clause 16.2 or
 - d. an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by the Supplier.
- 15.1.4 Despite the existence of a dispute, both parties must (unless requested in writing by the other party not to do so) continue to perform obligations under this Contract.

16 TERMINATION

16.1 Termination for convenience

- 16.1.1 The Department may, at any time by notice and at its sole discretion, terminate this Contract in whole or reduce the scope of this Contract without prejudice to the rights, liabilities, or obligations of either party accruing prior to the date of termination.
- 16.1.2 The Supplier must, on receipt of a notice of termination or reduction:
- a. stop or reduce work as specified in the notice
 - b. take all available steps to minimise loss resulting from that termination or reduction and to protect Commonwealth Material and Contract Material and
 - c. continue work on any part of the Services not affected by the notice.
- 16.1.3 In the event of termination under clause 16.1.1, the Department will only be liable to:
- a. pay any Instalment relating to Services completed before the effective date of termination
 - b. reimburse any expenses the Supplier unavoidably incurs relating entirely to Services not covered under clause 16.1.3a, which the Supplier fully substantiates
 - c. pay any expenses and meet any costs unavoidably incurred under Item E [Expenses and Costs] before the effective date of termination and
 - d. provide the facilities and assistance necessarily required under Item J [Facilities and Assistance] before the effective date of termination.
- 16.1.4 The Department will not be liable to pay compensation under clause 16.1.3a and 16.1.3b in an amount which would, added to any fees already paid to the Supplier under this Contract, together exceed the fees set out in Item D [Fees].
- 16.1.5 If there is a reduction in scope of the obligations under this Contract, the Commonwealth's liability to pay any Instalment or expenses set out in Item D [Fees] and Item E [Expenses and Costs] will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Contract.
- 16.1.6 The Department will not be liable to pay any compensation for loss of prospective profits for a termination or reduction in scope under this clause 16.1, or loss of any benefits that would have been conferred on the Supplier had the termination or reduction not occurred.

TERMINATION

16.2 Termination for breach

- 16.2.1 The Department may immediately terminate this Contract by giving written notice to the Supplier of the termination, if:
- a. the Department is satisfied that, prior to entering into this Contract, the Supplier engaged in misleading or deceptive conduct, or omitted to provide information to the Department that:
 - i. is material to the performance of the Contract or
 - ii. may have affected the:
 - A. original decision to enter into the Contract
 - B. terms and conditions of the Contract or
 - C. action taken by the Department under this Contract, where that action was taken in reliance on the Supplier's representations, warranties or information provided
 - b. the Supplier fails to fulfil, or is in breach of, any of its obligations under this Contract, and does not rectify the omission or breach within twenty (20) Business Days (or such other timeframe the Department determines is reasonable in the circumstances) of receiving a notice in writing from the Department requiring the Supplier to do so
 - c. the Supplier is unable to pay all its debts as and when they become due
 - d. the Supplier is an incorporated body and:
 - i. it fails to comply with a statutory demand within the meaning of section 459F of the *Corporations Act 2001* (Cth)
 - ii. proceedings are initiated to obtain an order for its winding up or any shareholder, member or director convenes a meeting to consider a resolution for its winding up
 - iii. subject to sections 415D, 434J and 451E of the *Corporations Act 2001* (Cth), it comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001*(Cth) or equivalent provisions in other legislation, or an order has been made to place it under external administration or
 - iv. notice is served on it or proceedings are taken to cancel its incorporation or registration or to dissolve it as a legal entity
 - e. the Supplier is an individual, and he or she becomes bankrupt or enters into a scheme of arrangement with creditors or
 - f. the Supplier ceases to carry on a business relevant to the performance of the Services.
- 16.2.2 The Supplier may immediately terminate this Contract by giving the Department written notice of the termination if:
- a. the Department fails to fulfil, or is in breach of, any of its obligations under this Contract and
 - b. the Department does not rectify the omission or breach within twenty (20) Business Days (or such other timeframe that is reasonable in the circumstances) of receiving a notice in writing from the Supplier to do so.

NOTICES

17 KNOWLEDGE TRANSFER

- 17.1.1 If specified in Item A [Services and Subcontractors] and subject to any qualification or provision to the contrary in the Contract, the Supplier must provide the following assistance to the Department on termination or expiration of this Contract:
- a. transferring or providing access to the Department to all information stored by whatever means held by the Supplier or under the control of the Supplier in connection with this Contract and
 - b. making Specified Personnel and Supplier Personnel available for discussions with the Department as may be required. The time, length and subject of these discussions will be at the sole discretion of the Department, provided that any matter discussed is not considered to reveal any "Commercial-in-Confidence" information of the Supplier.

18 NOTICES

- 18.1.1 A party giving notice under this Contract must do so in writing, and that notice must be:
- a. if given by the Supplier to the Department – addressed to the person specified in Item Q [Addresses for Notices], or as otherwise notified by the Department or
 - b. if given by the Department to the Supplier – addressed to the person specified in Item Q [Addresses for Notices], or as otherwise notified by the Supplier.
- 18.1.2 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 pre-paid post or
 - c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.
- 18.1.3 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.

Pages 36 to 45 have been removed as they are considered exempt under section 34 and/or section 47 and/or section 47E and/or section 47G of the FOI Act.