



Australian Government

**Department of Families, Housing,
Community Services and Indigenous Affairs**

CONTRACT

Number: 90000663

Between: **COMMONWEALTH OF AUSTRALIA**
represented by the Department of Families, Housing,
Community Services and Indigenous Affairs

and **SECURITY AND TECHNOLOGY SERVICES**
ABN 71 150 404 470

for: **The supply of equipment, installation and programming of
a Commercial Grade Alarm System and Restricted Key
System at Derby Indigenous Coordination Centre (ICC)**

This Contract is dated

Parties

This Contract is made between and binds the following parties:

COMMONWEALTH OF AUSTRALIA (the Commonwealth) represented by and acting through the Department of Families, Housing, Community Services and Indigenous Affairs ABN 36 342 015 855 (the Department)

AND

SECURITY AND TECHNOLOGY SERVICES
ABN 71 150 404 470 (the Supplier)

Context

This Contract is made in the following context:

- A. The Department wishes to engage the Supplier to provide the Goods and Services.
- B. The Supplier has fully informed itself about the Goods and Services and has submitted the quotation entitled Customer Proposal No. 85161 and dated 19th May 2012 for the provision of the Goods and Services.

Operative Provisions

In consideration of the mutual promises contained in this document, the parties to this Contract agree as follows:

1. INTERPRETATION

1.1 Definitions

1.1.1 In this Contract, unless the context otherwise indicates:

Accept means the Goods or Services have been accepted by the Department in accordance with the procedures set out in the Schedule. **Accepted** and **Acceptance** have the corresponding meanings;

Acceptance Criteria means the requirements set out in Item A [Goods, Services and Subcontractors];

Business Day means a weekday other than a public holiday in the relevant State or 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 which is the date 12 months after all Goods and Services have been Accepted by the Department;

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 Q [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;

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 L [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;
- c. is protected information as defined in section 23(1) of the *Social Security Act 1991*, under Division 2 of Part 6 of *A New Tax System (Family Assistance) (Administration) Act 1999*, under the *Social Security (Administration) Act 1999*, under sections 16 and 16AA of the *Child*

Support (Registration and Collection) Act 1988, under sections 150 and 150AA of the *Child Support (Assessment) Act 1989*, section 6 of the *Paid Parental Leave Act 2010* 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] and Material notified to the Department under clause 4.2.3;

Fair Work Principles means all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide, available at <www.deewr.gov.au/fairworkprinciples>

Goods means the goods set out in Item A [Goods, Services and Subcontractors];

GST has the same meaning as it has in section 195-1 of the GST Act;

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

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

Intellectual Property includes:

- a. all copyright (including rights in relation to phonograms and broadcasts);
- b. all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs and circuit layouts; and
- c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

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*, 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)*

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

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', 'Restricted', 'Highly Protected', 'Protected' or 'In-Confidence';

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

Small Business means an enterprise which, at the Commencement Date, employed less than the full time equivalent of 20 persons ('full time equivalent' is as defined by the Australian Bureau of Statistics);

Specified Personnel means the Personnel (including Subcontractors) specified in Item O [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 2.5;

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 L 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; and

'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.

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; and
- i. a reference to writing is a reference to any representation of words, figures or symbols, whether or not in a visible form.

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.

2. PROVISION OF GOODS AND SERVICES

2.1 Commencement

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

The Supplier must:

- a. perform the Services as specified in Item A [Goods, Services and Subcontractors];
- b. deliver the Goods at the time and place, and in the manner, specified in Item A [Goods, Services and Subcontractors] and Item C [Commencement and Timeframe];
- c. provide to the Department the Material specified in Item B [Contract Material];
- d. perform the Services and provide the Goods at a high standard, with all due skill, care and diligence, and adopt relevant best practice, including any Department, Commonwealth or industry standards and guidelines specified in Item N [Standards and Best Practice];

- e. ensure that all Goods supplied to the Department:
 - i. conform with any specifications stated in Item A [Goods, Services and Subcontractors];
 - ii. are free from defects in materials and workmanship;
 - iii. are of merchantable quality; and
 - iv. are fit for their purpose;
- f. comply with the timeframe for the performance of the Services specified in Item C [Commencement and Timeframe]; and
- g. submit invoices, and any required supporting documents, in the manner specified in Item F [Invoices].

2.3 Liaison with the Department's Contact Officer

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

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*, 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 and undertake tasks in relation to the Goods, or part thereof, in accordance with this Contract.
- 2.5.2 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, or from undertaking tasks in relation to the Goods. The Supplier must provide replacement Personnel acceptable to the Department at no additional cost and at the earliest opportunity.

2.6 Subcontracting

- 2.6.1 The Supplier may only subcontract the performance of any obligations under this Contract to a Subcontractor:

- a. listed in Item A [Goods, Services and Subcontractors]; or
 - b. for whom the Department has given its prior written approval, which will not be unreasonably withheld.
- 2.6.2 In giving its approval for the engagement of a Subcontractor pursuant to clause 2.6.1, the Department may impose any terms and conditions it thinks fit.
- 2.6.3 The Supplier must ensure that any subcontract for the performance of any obligations under this Contract is in writing and contains provisions equivalent to clauses, 2.4, 2.5, 2.6, 2.8, 2.9, 4, 5, 6, 7, 8, 10, 11, 13.3 and 15, and is responsible for ensuring that the Subcontractor complies with those terms.
- 2.6.4 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.
- 2.6.5 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.
- 2.6.6 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, (such acceptance not to be unreasonably withheld).
- 2.6.7 The Supplier must not enter into a subcontract under this Contract with a subcontractor named by the Director of the Equal Opportunity for Women in the Workplace Agency as an employer currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.

2.7 Responsibility of the Supplier

The Supplier is fully responsible for the performance of the Services and the supply of the Goods 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 or supply of the Goods, unless such involvement materially impacts on the Supplier's ability to perform the Services or supply the Goods in accordance with this Contract;
- b. payment made to the Supplier on account of the Services or Goods;
- c. subcontracting of the Services or supply of the Goods;

- d. acceptance by the Department of replacement Personnel.

2.8 Compliance with the *Work Health and Safety Act 2011*

- 2.8.1 The Service Provider should note their obligation to comply, and as far as practicable ensure Subcontractors will comply with all relevant requirements of the *Work Health and Safety Act 2011* (WHS Act), including:
 - a. complying with all applicable work health and safety laws;
 - b. consulting, co-operating and co-ordinating with the Department on workplace health and safety activities so far as it is practicable;
 - c. providing the Department any information the Department reasonably requires to confirm that the Service Provider (and any Subcontractor) is complying with the WHS Act;
 - d. participating in all compliance activities associated with its legal obligations, including those arising under the WHS Act. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators; and
 - e. any other additional work health and safety requirements specified in Item N [Work Health and Safety Requirements].
- 2.8.2 Compliance with the WHS Act does not relieve the Service Provider from its responsibilities to comply with its other obligations under any proposed deed or any Contract.
- 2.8.3 The Service Provider will:
 - a. not use a Subcontractor in relation to any Contract where the Subcontractor would be precluded from contracting directly with the Department under the requirements of the WHS Act; and
 - b. ensure that all Subcontractors impose obligations on Subcontractors equivalent to the obligation under clauses 2.8.1 to 2.8.3.

2.9 Fair Work Principles

- 2.9.1 The Supplier must comply, and as far as practicable must ensure its Subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide available at www.deewr.gov.au/fairworkprinciples, including by:
 - a. complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;
 - b. informing the Department of any adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers' compensation laws made against it during the Term of the Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
 - c. providing the Department any information the Department reasonably requires to confirm that the Supplier (and any Subcontractor) is complying with the Fair Work Principles; and

d. participate in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Department, its nominees and/or relevant regulators.

2.9.2 Compliance with the Fair Work Principles does not relieve the Supplier from its responsibility to comply with its other obligations under the Contract.

2.9.3 The Supplier acknowledges that if it does not comply with the Fair Work Principles, then, without prejudice to any rights that would otherwise accrue to the Department, the Department is entitled to publish details of the Supplier's failure to comply (including the Supplier's name) and to otherwise provide those details to other Commonwealth agencies.

2.9.4 As far as practicable, the Supplier must:

- a not use a Subcontractor in relation to this Contract where the Subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and
- b ensure that all subcontracts impose obligations on Subcontractors equivalent to the obligations under clause 2.9.

3. FEES, EXPENSES AND ASSISTANCE

3.1 Fees, expenses and assistance

3.1.1 Subject to this Contract, the Department will:

- a. pay the Supplier the fees for the Goods and Services in accordance with 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 K [Facilities and Assistance].

3.1.2 The Department will not be liable to pay for any rejected Goods or for any damage done to or arising from inspection or rejection of the Goods.

3.1.3 The Supplier must submit invoices for payment in the manner specified in Item F [Invoices].

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 or supply of Goods 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 twenty (20) Business 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 twenty (20) Business 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 The price of the Goods and Services includes:
- a. all taxes, duties and government charges imposed or levied in Australia or overseas;
 - b. all amounts payable for the use of the Goods or Services (including use of any Intellectual Property rights in the Goods);
 - c. delivery of the Goods;
 - d. Acceptance testing; and
 - e. all other work required under 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.

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 3.4.6.a, where the payment of the reimbursement attracts GST, the reimbursement amount will be increased by the rate of the GST.

3.5 Survival

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

4 USE OF MATERIAL AND INTELLECTUAL PROPERTY

4.1 Commonwealth Material

4.1.1 The Department will provide the Supplier with the Commonwealth Material specified in Item I [Commonwealth Material], and may provide additional Commonwealth Material to the Supplier during the operation of this Contract.

4.1.2 The Commonwealth grants (or will procure) a royalty-free, non-exclusive licence for the Supplier to use and reproduce the Commonwealth Material for the purposes of this Contract.

- 4.1.3 The Supplier must ensure that the Commonwealth Material is used and held strictly in accordance with any conditions or restrictions set out in Item J [Use of Commonwealth Material] and any direction from the Department.
- 4.1.4 The Supplier must, on or before the Completion Date, destroy or return to the Department all Commonwealth Material in its possession, unless otherwise specified in Item J [Use of Commonwealth Material] or otherwise directed by the Department's Contact Officer.
- 4.2 Contract Material and Existing Material**
- 4.2.1 Subject to this clause 4.2, Intellectual Property in all Contract Material vests or will vest on creation in the Commonwealth.
- 4.2.2 Clause 4.2.1 does not affect the ownership of Intellectual Property in:
- a. any Commonwealth Material incorporated into Contract Material; and
 - b. Existing Material.
- 4.2.3 The Supplier must notify the Department in writing of the identifying details of any Existing Material which has not been identified in Item G [Existing Material] as soon as practicable after it has identified such Material as Existing Material.
- 4.2.4 The Supplier grants to, or will procure for, the Commonwealth a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, communicate, broadcast, publish, adapt, modify and exploit any Existing Material in conjunction with the Contract Material.
- 4.2.5 The Supplier agrees, on request by the Department, to promptly create, sign, execute or otherwise deal with any document that may be necessary or desirable to give effect to this clause 4.2.
- 4.2.6 The Supplier warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material and the Existing Material in the manner provided for in this clause 4.2.
- 4.2.7 The Supplier must deliver all Contract Material to the Department by the date specified in Item B [Contract Material] or otherwise directed by the Department's Contact Officer.
- 4.2.8 The Supplier must use the Contract Material:
- a. only for the purposes of this Contract; and
 - b. in accordance with any conditions or restrictions specified in Item B [Contract Material] or as notified by the Department from time to time.

4.3 Moral rights

4.3.1 In this clause 4.3, 'Permitted Acts' means any of the following classes or types of acts or omissions:

- a. using, reproducing, communicating, adapting, modifying, publishing or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- b. supplementing the Contract Material with any other Material;
- c. materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material; and
- d. using the Contract Material in a different context to that originally envisaged,

but does not include false attribution of authorship.

4.3.2 Where the Supplier is a natural person and the author of the Contract Material or any 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.

4.3.3 If clause 4.3.2 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.

4.4 Dealing with Copies

Property in each document, device, article or medium in which Commonwealth Material, Contract Material or Department Confidential Information is embodied vests or will vest in the Commonwealth.

4.5 Survival

This clause 4 survives the expiration or earlier termination of this Contract.

5. CONFIDENTIAL INFORMATION

5.1 Department Confidential Information

- 5.1.1 Subject to clause 5.1.2, the Supplier must not, without the prior written consent of the Department, disclose any Department Confidential Information to a third party.
- 5.1.2 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.
- 5.1.3 The Department may impose any conditions it considers appropriate when giving consent under this clause 5.1 and the Supplier must comply with these conditions.
- 5.1.4 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.
- 5.1.5 The Supplier will not be taken to have breached its obligations under this clause 5.1 to the extent that the Department Confidential Information is:
- a. disclosed by the Supplier to its Personnel or Subcontractors solely in order to comply with obligations, or to exercise rights, under this Contract;
 - b. 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.
- 5.1.6 Where the Supplier intends to disclose Department Confidential Information to another person pursuant to clauses 5.1.5a – 5.1.5c, 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.

5.1.7 Where the Supplier discloses Department Confidential Information to another person pursuant to clauses 5.1.5a – 5.1.5c, the Supplier must notify the receiving person that the information is confidential.

5.1.8 The Supplier must not disclose Department Confidential Information in the circumstances referred to in clauses 5.1.1a and 5.1.5b unless the receiving person agrees to keep the information confidential.

5.2 Supplier Confidential Information

5.2.1 Subject to clause 5.2.2, the Department must not, without the prior written consent of the Supplier, disclose any Supplier Confidential Information to a third party.

5.2.2 The Department will not be taken to have breached its obligations under this clause 5.2 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.

5.3 Period of confidentiality

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 L [Confidential Information] – for the period set out in Item L [Confidential Information] in respect of that item; and
- b. in relation to any item of information that is protected information as defined in section 23(1) of the *Social Security Act 1991*, under

Division 2 of Part 6 of *A New Tax System (Family Assistance) (Administration) Act 1999*, under the *Social Security (Administration) Act 1999*, under sections 16 and 16AA of the *Child Support (Registration and Collection) Act 1988*, under sections 150 and 150AA of the *Child Support (Assessment) Act 1989*, or other Commonwealth legislation – for as long as required or provided for by the legislation.

5.4 No reduction in privacy obligations

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

6. PROTECTION OF PERSONAL INFORMATION

6.1 Application of this clause

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

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

agency;
approved privacy code (APC);
contracted Supplier;
Information Privacy Principles (IPPs); and
National Privacy Principles (NPPs).

6.3 Obligations of Supplier in relation to Personal Information

6.3.1 The Supplier acknowledges that it is a contracted Supplier 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 IPPs 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 IPP;
- d. not to use or disclose Personal Information in breach of section 16F [Direct marketing] of the *Privacy Act* (where applied to the Supplier), unless that use or disclosure is explicitly required under this Contract;

- e. not to engage in an act or practice that would breach an NPP (particularly NPPs 7 to 10) or an APC (where applied to the Supplier), unless that act or practice is explicitly required under this Contract;
 - f. 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 NPP or an APC binding on a party to this Contract);
 - g. 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;
 - h. to comply with any directions, guidelines, determinations or recommendations notified to the Supplier by the Department; and
 - i. 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.
- 6.4 In accordance with clause 2.6, 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).

6.5 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

6.4, including in that notice an explanation of how that liability, loss or expense was assessed and the Supplier's proposed share of that liability.

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.

7.1.4 The Supplier must, and must ensure that all Supplier Personnel and Subcontractors, comply with:

- a all security requirements specified in Item M [Security Requirements], which may include (but are not limited to):
- b appropriate security clearance classification for those Personnel and Subcontractors who will have access to Security Classified Information;
- c specifications in relation to the handling, storage, transmission and disposal of all hard copies of Security Classified Information;
- d 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;
- e specifications in relation to the Supplier's premises and facilities at which Security Classified Information may be stored or handled;
- f 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
- g any variations or additions to these security requirements that the Department notifies the Supplier.

7.2 Third party access to Security Classified Information

7.2.1 The Supplier must ensure that, in circumstances where a third party holds legal rights that may allow access to the Department's Security Classified Information, the Supplier immediately notifies the Department of the risk and takes such steps as the Department may reasonably require to deal with the risk.

7.2.2 If the Supplier is unwilling or unable to comply with the Department's requirements under clause 7.2.1, the Department may immediately terminate this Contract pursuant to clause 15.2.

7.3 Notification

The Supplier must notify the Department immediately if it becomes aware or has reason to suspect that a breach of security has occurred in the delivery of the Services or supply of the Goods.

7.4 Unauthorised disclosure

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* and section 91.1 of the *Criminal Code Act 1995*.

7.5 Termination for breach of this clause

The Department may immediately terminate this Contract pursuant to clause 15.2 if the Supplier breaches this clause 7.

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, Privacy Commissioner, Freedom of 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;

- i. require assistance from the Supplier in respect of any inquiry into or concerning the Services, Goods.;
- 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; and
- k. inspect the manufacture of the Goods.

8.1.2 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 or supply of the Goods under the Contract in any material respect and will endeavour to comply with the Supplier's reasonable security procedures.

8.2 Costs

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

8.3 Supplier to comply with Auditor-General's requirements

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

8.4 No reduction or restriction

8.4.1 The requirement for access as specified in clause 8.1.1 does not in any way reduce the Supplier's responsibility to perform its obligations in accordance with the Contract.

8.4.2 Nothing in this Contract reduces limits or restricts in any way any function, power, right or entitlement of the Auditor-General, Information Commissioner, Privacy Commissioner, Freedom of Information Commissioner or their delegates. The rights of the Department, Auditor-General, Information Commissioner, Privacy Commissioner, Freedom of 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.

8.5 Survival

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

9. INSURANCE

9.1 The Supplier must:

- a. effect and maintain, or cause to be effected and maintained, the insurance specified in clause 9.2 from the Commencement Date until:
 - i. the Completing Date if the relevant insurance policy is an occurrence policy; and
 - ii. seven years after the Completion Date if the relevant insurance policy is a claims made policy; and
- b. on request, provide proof of insurance acceptable to the Department, in the form of a certificate of currency issued by the insurer.

9.2 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
- b. public liability insurance for an amount of not less than ten (10) million dollars each and every occurrence;
- 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 an amount of not less than fifty (50) million dollars per claim; and
- d. the additional insurances specified in Item P [Insurance], if any.

9.3 The Supplier must promptly notify the Commonwealth if, in relation to the insurance policy referred to in clause 9.2.a:

- a. any material claims relating to the performance of the Services are made under the insurance policy; and
- b. any claims relating to the performance of the Services are made under the insurance policy which could involve the Commonwealth.

9.4 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.

- 9.5 For the avoidance of doubt, this clause 9 does not relieve the Supplier of its obligations under any other provisions of this Contract.
- 9.6 This clause 9 applies for the life of this Contract and for a period of seven years from the termination or expiry of this Contract.

10. INDEMNITY

- 10.1 The Supplier agrees to indemnify the Commonwealth from and against any:
- a. liability incurred by the Commonwealth;
 - b. loss of or damage to property of the Commonwealth; or
 - c. loss or expense incurred by the Commonwealth 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 Commonwealth;
arising from:
 - (i) any wilful, unlawful or negligent act or omission by the Supplier, its officers, employees, agents or sub-contractors in connection with this Contract;
 - (ii) any breach by the Supplier of its obligations or warranties under this Contract;
 - (iii) any use or disclosure by the Supplier, its officers, employees, agents or sub-contractors of Personal Information held or controlled in connection with this Contract; or
 - (iv) the use by the Commonwealth of the Contract Material as intended under this Contract.
- 10.2 The Supplier's liability to indemnify the Commonwealth under sub-clause will be reduced proportionately to the extent that any negligent act or omission of the Commonwealth contributed to the relevant liability, loss or damage, or loss or expense.
- 10.3 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 liability, loss or damage, or loss or expense.
- 10.4 In this Clause 10 "Commonwealth" includes officers, employees and agents of the Commonwealth.
- 10.5 This Clause 10 will survive the expiration or termination of this Contract.

10A LIMITATION

- 10A.1 The liability of each party arising out of or in connection with this contract is, subject to clause 10A.2, limited to \$37,295.42 GST inclusive.
- 10A.2 Any limit on the liability of each party under clause 10A.1 does not apply in relation to liability relating to:
- a. personal injury (including sickness and death);
 - b. loss of, or damage to, tangible property;
 - c. an infringement of Intellectual Property rights;
 - d. a breach of any obligation of confidentiality, security matter or privacy; or
 - e. any breach of any statute or any wilfully wrong act or omission including, in the case of the Supplier, any act or omission that constitutes repudiation of the contract.
- 10A.3 The limitation of liability specified in clause 10A.1 applies in respect of each single occurrence or a series of related occurrences arising from a single cause.
- 10A.4 Notwithstanding anything else in this Contract and to the extent permitted by law, the Department and the Supplier release each other from all loss or liability from any and all claims in respect of all loss of profit, income, business opportunity, goodwill or reputation and any other loss or liability which would fall within the second limb of losses referred to in *Hadley v Baxendale (1854) 9 Ex 341*.

11. CONFLICT OF INTEREST

- 11.1 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 or supply of the Goods.
- 11.2 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 11.2.c, to resolve or otherwise deal with the Conflict.

- 11.3 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 15.2.

12. DISCLOSURE BY THE SERVICE PROVIDER

- 12.1 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 or supply the Goods;
- 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.

- 12.2 The Supplier acknowledges that the Commonwealth in entering into this Contract is relying on the information or representations provided by the Supplier in the proposal and quotation or tender referred to in Context paragraph B of this Contract.

13. COMPLIANCE WITH LAWS

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. Division 3 of Part 5 of the Social Security (Administration) Act 1999 (Cth);
 - b. Division 2 of Part 6 of the A New Tax System (Family Assistance) (Administration) Act 1999 (Cth);
 - c. the Crimes Act 1914 (Cth);
 - d. the Racial Discrimination Act 1975 (Cth);
 - e. the Sex Discrimination Act 1984 (Cth);
 - f. the Disability Discrimination Act 1992 (Cth);
 - g. the Equal Opportunity for Women in the Workplace Act 1999 (Cth);
 - h. the Charter of United Nations Act 1945 and the Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2008;
 - i. the Archives Act 1983 (Cth);
 - j. the Competition and Consumer Act 2010 (Cth);
 - k. the Criminal Code Act 1995 (Cth);
 - l. the Fair Work Act 2009 (Cth);
 - m. the Carer Recognition Act 2010 (Cth);
 - n. the Work Health and Safety Act 2011 (Cth); and
 - o. any other occupational health and safety legislation applicable to the Supplier.
- 13.2 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*.
- 13.3 The National Code of Practice for the Construction Industry (Code) and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry, August 2009 (Guidelines), apply to this project. By agreeing to undertake the works, the Supplier will be taken to have read and to agree to comply with the Code and Guidelines.
- 13.4 Compliance with the Commonwealth's Policies and Guidelines**
- 13.4.1 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.
- 13.4.2 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.

- 13.4.3 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

The Supplier cannot assign its obligations, and agrees not to assign its rights, under this Contract without the Department's prior written approval.

15. TERMINATION

15.1 Termination for convenience

- 15.1.1 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.

- 15.1.2 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 and supply the Goods not affected by the notice.

- 15.1.3 In the event of termination under clause 15.1.1, the Department will only be liable to:

- a. pay any Instalment relating to Services completed before the effective date of termination;
- b. pay for any Goods received by the Department prior to the effective date of termination;
- c. reimburse any expenses the Supplier unavoidably incurs relating entirely to Services not covered under clause 15.1.3.a, which the Supplier fully substantiates;
- d. pay any allowances and meet any costs unavoidably incurred under Item E [Allowances and Costs] before the effective date of termination; and
- e. provide the facilities and assistance necessarily required under Item K [Facilities and Assistance] before the effective date of termination.

- 15.1.4 The Department will not be liable to pay compensation under clause 15.1.3.a and 15.1.3.b 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].

15.1.5 If there is a reduction in scope of the obligations under this Contract, the Commonwealth's liability to pay any Instalment or allowances set out in Item D [Fees] and Item E [Allowances and Costs] will, in the absence of agreement to the contrary, abate proportionately to the reduction in the obligations under this Contract.

15.1.6 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 15, or loss of any benefits that would have been conferred on the Supplier had the termination or reduction not occurred.

15.2 Termination for breach

15.2.1 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. if 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*;
 - 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. it comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* 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. if 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 or supply of the Goods.

15.2.2 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.

16. NOTICES

16.1 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 R [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 R [Addresses for Notices], or as otherwise notified by the Supplier.

16.2 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.

16.3 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.

17. Force Majeure

- 17.1 A party (Affected Party) is excused from performing its obligations under this Contract to the extent it is prevented by circumstances beyond its reasonable control (other than lack of funds for any reason or any strike, lockout and labour disputes in respect of the Supplier only), including but not limited to acts of God, natural disasters, acts of war, riots and strikes outside that party's organisation.
- 17.2 When the circumstances described in clause 17.1 arise or are reasonably perceived by the Affected Party as an imminent possibility, the Affected Party must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.
- 17.3 If non-performance or diminished performance by the Affected Party due to the circumstances under clause 17.1 continues for a period of more than 30 consecutive days, the other party may terminate the Contract immediately by giving the Affected Party written notice.
- 17.4 If this contract is terminated under clause 17.3:
- a. each party will bear its own costs and neither party will incur further liability to the other; and
 - b. where the Supplier is the Affected Party, it will be entitled to payment for Goods supplied or Services performed prior to the date of intervention of the circumstances described in clause 17.1.

SCHEDULE

Item A [Goods, Services and Subcontractors]

Goods

The Supplier must install the Goods in the locations as detailed in the Attachment A:

Services

The Supplier must provide all the services in the locations as detailed in the Attachment A:

- 2.3 The Supplier must ensure that the Services are provided by technicians that hold a current Security Licence in the relevant State or Territory and that are SCEC Endorsed locksmiths.

Acceptance

- 3.1 Each item of the Goods and Services is subject to Acceptance by the Department.
- 3.2 The Supplier must:
- a. certify to the Department that the Goods and Service meet the Acceptance Criteria set out in Attachment A and
 - b. provide at its own cost any information or assistance sought by the Department in order for the Department to verify that the Goods and Services meet the Acceptance Criteria.
- 3.3 The Department must, within five Business Days after the later of:
- a. delivery of the relevant Goods or completion of the relevant Services (as the case may be); and
 - b. certification by the Supplier that the Goods or Services meet the Acceptance Criteria,
- either Accept or reject the Goods or Services.
- 3.4 If the Department rejects the Goods or Services:
- a. the Department must provide a list of defects and deficiencies to the Supplier at the time of rejection; and
 - b. the Supplier must
 - i. take all necessary steps to ensure that the Goods or Services are promptly corrected;

- ii. certify to the Department that the Goods or Services meet the Acceptance Criteria; and
- iii. allow the Department to repeat the Acceptance tests for all or part of the Goods or Services,

within five Business Days after the date of the notice or such other time as agreed between the parties in writing.

- 3.5 If any part of the Goods or Services fails the Acceptance tests on two or more occasions, the Department may (in addition to its other remedies) terminate the Contract immediately under clause 15.2 by giving the Supplier written notice.
- 3.6 If the Department fails to notify the Supplier within the timeframe set out in paragraph 3.3 above that it rejects the Goods or Services then, subject to paragraph 4 below, it will be treated as having Accepted the Goods or Services.

Warranty

- 4.1 The Warranty Period is 12 months after the date that the last item to be installed is Accepted.
- 4.2 During the Warranty Period the Supplier warrants that the Goods:
- a. conform with the specifications stated in Attachment 1 (Statement of Requirements);
 - b. are free from defects in materials and workmanship;
 - c. are of merchantable quality; and
 - d. are fit for their purpose;
- 4.3 If the Department gives prompt notice of any defect or omission discovered in Goods during the Warranty Period, the Supplier must correct that defect or omission without delay and at no cost to the Department.
- 4.4 The Supplier must meet all costs of, and incidental to, the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.

Item B [Contract Material]

None stated

Item C [Commencement and Timeframe]

Commencement Date

22nd October 2012 As per the definition of "Commencement Date" in clause 1.1.1.

Completion Date

The completion date is 25th January 2013. As per the definition of "Completion Date" in clause 1.1.1.

Timeframes

The Supplier must provide the Goods and Services within 90 days of Contract Commencement Date.

The Department may, at its sole discretion and by providing the Service Provider with written notice prior to the Completion Date, extend the Contract for a period of 30 days (Additional Contract Period).

Item D [Fees]

Fees for Goods and Services

Total price payable for the Goods and Services is \$18,647.71 GST inclusive.

Item E [Expenses and Costs]

Not applicable.

Item F [Invoices]

The Supplier must submit correctly rendered tax invoices to the Department. A correctly rendered tax invoice is one which:

- a. includes the Contract number;
- b. includes the title of the Goods and Services;
- c. includes the name of the Department's Contact Officer;
- d. details the fees payable, and in the case of Goods is fully itemised;
- e. details expenses and costs payable, and attaches original receipts;
- f. contains written certification in a form acceptable to the Department that the Supplier has paid all remuneration, fees or other amounts payable to an employee, agent or Subcontractor performing Services under this Contract; and
- g. is a tax invoice.

The due date for payment by the Department is 30 days after receipt by the Department of a correctly rendered invoice.

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

BSB:
Account:

Item G [Existing Material]

Not Applicable

Item H [Not used]

Item I [Commonwealth Material]

The following material is Commonwealth Material for the purposes of this Contract:

- a. Floor plan and door schedule of Derby ICC.

Item J [Use of Commonwealth Material]

All Commonwealth Material can only be used for the provision of the Goods and Services.

Item K [Facilities and Assistance]

The Department will provide the following Facilities and Assistance:

- a. access to the building management system and fire and security technology systems for the purpose of performing the Services.

Item L [Confidential Information]

Department Confidential Information:

DESCRIPTION	PERIOD OF CONFIDENTIALITY
Details of the Department's security schematics and floor plans for equipment that is being installed.	Perpetual

Supplier Confidential Information:

DESCRIPTION	PERIOD OF CONFIDENTIALITY
Nil	Not applicable

Item M [Security Requirements]

All contractors must complete an "Ongoing Contractor Access Pack" prior to gaining access to the site.

Item N [Standards and Best Practice]

The Supplier must provide the Service in accordance with Australian Standards

Item O [Specified Personnel]

The Goods and Services are to be provided by Security and Technology Services

Item P [Insurance]

None Specified.

Item Q [Contact Officers]

The Department's Contact Officer is the person holding the position of Project Manager currently:

s22

PO Box 7576
Canberra Business Centre
ACT 2610
Email
Phone:
Facsimile

The Supplier's Contact Officer is the person holding the position of Managing Director currently:

Name: s47F(1)
Title: State Manager
Company Name: Security and Technology Services
Address: E-Mail address: admin.broome@sts.net.au

Item R [Addresses for Notices]

The Department's address for notices is:

Name: s22
Tuggeranong Office Park - AW0
PO Box 7576
Canberra Business Centre
ACT 2610
Email: s22
Facsimile: s22

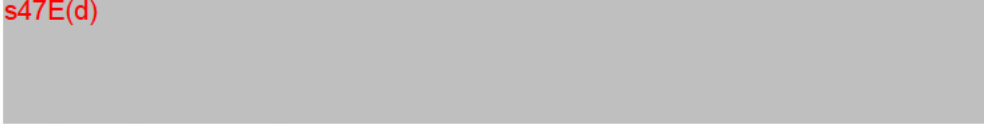
The Supplier's address for notices is:

Name: s47F(1)
Security and Technology Services
45 Blackman St
Broome WA 2006



SIGNED for and on behalf of
THE COMMONWEALTH OF AUSTRALIA as represented by the Department of
Families, Housing, Community Services and Indigenous Affairs, by:

s47E(d)



Section Manager
[Insert Signatory's work title]

On:

26 September 2012
[Insert date]

In the presence of:

s47E(d)



[Insert name of Witness]

Supervisor Security Operations
[Insert occupation and profession of witness]

SIGNED for and on behalf of SECURITY AND TECHNOLOGY SERVICES,
ABN 71 150 404 470 by:

s47F(1)



[Insert name of authorised representative]

[Signature of authorised
representative]

On:

24/09/2012
[Insert date]

s47F(1)



[Insert name of witness]

[Signature of witness]

On:

24/09/2012
[Insert date]