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# Change Order

This change order serves to vary the work order, official order or order in accordance with the terms set out below. Unless specifically stated in this work order, official order or order, all terms and conditions continue unaffected.

Number	Item	Details
1	Deed number	<u>SON4009385</u>
2	Work order number	CD012337
3	Change number	1
4	Raised by	PM&C
5	Details of change (use attachments if required)	<p>Amend contract term:</p> <p>Initial contract cease date was Saturday, 31 August 2024. An extension has been applied of 1 week. The new contract cease date is Friday, 6 September 2024.</p> <p>Amend the contract value:</p> <p>Original contract value was \$18,579, approval of an additional \$8,921 to be paid due to change in project scope. New whole of contract value is \$27,500 (GST inclusive).</p>
6	Implementation date of change	29 August 2024
7	Effect on deliverables and services	N/A
8	Effect on documentation	N/A
9	Plan for implementing the change	N/A

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Number	Item	Details
10	Effect on service charges	Increase in total value of contract from \$18,579 to \$27,500 (GST inclusive).
11	Other relevant matters (eg transitional impacts)	N/A

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Signed for and on behalf of the Commonwealth of Australia as represented by the Department of the Prime Minister and Cabinet by its duly authorised representative:

Details	Signatures
Signature:	s 22(1)(a)(ii)
Name of signatory:	Rochelle White
Position:	Assistant Secretary
Date:	3 September 2024

Signed for and on behalf of A Montage Unique Pty Ltd trading as Ellis Jones Consulting by its duly authorised representative:

Details	Signatures
Signature:	s 22(1)(a)(ii)
Name of signatory:	s 47F
Position:	Managing Director
Date:	29 August 2024

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**From:** White, Rochelle  
**To:** s 22(1)(a)  
**Cc:** s 22(1)(a)  
**Subject:** FW: Clearance of Rapid Review Procurement Docs [SEC=OFFICIAL]  
**Date:** Tuesday, 23 July 2024 1:46:12 PM  
**Attachments:** image001.jpg  
 image002.png  
 image003.jpg  
**Importance:** High

**OFFICIAL**

Hi s 22(1) this is looking very good. s 47E(d)

Then please progress it for approval in P2P.  
 Rochelle

**From:** s 22(1)(a)(ii) @pmc.gov.au  
**Sent:** Tuesday, 23 July 2024 1:26 PM  
**To:** White, Rochelle <Rochelle.White@pmc.gov.au>  
**Subject:** FW: Clearance of Rapid Review Procurement Docs [SEC=OFFICIAL]  
**Importance:** High

**OFFICIAL**

Not sure why you weren't included in this, but this is for your clearance now.

Kind regards,

s 22(1)(a)(ii) | Executive Assistant to  
 Clancie Hall, Assistant Secretary, Gender Equality Systems and Partnerships Branch  
 Rochelle White, Assistant Secretary, Gender Based Violence and Social Policy Branch  
 Office for Women  
 Department of the Prime Minister and Cabinet  
 P s 22(1)(a)(ii)  
 Ngunnawal Country, One National Circuit, Barton ACT 2600 | PO Box 6500 Canberra ACT 2600  
 e s 22(1)(a)(ii) @pmc.gov.au w. pmc.gov.au



Working for Women Email Signature

**From:** s 22(1)(a)(ii) @pmc.gov.au  
**Sent:** Tuesday, 23 July 2024 1:05 PM  
**To:** s 22(1)(a)(ii) @pmc.gov.au  
**Subject:** Clearance of Rapid Review Procurement Docs [SEC=OFFICIAL]

**OFFICIAL**

Hi s 22(1)(a)

Please find below all relevant details of the two documents that s 22(1) and I require Rochelle to approve (as Rochelle is the delegate for this procurement). Could you please update Rochelle's clearance folder with the below details? ☺

Please note – there will be no area to sign on the documents themselves, Rochelle may provide written clearance back to s 22(1) and I via email ☺

Many thanks,

Brief/ Doc / Item Name <i>Include Link or note if via email</i>	Contact Officer	How long will it take to clear?	Date AS action required	Date FAS action required (if applicable - can be a date range)	Date Executive Director action required (if applicable - can be a date range)	Final Due Date (MO, PMO etc - is it a hard deadline)	Other Comments
Approvals for rapid review panel graphic designer. As the delegate, you are required to approve the evaluation group summary and value for money assessment.  <ul style="list-style-type: none"> <li><a href="#">Evaluation Group Summary</a></li> <li><a href="#">value-for-money-assessment.docx</a></li> </ul>	s 22(1)	15 mins	23/7	NA	NA	NA	We are proposing that pending your approval of the recommended supplier, we will let Padma know our selection (she is keen to remain involved in the design process) and we can let the panel know our selection and share the designer's website. s 47E(d)  We will progress with contracting asap with a view to having a contract in place by this Friday so that we can start working with the designer from next Monday.

## CREATIVE AND DIGITAL COMMUNICATION PANEL – SHORT FORM OFFICIAL ORDER

*[Note: This template is not a mandatory form for issuing an Official Order. Participating Agencies may wish to develop their own form of Official Order in consultation with the Contractor. In particular, depending on the nature of the procurement, Participating Agencies may wish to develop Agency-specific service level regimes to manage Contractor performance.*

*The following is an example of a form of Official Order that can be used depending on the size, value and risk profile of the procurement. Agencies are reminded that it is critical that the items in the Official Order are accurately completed as this will determine the parties' rights and obligations under the Contract, including any terms and conditions intended to prevail over the Standard Terms and Conditions.]*

**Official Order Number – CD012337**

**Date – 26 July 2024**

*A Montage Unique Pty Ltd trading as Ellis Jones Consulting 99 130 460 829 has offered under clause 5.1 of the Head Agreement specified at item 1 below to provide the Services to the Participating Agencies. The Department of Prime Minister and Cabinet, 1 National Circuit, Barton ACT 2600 ABN 18 108 001 191 7 accepts this offer on the terms and conditions set out in the Head Agreement and in this Official Order and issues this Official Order in accordance with clause 5.4 of the Head Agreement. This Official Order is issued in Accordance with the Deed of Agreement for the Provision of Creative and Digital Communication Services (Standing Offer Notice Identifier (SON ID) SON4009385.*

Unless otherwise specified in the Official Order, if there is an inconsistency between this Official Order and any other provisions of the Head Agreement, the Head Agreement will prevail to the extent of any inconsistency.

Item number	Description	Standard Terms and Conditions Clause Reference	Details
<b>General</b>			
1.	<b>Head Agreement No. and description</b>	1.1	CD012337 Dated 26 July 2024 For the provision of Creative and Digital Communication Services
2.	<b>Services</b>	<b>Schedule 2 of the Head Agreement</b>	Communicates and Design services.

3.	<b>Participating Agency</b>	1.1	<i>Commonwealth of Australia (Commonwealth) as represented by Department of the Prime Minister &amp; Cabinet, The Office for Women 1 National Circuit, Barton ACT 2600 ABN 18 108 001 191 7</i>
4.	<b>Participating Agency Representative</b>	1.1 and 11	<i>Rochelle White</i> s 22(1)(a)(ii) <a href="mailto:Rochelle.White@pmc.gov.au">Rochelle.White@pmc.gov.au</a>
5.	<b>Contractor Representative</b>	1.1 and 11	s 47F
6.	<b>Contract Period</b>	1.1 and 2.1	<i>Start date: 29 July 2024 End date: 31 August 2024</i>
7.	<b>Contract Option Period</b>	2.2	<i>The Entity may in its sole discretion extend the Initial Term of this Order for a further period or periods, up to 4 weeks, on the same terms and conditions of this Order, by giving written notice to the Service Provider, prior to end of the Initial Term of this Order (Extension Period/s).</i>
8.	<b>Contract Option Notice Period</b>	2.2	<i>1 week</i>
9.	<b>Specified Personnel</b>	1.1 and 14	s 47F
10.	<b>Subcontractors</b>	Error! Reference source not	<i>Nil.</i>
11.	<b>Other Contractors</b>	1.1 and 7	<i>Nil.</i>
12.	<b>Notices</b>	Error! Reference source not found.	<i>Participating Agency: Department of the Prime Minister and Cabinet, The Office for Women Rochelle White PO Box 6500, Canberra ACT 2600</i>  <i>Contractor: Ellis-Jones Consulting s 47F 26 Peel Street, Collingwood VIC 3066</i>

13.	<b>Governing law and jurisdiction</b>	Error! Reference source not found.	<i>As specified in the Standard Terms and Conditions.</i>		
<b>Services</b>					
14.	<b>Description of Services including the purpose of the Services, Milestone Dates, and Delivery Place</b>	<b>1.1, 4, 4.3(d) and 4.4</b>	<p><i>Please note – Exact milestones to confirmed at inception meeting.</i></p> <p><i>The Rapid Review Taskforce within the Office for Women would like to engage a suitably qualified Graphic Designer to produce a report on behalf of the Rapid Review Taskforce.</i></p> <ul style="list-style-type: none"> <li>• <i>The suitable supplier will design and create a web limited Report (approx. 90 pages, with additional appendices TBC) which may also have a small print run.</i></li> <li>• <i>Ability to visually conceptualise ideas for the design of the Report and create infographics to communicate messaging (approx. 10 complex/medium, 10 simple),</i></li> <li>• <i>Ability to communicate sensitive content, included but not limited to: Domestic violence, homicide and gender based violence;</i></li> <li>• <i>Typesetting content to meet Web Content Accessibility Guidelines.</i></li> <li>• <i>Liaise with the Rapid Review Panel members &amp; Secretariat to communicate visual ideas/concepts for the Report.</i></li> </ul>		
			<b><i>Milestone Description</i></b>	<b><i>Delivery Location</i></b>	<b><i>Due Date</i></b>
			<i>First draft of report structure submitted to designer to support concept development.</i>	<i>Via email/digital meeting MS Teams.</i>	<i>Tues, 30 July 2024</i>

			<i>Receive design concepts (x2) from designer (include cover, internal double page spread, headings, font application and data visual concepts).</i>	<i>Via email/digital meeting MS Teams.</i>	<i>Mon, 5 August 2024</i>
			<i>Approved concept selected (refinements to concept possible)</i>	<i>Via email/digital meeting MS Teams.</i>	<i>Tues, 6 August 2024</i>
			<i>Final report content submitted to designer for typesetting and layout.</i>	<i>Via email/digital meeting MS Teams.</i>	<i>Wed, 14 August 2024</i>
			<i>Receive designed report from designer</i>	<i>Via email/digital meeting MS Teams.</i>	<i>19 August 2024</i>
			<i>Final copy edits provided to designer</i>	<i>Via email/digital meeting MS Teams.</i>	<i>Wed, 21 August 2024</i>
			<i>Receive final designed report Print PDF from designer</i>	<i>Via email/digital meeting MS Teams.</i>	<i>Fri, 23 August 2024</i>
			<i>Receive word document, tagged accessible PDF all working design files.</i>	<i>Via email/digital meeting MS Teams. Via registered post.</i>	<i>Tues, 27 August 2024</i>
16.	<b>Reporting requirements</b>	<b>11.2</b>	<i>Participate in regular meetings with the Rapid Review Panel/Secretariat on progression of work, for Panel to evaluate Report and to discuss changes/suggestions.</i>		



17.	<b>National Anti-Corruption Commission</b>	Error! Reference source not found.	<i>The Standard Terms and Conditions apply.</i>
18.	<b>Business Hours</b>	<b>1.1</b>	<i>As specified in the Standard Terms and Conditions.</i>
19.	<b>Relevant Standards</b>	Error! Reference source not found.	<i>Refer to the standards set out in the Standard Terms and Conditions. No additional standards, practice or guidelines apply.</i>
20.	<b>Participating Agency requirements</b>	Error! Reference source not found.	<i>Refer to the requirements set out in the Standard Terms and Conditions. No additional Participating Agency requirements apply.</i>
21.	<b>APS Values</b>	<b>4.13</b>	<i>The Standard Terms and Conditions apply.</i>
22.	<b>Commonwealth Fraud Control Framework</b>	<b>4.14</b>	<i>The Standard Terms and Conditions apply.</i>
23.	<b>Indigenous Procurement Policy</b>	<b>4.18</b>	<i>The Standard Terms and Conditions apply.</i>

24.	<b>Child Safety</b>	<b>4.23</b>	<p>Part or all of the Services involve the Contractor employing or engaging with Child-Related Personnel that is required by Relevant Legislation to have a Working With Children Check:</p> <p><input type="checkbox"/> Yes, clauses 14.5 to 14.8 of the Deed apply</p> <p><input checked="" type="checkbox"/> No, clauses 14.5 to 14.8 of the Deed do not apply</p> <p>Contractor's Child-Related Personnel must comply with Relevant Legislation, including ensuring Working With Children Checks are be current for its Child-Related Personnel remain current</p> <p><input type="checkbox"/> Yes, clause 14.2(b) of the Deed apply</p> <p><input checked="" type="checkbox"/> No, clause 14.2(b) of the Deed does not apply</p>
25.	<b>Security</b>	Error! Reference source not found.	<i>No additional security requirements apply.</i>
26.	<b>Additional insurance</b>	Error! Reference source not found.	<i>Nil.</i>
<b>Confidential Information</b>			

27.	<b>Confidential Information</b>	1.1 and Error! Reference source not found.	<b>Participating Agency's Confidential Information:</b>	
			<b>Item</b>	<b>Period of confidentiality</b>
			<i>Any information provided to supplier from agency including for the purpose of developing the Report: . Written/verbal or digital information provided via post, email or MS Teams.</i>	29 July 2024 – 13 September 2024
			<i>Supplier's Confidential Information</i>	
			<b>Item</b>	<b>Period of confidentiality</b>
	<i>Bank account details of supplier</i>	<i>Indefinite</i>		
	<i>Any personal information in relation to supplier's employees such as personal contact numbers that are not publicly available.</i>	<i>Indefinite</i>		
<b>Ownership of Material</b>				
28.	<b>Participating Agency Material</b>	1.1 and 15	Participating agency materials that will be provided to the supplier: <ul style="list-style-type: none"> <li>• Written/electronic information pertaining to the Panel's recommendations for the Prevention Review Report</li> <li>• Data and research</li> </ul>	

29.	<b>Ownership of Contract Material</b>	16.3(a)	<i>Participating Agency to own all Intellectual Property Rights in Contract Material upon its creation.</i>
30.	<b>Licence of Material</b>	16.3(b)	<i>The Standard Terms and Conditions apply.</i>
31.	<b>Moral Rights – Specified Acts</b>	Error! Reference source not found.	<i>As specified in the Standard Terms and Conditions.</i>
<b>Payment</b>			
32.	<b>Payment – Service Charges</b>	19.1	<i>The total fee must not exceed \$18,579 (GST inclusive) during the initial engagement.</i>  <i>Any additional works which may result in the total fee amount being exceeded must be approved by the Participating Agency prior to commencement of the additional works.</i>
33.	<b>Additional invoice requirements</b>	19.3	<i>Invoices are to be sent via email after completion of final milestone to <a href="mailto:s47E(d)@pmc.gov.au">s 47E(d) @pmc.gov.au</a> and Cc <a href="mailto:s22(1)(a)(ii)@pmc.gov.au">s 22(1)(a)(ii)@pmc.gov.au</a></i>  <i>Invoices <b>must</b> include the following reference CD012337</i>
34.	<b>Payment period</b>	Error! Reference source not found.	<i>As specified in the Standard Terms and Conditions.</i>

35.	<b>Expenses</b>	Error! Reference source not found.	(a) <i>Subject to (b) below, the Participating Agency will not pay any travel, accommodation or other fees, charges or expenses unless they have been pre- approved in writing by [the Participating Agency].</i>
<b>Acceptance of Services and other processes</b>			
36.	<b>Acceptance</b>	<b>4.6</b>	<i>As specified in the Standard Terms and Conditions.</i>
37.	<b>Business process requirements</b>	<b>5</b>	<i>Nil.</i>
38.	<b>Business continuity planning</b>	<b>6</b>	<i>Nil.</i>
39.	<b>Transition and implementation</b>	<b>9</b>	<i>Nil.</i>
40.	<b>Unwind</b>	<b>10</b>	<i>Clause 10 is to apply.</i>
41.	<b>Progress meetings</b>	<b>11.1</b>	<i>Participate in regular meetings with the Rapid Review Panel/Secretariat on progression of work, for Panel to evaluate Report and to discuss changes/suggestions. Prior notice of progress meetings will be provided to Supplier.</i>
42.	<b>Relationship management</b>	<b>12.1</b>	<i>Relationship with Supplier will be managed through 1 x Panel member and 1 x Secretariat member.</i>
43.	<b>Operational management meetings</b>	<b>12.2</b>	<i>Nil.</i>

44.	<b>Other forums</b>	<b>12.3</b>	<i>Nil.</i>
46.	<b>Force majeure</b>	Error! Reference source not found.	<i>As specified in the Standard Terms and Conditions.</i>
47.	<b>Limitation Amount</b>	Error! Reference source not found.	<i>Liability Cap not applicable.</i>

Signed for and on behalf of  
[Participating Agency] by its duly  
authorised representative in the presence  
of

s 22(1)(a)(ii)

Signature of witness

s 22(1)(a)(ii)

Signature of representative

s 22(1)(a)(ii)

Name of witness (print)

Rochelle White

Name of representative (print)

30.7.24

Date

AS, Gender-Based Violence & Social Policy Branch

Position of representative (print)

[Note to drafters: a number of  
execution blocks have been included  
to enable signing by companies and  
trusts. Please remove whichever  
execution block is not applicable]

[Note to drafters: use this execution  
block if the Contractor is a  
company]

Executed by A Montage Unique Pty  
Ltd TA Ellis Jones Consulting  
130460829/99130460829 in  
accordance with Section 127 of the  
Corporations Act 2001

s 22(1)(a)(ii)

Signature of director

s 47F

Name of director (print)

in the presence of:

s 22(1)(a)(ii)

Signature of Witness

s 47F

Name of Witness

29 July 2024

Date

**[Note to drafters: use this execution block if the Contractor is a partnership]**

Signed by authority of *[insert name of Contractor and ABN]* by:

\_\_\_\_\_  
Name of Partner (print)

\_\_\_\_\_  
Signature of partner

in the presence of :

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signature of Witness

Date

**[Note to drafters: use this execution block if the Contractor is a individual]**

Signed by *[insert name of Contractor and ABN]* by:

\_\_\_\_\_  
Name of signatory (print)

\_\_\_\_\_  
Signature of signatory

in the presence of:

\_\_\_\_\_



\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

**[Note to drafters: use this execution block if the Contractor is a company acting as the trustee of a trust (no common seal)]**

Signed by *[insert name and ABN/ACN of company]* in its capacity as trustee of *[insert name of trust]* in accordance with section 127 of the *Corporations Act 2001* (Cth)

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary/sole director and sole company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary/sole director and sole company secretary (print)

**Note to drafters: use this execution block if the Contractor is a company acting as the trustee of a trust (common seal)]**

The common seal of *[insert company name and ABN/ACN]* in its capacity as trustee of *[insert name of trust]* is fixed in accordance with section 127 of the *Corporations Act 2001* (Cth) in the presence of:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary/sole director and sole company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary/sole director and sole company secretary (print)

**Note to drafters: use this execution block if the Contractor is an individual acting as the trustee of a trust]**

Signed by *[insert name of trustee]* in *[his/her]* capacity as trustee of *[insert name of trust]* in the presence of

\_\_\_\_\_  
Signature of trustee

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of trustee (print)

\_\_\_\_\_  
Name of witness

**From:** s 47F  
**To:** s 22(1)(a)(ii)  
**Cc:** s 47G(1)(a) s 22(1)(a)(ii)  
**Subject:** RE: Engagement of Services - The Department of the Prime Minister and Cabinet [SEC=OFFICIAL]  
**Date:** Tuesday, 30 July 2024 12:36:54 AM  
**Attachments:** [image003.png](#)  
[image005.png](#)  
[CDC Official Order - Ellis Jones.docx](#)

Hello s 22(1)(a)(ii)

Please find signed and attached.

If possible, we'd like to kick-off on Thursday or Friday this week.

Looking forward to getting started,

s 47F

**s 47F**

Managing Director

Research, Strategy, Communications, Design.  
Move People. Change the World for Good.

t. +61 (03) 9416 0046

m. s 47F

[ellisjones.com.au](http://ellisjones.com.au) • [blog](#) • [linkedin](#)



**From:** s 22(1)(a)(ii) @pmc.gov.au>  
**Sent:** Monday, July 29, 2024 1:37 PM  
**To:** s 47F @ellisjones.com.au>  
**Cc:** s 47G(1)(a) @ellisjones.com.au>; s 47G(1)(a) @ellisjones.com.au>; s 47F @ellisjones.com.au>; s 22(1)(a)(ii) @pmc.gov.au>  
**Subject:** Engagement of Services - The Department of the Prime Minister and Cabinet [SEC=OFFICIAL]  
**Importance:** High

OFFICIAL

Dear s 47F ,

Thank you for your response to our Request for Quotation for the design of the Rapid Review of Prevention Approaches Expert Panel Report.

After an evaluation of all responses received, I am pleased to inform you that the offer submitted by *A Montage Unique Pty Ltd* trading as *Ellis-Jones Consulting* has been selected as the preferred supplier.

Please find **attached** a copy of the contract for your review and signature. Please note the dates of the final deliverables differ slightly to the RFQ (1 week later). Please return the signed version to s 22(1)(a)(ii) [@pmc.gov.au](mailto:s 22(1)(a)(ii)@pmc.gov.au) at your earliest convenience and a kick-off meeting can ideally be scheduled in the next couple of days.

Once received, I will arrange for our delegate to countersign and a copy will be returned to you for your records. If you do not agree with elements of the contract, please contact me as soon as possible to discuss.

We look forward to working with you 😊

Many thanks,

s 22(1)(a)(ii) | Adviser  
Prevention Review Secretariat  
Office for Women | Department of the Prime Minister and Cabinet  
s 22(1)(a)(ii) [@pmc.gov.au](mailto:s 22(1)(a)(ii)@pmc.gov.au)

Ngunnawal Country, One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

s 22(1)(a)(ii)



IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.



# TAX INVOICE

From **Ellis Jones**  
 A Montage Unique Pty Ltd  
 PO Box 504  
 Clifton Hill 3068  
  
 03 9416 0046  
 www.ellisjones.com.au  
 accounts@ellisjones.com.au  
  
 ABN 99 130 460 829  
 ACN 130 460 829

Invoice ID **24DEPMC01**  
 PO Number **CD012337**  
 Issue Date **06/09/2024**  
 Due Date **21/09/2024 (Net 15)**  
 Subject **TAX INVOICE: Provision of services**

Invoice For **Prime Minister and Cabinet**  
 Attention: **§ 22(1)(a)(ii)**  
 Prevention Review Secretariat  
 Office for Women  
 The Department of Prime Minister and Cabinet  
 1 National Circuit, Barton ACT 2600  
 ABN 18 108 001 191 7

Item Type	Description	Quantity	Unit Price	Amount
Service	Office of Women - Rapid Review Panel Report  Project design and set-up Structure and creative direction: 3 x concepts Illustrations, infographics, and diagrams Page layout: exec summary and full report Editing and proofing: Easy Read version Accessible version Export Project management	1.00	\$25,000.00	<b>\$25,000.00</b>

Subtotal **\$25,000.00**  
 GST (10%) **\$2,500.00**  
  
**Amount Due \$27,500.00**

**Notes**

Bank account details:  
 A Montage Unique Pty Ltd T/A Ellis Jones Consulting  
 BSB. **§ 47G(1)(a)** ACCT. **§ 47G(1)(a)**

Our terms of business require payment of each invoice by the due date. We reserve the right to charge interest of 0.8% per month on overdue payments.

Please send remittance advice to [accounts@ellisjones.com.au](mailto:accounts@ellisjones.com.au)

# Head Agreement for Creative and Digital Communication Services

Number **Number**

---

Services Australia (**Lead Agency**)

**Legal Entity** (**Contractor**)

# Head Agreement for Creative and Digital Communication services

---

<b><u>Deed Information</u></b> .....	<b>3</b>
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# Deed Information

---

## Date

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
 day month year

## Parties

Name Commonwealth of Australia (**Commonwealth**) as represented by  
 Services Australia, 57 Athllon Drive, Greenway ACT 2900 ABN 90 794  
 605 008

Short form name **Lead Agency**

Name **Legal Entity**  
 ABN **insert**

Short form name **Contractor**

## Background

- A The Participating Agencies require the provision of Creative and Digital Communication Services.
- B The Contractor has offered to provide to Participating Agencies the Services.
- C The Lead Agency has agreed to appoint the Contractor on the terms and conditions of this Head Agreement for the Head Agreement Term to provide, upon execution of an Official Order, such of the Services as may be requested from time to time by a Participating Agency.



# Agreed Terms

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## 1. Definitions and interpretation

### 1.1 Definitions

In this Head Agreement, except where the contrary intention is expressed, the following definitions are used:

<b>Accounting Standards</b>	the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
<b>Advisers</b>	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
<b>Agency</b>	(a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation (including a local authority); (b) a body established by the Governor-General or by a Minister of State of the Commonwealth including departments; or (c) an incorporated company over which the Commonwealth exercises control; or (d) a State or Territory Agency; or (e) a local government, council or municipality.
<b>Agreed Terms</b>	clauses 1 to 23 of this Head Agreement, which set out the terms and conditions agreed by the parties.
<b>AusTender</b>	is the Australian Government's procurement information system, <a href="http://www.tenders.gov.au">www.tenders.gov.au</a> , that provides centralised publication of Australian Government business opportunities, annual procurement plans, multi-use lists, standing offer notices and contracts awarded, access to approach to market documentation and addenda, and the Tender Response lodgement functionality.
<b>Background Material</b>	any Material, other than Head Agreement Material, which is made available by a party for the purpose of this Head Agreement, on or following the Commencement Date, and includes: (a) Third Party Material; (b) error corrections to, or translations of, that Material; and (c) derivatives of that Material where such derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material.

<b>Shadow Economy Procurement Connected Policy (formerly known as 'black economy')</b>	means the Shadow economy – increasing the integrity of government procurement. The policy is available at <a href="https://treasury.gov.au/policy-topics/economy/black-economy/procurement-connected-policy">https://treasury.gov.au/policy-topics/economy/black-economy/procurement-connected-policy</a>
<b>Business Day</b>	a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where an act is to be performed, where a payment is to be made, or where the Notice is received.
<b>Business Hours</b>	from 8.00am to 6.00pm on a Business Day, unless specified otherwise in an Official Order.
<b>Capped Rates</b>	the rates set out in or determined in accordance with Schedule 3.
<b>Commencement Date</b>	the date on which this Head Agreement commences, as specified in item 6 of the Head Agreement Details.
<b>Commonwealth or Cth</b>	the Commonwealth of Australia.
<b>Confidential Information</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) information that is by its nature confidential;</li> <li>(b) information provided on a confidential basis;</li> <li>(c) information that a party knows or ought to know is confidential; or</li> <li>(d) information described in item 15 of the Head Agreement Details, or in a separate document created in accordance with clause 14.5; or</li> </ul> <p>but does not include:</p> <ul style="list-style-type: none"> <li>(e) information that is or becomes public knowledge otherwise than by breach of this Head Agreement or any other confidentiality obligation.</li> </ul> <p>In the case of the Lead Agency and Participating Agencies, Confidential Information includes:</p> <ul style="list-style-type: none"> <li>(a) Personal Information; or</li> <li>(b) Protected Information.</li> </ul>
<b>Contract</b>	a contract formed under clause 5.5.
<b>Contractor</b>	the party specified in item 2 of the Head Agreement Details and includes as the context requires Personnel of the Contractor and its subcontractors.
<b>Contractor Representative</b>	the person identified in item 4 of the Head Agreement Details.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).

<b>Default</b>	means any of the following: <ul style="list-style-type: none"> <li>a. a breach of an express or implied provision of this Head Agreement or any Contract by a party to the Contract; and</li> <li>b. a breach of a general law duty or an applicable law in relation to the Contract by any of the following: <ul style="list-style-type: none"> <li>(i) the Lead Agency or Lead Agency Personnel;</li> <li>(ii) a Participating Agency or Participating Agency Personnel; and</li> <li>(iii) the Contractor or Contractor Personnel.</li> </ul> </li> </ul>
<b>Electronic Signature</b>	means a valid electronic signature, including: <ul style="list-style-type: none"> <li>(a) typing the relevant names in the execution block and signing using a stylus in the execution field within the electronic document;</li> <li>(b) inserting a scanned version of the signature on the electronic document;</li> <li>(c) providing an affirmative statement in a covering email; or</li> <li>(d) using a software program which has been approved by the Lead Agency or the Participating Agency prior to execution.</li> </ul>
<b>Head Agreement</b>	this deed of standing offer between the Lead Agency and the Contractor, as varied from time to time in accordance with clause 23.1, and includes its schedules and any attachments.
<b>Head Agreement Details</b>	the details set out in Schedule 1.
<b>Head Agreement Material</b>	any Material created by the Contractor on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Head Agreement, but does not include the tools the Contractor uses to deliver the Services, including the Contractor's processes and procedures, software and on-line collaborative tools.
<b>Head Agreement Term</b>	the Initial Head Agreement Term plus each extension exercised in accordance with clause 3.2.
<b>Initial Head Agreement Term</b>	the period of time for which this Head Agreement is intended to continue, as specified in item 7 of the Head Agreement Details.

<b>Intellectual Property Rights</b>	<p>all intellectual property rights, including, the following rights:</p> <ul style="list-style-type: none"> <li>(a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names;</li> <li>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</li> <li>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,</li> </ul> <p>whether or not such rights are registered or capable of being registered.</p>
<b>Law</b>	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
<b>Lead Agency</b>	the Agency specified in item 1 of the Head Agreement Details.
<b>Lead Agency Material</b>	any Material provided (or required to be provided) to the Contractor by the Lead Agency, including the Material (if any) specified in item 12 of the Head Agreement Details.
<b>Lead Agency Representative</b>	the person identified in item 3 of the Head Agreement Details.
<b>Losses</b>	liabilities, expenses, losses, damages, costs, compensation or expense (including legal costs on a full indemnity basis, whether incurred by or awarded against a party).
<b>Material</b>	includes property, information, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
<b>Milestone Date</b>	any fixed date to be met by the Contractor in performing any of its obligations under a Contract, as specified in the Official Order.
<b>Moral Rights</b>	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
<b>Notice</b>	a notice, demand, consent, approval or communication issued under this Head Agreement in accordance with clause 22.
<b>Official Order</b>	an order for Services placed by a Participating Agency in accordance with clause 5, substantially in the form set out in Schedule 4 or in another form agreed between the Participating Agency and the Contractor in writing.

<b>Participating Agency</b>	an Agency which may require the provision of Services under this Head Agreement and any other Agency that joins this Head Agreement in accordance with clause 6.
<b>Personal Information</b>	has the meaning given to that term under the <i>Privacy Act 1988</i> (Cth).
<b>Personnel</b>	in relation to a party, any employee, officer or agent of that party, and in the case of the Contractor, of any subcontractor. Where the context requires, it also includes Advisers of that party.
<b>Protected Information</b>	<p>means information or an opinion (including information or an opinion forming part of a database) which is protected by any provision of an Act, regulation or other legislative instrument which requires secrecy or confidentiality in dealing with information which is part of this Contract, including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) Part 5.6 of the <i>Criminal Code</i> (Cth);</li> <li>(b) sections 476.1 to 478.4 inclusive of the <i>Criminal Code</i> (Cth);</li> <li>(c) section 12ZU and sections 351 to 353 inclusive and sections 357 to 360 inclusive of the <i>Student Assistance Act 1973</i> (Cth);</li> <li>(d) sections 202 to 206 inclusive of the <i>Social Security (Administration) Act 1999</i> (Cth);</li> <li>(e) sections 162 to 165 inclusive and section 170 of <i>A New Tax System (Family Assistance) (Administration) Act 1999</i> (Cth);</li> <li>(f) section 130 of the <i>Health Insurance Act 1973</i> (Cth); and</li> <li>(g) section 135A of the <i>National Health Act 1953</i> (Cth).</li> </ul>
<b>Satisfactory</b>	means meets the conditions set out in Part 6.b of the Shadow Economy Procurement Connected Policy or, if the circumstances in Part 6.c of the Shadow Economy Procurement Connected Policy apply, the conditions set out in Part 8.b of the Shadow Economy Procurement Connected Policy.
<b>Schedule</b>	a schedule to this Head Agreement.

<b>Secrecy Law</b>	<p>means a provision in an Act or subordinate legislation that imposes secrecy or confidentiality obligations on individuals or entities in relation to Commonwealth information, including:</p> <ul style="list-style-type: none"> <li>(a) A New Tax System (Family Assistance) (Administration) Act 1999;</li> <li>(b) Child Support (Assessment) Act 1989;</li> <li>(c) Child Support (Registration and Collection) Act 1988;</li> <li>(d) Crimes Act 1914;</li> <li>(e) Criminal Code Act 1995;</li> <li>(f) Data-matching Program (Assistance and Tax) Act 1990;</li> <li>(g) Disability Services Act 1986;</li> <li>(h) Health Insurance Act 1973;</li> <li>(i) National Health Act 1953;</li> <li>(j) National Redress Scheme for Institutional Child Sexual Abuse Act 2018;</li> <li>(k) Paid Parental Leave Act 2010</li> <li>(l) Social Security (Administration) Act 1999; and</li> <li>(m) Student Assistance Act 1973.</li> </ul>
<b>Service Charges</b>	the charges payable to the Contractor in accordance with an Official Order.
<b>Services</b>	<p>the services:</p> <ul style="list-style-type: none"> <li>(a) described in Schedule 2 which the Contractor has offered to provide under the Head Agreement; or</li> <li>(b) to be provided by the Contractor (including the provision of any deliverables) as specified in an Official Order,</li> </ul> <p>as the context requires.</p>
<b>Specified Personnel</b>	the personnel specified in an Official Order.
<b>Standard Terms and Conditions</b>	the terms and conditions specified in Schedule 5.
<b>State or Territory Agency</b>	<ul style="list-style-type: none"> <li>(a) a body corporate or an unincorporated body established or constituted for a public purpose by State or Territory legislation, or an instrument made under that legislation (including a local authority);</li> <li>(b) a body established by a State Governor, or by a Minister of State or a Territory including departments; or</li> <li>(c) an incorporated company over which a State or Territory exercises control.</li> </ul>
<b>Statement of Tax Record</b>	<p>means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at</p> <p><a href="https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR">https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR</a></p>
<b>Third Party Material</b>	Background Material in which a third party holds Intellectual Property Rights.

<b>Valid</b>	means valid in accordance with Part 7.e of the Shadow Economy Procurement Connected Policy.
<b>Warranted Materials</b>	the Background Material provided by the Contractor and Head Agreement Material.

## 1.2 Interpretation

In this Head Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Head Agreement;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Australian Eastern Standard Time;
- (g) a reference to a party is to a party to this Head Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the *Corporations Act 2001* (Cth) has the meaning given to it in the *Corporations Act 2001* (Cth);
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Head Agreement or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) headings are for ease of reference only and do not affect interpretation.

## 2. Priority of Head Agreement documents

If there is inconsistency between any of the documents forming part of this Head Agreement,

those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) Agreed Terms;
- (b) Schedules;
- (c) any attachments to the Schedules; and
- (d) documents incorporated by reference in this Head Agreement.

### 3. Duration of Head Agreement

#### 3.1 Head Agreement Term

- (a) This Head Agreement begins on the Commencement Date and continues for the duration of the Head Agreement Term unless terminated in accordance with clause 19.
- (b) The expiry of the Head Agreement does not terminate a Contract.

#### 3.2 Option to extend Head Agreement Term

- (a) The Initial Head Agreement Term may be extended at the option of the Lead Agency for further period(s), specified in item 8 of the Head Agreement Details (each a **Head Agreement Option Period**), on the terms and conditions then in effect, by giving written notice to the Contractor. Such notice must be given at least:
  - (i) 30 days; or
  - (ii) such other period specified in item 9 of the Head Agreement Details (**Head Agreement Option Notice Period**),
 before the end of the current Head Agreement Term.
- (b) The notice must set out:
  - (i) the period of the extension, being no greater than the Head Agreement Option Period; and
  - (ii) the revised completion date.
- (c) Any extension in accordance with this clause 3.2 takes effect from the end of the then current Head Agreement Term.

### 4. General obligations of the Contractor

#### 4.1 General obligations

The Contractor will, at all times:

- (a) act reasonably in performing its obligations and exercising its rights under this Head Agreement; and
- (b) diligently perform its obligations under this Head Agreement.

#### 4.2 Contractor warranties

- (a) The Contractor warrants that it:
  - (i) is capable, and will remain capable during the Head Agreement Term, of providing the Services at locations within Australia, including metropolitan, regional and remote areas;
  - (ii) is capable, and will remain capable during the Head Agreement Term, of managing the Services requirements that may be initiated from a wide range of sources and which may have varying requirements and competing priorities; and



- (iii) will perform the Services in a manner that respects and addresses, where appropriate, the communications needs associated with:
  - (A) indigenous cultures;
  - (B) cultural diversity;
  - (C) language diversity;
  - (D) age diversity; and
  - (E) people with disabilities.

## 5. Standing offer and creation of Contracts

### 5.1 Standing offer

By this Head Agreement the Contractor makes an irrevocable standing offer to supply the Services to the Participating Agencies on the terms and conditions set out in this Head Agreement.

### 5.2 Service Charges

The Service Charges payable to the Contractor for performing the Services will be specified in an Official Order and must be based on rates which must not exceed the Capped Rates.

### 5.3 Determining whether to place an Official Order

- (a) A Participating Agency may, during the Head Agreement Term, issue the Contractor with an Official Order.
- (b) Before issuing an Official Order to the Contractor, a Participating Agency may:
  - (i) consult with the Contractor in relation to the details to be specified in the Official Order; or
  - (ii) require the Contractor to provide a quotation for services required under the Head Agreement (**Request for Quotation**). The Request for Quotation may follow such format as is suitable in the circumstances and may include details such as:
    - (A) a description of the Services required;
    - (B) the Specified Personnel;
    - (C) additional insurance requirements;
    - (D) the timeframe for provision of the Services required;
    - (E) the timeframe for provision of the quotation; and
    - (F) the information required from the Contractor.
- (c) If a Participating Agency issues a Request for Quotation, the Contractor must provide a quotation to the Participating Agency in response to the Request for Quotation and base any proposed Service Charges on the Capped Rates or a lower rate.
- (d) Notwithstanding any consultation with the Contractor, the issue of a Request for Quotation or the provision of a quotation from the Contractor, a Contract is not formed until the Participating Agency issues an Official Order to the Contractor.

### 5.4 Aggregation of demand

Participating Agencies with similar requirements may aggregate their demand and approach the Contractor with a single Request for Quotation covering the provision of Services to those Agencies. Proposed contractual arrangements will be detailed in the Request for Quotation.

## 5.5 Formation of a Contract

- (a) The Participating Agency may complete, sign (including by an Electronic Signature) and send to the Contractor an Official Order. An Official Order must refer to this Head Agreement by including the endorsement “This Official Order is issued in Accordance with the Deed of Agreement for the Provision of Creative and Digital Communication Services (Standing Offer Notice Identifier (SON ID) SON4009385” and should include the details set out in Schedule 4 but may follow such format as is determined by the Participating Agency to be appropriate in the circumstances.
- (b) The Contractor's offer contained in this Head Agreement will be accepted by the Participating Agency and a Contract is formed when:
  - (i) the Participating Agency and the Contractor have signed an Official Order in the form set out in Schedule 4; or
  - (ii) the Participating Agency and the Contractor have signed an Official Order in another form agreed between the Participating Agency and the Contractor in writing.
- (c) Each Official Order issued by a Participating Agency in accordance with this Head Agreement will form a separate Contract between the Contractor and the Participating Agency for the supply by the Contractor of the Services specified in the Official Order to the Participating Agency. For the avoidance of doubt, the Lead Agency is not a party to any Contract formed under the Head Agreement except when it is the Agency which issued the Official Order.

## 5.6 Terms and Conditions of a Contract

- (a) The terms and conditions of a Contract are:
  - (i) the terms and conditions specified in the Official Order; and
  - (ii) the Standard Terms and Conditions.

## 5.7 Priority of Contract documents

To the extent of any inconsistency between two or more documents which form part of a Contract, those documents will be interpreted in the following (descending) order of priority:

- (a) the Standard Terms and Conditions;
- (b) the Official Order;
- (c) the attachments to the Official Order; and
- (d) any other document referred to in the Official Order.

## 5.8 No guarantee

- (a) Notwithstanding any other provision of this Head Agreement, the Lead Agency and each Participating Agency does not guarantee or make any assurance that any Services or any particular volume of Services will be ordered from the Contractor under this Head Agreement.
- (b) Notwithstanding any other provision of this Head Agreement, each Participating Agency may, at its absolute discretion, obtain the same or similar Services from any other service provider.

# 6. Provision of Services to third parties

## 6.1 Provision of Services to Agencies

- (a) The Contractor irrevocably offers to provide the Services to any Agency on the same as the terms and conditions as this Head Agreement except as adapted to the circumstances of the Agency.
- (b) If a Participating Agency obtains Services under this Head Agreement:
  - (i) a separate agreement will be created between the Contractor and the Participating Agency as the case requires; and
  - (ii) references to the Lead Agency in this Head Agreement will be assumed to be references to the Participating Agency.

## **6.2 Business continuity**

- (a) The Contractor must develop and maintain appropriate business continuity and disaster recovery strategies for continued delivery of the Services.
- (b) If the Contractor and a Participating Agency have established an ongoing or long term contractual relationship under an Official Order or a number of Official Orders, the Participating Agency may require the Contractor to provide details of its business continuity and disaster recovery arrangements, which may include:
  - (i) identification of key business processes;
  - (ii) business impact analysis;
  - (iii) continuity treatments; and
  - (iv) implementation, testing and maintenance.

## **7. Not used**

## **8. General processes**

The Contractor must have established and maintain for the duration of the Head Agreement Term processes for:

- (a) receiving and reviewing job opportunities and specifications;
- (b) providing quotes;
- (c) receiving job authorisations;
- (d) invoicing and reporting;
- (e) quality management; and
- (f) governance and performance management.

## **9. Monitoring progress**

### **9.1 Progress meetings**

The parties will meet at the times and manner set out in item 11 of the Head Agreement Details (or otherwise as agreed in writing between the parties) to discuss any issues in relation to performance under this Head Agreement or the provision of the Services. The Contractor must ensure that the Contractor Representative, and the Lead Agency must ensure the Lead Agency Representative, is reasonably available to attend such meetings and answer any queries relating to performance under this Head Agreement or the provision of the Services raised by either party.

### **9.2 Reporting**

The Contractor must provide the Lead Agency and the Participating Agencies with reports in

accordance with item 12 of the Head Agreement Details.

## 10. Lead Agency Material

The Lead Agency will provide to the Contractor Lead Agency Material and the Contractor must ensure that Lead Agency Material is used strictly in accordance with any conditions or restrictions specified in item 13 of the Head Agreement Details and any direction by the Lead Agency.

## 11. Intellectual Property Rights

### 11.1 Background Material

This clause 11 does not affect the ownership of the Intellectual Property Rights in any Background Material.

### 11.2 Third Party Material

Unless otherwise specified in the Official Order, the Contractor must obtain all necessary copyright and other Intellectual Property Rights permissions before making any Third Party Material available as Background Material for the purpose of this Head Agreement.

### 11.3 Lead Agency ownership of Intellectual Property Rights in Head Agreement Material

- (a) Upon its creation all Intellectual Property Rights in the Head Agreement Material vest in the Lead Agency.
- (b) To the extent that:
  - (i) the Lead Agency or the Participating Agencies need to use any of the Background Material provided by the Contractor to receive the full benefit of the Services (including the Head Agreement Material), then unless otherwise specified in the Official Order, the Contractor grants to, or must obtain for, the Lead Agency a perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Background Material during the Head Agreement Term; or
  - (ii) the Contractor needs to use any of the:
    - (A) Lead Agency Material; or
    - (B) Head Agreement Material,
  - (iii) for the purpose of performing its obligations under this Head Agreement, the Lead Agency grants to the Contractor, subject to any direction by the Lead Agency, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate such Material solely for the purpose of this Head Agreement.
- (c) The licence granted to the Lead Agency under clause 11.3(b)(i) does not include a right to exploit the Background Material for the Lead Agency's commercial purposes.

### 11.4 Warranty

Unless otherwise specified in the Official Order, the Contractor warrants that:

- (a) the Warranted Materials and the Lead Agency's and the Participating Agencies' use of the Warranted Materials will not infringe the Intellectual Property Rights of any person; and
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 11.

### 11.5 Indemnity

Unless otherwise specified in the Official Order, the Contractor agrees to indemnify the Lead Agency and the Participating Agencies in respect of any Losses suffered or incurred by the Lead Agency or the Participating Agencies which arise directly or indirectly from a breach of any of the obligations of the Contractor under this clause 11.

## 12. Moral Rights

### 12.1 Obtaining consents

To the extent permitted by the applicable Laws and for the benefit of the Lead Agency and the Participating Agencies, the Contractor:

- (a) consents to the use by the Lead Agency and the Participating Agencies of the Head Agreement Material for the Specified Acts even if the use may otherwise be an infringement of the Contractor's Moral Rights;
- (b) must ensure that each author of the Head Agreement Material (including any Personnel of the Contractor and any subcontractors) consents in writing to the use by Lead Agency and the Participating Agencies of the Head Agreement Material for the Specified Acts even if use would otherwise be an infringement of their Moral Rights; and
- (c) must use its best endeavours to ensure that any author of the Background Material and Third Party Material consents in writing to the use by the Lead Agency and the Participating Agencies of the Background Material and Third Party Material for the Specified Acts even if such use would otherwise be an infringement of their Moral Rights.

### 12.2 Specified Acts

- (a) In this clause 12, **Specified Acts** means:
  - (i) failing to attribute or falsely attributing the authorship of any Head Agreement Material, or any content in the Head Agreement Material (including without limitation material within the meaning of the *Copyright Act 1968* (Cth));
  - (ii) materially altering the style, format, colours, content or layout of the Head Agreement Material and dealing in any way with the altered Head Agreement Material;
  - (iii) reproducing, communicating, adapting, publishing or exhibiting any Head Agreement Material; and
  - (iv) adding any additional content or information to the Head Agreement Material.
- (b) For the purposes of this clause 12, **Head Agreement Material** includes any Background Material to the extent that it is included in, forms part of or is attached to the Head Agreement Material.

## 13. Insurance

### 13.1 Obligation to maintain insurance

The Contractor must have and maintain:

- (a) for the Head Agreement Term, valid and enforceable insurance policies for:
  - (i) public liability;
  - (ii) workers' compensation as required by Law;
  - (iii) any additional types specified in item 14 of the Head Agreement Details; and
- (b) for seven (7) years following the expiry or termination of this Head Agreement, valid

and enforceable insurance policies for either professional indemnity or errors and omissions, unless otherwise specified in item 14 of the Head Agreement Details,

in the amounts specified in item 14 of the Head Agreement Details. The insurance required by clause 13.1(a)(i) must cover the Contractor's liability at general law and extend to include cover for the Contractor's assumed liabilities under any indemnity given under this Head Agreement.

### **13.2 Confirmation of insurance**

The Contractor must, on request by the Lead Agency, provide current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by clause 13.1.

## **14. Confidentiality**

### **14.1 Confidential Information not to be disclosed**

- (a) Subject to clause 14.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, the Lead Agency may impose such conditions as it thinks fit, and the Contractor agrees to comply with these conditions.

### **14.2 Written undertakings**

- (a) The Lead Agency may at any time require the Contractor to arrange for:
  - (i) its Advisers; or
  - (ii) any other third party to whom information may be disclosed pursuant to clause 14.3(a) or 14.3(e),
 to give a written undertaking in the form of a deed relating to the use and non-disclosure of the Lead Agency's Confidential Information.
- (b) If the Contractor receives a request under clause 14.2(a) it must promptly arrange for all such undertakings to be given.

### **14.3 Exceptions to obligations**

The obligations on the parties under this clause 14 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its Advisers or Personnel solely in order to comply with obligations, or to exercise rights, under this Head Agreement or a Contract;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of deed-related activities;
- (c) is disclosed by the Lead Agency to the responsible Minister;
- (d) is disclosed by the Lead Agency, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Lead Agency within the Lead Agency's organisation, or with another Agency or State or Territory Agency, when this serves the Lead Agency's legitimate interests;
- (f) is authorised or required by law, including under this Head Agreement or a Contract, under a licence or otherwise, to be disclosed; or
- (g) is in the public domain otherwise than due to a breach of this clause 14.

### **14.4 Obligation on disclosure**

Where a party discloses Confidential Information to another person:

- (a) pursuant to clauses 14.3(a), 14.3(b) or 14.3(e), the disclosing party must:
  - (i) notify the receiving person that the information is Confidential Information; and
  - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
- (b) pursuant to clauses and 14.3(c) and 14.3(d), the disclosing party must notify the receiving party that the information is Confidential Information.

#### **14.5 Additional confidential information**

- (a) The parties may agree in writing after the Commencement Date that certain additional information is to constitute Confidential Information for the purposes of this Head Agreement.
- (b) Where the parties agree in writing after the Commencement Date that certain additional information is to constitute Confidential Information for the purposes of this Head Agreement, this documentation is incorporated into, and becomes part of this Head Agreement, on the date on which both parties have signed this documentation.

#### **14.6 Period of confidentiality**

The obligations under this clause 14 continue, notwithstanding the expiry or termination of this Head Agreement:

- (a) in relation to an item of information described in item 15 of the Head Agreement Details, for the period set out in the Head Agreement Details in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the Commencement Date is to constitute Confidential Information for the purposes of this Head Agreement, for the period agreed by the parties in writing in respect of that information.

#### **14.7 Return of Confidential Information**

- (a) The Contractor must immediately on the earlier of a request from the Lead Agency or termination or expiration of this Head Agreement:
  - (i) return to the Lead Agency;
  - (ii) destroy and certify in writing to the Lead Agency the destruction of; or
  - (iii) destroy and permit the Lead Agency to witness the destruction of,
    - all the Lead Agency's Confidential Information in the Contractor's possession or control.

#### **14.8 No reduction in privacy obligations**

Nothing in this clause 14 derogates from any obligation which either party may have either under the:

- (a) *Privacy Act 1988* (Cth);
- (b) Secrecy Laws; or
- (c) under this Head Agreement, in relation to the protection of Personal Information.

## 15. Conflict of interest

### 15.1 Warranty

The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Head Agreement no conflict of interest exists or is likely to arise in the performance of its obligations under this Head Agreement or any Contract other than those specified in item 16 of the Head Agreement Details.

### 15.2 Notification of a conflict of interest

If, during the performance of the Services a conflict of interest arises, or appears likely to arise, the Contractor must:

- (a) notify the Lead Agency immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the Lead Agency requires to resolve or otherwise deal with the conflict.

## 16. Books and records

### 16.1 Contractor to keep books and records

The Contractor must:

- (a) keep and require its subcontractors to keep adequate books and records, in accordance with Australian Accounting Standards, in sufficient detail to enable the amounts payable by the Lead Agency under this Head Agreement to be determined; and
- (b) retain and require its subcontractors to retain for a period of seven (7) years after the expiry or termination of this Head Agreement all books and records relating to the Services.

### 16.2 Costs

The Contractor must bear its own costs of complying with this clause 16.

### 16.3 Survival

This clause 16 applies for the Head Agreement Term and for a period of seven (7) years from the expiry or termination of this Head Agreement.

## 17. Audit and access

### 17.1 Right to conduct audits

The Lead Agency or a representative may conduct audits relevant to the performance of the Contractor's obligations under this Head Agreement. Audits may be conducted of:

- (a) the Contractor's operational practices and procedures as they relate to this Head Agreement;
- (b) the accuracy of the Contractor's invoices and reports in relation to the provision of the Services or this Head Agreement;
- (c) the Contractor's compliance with its confidentiality, privacy and security obligations under this Head Agreement;
- (d) Material (including books and records) in the possession of the Contractor relevant to the Services or this Head Agreement; and
- (e) any other matters determined by the Lead Agency to be relevant to the Services or this Head Agreement.



## 17.2 Access by the Lead Agency

- (a) The Lead Agency may, at reasonable times and on giving reasonable notice to the Contractor:
- (i) access the premises of the Contractor to the extent relevant to the performance of this Head Agreement;
  - (ii) require the provision by the Contractor, its Personnel or subcontractors, of records and information in a data format and storage medium accessible by the Lead Agency by use of the Lead Agency's existing computer hardware and software;
  - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Contractor, its employees, agents or subcontractors; and
  - (iv) require assistance in respect of any inquiry into or concerning the Services or this Head Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Lead Agency), any request for information directed to the Lead Agency, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Contractor must provide access to its computer hardware and software to the extent necessary for the Lead Agency to exercise its rights under this clause 17, and provide the Lead Agency with any reasonable assistance requested by the Lead Agency to use that hardware and software.
- (c) Without limiting the Contractor's obligations, the Lead Agency will comply with the reasonable directions of the Contractor's site manager in relation to security and safety when accessing the premises of the Contractor.

## 17.3 Conduct of audit and access

The Lead Agency must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 17.1; and
- (b) the exercise of the general rights granted by clause 17.2 by the Lead Agency,

do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under this Head Agreement. Without limiting its rights under this clause 17 the Lead Agency will have regard to disruptions notified to it by the Contractor in the performance of any audit or exercise of its rights under clause 17.2.

## 17.4 Costs

- (a) Except as set out in clause 17.4 (b), each party must bear its own costs of any reviews and/or audits.
- (b) If the Contractor is able to substantiate that it has incurred direct expenses as a direct consequence of the Lead Agency's exercise of the rights granted under clause 17.1 or clause 17.2 which, having regard to the value of this Head Agreement, are substantial, the Lead Agency and the Contractor will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated to the Lead Agency's reasonable satisfaction.

## 17.5 Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner

The rights of the Lead Agency under clause 17.1 and apply equally to the Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner, and their delegates (each an **Authorised Investigator**) for the purpose of performing the Auditor-

General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's statutory functions or powers.

#### **17.6 Contractor to comply with Auditor-General's, Information Commissioner's, Privacy Commissioner's and Freedom of Information Commissioner's requirements**

The Contractor must do all things necessary to comply with an Authorised Investigator's requirements, notified under clause 17.2, provided such requirements are legally enforceable and within the power of the relevant Authorised Investigator.

#### **17.7 No reduction in responsibility**

The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Head Agreement.

#### **17.8 Subcontractor requirements**

The Contractor must ensure that any subcontractors engaged for the purpose of this Head Agreement are required to provide the Lead Agency or an Authorised Investigator with rights equivalent to those specified in this clause 17.

#### **17.9 No restriction**

Nothing in this Head Agreement reduces, limits or restricts in any way any function, power, right or entitlement of an Authorised Investigator. The rights of the Lead Agency under this Head Agreement are in addition to any other power, right or entitlement of an Authorised Investigator.

#### **17.10 Survival**

This clause 17 applies for the Head Agreement Term and for a period of seven (7) years from the expiry or termination of this Head Agreement.

### **18. Dispute resolution**

#### **18.1 Good faith negotiations**

If a dispute arises between the parties on any matter related to this Head Agreement, the parties must first negotiate in good faith to resolve the dispute in a spirit of goodwill and compromise.

#### **18.2 Notification**

If a dispute is not resolved in accordance with clause 18.1, either party may give written Notice to the other party specifying the dispute and requiring its resolution under this clause ('**Notice of Dispute**').

#### **18.3 Mediation**

If the dispute is not resolved within 14 days of service of the Notice of Dispute ('**Notice Period**'), the dispute is by this clause submitted to mediation. The mediation must be conducted in the jurisdiction specified in item 17 of the Agreement Details. The Resolution Institute's Rules for Mediation (as are in place from time to time) apply to the mediation, or such other rules as may be agreed by the parties, except where they conflict with this clause. The current Resolution Institute's Rules for Mediation are available at <https://resolution.institute/Web/Web/Public-In-Dispute/Rules-and-Regulations/RI-Mediation-Rules-2016.aspx>.

#### **18.4 Appointment of mediator**

If the parties to the Dispute cannot agree on a mediator and the mediator's remuneration within fourteen (14) days after the Notice Period, the mediator is the person appointed by, and the remuneration of the mediator is the amount or rate determined by:

- (a) the President of the Law Society in the jurisdiction specified in item 17 of the Head Agreement Details; or

- (b) the President's nominee, acting on the request of either party to the dispute

## 18.5 Confidentiality

Any information or documents disclosed by a party under this clause 18:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

## 18.6 Costs

Each party to a Dispute must pay its own costs of complying with this clause 18. The parties to the Dispute must equally pay the costs of any mediator.

## 18.7 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 18.1 to 18.4. Clauses 18.5 and 18.6 survive termination of the dispute resolution process.

## 18.8 Breach of this clause

If a party to a Dispute breaches clauses 18.1 to 18.7, the other party does not have to comply with those clauses in relation to the Dispute.

## 18.9 Exception

- (a) For the purpose of this clause 18, a Dispute does not include a dispute arising in relation to the Lead Agency's termination of this Head Agreement under clause 19.1.
- (b) This clause 18 does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court that may be urgently required.
- (c) Subject to clause 18.9(b), a party must not commence or maintain a court action or proceeding upon a dispute in connection with this Head Agreement until the dispute has been submitted to mediation under this clause 18.

# 19. Termination of Head Agreement

## 19.1 Termination for convenience

- (a) The Lead Agency may, at any time, by written Notice by the Lead Agency Representative, terminate this Head Agreement in whole or in part.
- (b) In the event that a Contract is so terminated the provisions set out in clause 35.1 (Termination for convenience) will apply as if the Contract had been terminated under that clause.

## 19.2 Termination by the Lead Agency for breach

- (a) Without limiting any other rights or remedies the Lead Agency may have against the Contractor arising out of or in connection with this Head Agreement or any Contract, the Lead Agency may terminate this Head Agreement effective immediately by giving notice to the Contractor if:
  - (i) the Contractor breaches a material provision of this Head Agreement and that breach is not capable of remedy;
  - (ii) the Contractor breaches any provision of this Head Agreement and fails to remedy the breach within 14 days after receiving a Notice from the Lead Agency requiring it to do so;
  - (iii) a Participating Agency terminates a Contract for default by the Contractor;

- (iv) in the opinion of the Lead Agency, a conflict of interest exists which would prevent the Contractor from performing its obligations under this Head Agreement; or
  - (v) subject to the Lead Agency complying with any requirements in the *Corporations Act 2001* (Cth), an event specified in clause 19.2(c) happens to the Contractor.
- (b) Without limitation, for the purposes of clause 19.2(a) each of the following constitutes a breach of a material provision of this Head Agreement:
- (i) a failure to comply with clause 14 (Confidentiality);
  - (ii) a failure to notify the Lead Agency of a conflict of interest under clause 15 (Conflict of interest);
  - (iii) a failure to comply with clause 23.17 (Workplace Gender Equality);
  - (iv) a failure to comply with clause 23.18 (National Principles for Child Safe Organisations and other action for the safety of Children);
  - (v) a failure to comply with clause 23.19 (National Anti-Corruption Commission); and
  - (vi) a failure to comply with clause 23.20(b) (Notification of Significant Events).
- (c) The Contractor must notify the Lead Agency immediately if:
- (i) the Contractor being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Contractor;
  - (ii) the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
  - (iii) the Contractor ceases to carry on business;
  - (iv) the Contractor ceases to be able to pay its debts as they become due;
  - (v) the Contractor being a corporation enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
  - (vi) the Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
  - (vii) where the Contractor is a partnership, any step is taken to dissolve that partnership.
- (d) In this clause 19.2, **controller**, **managing controller**, **liquidator** and **administrator** have the same meanings as in the Corporations Act.

### 19.3 After termination or expiration

On termination or expiration of this Head Agreement the Contractor must:

- (a) stop work as specified in the notice;
- (b) take all available steps to minimise loss resulting from that termination and to protect Lead Agency Material;
- (c) deal with Lead Agency Material and Head Agreement Material as reasonably directed by the Lead Agency; and
- (d) return all Lead Agency Confidential Information to the Lead Agency.

### 19.4 Termination does not affect Contracts

Termination of this Head Agreement does not affect the continuance of any Contract formed

under this Head Agreement unless the relevant Participating Agency terminates the Contract.

### **19.5 Termination does not affect accrued rights**

Termination of this Head Agreement does not affect any accrued rights or remedies of a party.

## **20. Termination of Contracts**

For clarity, a Participating Agency may terminate any Contract in accordance with clause 35 of the Standard Terms and Conditions.

## **21. Survival**

The following clauses survive the expiry or termination of this Head Agreement:

- (a) Clause 11 (Intellectual Property Rights);
- (b) Clause 12 (Moral Rights);
- (c) Clause 13 (Insurance) to the extent it relates to professional indemnity or errors or omissions insurance;
- (d) Clause 14 (Confidentiality);
- (e) Clause 16 (Books and records); and
- (f) Clause 17 (Audit and access).

## **22. Notices and other communications**

### **22.1 Service of notices**

A Notice or other communication sent by the Lead Agency in connection with this Head Agreement (**'Notice'**) has no legal effect unless it is:

- (a) in writing, in hard-copy or by email;
- (b) in English and signed by (in the case of a hard-copy communication), or sent by (in the case of soft-copy communication):
  - (i) the Lead Agency Representative, if given by the Lead Agency, if in relation to this Head Agreement;
  - (ii) the Contractor's Representative, if given by the Contractor, and
- (c) addressed to:
  - (i) the Lead Agency Representative, if given by the Contractor, if in relation to this Head Agreement;
  - (ii) the Contractor's Representative, if given by the Lead Agency; and
- (d) sent to the other party's Address for Service by courier, by hand, mail, email or facsimile.

### **22.2 Effective on receipt**

- (a) A Notice given in accordance with clause 22.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:
  - (i) if hand delivered, on delivery;
  - (ii) if sent by prepaid post, on the third Business Day after the date of posting (or on the 10th Business Day after the date of posting if posted to or from a place outside Australia);
  - (iii) if it is sent by facsimile before 5.00pm on a Business Day (at the place of receipt), on the day it is sent and otherwise on the next Business Day (at the place of receipt);

- (iv) if it is sent by email, when it reaches the receiving party's email server, unless the sending party receives an error message indicating that the Lead Agency Representative (in the case of the Lead Agency) or Contractor's Representative (in the case of the Contractor) has not received the message; or
  - (v) if it is delivered by hand or courier before 5.00pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- (b) Despite clause 22.2(a), a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice.
  - (c) A Notice sent or delivered in a manner provided by clause 22.2(a) must be treated as validly given to and received by the party to which it is addressed even if:
    - (i) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
    - (ii) the Notice is returned unclaimed.

## 23. Miscellaneous

### 23.1 Variation

With the exception of amendments made pursuant to clause 6.1(b) and variations to the Capped Rates in accordance with Schedule 3, no agreement or understanding varying or extending this Head Agreement is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties. In particular, an invoice does not vary the Contract, time sheet or any other material provided by the Contractor.

### 23.2 Approvals and consents

Except where this Head Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Head Agreement.

### 23.3 Assignment and novation

- (a) The Contractor must not assign, in whole or in part, its rights or obligations under this Head Agreement without the prior written approval of the Lead Agency.
- (b) The Contractor must not consult with any other person or body for the purposes of entering into an arrangement that will require novation of this Head Agreement or a Contract without the Lead Agency's prior written approval.
- (c) Without limiting any legislative provision, Commonwealth administrative action or other right, power or privilege and notwithstanding any other provision of this Head Agreement, if the Lead Agency is restructured in any manner, the Lead Agency may in its absolute discretion assign or transfer this Head Agreement to any Commonwealth Entity arising out of or in connection with such a restructure.
- (d) The Lead Agency or the Commonwealth Entity to which this Head Agreement is assigned or transferred will Notify the Contractor of any assignment or transfer under clause 23.3(c).
- (e) The Contractor agrees that if there is a restructure (e.g. machinery of government change), this Head Agreement and any Contract is deemed to refer to the new entity succeeding or replacing the Lead Agency and all of the Lead Agency's rights and obligations under this Head Agreement or any Contract will continue and will become rights and obligations of that new entity.

### 23.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this Head Agreement.

### **23.5 Counterparts**

This Head Agreement may be executed in counterparts. All executed counterparts constitute one document.

### **23.6 No merger**

The rights and obligations of the parties under this Head Agreement do not merge on completion of any transaction contemplated by this Head Agreement.

### **23.7 Entire agreement**

- (a) This Head Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements, negotiations or representations, either written or verbal, between the parties.
- (b) For the avoidance of doubt, if the Contractor has previously entered into a deed of standing offer or a contract to provide to Agencies services similar to the Services, this Head Agreement will not supersede that deed of standing offer or contract.

### **23.8 Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Head Agreement and any transaction contemplated by it.

### **23.9 Severability**

A term or part of a term of this Head Agreement that is illegal, void or unenforceable may be severed from this Head Agreement and the remaining terms or parts of the terms of this Head Agreement continue in force.

### **23.10 Waiver**

- (a) A failure or delay in exercise or partial exercise of a right arising from a breach of any provision of this Head Agreement is not a waiver of that right and cannot be relied upon as a waiver of that right.
- (b) Payment of an invoice is not a waiver.

### **23.11 Relationship**

- (a) The Lead Agency and the Contractor must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Head Agreement does not create a relationship of employment, agency or partnership between the Lead Agency and the Contractor.

### **23.12 Announcements**

- (a) The Contractor must, before making a public announcement in connection with this Head Agreement or any transaction contemplated by it, obtain the Lead Agency's written agreement to the announcement, except if required by Law or a regulatory body (including a relevant stock exchange).
- (b) If the Contractor is required by Law or a regulatory body to make a public announcement in connection with this Head Agreement or any transaction contemplated by this Head Agreement, the Contractor must, to the extent practicable, first consult with and take into account the reasonable requirements of the Lead Agency.

### **23.13 Trustee**

The Contractor represents and warrants that if the Contractor is a trustee, it enters into this Head

Agreement personally and in its capacity as trustee and has the power to perform its obligations under this Head Agreement.

### **23.14 Governing law and jurisdiction**

This Head Agreement is governed by the law specified in item 17 of the Head Agreement Details and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

### **23.15 Shadow economy procurement connected policy**

- (a) The Contractor warrants that:
  - (i) at the Commencement Date it holds a Valid and Satisfactory Statement of Tax Record;
  - (ii) if the Contractor is a trustee, that at the Commencement Date it holds a Valid and Satisfactory Statement of Tax Record for the relevant trust;
  - (iii) if the Contractor is a partnership, that at the Commencement Date it holds for the partnership and each partner that is directly involved in the delivery of the Services a Valid and Satisfactory Statement of Tax Record;
  - (iv) if the Contractor is part of a consolidated group for income tax and/or GST for taxation purposes, at the Commencement Date it holds for the income tax group head and/or GST group representative a Valid and Satisfactory Statement of Tax Record; and
  - (v) in relation to any first tier subcontractor it has engaged to deliver the Services with an estimated value of over \$4 million (GST inclusive) that the Contractor holds a Satisfactory Statement of Tax Record for the subcontractor that was Valid at the time of entry into the subcontract between the Contractor and the subcontractor.
- (b) If the Contractor is a partnership, the Contractor must ensure that if a new partner joins the partnership that a Valid and Satisfactory Statement of Tax Record for the partner is provided to the Lead Agency as soon as possible after they become a partner to the partnership.
- (c) Without limiting its other rights under this Head Agreement or at law, any failure by the Contractor to comply with the requirements outlined in clause 23.15 will be a breach of the Head Agreement.
- (d) The Contractor must, during the Head Agreement Term and the Contract Period of any Official Order placed under this Head Agreement (including any extension)
  - (i) hold a Valid and Satisfactory Statement of Tax Record at all times during the Head Agreement Term (including any extension) and, on request by the Lead Agency, provide to the Lead Agency a copy of any such Statement of Tax Record;
  - (ii) if the Contractor is a trustee, hold a Valid and Satisfactory Statement of Tax Record for the relevant trust at all times and, on request by the Agency, provide to the Agency a copy of any such Statement of Tax Record;
  - (iii) if the Contractor is a partnership, hold for the partnership and each partner that is directly involved in the provision of the Services a Valid and Satisfactory Statement of Tax Record at all times; and
  - (iv) ensure that any first tier subcontractor engaged under a contract to deliver the Services with an estimated value of over \$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant subcontract.
- (e) The Contractor must retain a copy of any Statement of Tax Record held by any partner, relevant trust, income tax group head and/or GST group representative, or first tier



subcontractor in accordance with clause 23.15(d)(iv) and must, on request by the Lead Agency, provide to the Lead Agency a copy of any such Statement of Tax Record.

### 23.16 Modern Slavery

- (a) The Contractor must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Services.
- (b) If at any time the Contractor becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Head Agreement or any Contract, the Contractor must as soon as reasonably practicable take all reasonable action to address or remove these practices, including (where relevant) by addressing any practices of other entities in its supply chain.

### 23.17 Workplace Gender Equality

- (a) This clause 23.17 applies only to the extent that the Contractor is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (**the WGE Act**).

**Note:** The WGE Act defines 'relevant employer' as:

- a registered higher education provider that is an employer; or
- a natural person, or a body association (whether incorporated or not), being the employer of 100 or more employees in Australia,

but does not include the Commonwealth, a State, a Territory or an authority.

- (b) The Contractor must comply with its obligations, if any, under the WGE Act.
- (c) If the Contractor becomes non-compliant with the WGE Act during the Contract Period, the Contractor must notify the Lead Agency and Participating Agencies.
- (d) If the Head Agreement Term or any Contract Period under the Head Agreement exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the Services Start Date and following this, annually, to the Lead Agency and Participating Agencies.
- (e) If the Contractor becomes non-compliant with the WGE Act during the Head Agreement Term or Contract Period, and that non-compliance is not able to be rectified by the Contractor within a reasonable period (as determined by the Lead Agency provided that such period must not be less than 20 Business Days), the Lead Agency may terminate the Head Agreement in accordance with clause 19.2 (Termination by the Lead Agency for breach).

### 23.18 National Principles for Child Safe Organisations and other action for the safety of Children

- (a) Under this clause 23.18, the following additional definitions are used:

**Child** means an individual(s) under the age of 18 years and Children has a similar meaning;

**Child-Related Personnel** means officers, employees, contractors, agents and volunteers of the Contractor involved with the Services who as part of that involvement may interact with Children;

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

**National Principles for Child Safe Organisations** means the National Principles for Child Safe Organisations, endorsed by the Council of Australian Governments as published by the Commonwealth Government (available at:

<https://www.humanrights.gov.au/about/news/coag-endorses-national-principles-child-safe-organisations>);

**Relevant Legislation** means Legislation in force in any jurisdiction where any part of the Services may be provided or carried out;

**Working with Children Check or WWCC** means the process in place pursuant to Relevant Legislation to screen an individual for fitness to work with Children.

- (b) If any part of the Services involve the Contractor employing or engaging with Child-Related Personnel that is required by Relevant Legislation to have a Working With Children Check to undertake the provision of Services or any part of the Services, the Contractor must:
- (i) comply with all Relevant Legislation relating to the employment or engagement of Child-Related Personnel in relation to the Services, including mandatory reporting and all necessary Working With Children Checks however described;
  - (ii) if specified in an Official Order, ensure that Working With Children Checks obtained in accordance with this clause 23.18 remain current and that all Child-Related Personnel continue to comply with all Relevant Legislation for the duration of their involvement in the Services; and
  - (iii) if requested, provide the Lead Agency at the Contractor's cost, an annual statement of compliance with this clause 23.18, in such form as may be specified by the Lead Agency.
- (c) When Child Safety obligations may be relevant to a subcontract, the Contractor must ensure that any subcontract entered into by the Contractor for the purposes of fulfilling the Contractor's obligations under the contract imposes on the subcontractor the same obligations regarding Child safety that the Contractor has under the Contract. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.
- (d) Clauses 23.18(e) to 23.18(h) apply if it is specified in an Official Order at item 24 that for the purpose of the Official Order, the Contractor will be employing or engaging with Child-Related Personnel who must have a Working With Children Check.
- (e) Subject to clause 23.18(d), the Contractor agrees in relation to the Services to:
- (i) implement the National Principles for Child Safe Organisations;
  - (ii) ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
  - (iii) complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
  - (iv) implement and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 23.18;
  - (v) provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
    - the National Principles for Child Safe Organisations;
    - the Contractor's risk management strategy required by this clause 23.18;
    - Relevant Legislation relating to requirements for working with Children, including Working With Children Checks; and
    - Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
  - (vi) if requested, provide the Lead Agency at the Contractor's cost, an annual statement of compliance with clause 23.18(e), in such form as may be specified by the Lead Agency.

- (f) Subject to clause 23.18(d), with reasonable Notice to the Contractor, the Lead Agency may conduct a review of the Contractor's compliance with clause 23.18(e).
- (g) Subject to clause 23.18(d) the Contractor must:
  - (i) Notify the Lead Agency of any failure to comply with clause 23.18(e);
  - (ii) co-operate with the Lead Agency in any review conducted by the Lead Agency of the Contractor's implementation of the National Principles for Child Safe Organisations or compliance with clause 23.18(e); and
  - (iii) promptly, and at the Contractor's cost, take such action as is necessary to rectify, to the Lead Agency's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with clause 23.18(e).
- (h) Subject to clause 23.18(d), if the Contractor fails to rectify its non-compliance with clause 23.18(e) within a reasonable time the Lead Agency may terminate the Head Agreement in accordance with clause 19.2.

### 23.19 National Anti-Corruption Commission

- (a) In this clause 23.19, 'Corrupt Conduct,' 'NACC disclosure' and 'National Anti-Corruption Commissioner' (NACC Commissioner) have the meaning given in the *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act).
- (b) The Contractor:
  - (i) acknowledges that it, and its Personnel, are "contracted service providers" for the purposes of the NACC Act;
  - (ii) acknowledges that its Personnel may be "public officials" for the purposes of the NACC Act;
  - (iii) agrees that it will not engage in, and will ensure its Personnel do not engage in, Corrupt Conduct;
  - (iv) will notify the Lead Agency within five Business Days of becoming aware of, or having reasonable grounds to suspect, any Corrupt Conduct in connection with this Head Agreement; and
  - (v) will ensure that its arrangements with its Personnel, including any subcontractors, include obligations that are consistent with this clause 23.19.
- (c) The Contractor must comply with any request for assistance or direction, or cooperate in full with the Lead Agency in any action or investigation by the Lead Agency into actual or potential matters falling under the NACC Act in relation to this Head Agreement.
- (d) To the extent permitted by law, where the Contractor is subject to an investigation by the NACC Commissioner, it must notify the Lead Agency within five Business Days of becoming aware of the investigation and provide any relevant information as requested by the Lead Agency (which may include the names of affected Personnel).
- (e) The parties acknowledge they must comply with the requirements of the NACC Act in relation to a NACC disclosure before exercising a contractual or other remedy under this Head Agreement.
- (f) The parties acknowledge they must comply with the requirements of the NACC Act in relation to a NACC disclosure before exercising a contractual or other remedy under this Head Agreement.
- (g) If:
  - (i) there is a finding or opinion under the NACC Act that the Contractor or its Personnel has engaged in, is engaging in or will engage in Corrupt Conduct; or

- (ii) the Lead Agency considers the Contractor has failed to take reasonable steps to prevent Corrupt Conduct,

the Contractor must reimburse or compensate the Lead Agency in full for any losses incurred by the Lead Agency as a result of that Corrupt Conduct.

- (h) The rights of the Lead Agency in relation to clauses 17.5 to 17.6 (Audit and Access) apply equally to the NACC Commissioner or a delegate of the NACC Commissioner, for the purpose of performing the NACC Commissioner's statutory functions or powers.
- (i) The Contractor acknowledges that the provision of Confidential Information by a party for the purposes of an investigation under the NACC Act is a permitted disclosure, and therefore does not constitute a breach of obligations under clause 14 (Confidentiality).

## 23.20 Notification of Significant Events

- (a) For the purposes of this clause, 'Significant Event' means:
  - (i) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or its officers, employees, agents or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
  - (ii) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or its officers, employees, agents or Subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.
- (b) The Contractor must immediately issue the Lead Agency a Notice on becoming aware of a Significant Event.
- (c) The Notice issued under clause 23.20(b) must provide a summary of the Significant Event, including the date that it occurred and whether any Specified Personnel or other personnel engaged in connection with the Services were involved.
- (d) The Lead Agency may notify the Contractor in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Contractor must issue a Notice under clause 23.20(b) in relation to the event within three (3) Business Days of being notified by the Lead Agency.
- (e) Where reasonably requested by the Lead Agency, the Contractor must provide the Lead Agency with any additional information regarding the Significant Event within three (3) Business Days of the request.
- (f) If requested by the Lead Agency, the Contractor must prepare a draft remediation plan and submit that draft plan to the Lead Agency's Contract Manager for approval within ten (10) Business Days of the request.
- (g) A draft remediation plan prepared by the Contractor under clause 23.20(f) must include the following information:
  - (i) how the Contractor will address the Significant Event in the context of the Services, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Services or compliance by the Contractor with its other obligations under the Contract; and
  - (ii) how the Contractor will ensure events similar to the Significant Event do not occur again; and
  - (iii) any other matter reasonably requested by the Lead Agency.
- (h) The Lead Agency will review the draft remediation plan and either approve the draft remediation plan or provide the Contractor with the details of any changes that are required. The Contractor must make any changes to the draft remediation plan reasonably requested by the Lead Agency and resubmit the draft remediation plan to the

Lead Agency for approval within three (3) Business Days of the request unless a different timeframe is agreed in writing by the Lead Agency. This clause 23.20(h) will apply to any resubmitted draft remediation plan.

- (i) Without limiting its other obligations under the Contract, the Contractor must comply with the remediation plan as approved by the Lead Agency. The Contractor agrees to provide reports and other information about the Contractor's progress in implementing the remediation plan as reasonably requested by the Lead Agency.
- (j) A failure by the Contractor to comply with its obligations under this clause will be a material breach of the Contract. The Lead Agency's rights under this clause are in addition to and do not otherwise limit any other rights the Lead Agency may have under the Contract. The performance by the Contractor of its obligations under this clause will be at no additional cost to the Lead Agency.

# Signing page

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**EXECUTED** as a deed.

**Signed** for and on behalf of the **Commonwealth of Australia** as represented by **Services Australia ABN 90 794 605 008** by its duly authorised representative in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of representative

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of representative (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Position of representative (print)

**Executed** by **Legal Entity** ABN **insert** in accordance with Section 127 of the *Corporations Act 2001*

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary/ sole director and sole company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary/ sole director and sole company secretary (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# Schedule 1 – Head Agreement Details

Item number	Description	Clause Reference	Details
1.	Lead Agency	1.1	Commonwealth of Australia as represented by Services Australia 57 Athllon Drive Greenway ACT 2900  ABN 90 794 605 008
2.	Contractor	1.1	Legal Entity Address ABN insert Phone: insert
3.	Lead Agency Representative	1.1	s 47F Director, Production and Procurement Communications Division  E: s 47E(d) @servicesaustralia.gov.au P: s 47F
4.	Contractor Representative	1.1	Insert contractor representative's name
5.	Address for Notices	22	<b>Lead Agency:</b> Production and Procurement Section Communications Division Services Australia  PO Box 7788 Canberra BC ACT 2610  57 Athllon Drive Greenway ACT 2900  s 47E(d) @servicesaustralia.gov.au  <b>Contractor:</b> Contact name Street address: insert Email address: insert

6.	<b>Commencement Date</b>	<b>1.1 and 3.1</b>	30 October 2023	
7.	<b>Initial Head Agreement Term</b>	<b>1.1 and 3.1</b>	Three years	
8.	<b>Head Agreement Option Period</b>	<b>3.2</b>	Two periods of one year each	
9.	<b>Head Agreement Option Notice Period</b>	<b>3.2</b>	As per clause 3.2	
10.	<b>Not used</b>			
11.	<b>Progress meetings</b>	<b>9.1</b>	NIL	
12.	<b>Reporting</b>	<b>9.2</b>	The Contractor must provide reports agreed in writing by the parties.	
13.	<b>Lead Agency Material</b>	<b>1.1 and 10</b>	NIL	
14.	<b>Insurance</b>	<b>13</b>	Public liability insurance for an insured amount of \$20 million per occurrence and not less than \$20 million in the aggregate.	
			Workers compensation as required by law.	
	<b>Additional insurance</b>	<b>13.1(a)(vi)</b>	Not applicable	
15.	<b>Confidential Information</b>	<b>1.1 and 14</b>	<b>Lead Agency's Confidential Information:</b>	
			<b>Item</b>	<b>Period of confidentiality</b>
			NIL	NIL
			<b>Contractor's Confidential Information:</b>	
			<b>Item</b>	<b>Period of confidentiality</b>
			NIL	NIL



16.	<b>Conflict of interest</b>	<b>15.1</b>	NIL
17.	<b>Governing law and jurisdiction</b>	<b>23.14</b>	Australian Capital Territory.

# Schedule 2 – Services

## 1. Overview

This Schedule sets out requirements for the Services relating to the provision of Creative and Digital Communication Services to be provided by the Contractor to Participating Agencies. Specific requirements for the Services may be more specifically described in an Official Order.

## 2. Categories of Service

- (a) The Contractor will provide the following Categories of Service:
  - (i) Strategic brand, marketing and communication
  - (ii) Graphic design
  - (iii) Forms design
  - (iv) Web and app design
  - (v) Accessibility review and audit
  - (vi) Authoring and editorial
  - (vii) Translation
  - (viii) Film and video
  - (ix) Still photography
  - (x) Scanning and digitisation
- (b) The Contractor may be required to provide the Services under a print management service provider engaged by, and acting as an agent of, a Participating Agency.
- (c) All members of the Print Management panel are fully independent of all creative and digital communication suppliers, and are not permitted to provide, or bid to deliver, any of these Services themselves.
- (d) Services may be required by a Participating Agency:
  - (i) on an ongoing basis for a defined period;
  - (ii) on a project basis to meet specific requirements; or
  - (iii) on an ad hoc basis.

## 3. General requirements

- (a) The following general requirements are applicable to all Categories of Service.
- (b) All Australian Government websites and web-based content and assets must comply with the Web Content Accessibility Guidelines (WCAG) version 2.0 level AA. Information about WCAG can be found at <https://www.w3.org/WAI/intro/wcag>.
- (c) Services must be performed in a manner that respects and addresses, where appropriate, the communication needs associated with:
  - (i) Indigenous cultures;
  - (ii) cultural diversity;

- (iii) language diversity;
- (iv) age diversity; and
- (v) people living with disability.

The Contractor must have processes implemented to effectively manage the content of individual jobs through:

- (i) digital asset and text version control;
  - (ii) copyright identification including obtaining consent to release or use; and
  - (iii) digital asset library management.
- (b) Creative and digital communication work packages will be subject to various Agency and Commonwealth style guides and the Contractor will be required to provide Services in accordance with such guides.
- (c) In undertaking the Services, The Contractor will be in receipt of various digital assets and content from Participating Agencies. The Contractor are required to manage these assets in accordance with any legislative obligations and with the highest professional standards. These obligations and standards include:
- (i) management of indexes and metadata;
  - (ii) secure storage and retrieval including the backup, recovery, identification, version control, retention and destruction of digital assets and copies;
  - (iii) copyright and intellectual property management including obtaining managing and recording, where appropriate, consents to use or release digital assets; and
  - (iv) controls against inappropriate manipulation or use of digital assets.
- (d) Work packages must include delivery of, as appropriate:
- (i) hard copy, laser or digital PDF proofs;
  - (ii) all desktop publishing or source files;
  - (iii) placed or embedded graphics eg. TIFF, EPS;
  - (iv) all screen and print fonts, including fonts embedded in objects; and
  - (v) any other files, images or artefacts required for production purposes.
- (e) The Contractor may be required to produce an electronic proof and hardcopy proof with mock-up (where relevant), which may need to be approved by the relevant Participating Agency.

#### 4. Strategic brand, marketing and communication

- (a) Strategic brand, marketing and communication services include:
- (i) general public relations and communication advice;
  - (ii) corporate image, logo design, brand development and brand implementation services;
  - (iii) design and development of corporate design standards;
  - (iv) design and development of materials for advertising or communication campaigns;
  - (v) development of communication and marketing strategies and plans;
  - (vi) development of style guides, templates and tools;

- (vii) conception, planning and management of communication events; and
  - (viii) project estimates and budget quotations.
- (b) Services may be required for a range of uses, including for use in social media, websites and other digital channels.

## 5. Graphic design

- (a) Graphic design services include:
- (i) general graphic design, typesetting and layout work;
  - (ii) illustrations;
  - (iii) infographics;
  - (iv) templates;
  - (v) business process support (such as office automation tool and desktop publishing tool templates (including for Microsoft Office © applications) including font, styles and embedded graphics);
  - (vi) campaign and programme support; and
  - (vii) brochure, publication and other print, on-line, digital or electronic media layout and design.
- (b) Graphic design, typesetting and layout services may include large and specialised formats, including for example:
- (viii) architectural drawings;
  - (ix) technical drawings;
  - (x) maps and navigational charts;
  - (xi) plans;
  - (xii) organisation, production and flow charts;
  - (xiii) academic style books;
  - (xiv) composite documents embedding any of the above in text;
  - (xv) banners; and
  - (xvi) corporate merchandise.
- (c) In providing graphic design services, the Contractor may be required to provide digital publishing services – ie. to upload or publish material to digital channels including digital publishing systems, repositories for apps or other publishing environments.
- (d) In providing digital publishing services, the Contractor may require access to proprietary digital publishing systems.
- (e) The format of the graphic design, typesetting and layout deliverables will depend on the final use for the graphics, but should be capable of being used in a number of different applications and modes.
- (f) Graphics are required to be developed in, or rendered to, a digital format that complies with standard industry formats.

- (g) Some digital media and content used in the graphic design process will be subject to special requirements, such as retention, copyright provisions, colour matching and cultural sensitivities. The Contractor may be required to implement procedures to ensure media and content is managed in accordance with the Participating Agency's requirements and obligations.
- (h) Services may be required for a range of uses, including for use in social media, websites and other digital channels.

## 6. Forms design

- (a) Forms design services include:
  - (i) forms design;
  - (ii) forms analysis;
  - (iii) forms testing;
  - (iv) observational studies; and
  - (v) focus group services.
- (b) Forms design may be required for use in a range of media, including online and digital applications.
- (c) Where bilingual or multilingual forms artwork (English followed by translated language) is required, the Contractor undertaking forms design for a Participating Agency may be required to work with a translation company to produce bilingual or multilingual forms artwork.

## 7. Web and app design

- (a) Web and app design services include:
  - (i) creative digital design, including creation of graphic elements, for websites and apps;
  - (ii) development of template and style sheets for web sites and apps;
  - (iii) structure analysis and information architecture design;
  - (iv) user experience testing;
  - (v) graphics, rulers, borders and other artefacts used in the development of web pages and apps;
  - (vi) design and development of online training;
  - (vii) design and development of online seminars and presentations; and
  - (viii) ensuring that relevant accessibility and compatibility standards are complied with.
- (b) Online learning solutions may be required for the purpose of training and supporting end users. Design services may include, but not be limited to:
  - (ix) information gathering, needs analysis and development of reports;
  - (x) development of online based learning solution and associated content, including;
    - (A) methods and planning for the development of the online based learning solution;
    - (B) recommendations for the maintenance and communication of changes to the online based learning solution to the end users;

- (C) work effort estimates for the development of the online based learning solution;
  - (D) a proposed schedule for the development of the online based learning solution; and
  - (E) costing estimates for the development of the online based learning solution.
- (c) Online seminars and/or presentation design and development services may be required, including for, but not limited to:
- (xi) script development;
  - (xii) audio recording sourced from talent or in-house;
  - (xiii) mark up of HTML version with downloadable audio files;
  - (xiv) animation of Flash seminar version, with embedded audio;
  - (xv) video production suitable for an online platform; and
  - (xvi) online animation using static photographs or graphics.
- (d) This Category of Service does not include the development of code or other application interfaces (ie. software development), but the Contractor should be aware that style sheets and templates may be used by software developers. The Contractor should have an understanding of the requirements for implementing developed code in web pages.
- (e) Some web and app design may be used for collaborative work and use standard web collaboration tools or web portals.
- (f) The Contractor must ensure that all design deliverables are compatible with the relevant Participating Agency's:
- (xvii) operating environments;
  - (xviii) hardware, software and host environments; and
  - (xix) corporate design standards, branding and style guides.
- (g) Services may be required for a range of uses, including for use in social media.

## 8. Accessibility review and audit

- (a) Accessibility review and audit services include reviewing and auditing Participating Agency websites, online and digital content, and other material, for compliance with the Web Content Accessibility Guidelines (WCAG) version 2.0 level AA.
- (b) Review and audit services may be required for existing material or sites, or for material or sites currently in development.
- (c) Following a review or audit, the Contractor may be required to perform remedial work to facilitate compliance.
- (d) Additional services may include:
  - (i) conversion of Word documents to accessible HTML files;
  - (ii) transcript and captioning of pre-recorded audio and video; and
  - (iii) captioning services for live audio / video (either on-site or remotely, eg. for conferences, presentations and webcasts).
- (e) Policies relating to accessibility are available on the Department of Finance website (<http://www.finance.gov.au/publications/wcag-2-implementation/index>).

- (f) When applicable, services delivered under an Official Order should comply with the Web Accessibility NTS, and all products, services and outputs should conform to WCAG 2.0 (specifying Level A, AA or AAA), preferably through the use of Sufficient Techniques (as that term is defined in the WCAG 2.0 Quick Reference (<http://www.w3.org/WAI/WCAG20/quickref/>)).

## 9. Authoring and editorial

- (a) Participating Agencies may require authoring and editorial services of content to be used in publications or promotional products.
- (b) Authoring services include:
- (i) development of text content for promotional, technical and/or educational publications;
  - (ii) development of text for use in different formats, including speeches, scripts, advertising copy, media materials and website copy;
  - (iii) preparation of text using standard office automation tools and document formats for inclusion in desktop publishing or other publishing tools;
  - (iv) collection of material through workshops, interviews and other documentation; and
  - (v) transcribing services.
- (c) Editorial services include:
- (i) proof reading, copy editing, substantive editing or structural editing of text content for promotional, business, technical and/or educational publications for grammar, sense, clarity, consistency and Participating Agency-specific style;
  - (ii) establishing procedures for the management of editions and versions of documents;
  - (iii) indexing and cross referencing of documents; and
  - (iv) transcribing services.
- (d) The Contractor should be capable of preparing and editing source material that may include:
- (i) inclusive language and an understanding of terminology used by different audience groups;
  - (ii) medical information and content of a medical nature;
  - (iii) scientific content and technical information;
  - (iv) Indigenous content and information;
  - (v) rural content and information;
  - (vi) general media content and information;
  - (vii) policy and legislative information;
  - (viii) business or organisation information with reporting and governance structures;
  - (ix) academic and educational information; and
  - (x) promotional information, including advertising.
- (e) Proofreading includes checking typeset copy against final approved text, reading for typographical errors, checking presentation, colour and page falls.

- (f) Copy editing includes thoroughly checking grammar, spelling, punctuation, syntax or interpretation of data imported from spreadsheets, and the checking of format, style, references, tables and graphics for consistency.
- (g) Substantive editing includes identifying problems of clarity and structure, rewriting segments as required, revising, improving presentation, and incorporating changes and suggestions.
- (h) Structural editing includes developing the structure, organisation and presentation of a document.
- (i) All text content will be edited using Participating Agency's standard office automation tools and the Contractor should be proficient at using these tools' editing functions and version control.

## 10. Translation

- (a) Participating Agencies may require translation services for the creation of text content to be used in singular-lingual, multi-lingual, simplified English or Braille publications or promotional products.
- (b) Translation services include translation of text content for promotional, technical and/or educational publications into other language texts, including AUSLAN, and may involve several languages in the same text.
- (c) The Contractor should be capable of translating source material that may include, but will not be limited to:
  - (i) inclusive language and an understanding of terminology used by different audience groups medical information and content of a medical nature;
  - (ii) scientific and technical information;
  - (iii) Indigenous content and information;
  - (iv) rural content and information;
  - (v) general media content and information;
  - (vi) policy and legislative information;
  - (vii) business or organisation information with reporting and governance structures;
  - (viii) academic and educational information; and
  - (ix) promotional information.
- (d) Translation requirements may include transcribing services.
- (e) Translation requirements may include the audio recording of translated material for use in a range of media.
- (f) The Contractor must be capable of providing independent or quality checking of translated material before it is provided to a Participating Agency.
- (g) The Contractor must be capable of verifying translated material in proofs prior to production.
- (h) Language translation services must be performed by NAATI accredited translators.
- (i) For translation requirements where NAATI accreditation is not available, the Contractor must be able to provide the credentials and experience of translators used, and confirm that translators used are aware of the AUSIT code of ethics.



- (j) The Contractor that utilise the services of contractors, sub-contractors or third-party translators must have implemented procedures for the management and coordination of such arrangements.

## 11. Film and video

- (a) Participating Agencies may require filming services for creation of digital assets to be used in publications, promotional products, online, DVDs or television applications.
- (b) Film and video services include:
  - (i) on-site or studio filming of events, locations, industries, markets, presentations or people;
  - (ii) piece to camera;
  - (iii) provision of autocue;
  - (iv) sourcing and management of talent and models;
  - (v) sourcing and management of camera, lighting, sound and production specialists;
  - (vi) sourcing and management of generic or stock film;
  - (vii) management of Participating Agency-supplied generic or stock film;
  - (viii) management of raw film footage and materials;
  - (ix) management and version control of digital assets;
  - (x) management of copyright issues and providing or acquiring appropriate consent to release or use digital assets;
  - (xi) enhancement, digital manipulation, animation, graphic design, editing and post-production services of digital film or media files; and
  - (xii) provision of images or digital media files as required in:
    - (A) hard copy;
    - (B) high resolution files in .mov or comparable format; and/or
    - (C) web resolution files in .mov or comparable format.
- (c) Additional services may include:
  - (i) transcription and captioning of pre-recorded audio and video;
  - (ii) audio descriptions to meet accessibility requirements; and
  - (iii) captioning services for live audio / video (either on-site or remotely, eg. for conferences, presentations and webcasts).

## 12. Still photography

- (a) Participating Agencies may require still photography services for creation of digital assets to be used in publications, promotional products, online, DVDs, Blu-rays or television applications.
- (b) Photography services include:
  - (i) on-site or studio photographing of events, locations, industries, markets, presentations or people;

- (ii) sourcing and management of talent and models;
- (iii) sourcing and management of camera, lighting, sound and production specialists;
- (iv) sourcing and management of generic or stock images;
- (v) management of Participating Agency-supplied generic or stock images;
- (vi) enhancement, digital manipulation, editing and post-production services of digital images in preparation of a final copy;
- (vii) provision of images or digital media files as required in:
  - (A) hard copy;
  - (B) raw files; and/or
  - (C) high resolution image files in tiff, jpg format or video / audio files.
- (viii) management and version control of digital assets; and
- (ix) management of copyright issues and providing or acquiring appropriate consent to release or use digital assets.

### 13. Scanning and digitisation

- (a) Participating Agencies may require scanning and digitisation services including:
  - (i) management of indexes and metadata;
  - (ii) scanning and/or digitisation of hard copy assets;
  - (iii) sourcing and management of generic or stock images;
  - (iv) management of Participating Agency-supplied generic or stock images;
  - (v) transfer of images to microfilm;
  - (vi) enhancement or digital manipulation of digital images in preparation of a final copy;
  - (vii) provision of images as required in hard copy and/or image files;
  - (viii) management and version control of digital assets; and
  - (ix) management of copyright issues and providing or acquiring appropriate consent to release or use digital assets.
- (b) Scanning and digitisation services are to be provided in the context of communication materials, products and artwork and are not intended to be used for bulk records management purposes.

### 14. Business processes

- (a) The Contractor must have established processes for:
  - (i) receiving and reviewing job opportunities and specifications, including through on-line portals or procurement solutions;
  - (ii) providing quotes and/or tender responses;
  - (iii) receiving job authorisation;
  - (iv) production of proofs and samples;
  - (v) invoicing and reporting;

- (vi) quality management; and
  - (vii) governance and performance management.
- (b) The Contractor must maintain version control over all specifications, proofs, and job materials to ensure that:
- (i) only current authorised versions are used;
  - (ii) a full version history is maintained; and
  - (iii) an audit trail of all approved changes is maintained.

## 15. On-line collaborative tools

- (a) The Contractor should support on-line collaboration environments including, for example, facilities for:
- (i) proofing (ripped);
  - (ii) collaborative workspaces;
  - (iii) customisation or personalisation of a limited range of standardised corporate stationery items;
  - (iv) voice and video conferencing;
  - (v) digital asset management;
  - (vi) eProcurement; and
  - (vii) invoicing.

## 16. Interfaces and data transfer

- (a) The Contractor must have contemporary information and communications infrastructure to support integration and or interfaces required for the reliable, timely and secure transfer of data to and from Participating Agencies and/or suppliers.
- (b) Interfaces should support international and/or industry standard approaches, protocols and file formats, including open standards.

## 17. Hours of Coverage

- (a) Services must be available to meet the requirements of Participating Agencies, including:
- (i) during normal business hours (8am to 6pm local time) on normal business days;
  - (ii) scheduled after hours activities, to support peak demand requirements; and
  - (iii) unscheduled out of hours activities, to support emergency demand requirements, including to support disaster recovery and emergency relief operations.
- (b) Where requested by a Participating Agency, the Contractor must provide an out of hours emergency contact number.

## 18. Timeliness

- (a) The Contractor must meet the requirements of Participating Agencies for timeliness, including:

- (i) defined response and/or turnaround times for normal, urgent and priority quotations;
- (ii) on-time delivery as specified in an Official Order;
- (iii) on-time provision of scheduled and ad hoc reports; and
- (iv) on-time provision of invoices.

## 19. Quality

- (a) The Contractor must meet the requirements of Participating Agencies in relation to quality, including in relation to:
  - (i) conformance with job specifications;
  - (ii) conformance with applicable standards, including print industry standards; and
  - (iii) accuracy of invoices and other documentation.

## 20. Improvement opportunities

- (a) To ensure that improvement opportunities and better practice methods can be applied where appropriate to the delivery of the Services, the Contractor must, upon request, advise Participating Agencies of advances or changes in their production equipment, processes, techniques or capabilities to deliver the Services.
- (b) The Contractor must, upon request, participate in, and contribute to, the development of strategies for the adoption of new or revised service delivery methods by Participating Agencies, including strategies for:
  - (i) service integration;
  - (ii) information management, transfer, re-use, version control and standards; and
  - (iii) implementation, including transition arrangements.

## 21. Relationship management

The Contractor must establish appropriate arrangements for the operational management of the Services, including nominating a primary point of contact.

## 22. Management meetings

- (a) Where a Contractor and a Participating Agency have established a contractual relationship, the Participating Agency may require the Contractor to participate in operational management meetings.
- (b) Such meetings will relate to ongoing matters relating to the provision of the Services, including for example:
  - (i) work in progress;
  - (ii) forecast demand;
  - (iii) reporting and invoicing;
  - (iv) changes to processes and/or key personnel;
  - (v) transition management; and

- (vi) other issues relevant to the ongoing management of an Official Order or Head Agreement.

## 23. Policy requirements

- (a) The Contractor must comply at all times with the following policies and such other policies as may be specified from time to time by Participating Agencies, including without limitation:
  - (i) Accountable Authority Instructions;
  - (ii) security policies;
  - (iii) Occupational Health and Safety policies;
  - (iv) prohibition on the use of illegal workers;
  - (v) environmental policies; and
  - (vi) participation by small and medium enterprises, Australian Disability Enterprises and Indigenous-owned businesses.
- (b) The Contractor should ensure that all personnel engaged in the provision of Services on Commonwealth premises are aware of, and comply with, the APS Values and APS Code of Conduct.

## 24. Security requirements

- (a) The Contractor must comply at all times with requirements for the security of, and handling of, sensitive and classified material in respect of work undertaken for a Participating Agency.
- (b) In addition to clause 30 of the Standard Terms and Conditions, security requirements will be specified by a Participating Agency in an Official Order, including, but not limited to:
  - (i) Protective Security Policy Framework and the Information Security Manual, as amended from time to time;
  - (ii) requirements for storage, access and transfer of physical and electronic assets, including processing within designated secure locations;
  - (iii) training of staff in security awareness;
  - (iv) requirements for police checks and/or security clearances for nominated Contractor staff;
  - (v) requirements for on-site supervision by Agency staff;
  - (vi) removal, return or secure destruction of images, print supplies, transfer media and hardware used in the provision of the services;
  - (vii) removal, return or secure destruction of Material in addition to Confidential Information where required by the Participating Agency;
  - (viii) accountability and traceability of materials, finished products and spoils;
  - (ix) notification of suspected or actual security breaches; and
  - (x) participation of the Contractor in security reviews, inspections or other activities, including in relation to investigation of breaches.
- (c) The Contractor must, upon request, obtain security clearances for nominated personnel in respect of work undertaken for a Participating Agency.

- (d) The Contractor must have appropriate processes and facilities to ensure the secure storage, handling and authorised release of items held ‘under embargo’, from the time at which material is received, through to the time of release.
- (e) The Contractor must have appropriate facilities and processes for the secure storage and handling accountable documents, including cheques and other instruments.

## 25. Standards

- (a) The Contractor must ensure that quality standards are maintained across the supply chain, including conformance of any suppliers with quality requirements set out in an Official Order.
- (b) The Contractor must comply with Participating Agencies’ standards, including for example:
  - (i) graphic design standards;
  - (ii) style guides;
  - (iii) corporate branding, campaign branding, logos etc.; and
  - (iv) parliamentary procedures and tabling requirements.
- (c) The Contractor should comply with relevant Australian, international, and industry standards, specifications, guidelines, and classification schemes in relation to the provision of the Services (however, formal accreditation to any particular standard is not required) for membership of the panel. Participating Agencies may require compliance with, or formal accreditation to, specific standards as required for an Official Order.

# Schedule 3 – Capped Rates

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## 1. Capped Rates

### 1.1 Capped Rates

[To be **inserted - rates** following conclusion of evaluation process. Refer to RFT]

### 1.2 Allowances

- (a) The Participating Agency will only reimburse the Contractor for any travel, accommodation and associated expenses if those expenses:
  - (i) are approved in writing by the Participating Agency Representative before any cost has been incurred; and
  - (ii) do not exceed the Participating Agency's Non-SES travel and accommodation rates, as amended from time to time.

### 1.3 Assumptions

- (a) Capped Rates are subject to the following assumptions:
  - (i) **[insert assumptions]**.

### 1.4 Variation

- (a) The Contractor may apply to vary the Capped Rates on the anniversary of the Commencement Date. Any request for a variation will be capped at the equivalent of the percentage increase in annual 'Average Weekly Earnings' (published by the Australian Bureau of Statistics as Average Weekly Earnings, Seasonally Adjusted Estimates, Private Sector, Full-time adult ordinary time earnings).
- (b) The Lead Agency may, acting reasonably, approve or deny any variation to the Capped Rates applied for under clause 1.4(a).
- (c) Any variation to the Capped Rates:
  - (i) will take effect from the date specified in the Lead Agency's written notice of approval under clause 1.4(b), or if no date is specified, from the date of the notice; and
  - (ii) will not affect Contracts formed prior to the date the variation takes effect.

## 2. Alternative pricing structure

There may be occasions when a Participating Agency requires the application of different pricing structures. Each Official Order will specify the applicable pricing principles, which may include payment against the achievement of specific Milestone Dates. Regardless of whether an Official Order is to be based on milestone payments or monthly payments, the Official Order must not be based on rates higher than the Capped Rates.

## 3. Invoicing requirements

- (a) The invoice must be in a form approved by the Participating Agency which sets out:
  - (i) subject to clause 3(b) of this Schedule 3, the details of the amount of time spent

by each person including Specified Personnel on the Services for the period to which the invoice relates and, if applicable, a record detailing the specific Contract obligations have been met by the relevant Milestone Dates;

- (ii) the Contract or project number;
  - (iii) a description of the Services provided;
  - (iv) the amount of any allowances, costs and interest to be paid by the Participating Agency together with any substantiating material required;
  - (v) the name of the Participating Agency representative;
  - (vi) cost centre or account code;
  - (vii) price;
  - (viii) GST amount; and
  - (ix) such other information as the Participating Agency requires.
- (b) Where the Contractor is unable to set out any of the information specified in clause 3(a)(i) of this Schedule 3 in invoices, the Contractor must set out that information in an accompanying report. Each invoice and accompanying report submitted to a Participating Agency must together contain all the information specified in clause 3(a) of this Schedule 3.
- (c) Invoices must:
- (i) be submitted either electronically by e-mail in PDF format, or via E-Invoicing;
  - (ii) be submitted on the dates and at the frequencies specified in the Official Order to the person specified in the Official Order;
  - (iii) relate only to supplies that have been delivered to the Participating Agency in accordance with the Contract; and
  - (iv) be a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- (d) If requested by the Participating Agency to do so the Contractor must provide documentary evidence for the amounts specified in the invoice.
- (e) The Participating Agency agrees to pay the Contractor the Fees for Services completed to the satisfaction of the Participating Agency within the number of days specified in clause 19.4 of the Official Order after receipt by the Participating Agency of a Correctly Rendered Invoice and the Fees become due and payable by the Participating Agency. If this period ends on a Business Day, payment is required on the next Business Day.
- (f) The Participating Agency is not required to make any payment to the Contractor in the absence of a Correctly Rendered Invoice.
- (g) If the Participating Agency disputes an invoice, the Participating Agency:
- (i) must pay the undisputed part of the invoice; and
  - (ii) may withhold payment of any disputed amount until the matter is resolved.



# Schedule 4 – Official Order

*[Note: This Schedule 4 is not a mandatory form for issuing an Official Order. Participating Agencies may wish to develop their own form of Official Order in consultation with the Contractor. In particular, depending on the nature of the procurement, Participating Agencies may wish to develop Agency-specific service level regimes to manage Contractor performance.*

*The following is an example of a form of Official Order that can be used depending on the size, value and risk profile of the procurement. Agencies are reminded that it is critical that the items in the Official Order are accurately completed as this will determine the parties' rights and obligations under the Contract, including any terms and conditions intended to prevail over the Standard Terms and Conditions.]*

<b>Official Order Number – [insert]</b>			
<b>Date – [insert]</b>			
<p><i>[Insert name of Contractor] [insert contractor's ABN] has offered under clause 5.1 of the Head Agreement specified at item 1 below to provide the Services to the Participating Agencies. [Insert name of the Participating Agency, for example, the Commonwealth of Australia (Commonwealth) as represented by the Services Australia, 57 Athllon Drive, Greenway ACT 2900 ABN 90 794 605 008] (Participating Agency) accepts this offer on the terms and conditions set out in the Head Agreement and in this Official Order and issues this Official Order in accordance with clause 5.4 of the Head Agreement. This Official Order is issued in Accordance with the Deed of Agreement for the Provision of Creative and Digital Communication Services (Standing Offer Notice Identifier (SON ID) SON4009385.</i></p> <p><b>Unless otherwise specified in the Official Order, if there is an inconsistency between this Official Order and any other provisions of the Head Agreement, the Head Agreement will prevail to the extent of any inconsistency.</b></p>			
Item number	Description	Standard Terms and Conditions Clause Reference	Details
<b>General</b>			
1.	<b>Head Agreement No. and description</b>	<b>1.1</b>	<p><i>[Insert deed number]</i></p> <p>Dated <i>[insert]</i></p> <p>For the provision of Creative and Digital Communication Services</p>
2.	<b>Services</b>	<b>Schedule 2 of the Head Agreement</b>	<i>[Refer to Schedule 2 and insert the name of the Services required.]</i>

3.	<b>Participating Agency</b>	<b>1.1</b>	<i>[Insert details of the Participating Agency, for example, Commonwealth of Australia (Commonwealth) as represented by Services Australia, 57 Athllon Drive, Greenway ACT 2900 ABN 90 794 605 008]</i>
4.	<b>Participating Agency Representative</b>	<b>1.1 and 11</b>	<i>[Insert details of Participating Agency Representative.]</i>
5.	<b>Contractor Representative</b>	<b>1.1 and 11</b>	<i>[Insert details of Contractor Representative.]</i>
6.	<b>Contract Period</b>	<b>1.1 and 2.1</b>	<i>[Insert the period of time for which the Contract will continue, eg 2 years.]</i>
7.	<b>Contract Option Period</b>	<b>2.2</b>	<i>[Insert 'Nil' unless you anticipate an extension to the Contract.]</i>
8.	<b>Contract Option Notice Period</b>	<b>2.2</b>	<i>[Insert 'Nil' unless you anticipate an extension to the Contract.]</i>
9.	<b>Specified Personnel</b>	<b>1.1 and 14</b>	<i>[Insert names and positions of Specified Personnel. Otherwise insert 'Nil'.]</i>
10.	<b>Subcontractors</b>	<b>4.12</b>	<i>[Insert names and ABNs of any subcontractors. Otherwise insert 'Nil'.]</i>
11.	<b>Other Contractors</b>	<b>1.1 and 7</b>	<i>[Insert details of the Other Contractors that provide services to the Participating Agency that the Contractor is required to cooperate with for this Contract.]</i>
12.	<b>Notices</b>	<b>37</b>	<p><i>Participating Agency:</i></p> <p><i>[Insert name and position of person to receive Notices]</i></p> <p><i>[Insert postal address] [Insert physical address] [Insert email address]</i> Contractor:</p> <p><i>[Insert Contractor's Representative] Postal address: [Insert postal address] Street address: [Insert street address] [Insert email address]</i></p>
13.	<b>Governing law and jurisdiction</b>	<b>38.14</b>	<i>[Insert alternative if the law of the Australian Capital Territory is not to govern this Contract. Otherwise insert 'As specified in the Standard Terms and Conditions'.]</i>

Services			
14.	<b>Description of Services including the purpose of the Services, Milestone Dates, and Delivery Place</b>	<b>1.1, 4, 4.3(d) and 4.4</b>	<p><i>[Specify the purpose for which the Participating Agency requires the Services.]</i></p> <p><i>[Insert details of services required and attach additional pages if required.]</i></p> <p><i>[Include details of any Deliverables, including details of delivery such as the Delivery Place and delivery dates.]</i></p> <p><i>[Include details of any Milestone Dates – ie dates by which specific Contractor obligations must be performed – and details of those obligations.]</i></p>

<p>15.</p>	<p><b>Measuring performance</b></p>	<p><b>13</b></p>	<p><i>[Insert details of any Service Levels and how Service Rebates will apply. Note that Service Levels should be set/described according to the particular performance issues that are important for that Contract. The following is an example only.]</i></p> <p><i>Example:</i></p> <table border="1" data-bbox="790 387 1404 1344"> <thead> <tr> <th data-bbox="790 387 986 481"><b>Service Level</b></th> <th data-bbox="986 387 1404 481"><b>Consequences of failure to achieve Service Level</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="790 481 986 651">Provision of a correctly rendered invoice</td> <td data-bbox="986 481 1404 651">[x]% reduction in the Service Charges payable for the Services that were the subject of the original invoice.</td> </tr> <tr> <td data-bbox="790 651 986 969">Achievement of each Milestone Date specified at item 14</td> <td data-bbox="986 651 1404 969">[x]% reduction in the Service Charges payable for the Services for each failure to meet a Milestone Date, calculated on a cumulative basis. For example, if x = 2, then for two failures the total reduction of the Service Charges is by 4%.</td> </tr> <tr> <td data-bbox="790 969 986 1140">Provision of reports in accordance with item 16</td> <td data-bbox="986 969 1404 1140">[x]% reduction in the Service Charges due under the next invoice issued by the Contractor.</td> </tr> <tr> <td data-bbox="790 1140 986 1344">Timely provision of a report against the Service Levels</td> <td data-bbox="986 1140 1404 1344">[\$x] for each failure.</td> </tr> </tbody> </table> <p>The Contractor must provide to the Participating Agency a report against the Service Levels, including the amount of Service Rebates payable to the Participating Agency. The Participating Agency may, at its sole discretion, elect to set off the amount or issue a notice requiring payment in accordance with clause 19.2 of the Standard Terms and Conditions.</p> <p>The Service Level report is due on the first Monday of each month unless otherwise notified to the Contractor in writing.</p> <p><i>Please take note of the clauses dealing with Service Levels and Service Rebates, in particular clause 19.2 which deals with how the Participating Agency may set off or require payment of the Service Rebates.]</i></p>	<b>Service Level</b>	<b>Consequences of failure to achieve Service Level</b>	Provision of a correctly rendered invoice	[x]% reduction in the Service Charges payable for the Services that were the subject of the original invoice.	Achievement of each Milestone Date specified at item 14	[x]% reduction in the Service Charges payable for the Services for each failure to meet a Milestone Date, calculated on a cumulative basis. For example, if x = 2, then for two failures the total reduction of the Service Charges is by 4%.	Provision of reports in accordance with item 16	[x]% reduction in the Service Charges due under the next invoice issued by the Contractor.	Timely provision of a report against the Service Levels	[\$x] for each failure.
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Timely provision of a report against the Service Levels	[\$x] for each failure.												

16.	<b>Reporting requirements</b>	<b>11.2</b>	<i>[Insert details of any reporting requirements under the Contract. Otherwise insert 'Nil'.]</i>
17.	<b>National Anti-Corruption Commission</b>	<b>4.29</b>	<i>[If the Participating Agency is a State or Territory Agency and does not want clause 4.29 to apply to this Contract, insert 'Clause 4.29 is not to apply.' Otherwise, insert 'The Standard Terms and Conditions apply.']</i>
18.	<b>Business Hours</b>	<b>1.1</b>	<i>[If Business Hours differ from those specified in the definition in the Standard Terms and Conditions, specify alternative hours here, eg 9.00am to 5.00pm on a Business Day at the place where the Services are to be provided. Otherwise insert 'As specified in the Standard Terms and Conditions'.]</i>
19.	<b>Relevant Standards</b>	<b>4.1(d)</b>	<i>[Insert relevant standards, best practice and guidelines (if any). Otherwise insert 'Refer to the standards set out in the Standard Terms and Conditions. No additional standards, practice or guidelines apply'.]</i>
20.	<b>Participating Agency requirements</b>	<b>4.1(c)</b>	<i>[Insert any additional requirements with which the Contractor must comply that are not already set out in the Standard Terms and Conditions. State or Territory Agencies should consider including additional requirements here.  Otherwise insert 'Refer to the requirements set out in the Standard Terms and Conditions. No additional Participating Agency requirements apply'.  Note that a number of Commonwealth policy requirements have already been included at clause 4 and do not need to be re-inserted here. Security requirements should be inserted below.]</i>
21.	<b>APS Values</b>	<b>4.13</b>	<i>[If the Participating Agency is a State or Territory Agency and does not want clause 4.13 to apply to this Contract, insert 'Clause 4.13 is not to apply.' Otherwise, insert 'The Standard Terms and Conditions apply.']</i>
22.	<b>Commonwealth Fraud Control Framework</b>	<b>4.14</b>	<i>[If the Participating Agency is a State or Territory Agency and does not want clause 4.14 to apply to this Contract, insert 'Clause 4.14 is not to apply.' Otherwise, insert 'The Standard Terms and Conditions apply.']</i>

23.	<b>Indigenous Procurement Policy</b>	<b>4.18</b>	<i>[If the Participating Agency is a State or Territory Agency and does not want clause 4.18 to apply to this Contract, insert 'Clause 4.18 is not to apply.' Otherwise, insert 'The Standard Terms and Conditions apply.']</i>
24.	<b>Child Safety</b>	<b>4.23</b>	<p>Part or all of the Services involve the Contractor employing or engaging with Child-Related Personnel that is required by Relevant Legislation to have a Working With Children Check:</p> <p><input type="checkbox"/> Yes, clauses 14.5 to 14.8 of the Deed apply</p> <p><input type="checkbox"/> No, clauses 14.5 to 14.8 of the Deed do not apply</p> <p>Contractor's Child-Related Personnel must comply with Relevant Legislation, including ensuring Working With Children Checks are be current for its Child-Related Personnel remain current</p> <p><input type="checkbox"/> Yes, clause 14.2(b) of the Deed apply</p> <p><input type="checkbox"/> No, clause 14.2(b) of the Deed does not apply</p>
25.	<b>Security</b>	<b>30</b>	<i>[Insert any security requirements additional to those specified in clause 30 and any additional requirements relating to secure services. Otherwise insert 'No additional security requirements apply.']</i>
26.	<b>Additional insurance</b>	<b>25.2</b>	<p><i>[Insert any additional types of insurance the Contractor is required to maintain and the amount of that insurance required, for example:</i></p> <p><i>§[Insert amount] of public liability insurance;</i></p> <p><i>§[Insert amount] of professional indemnity or errors and omissions insurance; and</i></p> <p><i>§[Insert amount] of cyber insurance.</i></p> <p><i>Otherwise insert 'Nil'.]</i></p>
<b>Confidential Information</b>			

27.	<b>Confidential Information</b>	<b>1.1 and 26</b>	<p>Participating Agency's Confidential Information:</p> <table border="1" data-bbox="794 241 1401 394"> <thead> <tr> <th data-bbox="794 241 1118 331">Item</th> <th data-bbox="1126 241 1401 331">Period of confidentiality</th> </tr> </thead> <tbody> <tr> <td data-bbox="794 333 1118 394">[insert]</td> <td data-bbox="1126 333 1401 394">[insert]</td> </tr> </tbody> </table> <p>Contractor's Confidential Information:</p> <table border="1" data-bbox="794 499 1401 669"> <thead> <tr> <th data-bbox="794 499 1118 611">Item</th> <th data-bbox="1126 499 1401 611">Period of confidentiality</th> </tr> </thead> <tbody> <tr> <td data-bbox="794 613 1118 669">[insert]</td> <td data-bbox="1126 613 1401 669">[insert]</td> </tr> </tbody> </table> <p>[The Contractor should have regard to the guidelines published by the Department of Finance, available at:  <a href="https://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html">https://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html</a>]</p>	Item	Period of confidentiality	[insert]	[insert]	Item	Period of confidentiality	[insert]	[insert]
Item	Period of confidentiality										
[insert]	[insert]										
Item	Period of confidentiality										
[insert]	[insert]										
<b>Ownership of Material</b>											
28.	<b>Participating Agency Material</b>	<b>1.1 and 15</b>	<i>[Insert specific Material to be provided to the Contractor by the Participating Agency (if any) and any restrictions on the use of the Material. Otherwise insert 'Nil'.]</i>								
29.	<b>Ownership of Contract Material</b>	<b>16.3(a)</b>	<i>[If the Participating Agency will own Contract Material insert 'Participating Agency to own all Intellectual Property Rights in Contract Material upon its creation.' Otherwise insert 'The Standard Terms and Conditions apply.']</i>								
30.	<b>Licence of Material</b>	<b>16.3(b)</b>	<p><i>[If the Participating Agency would like different licence terms to apply to Background Material and Contract Material, this should be specified here. Otherwise insert 'The Standard Terms and Conditions apply.'</i></p> <p><i>If the Participating Agency would like a different licence terms to apply to Participating Agency Material, this should be specified here. Otherwise insert 'The Standard Terms and Conditions apply.'</i></p>								

31.	<b>Moral Rights – Specified Acts</b>	<b>18.2</b>	<i>[If the Participating Agency wants to perform additional acts with the Contract Material other than those listed in clause 17, these should be set out here. Otherwise insert 'As specified in the Standard Terms and Conditions'.]</i>
<b>Payment</b>			
32.	<b>Payment – Service Charges</b>	<b>19.1</b>	<i>[Insert Service Charges (GST inclusive) based on the Capped Rates in Schedule 3 of the Head Agreement. Attach additional pages if required.  Participating Agencies to specify applicable pricing principles here which may include payment against the achievement of specific Milestone Dates.]</i>
33.	<b>Additional invoice requirements</b>	<b>19.3</b>	<i>[Insert any additional invoicing requirements which are not specified in Schedule 3 of the Head Agreement. Otherwise insert 'No additional invoicing requirements apply.']</i>
34.	<b>Payment period</b>	<b>19.6</b>	<i>[Insert an alternative payment period if the 20 day period contemplated in clause 19.4 is not suitable. If the 20 day period is suitable, insert 'As specified in the Standard Terms and Conditions'.]</i>
35.	<b>Expenses</b>	<b>19.9</b>	<i>[Note: If the contract is for a fixed fee, insert 'The Participating Agency will not pay any travel accommodation or other fees, charges or expenses'. If the Participating Agency will pay expenses in addition to the fee insert details of reimbursable expenses, for example:  (a) Subject to (b) below, the Participating Agency will not pay any travel, accommodation or other fees, charges or expenses unless they have been pre-approved in writing by [the Participating Agency] and do not exceed \$[insert] (inclusive of GST) in total.  (b) The Contractor will be reimbursed for the travel and related accommodation at non-SES rates where they are pre-approved in writing by the Participating Agency. The Contractor must submit an invoice for those expenses and the Participating Agency will reimburse the Contractor in accordance with the invoicing procedures set out in this Official Order.]</i>
<b>Acceptance of Services and other processes</b>			



36.	<b>Acceptance</b>	<b>4.6</b>	<i>[If period for acceptance of Deliverables differs from those specified in clause 4.6, specify the alternative period here. Otherwise insert 'As specified in the Standard Terms and Conditions'.]</i>
37.	<b>Business process requirements</b>	<b>5</b>	<i>[Insert details of any additional business process requirements. Otherwise insert 'Nil'.]</i>
38.	<b>Business continuity planning</b>	<b>6</b>	<i>[Insert details of any additional business continuity requirements. Otherwise insert 'Nil'.]</i>
39.	<b>Transition and implementation</b>	<b>9</b>	<i>[Insert details of any additional transition in or out requirements. Otherwise insert 'Nil'.]</i>
40.	<b>Unwind</b>	<b>10</b>	<i>[If the unwinding clause is to apply, insert 'Clause 10 is to apply'. Otherwise insert 'Clause 10 is <b>not</b> to apply'.]</i>
41.	<b>Progress meetings</b>	<b>11.1</b>	<i>[Insert details of any progress meetings required under the Contract. Otherwise insert Nil'.]</i>
42.	<b>Relationship management</b>	<b>12.1</b>	<i>[Insert details of arrangements for the operational management of the Services. Otherwise insert 'Nil'.]</i>
43.	<b>Operational management meetings</b>	<b>12.2</b>	<i>[Insert details of arrangements for operational management meetings in relation to the Services. Otherwise insert 'Nil'.]</i>
44.	<b>Other forums</b>	<b>12.3</b>	<i>[If it is envisaged that forums will be held, insert details of forums that the Contractor may be required to attend. Otherwise insert 'Nil'.]</i>
45.	<b>Not used</b>		
46.	<b>Force majeure</b>	<b>33</b>	<i>[If a termination period other than 30 days will apply in the event of an 'unforeseen event,' specify it here. Otherwise insert 'As specified in the Standard Terms and Conditions'.]</i>

47.	<b>Limitation Amount</b>	<b>24.1</b>	<i>[Insert a limitation of liability cap informed by a risk assessment]</i>
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Signed for and on behalf of [*Participating Agency*] by its duly authorised representative in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of representative

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of representative (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Position of representative (print)

**[Note to drafters: a number of execution blocks have been included to enable signing by companies and trusts. Please remove whichever execution block is not applicable]**

**[Note to drafters: use this execution block if the Contractor is a company]**

Executed by [*insert name of Contractor and ACN/ABN*] in accordance with Section 127 of the *Corporations Act 2001*

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary/sole director and sole company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary/sole director and sole company secretary (print)

in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Date

**[Note to drafters: use this execution block if the Contractor is a partnership]**

Signed by authority of *[insert name of Contractor and ABN]* by:

\_\_\_\_\_  
Name of Partner (print)

\_\_\_\_\_  
Signature of partner

in the presence of :

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signature of Witness

Date

**[Note to drafters: use this execution block if the Contractor is an individual]**

Signed by *[insert name of Contractor and ABN]* by:

\_\_\_\_\_  
Name of signatory (print)

\_\_\_\_\_  
Signature of signatory

in the presence of:

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Date

**[Note to drafters: use this execution block if the Contractor is a company acting as the trustee of a trust (no common seal)]**

Signed by *[insert name and ABN/ACN of company]* in its capacity as trustee of *[insert name of trust]* in accordance with section 127 of the *Corporations Act 2001* (Cth)

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary/sole director and sole company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary/sole director and sole company secretary (print)

**Note to drafters: use this execution block if the Contractor is a company acting as the trustee of a trust (common seal)]**

The **common seal** of *[insert company name and ABN/ACN]* in its capacity as trustee of *[insert name of trust]* is fixed in accordance with section 127 of the *Corporations Act 2001* (Cth) in the presence of:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary/sole director and sole company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary/sole director and sole company secretary (print)

**Note to drafters: use this execution block if the Contractor is an individual acting as the trustee of a trust]**

Signed by *[insert name of trustee]* in *[his/her]* capacity as trustee of *[insert name of trust]* in the presence of

\_\_\_\_\_  
Signature of trustee

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of trustee (print)

\_\_\_\_\_  
Name of witness

# Schedule 5 – Standard Terms and Conditions

## 1. Definitions and interpretation

### 1.1 Definitions

In this Contract, except where the contrary intention is expressed, the following definitions are used:

<b>Accounting Standards</b>	the standards of that name maintained by the Australian Accounting Standards Board (referred to in section 227 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
<b>Advisers</b>	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
<b>Agency</b>	(a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation (including a local authority); (b) a body established by the Governor-General or by a Minister of State of the Commonwealth including departments; (c) an incorporated company over which the Commonwealth exercises control; or (d) a State or Territory Agency.
<b>Auditor-General</b>	the office established by section 7 of the <i>Auditor-General Act 1997</i> (Cth).
<b>Background Material</b>	any Material, other than Contract Material, which is made available by a party for the purpose of this Contract, on or following the Commencement Date, and includes: (a) Third Party Material; (b) any modifications that may be required under clause 16.5(b); (c) error corrections or translations to that Material; and (d) derivatives of that Material where such derivative work cannot be used without infringing the Intellectual Property Rights in the underlying Material.
<b>Business Day</b>	a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where an act is to be performed or where the Notice is received.
<b>Business Hours</b>	from 8.00am to 6.00pm on a Business Day, unless specified otherwise in the Official Order.

<b>Commonwealth or Cth</b>	the Commonwealth of Australia.
<b>Commonwealth Fraud Control Framework</b>	the guidelines framework of that name as updated from time to time, available at: <a href="https://www.ag.gov.au/CrimeAndCorruption/FraudControl/Pages/FraudControlFramework.aspx">https://www.ag.gov.au/CrimeAndCorruption/FraudControl/Pages/FraudControlFramework.aspx</a> .
<b>Confidential Information</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) information that is by its nature confidential;</li> <li>(b) information provided on a confidential basis;</li> <li>(c) information a party knows or ought to know is confidential; or</li> <li>(d) information described in the Official Order or in a separate document created in accordance with clause 14.5 of the Head Agreement Terms;</li> <li>(e) but does not include:</li> <li>(f) information that is or becomes public knowledge otherwise than by breach of this Contract or any other confidentiality obligation.</li> </ul> <p>In the case of the Lead Agency and Participating Agencies, Confidential Information includes:</p> <ul style="list-style-type: none"> <li>(a) Personal Information; or</li> <li>(b) Protected Information.</li> </ul>
<b>Contract</b>	this agreement between the Participating Agency and the Contractor, as varied from time to time in accordance with clause 38.2
<b>Contract Material</b>	any Material brought into existence as part of, or for the purpose of performing the Services, or as an outcome of the Services and includes but is not limited to documents, equipment, information or data stored by any means. It includes any modifications that may be required under clause 16.5(b) but does not include the tools the Contractor uses to deliver the Services, including the Contractor's processes and procedures, software and on-line collaborative tools.
<b>Contract Period</b>	<p>the period of time for which this Contract is intended to continue:</p> <ul style="list-style-type: none"> <li>(a) as specified in the Official Order; or</li> <li>(b) if no period of time is specified in the Official Order, the period from the Services Start Date until the date the Contractor has completed all its obligations in relation to providing the Services, other than those obligations that are expressly specified to survive the term of the Contract.</li> </ul>
<b>Contractor</b>	the party specified in the Official Order including, as the context requires, Personnel of the Contractor and its subcontractors.
<b>Contractor Representative</b>	the person identified as the Contractor Representative in the Official Order or, if no person is identified in the Official Order, the person identified in item 4 of Schedule 1 to the Head Agreement.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).

<b>Deliverable</b>	any Contract Material or other item or element of a Service to be provided by the Contractor under this Contract.
<b>Delivery Place</b>	the address for delivery specified in the Official Order.
<b>Digital Service Standard</b>	the standards issued by the Digital Transformation Agency as updated from time to time available at: <a href="https://www.dta.gov.au/standard/">https://www.dta.gov.au/standard/</a> .
<b>Eligible Data Breach</b>	has the meaning given in <i>the Privacy Act 1988</i> (Cth).
<b>GST</b>	a tax in the nature of a supply or goods and services tax levied or imposed by the Commonwealth of Australia including a tax levied or imposed by: <ul style="list-style-type: none"> <li>(a) <i>A New Tax System (Goods and Services Tax Imposition - Customs) Act 1999</i> (Cth);</li> <li>(b) <i>A New Tax System (Goods and Services Tax Imposition - Excise) Act 1999</i> (Cth); or</li> <li>(c) <i>A New Tax System (Goods and Services Tax Imposition - General) Act 1999</i> (Cth).</li> </ul>
<b>Head Agreement</b>	the deed of standing offer between the Lead Agency and the Contractor for the provision of Creative and Digital Communication services.
<b>Indigenous Procurement Policy</b>	the policy of that name issued by the National Indigenous Australians Agency as updated from time to time, available at: <a href="https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp">https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp</a> .
<b>Information Commissioner</b>	the officer appointed as the Information Commissioner under an Act of Parliament, or his or her successor.



<b>Intellectual Property Rights</b>	<p>all know-how, copyright, and all rights in relation to inventions, registered and unregistered trade marks (including service marks), registered designs, and circuit layouts, trade secrets and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.</p> <p>Intellectual Property Rights include the following rights:</p> <ul style="list-style-type: none"> <li>(a) patents, copyright, rights in circuit layouts, designs, trade marks (including goodwill in those marks) and domain names;</li> <li>(b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and</li> <li>(c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere,</li> </ul> <p>whether or not such rights are registered or capable of</p>
<b>Law</b>	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
<b>Lead Agency</b>	the Agency specified in item 1 of Schedule 1 of the Head Agreement.
<b>Losses</b>	liabilities, expenses, losses, damages, costs, compensation or expense (including legal costs on a full indemnity basis, whether incurred by or awarded against a party).
<b>Material</b>	includes property, information, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
<b>Milestone Date</b>	any fixed date to be met by the Contractor in performing any of its obligations under this Contract, as specified in the Official Order.
<b>Moral Rights</b>	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
<b>Not to Exceed Unwind Charges</b>	the charges specified in the Official Order which is the not to exceed amount which may be payable to the Contractor for the provision of the Unwind Assistance.
<b>Notice</b>	a notice, demand, consent, approval or communication issued under this Contract.
<b>Official Order</b>	the order for Services placed by the Participating Agency in accordance with clause 5 of the Head Agreement.

<b>Other Contractors</b>	includes contractors that provide services to the Participating Agency from time to time, including the Australia Post, couriers, suppliers of print management services, printing and production services or warehousing and distribution services under separate agreements with the Lead Agency and any other contractors specified in the Official Order.
<b>Participating Agency</b>	an Agency listed in item 9 of Schedule 1 of the Head Agreement and any other Agency that joins the Head Agreement in accordance with clause 6 of the Head Agreement.
<b>Participating Agency Material</b>	any Material provided (or required to be provided) to the Contractor by the Participating Agency, including the Material (if any) specified in the Official Order.
<b>Participating Agency</b>	the agency identified as the Participating Agency in the Official Order.
<b>Personnel</b>	in relation to a party, any employee, officer, statutory office holder, or agent of that party, and in the case of a Contractor, any subcontractor. Where the context requires, it also includes Advisors of that party.
<b>Privacy Act</b>	the <i>Privacy Act 1988</i> (Cth).
<b>Privacy Commissioner</b>	means the Privacy Commissioner for the Commonwealth or equivalent office holder (if any).
<b>Protective Security Policy Framework</b>	the Australian Government's policy framework found at <a href="https://www.protectivesecurity.gov.au/Pages/default.aspx">https://www.protectivesecurity.gov.au/Pages/default.aspx</a> .
<b>Relevant Services</b>	the Services specified in the Official Order as the Services to which any limitation on liability in accordance with clause 24 is to apply (if any).
<b>Service Charges</b>	the charges payable to the Contractor in accordance with clause 19 and the Capped Rates in Schedule 3.
<b>Service Levels</b>	the standards of service which the Contractor must achieve in providing the Services to the Participating Agency as set out in the Official Order.
<b>Service Rebates</b>	an amount calculated in accordance with the Official Order which is payable by the Contractor to the Participating Agency under clause 13.3(b).
<b>Services</b>	the services to be provided by the Contractor, as specified in the Official Order and includes the provision of the Deliverables.
<b>Services Start Date</b>	the services start date specified in the Official Order or if no date is specified, the date on which a completed and signed Official Order was issued to the Contractor.
<b>Specified Personnel</b>	the personnel specified in the Official Order.

<b>State or Territory Agency</b>	(b) a body corporate or an unincorporated body established or constituted for a public purpose by State or Territory legislation, or an instrument made under that legislation (including a local authority);  (c) a body established by a State Governor, or by a Minister of State or a Territory including departments; or  (d) an incorporated company over which a State or Territory exercises control.
<b>Termination Notice</b>	a written notice exercising a right to terminate this Contract.
<b>Third Party Material</b>	Background Material in which a third party holds Intellectual Property Rights.
<b>Transition Plan</b>	the transition plan prepared by the Contractor and approved by the Participating Agency in accordance with the Contract.
<b>Unwind</b>	the transfer of responsibility for provision of the Services (or part of them) from the Contractor to the Participating Agency (or a third party designated by the Participating Agency) by providing the Unwind Assistance in accordance with clause 10.
<b>Unwind Assistance</b>	the provision of assistance with Unwind by the Contractor during the Unwind Period (in addition to the continued performance of the Services).
<b>Unwind Period</b>	(a) if a Termination Notice is given by a party, the period commencing on the date on which the Termination Notice is given and continuing until 12 months after the date of the Termination Notice; and  (b) if a Termination Notice is not given by a party, the period commencing 12 months before the end of the Contract Period (or any other period reasonably requested by the Contractor) and continuing until the end of the Contract Period.
<b>Unwind Plan</b>	the plan for Unwind to be developed jointly by the Contractor and the Participating Agency, in accordance in the principles outlined in the Official Order.
<b>Warranted Materials</b>	the Background Material provided by the Contractor, the Deliverables and Contract Material.
<b>WHS Act</b>	the <i>Work Health and Safety Act 2011</i> (Cth).

## 1.2 Interpretation

In this Contract, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause or paragraph is to a clause or paragraph of this Schedule 5;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;

- (f) a reference to time is to Australian Eastern Standard Time;
- (g) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including**, **for example** or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a party that is a trustee is bound both personally and in its capacity as a trustee;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;
- (p) any undefined terms have the same meanings as in the Head Agreement;
- (q) if a day on or by which an obligation (other than Services) must be performed or an event (other than Services) must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (r) headings are for ease of reference only and do not affect interpretation.

### 1.3 Completion of Official Order

If an Official Order is substantially in the form of Schedule 4, to the extent that the parties have not completed items in the Official Order, unless otherwise stated in the Official Order, those items will be taken to be 'not applicable' for the purpose of this Contract.

## 2. Duration of Contract

### 2.1 Contract Period

This Contract begins on the Services Start Date and continues for the duration of the Contract Period unless terminated in accordance with clause 33 or 35.

### 2.2 Option to extend Contract Period

- (a) The Contract Period may be extended by the Participating Agency for further period(s), specified in the Official Order (if any) (each a **Contract Option Period**), on the terms and conditions then in effect, by giving written notice to the Contractor. Such notice must be given at least:
  - (i) 30 days; or
  - (ii) such other period specified in the Official Order (**Contract Option Notice**)

**Period),**

before the end of the current Contract Period.

- (b) Any extension in accordance with this clause 2.2 takes effect from the end of the then current Contract Period.

### 3. General obligations of the Contractor

#### 3.1 General obligations

The Contractor will, at all times:

- (a) act reasonably in performing its obligations and exercising its rights under this Contract; and
- (b) diligently perform its obligations under this Contract.

#### 3.2 Obligations of a trustee

- (a) If the Contractor acts as trustee for a trust (**the Trust**) in relation to this Contract, the Contractor warrants to the Participating Agency that:
  - (i) the Contractor is the only trustee of the Trust;
  - (ii) the Contractor has not been removed from, or ceased to act, or resigned or retired from the office of trustee of the Trust, nor has any decision or action been taken or proposed in respect of the removal, resignation or retirement of the Trustee as trustee of the Trust, or to appoint an additional trustee of the Trust;
  - (iii) the Contractor is not in default under the relevant Trust deed;
  - (iv) the Contractor has power under the Trust deed to enter into and observe the Contractor's obligations under this Contract;
  - (v) the Contractor has entered in this Contract in the trustee's capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;
  - (vi) the Contractor has a right, and will at all times have a right, to be fully indemnified out of the assets of the Trust in respect of the obligations incurred by the trustee under this Contract;
  - (vii) the assets of the Trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Contractor has a right to be indemnified out of the trust fund; and
  - (viii) to the extent that the assets of the Trust are insufficient to satisfy any right of indemnity, the Contractor holds professional indemnity or errors or omissions insurance as required by this Contract.
- (b) Without limiting any other indemnities provided by the Contractor to the Participating Agency, the Contractor indemnifies the Participating Agency against any Losses incurred in connection with the following situations:
  - (i) if a warranty made by the Contractor under this clause 3.2 is found to be incorrect or misleading when made or taken to be made; and/or
  - (ii) the Contractor ceases to be the trustee of the Trust or any step is taken to appoint another trustee of the Trust.

### 4. Provision of Services

#### 4.1 Service obligations

- (a) The Contractor:

- (i) warrants that it has the requisite skills, qualifications and experience to provide the Services; and
  - (ii) offers to provide the Services to each Participating Agency.
- (b) In providing the Services, the Contractor must:
- (i) liaise with and report to the Participating Agency Representative as provided for in the Contract; and
  - (ii) subject to Contract clause 4.1(c), provide the Services to the Participating Agency's satisfaction by the Completion Date.
- (c) The Participating Agency reserves the right to require minor variations to an Official Order at no additional cost to the Participating Agency provided such variations require no greater expenditure of time or resources by the Contractor or the Specified Personnel.
- (d) The Contractor must supply the Services:
- (i) to the reasonable satisfaction of the Participating Agency Representative;
  - (ii) in accordance with the job specifications set out in the Official Order;
  - (iii) with due skill and care and to the best of the Contractor's knowledge and expertise;
  - (iv) to a high standard and in accordance with the professional standards of conduct generally accepted by the relevant industry as determined by the Participating Agency;
  - (v) in accordance with the Service Levels (if any);
  - (vi) in accordance with relevant Australian industry and government standards, including, when relevant, publishing standards, parliamentary and tabling requirements, accessibility and compatibility standards, AS/ISO standards (including ISO 9000, AS/ISO 12647-2, AS/ISO 14001, AS/NZS 4360), specifications, best practice and guidelines or where none apply, endeavour to comply with relevant international industry standards, best practice and guidelines, including any specified in the Official Order;
  - (vii) using the Specified Personnel (if any);
  - (viii) in accordance with all applicable Laws;
  - (ix) in accordance with the Participating Agency's policies and specific requirements, including Accountable Authority Instructions, work health and safety policies, prohibition on the use of illegal workers, environmental policies, participation by small and medium enterprises and any additional policies set out in the Official Order;
  - (x) in accordance with any directions in relation to the Services given by the Participating Agency acting reasonably from time to time;
  - (xi) so as to meet the Milestone Dates and other project plan requirements, and where no Milestone Dates or project plan requirements are specified, promptly and without delay;
  - (xii) in accordance with the same standards and obligations that are imposed on the Participating Agency Personnel under the WHS Act;
  - (xiii) in a manner that respects and addresses, when appropriate, the communications needs associated with:
    - (A) indigenous cultures;
    - (B) cultural diversity;

- (C) language diversity;
  - (D) age diversity; and
  - (E) people with disabilities;
- (xiv) so as to keep accurate and auditable records relating to the performance of the Services; and
- (xv) otherwise in accordance with the provisions of this Contract.

#### 4.2 Digital assets management

- (a) The Contractor, when in receipt of any digital asset or content from the Participating Agency, must comply with any legislative obligations and professional standards, including:
- (i) management of indexes and metadata;
  - (ii) secure storage and retrieval including the backup, recovery, identification, version control, retention and destruction of digital assets and copies;
  - (iii) copyright and intellectual property management including obtaining, managing and recording, where appropriate, consents to use or release digital assets; and
  - (iv) implementing controls against inappropriate manipulation or use of digital assets.

#### 4.3 Contractor warranties

Without limiting any other provision of this Contract, the Contractor represents and warrants that:

- (a) it has the right to enter into this Contract;
- (b) it has all rights, title, licences, interests and property necessary to lawfully perform the Services;
- (c) it and its Personnel, including its Specified Personnel, have the necessary experience, skill, knowledge, expertise and competence to perform the Services and (when appropriate) will hold such licences, permits or registrations as are required under any State, Territory or Commonwealth legislation to perform the Services;
- (d) the Services and Warranted Materials will be fit for the purpose as set out in the Official Order;
- (e) the Services will be complete and accurate in accordance with the job specifications set out in this Contract;
- (f) the Deliverables are of good and merchantable quality and are free from defects in design, performance and workmanship;
- (g) any materials (including documentation) supplied with the Services will be sufficient to enable the Participating Agency to make full and proper use of the Services;
- (h) it must Notify the Participating Agency if anything happens or may happen that could affect any of the warranties in this Contract or the Contractor's ability to perform its obligations under the Contract;
- (i) if the Contractor is a trustee, it enters this Contract personally and in its capacity as trustee and has the power to perform its obligations under this Contract; and
- (j) it must not at any time intentionally do anything which directly or indirectly may impair or be likely to impair the good name and reputation of the Participating Agency or its operations;

- (k) it will be just and faithful in all transactions relating to the Participating Agency and show the utmost good faith in performing the Services; and
- (l) it must carry out its obligations under this Contract and provide the Services using a professional degree of care, skill and diligence according to any applicable good industry practice.

#### 4.4 Delivery Place

- (a) The Contractor must supply and deliver the Deliverables to the Delivery Place:
  - (i) during Business Hours; and
  - (ii) in accordance with the timeframes specified in the Official Order.
- (b) The Contractor must ensure the Service Charges include all delivery fees.
- (c) The Contractor must supply and deliver the Deliverables to the loading dock or other place notified by the Participating Agency (verbally or in writing) at the Delivery Place.
- (d) The Contractor is responsible for coordinating its access to the Delivery Place with the Participating Agency (for example, when goods lift access is required).

#### 4.5 Title and risk

- (a) Subject to clause 16, title in the Deliverables free of any encumbrances passes to the Participating Agency on acceptance of the Deliverables by the Participating Agency.
- (b) The risk in the Deliverables remains with the Contractor until the delivery to, and acceptance of, the Deliverables by the Participating Agency.

#### 4.6 Acceptance

- (a) All Deliverables must be to the satisfaction of the Participating Agency Representative acting reasonably.
- (b) Regardless of any cooperation with Other Contractors required under clause 7 of this Contract, the authority to accept any Deliverables remains solely with the Participating Agency.
- (c) Upon delivery of the Deliverables pursuant to clause 4.4 the Participating Agency must within 5 Business Days, or other period specified in the Official Order:
  - (i) conduct such tests and inspections as deemed necessary by the Participating Agency;
  - (ii) accept the Deliverables; or
  - (iii) reject all or part of the Deliverables on the ground that they do not conform to the requirements of this Contract.
- (d) If the Participating Agency Representative rejects all or part of the Deliverables under Clause 4.6(c)(iii) the Participating Agency Representative must, within 5 Business Days, or other period specified in the Official Order, by notice in writing to the Contractor, give the Contractor reasons for the rejection and return the rejected Deliverables to the Contractor.
- (e) The Contractor must, within 5 Business Days of receipt of the notice of rejection, either resupply or rectify the Deliverables so that they conform to the requirements of this Contract. If, within the time specified (or such other time as is agreed in writing by the Participating Agency Representative), the Contractor fails to rectify or resupply the Deliverables, the Participating Agency may terminate this Contract immediately under



clause 35.2 by giving the Contractor written notice.

- (f) If Deliverables are rejected under this clause 4.6 re-submitted or rectified Deliverables will not be taken to have occurred until the date when Deliverables conforming to the requirements of the Contract are re-supplied or rectified. Nothing in this clause 4.6 affects the liability of the Contractor for any obligation to deliver the Deliverables in accordance with clause 4.4.
- (g) The cost of rectifying or resupplying the rejected Deliverables, including all freight, and handling costs associated with the return and replacement of faulty or incorrectly manufactured or despatched Deliverables will be borne by the Contractor.

#### **4.7 Delay**

- (a) The Contractor must immediately notify the Participating Agency if the Contractor becomes aware that there will be, or is likely to be, a delay in relation to any Services or Milestone Date. This Notice must include a full explanation (to the extent that is reasonably practicable at the time of the Notice) of:
  - (i) the nature and expected duration of the delay;
  - (ii) the likely impact of the delay on the delivery of other Services and the achievement of other Milestone Dates;
  - (iii) the causes of the delay;
  - (iv) the steps that the Contractor is taking to minimise the delay; and
  - (v) whether the delay was caused in whole or in part by the Participating Agency because the Agency has failed to provide Participating Agency Materials or approval, or because the Participating Agency has otherwise failed to comply with its obligations under this Contract.
- (b) If a Notice given by the Contractor under clause 4.7 does not include a full explanation of all of the matters in clauses 4.7(a)(i) to 4.7(a)(v), the Contractor must give the Participating Agency a further Notice including a full explanation of all those matters as soon as is reasonably practicable.
- (c) The Contractor must use its best endeavours to minimise any delay in relation to any Services or Milestone Dates, and the impact of the delay on the Participating Agency, irrespective of the cause of the delay.

#### **4.8 Hours of coverage**

- (a) The Contractor must be available to meet the requirements of the Participating Agency during:
  - (i) Business Hours; and
  - (ii) outside of Business Hours, which may be for the purposes of supporting peak demand requirements, emergency demand requirements, or to support disaster recovery and emergency relief operations.
- (b) Upon request, the Contractor must provide an out of hours emergency contact number.

#### **4.9 Timeliness**

- (a) The Contractor must meet the requirements of the Participating Agency for timeliness specified in the Official Order and job specifications including:
  - (i) agreed response and turnaround times for normal, urgent and priority jobs, and the provision of scheduled and ad hoc reports; and
  - (ii) the provision of invoices.

#### **4.10 Access to the Participating Agency's premises**

The Participating Agency must cooperate with the Contractor by providing access to its premises and facilities as reasonably necessary to enable the Contractor to provide the Services.

#### **4.11 Conduct at the Participating Agency's premises**

Without limiting clause 30 the Contractor must, if using or accessing the Participating Agency's premises or facilities, comply with all reasonable directions and procedures relating to work health and safety and security in operation at those premises or facilities whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.

#### **4.12 Subcontracting**

- (a) The Contractor must not subcontract any aspect of the provision of the Services without the Participating Agency's prior written approval. The Participating Agency may provide the Contractor with written approval with any terms or conditions, which the Contractor must comply with.
- (b) If the Participating Agency has provided written approval under clause 4.12(a), the Contractor must as far as practicable ensure that all subcontracts impose obligations on the subcontractors equivalent to the obligations under this clause 4.12.
- (c) Notwithstanding any subcontract, the Contractor remains fully responsible for performing its obligations under the Contract.
- (d) The Contractor must not enter into a subcontract arrangement under this Contract with a subcontractor named by the Director of Affirmative Action as an employer not complying with the *Workplace Gender Equality Act 2012* (Cth).

#### **4.13 APS Values**

- (a) During the Contract Period, and any extension of the Contract Period, the Contractor must uphold and demonstrate behaviour consistent with the APS Values and Code of Conduct.
- (b) If a State or Territory or Local Government Agency is the Participating Agency under this Contract, the Participating Agency may specify in the Official Order that this clause 4.13 does not apply to this Contract.

#### **4.14 Commonwealth Fraud Control Framework**

- (a) The Contractor must:
  - (i) comply with the Commonwealth Fraud Control Framework, as amended from time to time; and
  - (ii) notify the Participating Agency promptly if it knows or has reason to suspect that any fraud has occurred or is occurring or is likely to occur in relation to this Contract (including by the Contractor and its Personnel).
- (b) If a State or Territory or Local Government Agency is the Participating Agency under this Contract, the Participating Agency may specify in the Official Order that this clause 4.14 does not apply to this Contract.

#### **4.15 Environmental policies**

- (a) The Contractor must perform its obligations under the Contract in a way that does not place the Contractor or the Participating Agency in breach of any applicable environmental legislation including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
- (b) The Contractor must seek to implement any best practice environmental or green standards applicable to the Services.

#### **4.16 Freedom of Information**

- (a) This clause 4.16 applies if the Contract is a **Commonwealth Contract** for the purposes of the *Freedom of Information Act 1982* (Cth).
- (b) If an application is made to the Participating Agency under the *Freedom of Information Act 1982* (Cth) for access to documents concerning the Contractor, the Participating Agency:
  - (i) may, before making a decision, consult with the Contractor, without prejudice to any decision to release the information; and
  - (ii) must determine the application in accordance with the requirements of the *Freedom of Information Act 1982* (Cth).

#### 4.17 **Illegal Workers**

- (a) In this clause 4.17 **Illegal Worker** means a person who:
  - (i) has unlawfully entered and remains in Australia and has no legal right to work in Australia; or
  - (ii) has lawfully entered Australia, but remains in Australia after his or her visa has expired; or
  - (iii) is working in breach of his or her visa conditions.
- (b) The Contractor must not engage Illegal Workers in any capacity to carry out any work under or in connection with this Contract and must notify the Participating Agency promptly if it becomes aware of the involvement of an Illegal Worker in such work.
- (c) The Contractor must remove, or cause to be removed, any Illegal Worker from any involvement in performing its obligations under this Contract (including if engaged by a subcontractor) and arrange for their replacement at no cost to the Participating Agency immediately upon becoming aware of the involvement of the Illegal Worker.
- (d) If requested in writing by the Participating Agency, the Contractor must provide evidence within 14 days that it has taken all reasonable steps to ensure that it has complied and is complying with its obligations under this clause 4.17.

#### 4.18 **Indigenous Procurement Policy**

- (a) It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see Indigenous Procurement Policy at: <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>).
- (b) The Contractor must use its reasonable endeavours to increase its:
  - (i) purchasing from Indigenous enterprises; and
  - (ii) employment of Indigenous Australians,
 in the delivery of the Services.
- (c) Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a subcontractor, and use of Indigenous suppliers in the Contractor's supply chain.
- (d) The Contractor must provide such written reports and evidence of its compliance with this clause 4.18 every six (6) months during the Contract Period.
- (e) If during the Contract Period the value of this Contract exceeds \$7.5 million, then the Contract may become a High Value Contract for the purposes of the Indigenous Procurement Policy, in which case the Contractor must:

- (i) within 10 Business Days after the \$7.5 million value is reached, develop an Indigenous Participation Plan that addresses:
  - (A) how the Contractor intends on meeting the mandatory minimum requirements for the Indigenous Procurement Policy;
  - (B) the Contractor's current rate of Indigenous employment and supplier use;
  - (C) the Contractor's commitment to Indigenous participation; and
  - (D) if any part of the Contract is being or will be delivered in a Remote Area, how the Contractor will ensure that its provision of Services will deliver significant Indigenous employment or supplier use outcomes in that Remote Area; and
- (ii) submit the draft Indigenous Participation Plan to the Participating Agency for its review and, if appropriate, approval.
- (f) Upon approval of the draft Indigenous Participation Plan under clause 4.18(e), the Contractor must:
  - (i) comply with the Indigenous Participation Plan (which will by contract amendment become an attachment to the Official Order);
  - (ii) report against its compliance with the Indigenous Participation Plan quarterly during the Contract Period; and
  - (iii) comply with any directions issued by the Participating Agency Representative in relation to the Contractor's implementation of the Indigenous Participation Plan.
- (g) In this clause:
  - (i) **High Value Contract** has the meaning provided in the Indigenous Procurement Policy;
  - (ii) **Indigenous enterprise** means an organisation that is 50 per cent or more Indigenous owned that is operating a business;
  - (iii) **Indigenous Participation Plan** means the plan set out at Schedule 6 (Indigenous Participation Plan);
  - (iv) **Indigenous Procurement Policy** means the policy of that name, as amended from time to time, available on the website at <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>; and
  - (v) **Remote Area** means the areas identified in the map on the website at <https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>, as updated from time to time.
- (h) If a State or Territory Agency is the Participating Agency under this Contract, the Participating Agency may specify in the Official Order that this clause 4.18 does not apply to this Contract.

#### 4.19 Unpaid entitlements

- (a) The Contractor is responsible for ensuring the adequacy of any workers' compensation for its employees including the Specified Personnel and is responsible for the payment of any sick pay, holiday pay, PAYG, fringe benefit tax, payroll tax, superannuation and other statutory charges. The Contractor must not recover the cost of any employee entitlements from the Participating Agency.
- (b) The Contractor must ensure it complies with any judicial decision made against it in respect of its employees in Australia (not including a decision under appeal) relating to employee entitlements and pay or resolve the claim.

- (c) If any fine, penalty or other charge is imposed on the Participating Agency as a result of the Contractor's noncompliance with clause 4.19, the Contractor indemnifies the Participating Agency in respect of that fine, penalty or other charge.

#### 4.20 Digital Service Standard

- (a) Unless otherwise specified in the Official Order, the Contractor must perform the Services in accordance with the Digital Service Standard, including compliance with the Web Content Accessibility Guidelines (WCAG) version 2.0 (specifying Level A, AA or AAA), through the use of Sufficient Techniques (as defined in the WCAG 2.0 Quick Reference (<http://www.w3.org/WAI/WCAG20/quickref/>)). Further information about the Digital Standard is available at <https://www.dta.gov.au/help-and-advice/digital-service-standard/digital-service-standard-criteria/9-make-it-accessible>.

#### 4.21 Workplace Gender Equality

- (a) This clause 4.21 applies only to the extent that the Contractor is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* (Cth) (the WGE Act).

Note: The WGE Act defines 'relevant employer' as:

- a registered higher education provider that is an employer; or
- a natural person, or a body association (whether incorporated or not), being the employer of 100 or more employees in Australia,

but does not include the Commonwealth, a State, a Territory or an authority.

- (b) The Contractor comply with its obligations, if any, under the WGE Act.
- (c) If the Contractor becomes non-compliant with the WGE Act during the Contract Period, the Contractor must notify the Participating Agency.
- (d) If the Contract Period exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the Services Start Date and following this, annually, to the Participating Agency.
- (e) If the Contractor becomes non-compliant with the WGE Act during the Contract Period, and that non-compliance is not able to be rectified by the Contractor within a reasonable period (as determined by the Participating Agency provided that such period must not be less than 20 Business Days), the Participating Agency may terminate the Contract in accordance with clause 35.2.

#### 4.22 Work Health and Safety

##### User notes (for Commonwealth agencies):

Clause 4.22 provides that the Contractor must meet, and assist the Commonwealth to meet, its obligations under the Work Health and Safety Act 2011 (Cth). The Participating Agency should not enter any contract without first completing the following Work Health and Safety ('WHS') Risk Assessment. With respect to Contract clause 4.22(b) and 4.22(c) if the response to every question is 'no', the Participating Agency should not request a WHS Plan from the Contractor. If the response to any of the questions is 'yes', the Participating Agency must request a WHS Plan from the Contractor.

##### WHS Risk Assessment:

- (i) Does the Contract include any refurbishment, construction, demolition work or other types of manual or physical labour?
- (ii) Does the Contractor engage or use the services of subcontractors in relation to question (i)?
- (iii) Is it reasonably foreseeable that the provision of the Services could pose a risk to the health and safety of any Participating Agency employee, member of the public or other contractors?
- (iv) Is the Contractor providing Services that are to be provided at Participating Agency premises?
- (v) Is the Contractor required to have any special licence or permit or registration to provide the Services?

**(vi) Are the Services hazardous or dangerous by their nature?**

**(vii) Will the Contractor provide or operate any form of plant, equipment or other machinery to provide the Services?**

- (a) Without limiting the overarching obligations to comply with the *Work Health and Safety Act 2011* (Cth) or any state or territory law applicable to work health and safety ('WHS Law'), at all times in performing its obligations under this Contract the Contractor must:
- (i) provide the Services to or on behalf of the Participating Agency in a safe manner that is without risk to the health, safety and welfare of any person and that eliminates health and safety risks so far as reasonably practicable;
  - (ii) comply with its own obligations under WHS Law concerning the safety of workers and workplaces and assist the Participating Agency to meet its obligations under the WHS Law;
  - (iii) consult, cooperate and coordinate with the Participating Agency as required by WHS Law applicable to the provision of the Services and Notify the Participating Agency of any health and safety risk or incidents as soon as they become known to the Contractor;
  - (iv) comply with any reasonable directions of the Participating Agency; and
  - (v) if under WHS Law there is a requirement for a person who is providing the Services to be licensed, authorised, qualified, trained or skilled, the Contractor must ensure that the person has the appropriate current licence, authorisation, training or the necessary skills to provide the Services safely.
- (b) If requested by the Participating Agency, before the Contractor provides the Services it must prepare and provide to the Participating Agency a Work Health and Safety Plan ('WHS Plan') to document the process and procedures it will implement to ensure compliance with Contract clause 4.22(a).
- (c) The Contractor must implement any WHS Plan provided to the Participating Agency under clause 4.22(b) and a failure to do so will constitute a breach of this Contract giving rise to the Participating Agency's right to terminate for default under Contract clause 35.2.

#### **4.23 National Principles for Child Safe Organisations and other action for the safety of Children**

- (a) Under this clause 4.23, the following additional definitions are used:
- Child** means an individual(s) under the age of 18 years and Children has a similar meaning;
- Child-Related Personnel** means officers, employees, contractors, agents and volunteers of the Contractor involved with the Services who as part of that involvement may interact with Children;
- Legislation** means a provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority;
- National Principles for Child Safe Organisations** means the National Principles for Child Safe Organisations, endorsed by the Council of Australian Governments as published by the Commonwealth Government (available at: <https://www.humanrights.gov.au/about/news/coag-endorses-national-principles-child-safe-organisations>);
- Relevant Legislation** means Legislation in force in any jurisdiction where any part of the Services may be provided or carried out;

**Working with Children Check or WWCC** means the process in place pursuant to Relevant Legislation to screen an individual for fitness to work with Children.

- (b) If any part of the Services involve the Contractor employing or engaging with Child-Related Personnel that is required by Relevant Legislation to have a Working With Children Check to undertake the provision of Services or any part of the Services, the Contractor must:
- (i) comply with all Relevant Legislation relating to the employment or engagement of Child-Related Personnel in relation to the Services, including mandatory reporting and all necessary Working With Children Checks however described;
  - (ii) if specified in an Official Order, ensure that Working With Children Checks obtained in accordance with this clause 4.23 remain current and that all Child-Related Personnel continue to comply with all Relevant Legislation for the duration of their involvement in the Services; and
  - (iii) if requested, provide the Participating Agency at the Contractor's cost, an annual statement of compliance with this clause 4.23, in such form as may be specified by the Participating Agency.
- (c) When Child Safety obligations may be relevant to a subcontract, the Contractor must ensure that any subcontract entered into by the Contractor for the purposes of fulfilling the Contractor's obligations under the contract imposes on the subcontractor the same obligations regarding Child safety that the Contractor has under the Contract. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.
- (d) Clauses 4.23(e) to 4.23(h) apply if it is specified in an Official Order at item 24 that for the purpose of the Official Order, the Contractor will be employing or engaging with Child-Related Personnel who must have a Working With Children Check.
- (e) Subject to clause 4.23(d), the Contractor agrees in relation to the Services to:
- (i) Implement the National Principles for Child Safe Organisations;
  - (ii) ensure that all Child-Related Personnel implement the National Principles for Child Safe Organisations;
  - (iii) complete and update, at least annually, a risk assessment to identify the level of responsibility for Children and the level of risk of harm or abuse to Children;
  - (iv) implement and update, at least annually, an appropriate risk management strategy to manage risks identified through the risk assessment required by this clause 4.23;
  - (v) provide training and establish a compliance regime to ensure that all Child-Related Personnel are aware of, and comply with:
    - the National Principles for Child Safe Organisations;
    - the Contractor's risk management strategy required by this clause 4.23;
    - Relevant Legislation relating to requirements for working with Children, including Working With Children Checks; and
    - Relevant Legislation relating to mandatory reporting of suspected child abuse or neglect, however described; and
  - (vi) if requested, provide the Participating Agency at the Contractor's cost, an annual statement of compliance with clause 4.23(e), in such form as may be specified by the Participating Agency.
- (f) Subject to clause 4.23(d), with reasonable Notice to the Contractor, the Participating Agency may conduct a review of the Contractor's compliance with clause 4.23(e)
- (g) Subject to clause 4.23(d) the Contractor must:
- (i) Notify the Participating Agency of any failure to comply with clause 4.23(e)
  - (ii) co-operate with the Participating Agency in any review conducted by the

- (iii) Participating Agency of the Contractor's implementation of the National Principles for Child Safe Organisations or compliance with clause 4.23(e); and promptly, and at the Contractor's cost, take such action as is necessary to rectify, to the Participating Agency's satisfaction, any failure to implement the National Principles for Child Safe Organisations or any other failure to comply with clause 4.23(e)
- (h) Subject to clause 4.23(d), if the Contractor fails to rectify its non-compliance with clause 4.23(e) within a reasonable time the Participating Agency may terminate the Deed in accordance with clause

#### **4.24 Australian Industry Participation (AIP)**

- (a) The provisions relating to Australian Industry Participation in this Contract clause 4.24. applies to this Contract if the value of the Contract is worth over AUD \$20 million.
- (b) The Contractor must:
  - (i) comply with the AIP Plan in performing its obligations in accordance with this Contract;
  - (ii) provide evidence of its current AIP Plan upon request from the Participating Agency; and
  - (iii) include appropriate provisions in its contracts with subcontractors to ensure that the Contractor is able to meet its obligations under clause 4.24.
- (c) If any conflict arises between any part of the AIP Plan and any other part of this Contract, the other part of this Contract prevails.
- (d) The AIP Plan must not be construed as limiting the Contractor's responsibility to provide the Services in accordance with, and otherwise to comply with, the requirements of this Contract.
- (e) If requested by the Participating Agency, the Contractor must provide to the Participating Agency an AIP Plan implementation report that meets the AIP Plan implementation report requirements within 60 days after the first anniversary of the Contract Commencement Date.
- (f) If the Participating Agency considers that an AIP Plan implementation report provided under clause 1.1(e) does not meet the AIP Plan implementation report requirements, the Participating Agency may by written Notice to the Contractor reject the AIP Plan implementation report. If the Participating Agency rejects the AIP Plan implementation report, the Participating Agency must provide the Contractor with reasons for the rejection.
- (g) If the Participating Agency rejects the AIP Plan implementation report pursuant to this clause, the Contractor must provide to the Participating Agency the AIP Plan implementation report, amended to address the reasons advised by the Participating Agency and that otherwise meets the AIP Plan implementation report requirements, within 10 Business Days of the date of the Notice issued under this clause.
- (h) The Contractor acknowledges that the Participating Agency may:
  - (i) publish the executive summary of the Contractor's AIP Plan;
  - (ii) publicise or report on the Contractor's performance in relation to and level of compliance with the AIP Plan; and
  - (iii) publicise or report on any information contained in the AIP Plan or an AIP Plan implementation report provided pursuant to this Contract.
- (i) In this Contract clause 4.24, 'AIP Plan' has the meaning provided in Division 2 of the Australian Jobs Act 2013 (Cth). For guidance on developing an AIP Plan see the User Guide for Developing an AIP Plan available at <https://www.industry.gov.au/sites/default/files/user-guide-for-developing-an-australian-industry-participation-plan.pdf>.



#### 4.25 Australian packaging covenant

The Contractor must endeavour to minimise the environmental impacts arising from the disposal of used packaging, conserve resources through better design and production processes for packaging, and facilitate the re-use and recycling of used packaging materials in accordance with the principles in the Sustainable Packaging Guidelines available at <https://www.packagingcovenant.org.au/documents/item/1091>.

#### 4.26 Lobbying code of conduct

The Contractor must and must ensure that its Personnel, comply with the Lobbying Code of Conduct where their activities fall within the scope of the Lobbying Code of Conduct.

#### 4.27 Criminal code

- (a) The Contractor acknowledges that giving false or misleading information to the Commonwealth is a serious offence under the *Criminal Code Act 1995* (Cth)
- (b) If a State or Territory or Local Government Agency is the Participating Agency under this Contract, the Participating Agency may specify in the Official Order that this clause 4.27 does not apply to this Contract

#### 4.28 Anti-money laundering

The Contractor must comply with any obligations applicable to it contained in any laws arising from the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

#### 4.29 National Anti-Corruption Commission

- (a) In this clause 4.29, ‘Corrupt Conduct,’ ‘NACC disclosure’ and ‘National Anti-Corruption Commissioner’ (NACC Commissioner) have the meaning given in the *National Anti-Corruption Commission Act 2022* (Cth) (NACC Act).
- (b) The Contractor:
  - (i) acknowledges that it, and its Personnel, are “contracted service providers” for the purposes of the NACC Act;
  - (ii) acknowledges that its Personnel may be “public officials” for the purposes of the NACC Act;
  - (iii) agrees that it will not engage in, and will ensure its Personnel do not engage in, Corrupt Conduct;
  - (iv) will notify the Participating Agency within five Business Days of becoming aware of, or having reasonable grounds to suspect, any Corrupt Conduct in connection with this Contract; and
  - (v) will ensure that its arrangements with its Personnel, including any subcontractors, include obligations that are consistent with this clause 4.29.
- (c) The Contractor must comply with any request for assistance or direction, or cooperate in full with the Participating Agency in any action or investigation by the Participating Agency into actual or potential matters falling under the NACC Act in relation to this Contract.
- (d) To the extent permitted by law, where the Contractor is subject to an investigation by the NACC Commissioner, it must notify the Participating Agency within five Business Days of becoming aware of the investigation and provide any relevant information as requested by the Participating Agency (which may include the names of affected Personnel).
- (e) The parties acknowledge they must comply with the requirements of the NACC Act in relation to a NACC disclosure before exercising a contractual or other remedy under this Contract.

- (f) If:
  - (i) there is a finding or opinion under the NACC Act that the Contractor or its Personnel has engaged in, is engaging in or will engage in Corrupt Conduct; or
  - (ii) the Participating Agency considers the Contractor has failed to take reasonable steps to prevent Corrupt Conduct,

the Contractor must reimburse or compensate the Participating Agency in full for any losses incurred by the Participating Agency as a result of that Corrupt Conduct.

- (g) The rights of the Participating Agency in relation to clauses 32.5 to 32.6 (Audit and Access) apply equally to the NACC Commissioner or a delegate of the NACC Commissioner, for the purpose of performing the NACC Commissioner's statutory functions or powers.
- (h) For the purposes of this Contract as relevant to determining a party's liability (for the purposes of clause 24.1) or to determining the scope of a limitation of liability (for the purposes of clause 24.2), a negligent or deliberately wrongful act or omission is taken to include a finding or opinion under the NACC Act that a person has engaged, is engaging or will engage in Corrupt Conduct.
- (i) The Contractor acknowledges that the provision of Confidential Information by a party for the purposes of an investigation under the NACC Act is a permitted disclosure, and therefore does not constitute a breach of obligations under clause 26 (Confidentiality).
- (j) If a State or Territory or Local Government Agency is the Participating Agency under this Contract, the Participating Agency may specify in the Official Order that this clause 4.29 does not apply to this Contract.

#### **4.30 Notification of Significant Events**

- (a) For the purposes of this clause, 'Significant Event' means:
  - (i) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Contractor or its officers, employees, agents or Subcontractors that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation; or
  - (ii) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Contractor or its officers, employees, agents or Subcontractors, that may adversely impact on compliance with Commonwealth policy and legislation or the Commonwealth's reputation.
- (b) The Contractor must immediately issue the Participating Agency a Notice on becoming aware of a Significant Event.
- (c) The Notice issued under clause 1.1(b) must provide a summary of the Significant Event, including the date that it occurred and whether any Specified Personnel or other personnel engaged in connection with the Services were involved.
- (d) The Participating Agency may notify the Contractor in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Contractor must issue a Notice under clause 1.1(b) in relation to the event within three (3) Business Days of being notified by the Participating Agency.
- (e) Where reasonably requested by the Participating Agency, the Contractor must provide the Participating Agency with any additional information regarding the Significant Event within three (3) Business Days of the request.
- (f) If requested by the Participating Agency, the Contractor must prepare a draft remediation plan and submit that draft plan to the Participating Agency's Contract

Manager for approval within ten (10) Business Days of the request.

- (g) A draft remediation plan prepared by the Contractor under clause 1.1(b)(f) must include the following information:
  - (iii) how the Contractor will address the Significant Event in the context of the Services, including confirmation that the implementation of the remediation plan will not in any way impact on the delivery of the Services or compliance by the Contractor with its other obligations under the Contract; and
  - (iv) how the Contractor will ensure events similar to the Significant Event do not occur again; and
  - (v) any other matter reasonably requested by the Participating Agency.
- (h) The Participating Agency will review the draft remediation plan and either approve the draft remediation plan or provide the Contractor with the details of any changes that are required. The Contractor must make any changes to the draft remediation plan reasonably requested by the Participating Agency and resubmit the draft remediation plan to the Participating Agency for approval within three (3) Business Days of the request unless a different timeframe is agreed in writing by the Participating Agency. This clause 1.1(b)(h) will apply to any resubmitted draft remediation plan.
- (i) Without limiting its other obligations under the Contract, the Contractor must comply with the remediation plan as approved by the Participating Agency. The Contractor agrees to provide reports and other information about the Contractor's progress in implementing the remediation plan as reasonably requested by the Participating Agency.
- (j) A failure by the Contractor to comply with its obligations under this clause will be a material breach of the Contract. The Participating Agency's rights under this clause are in addition to and do not otherwise limit any other rights the Participating Agency may have under the Contract. The performance by the Contractor of its obligations under this clause will be at no additional cost to the Participating Agency.

## 5. Business process requirements

### 5.1 General processes

- (a) The Contractor must maintain version control over all specifications and job materials to ensure that:
  - (i) only current and authorised versions are used;
  - (ii) a full version history is maintained; and
  - (iii) an audit trail of all approved changes is maintained.
- (b) The Contractor must have established and must maintain for the Head Agreement Term, processes for managing client interfaces for:
  - (i) receiving and reviewing job opportunities and specifications, including through online portals or procurement solutions;
  - (ii) providing quotes or tender responses;
  - (iii) receiving job authorisations;
  - (iv) invoicing and reporting;
  - (v) quality management; and
  - (vi) governance and performance management.

- (c) The Contractor must have processes implemented to effectively manage the content of individual jobs through:
  - (i) digital asset and text version control;
  - (ii) copyright identification including obtaining consent from relevant rights holders to release or use; and
  - (iii) digital asset library management.

## 5.2 On-Site Services

The Contractor must perform some, or all of, the services on site at the Participating Agency's premises, if specified in the Official Order.

## 5.3 Interfaces and data transfer

- (a) The Contractor must have contemporary information and communications infrastructure to support integration and/or interfaces required for the reliable, timely and secure transfer of data to and from the Participating Agency and/or Other Contractors.
- (b) The interfaces should support international and industry standard approaches, protocols and file formats, including open standards.
- (c) The interfaces should support the following protocols and file formats:
  - (i) Simple Mail Transfer Protocol (SMTP);
  - (ii) File Transfer Protocol (FTP) and File Transfer Protocol Secure (FTPS, HFTP-SSL);
  - (iii) Hypertext Transfer Protocol (HTTP) and Hypertext Transfer Protocol Secure (HTTPS);
  - (iv) Portable Document Format (PDF);
  - (v) Encapsulated Post Script (EPS);
  - (vi) Graphical Interchange File Format (GIF) and Tagged Image File Format (TIFF);
  - (vii) XML and Comma Separated Values (CSV); and
  - (viii) Other Delimiter Separated Values (DSV) eg tab, colon etc.

## 5.4 Dynamic environment

The Contractor acknowledges that the Participating Agency works in a dynamic environment and must adapt to meet changes in government policy, client demand and other environmental conditions. It is anticipated that there will be a continuing shift towards multi-channel and multi-media approaches.

## 5.5 Improvement opportunities

Upon request, the Contractor must:

- (a) consider the impact of multi-channel and multi-media delivery to identify opportunities to minimise content rework and maximise content re-use to ensure that improvement opportunities and better practice methods can be applied to the delivery of Services;
- (b) advise the Participating Agency of:
  - (i) advances or changes in its equipment, processes, technology, techniques or capabilities it can deploy to deliver the Services; and
  - (ii) advances generally in the creative and digital communication industry that will influence the delivery of the Services; and

- (c) participate in forums and contribute to the development of strategies for the adoption of new or revised service delivery methods by the Participating Agency, including strategies for:
  - (i) service integration;
  - (ii) information management, transfer, re-use, version control and standards; and
  - (iii) implementation, including transition arrangements.

## 5.6 Financial viability

- (a) The Participating Agency may from time to time undertake a financial viability assessment of the Contractor or commission a third party ('Nominee') to undertake a financial viability assessment on the Participating Agency's behalf. The Participating Agency will Notify the Contractor if a Nominee is to undertake a financial viability assessment of the Contractor.
- (b) The Contractor must:
  - (i) provide to the Participating Agency and any Nominee on request all information the Participating Agency or the Nominee reasonably requires to satisfy itself that the Contractor is financially viable and has the financial capacity to provide the Services and to otherwise meet its obligations under this Contract; and
  - (ii) otherwise assist the Participating Agency and any Nominee as reasonably necessary in relation to a financial viability assessment.

## 6. Business Continuity Planning

The Contractor must develop and maintain business continuity and disaster recovery strategies for the continued delivery of Services that must include:

- (a) identification of key business processes;
- (b) business impact analysis;
- (c) continuity treatments;
- (d) implementation, testing and maintenance of the arrangements; and
- (e) any other requirements specified in the Official Order.

## 7. Co-operation with Participating Agency and Other Contractors

### 7.1 Working with the Participating Agency

The Contractor must co-operate with the Participating Agency and its Personnel and Other Contractors, and comply with the Participating Agency's reasonable directions, in providing the Services.

### 7.2 Outcomes

The Contractor must, at no additional cost to the Participating Agency, work to the best of its abilities to establish relationships with each Other Contractor so that the Contractor and each Other Contractor:

- (a) work together;
- (b) co-ordinate their activities;
- (c) co-operate fully and comprehensively with each other;

- (d) integrate the equipment and services they each supply;
- (e) establish integrated processes which nonetheless preserve their separate responsibilities; and
- (f) agree the scope of obligations and interactions needed between themselves to obviate the need for the Participating Agency to be involved in resolving service problems or managing their relationship.

### **7.3 Provision of assistance**

The Contractor must, at no additional cost to the Participating Agency or the Other Contractors, provide the Participating Agency and each of the Other Contractors (as applicable) all reasonable assistance, and do all other things necessary, to ensure that all parts of the Services are able to be carried out in a co-ordinated, effective and timely manner.

## **8. Handling of embargoed material**

The Contractor must have appropriate processes and facilities to ensure the secure storage, handling and authorised release of Deliverables held 'under embargo', from the time at which Products are received, through to the time of release and must comply with any requirements specified in an Official Order.

## **9. Transition and implementation**

- (a) If specified in the Official Order, the Contractor must prepare and provide to the Participating Agency a transition plan in accordance with the requirements specified in the Official Order for the Participating Agency's approval.
- (b) The Contractor must provide the transition and implementation services in accordance with the Transition Plan and this Contract.

## **10. Unwind**

### **10.1 Overview**

If specified in the Official Order, it is critical for the Participating Agency to have continuity of the Services and, for that reason, the Participating Agency relies significantly on the Contractor fulfilling its Unwind obligations. Accordingly, the Contractor must:

- (a) comply with this clause 10;
- (b) ensure that Unwind occurs in a timely and orderly manner, by providing the Unwind Assistance during the Unwind Period; and
- (c) do all things reasonably necessary to effect Unwind.

### **10.2 Unwind Assistance**

The Contractor must provide the Unwind Assistance:

- (a) to any third party appointed by the Participating Agency to take over the supply of the Services; and
- (b) for any Services being removed from scope by the Participating Agency under this Contract.

### **10.3 Unwind Plan**

The Contractor must prepare an Unwind Plan for approval by the Participating Agency within the time specified in the Official Order. The Unwind Plan must contain the detail of the Unwind Assistance to be provided by the Contractor.

### **10.4 Continuation of business as usual Services**

The Contractor:

- (a) must continue to provide the Services in accordance with the terms of this Contract during the Unwind Period (except to the extent the Participating Agency approved Unwind Plan contemplates, or the Participating Agency requires certain Services to stop being provided by the Contractor and instead decides, at its discretion, to have them provided by a third party or the Participating Agency itself);
- (b) must ensure there is no degradation of quality of the Services during Unwind except to the extent set out in the Participating Agency approved Unwind Plan; and
- (c) acknowledges all Service Levels and associated Services Rebates apply during the Unwind Period
- (d) must comply with all reasonable directions from the Participating Agency.

## **10.5 Payment of cost for Unwind Assistance**

- (a) In relation to any cost for Unwind Assistance:
  - (i) the Participating Agency is not liable to pay any charges for the Unwind Assistance if the Participating Agency terminates this Contract (or part of it) for cause under clause 35.2; and
  - (ii) in any other case, the Participating Agency must pay for any additional resources required by the Contractor to provide the Unwind Assistance (that is in addition to those resources who are used to provide the Services) on a time and materials basis at the Contractor's then existing time and materials rates (as approved by the Participating Agency) but not to exceed the amount of the Not to Exceed Unwind Charges.
- (b) The parties will review the amount of the Not to Exceed Unwind Charges on each anniversary of the Commencement Date and at this time the Contractor may request in writing that the Not to Exceed Unwind Charges be varied to reflect any change in the scope of the Services and the additional time and materials estimated to provide the Unwind Assistance.
- (c) The Participating Agency may, at its sole discretion, accept any request of the Contractor in accordance with clause 10.5(b).

## **10.6 Extension of Unwind Period and Unwind Plan**

The parties may vary the Unwind Period by agreement in writing between the parties. If the parties extend the Unwind Period beyond the Contract Period, the Contract Period is extended to incorporate the extension to the Unwind Period. The parties may vary the Unwind Plan by agreement in writing between the parties.

# **11. Monitoring progress**

## **11.1 Progress meetings**

The parties will meet at the times and in the manner set out in the Official Order (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services. The Contractor must ensure that the Contractor Representative, and the Participating Agency must ensure that the Participating Agency Representative, is reasonably available to attend such meetings and answer any queries relating to the provision of the Services raised by either party.

## **11.2 Reporting**

The Contractor must provide the Participating Agency with accurate reports in accordance with the Official Order.

## 12. Governance Arrangements

### 12.1 Relationship Management

If specified in the Official Order, the Contractor must establish arrangements for the operational management of the Services, including nominating a primary point of contact.

### 12.2 Operational Management Meetings

- (a) If specified in the Official Order, the Contractor must attend and participate in operational management meetings to address ongoing matters relating to the provision of the Services, including for example:
  - (i) work in progress;
  - (ii) forecast demand;
  - (iii) reporting and invoicing;
  - (iv) changes to processes and/or key Personnel;
  - (v) transition management; and
  - (vi) other issues relevant to the ongoing management of the Contract.
- (b) The Contractor must attend the operational management meetings as specified in the Official Order.

### 12.3 Other Forums

- (a) If specified in the Official Order, the Contractor must participate in other forums with one or more Participating Agencies and Other Contractors to discuss issues relating to the overall management of supply arrangements for Services.
- (b) These meetings will be held on an 'as required' basis and would be normally initiated by the Participating Agency.
- (c) The Participating Agency and the Contractor may request additional meetings at any time.

## 13. Measuring performance

### 13.1 Reporting on performance

The Contractor must during the Contract Period:

- (a) implement and maintain measuring and monitoring tools capable of measuring its performance against the requirements of the Contract; and
- (b) upon request, provide the Participating Agency with a report on its performance against the requirements of the Contract.

### 13.2 Measurement and monitoring tools

If Service Levels are specified in the Official Order, the Contractor must:

- (a) implement and maintain during the Contract Period, measuring and monitoring tools capable of measuring its performance against the Service Levels;
- (b) provide the Participating Agency with access to the data and information gathered by those tools;



- (c) if requested by the Participating Agency demonstrate to the Participating Agency the operation and accuracy of those tools; and
- (d) investigate any failure to provide the Services in accordance with the Service Levels and report its findings to the Participating Agency.

### **13.3 Service Rebates**

If specified in the Official Order, and to the extent that the Contractor is responsible for any failure to achieve a Service Level, the Contractor:

- (a) must pay to the Participating Agency Service Rebates, the amount of which will be determined in accordance with the Official Order. The parties agree that the amount of Service Rebates payable by the Contractor under this Contract will not exceed the total amount of the Service Charges payable to the Contractor under this Contract;
- (b) acknowledges that any Service Rebates calculated in accordance with the Official Order are a genuine pre-estimate of the loss and damage the Participating Agency will suffer as a result of a failure to achieve a Service Level;
- (c) acknowledges that payment of Service Rebates under this Contract will be without prejudice to any other rights or remedies that the Participating Agency may have against the Contractor under, or arising from, this Contract as a result of the Contractor's failure to achieve a Service Level; and
- (d) will not be liable to pay any Service Rebates arising from the Contractor's failure to achieve a Service Level to the extent that failure arose as a direct result of:
  - (i) the Participating Agency's failure to fulfil its obligations under this Contract; or
  - (ii) an event arising under clause 33.

## **14. Specified Personnel**

### **14.1 Use of Specified Personnel**

The Contractor must:

- (a) provide the Services or any part of the Services to which their particular expertise relates, with the active involvement of, and using the expertise of, the Specified Personnel; and
- (b) ensure that each of the Specified Personnel is aware of and complies with the Contractor's obligations in providing the Services.

### **14.2 If the Specified Personnel are not available**

If one or more of the Specified Personnel is or will become unable or unwilling to be involved in providing the Services, the Contractor must notify the Participating Agency immediately.

The Contractor must:

- (a) if requested by the Participating Agency, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and
- (b) obtain the Participating Agency's written consent prior to appointing any such replacement person. The Participating Agency's consent will not be unreasonably withheld.

### **14.3 Participating Agency may request replacement of Personnel**

The Participating Agency may, acting reasonably and after having attempted to resolve the issue with the Contractor, at any time request the Contractor to remove from work in respect of this Contract any of the Specified Personnel or any of the Contractor's Personnel. The Contractor must promptly arrange for the removal of such Specified Personnel or any of the Contractor's Personnel and their

replacement in accordance with the process outlined in clause 14.2.

#### **14.4 Termination**

If the Contractor is unable to provide acceptable replacement personnel within a reasonable time the Participating Agency may terminate the Contract in accordance with clause 35.2.

### **15. Participating Agency Material**

The Participating Agency will provide to the Contractor Participating Agency Material and the Contractor must ensure that Participating Agency Material is used strictly in accordance with any conditions or restrictions specified in the Official Order and any direction by the Participating Agency.

### **16. Intellectual Property Rights**

#### **16.1 Background Material**

This clause 16 does not affect the ownership of the Intellectual Property Rights in any Background Material.

#### **16.2 Third Party Material**

Unless otherwise specified in the Official Order, the Contractor must obtain all necessary copyright and other Intellectual Property Rights permissions before making any Third Party Material available as Background Material for the purpose of this Contract.

#### **16.3 Participating Agency ownership of Intellectual Property Rights in Contract Material**

- (a) Upon its creation all Intellectual Property Rights in the Contract Material vest in the Participating Agency, unless otherwise specified in the Official Order.
- (b) Unless otherwise specified in the Official Order, to the extent that:
  - (i) the Participating Agency needs to use any of the:
    - (A) Background Material; or
    - (B) Contract Material,

provided by the Contractor to receive the full benefit of the Services, the Contractor grants to, or must obtain for, the Participating Agency, a perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Background Material during the Contract Period; or
  - (ii) the Contractor needs to use any of the Participating Agency Material for the purpose of performing its obligations under this Contract, the Participating Agency grants to the Contractor, subject to any conditions or restrictions specified in the Official Order and any direction by the Participating Agency, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate such Material solely for the purpose of providing the Services.
- (c) The licence granted to the Participating Agency under clause 16.3(b)(i) does not include a right to exploit the Background Material for the Participating Agency's commercial purposes.

#### **16.4 Warranty**

- (a) Unless otherwise specified in the Official Order, the Contractor warrants that:
  - (i) the Warranted Materials and the Participating Agency's use of the Warranted Materials will not infringe the Intellectual Property Rights of any person; and
  - (ii) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 16.
- (b) The Participating Agency warrants that:
  - (i) the Participating Agency Materials and the Contractor's provision of the Services will not infringe the Intellectual Property Rights of any person; and
  - (ii) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 16.

### **16.5 Remedy for breach of warranty**

If someone claims, or the Participating Agency reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights, the Contractor must, in addition to the indemnity under clause 23 and to any other rights that the Participating Agency may have against it, promptly, at the Contractor's expense:

- (a) use its best efforts to secure the rights for the Participating Agency to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

### **16.6 Delivery of Contract Material**

On the expiry or termination of this Contract or on such earlier date as may be specified by the Participating Agency, the Contractor must deliver to the Participating Agency Representative all Contract Material as required under this Contract.

### **16.7 Indemnity**

Unless otherwise specified in the Official Order, the Contractor agrees to indemnify the Participating Agency in respect of any Losses suffered or incurred by the Participating Agency which arise directly or indirectly from a breach of any of the obligations of the Contractor under this clause 16.

### **16.8 Authorisation for the use the name "medicare" or "Medicare Australia" or a prescribed symbol**

- (a) Subject to clauses 16.8(b) and 16.8(c), if the scope of the Services requires the Contractor to use the name "medicare" or "Medicare Australia" or a symbol prescribed under the *Human Services (Medicare) Act 1973* (Cth), to the extent required under section 41CA of the *Human Services (Medicare) Act 1973* (Cth), the Commonwealth provides its authorisation for such use.
- (b) The Contractor must:
  - (i) only use the name "medicare" or "Medicare Australia" or a prescribed symbol for the purposes of performing the Services under this Contract;
  - (ii) submit to the Participating Agency for approval a proposal of the Contractor's use of the name "medicare" or "Medicare Australia" or a prescribed symbol;
  - (iii) not use the name "medicare" or "Medicare Australia" or a prescribed symbol until

the Participating Agency approves such use; and

- (iv) not use the name “medicare” or “Medicare Australia” or a prescribed symbol for commercial purposes outside the scope of this Contract.
- (c) In relation to the use of the name ‘medicare’ or ‘Medicare Australia’ or a prescribed symbol, the Commonwealth may impose any additional conditions it thinks fit in the Official Order, and the Contractor agrees to comply with those conditions.
- (d) The authorisation under clause 16.8(a) ceases to be in force if:
  - (i) the Contractor contravenes a condition of authorisation specified under clauses 16.8(b) and 16.8(c), or in any Official Order;
  - (ii) the Head Agreement expires or terminates;
  - (iii) this Contract expires or terminates; or
  - (iv) the Commonwealth otherwise notifies the Contractor in writing.

## 16.9 Consent for the use of protected names and symbols

- (a) Subject to clauses 16.9(b) and 16.9(c), if the scope of the Services requires the Contractor to use a name or symbol protected under the *Human Services (Centrelink) Act 1997* (Cth), to the extent required under section 38 of the *Human Services (Centrelink) Act 1997* (Cth), the Commonwealth provides its consent to such use.
- (b) The Contractor must:
  - (i) only use the protected name or symbol for the purposes of performing the Services under this Contract;
  - (ii) submit to the Participating Agency for approval a proposal of the Contractor’s use of the protected name or symbol;
  - (iii) not use the protected name or symbol until the Participating Agency approves such use;
  - (iv) not use a name or symbol so closely resembling a protected name or symbol as to be likely to be mistaken for it; and
  - (v) not use the protected name or symbol for commercial purposes outside the scope of this Contract.
- (c) In relation to the use of a protected name or symbol, the Commonwealth may impose any additional conditions it thinks fit in the Official Order, and the Contractor agrees to comply with those conditions.
- (d) The authorisation under clause 16.9(a) ceases to be in force if:
  - (i) the Contractor contravenes a condition of authorisation specified under clauses 16.9(b) and 16.9(c), or in any Official Order;
  - (ii) the Head Agreement expires or terminates;
  - (iii) this Contract expires or terminates; or
  - (iv) the Commonwealth otherwise notifies the Contractor in writing.

## 17. Not used

## 18. Moral Rights

### 18.1 Obtaining consents

To the extent permitted by the applicable Laws and for the benefit of the Participating Agency, the Contractor:

- (a) consents to the use by the Participating Agency of the Contract Material for the Specified Acts even if the use may otherwise be an infringement of the Contractor's Moral Rights;
- (b) must ensure that each author of the Contract Material (including any Personnel of the Contractor and any subcontractors) consents in writing to the use by the Participating Agency of the Contract Material for the Specified Acts even if such use would otherwise be an infringement of their Moral Rights; and
- (c) must use its best endeavours to ensure that any author of the Background Material and Third Party Material consents in writing to the use by the Participating Agency of the Background Material and Third Party Material for the Specified Acts even if such use would otherwise be an infringement of their Moral Rights.

### 18.2 Specified Acts

- (a) In this clause 18, **Specified Acts** means:
  - (i) falsely attributing the authorship of any Contract Material, or any content in the Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
  - (ii) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
  - (iii) reproducing, communicating, adapting, publishing or exhibiting any Contract Material;
  - (iv) adding any additional content or information to the Contract Material; and
  - (v) any additional acts specified in the Official Order.
- (b) For the purposes of this clause 18, **Contract Material** includes any Background Material to the extent that it is included in, forms part of or is attached to the Contract Material.

## 19. Payment

### 19.1 Obligation to pay charges

Subject to this clause 19 and the Services meeting the requirements of this Contract including:

- (a) the acceptance requirements for Deliverables under clause 4.6; and
- (b) the Service Levels,

the Participating Agency must pay to the Contractor the Service Charges as set out in the Official Order. In accordance with clause 2 of Schedule 3, the Participating Agency will specify the applicable pricing principles in the Official Order, which may include payment against the achievement of specific Milestone Dates.

### 19.2 Service Rebates

- (a) If Service Rebates become payable under clause 13.3, the Participating Agency may, at its sole discretion:
  - (i) elect to set off the amount the Contractor must pay against any subsequent liability for Service Charges; or

- (ii) issue a notice requiring payment of the Service Rebates within no less than 10 Business Days of receipt of the notice.

### 19.3 Contractor to provide invoice

The Contractor must provide a correctly rendered invoice to the Participating Agency for the Service Charges in accordance with the requirements specified in Schedule 3 of the Head Agreement and the Official Order.

### 19.4 Correctly Rendered Invoices

An invoice is correctly rendered if:

- (a) it is correctly addressed, issued in the manner specified in accordance with clause 3 (Invoicing requirements) in Schedule 3 and is calculated in accordance with the Contract;
- (b) it relates only to Services that have been delivered to the Participating Agency in accordance with the Contract; and
- (c) it is a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

### 19.5 Due and payable

An invoice will be due and payable if:

- (a) It is a Correctly Rendered Invoice in accordance with clause 19.4; and
- (b) The Participating Agency has either:
  - (i) Provided Notice to the Contractor acknowledging that the Services have been provided as required under this Contract and the invoice is a Correctly Rendered Invoice; or
  - (ii) Allowed 7 days to elapse following receipt of the invoice without providing Notice to the Contractor that the invoice is not a Correctly Rendered Invoice.

### 19.6 Due date for payment

Unless otherwise specified in the Official Order and subject to this clause 19, the Participating Agency must make payment of a correctly rendered invoice within:

- (a) 5 calendar days after receipt of the invoice for e-Invoicing; or
- (b) 20 calendar days after receipt for all other invoices, unless shorter maximum payment terms are specified in an Official Order or agreed between a Participating Agency and a Contractor.

### 19.7 Interest for late payment

- (a) This clause 19.7 only applies if the amount of the interest payable exceeds AUD\$100.

**User note: Where clause 19.7 applies, the interest will usually be payable after either 20 days, or 5 days where both the Participating Agency and the Contractor have the capability and have agreed that Invoices under this Contract will be received by way of e-Invoicing. Commonwealth agencies should refer to Supplier Pay On-Time or Pay Interest Policy, RMG 417 for information or clarification about e-Invoicing.**

- (b) The Participating Agency will pay interest on late payments to the Contractor as follows:

- (i) for payments made by the Participating Agency by e-Invoicing, 5 days after the amount became due and payable, only if the Contractor issues a Correctly Rendered Invoice for the interest; or
  - (ii) for all other payments made by the Participating Agency, 20 days after the amount became due and payable, only if the Contractor issues a Correctly Rendered Invoice for the interest.
- (c) Interest payable under this clause 19.7 will be simple interest on the unpaid amount at the General Interest Charge Rate, calculated in respect of each day from the day after the amount was due and payable, up to and including the day that the Participating Agency effects payment as represented by the following formula:

$$SI = UA \times GIC \times D$$

where:

- SI = simple interest amount;
- UA = the unpaid amount;
- GIC = General Interest Charge Rate daily rate; and
- D = the number of days from the day after payment was due up to and including the day that payment is made.

- (d) In this clause 19.7:
- (i) **General Interest Charge Rate** means the general interest charge rate determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due, expressed as a decimal rate per day;
  - (ii) **Small Business** means an enterprise that employs less than the full time equivalent of 20 persons on the day that the Contract is entered into. If the enterprise is an 'associated entity' as defined in section 50AAA of the Corporations Act, this test is applied to the group of associated entities as a whole;
  - (iii) **Correctly Rendered Invoice** means an invoice issued in relation to the interest in accordance with the requirements specified in Schedule 3 of the Head Agreement and the Official Order.

## 19.8 Incorrect invoices, under/over payment

If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Participating Agency to the Contractor under this Contract.

## 19.9 Expenses

Unless specified otherwise in the Official Order, the Contractor must not charge the Participating Agency for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Service Charges. Subject to clause 19.7, the Participating Agency is under no obligation to pay any amount in excess of the Service Charges.

## 19.10 Taxes

The Contractor must pay:

- (a) all stamp duty (including penalties and interest) assessed or payable in respect of this Contract and the undertaking of the Services; and

- (b) subject to clause 20, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Contract.

## 20. GST

### 20.1 Interpretation

In this clause 20, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

### 20.2 GST inclusive consideration

- (a) The Service Charges have been calculated having regard to GST and reflect the GST-inclusive market value of any supply made under the Contract. The Contractor is not entitled to recover any additional amount on account of GST from the Participating Agency.
- (b) The Contractor warrants that the amounts in any invoice it provides to the Participating Agency correctly reflect the GST payable on the relevant supply.

### 20.3 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense under this Contract (**Reimbursement Payment**), the Reimbursement Payment will:

- (a) first, be reduced by any input tax credit the other party is entitled to for the loss, cost or expense; and
- (b) then, if and to the extent that the Reimbursement Payment is consideration for a taxable supply by the reimbursed party, the amount shall be increased by an additional amount equal to the GST payable on that supply provided that the reimbursed party issues a tax invoice for that supply.

### 20.4 Adjustments

If the rate of GST (as defined in section 9-70 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) changes, the Service Charges will be reduced or increased accordingly to reflect the change in the rate of GST.

### 20.5 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.

## 21. Electronic payment

- (a) The Contractor acknowledges that the Participating Agency's method of payment will be by electronic funds transfer direct to the Contractor's bank account.
- (b) During the Contract Period the Contractor:
- (i) must maintain a Contractor's bank account for the purpose of receiving electronic payment by the Participating Agency under the Contract;
  - (ii) must Notify the Participating Agency of a change of the Contractor's bank account no later than 14 days before a payment by the Agency is due (the Cut-off Date); and
  - (iii) warrants that the Contractor's bank account details which may be Notified to the Participating Agency from time to time are true and correct.
- (c) Unless the contrary is shown, payment will be deemed to have been made on the date the Participating Agency instructs its bank that funds are to be transferred.



- (d) The Participating Agency must forward a remittance advice to the Contractor when it instructs its bank to make an electronic funds transfer to the Contractor's bank account.
- (e) The Participating Agency will not be liable to make any additional or interim payments where details of the Contractor's bank account are:
  - (i) incorrectly Notified by the Contractor; or
  - (ii) Notified under clause 21(b)(ii) after the Cut-Off Date for that payment.

**User Note: Commonwealth agencies should include the following clause 22 in the Contract if:**

- **The Tenderer is a Reporting Entity as at the date of its tender response; and**
- **The value of the Contract is anticipated to be at or above \$4,000,000 (GST inclusive), as at contract execution.**

**If the above applies, then the Tenderer is expected to accept the PT PCP clauses in the form of the draft contract.**

**Reporting requirements: To meet reporting requirements under the Payment Times Procurement Connected Policy, if the proposed value of this procurement is at or above \$4,000,000 (GST inclusive) please email the official order number and Participating Agency Representative name to ^note: Participating Agency to provide relevant contact email for reporting requirements.^**

**State and territory agencies may remove this clause 22.**

## 22. Payment Times Procurement connected policy

- (a) The Contractor must comply with the PT PCP.
- (b) If the Contractor enters into a PT PCP Subcontract, the Contractor must include in that subcontract:
  - (i) a requirement for the Contractor to pay the PT PCP Subcontractor:
    - (A) subject to clause 22(d), within 20 calendar days after the Acknowledgement of the Satisfactory Delivery of the Goods or Services and receipt of a Correctly Rendered Invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day; and
    - (B) subject to clause 22(e) for payments made by the Contractor after the payment is due, the unpaid amount plus interest on the unpaid amount calculated in accordance with clause 19.7
  - (ii) a statement that the PT PCP applies to that subcontract; and
  - (iii) a statement that the subcontractor may make a complaint to the Commonwealth in accordance with the PT PCP if there has been non-compliance with the requirements of this clause 22(b).
- (c) If the Contractor enters into a Reporting Entity Subcontract in anticipation of (or after) entering the Contract, the Contractor must use reasonable endeavours to include in that subcontract:
  - (i) obligations equivalent to those in clause 22(a); and
  - (ii) a requirement that if the Reporting Entity Subcontractor in turn enters into a Reporting Entity Subcontract, then that subcontract will include:
    - (A) obligations equivalent to those in clause 22(a); and

- (B) obligations equivalent to this clause 22(b) (such that the obligations in this clause 22(b) are to continue to be flowed down the supply chain to all Reporting Entity Subcontractors
- (d) Clause 22(b)(i)(A) does not limit any obligation to comply with applicable legislation that provides for a shorter payment period than the period in clause 22(b)(i)(A).
- (e) The Contractor is not required to pay interest in accordance with clause 22(b)(i)(B) if either:
- (i) the Commonwealth has failed to pay the Contractor in accordance with the timeframes and requirements under this Contract; or
  - (ii) the amount of the interest payable is less than \$100 (GST inclusive).
- (f) For the purpose of clause 22(b)(i)(B), interest is to be calculated in accordance with the formula at clause 19.7.
- (g) If requested in writing by the Commonwealth, the Contractor must properly complete and return a PT PCP Evaluation Questionnaire within 30 Calendar Days of the request.
- (h) If the Commonwealth considers or becomes aware that the Contractor has not or may not have complied with:
- (i) the requirements of clause 22(a); or
  - (ii) the payment requirements of a PT PCP Subcontract, the Commonwealth may direct the Contractor to provide to the Commonwealth either or both of the following within the timeframes specified by the Commonwealth
  - (iii) information to enable the Commonwealth to review the Contractor's compliance; or
  - (iv) a properly completed PT PCP Remediation Plan.
- (i) The Contractor must complete all of the steps and activities contained in the PT PCP Remediation Plan provided under clause 22(h)(iv)
- (j) If the Commonwealth considers that the Contractor has failed to comply with any of its obligations under this clause 22(a), without limiting the Commonwealth's rights and remedies at law or otherwise under the Contract, the Commonwealth may do either or both of the following:
- (i) take the failure or non-compliance into account as part of the Commonwealth's monitoring of the Contractor's performance under the Contract; or
  - (ii) report the non-compliance (and provide a copy of the completed PT PCP Remediation Plan) to the Policy Team.
- (k) The Contractor agrees that if it is the subject of a complaint in relation to its compliance with clause 22(a) or the associated payment provisions of a PT PCP Subcontract:
- (i) it will not take any prejudicial action against the complainant due to the complaint or any investigation or inquiry in relation to the complaint; and
  - (ii) it will cooperate in good faith with the Commonwealth in connection with any investigation or inquiry and any attempt to resolve the complaint.
- (l) For any PT PCP Purpose, the Contractor consents to the Commonwealth:
- (i) using and sharing with any other Commonwealth Entity the information provided by the Contractor as part of a PT PCP Evaluation Questionnaire, a PT PCP Remediation Plan, or otherwise received or obtained by the Commonwealth in connection with this Contract or a PT PCP Subcontract; and
  - (ii) receiving information obtained under, or in accordance with, the PTR Act ('Protected Information') from an Entrusted Person and using such Protected Information.

- (m) By submitting a PT PCP Evaluation Questionnaire or a PT PCP Remediation Plan or other document in connection with the PT PCP that includes any personal information within the meaning of Privacy Act 1988 (Cth), the Contractor warrants and represents that it has obtained all necessary consents in accordance with relevant privacy laws to the collection, use and disclosure of such information in the manner contemplated by this clause 22(m). The Contractor will provide evidence of such consents to the Commonwealth on request.
- (n) Interpretation
- (i) **‘Entrusted Person’** has the meaning given to this term in the PTR Act.
  - (ii) **‘PT PCP Policy Team’** means the relevant Minister, department or authority that administers or otherwise deals with the PT PCP on the relevant day. A reference to the Commonwealth in clauses and 22(g), 22(h)(i), 22(k)(i), and 22(l) includes the PT PCP Policy Team.
  - (iii) **‘PT PCP’** means the Commonwealth’s ‘Payment Times Procurement Connected Policy’.
  - (iv) **‘PT PCP Evaluation Questionnaire’** means a questionnaire in substantially the form of Appendix C of the PT PCP.
  - (v) **‘PT PCP Purpose’** means:
    - (A) the review, evaluation, monitoring, assessment and reporting on the PT PCP, including the compliance by those Commonwealth’s suppliers and their subcontractors that are Reporting Entities; or
    - (B) improving payment times to PT PCP Subcontractors.
  - (vi) **‘PT PCP Remediation Plan’** means a written remediation plan substantially in the form of Appendix D of the PT PCP.
  - (vii) **‘PT PCP Subcontract’** means a subcontract between a Reporting Entity and another party (Other Party) where:
    - (D) the subcontract is (wholly or in part) for the provision of goods or services for the purposes of the Contract;
    - (E) both parties are carrying on business in Australia; and
    - (F) the component of the subcontract for the provision of goods or services for the purposes of the Contract has a total value of less than (or is reasonably estimated will not exceed) \$1,000,000 (GST inclusive) during the period of the subcontract, not including any options, extensions, renewals or other mechanisms that may be executed over the life of the subcontract (but including work/official orders entered into that are valued up to \$1 million (GST inclusive) under standing offer (panel) arrangements); but does not include the following subcontracts:
      - (G) subcontracts entered into prior to the Reporting Entities’ tender response for the Contract;
      - (H) subcontracts which contain standard terms and conditions put forward by the Other Party and which cannot reasonably be negotiated by the Reporting Entity; or
      - (I) subcontracts for the purposes of:
        - (I) procuring and consuming goods or services overseas;
        - (II) procuring real property, including leases and licences.

*Note to Reporting Entities: you will need to identify whether a subcontract delivers goods or services for the purposes of the Contract with the Commonwealth.*

- (viii) **‘PT PCP Subcontractor’** means the party that is entitled to receive payment for the provision of goods or services under a PT PCP Subcontract.
- (ix) **‘PTR Act’** means the Payment Times Reporting Act 2020 (Cth), as amended from time to time, and includes a reference to any subordinate legislation made under the Act.
- (x) **‘Reporting Entity’** has the meaning given to this term in the PTR Act.
- (xi) **‘Reporting Entity Subcontractor’** means any person that:
  - (A) is a Reporting Entity; and
  - (B) provides goods or services directly or indirectly to the Contractor for the purposes of the Contract where the value of such goods or services are estimated to exceed \$4,000,000 (GST inclusive).
- (xii) **‘Reporting Entity Subcontract’** has a corresponding meaning.

## 23. Indemnity

### 23.1 Contractor's indemnity

- (a) The Contractor will at all times indemnify, hold harmless and defend the Participating Agency, its officers and employees (referred to in this clause 23.1(a) as “Those Indemnified) from and against any:
  - (i) cost, loss, expense or liability incurred by the Participating Agency;
  - (ii) loss of or damage to property of the Participating Agency, the Contractor or a third party;
  - (iii) personal injury or death of any person; or
  - (iv) loss or expense incurred by the Participating Agency in dealing with any claim against it including all legal costs (on a solicitor and own client or full indemnity basis, whichever is greater), the cost of time spent, resources used, disbursements paid by the Participating Agency and other expenses incurred by the Lead Agency in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal)

arising directly or indirectly as a result of or in connection with:

- (i) a breach by the Contractor of the Contract;
  - (ii) an unlawful or negligent act or omission of the Contractor or its Personnel in connection with the Contract;
  - (iii) any misuse or disclosure by the Contractor, or its Personnel, of Personal Information or Protected Information;
  - (iv) the use by the Participating Agency of the Contract Materials or any Contractor Material licensed to the Participating Agency under clause 16.3; or
  - (v) any infringement of third party Intellectual Property rights by the Contractor, or its Personnel, in the course of, or incidental to, performing the Services.
- (b) The Contractor must pay to the Participating Agency all liabilities, costs and other expenses referred to in clause 23.1, whether or not the Participating Agency has paid or satisfied them.
  - (c) The Contractor's liability to indemnify Those Indemnified under clause 23.1(a) will be reduced proportionally to the extent that any unlawful or negligent act or omission of Those Indemnified contributed to the relevant cost, liability, loss, damage or expense.

- (d) The right of the Participating Agency to be indemnified under this clause 23 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Participating Agency is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.
- (e) To avoid doubt, risk of loss of or damage to property of the Participating Agency, the Contractor or a third party, resides with the Contractor while such property is in the care, custody or control of the Contractor.
- (f) This clause 23 survives the expiration or termination of the Contract.

## 24. Liability

### 24.1 Liability

- (a) The Contractor is responsible for any act or omission of the Contractor's Personnel in relation to this Contract, whether or not the act or omission is authorised by the Contractor.
- (b) Each party must use reasonable endeavours to mitigate its loss or damage relating to this Contract where the other party is liable for the loss or damage (whether because of breach of this Contract or otherwise).
- (c) The liability of a party to the other party in relation to this Contract (including under an indemnity) is reduced proportionately if the party incurring the loss or suffering the damage has contributed to the loss or damage through:
  - (i) a breach of its obligations under this Contract; and/or
  - (ii) a negligent or deliberately wrongful act or omission (including, in the case of the Contractor, an act or omission by Contractor's Personnel, and in the case of Agency, an act or omission of Agency's employees or officers).

### 24.2 Limitation of liability

- (a) The liability of the Contractor arising out of or in connection with this Contract in relation to the Relevant Services (including under any indemnity) is, subject to clause 24.2(b) limited to the amount specified in the Official Order.
- (b) Any limit on the liability of the Contractor under clause 24.2(a) does not apply in relation to liability relating to:
  - (i) personal injury (including sickness and death);
  - (ii) loss of, or damage to, tangible property;
  - (iii) an infringement of Intellectual Property Rights;
  - (iv) a breach of any obligation of confidentiality, security or privacy; or
  - (v) any breach of statute or any wilfully wrong act or omission including, in the case of the Contractor, any act or omission that constitutes repudiation of the Contract.
- (c) Unless specified otherwise in the Official Order, the limitation of liability specified in clause 24.2(a) applies in respect of each single occurrence or a series of related occurrences arising from a single cause.

**24.3 Review of limitation**

The parties acknowledge that the limitation of liability specified in the Official Order will be subject to review in the event that this Contract is varied or extended.

**25. Insurance****25.1 Obligation to maintain insurance**

The Contractor must effect and maintain for the Contract Period valid and enforceable insurance policies required in accordance with clause 13 of the Head Agreement.

**25.2 Obligation to maintain additional insurance**

- (a) In connection with the provision of the Services, the Contractor must have and maintain the additional valid and enforceable insurance policies specified in the Official Order.
- (b) For seven (7) years following the expiry or termination of the Contract, valid and enforceable insurance policies for either professional indemnity or errors and omissions.

**25.3 Confirmation of insurance**

The Contractor must, on request by the Participating Agency, provide current relevant confirmation of insurance documentation from its insurers or insurance brokers certifying that it has insurance as required by this clause 25.

**26. Confidentiality****26.1 Confidential Information not to be disclosed**

- (a) Subject to clause 26.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party.
- (b) In giving written consent to the disclosure of Confidential Information, the Participating Agency may impose such conditions as it thinks fit, and the Contractor agrees to comply with these conditions.

**26.2 Written undertakings**

- (a) The Participating Agency may at any time require the Contractor to arrange for:
  - (i) its Advisers; or
  - (ii) any other third party to whom information may be disclosed pursuant to clause 26.3(a) or 26.3(e),
 to give a written undertaking in the form of a deed relating to the use and non-disclosure of the Participating Agency's Confidential Information.
- (b) If the Contractor receives a request under clause 26.2(a) it must promptly arrange for all such undertakings to be given.

**26.3 Exceptions to obligations**

The obligations on the parties under this clause 26 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a party to its Advisers or Personnel solely in order to comply with obligations, or to exercise rights, under this Contract;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of contract-related activities;
- (c) is disclosed by the Participating Agency to the responsible Minister;

- (d) is disclosed by the Participating Agency, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (e) is shared by the Participating Agency within the Participating Agency's organisation, or with another Agency, when this serves the Participating Agency's legitimate interests;
- (f) is provided to a Commonwealth Entity for the purposes of clause 5 of the Head Agreement;
- (g) is authorised or required by law, including under this Contract, under a licence or otherwise, to be disclosed; or
- (h) is in the public domain otherwise than due to a breach of this clause 26.

#### **26.4 Obligation on disclosure**

Where a party discloses Confidential Information to another person:

- (a) pursuant to clauses 26.3(a), (b) or (e), the disclosing party must:
  - (iii) notify the receiving person that the information is Confidential Information; and
  - (iv) not provide the information unless the receiving person agrees to keep the information confidential; or
- (b) pursuant to clauses 26.3(c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information.

#### **26.5 Additional confidential information**

- (a) The parties may agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract.
- (b) If the parties agree in writing after the date of this Contract that certain additional information is to constitute Confidential Information for the purposes of this Contract, this documentation is incorporated into, and becomes part of this Contract, on the date by which both parties have signed this documentation.
- (c) Schedule 4 (Confidential Information of the parties) is to be amended to specify that information.

#### **26.6 Period of confidentiality**

The obligations under this clause 26 continue, notwithstanding the expiry or termination of this Contract:

- (a) in relation to an item of information described in the Official Order, for the period set out in the Official Order in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the Parties in writing in respect of that information.

#### **26.7 Return of Confidential Information**

- (a) The Contractor must immediately on the earlier of a request from the Participating Agency or termination or expiration of this Head Agreement:
  - (i) return to the Participating Agency;
  - (ii) destroy and certify in writing to the Participating Agency the destruction of; or
  - (iii) destroy and permit the Participating Agency to witness the destruction of, all the Participating Agency's Confidential Information in the Contractor's possession or

control.

## 26.8 No reduction in privacy obligations

Nothing in this clause 26.8 derogates from any obligation which either party may have either under:

- (a) the *Privacy Act 1988* (Cth);
- (b) Secrecy Laws; or
- (c) this Contract or under this Contract

in relation to the protection of Personal Information and Protected Information.

## 27. Privacy and secrecy

### 27.1 Obligations

- (a) The Contractor acknowledges that it is a contracted service provider, as defined in the *Privacy Act 1988* (Cth), and in providing the Services, the Contractor must:
  - (i) use or disclose Personal Information obtained in the course of providing the Services only for the purposes of this Contract;
  - (ii) collect, use and disclose Personal Information and Protected Information only to the extent necessary to provide the Services;
  - (iii) take all reasonable steps to ensure that Personal Information in its possession or control in connection with this Contract is protected against loss and unauthorised use, access, modification or disclosure;
  - (iv) comply with, and at all times act in a manner consistent with applicable Secrecy Laws and the Australian Privacy Principles including:
    - developing systems and procedures to enable the Contractor to comply with Secrecy Laws and the Australian Privacy Principles; and
    - maintaining records of the Personal Information and Protected Information held by the Contractor in connection with the Contract;
  - (v) ensure that its employees, agents and subcontractors and any other person who may have access to Personal Information or Protected Information held by the Contractor is aware of and undertakes to act in a manner consistent with this Contract clause 27;
  - (vi) not do any act or engage in any practice which would result in the Participating Agency being in breach of the *Privacy Act 1988* (Cth), or which would be likely to be considered a breach of the Act had the action been undertaken by the Participating Agency;
  - (vii) cooperate with demands or enquiries made by the Information Commissioner; and
  - (viii) comply as far as practical with any reasonable direction by the Participating Agency Representative to observe any recommendation of the Information Commissioner relating to any behaviour of the Contractor that the Information Commissioner considers a breach of the *Privacy Act 1988* (Cth) or this Contract clause 27.

### 27.2 Interpretation

In this clause 27 **Personal Information** has the meaning given to it in the *Privacy Act 1988* (Cth).

### 27.3 Handling of complaints and notifiable data breaches



- (a) The Participating Agency will handle any complaints alleging an interference with the privacy of an individual related to the Services as follows:
  - (i) where the Participating Agency receives a complaint, it will immediately Notify the Contractor and provide sufficient details for the Contractor to minimise the breach or prevent further breaches of any obligations of confidentiality; or
  - (ii) where the Contractor receives a complaint it must immediately Notify the Participating Agency of the complaint but must not release to the Participating Agency Confidential Information concerning the complainant without that person's permission.
- (b) If the Contractor fails to remedy any breach of its obligations of confidentiality within 14 days of:
  - (i) a Notice from the Participating Agency under Contract clause 27.3(a)(i); or
  - (ii) receiving a complaint under Contract clause 27.3(a)(ii),
 the Participating Agency may immediately terminate the Contract in accordance with Contract clause 33.2 (Termination by the Participating Agency for Default).
- (c) If the Contractor becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Contract or its provision of the Services, the Contractor agrees to:
  - (i) Notify the Participating Agency in writing as soon as possible, which must be no later than within 3 days of becoming aware; and
  - (ii) unless otherwise directed by the Participating Agency, carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).
- (d) Where the Contractor is aware that there are reasonable grounds to believe there has been, or where the Participating Agency Notifies the Contractor that there has been, an Eligible Data Breach in relation to any Personal Information held by the Contractor as a result of this Contract or its provision of the Services, the Contractor must:
  - (i) 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;
  - (ii) unless otherwise directed by the Participating Agency, take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth); and
  - (iii) take any other action as reasonably directed by the Participating Agency.

## 28. Conflict of interest

### 28.1 Warranty

The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no conflict of interest exists or is likely to arise in the performance of its obligations under this Contract.

### 28.2 Notification of a conflict of interest

If, during the performance of the Services a conflict of interest arises, or appears likely to arise, the Contractor must:

- (a) notify the Participating Agency immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and

- (c) take such steps as the Participating Agency requires to resolve or otherwise deal with the conflict.

## 29. Compliance with applicable Laws

The Contractor must and must ensure that its Personnel comply with all applicable Laws in performing the Contract, including:

- (a) *Copyright Act 1968* (Cth);
- (b) *Crimes Act 1914* (Cth);
- (c) *Criminal Code Act 1995* (Cth);
- (d) *Racial Discrimination Act 1975* (Cth);
- (e) *Sex Discrimination Act 1984* (Cth);
- (f) *Disability Discrimination Act 1992* (Cth);
- (g) *Workplace Gender Equality Act 2012* (Cth);
- (h) *Age Discrimination Act 2004* (Cth);
- (i) *Fair Work Act 2009* (Cth);
- (j) *Safety, Rehabilitation and Compensation Act 1988* (Cth);
- (k) *Competition and Consumer Act 2010* (Cth);
- (l) *Environment Protection and Biodiversity Conservation Act 1999* (Cth);
- (m) *Privacy Act 1988* (Cth);
- (n) Part 4 of the *Charter of the United Nations Act 1945* (Cth);
- (o) *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Cth);
- (p) *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);
- (q) *Ombudsman Act 1976* (Cth);
- (r) *Auditor-General Act 1997* (Cth);
- (s) *Modern Slavery Act 2018* (Cth); and
- (t) relevant workers' compensation legislation.

## 30. Security

### 30.1 Compliance with the Protective Security Policy Framework

- (a) The Contractor acknowledges that the Participating Agency must comply with the Australian Government Protective Security Policy Framework ('PSPF').
- (b) Nothing in this Contract clause 30.1 derogates from or limits obligations and rights set out elsewhere in this Contract.
- (c) The Contractor must, and must ensure that its Personnel and contractors, comply with:
  - (i) all relevant requirements of the PSPF, including the plans and protocols of the Participating Agency, in its application to Personnel, information and asset security;
  - (ii) the Participating Agency's security policies; and
  - (iii) any other security requirements that are Notified by the Participating Agency to the

Contractor. Such other security requirements must be complied with from the date specified in the Notice, or if none is specified, within 5 Business Days of receipt of the Notice.

- (d) The Contractor acknowledges that any conflict of interest that may impact upon compliance with the PSPF or the security requirements of this clause generally, must be disclosed under clause 28.

### 30.2 Information security

- (a) The Contractor must ensure that all Participating Agency Material it gains access to is protected at all times from:
- (i) unauthorised access or disclosure arising from an act or omission of either the Contractor or the Specified Personnel;
  - (ii) use by a third party (including subcontractors); and
  - (iii) being lost, stolen, misused, corrupted or access by any person,
- by taking security measures that are no less stringent than good industry practice.
- (b) If the Participating Agency considers that the Contractor's premises, business systems or Personnel do not meet the requirements of this clause 30.2, or present a risk of unauthorised access to Agency Material, the Contractor must remedy any security risks identified by the Participating Agency.
- (c) The Contractor must:
- (i) take reasonable and prudent steps for disaster recovery and business continuity consistent with good industry practice to ensure that Participating Agency Material on the Contractor's Systems is not lost, corrupted or rendered inaccessible;
  - (ii) ensure that only persons with a legitimate need to know information contained in Participating Agency Material have access to it. A legitimate need to know means in this clause 30.2 that without access, Contractor Personnel would be hindered in the proper or efficient performance of their duties;
  - (iii) ensure that the Contractor's Systems are configured so that the Contractor's Personnel who are not permitted under this Contract to access the Participating Agency's Confidential Information cannot access the Participating Agency's Confidential Information;
  - (iv) ensure that Participating Agency Material provided to the Contractor is only to be used for the purpose of delivering the Services described in this Contract and is not to be used for any other purpose; and
  - (v) comply with directions given by the Participating Agency in relation to the storage, transfer or destruction of Participating Agency Material.
- (d) The Contractor must not, and ensure its Personnel do not:
- (i) disclose, publish or communicate any Participating Agency Material it has acquired to any unauthorised person in any form during or after the Contract Period; and
  - (ii) transfer, store or access Participating Agency Material outside Australia or permit any person to access Participating Agency Material from outside Australia unless expressly authorised by the Participating Agency in a Notice. A Notice from the Participating Agency may impose conditions on any such permission, which the Contractor must comply with.
- (e) The Contractor acknowledges that it is subject to an ongoing obligation of confidence in relation to Participating Agency Material following the completed delivery of Services under this Contract and must maintain the protective security measures over the Agency Material

described in this Contract clause 30.

- (f) The Contractor must immediately Notify the Participating Agency if the Contractor:
  - (i) breaches any of its obligations under this Contract clause 30;
  - (ii) becomes aware of circumstances that may reasonably suggest that it could have breached its obligations under this Contract clause 30;
  - (iii) becomes aware that any Participating Agency Material has been lost, stolen, misused, corrupted or accessed by an unauthorised person; or
  - (iv) becomes aware of circumstances that may reasonably suggest that any Participating Agency Material has been lost, stolen, corrupted or accessed by an unauthorised person.

### 30.3 Property Security

- (a) Where it has access to Participating Agency Property, the Contractor must establish and maintain an appropriate physical security environment for the protection of that Participating Agency Property from damage or loss.
- (b) An appropriate physical security environment protects against unauthorised access to Participating Agency Property, including premises, and maintains evidence of access to Participating Agency Property and premises.
- (c) The Contractor must:
  - (i) ensure that the Participating Agency's premises are kept secure;
  - (ii) ensure that Agency Material in physical form is kept in appropriate security containers for its security classification;
  - (iii) ensure that the Contractor Personnel who have access to Participating Agency Material are briefed on security requirements for Participating Agency Material; and
  - (iv) at the Participating Agency's request in a Notice, provide details of the Contractor's physical security measures in place to protect Participating Agency Material.

### 30.4 Personnel security

- (a) When using the Participating Agency's premises or Participating Agency Property, the Contractor must ensure that the Specified Personnel and its Personnel comply with the Participating Agency's procedures and directions relating to safety and security, including work health and safety requirements.
- (b) Subject to clause 30.4(c), the Contractor must ensure that only Personnel approved by the Participating Agency have access to Participating Agency Material and Participating Agency Property.
- (c) If required by the Participating Agency, the Contractor must and must ensure its Personnel:
  - (i) undertake pre-engagement checks, criminal checks and security vetting; and
  - (ii) attend security briefings and training.

### 30.5 Cyber security

- (a) The Contractor must take reasonable and prudent steps consistent with good industry practice to reduce the risk of Cyber Attack on the Contractor's Systems.
- (b) At the Participating Agency's request in a Notice, the Contractor must provide details of the Contractor's security measures in place to reduce the risk of Cyber Attack on the Contractor's Systems.
- (c) If the Contractor becomes aware of a Cyber Attack on Contractor's Systems, the Contractor must immediately Notify:
  - (i) the Participating Agency (and, if this notification is not done by Notice, by Notice

within 1 Business Day); and

- (ii) if required by the Participating Agency, advise CERT Australia and/or the Australian Cyber Security Centre.

## 31. Books and records

### 31.1 Contractor to keep books and records

The Contractor must:

- (a) keep and require its subcontractors to keep adequate books and records, in accordance with Australian Accounting Standards, in sufficient detail to enable the amounts payable by the Participating Agency under this Contract to be determined; and
- (b) retain and require its subcontractors to retain for a period of seven (7) years after the expiry or termination of this Contract all books and records relating to the Services.

### 31.2 Costs

The Contractor must bear its own costs of complying with this clause 31.

### 31.3 Survival

This clause 31 applies for the Contract Period and for a period of seven (7) years from the expiry or termination of this Contract.

## 32. Audit and access

### 32.1 Right to conduct audits

- (a) The Participating Agency or a representative may conduct audits relevant to the performance of the Contractor's obligations under this Contract. Audits may be conducted of:
  - (i) the Contractor's operational practices and procedures as they relate to this Contract, including security procedures;
  - (ii) the accuracy of the Contractor's invoices and reports in relation to the provision of the Services under this Contract;
  - (iii) the Contractor's compliance with its confidentiality, privacy obligations and security obligations under this Contract;
  - (iv) material (including books and records) in the possession of the Contractor relevant to the Services or this Contract; and
  - (v) any other matters reasonably determined by the Participating Agency to be relevant to the Services or this Contract.

### 32.2 Access by the Participating Agency

- (a) The Participating Agency may, at reasonable times and on giving reasonable notice to the Contractor:
  - (i) access the premises of the Contractor to the extent relevant to the performance of this Contract;
  - (ii) require the provision by the Contractor, its Personnel or subcontractors, of records and information in a data format and storage medium accessible by the Participating Agency by use of the Participating Agency's existing computer hardware and software;
  - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Contractor, its Personnel or

subcontractors; and

- (iv) require assistance 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 Participating Agency), any request for information directed to the Participating Agency, and any inquiry conducted by Parliament or any Parliamentary committee.

- (b) The Contractor must provide access to its computer hardware and software to the extent necessary for the Participating Agency to exercise its rights under this clause 30, and provide the Participating Agency with any reasonable assistance requested by the Participating Agency to use that hardware and software.

### **32.3 Conduct of audit and access**

The Participating Agency must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 32.1; and
- (b) the exercise of the general rights granted by clause 32.2 by the Participating Agency, do not unreasonably delay or disrupt in any material respect the Contractor's performance of its obligations under this Contract.

### **32.4 Costs**

- (a) Except as set out in clause 32.4(b), each party must bear its own costs of any reviews and/or audits.
- (b) If the Contractor is able to substantiate that it has incurred direct expenses in the Participating Agency's exercise of the rights granted under clause 32.1 or clause 32.2 which, having regard to the value of this Contract, are substantial, the Participating Agency and the Contractor will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated to the Participating Agency's reasonable satisfaction.

### **32.5 Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner**

The rights of the Participating Agency under clauses 32.1 and 32.2 apply equally to the Auditor-General, Information Commissioner, Privacy Commissioner and Freedom of Information Commissioner and their delegates (each an **Authorised Investigator**) for the purpose of performing the Auditor-General's, Information Commissioner's, Privacy Commissioner's or Freedom of Information Commissioner's statutory functions or powers.

### **32.6 Contractor to comply with Auditor-General's, Information Commissioner's, Privacy Commissioner's and Freedom of Information Commissioner's requirements**

The Contractor must do all things necessary to comply with the Authorised Investigator's requirements, notified under clause 32.2, provided such requirements are legally enforceable and within the power of the Authorised Investigator.

### **32.7 No reduction in responsibility**

The requirement for, and participation in, audits does not in any way reduce the Contractor's responsibility to perform its obligations in accordance with this Contract.

### **32.8 Subcontractor requirements**

The Contractor must ensure that any subcontractors engaged for the purpose of this Contract are required to provide the Participating Agency or an Authorised Investigator with rights equivalent to those specified in this clause 32.

### **32.9 No restriction**

Nothing in this Contract reduces, limits or restricts in any way any function, power, right or entitlement of an Authorised Investigator. The rights of the Participating Agency under this Contract are in addition to any other power, right or entitlement of an Authorised Investigator.

### 32.10 Survival

This clause 32 applies for the Contract Period and for a period of seven (7) years from the expiry or termination of this Contract.

## 33. Force Majeure

- (a) A party to this Contract will not be entitled to exercise its rights and remedies upon the default of the other party (whether at common law or otherwise) if that default is due to Force Majeure.
- (b) If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended.
- (c) If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 14 days, either party may immediately terminate this Contract on providing written Notice to the other party.
- (d) For the purposes of this clause, 'Force Majeure' means any of the following events:
  - (i) fire, flood, earthquake, pandemic, elements of nature or act of God;
  - (ii) war, riot, insurrection, vandalism or sabotage;
  - (iii) strike, lockout, ban, limitation of work or other industrial disturbance; and
  - (iv) law, rule or regulation of any government or governmental entity, and executive or administrative order or act of general or particular application; which:
    - (A) is unforeseen by the party affected by the circumstance ('Affected Party');
    - (B) is beyond the reasonable control of the Affected Party; and
    - (C) occurs without the fault or negligence of the Affected Party.

## 34. Dispute resolution

### 34.1 Good faith negotiations

If a dispute arises between the parties on any matter related to this Contract, the parties must first negotiate in good faith to resolve the dispute in a spirit of goodwill and compromise.

### 34.2 Notification

If a dispute is not resolved in accordance with clause 34.1, either party may give written Notice to the other party specifying the dispute and requiring its resolution under this clause ('**Notice of Dispute**').

### 34.3 Mediation

If the dispute is not resolved within 14 days of service of the Notice of Dispute ('**Notice Period**'), the dispute is by this clause submitted to mediation. The mediation must be conducted in the jurisdiction specified in item 13 of the Official Order. The Resolution Institute's Rules for Mediation (as are in place from time to time) apply to the mediation, or such other rules as may be agreed by the parties, except where they conflict with this clause. The current Resolution Institute's Rules for Mediation are available at <https://resolution.institute/Web/Web/Public-In-Dispute/Rules-and-Regulations/RI-Mediation-Rules-2016.aspx>.

### 34.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator and the mediator's remuneration within

fourteen (14) days after the Notice Period, the mediator is the person appointed by, and the remuneration of the mediator is the amount or rate determined by:

- (a) the President of the Law Society in the jurisdiction specified in item 13 of the Official Order; or
- (b) the President's nominee, acting on the request of either party to the dispute

### **34.5 Confidentiality**

Any information or documents disclosed by a party under this clause 34:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

### **34.6 Costs**

Each party to a Dispute must pay its own costs of complying with this clause 34. The parties to the Dispute must equally pay the costs of any mediator.

### **34.7 Termination of process**

- (a) A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 34.1 to 34.4. Clauses 34.5 and 34.6 survive termination of the dispute resolution process.
- (b) This Contract clause 34 does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court that may be urgently required.
- (c) Subject to Contract clause 34.7(b), a party must not commence or maintain a court action or proceeding upon a dispute in connection with this Contract until the dispute has been submitted to mediation under this Contract clause 34.

## **35. Termination**

### **35.1 Termination for convenience**

- (a) The Participating Agency may, at any time by written Notice, terminate this Contract in whole or in part.
- (b) On receipt of a Notice of termination or reduction the Contractor must:
  - (i) stop work as specified in the notice;
  - (ii) ensure that Specified Personnel stop work under the Contract;
  - (iii) continue work on any part of the Services not affected by the Notice;
  - (iv) take all available steps to minimise loss resulting from that termination and to protect Participating Agency Material and Contract Material; and
  - (v) refund all Service Charges received from the Participating Agency for Services which the Contractor has not provided to the Participating Agency.
- (c) If this Contract is terminated under this clause 35.1, Participating Agency is liable only for:
  - (i) payments under clause 19 for Services rendered in accordance with this Contract before the effective date of termination; and
  - (ii) subject to clauses 35.1(d) and 35.1(e), any reasonable costs that are actually incurred by the Contractor and directly attributable to the termination or partial termination of this Contract.



- (d) In the event of partial termination, the Participating Agency's liability to pay the Service Charges will, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.
- (e) The Participating Agency is not liable to pay compensation under clause 35.1(c) for an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, exceed the total Service Charges payable under this Contract.
- (f) The Contractor is not entitled to compensation for loss of prospective profits.

### **35.2 Termination by the Participating Agency for default**

- (a) If the Contractor:
  - (i) breaches a material provision of this Contract and that breach is not capable of remedy;
  - (ii) the Contractor breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so;
  - (iii) the Lead Agency terminates the Head Agreement for default by the Contractor;
  - (iv) in the opinion of the Participating Agency, a conflict of interest exists which would prevent the Contractor from performing its obligations under this Contract; or
  - (v) fails to comply with the Modern Slavery Risk Management Plan or Ethical Sourcing Plan; or
  - (vi) subject to the Participating Agency complying with any requirement in the *Corporations Act 2001* (Cth), the Contractor goes into liquidation or receiver or receiver and Manager or mortgagee's or chargee's agent is appointed, or in the case of an individual, becomes bankrupt or enters into a scheme of arrangement with creditors

the Participating Agency may, by written Notice, terminate this Contract and recover from the Contractor any loss or damage suffered by the Participating Agency, including the costs of engaging a third party to complete or provide the Services.

- (b) Without limitation, for the purposes of clause 35.2(a) each of the following constitutes a breach of a material provision of this Contract:
  - (i) breach of warranty under clause 4.2 (Contractor warranties);
  - (ii) a failure to comply with clause 4.18 (Indigenous Procurement Policy);
  - (iii) a failure to comply with clause 4.21 (Workplace Gender Equality);
  - (iv) a failure to comply with clause 4.23 (National Principles for Child Safe Organisation and other action for the safety of Children);
  - (v) a failure to comply with clause 4.29 (National Anti-Corruption Commission);
  - (vi) a failure to comply with clause 4.30 (Notification of Significant Events);
  - (vii) a failure to comply with clause 14 (Specified Personnel);
  - (viii) a failure to comply with clause 16 (Intellectual Property Rights)
  - (ix) a failure to comply with clause 25 (Insurance);
  - (x) a failure to comply with clause 26 (Confidentiality);
  - (xi) a failure to comply with clause 27 (Privacy and secrecy); and

- (xii) a failure to notify the Participating Agency of a conflict of interest under clause 28 (Conflict of interest).
- (c) The Contractor must notify the Participating Agency immediately if:
  - (i) the Contractor being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Contractor;
  - (ii) the Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
  - (iii) the Contractor ceases to carry on business;
  - (iv) the Contractor ceases to be able to pay its debts as they become due;
  - (v) the Contractor being a corporation enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
  - (vi) the Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
  - (vii) where the Contractor is a partnership, any step is taken to dissolve that partnership.
- (d) In this clause 35.2, **controller**, **managing controller**, **liquidator** and **administrator** have the same meanings as in the Corporations Act.

### 35.3 After termination or expiration

- (a) The Contractor must immediately on the earlier of a request from the Participating Agency or termination or expiration of this Contract:
  - (i) return to the Participating Agency;
  - (ii) destroy and certify in writing to the Participating Agency the destruction of; or
  - (iii) destroy and permit the Participating Agency to witness the destruction of,
 all the Participating Agency's Confidential Information in the Contractor's possession or control.

### 35.4 Termination does not affect accrued rights

Termination of this Contract does not affect any accrued rights or remedies of a party.

### 35.5 General termination assistance

Without limiting the Contractor's obligations under this Contract, following the termination or expiry of this Contract, at the Participating Agency's request in a Notice, the Contractor must provide reasonable transition assistance to the Participating Agency, with the Participating Agency paying reasonable fees (calculated in accordance with Schedule 3 for such transition assistance as may be agreed between the Participating Agency and the Contractor, including by making Specified Personnel and other Contractor's Personnel available for discussions with the Contractor and its Personnel and providing any information relating to the Services that is reasonably requested by the Participating Agency.

## 36. Survival

The following clauses survive the expiry or termination of this Contract:

- (a) Clause 4.12(c) (Subcontracting);
- (b) Clause 16 (Intellectual Property Rights);

- (c) Clause 18 (Moral Rights);
- (d) Clause 20 (GST);
- (e) Clause 23 (Indemnity);
- (f) Clause 24 (Liability);
- (g) Clause 25 (Additional Insurance) to the extent it relates to professional indemnity or errors or omissions insurance;
- (h) Clause 26 (Confidentiality);
- (i) Clause 27 (Privacy and secrecy);
- (j) Clause 30 (Security);
- (k) Clause 31 (Books and records);
- (l) Clause 32 (Audit and access);
- (m) Clause 35.5 (General termination assistance)

## 37. Notices and other communications

### 37.1 Service of notices

A Notice or other communication sent by the Participating Agency in connection with this Contract ('Notice') has no legal effect unless it is:

- (a) in writing, in hard-copy or by email;
- (b) in English and signed by (in the case of a hard-copy communication), or sent by (in the case of soft-copy communication):
  - (i) the Participating Agency Representative, if given by the Participating Agency, in relation to this Contract;
  - (ii) the Contractor's Representative, if given by the Contractor, and
- (c) addressed to:
  - (i) the Participating Agency Representative, if given by the Contractor, in relation to this Contract;
  - (ii) the Contractor's Representative, if given by the Participating Agency; and
- (d) sent to the other party's Address for Service by courier, by hand, mail, email or facsimile.

### 37.2 Effective on receipt

- (a) A Notice given in accordance with clause 37.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:
  - (i) if hand delivered, on delivery;
  - (ii) if sent by prepaid post, on the third Business Day after the date of posting (or on the 10th Business Day after the date of posting if posted to or from a place outside Australia); or
  - (iii) if it is sent by facsimile before 5.00pm on a Business Day (at the place of receipt), on the day it is sent and otherwise on the next Business Day (at the place of receipt);
  - (iv) if it is sent by email, when it reaches the receiving party's email server, unless the sending party receives an error message indicating that the Participating Agency Representative (in the case of the Participating Agency) or Contractor's Representative (in the case of the Contractor) has not received the message; or
  - (v) if it is delivered by hand or courier before 5.00pm on a Business Day at the place of

delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

- (b) Despite clause 37.2(a), a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice.
- (c) A Notice sent or delivered in a manner provided by clause 37.2(a) must be treated as validly given to and received by the party to which it is addressed even if:
  - (i) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
  - (ii) the Notice is returned unclaimed.

## **38. Miscellaneous**

### **38.1 Ownership of Contract Material**

All copyright and other Intellectual Property Rights contained in this Contract remain the property of the Participating Agency.

### **38.2 Variation**

No agreement or understanding varying or extending this Contract is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

### **38.3 Approvals and consents**

Except where this Contract expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.

### **38.4 Assignment and novation**

- (a) The Contractor must not assign, in whole or in part, its rights or obligations under this Contract, without the prior written approval of the Participating Agency.
- (b) The Contractor must not consult with any other person or body for the purposes of entering into an arrangement that will require novation of this Contract without the Participating Agency's prior written approval.
- (c) Without limiting any legislative provision, Commonwealth administrative action or other right, power or privilege and notwithstanding any other provision of this Contract, if the Participating Agency is restructured in any manner, the Participating Agency may in its absolute discretion assign or transfer this Contract to any Commonwealth Entity arising out of or in connection with such a restructure.
- (d) The Participating Agency to which this Contract is assigned or transferred will Notify the Contractor of any assignment or transfer under clause 38.4.
- (e) The Contractor agrees that if there is a restructure (e.g. machinery of government change), this Contract is deemed to refer to the new entity succeeding or replacing the Participating Agency and all of the Participating Agency's rights and obligations under this Contract will continue and will become rights and obligations of that new entity.

### **38.5 Costs**

Each party must pay its own costs of negotiating, preparing and executing this Contract.

### **38.6 Counterparts**

This Contract may be executed in counterparts. All executed counterparts constitute one document.

### **38.7 No merger**

The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

**38.8 Entire agreement**

This Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes any previous agreements, negotiations, representations or understandings, either written or verbal, between the parties in connection with its subject matter.

**38.9 Further action**

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.

**38.10 Severability**

A term or part of a term of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining terms or parts of the terms of this Contract continue in force.

**38.11 Waiver**

- (a) A failure or delay in exercise or partial exercise of a right arising from a breach of any provision of this Contract is not a waiver of that right and cannot be relied upon as a waiver of that right.
- (b) Payment of an invoice is not a waiver.

**38.12 Relationship**

- (a) The Participating Agency and the Contractor must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Contract does not create a relationship of employment, agency or partnership between the Participating Agency and the Contractor.

**38.13 Announcements**

- (a) The Contractor must, before making a public announcement in connection with this Contract or any transaction contemplated by it, obtain the Participating Agency's written agreement to the announcement, except if required by Law or a regulatory body (including a relevant stock exchange).
- (b) If the Contractor is required by Law or a regulatory body to make a public announcement in connection with this Contract or any transaction contemplated by this Contract, the Contractor must, to the extent practicable, first consult with and take into account the reasonable requirements of the Participating Agency.

**38.14 Governing law and jurisdiction**

Unless specified otherwise in Item 13 of the Official Order, this Contract is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

# Schedule 6 (Indigenous Participation Plan)

**User note: Delete this Schedule if an Indigenous Participation Plan is not required for this Official Order/Contract. It is required if the resulting contract is a High Value Contract or where the business area decides to include Mandatory Minimum Requirements. The successful Contractor's Indigenous Participation Plan will form part of any resultant Contract.**

## 1 Indigenous Participation Plan - Template Tenderer's Response Form

Note to [Tenderers]:

- (a) Each [Tenderer] must submit an Indigenous Participation Plan with its submission. The Indigenous Participation Plan should address:
- (i) how the [Tenderer] intends on meeting the mandatory minimum requirements for the Indigenous Procurement Policy;
  - (ii) the [Tenderer's] current rate of Indigenous employment and supplier use;
  - (iii) the [Tenderer's] commitment to Indigenous participation. Some examples of the activities an organisation can take to demonstrate its commitment to Indigenous participation are set out in paragraph 4.7.1 of the Indigenous Procurement Policy; and
  - (iv) if any part of the Contract will be delivered in a Remote Area, how the [Tenderer] will ensure that its provision of Services will deliver significant Indigenous employment or supplier use outcomes in that Remote Area.
- (b) The mandatory minimum requirements can be met at:
- (i) the contract-based level (see clause (c) below); or
  - (ii) the organisation-based level (see clause (d) below).
- (c) To meet the mandatory minimum requirements at the contract-based level, by the end of the Initial Term of the Contract:
- (i) at least 4 per cent of the full time equivalent Australian-based workforce deployed on the contracted project must be Indigenous Australians, on average over the Initial Term of the Contract; or
  - (ii) at least 4 per cent of the value of the work performed under the Contract must be subcontracted to Indigenous enterprises, on average over the Initial Term of the Contract; or
  - (iii) a minimum percentage of the full time equivalent Australian-based workforce deployed on the contracted project must be Indigenous Australians, and a minimum percentage of the value of the work performed under the Contract must be subcontracted to Indigenous enterprises, so that both minimum percentages add up to 4 per cent, on average over the Initial Term of the Contract.
- (d) To meet the mandatory minimum requirements at the organisation-based level, by the end of the Initial Term of the Contract:
- (i) at least 3 per cent of the full time equivalent Australian-based workforce of the contractor must be Indigenous Australians, on average over the Initial Term of the Contract; or
  - (ii) at least 3 per cent of the value of the contractor's Australian supply chain must be subcontracted to Indigenous enterprises, on average over the Initial Term of the Contract; or
  - (iii) a minimum percentage of the full time equivalent Australian-based workforce must be Indigenous Australians, and a minimum percentage of the

- value of the Contractor's supply chain must be subcontracted to Indigenous enterprises, such that both minimum percentages add up to 3 per cent on average over the Initial Term of the Contract.
- (e) The mandatory minimum requirements can be met directly or through subcontracts.
- (f) The successful [Tenderer]'s Indigenous Participation Plan will be attached to the resultant Contract, and the successful [Tenderer] will be required to comply with and report against the Indigenous Participation Plan during the Term.

**INDIGENOUS PARTICIPATION PLAN**

[INSERT NAME OF TENDERER]

1. This is an Indigenous Participation Plan submitted as part of the Tender in response to [INSERT RFT NUMBER] (RFT).
2. If selected as the [Contractor] following evaluation of Tenders received in response to the RFT, [TENDERER] will meet the mandatory minimum requirements on and from 1 July 2016 for the purposes of the Indigenous Procurement Policy:

at the contract-based level, in which regard at least:

- \_\_ [INSERT] percentage of [TENDERER'S] full time equivalent Australian-based workforce deployed on the contracted project must be Indigenous Australians over the Initial Term; and
- \_\_ [INSERT] percentage of the value of the work performed under the Contract will be subcontracted to Indigenous enterprises over the Initial Term; or

at the organisation-based level, in which regard at least:

- \_\_ [INSERT] percentage of [TENDERER'S] full time equivalent Australian-based workforce will be Indigenous Australians over the Initial Term; and
- \_\_ [INSERT] percentage of the value of [TENDERER'S] Australian supply chain will be subcontracted to Indigenous enterprises over the Initial Term.

*[Note to [Tenderers]: Select which option(s) apply based on the requirements set out in clauses (b), (c) and (d) in the Note to Tenderers above.]*

3. To meet the mandatory minimum requirements on and from 1 July 2016 for the purposes of the Indigenous Procurement Policy, [TENDERER] will undertake the following ([Tenderer] to insert details of how it will meet the mandatory minimum requirements (which may include details of its current workforce / supply chain) at either / both the contract / organisation level and how it will go about meeting the requisite percentages to meet the mandatory minimum requirements. [Tenderers] should note that the mandatory minimum requirements are averages over the Initial Term of any resultant Contract, and will accordingly need to detail their approach to achieving the specified targets over the Initial Term):

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4. [TENDERER's] rate of Indigenous employment and supplier use as at [Tender Closing Date] is:

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5. [TENDERER] demonstrates its commitment to Indigenous participation as follows:

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6. [TENDERER] will meet the mandatory minimum requirements:

directly; or

through subcontracts.

[Tenderer to detail its approach to meeting the mandatory minimum requirements directly or through subcontracts.]

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<Note to drafters: Include the following when a component of any resultant Contract will be delivered in a Remote Area.>



**Remote Area Contracts**

7. A component of any resultant Contract will be delivered in a Remote Area. [TENDERER] proposes to ensure the Contract will deliver a significant Indigenous employment or supplier use outcome in that Remote Area as follows:

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